SUPERIOR COURT OF WASHINGTON, COUNTY OF SAN JUAN

CLARE LINN WELKER and ABIGAIL METZGER WELKER, Trustees of the Big Sky Trust UDT 11-14-2002, Plaintiffs, v. MOUNT DALLAS ASSOCIATION, a Washington non-profit corporation; et al., Defendants.	**NO. 15-2-05069-0** **DECLARATION OF DEAN M. PRATHER**

I, Dean M. Prather, declare as follows:

1. I am over the age of 18 and I am competent to be a witness in a lawsuit and to make this declaration. I make the following statements based upon my personal knowledge of the matters testified to herein.

2. I have been working as a title examiner, title officer, and underwriter for the past 25 years. I have worked primarily in the San Juan County market as a title examiner and underwriter for Chicago Title Company for the past five years. I am currently and actively employed in this role and I have $10 million in underwriting authority. I write the vast majority of title policies for San Juan County, as we hold the majority of the market share amongst the two title companies, and I write nearly 100% of the title insurance that Chicago Title issues in San Juan County.

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3. I disagree with that portion of Paragraph 9 of the declaration of George Peters where he claims that "off-record" matters are shown as exceptions on title commitments. This is inaccurate. Coverage is provided for off-record matters on extended coverage policies only. Extended policies are rarely provided for owner's coverage, and frequently provided for lender's coverage. Off-record matters are not a concern on standard coverage owner's policies – the most common form of owner's policies that we issue. Standard coverage policies provide no coverage against off-record matters, and we make no special or extra effort to discover them in most situations.

4. I disagree with that portion of Paragraph 10 of the declaration of George Peters that again addresses off-record matters. A title company will not raise off-record matters unless, as stated above, the policy to be issued is an extended coverage policy. I have written four standard coverage commitments this year for properties along Mount Dallas Road, and a co-worker wrote a 5th while I was on vacation. In none of these did we raise an exception for possible road maintenance costs. Again, standard coverage policies provide no coverage against off-record matters, and we make no special or extra effort to discover them in most situations. If we are asked to issue extended coverage, and we are aware of, or discover, an off-record matter that should be raised, we will raise it.

5. I disagree completely with Paragraph 11 of Mr. Peters' declaration, where he states that barring a title plant error in not picking up the document, the recorded RMA should be shown as an exception from coverage on any commitment or policy issued with respect to any of the 84 properties accessed by Mount Dallas Road, whether or not the property owner has executed the RMA or Joinder. I am aware of the RMA, I have read the RMA

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in its entirety, multiple times, and it clearly requires a Joinder executed by parties who wish to be bound by the RMA, before the RMA binds them. To show the RMA as an exception to title when there is no Joinder accepting the terms and binding the parties and the property, would be misrepresentative. The RMA plainly states that a Joinder is *required* in order for the RMA to be binding. The Court should understand that special exceptions become those items that are *warranted by the seller* when they execute a Statutory Warranty Deed to complete the transfer of title. In other words, when we include the exceptions on the deed, which most title and escrow companies do, and the seller signs that deed, the seller is warranting that all the items listed thereon burden the property being conveyed. If the seller did not execute the joinder, the property is not burdened by the RMA, and therefore a warranting of such would be improper, nonsensical, and counter to the seller's intentions if in-fact the seller never executed on the joinder. I have also read the revised, unrecorded, proposed RMA and if the existing RMA were revoked and this new RMA were recorded, my opinion would not change. We would not show the new RMA as an exception to title unless a Joinder is recorded accepting the terms and binding the parties and the property to that RMA.

6. I disagree with most of Paragraph 12 of Mr. Peters' declaration, for the reasons stated above and for the following reasons: the instruments that created the initial access easements are of record, and we show them as exceptions. Because they are referenced in the RMA does not mean that we raise them again by virtue of them being referenced in another document. And no, we would not continue to show superseded or terminated items, if they are properly superseded or terminated. In the case of the RMA we would

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expect that if the parties who executed the RMA, and the parties who executed joinders to the RMA, joined together and terminated or superseded the original RMA, this would be sufficient to clear them. Showing revoked, cancelled, superseded, terminated, or otherwise properly voided instrument is simply something that we do not do, *unless* we have reason to believe that the voiding instruments themselves were flawed in some way. We also do not take the position that a party is affected by an instrument simply because a third party states that they are affected by an instrument.

7. I disagree with Paragraph 13 of Mr. Peters' declaration. If a court order cancels a recorded RMA or any other instrument, we would cease to show the instrument. We would not show the court order or the instrument as an exception to title *unless the court order requires further action by the property owners, includes a new order that must be followed, or carries a money judgment against the person and property for which we are writing title.* Further, we typically only show pending litigation when there is a Lis Pendens in force and effect against the property being searched. To date, I find no such instrument recorded in relation to this cause, and therefore we normally would not show the pending litigation. However, while writing this declaration, the Plaintiff, Clare Welker, contacted our office via email, and gave us actual notice of the case. Therefore, we will begin to show the pending litigation on our title commitments. Prior to his giving notice, we were not raising the issue in our title commitments.

8. I disagree with Paragraph 14 of Mr. Peters' declaration. Recording a document does not immediately make it binding upon all properties that it mentions. We look at recorded documents one at a time, and determine from the writing within the four corners of the

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document as to whether or not we will show the instrument on a title commitment and on the resulting title policy. We are not showing the RMA document disputed in this cause *unless there is a properly executed joinder*, which the RMA itself requires in order to bind the property owner to the terms of the RMA. And again, we do not typically show pending litigation without a properly executed and filed Lis Pendens.

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

Signed at Bellingham, Washington on June 1st, 2016.

Dean M. Prather

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