Supreme Court No. _____

THE SUPREME COURT OF THE STATE OF WASHINGTON

HIGH DEFINITION HOMES, LLC,

APPELLANT,

v.

STEWART TITLE GUARANTY COMPANY,

RESPONDENTS.

HIGH DEFINITION HOMES, LLC'S PETITION FOR REVIEW

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

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I. IDENTITY OF PETITIONER/CITATION TO COURT OF APPEALS DECISION

Petitioner, High Definition Homes, LLC (hereinafter, "High Definition") is the plaintiff in Lewis County Superior Court, Case No. 22-2-00658-21, and was the appellant before the Court of Appeals, Division II, Case No. 58677-1-II. The Court of Appeals entered its decision on August 6, 2024. A copy of the Court of Appeals decision is attached at Appendix D.

II. SUMMARY AND ISSUE PRESENTED FOR REVIEW

High Definition contracted to purchase two abutting, but legally separate, lots described by two separate legal descriptions ("Tract A of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2017 0038 . . ." and "Tract B of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2017 0038 . . ."), two separate street addresses, and two separate tax parcel numbers. High Definition contracted to buy the two lots in a single transaction for a single consideration from a single seller. High Definition paid a consideration consistent only with

its ability to develop and sell the two separate lots separately. Appendix A.

Unbeknownst to High Definition, the seller had recorded a document entitled "Boundary Line Adjustment/Lot Consolidation" which caused the two separate lots to be consolidated into a single lot (hereinafter, the "Lot Consolidation"). Appendix B. The seller did not disclose the recording of the Lot Consolidation to High Definition.

High Definition applied for a title insurance policy from Stewart Title Guaranty Company (hereafter, the "insurer") to insure its title to the two separate lots it contracted to purchase. High Definition provided the insurer the purchase and sale agreement showing it had contracted to purchase two separate lots described by two separate legal descriptions.

In preparing the policy, the insurer discovered the recorded Lot Consolidation, and thus discovered --before it issued the policy -- that the two separate lots which High Definition had contracted to purchase had been consolidated into one lot.

The insurer issued a title policy. Appendix C. In doing so, the insurer did not effectively disclose the Lot Consolidation that the sellers had recently recorded to High Definition.

The policy did not describe the title being insured by the legal description contained in the Lot Consolidation: "Parcel A of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2020-0181". Instead, the title insurance policy described the title insured in Schedule A by combining the legal description of the two separate lots whose title High Definition had applied to insure ("Tracts A and B of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2017 0038"). Schedule A of the policy also referred to these two separate lots as each having its own separate street address, and own separate tax parcel number.

The surveyor who wrote the new legal description contained in the Lot Consolidation testified that the continued use of only this prior legal description was substantially misleading.

The policy contained a special exception, special exception no. 5, which excluded coverage for matters described in a "record of survey" recorded under a particular recording number. The document recorded under that recording number was the Lot Consolidation.

The insurer did not attach a copy of the Lot Consolidation to the policy. The insurer never at any time provided a copy of the Lot Consolidation to High Definition.

High Definition's principal reviewed the policy. He understood that the purpose of a record of survey was to map out the original boundaries of property. *See* RCW 58.09.020(3), .030. He knew that only a boundary line adjustment or lot consolidation could change or consolidate the boundaries of the two lots High Definition had contracted to purchase. *See* Centralia Municipal Code §19.20.020,-.030. Because the title insurer had not provided him a copy of the recorded document referred to in special exception no. 5, and relying on the title insurer's misdescription of

the document as a mere "record of survey," he did not inquire further.

Unaware of the Lot Consolidation, High Definition closed the purchase.

High Definition later discovered the existence of the Lot Consolidation when it applied for permits to develop the parcels. High Definition incurred expense and delay re-segregating the now single parcel back into the two separate parcels whose title High Definition had contracted to purchase, and which High Definition had applied to insure. High Definition incurred loss and damage as a result.

High Definition made claim against the insurer for that loss and damage. The insurer denied the claim.

Rejecting High Definition's claim that enforcement of the special exception's exclusion for the lot consolidation would be procedurally unconscionable, the trial court granted the title insurer's motion for judgment on the pleadings. The Court of Appeals affirmed solely on this basis. Appendix D.

Question Presented

A contract term is procedurally unconscionable if the fact that it has been included in the contract has not been meaningfully communicated to a party, so as to deprive the party of a meaningful choice whether to assent to and enter into a contract including that term.

Under the standards applicable to motions for judgment on the pleadings under CR 12(c), did High Definition sufficiently establish that the special exception is unenforceable on the grounds of procedural unconscionability?

Short Answer: Yes. High Definition applied to insure its title to two separate lots. The insurer discovered that a Lot Consolidation had been recorded which consolidated the two lots which High Definition had contracted to buy and whose title High Definition had applied to insure into a single lot. But the insurer did not meaningfully communicate the fact that the lots had been consolidated to High Definition. Its failure to do so deprived High

Definition of a meaningful choice to either proceed to purchase and insure what was now only a single lot, or to refuse to do so.

III. STATEMENT OF THE CASE

A. High Definition contracts to purchase two separate lots.

High Definition entered into an agreement to purchase two separate but abutting parcels described by two separate legal descriptions ("Tract A of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2017 0038 . . ." and "Tract B of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2017 0038 . . ."), two separate street addresses, and two separate tax parcel numbers. High Definition agreed to pay a single consideration to a single seller for these two separate parcels. CP 74-86. (Appendix A).

Unbeknownst to High Definition, CP 67, the sellers had recorded a "Boundary Line Adjustment/Lot Consolidation" (hereinafter, "Lot Consolidation"). CP 103 (Appendix B). The effect of the recording of the Lot Consolidation was to eliminate the boundary between the two adjoining tracts, thereby

combining them into a single parcel. See Centralia Municipal Code, §19.20.020-.030.

The Lot Consolidation created a new legal description of the property consistent with its change in status from two separate tracts to a single parcel. This new legal description consisted of **both of** the following paragraphs:

> Parcel A of City of Centralia Boundary Line Adjustment/Lot Consolidation number 20200181, records of Lewis County, Washington.
>
> Also described as tract A and tract B of City of Centralia boundary line adjustment number BLA-20170036 as recorded in Book 3 of Boundary Line Adjustment Maps at page 192 under Auditor's File number 3462824, records of Lewis County, Washington.

CP 103. The surveyor who created the lot consolidation testified that once the Lot Consolidation had been recorded, referring to the property by only the second part of the new legal description was substantially misleading. CP 106-08.

B. The insurer insures High Definition's title.

In connection with its purchase of the two tracts, High Definition applied to the insurer for a policy of title insurance. In applying for the title insurance, High Definition provided the insurer with the purchase and sale agreement for the two separate lots pursuant to two separate legal descriptions, two separate street addresses, and two separate tax parcel numbers. High Definition thus unmistakably communicated to the insurer its intent to insure its title to two separate lots. CP 74-86. (Appendix A).

The insurer issued High Definition a title policy. CP 90-101. (Appendix C). The policy insured High Definition against "loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of" various Covered Risks, including "Title being vested other than as stated in Schedule A," and "unmarketable title." CP 90.

Schedule A contained a legal description of the property insured. Schedule A did not describe the property as a single lot

or utilize the recently recorded Lot Consolidation ("Parcel A of Boundary Line Adjustment/Lot Consolidation 2020-0181").

Instead, it described the property insured by the Policy as two lots:

> Tracts A and B of boundary line adjustment BLA-2017 0036 . . . .CP 96.

Schedule A also described the property by two separate addresses: "216 East Roanoke Street & 217 Scott Street, Centralia, Washington 98531." CP 95. The map attached to the policy showed two separate lots and contained two arrows pointing to each of the two separate lots. CP 101.

The title policy contained a special exception excluding loss or damage arising by reason of matters disclosed by "**record of survey**" recorded under Lewis County Auditor's File No. 3535886:

> This policy does not insure against loss or damage by reason of the [sic] and the Company will not pay costs, attorney's fees, or expenses which arise by reason of:
> . . .

> 5. Matters disclosed by **record of survey**
> Recorded: October 30, 2020, Auditor's No.: 3535886.

(Emphasis added). CP 97-98. The document recorded under Auditor's No. 3535886 was the Lot Consolidation, not a "record of survey." CP 103 (Appendix B).

The insurer did **not** attach a copy of the Lot Consolidation to the policy. The insurer **never, at any time**, provided a copy of the Lot Consolidation it misdescribed as a record of survey and purported to reference in the special exception to High Definition. CP 67, 136.

High Definition's principal testified that the insurer's failure to refer to the Lot Consolidation in the description of the property insured, its misdescription of the Lot Consolidation as merely being a record of survey, and it failure to provide High Definition with a copy of the document that Special Exception No. 5 purported to reference misled High Definition:

> 3. Washington law defines a "Record of Survey" as a document whose function is to locate and monument existing parcel boundaries. The purpose of a "Record of Survey" is not to change or

eliminate a parcel's boundaries. The purpose of a boundary line adjustment/lot consolidation, in contrast, is to alter or eliminate parcel boundaries.

4. The policy misdescribed the document referred to in Special Exception No. 5 as a "Record of Survey" rather than a "Boundary Line Adjustment/Lot Consolidation."

5. This misrepresentation, together with the title company's failure to provide High Definition a copy of the document being referred to, caused me to conclude the document did not consequentially effect the boundaries of the lots that the policy would be insuring. High Definition accordingly closed the purchase of the lots.

6. Had the title company ever referred to the "Lot Consolidation" in its Schedule A description of the property being insured, or had the title company correctly referred to the document whose recording number is set forth in Special Exception No. 5 as either a "Boundary Line Adjustment" or "Lot Consolidation," I definitely would have taken action to obtain and review the document, would have discovered the sellers did not in fact hold title to two separate parcels and would have refused to close.

CP 136-37.

Unaware of the Lot Consolidation, High Definition closed the purchase. CP 67.

High Definition discovered the existence of the Lot Consolidation when it applied for permits to develop the parcels. High Definition incurred expense and delay re-segregating the now single parcel back into the two separate parcels whose title it had contracted to purchase, and which it had applied to insure. High Definition incurred loss and damage as a result. CP 67.

High Definition made claim against the insurer for its loss and damage. The title insurer denied its claim. CP 67.

C. The trial court grants the insurer's motion for judgment on the pleadings.

The trial court granted the insurer's motion for judgment on the pleadings, rejecting High Definition's claim of procedural unconscionability. CP 157-58.

The Court of Appeals, in an unpublished decision filed August 6, 2024, affirmed the trial court's dismissal in response to the motion for judgment on the pleadings. Appendix D. It did so by rejecting High Definitions claim that the special exception was procedurally unconscionable. *Id.*

IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case presents an issue of substantial public interest pertaining to the law of procedural unconscionability. The Court of Appeals decision not only wrongly decided this issue, but did so in a way that is wholly inconsistent with this Court's prior decisions. RAP 13(b)(1), (4).

This Court has held that a contractual provision that is procedurally unconscionable may not be enforced. *Burnett v. Pagliacci Pizza, Inc.*, 196 Wn.2d 38, 54 ¶27, 470 P.3d 486 (2020); *Zuver v. Air Touch Communications, Inc.,* 153 Wn.2d 293, 303 ¶10, 103 P.3d 753 (2004); *Nelson v. McGoldrick*; 127 Wn.2d 124, 131, 896 P.2d 1258 (1995). It has further held that **the key question** in determining whether a contractual provision is procedurally unconscionable **is whether the party affected by the provision was deprived of a meaningful choice whether to assent to it**. *Id., quoting Nelson v. McGoldrick*, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995). And it has held that the specific factors which this Court has identified in specific cases

as tending to show or not show procedural unconscionability should not "be applied mechanically without regard to whether in truth a meaningful choice existed." *Zuver*, 153 Wn.2d at 303, quoting *Nelson,* 127 Wn.2d at 131.

Here, the Court of Appeals completely lost sight of this key question. High Definition applied to insure its title to two separate lots. The insurer learned, prior to issuing the policy, that the seller had recorded a Lot Consolidation which combined the two lots into a single lot. **But the Court of Appeals never once addressed the question of whether the insurer meaningfully informed High Definition of that fact that the two lots had been combined into one.** Because the insurer did not meaningfully inform High Definition, it deprived High Definition of a meaningful choice between proceeding to close and thereby obtain and insure title to the single consolidated lot, or not do so. Because it deprived High Definition of this choice, special exception no. 5 is procedurally unconscionable, and therefore unenforceable.

Further, as this Court's cases cited above make perfectly clear, there are multiple reasons why a party to a contract may be deprived of the required meaningful choice. One set of reasons, repeatedly recognized by Washington courts, focuses on the whether the signatory had an adequate time to review the contract and whether the provision in question was hidden in a maze of fine print. *See, e.g., Cornelius v. Alpha Kappa Lambda,* 19 Wn.App.2d 862, 870-71 ¶15-18, 871 ¶19, 502 P.3d 910 (2021). Compare Court of Appeals' decision at p. 17, *citing Mattingly v. Palmer Ridge Homes, LLC*, 157 Wn.App. 376, 388, 238 P.3d 505 (2010) (Appendix D)

Here, High Definition did not rely on these factors. High Definition's principal read the title policy. He did not claim he lacked adequate time to review the policy. He did not claim that special exception no. 5 was hidden in a maze of fine print. Accordingly, it is not surprising the Court of Appeals' mechanical application of these factors to the facts of this case led it reject the claim of procedural unconscionability.

What High Definition did claim is that the insurer, in issuing the policy (1) concealed the fact that the two separate lots had been consolidated by utilizing an incorrect and substantially misleading legal description, (2) purported to incorporate a document by reference into special exception no. 5 that it did not provide to High Definition, and (3) affirmatively misdescribed the nature of the document referenced in special exception no. 5 thereby causing High Definition not to review that document.

A. The insurer concealed the fact that the two separate lots had been consolidated into one by utilizing an incorrect and substantially misleading legal description of the property being insured.

This first factor should be considered in light of the following wholly undisputed facts: High Definition applied to insure two legally separate parcels described by two separate legal descriptions. CP 74-86. While preparing to issue the policy, the insurer discovered that the seller had recorded the Lot Consolidation, which consolidated the two lots High Definition had contracted to purchase and applied to insure into one lot. CP

98. As an insurer that owed a quasi-fiduciary duty to treat its insured's interest with the same consideration it treated its own interest, (see, e.g. *Safeco Ins. Co. v. Butler*, 118 Wn.2d 383, 389, 823 P.2d 499 (1992)), it had a duty to disclose the fact that the lots had been consolidated.

Had the insurer used the correct, current and complete legal description of the consolidated lots, the insurer would have made the required disclosure. That legal description described a single consolidated lot, and it specifically referenced a "Lot Consolidation." As the registered professional land surveyor who authored the Lot Consolidation declared under oath, once the Lot Consolidation had been recorded, use of anything less than the full legal description contained in the Lot Consolidation which referred to the combined lots as a single parcel, and instead referring to the property as two tracts, is substantially misleading. CP 107-08.

Despite these undisputed facts, the Court of Appeals held that the description of the property insured was "not incorrect,"

and that it "largely follows the new legal description." Appendix D (Slip Op. p. 17.) In so holding, the Court of Appeals plainly erred.

Even worse, the Court of Appeals ignored what this Court had repeatedly held to be the ultimate, overarching question: Whether the insurer put High Definition on notice of the fact that the lots had been consolidated, thereby giving High Definition a meaningful choice or whether to proceed to close and insure a transaction involving only one legal lot, rather than the two separate lots High Definition had contracted to purchase and applied to insure. The insurer's failure to utilize the current, correct legal description deprived High Definition of meaningful choice.

B. The insurer wrongly purported to incorporate the Lot Consolidation by reference into special exception no. 5 without making it available to High Definition.

The insurer also wrongly purported to incorporate the Lot Consolidation by reference into special exception no. 5 without making it available to High Definition.

Burnett controls on this issue. In *Burnett,* Burnett's employer required him to sign an employment contract that purported to incorporate an employee handbook by reference. But the employer did not provide Burnett the employee handbook for review until after Burnett had signed the contract. The Court held that the employer's attempted incorporation by reference of the handbook, and particularly of its provisions requiring the arbitration of disputes, was procedurally unconscionable because it deprived the employee of a meaningful opportunity before contracting to choose whether to consent to its terms. 196 Wn.2d at 56-67, ¶ 33.

Here, the insurer issued a policy which purported to incorporate, as part of special exception no. 5, matters referred to in a document recorded under a particular recording number. But, worse than in *Burnett*, the insurer *never* provided High Definition with a copy of the purportedly incorporated document which consolidated the two lots High Definition had applied to insure into one. Therefore, as in *Burnett*, the insurer denied High

Definition the opportunity to make a meaningful choice whether to close on and insure only the single lot the insurer knew that High Definition would acquire, or to refuse to do so.

The Court of Appeals held that this analysis did not apply on the grounds that the document in question was recorded with the Lewis County auditor's office, and thus "was reasonably available for [High Definition] to review." Appendix D (Slip opinion at 14, citing *Mattingly*, 157 Wn.App at 392).

Mattingly held only that the contracting party in the insurer's position had to submit evidence proving a document was "reasonably available," without discussing what constituted "reasonable availability." *Id.* None of the three cases *Mattingly* cites discusses that issue, either. *Id.* Because the contracting party did not do so, the Court held its enforcement procedurally unconscionable. *Id.*

Here, to the extent *Mattingly* applies at all, it imposed on the insurer the obligation to submit evidence proving the "reasonable availability" of the Lot Consolidation. But the

insurer, in moving for judgment on the pleadings, submitted no evidence. Therefore, the Court of Appeals should have held that the insurer failed to establish the Lot Consolidation was "reasonably available" to High Definition.

There are multiple additional reasons why the Court of Appeals erred. First, the policy itself expressly states that the written materials issued by the insurer to the insured, and only those materials, constitute "the entire policy and contract between the Insured and the Company." CP 93 ("Policy entire contract" clause). The policy itself thus forbids the insurer from requiring High Definition to look to materials outside the policy to ascertain the coverage the policy provides.

Second, property buyers like High Definition purchase title insurance precisely in order to insure the condition of their title without having to resort to searching for documents in the public records. That convenience is precisely why title insurance substantially replaced the prior system of title assurance involving abstracts of the auditor's records.

Third, to hold that title insurers can defeat claims under their policies by charging insureds with knowledge of the contents of documents recorded with the auditor's office would render the coverage provided by the policy illusory. Why have special exceptions referring to specific recorded documents if the insured is deemed to have constructive knowledge of them in any event?

Fourth, the title policy itself defines matters which the insured "knows" or has "knowledge" of as being limited to only matters of which the insured has actual, not constructive, knowledge:

> "Knowledge" or "known": Actual knowledge not constructive knowledge or notice that may be imputed to an insured by reason of the Public Records or any other records that impart constructive notice affecting the Title.

CP 91 (Definition of "Knowledge"). Under the language of its own policy, the insurer has the burden of ensuring its insured have actual knowledge of matters referred to in a special exception, either by attaching the documents to the policy itself,

or at least providing a copy to the insured. Most title insurers routinely do exactly that. But this title insurer does not even claim to have done so in High Definition's case.

Finally, the Court of Appeals again lost sight of the key, overarching question: whether High Definition had a meaningful choice. The failure of the insurer to provide High Definition with a copy of the document it purported to incorporate by reference deprived High Definition of meaningful choice.

C. The insurer affirmatively misdescribed the nature of the document described in special exception no. 5, thereby inducing High Definition not to review that document.

Where one party to a contract positively misdescribes to the other the nature of a document the first party incorporates by reference, and the misdescription induces the other party not to review the document, the misdescription deprives the second party of reasonable choice, and renders enforcement of the incorporated document procedurally unconscionable

For example, the *Restatement (Second) of Contracts* §166 provides:

> If a party's manifestation of assent is induced by the other party's fraudulent representation as to the contents or effect of a writing evidencing or embodying in whole or in part an agreement, the court at the request of the recipient may reform the writing to express the terms of the agreement as asserted,
>
> (a) if the recipient was justified in relying on the misrepresentation,
>
> (b) except to the extent that rights of third persons such as good faith purchasers for value will be unfairly affected.

This Court has affirmed this principle in other contexts. See *Washington Mutual Bank v. Hedreen*, 125 Wn.2d 521, 886 P.2d 1121 (1994) (Court affirmed reformation of contract where one party misrepresented, by failing to inform the other contracting party in a situation where it had a duty to do so, of the fact that the contract did not conform to their negotiated agreement). But it has never squarely adopted it in the context of a claim of procedural unconscionability. The Court should accept review in order to do so now.

Here, the insurer knew that High Definition was seeking to insure its title to two separate legal lots. It knew that the seller had recorded a Lot Consolidation which had consolidated those two lots into one lot. The insurer, consistent with its quasi-fiduciary obligation as insurer, had the duty to effectively disclose this to High Definition.

The insurer did not do so. Instead, the insurer positively misled High Definition about the nature of the document it sought to incorporate by reference in special exception no. 5. It described the document as a "record of survey" rather than the "Boundary Line Adjustment/Lot Consolidation" the document actually was.

Under Washington law, a record of survey is merely a "map" that "locates and monuments in accordance with sound principles of land surveying . . .points or lines which define the exterior boundary or boundaries of two or more ownerships. . ." RCW 58.09.020(3), .030. A record of survey thus may monument and depict *existing* land boundaries; but it cannot

change or eliminate the boundaries of an existing lot. To change or eliminate property boundaries one must obtain governmental approval of and record a Boundary Line Adjustment/Lot Consolidation. *See* Centralia Municipal Code, §19.20.020-.030.

The insurer's misdescription of the Lot Consolidation as a mere "record of survey" led High Definition to conclude that no such document had been recorded here. CP 136-37. It thereby deprived High Definition of the opportunity to understand what matters the insurer was purporting to refer to and exclude in the special exception. It deprived High Definition of meaningful choice.

The Court of Appeals held that special exception no. 5's description of the recorded document being incorporated by reference "adequately" described its nature. (Appendix D Slip Opinion p. 16). This holding is wrong. No Washington Court has ever held that a record of survey has had the effect of changing property boundaries.

The insurer's description of the Lot Consolidation as a record of survey is, at the very most, the kind of half-truth which Washington law recognizes as the equivalent of a fraudulent misrepresentation. *Ikeda v. Curtis*, 43 Wn.2d 449, 459-61, 261 P.2d 684 (1953). Because the misdescription actually deceived and misled High Definition, it is immaterial that further investigation by High Definition would have revealed the truth. *Boonstra v. Stevens Norton, Inc.*, 64 Wn.2d 621, 626, 393 P.2d 287 (1964).

Had the insurer correctly described the document as a "Lot Consolidation," High Definition would have been put on notice that the boundaries of the lots it was about to purchase had been eliminated. High Definition would have insisted on finding out how the boundaries had been affected prior to closing on the purchase of the property. The insurer thus misled High Definition by its incorrect description of the document being incorporated by reference. *Compare Mattingly*, 157 Wn.App at 391-92, ¶21.

Taken together, the insurers failure to utilize the current legal description of the property--which explicitly referenced both the Lot Consolidation and the fact that the two parcels were now a single lot, the insurer's failure to provide High Definition a copy of the Lot Consolidation--which the insurer discovered prior to issuing the policy, but about which the insurer could tell High Definition did not know, and the insurer's misdescription of the document it was purporting to incorporate by reference in special exception no. 5 as a mere "record of survey" -- a document that could not effect parcel boundaries, rather than a Boundary Line Adjustment/Lot Consolidation, the only purpose of which is to alter boundaries--the insurer denied High Definition a meaningful opportunity to choose whether or not to proceed to close and insure the purchase of the single lot, rather than the two lots it had applied to insure. Instead of ignoring this over arching question, the Court of Appeals should have held that the insurers failure to inform meaningfully High Definition of the Lot Consolidation rendered special exception no. 5 procedurally

unconscionable, and rejected the insurers attempt to enforce that exception.

D. Attorney's fees.

Assuming High Definition prevails in this dispute over coverage under an insurance policy, it is entitled to an award of attorney's fees pursuant to the rule articulated by this Court in *Olympic Steamship v Centennial Ins. Co.* 117 Wn.2d 37, 811 P.2d 673 (1991). On review, the Court should either award fees on this basis, or preserve High Definition's right on remand to request an award of attorney's fees, including fees on appeal upon final disposition on this matter.

V. CONCLUSION

The Court of Appeals in its decision completely lost sight of, and ignored what this Court had repeatedly held to be the key issue in resolving a claim of procedural unconscionability: whether the party affected by the provision was deprived of the meaningful choice whether to assent to it. The Court of Appeal's decision thus conflicts with a long line of decisions issued by this Court,

including *Burnett*, *Zuver*, and *Nelson*. The Court should accept review to reaffirm its holding in those cases. RAP 13.4(b)(1).

In addition, this Court should accept review in order to address the question of substantial public interest of whether a claim of procedural unconscionability can be based on the other party's misdescription of a document purportedly incorporated by reference, and whether the Court should adopt the rule articulated in the Restatement (Second) of Contracts, § 156. RAP 13.4(b)(4).

OWENS DAVIES, P.S.

Matthew B. Edwards, WSBA No. 18332
Attorney for Appellant High Definition Homes, LLC

This document contains 4,991 words, excluding the parts of the document exempted from the word count by RAP 18.17(b).

APPENDICES DESCRIPTION

A.	Purchase and Sale Agreement	CP 74-86
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APPENDIX A

Authentisign ID: 8A2A4A5C-42AC-47FC-BB98-289FD0DD9DF5

Form 25
Vacant Land PSA
Rev. 3/21
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VACANT LAND PURCHASE AND SALE AGREEMENT
Specific Terms

1. Date: April 30, 2021 MLS No.: N/A Offer Expiration Date: ____
2. Buyer: High Definition Homes LLC (Buyer) ____ (Buyer) A limited liability company (Status)
3. Seller: Nina Tuzman (Seller) Dmitriy Bayda (Seller)
4. Property: Legal Description attached as Exhibit A. Tax Parcel No(s).: 002763037000, 003708040000, ____
   216 E Roanoke St and 217 Scott St (Address) Centralia (City) Lewis (County) WA (State) 98531 (Zip)
5. Purchase Price: $ 200,000.00 Dollars
6. Earnest Money: $ 5,000.00 ☑ Check; ☐ Note; ☐ Wire; ☐ Other ____
   Delivery Date 5 days after mutual acceptance; to be held by ☐ Buyer Brokerage Firm; ☑ Closing Agent
7. Default: (check only one) ☑ Forfeiture of Earnest Money; ☐ Seller's Election of Remedies
8. Title Insurance Company: Title Guaranty Company of Lewis County
9. Closing Agent: Stewart Title (Company) Lisa Jones (Individual (optional))
10. Closing Date: 5-21-21; Possession Date: ☑ on Closing; ☐ Other ____
11. Services of Closing Agent for Payment of Utilities: ☐ Requested (attach NWMLS Form 22K); ☑ Waived
12. Charges/Assessments Levied Before but Due After Closing: ☐ assumed by Buyer; ☑ prepaid in full by Seller at Closing
13. Seller Citizenship (FIRPTA): Seller ☑ is; ☐ is not a foreign person for purposes of U.S. income taxation
14. Subdivision: The Property: ☐ must be subdivided before ____; ☑ is not required to be subdivided
15. Feasibility Contingency Expiration Date: ☑ 0 days after mutual acceptance; ☐ Other ____
16. Agency Disclosure: Buyer represented by: ☑ Buyer Broker; ☐ Buyer/Listing Broker (dual agent); ☐ unrepresented
    Seller represented by: ☑ Listing Broker; ☐ Listing/Buyer Broker (dual agent); ☐ unrepresented
17. Addenda: 22D(Optional Clauses) 22EF(Funds Evidence) 34(Addendum)
    22E FIRPTA Certification

Buyer	Seller
Authentisign [signature] 04/30/2021 — Buyer Signature / Date	N Tuzman [signature] 5/3/21 — Seller Signature / Date
Buyer Signature / Date	[signature] 5/04/21 — Seller Signature / Date
Buyer Address	Seller Address
City, State, Zip	Centrali WA 98531 — City, State, Zip
Buyer Phone No. / Fax No.	Seller Phone No. / Fax No.
kellen@hdhomeswa.com — Buyer E-mail Address	Seller E-mail Address
Blue Summit Realty LLC — Buyer Brokerage Firm; 2749 — MLS Office No.	RE/MAX Key Land Co. — Listing Brokerage Firm; 9144 — MLS Office No.
Brian Dermanoski — Buyer Broker (Print); 777290 — MLS LAG No.	Scott Horner — Listing Broker (Print); 6310 — MLS LAG No.
(360) 688-4073 — Firm Phone No.; Broker Phone No.; Firm Fax No.	(360) 330-0804 — Firm Phone No.; (360) 330-0804 — Broker Phone No.; (360) 330-0367 — Firm Fax No.
offers@bluesummitrealty.com — Firm Document E-mail Address	keylandofficedocs@gmail.com — Firm Document E-mail Address
brian@nwchoice.com — Buyer Broker E-mail Address	scotthorner@remax.net — Listing Broker E-mail Address
23411 — Buyer Broker DOL License No.; 18856 — Firm DOL License No.	11374 — Listing Broker DOL License No.; 20902 — Firm DOL License No.

CP_074

VACANT LAND PURCHASE AND SALE AGREEMENT
General Terms

a. **Purchase Price.** Buyer shall pay to Seller the Purchase Price, including the Earnest Money, in cash at Closing, unless otherwise specified in this Agreement. Buyer represents that Buyer has sufficient funds to close this sale in accordance with this Agreement and is not relying on any contingent source of funds, including funds from loans, the sale of other property, gifts, retirement, or future earnings, except to the extent otherwise specified in this Agreement. The parties shall use caution when wiring funds to avoid potential wire fraud. Before wiring funds, the party wiring funds shall take steps to confirm any wire instructions via an independently verified phone number and other appropriate measures.

b. **Earnest Money.** Buyer shall deliver the Earnest Money by the Delivery Date listed in Specific Term 6 (2 days after mutual acceptance if not filled in) to the party holding the Earnest Money (Buyer Brokerage Firm or Closing Agent). If sent by mail, the Earnest Money must arrive at Buyer Brokerage Firm or Closing Agent by the Delivery Date. If the Earnest Money is held by Buyer Brokerage Firm and is over $10,000.00 it shall be deposited into an interest bearing trust account in Buyer Brokerage Firm's name provided that Buyer completes an IRS Form W-9. Interest, if any, after deduction of bank charges and fees, will be paid to Buyer. Buyer shall reimburse Buyer Brokerage Firm for bank charges and fees in excess of the interest earned, if any. If the Earnest Money held by Buyer Brokerage Firm is over $10,000.00 Buyer has the option to require Buyer Brokerage Firm to deposit the Earnest Money into the Housing Trust Fund Account, with the interest paid to the State Treasurer, if both Seller and Buyer so agree in writing. If the Buyer does not complete an IRS Form W-9 before Buyer Brokerage Firm must deposit the Earnest Money or the Earnest Money is $10,000.00 or less, the Earnest Money shall be deposited into the Housing Trust Fund Account. Buyer Brokerage Firm may transfer the Earnest Money to Closing Agent at Closing. If all or part of the Earnest Money is to be refunded to Buyer and any such costs remain unpaid, the Buyer Brokerage Firm or Closing Agent may deduct and pay them therefrom. The parties instruct Closing Agent to provide written verification of receipt of the Earnest Money and notice of dishonor of any check to the parties and Brokers at the addresses and/or fax numbers provided herein.

Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent. If either party fails to execute the release form, a party may make a written demand to the Closing Agent for the Earnest Money. Pursuant to RCW 64.04, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of Closing Agent's notice, Closing Agent shall disburse the Earnest Money to the party making the demand within 10 days of the expiration of the 20 day period. If Closing Agent timely receives an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursal of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this Agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a Buyer Brokerage Firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to $500.00 for the costs thereof.

c. **Condition of Title.** Unless otherwise specified in this Agreement, title to the Property shall be marketable at Closing. The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights. Seller shall not convey or reserve any oil and/or mineral rights after mutual acceptance without Buyer's written consent. Monetary encumbrances or liens not assumed by Buyer, shall be paid or discharged by Seller on or before Closing. Title shall be conveyed by a Statutory Warranty Deed. If this Agreement is for conveyance of a buyer's interest in a Real Estate Contract, the Statutory Warranty Deed shall include a buyer's assignment of the contract sufficient to convey after acquired title. If the Property has been short platted, the Short Plat number is in the Legal Description.

d. **Title Insurance.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for the then-current ALTA form of standard form owner's policy of title insurance from the Title Insurance Company. If Seller previously received a preliminary commitment from a Title Insurance Company that Buyer declines to use, Buyer shall pay any cancellation fees owing to the original Title Insurance Company. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed. The Title Insurance Company shall send a copy of the preliminary commitment to Seller, Listing Broker, Buyer and Buyer Broker. The preliminary commitment, and the title policy to be issued, shall contain no exceptions other than the General Exclusions and Exceptions in said standard form and Special Exceptions consistent with the Condition of Title herein provided. If title cannot be made so insurable prior to the Closing Date, then as Buyer's sole and exclusive remedy, the Earnest Money shall, unless Buyer elects to waive

VACANT LAND PURCHASE AND SALE AGREEMENT
General Terms

such defects or encumbrances, be refunded to the Buyer, less any unpaid costs described in this Agreement, and this Agreement shall thereupon be terminated. Buyer shall have no right to specific performance or damages as a consequence of Seller's inability to provide insurable title.

e. **Closing and Possession.** This sale shall be closed by the Closing Agent on the Closing Date. "Closing" means the date on which all documents are recorded and the sale proceeds are available to Seller. If the Closing Date falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, the Closing Agent shall close the transaction on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. Buyer shall be entitled to possession at 9:00 p.m. on the Possession Date. Seller shall maintain the Property in its present condition, normal wear and tear excepted, until the Buyer is provided possession. Buyer reserves the right to walk through the Property within 5 days of Closing to verify that Seller has maintained the Property as required by this paragraph. Seller shall not enter into or modify existing leases or rental agreements, service contracts, or other agreements affecting the Property which have terms extending beyond Closing without first obtaining Buyer's consent, which shall not be unreasonably withheld.

f. **Section 1031 Like-Kind Exchange.** If either Buyer or Seller intends for this transaction to be a part of a Section 1031 like-kind exchange, then the other party shall cooperate in the completion of the like-kind exchange so long as the cooperating party incurs no additional liability in doing so, and so long as any expenses (including attorneys' fees and costs) incurred by the cooperating party that are related only to the exchange are paid or reimbursed to the cooperating party at or prior to Closing. Notwithstanding the Assignment paragraph of this Agreement, any party completing a Section 1031 like-kind exchange may assign this Agreement to its qualified intermediary or any entity set up for the purposes of completing a reverse exchange.

g. **Closing Costs and Prorations and Charges and Assessments.** Seller and Buyer shall each pay one-half of the escrow fee unless otherwise required by applicable FHA or VA regulations. Taxes for the current year, rent, interest, and lienable homeowner's association dues shall be prorated as of Closing. Buyer shall pay Buyer's loan costs, including credit report, appraisal charge and lender's title insurance, unless provided otherwise in this Agreement. If any payments are delinquent on encumbrances which will remain after Closing, Closing Agent is instructed to pay such delinquencies at Closing from money due, or to be paid by, Seller. Buyer shall pay for remaining fuel in the fuel tank if, prior to Closing, Seller obtains a written statement from the supplier as to the quantity and current price and provides such statement to the Closing Agent. Seller shall pay all utility charges, including unbilled charges. Unless waived in Specific Term No. 11, Seller and Buyer request the services of Closing Agent in disbursing funds necessary to satisfy unpaid utility charges in accordance with RCW 60.80 and Seller shall provide the names and addresses of all utilities providing service to the Property and having lien rights (attach NWMLS Form 22K Identification of Utilities or equivalent).

Buyer is advised to verify the existence and amount of any local improvement district, capacity or impact charges or other assessments that may be charged against the Property before or after Closing. Seller will pay such charges that are or become due on or before Closing. Charges levied before Closing, but becoming due after Closing shall be paid as agreed in Specific Term No.12.

h. **Sale Information.** Listing Broker and Buyer Broker are authorized to report this Agreement (including price and all terms) to the Multiple Listing Service that published it and to its members, financing institutions, appraisers, and anyone else related to this sale. Buyer and Seller expressly authorize all Closing Agents, appraisers, title insurance companies, and others related to this Sale, to furnish the Listing Broker and/or Buyer Broker, on request, any and all information and copies of documents concerning this sale.

i. **Seller Citizenship and FIRPTA.** Seller warrants that the identification of Seller's citizenship status for purposes of U.S. income taxation in Specific Term No. 13 is correct. Seller shall execute a certification (NWMLS Form 22E or equivalent) under the Foreign Investment In Real Property Tax Act ("FIRPTA") and provide the certification to the Closing Agent within 10 days of mutual acceptance. If Seller is a foreign person for purposes of U.S. income taxation, and this transaction is not otherwise exempt from FIRPTA, Closing Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

If Seller fails to provide the FIRPTA certification to the Closing Agent within 10 days of mutual acceptance, Buyer may give notice that Buyer may terminate the Agreement at any time 3 days thereafter (the "Right to Terminate Notice"). If Seller has not earlier provided the FIRPTA certification to the Closing Agent, Buyer may give notice of termination of this Agreement (the "Termination Notice") any time following 3 days after delivery of the Right to Terminate Notice. If Buyer gives the Termination Notice before Seller provides the FIRPTA certification to the Closing Agent, this Agreement is terminated and the Earnest Money shall be refunded to Buyer.

[ ] 04/30/2021				N.T. 5/3/21		D.B. 05/04/21	
Buyer's Initials	Date	Buyer's Initials	Date	Seller's Initials	Date	Seller's Initials	Date

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j. **Notices and Delivery of Documents.** Any notice related to this Agreement (including revocations of offers or counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and shall be deemed delivered only when the notice is received by Seller, by Listing Broker, or at the licensed office of Listing Broker. Notices to Buyer must be signed by at least one Seller and shall be deemed delivered only when the notice is received by Buyer, by Buyer Broker, or at the licensed office of Buyer Broker. Documents related to this Agreement, such as Initial's Form 17C, Information on Lead-Based Paint and Lead-Based Paint Hazards, Public Offering Statement or Resale Certificate, and all other documents shall be delivered pursuant to this paragraph. Buyer and Seller must keep Buyer Broker and Listing Broker advised of their whereabouts in order to receive prompt notification of receipt of a notice.

Facsimile transmission of any notice or document shall constitute delivery. E-mail transmission of any notice or document (or a direct link to such notice or document) shall constitute delivery when: (i) the e-mail is sent to both Buyer Broker and Buyer Brokerage Firm or both Listing Broker and Listing Brokerage Firm at the e-mail addresses specified on page one of this Agreement; or (ii) Buyer Broker or Listing Broker provide written acknowledgment of receipt of the e-mail (an automatic e-mail reply does not constitute written acknowledgment). At the request of either party, or the Closing Agent, the parties will confirm facsimile or e-mail transmitted signatures by signing an original document.

k. **Computation of Time.** Unless otherwise specified in this Agreement, any period of time measured in days and stated in this Agreement shall start on the day following the event commencing the period and shall expire at 9:00 p.m. of the last calendar day of the specified period of time. Except for the Possession Date, if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or legal holiday. Any specified period of 5 days or less, except for any time period relating to the Possession Date, shall not include Saturdays, Sundays or legal holidays. If the parties agree that an event will occur on a specific calendar date, the event shall occur on that date, except for the Closing Date, which, if it falls on a Saturday, Sunday, legal holiday as defined in RCW 1.16.050, or day when the county recording office is closed, shall occur on the next day that is not a Saturday, Sunday, legal holiday, or day when the county recording office is closed. When counting backwards from Closing, any period of time measured in days shall start on the day prior to Closing and if the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.16.050, the specified period of time shall expire on the next day, moving forward, that is not a Saturday, Sunday or legal holiday (e.g. Monday or Tuesday). If the parties agree upon and attach a legal description after this Agreement is signed by the offeree and delivered to the offeror, then for the purposes of computing time, mutual acceptance shall be deemed to be on the date of delivery of an accepted offer or counteroffer to the offeror, rather than on the date the legal description is attached. Time is of the essence of this Agreement.

l. **Integration and Electronic Signatures.** This Agreement constitutes the entire understanding between the parties and supersedes all prior or contemporaneous understandings and representations. No modification of this Agreement shall be effective unless agreed in writing and signed by Buyer and Seller. The parties acknowledge that a signature in electronic form has the same legal effect and validity as a handwritten signature.

m. **Assignment.** Buyer may not assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless the parties indicate that assignment is permitted by the addition of "and/or assigns" on the line identifying the Buyer on the first page of this Agreement.

n. **Default.** In the event Buyer fails, without legal excuse, to complete the purchase of the Property, then the following provision, as identified in Specific Term No. 7, shall apply:

i. **Forfeiture of Earnest Money.** That portion of the Earnest Money that does not exceed five percent (5%) of the Purchase Price shall be forfeited to the Seller as the sole and exclusive remedy available to Seller for such failure.

ii. **Seller's Election of Remedies.** Seller may, at Seller's option, (a) keep the Earnest Money as liquidated damages as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity.

o. **Professional Advice and Attorneys' Fees.** Buyer and Seller are advised to seek the counsel of an attorney and a certified public accountant to review the terms of this Agreement. Buyer and Seller shall pay their own fees incurred for such review. However, if Buyer or Seller institutes suit against the other concerning this Agreement, or if the party holding the Earnest Money commences an interpleader action, the prevailing party is entitled to reasonable attorneys' fees and expenses.

p. **Offer.** This offer must be accepted by 9:00 p.m. on the Offer Expiration Date, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, by the other party's broker, or at the licensed office of the other party's broker pursuant to General Term j. If this offer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.

VACANT LAND PURCHASE AND SALE AGREEMENT
General Terms

q. **Counteroffer.** Any change in the terms presented in an offer or counteroffer, other than the insertion of or change to Seller's name and Seller's warranty of citizenship status, shall be considered a counteroffer. If a party makes a counteroffer, then the other party shall have until 9:00 p.m. on the counteroffer expiration date to accept that counteroffer, unless sooner withdrawn. Acceptance shall not be effective until a signed copy is received by the other party, the other party's broker, or at the licensed office of the other party's broker designated in General Term H, the counteroffer is not so accepted, it shall lapse and any Earnest Money shall be refunded to Buyer.

r. **Offer and Counteroffer Expiration Date.** If no expiration date is specified for an offer/counteroffer, the offer/counteroffer shall expire 2 days after the offer/counteroffer is delivered by the party making the offer/counteroffer, unless sooner withdrawn.

s. **Agency Disclosure.** Buyer Brokerage Firm, Buyer Brokerage Firm's Designated Broker, Buyer Broker's Branch Manager (if any) and Buyer Broker's Managing Broker (if any) represent the same party that Buyer Broker represents. Listing Brokerage Firm, Listing Brokerage Firm's Designated Broker, Listing Broker's Branch Manager (if any), and Listing Broker's Managing Broker (if any) represent the same party that the Listing Broker represents. If Buyer Broker and Listing Broker are different persons affiliated with the same Firm, then both Buyer and Seller confirm their consent to Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. If Buyer Broker and Listing Broker are the same person representing both parties then both Buyer and Seller confirm their consent to that person and his/her Designated Broker, Branch Manager (if any), and Managing Broker (if any) representing both parties as dual agents. All parties acknowledge receipt of the pamphlet entitled "The Law of Real Estate Agency."

t. **Commission.** Seller and Buyer shall pay a commission in accordance with any listing or commission agreement to which they are a party. The Listing Brokerage Firm's commission shall be apportioned between Listing Brokerage Firm and Buyer Brokerage Firm as specified in the listing. Seller and Buyer hereby consent to Listing Brokerage Firm or Buyer Brokerage Firm receiving compensation from more than one party. Seller and Buyer hereby assign to Listing Brokerage Firm and Buyer Brokerage Firm, as applicable, a portion of their funds in escrow equal to such commission(s) and irrevocably instruct the Closing Agent to disburse the commission(s) directly to the Firm(s). In any action by Listing or Buyer Brokerage Firm to enforce this paragraph, the prevailing party is entitled to court costs and reasonable attorneys' fees. Seller and Buyer agree that the Firms are intended third party beneficiaries under this Agreement.

u. **Feasibility Contingency.** It is the Buyer's responsibility to verify before the Feasibility Contingency Expiration Date identified in Specific Term No.15 whether or not the Property can be platted, developed and/or built on (now or in the future) and what it will cost to do this. Buyer should not rely on any oral statements concerning this made by the Seller, Listing Broker or Buyer Broker. Buyer should inquire at the city or county, and water, sewer or other special districts in which the Property is located. Buyer's inquiry should include, but not be limited to: building or development moratoriums applicable to or being considered for the Property; any special building requirements, including setbacks, height limits or restrictions on where buildings may be constructed on the Property; whether the Property is affected by a flood zone, wetlands, shorelands or other environmentally sensitive area; road, school, fire and any other growth mitigation or impact fees that must be paid; the procedure and length of time necessary to obtain plat approval and/or a building permit; sufficient water, sewer and utility and any service connection charges; and all other charges that must be paid. Buyer and Buyer's agents, representatives, consultants, architects and engineers shall have the right, from time to time during and after the feasibility contingency, to enter onto the Property and to conduct any tests or studies that Buyer may need to ascertain the condition and suitability of the Property for Buyer's intended purpose. Buyer shall restore the Property and all improvements on the Property to the same condition they were in prior to the inspection. Buyer shall be responsible for all damages resulting from any inspection of the Property performed on Buyer's behalf. If the Buyer does not give notice to the contrary on or before the Feasibility Contingency Expiration Date identified in Specific Term No. 15, it shall be conclusively deemed that Buyer is satisfied as to development and/or construction feasibility and cost. If Buyer gives notice this Agreement shall terminate and the Earnest Money shall be refunded to Buyer, less any unpaid costs. The Feasibility Contingency Addendum (NWMLS Form 35F), if included in the Agreement, supersedes the Feasibility Contingency in Specific Term No. 15 and this General Term u.

Seller shall cooperate with Buyer in obtaining permits or other approvals Buyer may reasonably require for Buyer's intended use of the Property; provided that Seller shall not be required to incur any liability or expenses in doing so.

v. **Subdivision.** If the Property must be subdivided, Seller represents that there has been preliminary plat approval for the Property and this Agreement is conditioned on the recording of the final plat containing the Property on or before the date specified in Specific Term No. 14. If the final plat is not recorded by such date, this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

VACANT LAND PURCHASE AND SALE AGREEMENT
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W. **Information Verification Period.** Buyer shall have 10 days after mutual acceptance to verify all information provided from Seller or Listing Brokerage Firm related to the Property. This contingency shall be deemed satisfied unless Buyer gives notice identifying the materially inaccurate information within 10 days of mutual acceptance. If Buyer gives timely notice under this section, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

X. **Property Condition Disclaimer.** Buyer and Seller agree, that except as provided in this Agreement, all representations and information regarding the Property and the transaction are solely from the Seller or Buyer, and not from any Broker. The parties acknowledge that the Brokers are not responsible for assuring that the parties perform their obligations under this Agreement and that none of the Brokers has agreed to independently investigate or confirm any matter related to this transaction except as stated in this Agreement, or in a separate writing signed by such Broker. In addition, Brokers do not guarantee the value, quality or condition of the Property and some properties may contain building materials, including siding, roofing, ceiling, insulation, electrical, and plumbing, that have been the subject of lawsuits and/or governmental inquiry because of possible defects or health hazards. Some properties may have other defects arising after construction, such as drainage, leakage, pest, rot and mold problems. In addition, some properties may contain soil or other contamination that is not readily apparent and may be hazardous. Brokers do not have the expertise to identify or assess defective or hazardous products, materials, or conditions. Buyer is urged to use due diligence to inspect the Property to Buyer's satisfaction and to retain inspectors qualified to identify the presence of defective or hazardous materials and conditions and evaluate the Property as there may be defects and hazards that may only be revealed by careful inspection. Buyer is advised to investigate whether there is a sufficient water supply to meet Buyer's needs. Buyer is advised to investigate the cost of insurance for the Property, including, but not limited to homeowner's, fire, flood, earthquake, landslide, and other available coverage. Buyer acknowledges that local ordinances may restrict short term rentals of the Property. Brokers may assist the parties with locating and selecting third party service providers, such as inspectors or contractors, but Brokers cannot guarantee or be responsible for the services provided by those third parties. The parties shall exercise their own judgment and due diligence regarding third-party service providers.

OPTIONAL CLAUSES ADDENDUM TO PURCHASE & SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated April 30, 2021

between High Definition Homes LLC ("Buyer")
Buyer Buyer

and Nina Tuzman Dmitriy Bayda ("Seller")
Seller Seller

concerning 216 E Roanoke St and 217 Scott St Centralia WA 98531 (the "Property").
Address City State Zip

CHECK IF INCLUDED:

1. ☑ **Square Footage/Lot Size/Encroachments.** The Listing Broker and Buyer Broker make no representations concerning: (a) the lot size or the accuracy of any information provided by the Seller; (b) the square footage of any improvements on the Property; (c) whether there are any encroachments (fences, rockeries, buildings) on the Property, or by the Property on adjacent properties. Buyer is advised to verify lot size, square footage and encroachments to Buyer's own satisfaction.

2. **Title Insurance.** The Title Insurance clause in the Agreement provides Seller is to provide the then-current ALTA form of Homeowner's Policy of Title Insurance. The parties have the option to provide less coverage by selecting a Standard Owner's Policy or more coverage by selecting an Extended Coverage Policy:

   ☐ **Standard Owner's Coverage.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense, to apply for the then-current ALTA form of Owner's Policy of Title Insurance, together with homeowner's additional protection and inflation protection endorsements, if available at no additional cost, rather than the Homeowner's Policy of Title Insurance.

   ☐ **Extended Coverage.** Seller authorizes Buyer's lender or Closing Agent, at Seller's expense to apply for an ALTA or comparable Extended Coverage Policy of Title Insurance, rather than the Homeowner's Policy of Title Insurance. Buyer shall pay the increased costs associated with the Extended Coverage Policy, including the excess premium over that charged for Homeowner's Policy of Title Insurance and the cost of any survey required by the title insurer.

3. ☐ **Seller Cleaning.** Seller shall clean the interiors of any structures and remove all trash, debris and rubbish from the Property prior to Buyer taking possession.

4. ☑ **Personal Property.** Unless otherwise agreed, Seller shall remove all personal property from the Property not later than the Possession Date. Any personal property remaining on the Property thereafter shall become the property of Buyer, and may be retained or disposed of as Buyer determines.

5. ☐ **Utilities.** To the best of Seller's knowledge, Seller represents that the Property is connected to:
   ☐ public water main; ☐ public sewer main; ☐ septic tank; ☐ well (specify type) _____;
   ☐ irrigation water (specify provider) _____; ☐ natural gas; ☐ telephone; ☐ electricity;
   ☐ cable (specify provider) _____; ☐ internet (specify provider) _____;
   ☐ other _____.

6. ☐ **Insulation - New Construction.** If this is new construction, Federal Trade Commission Regulations require the following to be filled in. If insulation has not yet been selected, FTC regulations require Seller to furnish Buyer the information below in writing as soon as available:
   WALL INSULATION: TYPE: _____ THICKNESS: _____ R-VALUE: _____
   CEILING INSULATION: TYPE: _____ THICKNESS: _____ R-VALUE: _____
   OTHER INSULATION DATA: _____

OPTIONAL CLAUSES ADDENDUM TO PURCHASE & SALE AGREEMENT
Continued

7. ☐ **Leased Property Review Period and Assumption.** Buyer acknowledges that Seller leases the following items of personal property that are included with the sale: ☐ propane tank; ☐ security system; ☐ satellite dish and operating equipment; ☐ other _____.

Seller shall provide Buyer a copy of the lease for the selected items within _____ days (5 days if not filled in) of mutual acceptance. If Buyer, in Buyer's sole discretion, does not give notice of disapproval within _____ days (5 days if not filled in) of receipt of the lease(s) or the date that the lease(s) are due, whichever is earlier, then this lease review period shall conclusively be deemed satisfied (waived) and at Closing, Buyer shall assume the lease(s) for the selected item(s) and hold Seller harmless from and against any further obligation, liability, or claim arising from the lease(s), if the lease(s) can be assumed. If Buyer gives timely notice of disapproval, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

8. ☐ **Homeowners' Association Review Period.** If the Property is subject to a homeowners' association or any other association, then Seller shall, at Seller's expense, provide Buyer a copy of the following documents (if available from the Association) within _____ days (10 days if not filled in) of mutual acceptance:

a. Association rules and regulations, including, but not limited to architectural guidelines;
b. Association bylaws and covenants, conditions, and restrictions (CC&Rs);
c. Association meeting minutes from the prior two (2) years;
d. Association Board of Directors meeting minutes from the prior six (6) months; and
e. Association financial statements from the prior two (2) years and current operating budget.

If Buyer, in Buyer's sole discretion, does not give notice of disapproval within _____ days (5 days if not filled in) of receipt of the above documents or the date that the above documents are due, whichever is earlier, then this homeowners' association review period shall conclusively be deemed satisfied (waived). If Buyer gives timely notice of disapproval, then this Agreement shall terminate and the Earnest Money shall be refunded to Buyer.

9. ☐ **Homeowners' Association Transfer Fee.** If there is a transfer fee imposed by the homeowners' association or any other association (e.g. a "move-in" or "move-out" fee), the fee shall be paid by the party as provided for in the association documents. If the association documents do not provide which party pays the fee, the fee shall be paid by ☐ Buyer; ☐ Seller (Seller if not filled in).

10. ☐ **Excluded Item(s).** The following item(s), that would otherwise be included in the sale of the Property, is excluded from the sale ("Excluded Item(s)"). Seller shall repair any damage to the Property caused by the removal of the Excluded Item(s). Excluded Item(s):

11. ☐ **Home Warranty.** Buyer and Seller acknowledge that home warranty plans are available which may provide additional protection and benefits to Buyer and Seller. Buyer shall order a one-year home warranty as follows:

a. Home warranty provider: _____
b. Seller shall pay up to $_____ ($0.00 if not filled in) of the cost for the home warranty, together with any included options, and Buyer shall pay any balance.
c. Options to be included: _____ _____ (none, if not filled in).
d. Other: _____

12. ☐ **Other.**

[ ]

FIRPTA CERTIFICATION

The Foreign Investment in Real Property Tax Act ("FIRPTA"), 26 U.S.C. 1445, provides that a buyer of a U.S. real property interest must withhold tax if Seller is a foreign person, unless one of the exceptions in the Act applies. The following will inform Buyer and Closing Agent whether tax withholding is required.

Note: The above law applies to foreign corporations, partnerships, trusts, estates and other foreign entities, as well as to foreign individuals. If Seller is a corporation, partnership, trust, estate or other entity, the terms "I" and "my" as used below means the corporation or other entity. A "real property interest" includes full or part ownership of land and/or improvements thereon; leaseholds; options to acquire any of the foregoing; and an interest in foreign corporations, partnerships, trusts or other entities holding U.S. real estate

SELLER CERTIFICATION. Seller hereby certifies the following:

PROPERTY. I am the Seller of real property ☑ at:

216 E Roanoke St (Address) Centralia (City) WA (State) 98531 (Zip)

or ☐ (if no street address) legally described on the attached.

CITIZENSHIP STATUS. I ☒ AM ☐ AM NOT a non-resident alien (or a foreign corporation, foreign partnership, foreign trust, foreign estate or other foreign business entity) for purposes of U.S. income taxation.

TAXPAYER I.D. NUMBER.
My U.S. taxpayer identification number (e.g. social security number) is _____ (Tax I.D. number to be provided by Seller at Closing)

ADDRESS.
My home address is 802 Atherton (Address) Centralia (City) WA (State) 98531 (Zip)

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete. I understand that this Certification may be disclosed to the Internal Revenue Service ("IRS") and that any false statement I have made here could be punished by fine, imprisonment, or both.

Seller 6/17/2020 Date Seller 6/17/2020 Date

BUYER CERTIFICATION (Only applicable if Seller is a non-resident alien).

If Seller is a non-resident alien, and has not obtained a release from the IRS, then Closing Agent must withhold 15% of the amount realized from the sale and pay it to the IRS, unless Buyer certifies that the selected statement below is correct:

☐ **Amount Realized ($300,000 or less) and Family Residence = No Tax.** (a) I certify that the total price that I am to pay for the property, including liabilities assumed and all other consideration to Seller, does not exceed $300,000; and (b) I certify that I or a member of my family* have definite plans to reside on the property for at least 50% of the time that the property is used by any person during each of the first two twelve month periods following the date of this sale. If Buyer certifies these statements, there is no tax.

☐ Amount Realized (more than $300,000, but not exceeding $1,000,000) and Family Residence = 10% Tax. (a) I certify that the total price that I am to pay for the property, including liabilities assumed and all other consideration to Seller, exceeds $300,000, but does not exceed $1,000,000; and (b) I certify that I or a member of my family* have definite plans to reside on the property for at least 50% of the time that the property is used by any person during each of the first two twelve month periods following the date of this sale. If Buyer certifies these statements, then Closing Agent must withhold 10% of the amount realized from the sale and pay it to the IRS.

* (Defined in 11 U.S.C. 267(c)(4). It includes brothers, sisters, spouse, ancestors and lineal descendants).

Under penalties of perjury, I declare that I have examined this Certification and to the best of my knowledge and belief both statements are true, correct and complete. I understand that this Certification may be disclosed to the IRS and that any false statement I have made here could be punished by fine, imprisonment, or both.

Buyer _____ Date Buyer _____ Date

Form 22EF
Evidence of Funds Addendum
Rev. 7/19
Page 1 of 1

EVIDENCE OF FUNDS ADDENDUM TO PURCHASE & SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated April 30, 2021

between High Definition Homes LLC (Buyer) ______ (Buyer) ("Buyer")

and Nina Tuzman (Seller) Dmitriy Bayda (Seller) ("Seller")

concerning 216 E Roanoke St and 217 Scott St (Address) Centralia (City) WA (State) 98531 (Zip) (the "Property").

1. **DEFINITIONS.**
   a. "Evidence" means document(s) from a financial institution(s) in the United States showing that Buyer has sufficient cash or cash equivalent in United States funds.
   b. "Non-Contingent Funds" means funds that Buyer currently has in its possession and for which there is no contingency, such as financing (NWMLS Form 22A or equivalent), sale of Buyer's property (NWMLS Form 22B or equivalent), or pending sale of Buyer's property (NWMLS Form 22Q or equivalent).
   c. "Contingent Funds" means funds that Buyer does not currently have, but expects to receive from another source prior to Closing, and for which there is no contingency, such as a loan, proceeds from the sale of other property or stock, retirement funds, foreign funds, a gift, or future earnings.

2. ☒ **EVIDENCE OF NON-CONTINGENT FUNDS.** Buyer is relying on Non-Contingent Funds for payment of the Purchase Price. Buyer shall provide Evidence to Seller of such funds within ______ days (3 days if not filled in) of mutual acceptance. Unless Buyer discloses other sources of funds for the payment of the Purchase Price, Buyer represents that the Non-Contingent Funds are sufficient to pay the Purchase Price. Buyer shall not use such Non-Contingent Funds for any purpose other than the purchase of the Property without Seller's prior written consent. If Buyer fails to timely provide such Evidence, Seller may give notice terminating this Agreement any time before such Evidence is provided. Upon Seller's notice of termination under this Addendum, the Earnest Money shall be refunded to Buyer.

3. ☐ **DISCLOSURE OF CONTINGENT FUNDS.** Buyer is relying on Contingent Funds for the Purchase Price:

   ☐ Loan: ______

   ☐ Sale of the following owned by Buyer: ______

   ☐ Gift of $ ______ from ______

   ☐ Funds not readily convertible to liquid United States funds (describe): ______

   ______

   ☐ Other (describe): ______

   Buyer shall provide Evidence to Seller ______ days (10 days if not filled in) prior to Closing that the funds relied upon in Section 3 have been received or are immediately available to Buyer. If Buyer fails to timely provide such Evidence, Seller may give notice terminating this Agreement any time before such Evidence is provided. Buyer shall provide Seller with additional information about such funds as may be reasonably requested by Seller from time to time. Upon Seller's notice of termination under this Addendum, the Earnest Money shall be refunded to Buyer.

   If Buyer disclosed that Buyer is obtaining a loan, Seller shall permit an appraisal of the Property and inspections required by lender, including but not limited to structural, pest, heating, plumbing, roof, electrical, septic, and well inspections. Seller is not obligated to pay for such inspections unless otherwise agreed.

4. **BUYER DEFAULT.** If Buyer fails to timely close because the Contingent Funds identified in Section 3 are not available by Closing, Buyer shall be in default and Seller shall be entitled to remedies as provided for in the Agreement.

Buyer's Initials	Date	Buyer's Initials	Date	Seller's Initials	Date	Seller's Initials	Date
[initials]	04/30/2021			N.T.	5/1/21	D.B.	05/04/21

Form 34
Addendum/Amendment to P&S
Rev. 7/10
Page 1 of 1

ADDENDUM / AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated April 30, 2021

between High Definition Homes LLC ("Buyer")
Buyer Buyer

and Nina Tuzman Dmitriy Bayda ("Seller")
Seller Seller

concerning 216 E Roanoke St and 217 Scott St Centralia WA 98531 (the "Property").
Address City State Zip

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS:

1. Real estate commissions are to be paid from seller funds at closing;
2. Commission to be 6%;
3. 2 1/2% to Listing Broker;
4. 2 1/2% to Buyer's Broker;
5. 1% To Stan Z. Kostecki Real Estate;
6. An additional $3,000 from Nina Tuzman's closing funds to Stan Z. Kostecki Real Estate.
7. Kellen Mangan, member of High Definition Homes LLC is a licensed real estate broker in Washington State.

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged.

04/30/2021
Buyer's Initials Date

Buyer's Initials Date

N.T 4/4/21
Seller's Initials Date

D.B. 05/04/21
Seller's Initials Date

EXHIBIT "A"

TRACTS A , OF BOUNDARY LINE ADJUSTMENT BLA-2017 0036 RECORDED IN VOLUME 3 OF BOUNDARY LINE ADJUSTMENTS, PAGE 142, UNDER AUDTIOR'S FILE NO. 3492824, BEING LOTS 2 AND 5, BLOCK 1 OF HORNER'S SUBDIVISION OF A PORTION OF LOTS 1 AND 2 ANDREWS DONALD'S ADDITION TO CENTRALIA AS RECORDED IN VOLUME 4 OF PLATS, PAGE 67,

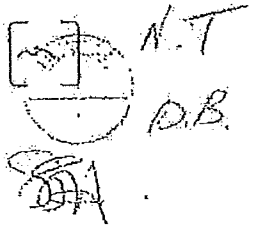
LEWIS COUNTY, WASHINGTON

N.S.
D.B.

EXHIBIT "A"

TRACT B OF BOUNDARY LINE ADJUSTMENT BLA-2017 0038 RECORDED IN VOLUME 3 OF BOUNDARY LINE ADJUSTMENTS, PAGE 142, UNDER AUDITOR'S FILE NO. 3462824, BEING LOTS 2 AND 5, BLOCK 1 OF HORNER'S SUBDIVISION OF A PORTION OF LOTS 1 AND 2, AUGUST SAWALLS ADDITION TO CENTRALIA AS RECORDED IN VOLUME 4 OF PLATS, PAGE 87.

LEWIS COUNTY, WASHINGTON

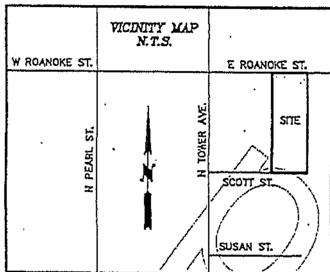


APPENDIX B

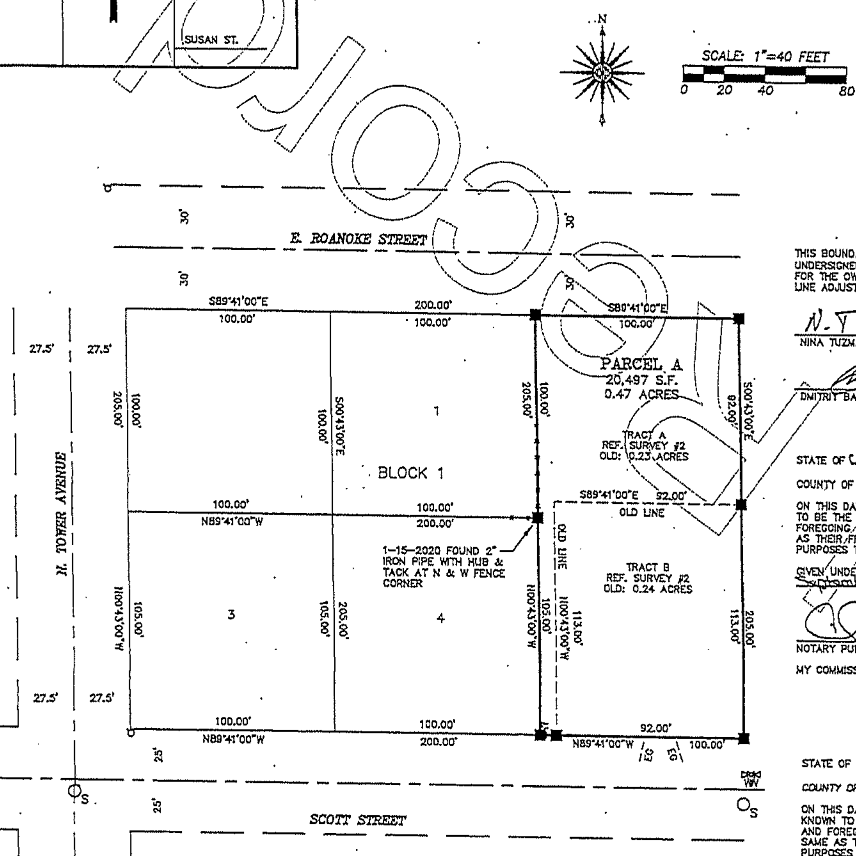
3535886

REVIEWED FOR APPLICABLE TAXES
APPROVED FOR RECORDING
LEWIS COUNTY TREASURER
BY CB DATE 10-30-20

3535886 B: 4 P: 84 BLAM
10/30/2020 10:47:06 AM Total Pages: 1 Fees: 167.50
Larry E. Grove, CPA, Lewis County Auditor, Chehalis, Washington



CITY OF CENTRALIA
BOUNDARY LINE ADJUSTMENT/LOT CONSOLIDATION NO. 2020 0181 PART OF HORNER'S SUBDIVISION IN THE NE 1/4 OF THE SE 1/4 OF SECTION 32, TOWNSHIP 15 NORTH, RANGE 2 WEST, W.M. IN LEWIS COUNTY, WASHINGTON



SITE ADDRESS:
216 E. ROANOKE ST.
CENTRALIA, WA 98531

BASIS OF BEARINGS: PLAT OF HORNER'S SUBDIVISION FILED IN BOOK 4 OF PLATS AT PAGE 87 UNDER AUDITOR'S FILE NUMBER 2002505, RECORDS OF LEWIS COUNTY, WASHINGTON.

LEGEND:

- ■ = 1-15-2020 FOUND 5/8" REBAR AND CAP LS 16908 PER REF. SURVEY #2 OR AS NOTED
- —x—x— = FENCE LINE
- O_S = SEWER MANHOLE
- WV = WATER VALVE
- DW = WATER METER
- = FIRE HYDRANT
- EG = EDGE OF GRAVEL AT EXISTING APPROACH

REFERENCE SURVEYS:

1) PLAT OF HORNER'S SUBDIVISION FILED IN BK. 4 OF PLATS PG. 87
2) BLA-2017 0036 FILED IN BK. 3 OF BLAM PG. 192, BY LS-16908
3) RECORD OF SURVEY FILED IN BK. 32, PG. 294, BY LS 16908

METHOD OF SURVEY: FIELD TRAVERSE USING A TOPCON GTS-312 (00°00'10") TOTAL STATION. THIS SURVEY MEETS OR EXCEEDS THE ACCURACY STANDARDS AS SET FORTH IN WAC 332-130-090.

THIS BOUNDARY LINE ADJUSTMENT IS REQUESTED AND APPROVED BY THE UNDERSIGNED, WHO CERTIFY THAT THEY ARE THE RESPONSIBLE PARTY/AGENT FOR THE OWNERS OF THE RESPECTIVE PARCELS IDENTIFIED IN THIS BOUNDARY LINE ADJUSTMENT:

N. Tuzman 9/28/2020
NINA TUZMAN DATE

[signature] 09/28/2020
DMITRIY BAYDA DATE

STATE OF Washington) SS
COUNTY OF Lewis)

ON THIS DAY PERSONALLY APPEARED BEFORE ME NINA TUZMAN TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT THEY SIGNED THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES THEREIN MENTIONED.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS 28th DAY OF September 2020

[signature]
NOTARY PUBLIC IN AND FOR THE STATE OF Washington
MY COMMISSION EXPIRES 07/20/2023

CHERYL A FOURNIER
NOTARY PUBLIC #95613
STATE OF WASHINGTON
COMMISSION EXPIRES
JULY 20, 2023

STATE OF ________) SS
COUNTY OF ________)

ON THIS DAY PERSONALLY APPEARED BEFORE ME DMITRIY BAYDA TO ME KNOWN TO BE THE INDIVIDUAL DESCRIBED IN AND WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT, AND ACKNOWLEDGED THAT THEY SIGNED THE SAME AS THEIR FREE AND VOLUNTARY ACT AND DEED, FOR THE USES AND PURPOSES THEREIN MENTIONED.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS ____ DAY OF ________ 20____

NOTARY PUBLIC IN AND FOR THE STATE OF ________
MY COMMISSION EXPIRES ________

GENERAL NOTES:

1. THIS BOUNDARY LINE ADJUSTMENT SHALL NOT CREATE ANY ADDITIONAL BUILDING LOT, TRACT, PARCEL, BUILDING SITE OR DIVISION OF LAND WHICH CONTAINS INSUFFICIENT AREA AND DIMENSION TO MEET MINIMUM REQUIREMENTS FOR A BUILDING SITE.
2. IF SEASONAL DRAINAGE CROSSES THE PROPERTY, FILLING OR DISRUPTION OF THE NATURAL FLOW IS PROHIBITED.
3. FUTURE DEVELOPMENT MUST MEET THE REQUIREMENTS OF THE CENTRALIA MUNICIPAL CODE, CENTRALIA DESIGN, AND DEVELOPMENT GUIDELINES, INTERNATIONAL CODE SERIES, AS WELL AS ANY OTHER APPLICABLE LOCAL, STATE, AND FEDERAL REGULATIONS.

CONDITIONS OF APPROVAL:

THIS BOUNDARY LINE ADJUSTMENT/LOT CONSOLIDATION HAS BEEN REVIEWED FOR COMPLIANCE WITH THE R:4, LOW DENSITY RESIDENTIAL ZONE. CMC 19.55.010(13).

ORIGINAL LEGAL DESCRIPTIONS:

TPN 002768037000 – TRACT A OF CITY OF CENTRALIA BOUNDARY LINE ADJUSTMENT NUMBER BLA – 2017 0036 AS RECORDED IN BOOK 3 OF BOUNDARY LINE ADJUSTMENT MAPS AT PAGE 192 UNDER AUDITOR'S FILE NUMBER 3462824, RECORDS OF LEWIS COUNTY, WASHINGTON.

TPN 002768040000 – TRACT B OF CITY OF CENTRALIA BOUNDARY LINE ADJUSTMENT NUMBER BLA – 2017 0036 AS RECORDED IN BOOK 3 OF BOUNDARY LINE ADJUSTMENT MAPS AT PAGE 192 UNDER AUDITOR'S FILE NUMBER 3462824, RECORDS OF LEWIS COUNTY, WASHINGTON.

NEW LEGAL DESCRIPTION:

PARCEL A OF CITY OF CENTRALIA BOUNDARY LINE ADJUSTMENT/LOT CONSOLIDATION NUMBER 2020 0181, RECORDS OF LEWIS COUNTY, WASHINGTON.

ALSO DESCRIBED AS TRACT A AND TRACT B OF CITY OF CENTRALIA BOUNDARY LINE ADJUSTMENT NUMBER BLA – 2017 0036 AS RECORDED IN BOOK 3 OF BOUNDARY LINE ADJUSTMENT MAPS AT PAGE 192 UNDER AUDITOR'S FILE NUMBER 3462824, RECORDS OF LEWIS COUNTY, WASHINGTON.

TREASURER'S CERTIFICATE:

REVIEWED FOR APPLICABLE TAXES AND APPROVED FOR RECORDING.

CB 10-30-20
LEWIS COUNTY TREASURER DATE

AUDITOR'S CERTIFICATE

FILED FOR RECORD THIS 30th DAY OF October 20 20 AT 10:47 A.M. IN BOOK 4 OF BLAM AT PAGE 84
AT THE REQUEST OF BLUHM & ASSOCIATES LAND SURVEYORS, INC.

DEPUTY COUNTY AUDITOR [signature]

CITY OF CENTRALIA COMMUNITY DEVELOPMENT:

Hillary Hoke 10-30-20
PLANNING ADMINISTRATOR DATE

CITY OF CENTRALIA ENGINEER'S APPROVAL

[signature] 9/29/2020
CITY OF CENTRALIA ENGINEER DATE

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF IRIS-GROUP IN DECEMBER OF 2019.

[signature] 9-15-2020
KEVIN BLUHM, PLS 29269 DATE

KEVIN D. BLUHM
STATE OF WASHINGTON
29269
REGISTERED
PROFESSIONAL LAND SURVEYOR

Bluhm & Associates
Land Surveyors, Inc.
1068 S. MARKET BLVD.
CHEHALIS, WA 98532
PHONE (360) 748-1551
FAX (360) 748-6282
E-MAIL:kbluhm@surveyservices.com

DRAWN BY: C. WINGFIELD	DATE: 9-14-2020	JOB # 19-535
CHECKED BY: K. BLUHM	SCALE: 1" = 40'	SHEET 1 OF 1

CP_103

APPENDIX C

stewart

ALTA OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY
STEWART TITLE GUARANTY COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection

   If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

Countersigned by:

Authorized Countersignature

Title Guaranty Company of Lewis County
Company Name

200 Northwest Pacific Avenue
Chehalis, WA 98532
City, State

STEWART TITLE GUARANTY COMPANY INCORPORATED 1908 TEXAS

Frederick H. Eppinger
President and CEO

David Hisey
Secretary

For coverage information or assistance resolving a complaint, call (800) 729-1902 or visit www.steward.com. To make a claim, furnish written notice in accordance with Section 3 of the Conditions.

COVERED RISKS - Continued

9. Title being vested other than as stated in Schedule A or being defective
   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      (i) to be timely, or
      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
      (i) the occupancy, use, or enjoyment of the Land;
      (ii) the character, dimensions, or location of any improvement erected on the Land;
      (iii) the subdivision of land; or
      (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

   The following terms when used in this policy mean:
   (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
   (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
   (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
   (d) "Insured": The Insured named in Schedule A.
      (i) the term "Insured" also includes
         (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
         (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
         (C) successors to an Insured by its conversion to another kind of Entity;
         (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
            (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
            (2) if the grantee wholly owns the named Insured,
            (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
            (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
      (ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
   (e) "Insured Claimant": An Insured claiming loss or damage.
   (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
   (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
(j) "Title": The estate or interest described in Schedule A.
(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the
Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:
(a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
   (i) the Amount of Insurance; or
   (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
   (i) the Amount of Insurance shall be increased by 10%, and
   (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2029, Houston, TX 77252-2029.

OWNERS POLICY
SCHEDULE A
STEWART TITLE

Name and Address of Title Insurance Company:

Title Guaranty Co. Of Lewis County
200 NW Pacific Ave., P O Box 1304
Chehalis, WA 98532

File No:**171687** Rate Code: **UNIMP/101** Policy No.: **071772768**

Address Reference: **216 E ROANOKE ST & 217 SCOTT ST, CENTRALIA, WA 98531**

Amount of Insurance: **$200,000.00** Premium: **$605.00**

Date of Policy: **May 24, 2021 at 2:49PM**

1. Name of Insured:

   HIGH DEFINITION HOMES LLC, A WASHINGTON LIMITED LIABILITY COMPANY

2. The estate or interest in the land which is covered by this policy is:

   Fee Simple

3. Title is vested in:

   HIGH DEFINITION HOMES LLC, A WASHINGTON LIMITED LIABILITY COMPANY

4. The land referred to in this policy is described as follows:

   SEE ATTACHED EXHIBIT A

EXHIBIT A

TRACTS A AND B OF BOUNDARY LINE ADJUSTMENT BLA-2017 0036 RECORDED IN VOLUME 3 OF BOUNDARY LINE ADJUSTMENTS, PAGE 142, UNDER AUDITOR'S FILE NO. 3462824, BEING LOTS 2 AND 5, BLOCK 1 OF HORNER'S SUBDIVISION OF A PORTION OF LOTS 1 AND 2, AUGUST SAWALLS ADDITION TO CENTRALIA AS RECORDED IN VOLUME 4 OF PLATS, PAGE 87.

LEWIS COUNTY, WASHINGTON

OWNERS POLICY

SCHEDULE B

File No. 171687 Policy No. 071772768

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage by reason of the (and the Company will not pay costs, attorney's fees or expenses), which arise by reason of:

GENERAL EXCEPTIONS:

A. Rights or claims disclosed only by possession, or claimed possession, of the premises.

B. Encroachments and questions of location, boundary and area disclosed only by inspection of the premises or by survey.

C. Easements, prescriptive rights, rights-of-way, streets, roads, alleys or highways not disclosed by the public records.

D. Any lien, or right to a lien, for contributions to employees benefit funds, or for state workers' compensation, or for services, labor or material heretofore or hereafter furnished, all as imposed by law and not shown by the public records.

E. Taxes or special assessments which are not yet payable or which are not shown as existing liens by the public records.

F. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity, natural gas or other utilities, or garbage collection and disposal.

G. Reservations or exceptions in United States Patents or in Acts authorizing the issuance thereof.

H. Indian tribal codes or regulations, Indian treaty or aboriginal rights, including easements or equitable servitudes.

I. Water rights, claims or title to water.

SPECIAL EXCEPTIONS

1. Property taxes for the current year or for subsequent years not yet due or owing.
2. Terms, provisions, conditions, dedications, notes, easements and restrictions, if applicable as contained and/or dedicated on the face of HORNER'S SUBDIVISION, recorded under Auditor's File No. 563565, records of Lewis County, Washington.
3. Terms, provisions, conditions, dedications, notes, easements and restrictions, if applicable as contained and/or dedicated on the face of Boundary Line Adjustment No. BLA-2017 0036, recorded MARCH 24, 2017, under Auditor's File No. 3462824, and those provided by the statute.
4. Matters disclosed by a record of survey
   Recorded : DECEMBER 4, 2019
   Auditor's No. : 3514433

5. Matters disclosed by a record of survey
Recorded : OCTOBER 30, 2020
Auditor's No. : 3535886

Stewart Title Guaranty Company, Stewart Title Insurance Company, Stewart Title Insurance Company of Oregon, National Land Title Insurance Company, Arkansas Title Insurance Company, Charter Land Title Insurance Company

Privacy Policy Notice

PURPOSE OF THIS NOTICE

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing non-public personal information about you with a non-affiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Stewart Title Guaranty Company, Stewart Title Insurance Company, Stewart Title Insurance Company of Oregon, National Land Title Insurance Company, Arkansas Title Insurance Company, Charter Land Title Insurance Company.

We may collect non-public personal information about you from the following sources:

- Information we receive from you, such as on applications or other forms.
- Information about your transactions we secure from our files, or from our affiliates or others.
- Information we receive from a consumer reporting agency.
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional non-public personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to non-affiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of non-affiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance.
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NON-PUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to non-public personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your non-public personal information.

Title Guaranty Company of Lewis County

Title Guaranty Company of Lewis County Privacy Statement

July 1, 2007

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by us, or affiliates, or others;
- From our Internet websites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

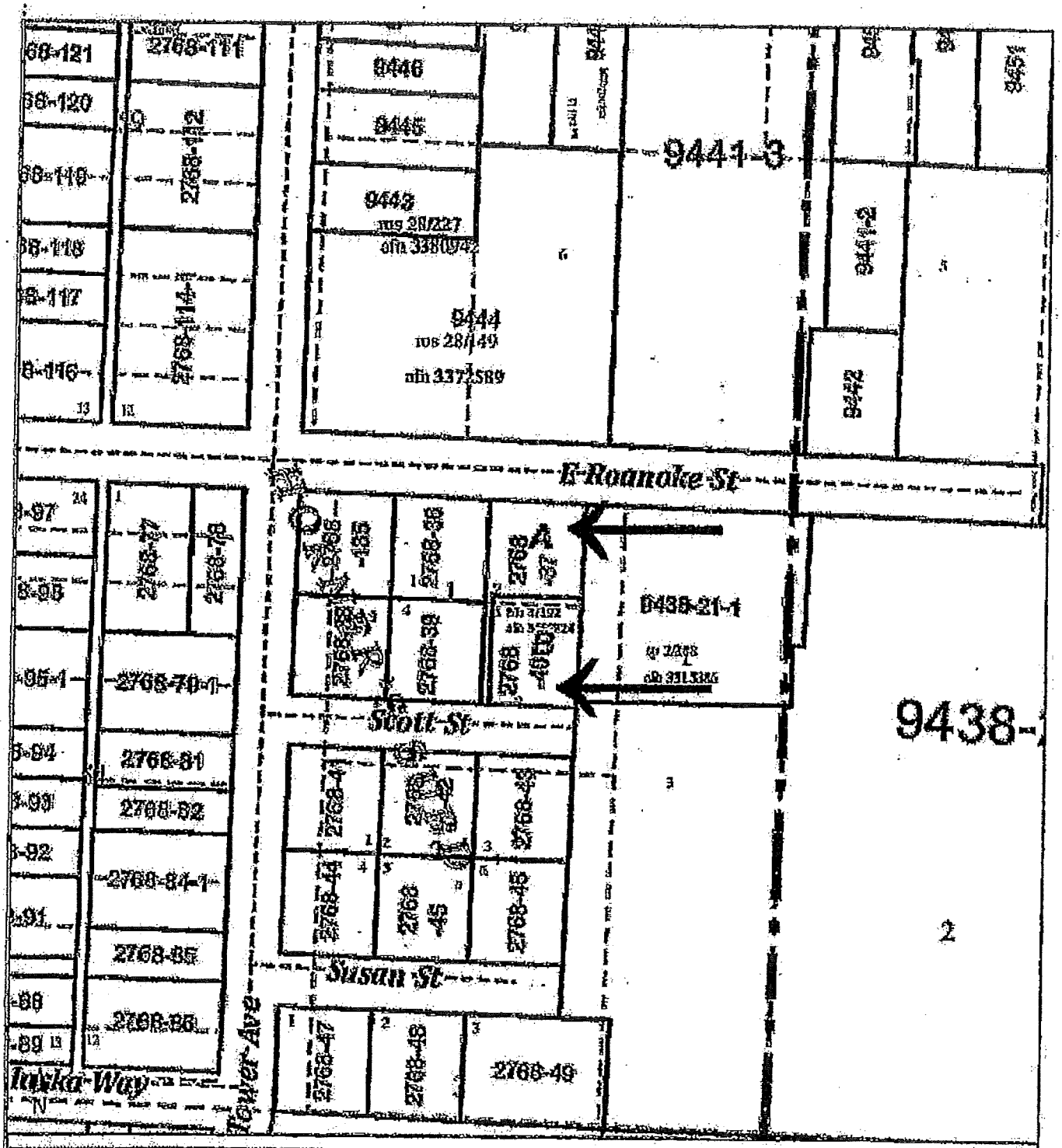
We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information to agents, brokers or representatives to provide you with services you have requested.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.



Title Guaranty Company of Lewis County

ParcelID: 002768037000
216 E Roanoke St
Centralia, WA 98531

This map/plat is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

APPENDIX D

Filed
Washington State
Court of Appeals
Division Two

August 6, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

HIGH DEFINITION HOMES, LLC, a Washington limited liability company, Appellant, v. STEWART TITLE GUARANTY COMPANY, a foreign insurance company, Respondent.	No. 58677-1-II UNPUBLISHED OPINION

LEE, J. — High Definition Homes, LLC (HDH) appeals the superior court's grant of a motion for judgment on the pleadings in favor of Stewart Title Guaranty Company (Stewart Title) and denial of HDH's motion for reconsideration of the superior court's decision to grant Stewart Title's motion for judgment on the pleadings. HDH argues that it was entitled to coverage under a title insurance policy issued by Stewart Title and Stewart Title wrongfully denied its claim.

Because HDH cannot prove any set of facts that would justify relief, we hold that the superior court did not err in granting Stewart Title's motion for judgment on the pleadings and denying HDH's motion for reconsideration. Accordingly, we affirm.

FACTS

A. BACKGROUND

In April 2021, HDH, a Washington limited liability company, contracted to purchase property in Centralia. HDH understood from the sellers that it was purchasing "two separate legal tracts"; each tract had its own tax parcel number and address. Clerk's Papers (CP) at 2.

The purchase and sale agreement stated that the property's legal description was as provided in "Exhibit A." CP at 74. Exhibit A was comprised of two legal descriptions on separate pages. The first page of Exhibit A stated:

> Tracts A of Boundary Line Adjustment BLA-2017 0036 recorded in Volume 3 of boundary line adjustments, page 142, under Auditor's File No. 3462824, being lots 2 and 5, block 1 of Horner's Subdivision of a portion of lots 1 and 2, August Sawalls addition to Centralia as recorded in Volume 4 of Plats, page 87.

CP at 85 (some capitalization omitted). The second page stated:

> Tract B of Boundary Line Adjustment BLA-2017 0036 recorded in Volume 3 of boundary line adjustments, page 142, under Auditor's File No. 3462824, being lots 2 and 5, block 1 of Horner's Subdivision of a portion of lots 1 and 2, August Sawalls addition to Centralia as recorded in Volume 4 of Plats, page 87.

CP at 86 (some capitalization omitted). Both descriptions appear to be modified with whiteout.

In connection with the purchase, HDH applied for, and obtained, a title insurance policy through Stewart Title. The title insurance policy stated in relevant part:

> Subject to the exclusions from coverage, the exceptions from coverage contained in Schedule B and the conditions, Stewart Title Guaranty Company . . . insures . . . against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:
>
> 1. Title being vested other than as stated in Schedule A.
>
> . . . .
>
> 3. Unmarketable Title.
>
> . . . .
>
> 5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
>
> (a) the occupancy, use, or enjoyment of the Land;
>
> (b) the character, dimensions, or location of any improvement erected on the Land;

> (c) the subdivision of land; or
> (d) environmental protection
> If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

CP at 28 (some capitalization omitted).

The title insurance policy defines several terms. Specifically, "Title" is defined as: "The estate or interest described in Schedule A." CP at 30. "Unmarketable Title" is defined as: "Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title." CP at 30.

Schedule A of the policy provided that HDH was the insured for a fee simple interest in the property. Schedule A referenced the following addresses for the property: "216 E Roanoke St & 217 Scott St, Centralia, WA 98531." CP at 95 (some capitalization omitted). The property was described as:

> Tracts A and B of Boundary Line Adjustment BLA-2017 0036 recorded in Volume 3 of boundary line adjustments, page 142, under Auditor's File No. 3462824, being lots 2 and 5, block 1 of Horner's Subdivision of a portion of lots 1 and 2, August Sawalls addition to Centralia as recorded in Volume 4 of Plats, page 87.

CP at 34 (some capitalization omitted).

Schedule B of the policy provided exceptions from coverage. In addition to general exceptions, Schedule B listed five "special exceptions." CP at 35 (capitalization omitted). Relevant here is Special Exception Number 5, which states:

> This policy does not insure against loss or damage by reason of the (and [Stewart Title] will not pay costs, attorney's fees or expenses), which arise by reason of:
>
> . . . .

5. Matters disclosed by a record of survey
Recorded : OCTOBER 30, 2020
Auditor's No. : 3535886

CP at 35-36.

HDH closed on the property on May 21, 2021. Following closing, HDH applied to the City of Centralia (City) for permits to develop the lots. The City informed HDH that the two lots had been merged into a single lot. HDH then discovered that prior to its purchase, the sellers had consolidated the two lots into a single lot. The consolidation was publicly recorded by way of a "Boundary Line Adjustment/Lot Consolidation" (Boundary Line Adjustment), Auditor No. 3535886. CP at 103.

The Boundary Line Adjustment provided an original legal description of the lots, along with a new legal description of the consolidated lots:

> ORIGINAL LEGAL DESCRIPTIONS:
>
> . . . Tract A of City of Centralia Boundary Line Adjustment Number BLA – 2017 0036 as recorded in Book 3 of Boundary Line Adjustment Maps at page 192 under Auditor's File Number 3462824, records of Lewis County, Washington.
>
> . . . Tract B of City of Centralia Boundary Line Adjustment Number BLA – 2017 0036 as recorded in Book 3 of Boundary Line Adjustment Maps at page 192 under Auditor's File Number 3462824, records of Lewis County, Washington.
>
> NEW LEGAL DESCRIPTION:
>
> Parcel A of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2020 0181, Records of Lewis County, Washington.
>
> Also described as Tract A and Tract B of City of Centralia Boundary Line Adjustment BLA – 2017 0036 as recorded in Book 3 of Boundary Line Adjustment Maps at page 192 under Auditor's File Number 3242824, records of Lewis County, Washington.

CP at 103 (some capitalization omitted). The Boundary Line Adjustment was recorded on October 30, 2020.

After learning of the Boundary Line Adjustment, HDH submitted a claim to Stewart Title "for all loss and damage it had or would sustain as a result of the [Boundary Line Adjustment]." CP at 67. Stewart Title denied the claim. HDH then applied to the City to subdivide the property back into two lots. According to HDH, it incurred "substantial expense preparing and submitting the application to subdivide the property" and it was "delayed in its ability to develop and sell the two lots, which caused [HDH] to incur substantial additional loss and expense." CP at 67.

B. PROCEDURAL HISTORY

In August 2022, HDH filed a complaint in superior court. The complaint stated that HDH "sustained or incurred loss or damage by reason of title being vested other than as stated in Schedule A." CP at 3. Specifically, HDH alleged (1) breach of contract; (2) unreasonable denial of a claim for coverage under RCW 48.30.015; and (3) bad faith, among other causes of action to be proved following discovery. HDH claimed at least $100,000 in damages.

In its answer to HDH's complaint, Stewart Title denied HDH's claims and stated, "The Insurance Policy speaks for itself." CP at 8. Stewart Title raised several affirmative defenses, including that HDH failed to state a claim upon which relief can be granted.

In July 2023, Stewart Title moved for a judgment on the pleadings pursuant to CR 12(c). In support of its motion, Stewart Title also submitted a copy of the title insurance policy.

HDH responded to Stewart Title's motion and attached declarations from Kellen Mangan, managing member of HDH, and Kevin Bluhm, the licensed professional land surveyor who created the Boundary Line Adjustment. In its response, HDH argued that Stewart Title's motion should

be denied because HDH sustained loss or damage by reason of a "'Covered Risk.'" CP at 50. HDH also alleged for the first time that the policy's Covered Risk 3 (unmarketable title) and Covered Risk 5 (the enforcement of any law or ordinance relating to the use or subdivision of the land) also applied.

In reply, Stewart Title moved to strike the declarations that HDH submitted in its response. Stewart Title argued that the declarations contained testimony and exhibits outside the scope of the CR 12(c) pleadings.

In August 2023, after hearing argument on the motion, the superior court granted Stewart Title's motion for judgment on the pleadings. The superior court orally ruled:

> I'm going to grant the Motion for Judgment on the Pleadings. . . . I think that the Schedule A, the description of what was being sold is covered by that. But even if it is not, even if it is not covered, I think the exclusion under Schedule B takes care of that. It's not what the insured understood. It's not what the parties understood. It's what the contract says. By listing the specific auditor's number, that tells the insured you should be looking at that.
>
> . . . I think the reasonable insured would look at the document that is excluded that is specifically referred to in the policy, so that's what happened here.

Verbatim Rep. of Proc. (VRP) at 3.

The superior court did not immediately enter a written order. HDH then filed a motion for reconsideration of the superior court's oral decision. HDH merely reiterated the same arguments as it had in its response to Stewart Title's CR 12(c) motion and did not identify the grounds upon which it sought reconsideration.

The superior court denied HDH's motion for reconsideration. The order denying the motion for reconsideration stated: "The court concludes HDH cannot prove any set of facts

consistent with its Complaint that would justify recovery on any of the causes of action pled therein." CP at 150.

Then, in September 2023, the superior court entered a written judgment of its oral ruling granting Stewart Title's motion for a judgment on the pleadings. The judgment stated that the superior court considered the declarations of Mangan and Bluhm in addition to the pleadings upon which the motion for judgment on the pleadings was based.

HDH appeals.

ANALYSIS

HDH argues that the superior court erred when it granted Stewart Title's motion for a judgment on the pleadings and when it denied HDH's motion for reconsideration. We disagree.

A. STANDARD OF REVIEW

1. Motion for Judgment on the Pleadings

CR 12(c) provides, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." CR 12(c) motions are nearly identical to CR 12(b)(6) motions to dismiss for failure to state a claim. *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012). The only "difference between these two motions is timing: a CR 12(b)(6) motion is made after the complaint but before the answer; a CR 12(c) motion is made after the pleadings are closed." *Id.*

The purpose of CR 12(c) is "is to 'determine if a plaintiff can prove any set of facts that would justify relief.'" *Zurich Servs. Corp. v. Gene Mace Constr., LLC*, 26 Wn. App. 2d 10, 19, 526 P.3d 46 (2023) (quoting *P.E. Sys.*, 176 Wn.2d at 203). Dismissal under CR 12(c) is appropriate only when the plaintiff cannot prove facts that would justify recovery. *P.E. Sys.*, 176 Wn.2d at

210. "Factual allegations contained in the complaint are accepted as true." *Silver v. Rudeen Mgmt. Co.*, 197 Wn.2d 535, 542, 484 P.3d 1251 (2021).

Generally, courts may only consider the factual allegations made in the complaint. *Zurich Servs. Corp.*, 26 Wn. App. 2d at 20. However, "[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." CR 10(c);[1] *accord Zurich Servs. Corp.*, 26 Wn. App. 2d at 20 (stating courts may also consider "documents incorporated into the pleadings, including an instrument such as an operative contract 'the authenticity of which is not contested'" (quoting *P.E. Sys.*, 176 Wn.2d at 205)). This includes documents "whose contents are alleged but are not physically attached to the pleadings." *Zurich Servs. Corp.*, 26 Wn. App. 2d at 20.

Courts may not consider exhibits that fall outside the definition of "written instrument," such as affidavits or declarations, which are considered extrinsic evidence. *P.E. Sys.*, 176 Wn.2d at 205. If a court admits and considers extrinsic evidence, a motion for a judgment on the pleadings must be converted into a CR 56 motion for summary judgment. CR 12(c); *P.E. Sys.*, 176 Wn.2d at 206. "In that event, all parties must be given reasonable opportunity to present all material made pertinent to such a motion by CR 56." *Zurich Servs. Corp.*, 26 Wn. App. 2d at 21.

Nevertheless, even if matters outside the pleadings are presented, a court may still determine "that no matter what facts are proved within the context of the claim, the plaintiffs would not be entitled to relief," and "the motion remains one under CR 12." *Id.* at 20. In such cases, the "'basic operative facts are undisputed'" and whatever outside evidence proven would be

[1] CR 10(c) provides in full: "Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."

immaterial. *Id.* (internal quotation marks omitted) (quoting *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 830 n.7, 355 P.3d 1100 (2015)). We review a dismissal under CR 12(c) de novo. *Id.* at 19.

2. Motion for Reconsideration

CR 59 provides that on the motion of an aggrieved party, an order may be vacated, and reconsideration granted, for one of several causes, including irregularity in proceedings, misconduct, newly discovered evidence, or errors in law, among other reasons. CR 59(a). We review the denial of a motion for reconsideration under an abuse of discretion standard. *Dynamic Res., Inc. v. Dep't of Revenue*, 21 Wn. App. 2d 814, 824, 508 P.3d 680 (2022). "A trial court abuses its discretion if its decision is 'manifestly unreasonable or exercised on untenable grounds or for untenable reasons.'" *Id.* (quoting *McCoy v. Kent Nursery, Inc.*, 163 Wn. App. 744, 758, 260 P.3d 967 (2011), *review denied*, 173 Wn.2d 1029 (2012)).

B. TITLE INSURANCE COVERAGE

HDH argues that it incurred loss by reason of a covered risk in its title insurance policy. Additionally, HDH argues that "Special Exception No. 5" does not apply. Br. of Appellant at 6.

1. Legal Principles

"Title, in the context of real property, is defined as 'the means whereby the owner of lands has the just possession of his property.'" *Schwab v. City of Seattle*, 64 Wn. App. 742, 749, 826 P.2d 1089 (1992) (quoting BLACK'S LAW DICTIONARY 1331 (5th ed. 1979)). Fundamental attributes of property ownership include the right to possess the property, to exclude others, and to dispose of the property as the owner sees fit. *Manufactured Hous. Cmtys. of Wash. v. State*, 142 Wn.2d 347, 364, 13 P.3d 183 (2000), *abrogated on other grounds by Chong Yim v. City of Seattle*,

194 Wn.2d 651, 451 P.3d 675 (2019). A title insurance policy is "any written instrument, contract, or guarantee by means of which title insurance liability is assumed." RCW 48.29.010(3)(j).

We interpret insurance policy provisions de novo. *Gardens Condo. v. Farmers Ins. Exch.*, 2 Wn.3d 832, 838, 544 P.3d 499 (2024). "Courts construe insurance policies as a whole, giving the language 'a fair, reasonable, and sensible construction' as would be given by an average person purchasing insurance." *Id.* at 839 (internal quotation marks omitted) (quoting *Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC*, 200 Wn.2d 315, 321, 516 P.3d 796 (2022)).

"'The insured bears the burden of showing that coverage exists; the insurer, that an exclusion applies.'" *Hill & Stout, PLLC v. Mut. of Enumclaw Ins. Co.*, 200 Wn.2d 208, 218, 515 P.3d 525 (2022) (quoting *Mut. of Enumclaw Ins. Co. v. T&G Constr., Inc.*, 165 Wn.2d 255, 268, 199 P.3d 376 (2008)). The "duty to indemnify exists only if the policy *actually covers* the insured's liability." *Am. Best Food, Inc. v. Alea London, Ltd.*, 168 Wn.2d 398, 404, 229 P.3d 693 (2010) (emphasis in original). Exclusionary clauses are strictly construed against the insurer. *Id.* at 406.

Undefined terms in an insurance policy are given their plain and ordinary meaning, and courts may look to the dictionary for undefined terms. *Hill & Stout*, 200 Wn.2d at 218-19. Language is ambiguous when it is susceptible to two or more reasonable interpretations. *Id.* at 218. "Any ambiguity in an insurance policy is construed in favor of the insured." *Id.* at 218-19. However, "[a] policy with clear and unambiguous language is to be enforced as written and without modification." *Gardens Condo.*, 2 Wn.3d at 839.

The Washington Survey Recording Act, chapter 58.09 RCW, "provide[s] a method for preserving evidence of land surveys by establishing standards and procedures . . . for recording a

public record of the surveys." RCW 58.09.010. A survey is "the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners." RCW 58.09.020(3).

"After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated." RCW 58.09.040. A record of survey may include "maps, plats, reports, descriptions, or other documentary evidence" so long as it complies with the provisions of chapter 58.09 RCW. RCW 58.09.030.

Under the Centralia Municipal Code (CMC), a "boundary line adjustment" means

> a division of land for the purpose of alteration by minor adjustment of boundary lines, between platted or unplatted lots or parcels or both, which does not create an additional lot, tract, parcel, building site, or division, nor creates any lot, tract, parcel, building site, or division which contains insufficient area or dimension to meet the minimum requirements for width or area for a building site. Boundary line adjustments are to be used to consolidate lots and resolve minor boundary line problems between two parcels of land, such as discrepancies found as a result of a boundary survey. Boundary line changes that alter the underlying plat pattern such as changing the general direction of lot lines or lot access are not boundary line adjustments.

CMC 19.04.020.F.

2. Coverage and Special Exception Number 5

HDH argues that it met its burden of demonstrating coverage under its title insurance policy and that the policy insured title to two separate tracts of land. Specifically, HDH contends that "Schedule A" of the policy "unambiguously describes the property . . . as two separate tracts." Br. of Appellant at 24.

HDH also argues that Special Exception Number 5 does not apply because there is no "'Record of Survey'" under Lewis County Auditor Number 3535886. Br. of Appellant at 34. Furthermore, HDH claims that Stewart Title "misleadingly described and never provided [HDH] with a copy of the 'Record of Survey' recorded under Lewis County Auditor's Number 3535886," making Stewart Title's conduct procedurally unconscionable and Stewart Title should be estopped from enforcing the exception. Br. of Appellant at 34.

As a threshold matter, we review HDH's appeal under the CR 12(c) standard—that is, we consider only the factual allegations made in HDH's complaint, the pleadings, and any written instruments attached to the pleadings. CR 10(c); 12(c); *Zurich Servs. Corp.*, 26 Wn. App. 2d at 20. Here, because the superior court considered declarations submitted by HDH, the superior court should have converted Stewart Title's motion for a judgment on the pleadings into a CR 56 motion for summary judgment. CR 12(c); CR 56; *Zurich Servs. Corp.*, 26 Wn. App. 2d at 21. However, while the superior court stated that it considered extrinsic evidence in its written judgment, the record shows that the superior court's ruling actually hinged on the policy alone. The superior court stated:

> I think that the Schedule A, the description of what was being sold is covered by that. But even if it is not, even if it is not covered, I think the exclusion under Schedule B takes care of that. It's not what the insured understood. It's not what the parties understood. *It's what the contract says*. By listing the specific auditor's number, that tells the insured you should be looking at that.
>
> . . . I think the reasonable insured would look at the document that is excluded that is specifically referred to in the policy.

VRP at 3 (emphasis added).

The parties do not dispute the validity of the title insurance policy. Where it is clear that the basic operative facts are undisputed, and any additional evidence presented under CR 56 would be immaterial, the motion remains one under CR 12. *Zurich Servs. Corp.*, 26 Wn. App. 2d at 20. Thus, this opinion assumes a CR 12(c) standard of review.

The issue before this court is whether HDH's purported losses arising from the consolidation of two adjacent lots, which involved a boundary line adjustment, are covered by the title insurance policy. Because there can be no coverage if a loss is excluded, we first look to the policy's exceptions (i.e., what is explicitly *excluded* from coverage).

a. No coverage under the policy language

The title insurance policy here clearly states that covered risks are "subject to the exclusions from coverage, the exceptions from coverage contained in Schedule B." CP at 28 (some capitalization omitted). Schedule B states: "This policy does not insure against loss or damage . . . which arise by reason of" several enumerated exceptions. CP at 35. Schedule B then sets forth two categories of exceptions from coverage: general exceptions and special exceptions. Special Exception Number 5 is the relevant exception here.

Special Exception Number 5 identifies an exception for "[m]atters disclosed by a record of survey" recorded on October 30, 2020 under Auditor's recording number 3535886. CP at 36. With regard to the document listed in Special Exception Number 5—a "record of survey" recorded October 30, 2020, with Auditor's Number 3535886—the recorded document explicitly states it is a "Boundary Line Adjustment/Lot Consolidation." CP at 103. The document also shows the boundary lines of the property. Furthermore, the document provides a "new legal description" of the property:

> Parcel A of City of Centralia Boundary Line Adjustment/Lot Consolidation Number 2020 0181, Records of Lewis County, Washington.
>
> Also described as Tract A and Tract B of City of Centralia Boundary Line Adjustment BLA – 2017 0036 as recorded in Book 3 of Boundary Line Adjustment Maps at page 192 under Auditor's File Number 3242824, records of Lewis County, Washington.

CP at 103.

Here, the policy language unambiguously excludes coverage for losses or damages arising from the Boundary Line Adjustment recorded on October 30, 2020 under Auditor's recording number 3535886. "A policy with clear and unambiguous language is to be enforced as written and without modification." *Gardens Condo.*, 2 Wn.3d at 839.

While Stewart Title may not have provided a copy of the Boundary Line Adjustment to HDH, the document was reasonably available for HDH to review because the recording date and number was clearly identified and the document was publicly recorded with the Lewis County Auditor's Office. *Mattingly v. Palmer Ridge Homes, LLC*, 157 Wn. App. 376, 392, 238 P.3d 505 (2010). Moreover, there were only *five* special exceptions listed in Schedule B; it was not a multi-page laundry list filled with dense, boilerplate language.

HDH argues that Special Exception Number 5 does not apply because "there is no 'Record of Survey' recorded under the specified Lewis County Auditor's Number 3535886"; rather, because only the Boundary Line Adjustment is recorded, a "record of survey" does not exist. Br. of Appellant at 34. HDH asserts that the purpose of the Boundary Line Adjustment is to change boundaries, which is substantially different from the purpose and legal effect of a record of survey. Thus, HDH argues, "Special Exception No. 5 purports to describe and incorporate by reference a

document that literally does not exist" and "[i]t therefore excludes nothing." Br. of Appellant at 36. This argument is unpersuasive.

Under the Washington Survey Recording Act, a survey is "the locating . . . in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners." RCW 58.09.020(3). A survey may include "maps, plats, reports, descriptions, or other documentary evidence." RCW 58.09.030. A land surveyor then "may file a *record* of survey with the county auditor." RCW 58.09.040 (emphasis added). Thus, a "record of survey" is not a *specific* document; it could be any number of documents, so long as it complies with the Survey Recording Act.

A "boundary line adjustment" is "a division of land for the purpose of alteration by minor adjustment of boundary lines, between platted or unplatted lots or parcels or both. . . . Boundary line adjustments are to be used to consolidate lots and resolve minor boundary line problems between two parcels of land, such as discrepancies found as a result of a boundary survey." CMC 19.04.020.F. Therefore, a boundary line adjustment locates "points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners." RCW 58.09.020(3). Here, the Boundary Line Adjustment showing the consolidation of two adjacent lots was publicly recorded on October 30, 2020. Thus, the Boundary Line Adjustment in this case is *a record of survey*.

This notion is bolstered by the way in which Special Exception Number 5 describes "record of survey." According to HDH, Special Exception Number 5 states, "'Matters disclosed by Record of Survey,'" with "'Record of Survey'" capitalized and implying that it is a *specific* document. Br.

of Appellant at 33. However, upon review of the record, Special Exception Number 5 in the policy actually states: "Matters disclosed by *a record of survey*." CP at 36 (emphasis added). The way in which "a record of survey" is referenced in the policy suggests the document is *not* a specific document; rather, it suggests a survey—whether that is a map, plat, or boundary line adjustment—that has been recorded.

HDH cites no authority for the proposition that there is a distinction between a survey locating existing boundaries versus a survey that changes boundaries, at least for the purposes of establishing a record of survey. HDH cites to *Thein v. Burrows*[2] to argue that a record of survey cannot change boundaries. However, in *Thein*, at issue was *two competing surveys* and whether one of those surveys was erroneously conducted. *Id.* at 761-62. Here, HDH does not argue that the boundaries provided on the Boundary Line Adjustment were *incorrect* nor does it dispute the methodology employed to create the Boundary Line Adjustment. Therefore, *Thein* is inapposite.

b. Procedural unconscionability

HDH next argues that Stewart Title's failure to provide HDH with a copy of the Boundary Line Adjustment renders enforcement of Special Exception Number 5 "procedurally unconscionable." Br. of Appellant at 37. Specifically, HDH contends that it was deprived of "the opportunity to understand what matters [Stewart Title] was purporting to refer to and exclude," resulting "in blatant unfairness to [HDH] and deprived it of meaningful choice." Br. of Appellant at 39. We disagree.

[2] 13 Wn. App. 761, 763, 537 P.2d 1064 (1975).

Courts assess procedural unconscionability based on the totality of the circumstances. *Mattingly*, 157 Wn. App. at 388. Courts will consider "'(1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were hidden in a maze of fine print.'" *Id.* (internal quotation marks omitted) (quoting *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 519, 210 P.3d 318 (2009)). The crux of procedural unconscionability is whether a party lacked meaningful choice. *Id.* at 388-89.

Here, HDH engaged Stewart Title for a title insurance policy. The entire policy is only 12 pages long, and the disputed interpretations arise only on six of those pages—the pages that provide "Covered Risks," and then Schedule A and Schedule B. Both Schedule A and Schedule B are concise, brief documents. Schedule A provides a description of the property insured:

> Tracts A and B of Boundary Line Adjustment BLA-2017 0036 recorded in Volume 3 of boundary line adjustments, page 142, under Auditor's File No. 3462824, being lots 2 and 5, block 1 of Horner's Subdivision of a portion of lots 1 and 2, August Sawalls addition to Centralia as recorded in Volume 4 of Plats, page 87.

CP at 34. Schedule B lists nine general exceptions and five special exceptions. The terms are not hidden in a maze of fine print and nothing in the record or HDH's argument suggests that HDH did not have a reasonable opportunity to understand the terms or that it lacked meaningful choice based on the language of the policy.

First, Schedule A's description of the property insured is not incorrect—while not identical to the new legal description listed in the Boundary Line Adjustment, the property description largely follows the new legal description. The record shows that prior to the consolidation of the lots, the property was referred to individually as "Tract A" and "Tract B," not as "Tract A and

Tract B" or "Tracts A and B."[3] Moreover, the description of land in a title insurance policy is for the purpose of identifying the land; not "'for the purpose of limiting the insurance protection.'" *Shotwell v. Transamerica Title Ins. Co.*, 91 Wn.2d 161, 169, 588 P.2d 208 (1978) (quoting *San Jacinto Title Guar. Co. v. Lemmon*, 417 S.W.2d 429, 431-32 (Tex. Civ. App. 1967)). Schedule A properly identified the property covered by the policy.

Second, and as discussed above, there were only *five* special exceptions listed in Schedule B; Schedule B was not a multi-page laundry list filled with dense, boilerplate language. Schedule B explicitly listed specific survey documents within the exceptions to coverage under the policy. Those documents were clearly identified by recording date and auditor's recording number. Even if HDH did not know the content of those documents, it was aware that those documents affected coverage under the policy. Based on the record, it does not appear that that Stewart Title intentionally misled HDH—indeed, the contract was succinct and it clearly stated the exceptions to coverage in a brief and detailed list. Thus, contrary to HDH's assertion, enforcing Special Exception Number 5 is not procedurally unconscionable.

c. Equitable estoppel

Finally, HDH argues that Stewart Title should be "equitably estopped from asserting Special Exception No. 5 excludes [HDH]'s claim" because Stewart Title misled HDH by referring to the Boundary Line Adjustment as a "'Record of Survey.'" Br. of Appellant at 43, 44. As

[3] We note that the descriptions of the property in Exhibit A of the purchase and sale agreement appear to have been modified. Indeed, on the page purporting to describe Tract A, it states: "*Tracts* A" and was followed by text that was whited out. CP at 85 (emphasis added). It would seem the apparent modification should at least have given rise to a request for clarification on HDH's part.

discussed above, Stewart Title did not mislead HDH by referring to the document as a "Record of Survey." Therefore, HDH's equitable estoppel claim fails.

Because the title insurance policy unambiguously excludes coverage for losses or damages arising from the Boundary Line Adjustment recorded on October 30, 2020 under Auditor's recording number 3535886, HDH cannot prove any set of facts that would justify relief. *Zurich Servs. Corp.*, 26 Wn. App. 2d at 19; CR 12(c). Further, Stewart Title did not mislead HDH in identifying the recorded Boundary Line Adjustment. As such, we do not address HDH's arguments that its losses and damages fall within covered risks.

Accordingly, we hold that the superior court did not err in granting Stewart Title's motion for a judgment on the pleadings. Because the superior court did not err in granting Stewart Title's motion, it necessarily did not err in denying HDH's motion for reconsideration.

ATTORNEY FEES ON APPEAL

HDH requests attorney fees and costs. We may award attorney fees and expenses to a party "[i]f applicable law grants to a party the right to recover." RAP 18.1(a).

HDH cites to *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 52, 811 P.2d 673 (1991), in support of its request for attorney fees. In *Olympic S.S. Co.*, the Washington Supreme Court stated that an insured has a right to "recoup attorney fees that it incurs because an insurer refuses to defend or pay the justified action or claim of the insured." *Id.* As discussed above, HDH did not have a justified claim and is not the prevailing party. Therefore, we decline to award attorney fees to HDH.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Glasgow, J.

Veljacic, A.C.J.

I certify that on the 30th day of August 2024, I caused a true and correct copy of Appellant High Definition Homes LLC's Petition for Review to be served in the manner indicated below:

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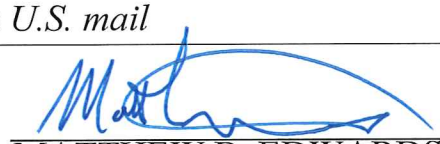
By: 
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