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WHATCOM COUNTY  
WASHINGTON

**SUPERIOR COURT OF THE STATE OF WASHINGTON  
WHATCOM COUNTY**

SCOTT HILLIUS; TOM STAEHR; DANIEL and  
SONJA LYONS; DOUGLAS and ANGELIQUE  
SCARLETT; MARK MIEDEMA; STEVEN and  
LISA ZEHM,

Plaintiffs,

v.

18 PARADISE, L.L.P. and MJ MANAGEMENT,  
LLC;

Defendants,

MJ MANAGEMENT, LLC,

Counterclaimant.

MAUREEN AND ROGER DOWLING, a married  
couple, MATT AND KARI SKINNER, a married  
couple,

Intervenors.

Case No.: 20-2-00701-37

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER ON  
REMAINING CLAIMS**

[CLERKS ACTION REQUIRED]

THIS MATTER came before the Court on Plaintiff's Fifth amended Complaint;  
Intervenor's Complaint in Intervention; MJ Management's Second Amended Answer to

1 Plaintiff's Fifth Amended Complaint and Counterclaim and 18 Paradise's Answer and  
2 Counterclaim to Plaintiff's Fifth Amended Complaint.

3 **1. BASES**

4 The Court held Civil Bench Trial between April 30, 2024, and May 13, 2024, on the  
5 merits of the case.

6 **2. FINDINGS OF FACT**

7 **Procedural Background and Earlier Court Findings.**

8 2.1 In May 2020, Plaintiffs filed their original complaint alleging violations of the  
9 Consumer Protection Act, Breach of Trust, Violation of the Civil RICO Statute,  
10 Declaratory Judgment on the effect of the Lynden PRD, and Express and  
11 Constructive Trust against 18 Paradise, its owner companies, and Mau Hua  
12 "Morris" Chen. They also alleged violations of the Consumer Protection Act, and  
13 Civil RICO against MJ Management, and Mick O'Bryan and Josh Williams.

14 2.2 On May 26, 2020, MJ Management, Mick O'Bryan and Josh Williams filed their  
15 Answer to Plaintiffs' Complaint.

16 2.3 On June 11, 2020, 18 Paradise removed the lawsuit to Federal Court.

17 2.4 In Federal Court, 18 Paradise moved to dismiss the owner companies of 18  
18 Paradise and Mau Hau "Morris" Chen. 18 Paradise also moved to dismiss the Civil  
19 RICO claim.

20 2.5 Plaintiffs stipulated to dismiss the RICO claim entirely and dismiss 18 Paradise's  
21 two owner companies, Morris Chen, and remand the case back to Whatcom  
22 County Superior Court.

23 2.6 On September 16, 2020, Plaintiffs filed their First Amended Complaint. The  
24 Complaint asserted a violation of the Consumer Protection Act against 18  
25 Paradise, Mick O'Bryan, Josh Williams, and MJ Management. It also asserts a  
26

1 Breach of Contract; Express and Constructive Trust; and Declaratory Judgment  
2 against 18 Paradise.

3 2.7 The Plaintiff sought and eventually, on November 25, 2020, certified this matter  
4 as a class action. The Order granting Class Certification defined the class as "Every  
5 person or entity who is a record owner of a fee or undivided fee interest in any  
6 Lot or Condominium Unit that is subject to the Master Declaration of Covenants,  
7 Conditions, Restrictions and Reservations for Homestead, a Planned Residential  
8 Development, recorded under Whatcom County recording number 920624017  
9 (the "Declaration")."

10 2.8 On May 25, 2021, Plaintiffs filed their Second Amended Complaint which  
11 included class action allegations; Consumer Protection Act Violations against MJ  
12 Management, 18 Paradise, William O'Bryan and Josh Williams; Breach of  
13 Contract—Declaration against 18 Paradise; Breach of Contract—PRD Agreement  
14 against 18 Paradise; Breach of Fiduciary Duty against 18 Paradise; Declaratory  
15 Judgment—Declaration, Homestead PRD Contract, and the PRD Ordinance  
16 against 18 Paradise; seeking an Injunction to comply with the PRD Ordinance  
17 against 18 Paradise, and failure to Enforce the PRD Ordinance against the City  
18 Lynden.

19 2.9 On September 29, 2021, MJ Management, Josh Williams, and William O'Bryan  
20 filed their Answer, Affirmative Defenses and Counterclaim to Plaintiffs' Second  
21 Amended Complaint. Their counterclaim sought declaratory relief on the  
22 applicability of the Joint Maintenance Fee.

23 2.10 On October 21, 2021, 18 Paradise filed their Answer to Plaintiff's Second  
24 Amended Complaint.

25 2.11 On September 15, 2021, the Court entered a Stipulation and Order Striking  
26 Motion for Preliminary Injunction in response to a disagreement over MJ

1 Management's efforts to collect maintenance fees. That Order set the process of  
2 collecting maintenance fees while the action is pending. The order gave MJ  
3 Management and 18 Paradise the right to collect and enforce the \$36.00  
4 maintenance fee and confirmed they were prohibited from taking adverse  
5 enforcement action against Homeowners who do not pay the \$57.00 increase  
6 that was put into effect in 2020. The Order leaves undisturbed the amount of  
7 money actually owed and allows the Declarant to take lawful action if the increase  
8 is deemed valid. Lastly, the Order compels any Homeowner who sells their  
9 property to deposit the amount of money claimed by the Defendants in dispute  
10 into the Court's Registry.

11 2.12 On February 4, 2022, the Court granted the City of Lynden's motion for summary  
12 judgment to dismiss. The City of Lynden was dismissed with Prejudice.

13 2.13 On April 6, 2022, the Court granted the Plaintiffs Motion for Partial Summary  
14 Judgment Regarding Common Open Space. The order defined "Common Open  
15 Space" as: "Platted areas within the Homestead PRD that are: (1) identified on the  
16 face of a plat as "Common Open Space" or "Open Space;" (2) delineated on a plat  
17 but not identified as a lot and (3) easements on the face of a plat for ingress and  
18 egress, pedestrian use, or pathways. Except: (1) areas dedicated to the City of  
19 Lynden for roadways and utilities; (2) areas that are also identified as utility  
20 easements, (3) unplatted areas, and (4) areas within the golf course, clubhouse,  
21 R.V. storage and maintenance areas."

22 2.14 On July 15, 2022, Plaintiffs sought and obtained leave and filed their Third  
23 Amended Complaint. The Third Amended Complaint contained class action  
24 allegations. It also alleged that 18 Paradise violated the Consumer Protection Act,  
25 and it sought Declaratory Judgments on the Master Declaration and the PRD  
26

1 Ordinance. It effectively dismissed MJ Management, William O'Bryan, and Josh  
2 Williams as defendants from the suit.

3 2.15 On July 16, 2022, Plaintiffs filed their Fourth Amended Complaint without the  
4 Court's Leave. 18 Paradise sought and obtained an Order dismissing the Fourth  
5 Amended Complaint and reverting to using the Third Amended Complaint.

6 2.16 On September 16, 2022, the Court entered Plaintiffs Order on Motion for Partial  
7 Summary Judgment re: Agency. The Order established the following facts as a  
8 matter of law: (1) MJ Management acted as the agent of 18 Paradise under the  
9 2017 Management and Lease Agreement between them; (2) MJ Management's  
10 execution and recording the Sixth and Seventh amendment to the Homestead  
11 Master Declaration of the CC&Rs was within the general scope of the agency  
12 relationship formed under the Management and Lease Agreement; (3) The  
13 Management and Lease Agreement required MJ Management to obtain 18  
14 Paradise's express permission before signing and recording the Sixth and Seventh  
15 Amendment to the Declaration; (4) MJ Management failed to obtain 18 Paradise's  
16 express permission before signing and recording the Sixth and Seventh  
17 Amendment to the Declaration. The Order reserved all other issues for trial.

18 2.17 On January 9, 2023, Plaintiffs, with the Court's leave, filed their Fifth Amended  
19 Complaint, which maintained their class action allegations, and re-asserted their  
20 Consumer Protection Act claim and their Declaratory actions regarding the  
21 Master Declaration and the application of the PRD Ordinance. It also re-asserted  
22 claims against MJ Management, William O'Bryan, and Josh Williams.

23 2.18 On February 6, 2023, the Intervenors filed their Complaint in Intervention seeking  
24 an injunction compelling 18 Paradise and MJ Management to perform necessary  
25 repair work. Intervenors brought a claim seeking to decertify Plaintiff's Class.  
26

1 2.19 On February 14, 2023, 18 Paradise filed their Answer to Plaintiffs' Fifth Amended  
2 Complaint.

3 2.20 On February 21, 2023, Plaintiffs filed their Answer to the Intervenor's Complaint.

4 2.21 On February 27, 2023, 18 Paradise filed its Answer to the Intervenor's Complaint.

5 2.22 On March 1, 2023, MJ Management, William O'Bryan, and Josh Williams filed their  
6 Answer to Plaintiffs' Fifth Amended Complaint.

7 2.23 On March 1, 2023, MJ Management, William O'Bryan, and Josh Williams filed their  
8 answer to the Intervenor's Complaint.

9 2.24 On April 14, 2023, the Court orally ruled on and granted 18 Paradise's motion  
10 seeking summary judgment dismissal of Plaintiffs' property claims seeking to  
11 deprive 18 Paradise of ownership of the Common Open Space as set forth in the  
12 Fifth Amended Complaint.

13 2.25 On January 22, 2024, 18 Paradise filed its First Amended Answer, Affirmative  
14 Defenses, and Counterclaims to Fifth Amended Complaint. The Counterclaim  
15 stated a claim for a Breach of Contract for unpaid maintenance fees, and a  
16 Counterclaim for Declaratory Relief interpreting the CC&Rs.

17 2.26 On January 6, 2024, the Court entered its Order (1) Granting in Part and Denying  
18 in Part Motion for Partial Summary Judgment RE: Ownership Claims and Improper  
19 Profits Claims, and (2) Certifying Ruling on Ownership Claims under CR 54(b),  
20 which dismissed all of Plaintiffs' claims regarding the legality and ownership of  
21 the Common Open Space and certified the ruling as final.

22 2.27 On February 6, 2024, MJ Management filed its First Amended Answer, Affirmative  
23 Defenses, and Counterclaims for a Defendant Class Action Response Plaintiffs'  
24 Fifth Amended Complaint. This answer re-raised MJ Management's prior claim  
25 for declaratory relief on MJ Management's right to collect fees from the  
26 Homeowners.

1 2.28 On April 11, 2024, 18 Paradise filed its Motion to Dismiss Breach of Contract  
2 Counterclaim Without Prejudice.

3 2.29 On April 12, 2024, the Court entered an Order Granting 18 Paradise's and MJ  
4 Management's Motion for Partial Summary Judgment on the Plaintiff's Consumer  
5 Protection Act Claim and Motion to Dismiss Defendants Williams and O'Bryan.  
6 The Court dismissed Plaintiff's Consumer Protection Act Claims based and  
7 dismissed William O'Bryan and Josh Williams as Defendants.

8 2.30 On April 12, 2024, the Court entered an Order Certifying Ruling on CPA Claims  
9 under CR 54(b), which certified the April 12 Order dismissing Plaintiffs' CPA  
10 Claims as final.

11 2.31 On April 17, 2024, the Court denied MJ Management's Motion for Class  
12 Certification of Defendant Class. The Court determined the proposed Defense  
13 class did not satisfy the commonality element. The Court also relied on its  
14 inherent discretion because the Court was concerned about the timing of MJ  
15 Management's request for Class Certification.

16 2.32 On April 24, at an omnibus pre-trial hearing, the Court granted 18 Paradise's  
17 motion and dismissed 18 Paradise's breach of contract counterclaim with  
18 prejudice.

19 2.33 On April 30, 2024, the Court entered an Order denying MJ Management's Motion  
20 for Reconsideration on the Court's Order denying MJ Management's Motion for  
21 Cass Certification.

22 2.34 On April 30, 2024, the Court ruled on the parties' Motions in Limine as follows:

23 2.34.1 The Court granted in Part Plaintiffs Motion to exclude evidence MJ  
24 Management's counterclaims to the extent it related to monetary claims.  
25 The Court ruled that MJ Management's declaratory claims remained in  
26 the case;

1 2.34.2 Plaintiffs argued that they had pled a claim for Declaratory Judgment  
2 determining which homeowners are and are not subject to the Master  
3 Declaration, and the Defendants objected that the claim was never  
4 properly pled and presented problems with the Class certification and  
5 conflicts. The Court determined it was concerned about commonality  
6 and adequacy of pleading and ruled this claim would not be presented  
7 at the trial.

8 2.35 The claims presented at trial were as follows:

- 9 1) Reciprocal claims for declaratory judgment regarding the validity of the Sixth  
10 and Seventh Amendments;
- 11 2) Reciprocal claims for declaratory judgment regarding whether the Joint  
12 Maintenance Fee is restricted to be collected and used exclusively for the  
13 maintenance of the Common Open Space;
- 14 3) Plaintiffs' claim for declaratory judgment that the Master Declaration violates  
15 Lynden Municipal Code Sections 19.29.020 and 090; and
- 16 4) Intervenors' claims for injunctive relief, to decertify the class, and seeking to  
17 avoid the obligation to create a Homeowner Association.

18 2.36 At the conclusion of the trial, 18 Paradise moved to dismiss Plaintiffs' claim to  
19 determine who was and was not subject to the Master Declaration, and the Court  
20 verbally dismissed the claim without prejudice, and further indicating that this  
21 dismissal would be memorialized in the final order in the case.

### 22 **Factual Background**

23 2.37 The city of Lynden enacted a Planned Residential Development Ordinance on  
24 January 21, 1992.



1 2.38 The Planned Residential Development Ordinance laid out the steps to initiate and  
2 complete a Planned Residential Development. The PRD Ordinance required every  
3 PRD within the City of Lynden to have a homeowner's association.

4 2.39 On July 20, 1992, Homestead Northwest, LLC, entered a preliminary plan for the  
5 Homestead Planned Residential Development. The PRD contract was agreed to  
6 and approved by the City of Lynden.

7 2.40 Homestead Northwest LLC created the Homestead Planned Residential  
8 Development and filed the Master Declaration of Conditions, Covenants,  
9 Restrictions and Reservations in July 1992 ("Master Declaration").

10 2.41 The City of Lynden approved the Homestead PRD Master Declaration, including  
11 the structure of the Homeowners Association as indicated by the Homestead PRD  
12 Agreement between the City and Homestead Northwest LLC.

13 2.42 Part of the plan for the PRD included Common Open Space, defined above in  
14 Paragraph 2.13, which was scattered throughout the property to provide parks  
15 and other recreational areas around Homestead.

16 2.43 As part of the Master Declaration, Homestead Northwest named itself the  
17 Declarant and reserved for itself various declarant rights including the right to  
18 retain the common open space and assess the other parcel owners in the PRD a  
19 monthly maintenance fee.

20 2.44 The Master Declaration, Section 3.2 also granted an easement to all Homestead  
21 residents for use of the Common Open Space: "all Parcel Owners other than the  
22 Declarant shall have and are hereby granted a perpetual non-exclusive easement  
23 and license to use the Common Open Space subject to their payment of joint  
24 maintenance fees so that the Common Open Space may be properly managed  
25 and maintained."

1 2.45 The Master Declaration gave the Declarant, its successors and assigns the right  
2 to assess a monthly maintenance fee for as long as the Declarant owned the  
3 Common Open Spaces. The Master Declaration, Section 3.5 defines the scope of  
4 the Joint Maintenance Fee: "In consideration of the easement and license granted  
5 to Parcel Owners herein, each Parcel Owner shall pay and by virtue of acquisition  
6 of any parcel in Homestead agrees for themselves and their heirs, successors and  
7 assigns to pay a monthly Joint Maintenance Fee to the Declarant."

8 2.46 In 1992, Homestead Northwest LLC set the first monthly maintenance fee at  
9 \$25.00 per month per homeowner. Under the Master Declaration, the Declarant  
10 was allowed to raise the Joint Maintenance Fee by up to 5% per year from the  
11 prior year.

12 2.47 Under the Master Declaration the Declarant had the right to amend the Master  
13 Declaration at Section 8.2.1: "So long as the Declarant retains ownership of the  
14 Common Open Space the Declarant specifically reserves for itself, its successors  
15 and assigns the absolute, unconditional right to alter, modify, change, revoke,  
16 rescind or cancel any and all of the restrictive covenants contained in this  
17 Declaration or hereinafter included in any subsequent Declaration provided that  
18 nothing herein shall prejudice or otherwise impair the security of any mortgagee  
19 of record as to any lot or parcel. Within forty-five (45) days after any such change  
20 in the Declaration the Declarant shall provide written notice of the change to  
21 Parcel Owners."

22 2.48 Further the Master Declaration includes a non-waiver clause in Section 8.3:  
23 "Violation for breach of any condition, covenant or restriction herein contained  
24 shall give the Declarant and/or the Association and/or the Parcel Owners in  
25 addition to all other remedies, the right to proceed at law or in equity to compel  
26 compliance of the terms of said conditions, covenants and restrictions and

1 prevent the violation or breach of any of them and the expense of any such  
2 litigation shall be borne by the then owner of the subject parcel provided that  
3 such proceedings, results in findings that such Parcel Owner was in violation of  
4 the covenants, conditions, and restrictions herein. Expenses of litigation shall  
5 include reasonable attorney's fees incurred by the prevailing party in seeking  
6 such enforcement. Failure by the Declarant, the Association, or any Parcel Owner  
7 to enforce any covenant, condition or restriction herein contained for any period  
8 of time shall in no event be deemed a waiver or estoppel the right to enforce the  
9 same thereafter."

10 2.49 The property started with 33 parcels and eventually grew to encompass  
11 approximately 614 homes and condominiums in the PRD.

12 2.50 Homestead Northwest LLC did not raise the monthly maintenance fee again until  
13 2005.

14 2.51 Between 2005 and 2008, Homestead Northwest exercised its right to increase the  
15 joint maintenance from \$25.00 to \$30.00 a month over the course of four years.

16 2.52 From 2008 until 2015, the Joint Maintenance Fee did not change through  
17 Raspberry Ridge's entire ownership.

18 2.53 Homestead Northwest LLC sold the golf course, the Common Open Spaces and  
19 all declarant rights to Raspberry Ridge in or around 2010.

20 2.54 18 Paradise bought Homestead from Raspberry Ridge on November 25, 2013.

21 2.55 18 Paradise and MJ Management entered into a Management and Lease  
22 Agreement in November 2017 to take effect on January 1, 2018, to manage the  
23 Golf Course and perform property management services around the Homestead  
24 PRD. In exchange, MJ Management was required to pay 18 Paradise rent monthly.

25 2.56 As part of that Management and Lease Agreement, 18 Paradise assigned MJ  
26 Management various Declarant Rights and duties, including the right to collect

1 and use Joint Maintenance Fee from homeowners to run the property and golf  
2 course pursuant to the Master Declaration.

3 2.57 MJ Management provided various services around Homestead to provide for the  
4 Homeowner's Common Benefit, including maintaining the common open space,  
5 snow removal, maintaining public areas, mowing grass strips, maintaining  
6 medians, maintaining the storm water pond and bioswale system, repairing fence  
7 lines, storm clean up, bathroom maintenance, hanging baskets of flowers, tree  
8 maintenance, entry sign area maintenance, and walking path maintenance.

9 2.58 On November 27, 2017, MJ Management increased the monthly maintenance fee  
10 to \$34.50 per month per homeowner without 18 Paradise's prior approval.

11 2.59 On November 20, 2018, MJ Management increased the monthly maintenance fee  
12 to \$36.00 per month per homeowner without 18 Paradise's prior approval.

13 2.60 On June 28, 2019, MJ Management executed the Sixth Amendment to Covenants.  
14 The Sixth Amendment amended section 3.5 (i) to read as follows: "Declarant may  
15 impose on any and all Parcel Owners a special assessment for the purpose of  
16 funding improvements to the Common Open Spaces and/or maintaining a  
17 reserve fund for anticipated, extraordinary or unanticipated expenses for  
18 maintaining the Common Open Space. Declarant shall impose and collect any  
19 special assessment as provided in this Article."

20 2.61 Relying on the Sixth Amendment's authority, MJ Management assessed a one-  
21 time \$83.00 special assessment to the Homestead Homeowners.

22 2.62 On December 3, 2019, MJ Management executed the Seventh Amendment to  
23 Covenants. The Seventh Amendment amended Section 3.5 (f) of the Master  
24 Declaration to read as follows: "Maintenance Fees shall increase annually no more  
25 than the percentage increase in the cost of living for all urban consumers in the  
26 Seattle/Tacoma area as published by the United States Department of Labor for

1 the most recently published 12 month period available on the first day of  
2 December, or five (5%) percent, whichever is greater. The failure to increase  
3 maintenance fees in one or more years does not waive the right to increase  
4 maintenance fees the following year up to the maximum combined amount for  
5 all years.”

6 2.63 Relying on the Seventh Amendment’s authority, in December 2019 MJ  
7 Management increased the maintenance fee to \$93.00 a month for each  
8 Homestead Homeowner for 2020, which they calculated by applying all the  
9 previously unapplied maintenance fee increases from 1992 to 2020.

10 2.64 The Court finds that the Intervenors contention that the HOA incorporated and  
11 filed with Washington Secretary of State by Plaintiff’s lawyer, K. David Andersson,  
12 and currently governed by Tom Staehr is invalid and defunct.

13 2.65 The Court finds that the Master Declaration is clear on the requirement for an  
14 HOA, but that it would remain an “advisory committee” only until such time that  
15 there was property for the HOA to manage.

### 16 3. CONCLUSIONS OF LAW

17 3.1 The Court has authority over the parties, the subject matter, and the proceedings.

18 3.2 18 Paradise, LLC as the current Declarant, possesses all the Declarant Rights, and  
19 owns the Common Open Space and the Golf Course.

20 3.3 The Declarant’s ownership of the Common Open Space is not impaired or  
21 affected in any manner by this ruling or the prior rulings in this case, other than  
22 to confirm that all claims by Plaintiffs to dispossess 18 Paradise’s of its ownership  
23 failed and have been dismissed with prejudice.

24 3.4 The Management and Lease Agreement did not expressly convey any specific  
25 declarant rights from 18 Paradise to MJ Management in writing, but 18 Paradise  
26

1 and MJ Management did expressly assign such rights by subsequent verbal  
2 agreements and course of dealings.

3 3.5 The Court finds that the Lease Management Agreement required MJ  
4 Management to obtain 18 Paradise's express permission before signing and  
5 recording amendments to the Master Declaration.

6 3.6 The testimony at trial (Raymond Chao, Josh Williams, and Mick O'Brien) and  
7 documentary evidence was consistent that 18 Paradise and MJ expressly agreed  
8 over time that MJ Management had the right to raise the maintenance fee and  
9 exercise Declarant rights. However, the testimony of 18 Paradise's designated  
10 representative during a deposition asserted that preapproval was required for MJ  
11 Management to record the amendments. Based on the totality of the the  
12 testimony provided, the Court finds that pre-approval by 18 Paradise was  
13 required before MJ Management could exercise declarant rights with respect to  
14 maintenance fees.

15 3.7 Because MJ Management did not seek 18 Paradise's permission before recording  
16 the Sixth and Seventh Amendments to the Master Declaration or setting the  
17 assessment and raising the management fees pursuant to these Amendments,  
18 the Court finds the Sixth and Seventh amendments are void ab inito.

19 3.8 Based on the issues before the Court and the evidence presented at trial the  
20 Court's ruling on the agency relationship between the MJ Management and 18  
21 Paradise is strictly limited to MJ Management's authority to execute and record  
22 the Sixth and Seventh Amendments.

23 3.9 The Parties stipulated to the validity of and have not challenged in this lawsuit  
24 any increase of the Joint Maintenance Fee prior to the Sixth and Seventh  
25 Amendments.

1 3.10 The Master Declaration must be interpreted liberally as required by Section 1.1.  
2 The Court applies the Supreme Court's ruling in *Berg v. Hudesman*, 115 Wn.2d  
3 657, 801 P.2d 222 (1990), and integrated context to the Master Declaration from  
4 testimony of parties, including the testimony of James Wynstra at trial. It is clear  
5 both from the plain language and from parol evidence of the intent of the drafter  
6 that the Master Declaration anticipates the collection of Joint Maintenance Fee  
7 from the parcel owners by the Declarant but that this fee is not tied to the  
8 Declarant's obligation to maintain the Common Open Space.

9 3.11 Sections 3.2 and 3.3 of the Master Declaration refer to the Common Open Space  
10 and its maintenance; however, nowhere in the CCRs is it stated that the  
11 maintenance fees must be used exclusively to maintain the Common Open Space  
12 as the Plaintiffs argue here. Nor would such a limitation make sense, as the  
13 Declarant is also charged with maintaining other common benefits, like the  
14 stormwater system that, while not included in the definition of Common Open  
15 Space, benefiting the whole of Homestead.

16 3.12 Section 3.5 defines the scope of the Joint Maintenance Fee and contains no  
17 reference to the Common Open Space or any other such limitation. The only  
18 limitations on the Joint Maintenance Fee are this initial \$25 amount and a cap of  
19 5% a year on any increases. Specifically, Section 3.5(a) sets the initial Joint  
20 Maintenance Fee at \$25 per month, and Section 3.5(e) provides that: "[t]he  
21 Declarant shall have the right and power to increase the maintenance fee each  
22 calendar year. Notices of fee adjustment shall be sent to Parcel Owners in  
23 December of each year where an adjustment has been made for the following  
24 calendar year." Section 3.5(f) expressly state that the Declarant may raise the  
25 maintenance fee each calendar year. Specifically, the Declarant may raise the  
26 maintenance fee by 5% or by the percentage increase in the cost of living in the

1 Seattle/Tacoma area, whichever is greater. Other than these restrictions, the Joint  
2 Maintenance Fee is not restricted by the CC&Rs.

3 3.13 The city of Lynden Ordinance establishing a planned residential development  
4 zone ("PRD") and RCW 90.40 require that a homeowner association be  
5 established. There is no justiciable controversy before the Court in this matter  
6 aside from confirming this fact. The Court expressly reiterates its prior rulings  
7 and confirms that this judgment does not divest any property ownership from 18  
8 Paradise. The Court further concludes that the required homeowner association  
9 in this case would by definition need to be some manner of an advisory  
10 association, as it would not own the Common Open Space or other property.

11 3.14 The Intervenors request to impose an injunctive relief on the homeowner  
12 association is not properly before this court, because there is not an active  
13 homeowner association and the relevant sections in the Master Declaration will  
14 only apply if the Declarant conveys its ownership to the homeowner association,  
15 which has not occurred.

#### 16 17 **4. ORDER**

18 Having reviewed the trial record and incorporating the conclusions of law above, and  
19 being otherwise fully advised, the Court hereby ORDERS:

20 4.1 Plaintiffs' claim for Declaratory Relief is granted as follows: The Sixth and Seventh  
21 Amendments to the Master Declaration are void ab inito.

22 4.2 18 Paradise's claim for Declaratory Relief is granted as follows: The Joint  
23 Maintenance Fee is restricted only by the timing and increase restrictions set  
24 forth in Section 3.5(e) and (f), and the use of the Joint Maintenance Fee is not  
25 restricted to only Maintenance of the Common Open Space or any in any other  
26 manner.

27 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
28 ORDER ON REMAINING CLAIMS



1 4.3 The correct amount of the Joint Maintenance Fee from January 1, 2019, through  
2 the entry of this Order is \$36.00 per homeowner per month.

3 4.4 Lyden's PRD and RCW 64.90 require a homeowner association to be established  
4 in all common ownership communities, which includes Homestead. It is not  
5 before the Court to opine further on how to establish a homeowner association  
6 here.

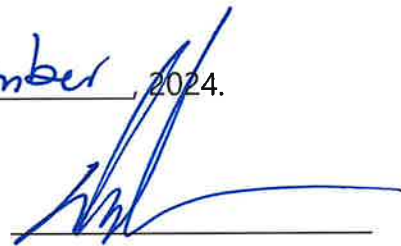
7 4.5 MJ Management's declaratory counterclaims are dismissed.

8 4.6 The Intervenors request for an injunctive relief on the homeowner association is  
9 denied.

10 4.7 Plaintiffs' Declaratory Claim to determine which parcels may and may not be  
11 subject to the Master Declaration, is dismissed without prejudice.

12 4.8 With the entry of these Findings, Conclusions, and Order the representation of  
13 Plaintiff's Counsel, Matthew Davis and K. David Andersson terminates with  
14 respect to the class members, except as such representation limited to post-trial  
15 motions and appeal. For the purposes of communication, class members may be  
16 contacted by counsel for 18 Paradise and/or MJ Management.

17  
18 **IT IS SO ORDERED** this 11<sup>th</sup> day of September, 2024.



HON. DAVID FREEMAN

Whatcom Superior Court Judge

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Presented by:  
POSSINGER LAW GROUP, PLLC  
Attorney for Defendant, MJ Management, LLC

By: \_\_\_\_\_  
Jeffrey K. Possinger  
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MONTGOMERY PURDUE, PLLC  
Attorney for Defendant, 18 Paradise, LP

By: \_\_\_\_\_  
Benjamin I. VandenBerghe  
WSBA # 35477

INTERVENORS

By: \_\_\_\_\_  
Maureen Dowling  
Pro Se

By: \_\_\_\_\_  
Roger Dowling  
Pro Se

By: \_\_\_\_\_  
Matt Skinner  
Pro Se

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Kari Skinner  
Pro Se

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER ON REMAINING CLAIMS  
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