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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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
ORDER ON REMAINING CLAIMS  
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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 Intervenor filed their Complaint in Intervention seeking  
24 an injunction compelling 18 Paradise and MJ Management to perform necessary  
25 repair work. Intervenor brought a claim seeking to decertify Plaintiff's Class.

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."  
26

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.



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.



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21 HON. DAVID FREEMAN  
22 Whatcom Superior Court Judge  
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Presented by:  
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Attorney for Defendant, MJ Management, LLC

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Benjamin I. VandenBerghe  
WSBA # 35477

INTERVENORS

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

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

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

By: \_\_\_\_\_  
Kari Skinner  
Pro Se

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
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ORDINANCE NO. 905

AN ORDINANCE OF THE CITY OF LYNDEN  
ESTABLISHING A PLANNED RESIDENTIAL DEVELOPMENT ZONE

The City Council of the City of Lynden does ordain as follows:

Section A. There is added to Title 19 of the Lynden Municipal Code a new chapter as follows:

19.29.010 Purpose and Intent.

- A. A Planned Residential Development, hereafter referred to as a PRD, is defined as a tract of land which is to be developed as a coordinated unit according to an approved detailed plan within a residential zone (RS, RM or MH and, until those designations are adopted, R-20, R-40, R-60, and R-100). Such tract shall be at least six (6) acres in size.
- B. These regulations are intended to permit greater flexibility and diversification in the use of land for a unified grouping of structures and open space on the site. Consequently, there should be more creative and imaginative design, more economical and efficient use of land, a harmonious variety of housing choices, a high level of attractiveness, and preservation of open space.
- C. The uses shall be controlled to minimize detrimental effects to the property in the proximity of the development. Approval of a PRD constitutes a contract between the City of Lynden and the developer to guarantee development in accordance with the approved plan.

19.29.020 Homeowners Association Required.

To preserve community facilities and open space, every PRD shall have a homeowner's association and agreements to fund such an organization.

19.29.030 Administrative Review Committee.

To assist the Director of Public Works in reviewing a PRD in accordance with this chapter, an administrative review committee is established. Members shall include the following persons:

- A. A Planning Commission member, appointed by the Chairman of the Planning Commission, and
- B. the Police Chief, and
- C. the Building Inspector, and
- D. the Utilities Superintendent, and
- E. the Director of Public Works and other appropriate persons he appoints, including Lynden Public Works Department staff members and private utility representatives and consultants.

19.29.040 Steps in Initiating and Completing A Planned Residential Development.

- A. A PRD may be initiated by the owner or group of owners of property proposed for such development by submitting an application supplied by the Department of Public Works and paying an application fee.
- B. Prior to filing an application for a PRD, the applicant is advised to confer with the Director of Public Works to discuss such an application.

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- C. The Director of Public Works shall set up a conference within thirty (30) days of receipt of such an application with the administrative review committee to discuss the feasibility of developing the proposed PRD. At this time the applicant shall bring basic sketches showing:
1. The area subject to the proposed PRD and surrounding land uses.
  2. The location of any sensitive areas on or near the site.
  3. A development scheme.
  4. Any other drawings the applicant deems advisable to bring to this meeting.
  5. SEPA checklist.

After reviewing these documents, the administrative review committee shall provide a written record of its action, a copy of which shall be given to the applicant within thirty (30) days after the meeting.

- D. If the applicant wishes to proceed with development of a PRD, a preliminary plan shall be submitted as outlined in this chapter under section 19.29.120 for the entire property.

Within fourteen (14) days of receipt of the preliminary plan the Director of Public Works shall have another meeting of the administrative review committee. The administrative review committee shall:

1. Determine if the application meets the minimum requirements and intent and purposes of the Lynden Comprehensive Plan.
2. Make recommendations of changes within the preliminary plan, approve the plan or recommend denial of the plan. These recommendations are to be recorded and submitted to the Planning Commission and to the applicant.
3. Determine whether:
  - a. The proposal would or would not have a significant adverse impact upon the environment and decide if an environmental impact statement is or is not required under the Environmental Policy Act. Such determination shall be filed pursuant to the Environmental Policy Act.
  - b. A substantial development permit is required by the Shoreline Master Plan Program Ordinance.
  - c. Sensitive Areas buffer are required.

The administrative review committee shall provide a written record of its action, a copy of which shall be given to the applicant within sixty (60) days after the meeting.

#### 19.29.050 Hearings Required.

- A. Each preliminary PRD will require a public hearing, with notification as required for a conditional use permit, by the Lynden Planning Commission for its recommendation to the City Council. At the Planning Commission public hearing the applicant will present the preliminary PRD development plan and the other documents which are a part thereof. The Planning Commission must take into consideration the information presented by the Director of Public Works and the administrative review committee, viewpoints expressed by the public and the EIS, if any. The recommendations may be to approve, approve with conditions, or deny the application for PRD.

- B. The City Council shall hold a public hearing with notification as required for a conditional use permit and give final approval, approval with conditions or deny the application for PRD.
- C. If an environmental impact statement (EIS) is required, the draft EIS shall be available for the hearing, and a notice published advertising a public hearing on the environmental impact statement in conjunction with the Planning Commission hearing.
- D. The minimum number of days that may elapse between the application date and the date on which the applications are set for a Planning Commission public hearing on the application is forty-five (45) days; the maximum number of days is ninety (90) days before the planning commission hearing unless the applicant has caused or contributed to a further delay or unless an EIS is being prepared for the proposal. Should a decision not be rendered within ninety (90) days after the hearing, the applications and preliminary development plan shall be deemed to have a favorable recommendation unless that time has been expressly extended by the Planning Commission.

19.29.060 Final Development Plan Requirements.

- A. Within one (1) year following council approval of the preliminary plan, the applicant shall submit a final development plan, in accordance with the requirements of section 19.29.130, to the Director of Public Works. At his/her discretion and for good cause, the Director of Public Works may extend the time for the filing of the final development plan.
- B. The final plan may be approved by the Director of Public Works if the application meets the minimum requirements as set forth in this chapter and is in substantial compliance with the approved preliminary development plan. The final development plan may be deemed sufficiently consistent with the preliminary development plan, provided modification by the applicant does not involve a change which would cause one or more of the following to occur:
  - 1. Violation of any provisions of this chapter;
  - 2. Varying the lot area requirements by more than ten percent;
  - 3. A reduction of more than ten percent of the area reserved for the common open space and/or usable open space;
  - 4. An increase in the total ground area covered by buildings by more than five percent;
  - 5. An increase in the floor area proposed for nonresidential use by more than ten percent.

Should any of the above conditions occur in the final plan, the applicant shall resubmit the final plan for approval by the Planning Commission and City Council.

- C. In the event there is to be a dedication of streets, parks or other public lands, the final plan shall be subject to all ordinances and laws regulating subdivisions.

19.29.070 Permitted Uses.

Any use permitted outright and any use permitted as a conditional use in the zone where a PRD is located may be permitted in a PRD. Duplexes, buildings with zero lot lines, buildings with side yard

setbacks of three (3') or more feet and multi-family housing units may be permitted in any residential zone.

19.29.080 Use and Bulk Requirements--Generally.

- A. The provisions of the Planned Residential Development are intended to be the minimum requirements necessary to regulate the development in order to provide protection to the neighboring properties and to the citizens of Lynden.
- B. A PRD shall be allowed only when totally served by all utilities and improved access streets. Private streets, other than through streets, may be permitted in a PRD as long as the streets contain paved surfaces and sidewalks are provided on the street right of way or other adequate walkways are provided within the development. Private streets are to be maintained by the PRD property owners through dues collected as part of a homeowner's association.
- C. PRD projects shall be located with respect to major streets or other transportation facilities to provide direct access to such development and minimize traffic along collector streets, as defined in the Comprehensive Arterial Street Plan for Lynden.
- D. Uses that ordinarily require a conditional use permit do not need further approval if approved as part of the Planned Residential Development.
- E. A portion of each PRD may be used to house maintenance equipment for the common grounds and for the storage of boats and travel trailers. Landscape buffers, approved by the Public Works Director, must be provided if the storage is outside storage. Use of storage areas is to be restricted to owners within the PRD, or their invitees.
- F. The administrative review committee and Planning Commission may allow a place within the PRD, not to exceed 1.0 % of the total land area, for visiting travel trailers, totally equipped with utilities, for guests. The time of stay shall not exceed thirty (30) days in any one calendar year. Control of land area reserved for visitors must be maintained by the homeowners' association.
- G. In PRD projects of 150 acres or more the Planning Commission may allow expanded country clubs as follows:
  1. If a golf course is built, a club house may be allowed which may include a restaurant with banquet facilities reasonably sized to serve a demonstrated need of the community, a pro shop, an athletic club and a convenience store limited to 2000 square feet. In addition, transient quarters, similar to a motel or hotel, may be built, limited to 40 rooms and a dining hall not to exceed 45 seats unless a demonstrated need is shown for additional rooms and/or seating.
  2. When a large area is used for common open space, a club house may include a restaurant with banquet facilities, not to exceed seating for 40 people, an athletic club, and a convenience store limited to 2000 square feet, unless a demonstrated need is shown for larger size and/or seating.

19.29.090 Restrictive Covenants and Maintenance Agreements

A homeowner's association shall be formed as a part of the PRD.

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- A. The restrictive covenants and/or homeowner's association intended to be used by the applicant in a PRD, which purports to restrict the use of land, the location or character of buildings or other structures thereon and the maintenance of common grounds must be reviewed by the Administrative Review Committee, which will make a written report to the Planning Commission and be approved by the City Council and City Attorney before filing with the applicable county recorder and approval of the PRD.
- B. The homeowner's association may provide restrictive covenants and shall provide for homeowner's dues schedules for maintenance of common grounds and facilities.
- C. A homeowner's association by-laws, once reviewed and approved by the City of Lynden, shall contain the following provisions: "Changes in these documents must be approved by the City of Lynden through the Lynden City Council or if the council designates an agency or department, by that agency or department." Any changes suggested shall be reviewed by the Lynden City Attorney, who will make a written report to the Lynden City Council concerning the effect of the proposed changes. The cost of review by the Lynden City Attorney will be paid by the homeowner's association.
- D. Privately owned land may be designated as common open space, if the owner of such privately owned land:
  - 1. Provides assurance satisfactory to the Public Works Director that the open space will be maintained in perpetuity and will only be used for the purposes intended as a part of the PRD.
  - 2. Establish a formula for the assessment of maintenance dues by the homeowners and rules whereby the common land may be turned over to the homeowners.
  - 3. Reduce these provisions to writing, which must be approved by the Lynden City Council, in advance.
- E. The PRD developers shall notify each buyer that it is the policy of the City of Lynden never to acquire or maintain the common grounds. This policy shall be clearly shown in recorded documents so that future buyers will be aware of this policy.

19.29.100 Use and bulk requirements--Determination--Specific standards.

Except as otherwise limited herein, yards, height, lot coverage, and open space of the development are to be proposed by the developer and require the approval of the Planning Commission with final approval by the City Council, subject to the following standards:

- A. The density allowed in a Planned Residential Development shall be the same density permitted in the zoning district in which the property is located, except as shown below; however, lot sizes and setback requirements may be reduced to compensate for common open space and community improvements such as athletic facilities, community meeting facilities and other community benefits.

Density bonuses may be allowed for Planned Residential Developments according to the following provisions:

- a. When at least ten (10%) percent of the land is in

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common open space, of which one fourth is improved with light improvements such as playground facilities, a five (5%) bonus may be allowed.

- b. When twenty (20%) percent of the land is in common open space and major community facilities (swimming pool, club house) are constructed a ten (10%) percent bonus may be allowed.

B. Minimum building setback requirements for the site shall be twenty-five feet on the site perimeter and twenty feet from all streets. Other proposed setbacks shall be stated in the plan and approved by the Planning Commission. In considering the plan the Planning Commission is to consider the following factors with regard to setback:

- 1. The Uniform Building Code
- 2. Privacy.

All conventional methods of architectural design and engineering should be utilized, to provide adequate privacy.

- 3. Light and Air.

Building spacing provides one method of ensuring that each room has adequate light and air. Building spacing may be reduced where there are no windows or very small window areas and where rooms have adequate provisions for light and air from another direction, provided that this does not conflict with provisions of the Uniform Building Code.

C. In the event a PRD is adjacent to the Badger Rd. (also known as State Highway 546) buildings shall be set back one hundred (100) feet from the center of the existing right-of-way. In the event buildings are adjacent to the Guide Meridian Road (also known as State Highway 539) buildings shall be set back one hundred (100) feet from the highway centerline east of the highway and one hundred and ten feet (110) from the highway centerline west of the highway. All arterial setbacks and arterial intersections on these highways shall be subject to approval by the Washington State Department of Transportation.

D. A mixture of diverse housing is desired, which includes multi-family housing units, town houses, and single family detached houses. The administrative review committee and the Planning Commission shall ensure that the PRD does not detract from other developments in the neighborhood and meets the requirements of the Comprehensive Plan. As a guide, a PRD should have at least twenty-five percent (25%) or more single family residences in a single family zone.

E. All single family residences in a PRD shall meet City of Lynden requirements for building heights stated elsewhere in the Lynden Zoning Ordinance. All other height limitations shall be listed in the preliminary development plan and be subject to approval of the Lynden Planning Commission and the Lynden City Council.

F. Densities are for an entire Planned Residential Development. As a result, if there are less units in the first phases of development than otherwise allowed, a transfer of the number of units may be allowed to subsequent development phases.

19.29.110 Costs to be Borne by the Developer.

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Upon receipt of an application for a PRD, the Public Works Director shall set the preliminary fee for the PRD. The estimated fee shall be based on the Public Works Department's best estimate of the cost for the review of the preliminary application, the final application and environmental check list or impact statement, advertising costs, legal fees, professional services, and city staff time, and all other costs the City might incur in reviewing the proposal. The estimated cost shall be paid by the applicant and placed in a trust fund. The preliminary fee shall be not less than One Thousand Dollars (\$1,000.00) and not more than Five Thousand Dollars (\$5,000.00).

After the preliminary fee is expended, all additional costs will be billed to the applicant monthly. The fees are to be paid within ten (10) days of the billing. Non-payment will result in immediate cessation of city review of the proposed PRD. Failure to pay the fees within thirty (30) days will result in forfeiture of the application. No building permits will be issued until all costs of the PRD review are paid. Any estimated fees left unused shall be refunded to the applicant.

#### 19.29.120 Preliminary Development Plan Requirements.

An applicant seeking approval of a development shall submit a preliminary development plan, together with an application developed by the Department of Public Works, which shall include all of the following information. The plans shall be of a quality equivalent to the conventional drawings of architects and engineers and at a scale requested by the Director of Public Works. The information shall include:

- A. A map showing street systems, watercourses, unique and sensitive natural features, forest cover, plat lines and plat designs, location of utilities and contours at five foot intervals;
- B. Areas proposed to be conveyed, dedicated, or reserved for parks, parkways, playgrounds, school sites, common open space, public buildings, and similar public and semi-public uses;
- C. Areas designated for recreational buildings, clubhouses, country club facilities and the nature and extent of such facilities;
- D. Proposed building areas and densities, setbacks and height.
- E. A development schedule indicating:
  1. The approximate date when construction of the project can be expected to begin,
  2. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin;
  3. The anticipated rate of development,
  4. The approximate dates when the development of each of the stages in the development will be completed,
  5. The area and location of common open space that will be provided at each stage;
- F. The existing and proposed utility systems including sanitary sewers, storm sewers, water lines, electric lines, gas lines and telephone lines.
- G. Agreements, provisions or covenants which govern the use, maintenance and continued protection of the planned unit development and any of its common open areas;
- H. The following plans and diagrams to the extent that the planning commission finds that the development creates special problems of traffic, parking, landscaping or economic feasibility:

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1. An off-street parking and loading plan,
  2. A circulation diagram indicating the proposed movement of vehicles, goods and pedestrians within the development and to and from existing thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern must be shown,
  3. A landscaping and tree planting plan,
  4. An economic feasibility report or market analysis;
- I. A written statement which includes the following:
1. Present ownership of all land included in the development together with proposed purchase, resale and lease arrangements,
  2. Proposed financing;
- J. Information on a map which shows the development in relation to the surrounding area and its uses, both existing and proposed, including land uses, zoning classifications, densities, circulation systems, public facilities and unique and sensitive natural features of the landscape.
- K. Approval of a preliminary PRD submitted in conjunction with a master plan shall state how the PRD conforms to the master plan and that the master plan shall serve as the general development guide by which subsequent PRD applications shall be measured for conformance.
1. If a master plan is submitted, the density of the entire area will be considered. The transfer of development densities may be allowed, provided that the first application is limited to the permitted density or less.
  2. The required information must be submitted for all of the land intended to be included in the application. Where projects are developed in stages, formal application can only be considered for the stage for which the above materials have been presented. Master plans including the bare essentials include land uses, densities, site design adjacent uses and circulation that should be submitted for the remaining lands to be developed in future stages of the project even though they are not under consideration for approval at that time.

19.29.130 Final Development Plan Content

- A. The final development plan must present all of the information required for the preliminary development plan in a finalized, detailed form. This includes site plans sufficient to record and engineering drawings. All schematics plans presented in the preliminary form must be presented in final detailed stages. Any final plats and public dedications must be submitted at that time.
- B. All maps submitted shall bear the stamp of a Professional Engineer and/or land surveyor as required by the Director of Public Works.
- C. The required information must be submitted for all land intended to be included in the application. Where projects are developed in stages, formal application can only be considered for the stage for which the above materials have been presented. Master plans including the bare essentials (land use, densities, site design, adjacent uses, circulation) shall be submitted for the remaining lands to be developed in future stages of the project even though they are not under consideration for approval at that time.
- D. Quantitative data for the following:
1. Total number and type of dwelling units for this application and approximate number for the total plat;
  2. Parcel Size for this application and for the total

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- proposed PRD;
3. Proposed lot coverage of buildings and structures;
  4. Approximate gross and net residential densities;
  5. Total amount of open space, including a separate figure for useable open space;
  6. Total amount of non-residential construction, including a separate figure for commercial and institutional facilities.

E. Under no circumstances will the City of Lynden be responsible for the maintenance or ownership of the required open spaces.

19.29.140 Construction Start and Completion Limits

If no construction has begun within 24 months from the time of final approval of the PRD, the permit shall lapse unless good cause is shown by the applicant, in which case the Director of Public works may extend this time limit by up to 12 months.

19.29.150 Plan Shall Run With Land

The approved final development plan is binding and shall be a restriction on development which runs with the land. It shall be recorded as such. Any unauthorized deviation therefrom shall be a cause for withholding building permits on the property.

19.29.160 Construction of Improvements-Guarantee.

A. All improvements which are to be made to City owned property or which are to become the property of the City must be either completed or bonded for completion in the manner provided for City owned improvements in the case of subdivisions of property. No sales of property in the PRD may be made until such improvements are so bonded or completed and approved by the City. The City may allow the construction of such improvements, or the bonding thereof, in phases, if the PRD is to be developed in phases and if each phase can logically be utilized on its own or in conjunction with previously completed phases. In case the PRD is to be developed in phases, and construction of City owned improvements is to be allowed in phases, the plan submitted and approved shall state with particularity which improvements are to be made in conjunction with each phase.

B. All improvements to be owned in common by persons purchasing property rights in the PRD must be either completed or bonded for completion in the manner provided for City owned improvements in the case of subdivisions of property. No sales of property in the PRD may be made until such improvements are so bonded or completed and approved by the City. The City may allow the construction of such improvements, or the bonding thereof, in phases, if the PRD is to be developed in phases and if each phase can logically be utilized on its own or in conjunction with previously completed phases. In case the PRD is to be developed in phases, and construction of improvements to be owned in common is to be allowed in phases, the plan submitted and approved shall state with particularity which improvements are to be made in conjunction with each phase.

Section B. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences,

clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.


Section C. Chapter 19.28 of the Lynden Municipal code and any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section D. This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

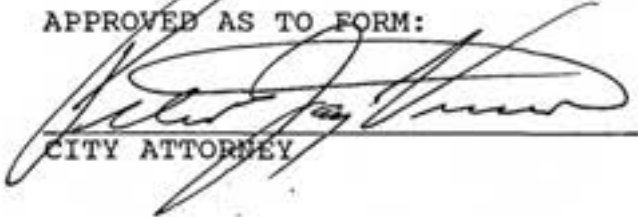
PASSED by the City Council this 21<sup>st</sup> day of January, 1992, and signed and approved by the Mayor on the same date.

  
MAYOR

ATTEST:

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

MASTER DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATIONS FOR  
HOMESTEAD, A PLANNED RESIDENTIAL DEVELOPMENT

This Master Declaration of Covenants, Conditions, Restrictions and Reservations for Homestead, a planned residential development situate in the City of Lynden, Whatcom County, Washington, (hereinafter referred to as the "Declaration") is made this 19th day of June, 1992 by HOMESTEAD NORTHWEST, INC., a Washington Business Corporation which declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, licenses, easements, charges and liens hereinafter set forth which are established for the purpose of protecting the value and desirability of the real property.

ARTICLE I  
Interpretation

1.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a planned development on the property hereinafter described.

1.2 Covenant Running with the Land. It is intended that this Declaration shall be operative as a set of covenants running with the land or equitable servitudes which shall be binding on the Declarant, its successors and assigns, and all subsequent owners of the property together with their grantees, heirs, successors, executors, administrators, devisees or assigns all in the manner hereinafter set forth.

1.3 Definitions.

1.3.1 "Declarant". The Declarant is Homestead Northwest, Inc., a Washington Business Corporation which currently has its principal office at 506 W. Grover Street, Lynden, Washington, 98264.

1.3.2 "Association". The Association shall mean and refer to the Homestead Owners Association, its successors and assigns. The Association is not a Condominium Association.

1.3.3 "Property" shall mean the real property described on Exhibit A which is annexed hereto and by this reference incorporated herein together with such additions thereto as may hereafter be brought within the jurisdiction of this Declaration.

1.3.4 "Lot" shall mean and refer to any numerically designated plot of land shown on any present or future subdivision map of the property.

1.3.5 "Condominium Unit" shall mean any Condominium Unit established by Declaration on any of the property pursuant to RCW 64.34 or any later condominium act adopted as law in the State of Washington.

1.3.6 "Parcel" shall mean a record Lot or a Condominium Unit within the Property.

1.3.7 "Owner" shall mean and refer to the record owner whether one or more persons or entities of fee simple title to any Lot or Condominium Unit which is a part of the Property including a contract buyer but excluding those having an interest merely as security for the performance of an obligation. Each Owner shall continuously provide the Declarant with a current mailing address and if the Common Open Space is later conveyed to the Association, the Owner shall continuously provide the Association with a current mailing address.

1.3.8 "Common Open Space" shall mean that certain real property described on Exhibit B which is annexed hereto and by this reference incorporated herein which is intended for the common use of all property owners in Homestead together with any later phased additions thereto. It may include both fee interests and easement rights.

1.3.9 "Board" shall mean the Board of Directors of the Homestead Owners Association.

## ARTICLE II Property

2.1 Current Property. Property which is currently subject to this Declaration is more fully described on Exhibit A which is annexed hereto and by this reference incorporated herein.

2.2 Additional Property. The Declarant reserves the right through phasing to add additional property which shall be subject to these Declarations as it is acquired by the Declarant. As a condition of the initial and subsequent conveyance to them of a parcel, each Parcel Owner agrees and assents to phasing. Phasing may be accomplished by the Declarant filing a phasing amendment which refers to this document and paragraph and describes the added phased property.

2.3 Common Open Space. Current elements of Common Open Space are described on Exhibit B which is annexed hereto and by this reference incorporated herein. Common Open Space is intended for the common use of all Parcel Owners in Homestead. Details of ownership, management, maintenance and phasing of the Common Open

Space are described in Articles III and IV hereinafter set forth. The term "Common Open Space" as used herein does not and shall not include the golf course, clubhouse, R.V. storage and maintenance areas. It includes only the property described on Exhibit B and any phased amendments thereto.

**ARTICLE III**  
**Open Space**

3.1 Ownership by Declarant. It is the general intention of the Declarant to retain ownership of the Common Open Space so that it may be maintained by golf course maintenance personnel.

3.2 Easement and License Granted. So long as the Declarant, its successors or assigns (other than Parcel Owners or the Association) retain ownership of the Common Open Space, all Parcel Owners other than the Declarant shall have and are hereby granted a perpetual non-exclusive easement and license to use the Common Open Space subject to their payment of joint maintenance fees so that the Common Open Space may be properly managed and maintained. The easement and license granted is appurtenant to each parcel and shall not be separated therefrom.

3.3 Maintenance. So long as the Declarant or such heirs, successors or assigns continue to own and hold title to the Common Open Space, payments for costs and expenses shall be funded by joint maintenance fees provided by Parcel Owners other than the Declarant. The Declarant shall manage and maintain the Common Open Space. All costs and expenses of maintenance of and improvements to the Common Open Space shall be paid by the Declarant, its heirs, successors and assigns (other than the Parcel Owners or the Association). Maintenance also includes maintenance of entry signs and landscape, mail box surrounds, street light electrical power bills, and maintenance of lights not maintained by the City of Lynden.

3.4 Use Subject to Rules and Regulations. Parcel Owners, their guests and invitees shall have the right, easement and license to use the Common Open Space now and hereafter designated as part of the Homestead development all according to rules and regulations now or hereinafter promulgated by the Declarant. The Declarant reserves the right to close certain areas of the Common Open Space for maintenance and improvement and to close certain areas during certain hours of the day and establish other rules and regulations for the use and protection of the Common Open Space.

3.5 Maintenance Costs. In consideration of the easement and license granted to Parcel Owners herein, each Parcel Owner shall pay and by virtue of acquisition of any parcel in Homestead agrees for themselves and their heirs, successors and assigns to pay a monthly Joint Maintenance Fee (hereinafter the "fee") to



the Declarant which shall be fixed and thereafter modified by the Declarant on the following basis:

- (a) The initial fee shall be \$25.00 per parcel per month.
- (b) Fees shall be payable by a Parcel Owner from the time that he acquires a parcel. Fees shall be payable monthly in advance on the first day of each month.
- (c) Upon sale or conveyance of a parcel the duty to pay the fee shall transfer to the owner acquiring the parcel.
- (d) The duty to pay the maintenance fee shall be a covenant running with the land and shall bind not only the first owner acquiring a parcel from the Declarant but also his heirs, successors, and assigns.
- (e) The Declarant shall have the right and power to increase the maintenance fee each calendar year. Notices of fee adjustment shall be sent to Parcel Owners in December of each year where an adjustment has been made for the following calendar year.
- (f) The annual increase in maintenance fees over the previous calendar year base shall be limited to the percentage increase in the cost of living for all urban consumers in the Seattle/Tacoma area as published by the United States Department of Labor for the most recently published 12 month period available on the first day of December, or five (5%) percent, whichever is greater. (If such statistics are not published for the Seattle/Tacoma area then statistics for the nearest urban area for which statistics are published shall apply.)
- (g) Declarant reserves the right to waive all or a portion of the maintenance fee for a Parcel Owner and such waiver shall not operate as a waiver or estoppel as to all parcel owners.
- (h) In the event of the termination of ownership by any Owner the annual fee structure then in effect as established in the previous month of December shall apply to the purchaser (new Parcel Owner) and any subsequent Parcel Owners after initial acquisition shall be subject to annual adjustment of the fee for maintenance as provided for herein. Any joint maintenance fee not paid when due shall be delinquent.

3.6 Enforcement. In the event that any Parcel Owner fails to pay a fee when due that fee together with such interest thereon and cost of collection as hereinafter provided shall be a charge on the Owner's parcel and shall be a continuing lien on that parcel against which the fee is assessed. The delinquent fee together with such interest and costs of collection thereof including reasonable attorney's fees shall also be the personal obligation of the Parcel Owner at the time the Assessment fell due. If the maintenance fee is not paid within thirty (30) days

after its due date it shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum and the Declarant may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Interest, costs and reasonable attorney's fees with respect to any such action shall be awarded to the prevailing party. No Parcel Owner may waiver or otherwise escape liability for payment of the joint maintenance fee as provided for herein by abandonment of his parcel.

3.7 Subordination of Lien to Mortgages. Where an institutional mortgagee or other owner obtains title to a parcel as a result of foreclosure or forfeiture of an institutional mortgage, such acquirer of title, its successor or assigns shall not be liable for payment of the aforementioned fees pertaining to any such parcel which became due prior to the acquisition of title in the manner referred to hereinabove. The Parcel Owner who incurred such fees shall nonetheless remain personally liable and responsible for payment of the fees. Mortgagee shall keep dues current after foreclosure.

3.8 Phasing. The Declarant reserves the right to phase and add to the Common Open Space for which the easement and license herein is granted by filing a phasing amendment to this document, said amendment having reference to the Auditor File Number of this document and setting forth the legal description of additional real property which is added to the Common Open Space. It is anticipated that the Common Open Space will ultimately consist of an easement and license with respect to at least eight acres of property. As a condition of conveyance to him of his parcel each Parcel Owner agrees for himself, his heirs, successors and assigns to permit and accept phasing of Common Open Space as provided for in this paragraph.

3.9 Relationship to the City of Lynden. Generally it is the policy of the City of Lynden never to acquire or maintain common grounds. All Parcel Owners should be aware of this.

3.10 Conveyance of Common Open Space to the Association. Any Parcel Owner now or hereafter acquiring an interest in any parcel in the Homestead development agrees by virtue of their acquisition of the parcel and for themselves, their heirs, successors and assigns to accept the conveyance of the Common Open Space from the Declarant, its heirs successors or assigns to the Association, if the Declarant desires to accomplish such a conveyance. In the event that the Declarant delivers a deed or deeds and/or transfers easement and license rights of the Common Open Space described herein and any phased additions thereto to the Association then and in such events on notice from the Declarant the easement and license provided for herein shall terminate and the duty of the Parcel Owners to pay maintenance and license fees as provided for in this Article shall terminate. The duty of the Declarant to maintain the Common Open Space and pay for all maintenance described hereinabove shall also

terminate therewith. The Parcel Owners shall then be required and agree to come together to further establish the Association to govern payment of common expenses and ownership, use, maintenance and operation of the Common Open Space maintaining the same high standard desired by and established by the Declarant herein.

**ARTICLE IV**  
*Owners Association*

4.1 Established. There is hereby established an Owners Association to be known as the "Homestead Owners Association".

4.2 Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Condominium Unit in Homestead shall be, by virtue of such ownership, a member in the Homestead Owners Association. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation. No Owner shall have more than one membership except that he own more than one parcel in which case he shall have one membership for each parcel owned. Membership shall be appurtenant to and may not be separated from ownership of any parcel which is subject to assessment by the Association. Ownership of such a Lot or Condominium Unit shall be the sole qualification for membership.

4.3 Period of Declarant Ownership. So long as the Declarant or its successors or assigns other than Parcel Owners retains ownership of the Common Open Space, the Association shall operate in advisory capacity only to the Declarant. During this time the Association shall operate as an unincorporated association.

4.4 Power to Manage and Assess After Transfer to Association. In the event that the Declarant, its successors or assigns exercise their right and power to convey the Common Open Space to the Association in accordance with the provisions of Article III hereinabove, the Association shall have power to manage the Common Open Space and establish annual assessments and charges on each parcel. Assessments shall be the same and equal for each parcel.

4.4.1 Form of Association. In the event of transfer of the Common Open Space to the Association the Declarant shall notify all Members of a Special Meeting of the Association membership to be held within thirty (30) days of the transfer date. The agenda at the Special Meeting will include at a minimum, the following issues:

(a) Whether the form of the Association be change from an unincorporated association to a non-profit corporation.

(b) Election of the initial Board of Directors with a minimum number of seven (7) members or more. If there is

a seven member Board two members shall be elected for a one year term, three members for a two year term and two members for a three year term.

#### 4.4.2 Voting

4.4.2.1 Voting Owner. There shall be one (1) voting representative for each parcel. Declarant shall be considered an "Owner" as that term is used herein, and shall be the voting representative, with respect to any parcel owned by the Declarant. If a person (including the Declarant) owns more than one parcel, he shall have the votes for each parcel owned. The voting representative shall be designated by the Owner or Owners of each parcel by written notice to the Board, and need not be an Owner. The designation shall be revocable at any time by actual notice to the Board from a party having an ownership interest in a parcel, or by actual notice to the Board of the death or judicially declared incompetence of any party with an ownership interest in the parcel. This power of designation and revocation may be exercised by the guardian of a Parcel Owner, and the administrators or executors of an Owner's estate.

4.4.2.2 Joint Owner Disputes. The vote for a parcel must be cast as a single vote, and fractional votes shall not be allowed. In the event that joint Parcel Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. In the event more than one (1) vote is cast for a particular parcel, none of said votes shall be counted and the votes shall be deemed void.

4.4.2.3 Quorum. Fifty (50%) percent of all Parcel Owners or more, shall constitute a quorum at any meeting of the Association. This shall be a requirement for conducting any Association business.

#### 4.4.3 Meetings and Notices of Meetings

4.4.3.1 Annual Meetings. There shall be an annual meeting of the Parcel Owners in the first quarter of each calendar year at such reasonable place and time as may be designated by written notice of the Board delivered to the Parcel Owners not less than ten (10) days and no more than sixty (60) days prior to the date fixed for the meeting. At the annual meeting there shall be presented a review of the financial records of the Association for the previous year itemizing receipts and disbursements and the allocation thereof to each Parcel Owner and the estimated expenses for the coming year. The Board at any time, or by written request of the Parcel Owners having at least twenty (20%) percent of the total votes, may require that an audit of the Association and management books and records be presented at any Special or Annual Meeting. The

Parcel Owner at his own expense may at any reasonable time make an audit of the books or records of the Board and/or the Association.

4.4.3.2 Special Meetings. Special Meetings of the Association may be called at any time for any reasonable purpose. Such meetings shall be called by written notice of the president of the Association upon the decision of the president, or after request signed by a majority of the Board, or by written request of the Parcel Owners having at least twenty (20%) percent of the total votes which notice shall be delivered not less than ten (10) days and not more than sixty (60) days prior to the date fixed for the meeting. The notice shall specify the date, time and place of the meeting and in general the matters to be considered.

4.4.4 Articles and Bylaws. The Association shall have power to adopt Articles of Incorporation, Bylaws and rules and regulations for operation of the Association not inconsistent with this Declaration. Upon concurrence of those Parcel Owners holding sixty (60) percent of the voting power of the Association at a regular or special meeting, amendments to the Articles, Bylaws and/or Rules and Regulations may be adopted by the same vote at a regular or special meeting similarly called. The Declarant may adopt initial Articles and Bylaws.

4.4.5 Management by the Board. At the expiration of the Declarant's management authority after the Common Open Space interests of the Declarant shall have been conveyed to the Association, administrative power and authority with respect to Association affairs shall vest in its Board of Directors. The Board of Directors shall be elected in the manner set forth hereinabove and after election the Board shall itself elect a president from among its members who shall preside over meetings of the Board and the meetings of the Association. A treasurer and secretary shall also be elected by the Board from among its members.

4.4.6 Authority of the Board. The Board shall have authority to manage the affairs of the Association and shall have all powers and authority permitted under this Declaration and under any Articles, Bylaws, rules and regulations as may be later adopted by the Association. The Board shall acquire and pay out of the common assessment fund hereinafter provided for all goods and services requisite for the proper functioning of the Association including, but not limited to:

- (a) Utility services for the Common Open Space;
- (b) Insurance as required for protection of Association affairs with respect to the Common Open Space and for fidelity if deemed necessary for Association officers and other employees;
- (c) The services of other persons or firms as required to properly manage the affairs of the Association;

(d) Legal and accounting services necessary or proper in the operation of the Association affairs and administration of the Association or enforcement of this Declaration, the Articles, Bylaws, rules and regulations of the Association provided that no litigation shall be initiated by the Board without approval of a majority of the Parcel Owners at a special or regular meeting. Nonetheless, any action against the Association may be defended by the Board without any restriction.

(e) Painting, maintenance and repair in landscape and garden work for the Common Open Space;

(f) Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to pay by law or which in its opinion shall be necessary for the proper operation of the Common Open Space;

(g) No capital improvements or additions for the purpose of restoring, repairing or replacing portions of the Common Open Space having a total cost in excess of Five Thousand (\$5,000.00) Dollars shall be paid by the Board without first obtaining the affirmative vote of a majority of Parcel Owners present at a meeting called for such purpose or if no such meeting is held then the written consent of a majority of Owners. Nothing contained herein shall be construed to give the Board authority to conduct and act of business for profit on behalf of any or all of the Parcel Owners;

(h) The Board shall have the right to contract for all goods and services, payment of which is to be made from the common funds of the Association.

(i) The Board may hold for the benefit of the Parcel Owners tangible and intangible personal property and real property on behalf of the Association.

4.5 Purpose of Assessment. The Assessments levied by the Association shall be exclusively for the services and facilities provided the Parcel Owners by the Association.

4.6 Amount of Annual Assessment. The amount of the annual Assessment shall be established by the Association. The total Assessment shall be equal to monies reasonably necessary to manage, maintain, and improve the common open space and to pay for the utilities, taxes, insurance, and administrative expenses of the Association. Each parcel shall bear an equal share of such Assessments which shall be established by the Members by majority vote at a Special Meeting of the Members on a date set by the Declarant in the year of conveyance of the Common Open Space to the Association and thereafter, at the annual meeting to be held in the first Quarter of each succeeding year on a specific date and time set by the Board of Directors of the Association. Assessments may be levied on a monthly or quarterly basis as determined by the Board.

4.7 Effect of Non Payment on Assessments. All Assessments together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the parcel

to which the Assessment is levied and shall be a continuing lien upon that parcel. Each Assessment together with such interest and costs of collection thereof (including reasonable attorney's fees) shall also be the personal obligation of the person who is the Owner of the parcel at the time the Assessment fell due. An Owner's personal obligation shall not pass to his successors in title unless expressly assumed by them. Any Assessment which is not paid when due shall be delinquent and if the Assessment is not paid within thirty (30) days after the due date it shall bear interest from the date of delinquency at the rate of twelve (12%) percent per annum until paid and the Association may bring an action of law against the Owner personally obligated to pay the same or foreclose the lien against the property. Interests, costs and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. No Owner may waiver or otherwise escape liability for the Assessments provided for herein by abandonment of this parcel.

4.8 Subordination of Lien to Mortgages. Lien of any Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages. Sale or transfer of any lot shall not affect the limited Assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage pursuant to a decree of forfeiture or foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such Assessment as to the payment thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such parcel from liability for any assessment thereafter becoming due or from the lien thereof.

4.9 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments created herein.

- (a) All properties held by the Declarant;
- (b) All properties dedicated to and accepted by local public authority.

4.10 Not a Condominium Association. Homestead Owners Association is not and shall not be a condominium association.

#### ARTICLE V Design Review Board

5.1 Establishment. A Design Review Board is hereby established for Homestead. The purpose of the Design Review Board is to review all building and landscape plans prior to commencement of construction on any Lot or Condominium Unit in Homestead. The Design Review Board shall be primarily interested in architecturally sound, harmonious and aesthetically pleasing design for the development so that property values may be promoted and protected.

5.2 Members. The initial members of the Design Review Board are Robert Libolt, James Wynstra, and Dick VandenBurg. In the event of the resignation of any of these members the Declarant shall have the right to appoint a replacement so that three members are on the Design Review Board at all times. In the event that the Common Open Space is conveyed by deed to the Association then the Association shall have the right to appoint the membership of the Design Review Board. The Design Review Board may be increased to five members in the discretion of the Declarant and after transfer of the Common Open Space to the Association, then in the discretion of the Board.

5.3 General Duties. To preserve the architectural and aesthetic appearance of the development to very high standard no buildings shall be erected or remodeled on any parcel nor shall any landscape be installed on any parcel until the construction plans and specifications and the structure's location on the parcel and any landscape plans have been evaluated and approved by the Design Review Board which shall evaluate the plans. Any plans submitted to the Design Review Board shall be accompanied by payment of \$100.00 review fee. The plans will be evaluated for quality of specified workmanship and materials, harmony of design with existing and anticipated structures and appropriate placement with regard to topography and finished grade elevation. No ancillary structure, fence or barrier shall be built on any parcel unless similarly approved. If the Design Review Board does not approve or disapprove in writing of any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted such plans and specifications will be deemed to have been expressly approved. Refusal to approve any plans or specifications may be based by the Design Review Board upon any grounds which are consistent with the purposes stated hereinabove including truly aesthetic considerations so long as such grounds are not arbitrary or capricious.

5.4 Restrictions and Guidelines. In making their evaluation the Design Review Board shall have regard for the general restrictions set forth in Article VI hereinafter. The Declarant may apply additional specific restrictions as to certain areas within Homestead by a separate filing. If there is such a filing then those guidelines along with those set forth herein shall guide the Design Review Board in making their determinations.

## ARTICLE VI General Restrictions

6.1 General Restrictions and Requirements. The following general restrictions and requirements shall apply to any parcel in Homestead:

6.1.1 Adjoining Agriculture. Any property owner in accepting a deed to a parcel in Homestead recognizes that the



property conveyed adjoins an area of intensive agricultural activities dominated by active dairy farming. Both the Declarant and the property Owner are determined to preserve the possibility of intensive agricultural and dairy operations so long as adjoining property is zoned for such activity. Therefore, the property Owner will not later object to the general nuisance of agricultural activities including, without limitation, noises caused by animals and mechanical devices and odors caused by sprays and manure storage, delivery, spreading or other causes.

6.1.2 Golf Course Lots: Easement. An easement is hereby reserved over the thirty (30) feet nearest the golf course of any parcel adjoining the golf course for purposes of ball recovery. No play shall be allowed in this area but players will be allowed to enter this area to recover balls. Therefore, no fencing of any kind or type is allowed in this area so that ball recovery may be possible.

6.1.3 Residential Use. Homestead is a planned residential development generally intended for residential use. Parcel Owners acquiring parcels in Homestead acknowledge the intention of the Declarant to develop a project of mixed residential uses. Areas of higher density may adjoin areas of lower density. In addition, the Parcel Owners understand that a convenience store not to exceed 2,000 square feet, a golf course clubhouse with pro shop and restaurant with banquet facilities of approximately 300 to 500 seats, a 40 unit or greater motel, an athletic club involving tennis and handball courts, golf course, driving range, weightlifting and other amenities will be built on the site. Other amenities may also be included. Parcel Owners acquiring a parcel in Homestead agree not to later object to the plan of development of the Declarant with respect to the Property.

6.1.4 No Temporary Buildings. No tents, trailers, commercial vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any parcel without the written consent of the Design Review Board.

6.1.5 Antennae; Basketball Hoops. No property owner other than the Declarant or the Association shall maintain any aerial antenna or any satellite dish upon any parcel. Basketball hoops are allowed on any parcel subject to location approval by the Design Review Board.

6.1.6 Boats, Recreational Vehicles, Etc. No boats or recreational vehicles may be kept on any parcel except within a building totally isolated from public view provided that boats and recreational vehicles may be kept in driveways for not more than three (3) consecutive days (after which a minimum break of fourteen (14) days shall be required before the right arises again to park any such vehicles for three consecutive days) their removal shall be required. Inoperative, unsightly or improperly

licensed vehicles shall not be kept on a parcel except within a building totally isolated from public view. Any vehicles maintained on a parcel or on a public street in front of a parcel in violation of these rules shall be removed at the owner's expense.

6.1.7. Signs. No sign of any kind shall be displayed to the public view on any parcel provided that the Declarant and if the Declarant conveys title to the Common Open Space to the Association then the Board may by appropriate rule permit temporary placement of a sign at a designated space indicating that a parcel is for sale or lease. Further, provided that this section shall not apply to the Declarant or the Declarant's agent in exercising their rights of initial sale with respect to the properties.

6.1.8 Pets. All animals, which term includes livestock, domestic animals, poultry, reptiles or living creatures of any kind, shall be raised, bred, or kept in strict compliance with the laws and ordinances of the City of Lynden. All dogs or other animals outside buildings shall be kept on a leash under direct personal control of the Parcel Owner or occupant at all times.

6.1.9 Obnoxious or Offensive Activity. No obnoxious or offensive activity shall be carried on on any parcel nor shall anything be done thereon which may be or become an annoyance or nuisance to other owners and their guests.

6.1.10 Artificial Vegetation. No artificial grass, plants or other artificial vegetation shall be placed or maintained on the exterior portion of any parcel unless approved by the Design Review Board.

6.1.11 Clothesline Area. No portion of any parcel shall be used as a drawing or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within buildings.

6.1.12 Miscellaneous. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any parcel and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain thereon. In the event that any Parcel Owner shall refuse to keep his parcel free of weeds, underbrush, or refuse piles and in the event that he allows grasses and other vegetation to grow on the lot to a length of greater than six inches then the Declarant and/or the Association may enter the parcel and bring it into compliance with the provisions of this section. The Parcel Owner shall be charged a reasonable cost for this service and if the Parcel Owner shall refuse to pay then it may be enforced by lien and lawsuit in the same manner that the Declarant might enforce collection of maintenance fees in accordance with the terms of Article III

hereinabove and in the same manner in which the Association might enforce the payment of assessments in accordance with the provisions of Article IV herein.

ARTICLE VII  
*Cable Television and Security Service*

7.1 Authority of the Declarant. The Declarant shall have the right to establish exclusive systems for the provision of cable television (CATV) services and a centralized security system service. The Declarant may establish and operate such systems itself or may enter into agreement with related or unrelated persons or entities for this purpose with any such agreements to be on such terms as the Declarant shall deem in its sole discretion to be in the best interest of the Parcel Owners. In the discretion of the Declarant any such systems for CATV services shall be mandatory for all Parcel Owners. Delivery of a centralized security system is optional to the Declarant.

7.2 Terms of Systems. The terms upon which the CATV and security systems are established and operated whether directly by the Declarant or by any party contracting with the Declarant for this purpose, the Declarant or any such party operating the CATV system or security systems or both, (being referred to herein as the "Operator") may include, but shall not be limited by or to the following:

7.2.1 Every parcel within the Property may be subject to a mandatory charge payable per parcel on the first day of each month or quarterly in advance of a specified dollar amount for cable television programming services and if separately arranged and agreed to, security services in such dollar amount subject to periodic adjustment.

7.2.2 The Declarant with respect to each parcel contained on the Property may impose assessments for CATV services which shall be due and payable as provided for in paragraph 7.2.1 and may collect the same and remit the amount collected to the Operator.

7.2.3 Every Parcel Owner hereby agrees that the Operator and its successors and assigns shall have a lien upon the Parcel Owner's parcel for the payment of CATV and if selected, security service fees (as the case may be).

7.2.4 Where an institutional mortgagee or other owner of a parcel obtains title to a parcel as a result of foreclosure of an institutional mortgage such acquirer of title, its successors and assigns shall not be liable for the payment of the aforementioned charges pertaining to any such parcel which become due prior to the acquisition of title in the manner provided hereinabove.

7.2.5 The Declarant may exclude non residential property within the Property from the provisions of this Article and may further exclude residential property which in the determination of the Declarant has uses for CATV and security services inconsistent with the overall design of such services and the Property as a whole.

7.3 Easement for CATV and Security Services. The Declarant hereby reserves for itself and for any Operator and for any successors or assigns of any of the foregoing a perpetual, non exclusive easement, privilege and right, in and to and over, under, on, and across all of the Property for the purposes of erecting, installing, maintaining, operating and removing any and all equipment or other property associated with the CATV and/or security service systems provided that such access or use shall not unreasonably interfere with the reasonable use and enjoyment of the Property by the Parcel Owners.

7.4 Structures. Notwithstanding anything to the contrary in item 7.3 of this Article, the Declarant hereby reserves for itself and for any operators and for any successors or assigns of the foregoing, a right to erect, install, maintain, operate and remove from the property at any time and from time to time any satellite dish, tower or other such structure or equipment for the purpose of establishing or operating CATV and/or security service systems, provided that any such structures or equipment shall not unreasonably interfere with the reasonable use or enjoyment of the property by the Parcel Owners.

#### ARTICLE VIII General Provisions

8.1 Easements. The Declarant reserves for itself, its heirs, successors and assigns perpetual non exclusive easements which shall be covenants running with the land as follows:

8.1.1 An easement ten feet in width on each and every parcel adjoining all roadways dedicated to the City of Lynden for purposes of installing, maintaining, and improving utility services. Said utilities shall include without limitation, electrical power, natural gas, television cable, storm drainage systems, sanitary sewer systems, and water lines.

8.1.2 An easement to install, maintain and improve signage for the Homestead Planned Residential Development within the exterior seven feet of each and every lot, said signage not to interfere with entry driveways.

8.1.3 An easement to enter each and every parcel within the Homestead Planned Residential Development for the purposes of maintaining landscape and berms installed by the Developer. Generally, the duty to maintain berms shall lie with the lot owner, but particularly with respect to berms along public

thoroughfares which affect the appearance of the entire planned residential development the Declarant shall have the right to enter and maintain such berms and to modify and improve the same to preserve the overall appearance of the Homestead Planned Residential Development.

## 8.2 Amendments.

8.2.1 Amendments by the Declarant. So long as the Declarant retains ownership of the Common Open Space the Declarant specifically reserves for itself, its successors and assigns the absolute, unconditional right to alter, modify, change, revoke, rescind or cancel any and all of the restrictive covenants contained in this Declaration or hereinafter included in any subsequent Declaration provided that nothing herein shall prejudice or otherwise impair the security of any mortgagee of record as to any lot or parcel. Within forty-five (45) days after any such change in the Declaration the Declarant shall provide written notice of the change to Parcel Owners.

8.2.2 Amendments by the Association. In the event that and after the Declarant conveys its interest in the Common Open Space to the Association then this Declaration may be amended at any time upon the affirmative vote in favor of the amendment of three-fourths (3/4) of the members of the Association at a duly held meeting of the Association where a quorum is present. Amendment to Article VII herein shall be made only upon 100% vote of all Parcel Owners.

8.3 Remedies for Violation. Violation for breach of any condition, covenant or restriction herein contained shall give the Declarant and/or the Association and/or the Parcel Owners in addition to all other remedies, the right to proceed at law or in equity to compel compliance of the terms of said conditions, covenants and restrictions and prevent the violation or breach of any of them and the expense of any such litigation shall be borne by the then owner of the subject parcel provided that such proceedings, results in findings that such Parcel Owner was in violation of the covenants, conditions and restrictions herein. Expenses of litigation shall include reasonable attorney's fees incurred by the prevailing party in seeking such enforcement. Failure by the Declarant, the Association, or any Parcel Owner to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel the right to enforce the same thereafter.

8.4 Notices. Any notices required to be sent to any Parcel Owner or to the Declarant and/or the Association under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the Parcel Owner on the records of the Declarant and/or the Association at the time of mailing.

8.5 Severability. Invalidation of all or any part of one of these covenants and restrictions by a judgment or court order shall in no way affect the remainder of any such provisions or any other provisions which shall remain in full force and effect.

8.6 Usage. Whenever used, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders for interpretation. The Declarant shall have the right except as limited by any of the provisions of this Declaration to determine all questions arising in connection with this Declaration and to construe and interpret its provisions and its good faith determination, construction or interpretation shall be final and binding. In all cases provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of the Homestead development.

8.7 Effective Date. This Declaration shall become effective upon its recordation in the public records of Whatcom County, Washington.

IN WITNESS WHEREOF the undersigned have executed this Declaration at Lynden, Washington, this 19 day of June, 1992.

EXHIBIT A

LOTS 1 TO 33, MABERRY PLAT, SITUATE IN WHATCOM COUNTY,  
WASHINGTON.

EXHIBIT B

OPEN SPACE: "TRACT A" AS IT APPEARS ON THE FACE OF  
MABERRY PLAT. SITUATE IN CITY OF LYNDEN, WHATCOM  
COUNTY, WASHINGTON.



JAN 26 2024

WHATCOM COUNTY CLERK

20-2-00701-37  
ORGPSJ 705  
Order Granting Partial Summary Judgment  
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**SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY**

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

Plaintiffs,

v.

18 PARADISE, L.L.P.; WILLIAM (MICK)  
O'BRYAN; JOSH WILLIAMS; and MJ  
MANAGEMENT, LLC;

Defendants,

MJ MANAGEMENT, LLC,

Counterclaimant.

MAUREEN AND ROGER DOWLING, a  
married couple, CORWIN MCCAIG, a  
single man, JAKE KALMA, a single man,  
STEVE BALVANZ, a single man, JON  
OLSON, a single man, MATT AND KARI  
SKINNER, a married couple, DARIN  
DEYOUNG, a single man, and TINA  
AND DAVID PALMER,

Intervenors.

NO. 20-2-00701-37

ORDER (1) GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
PARTIAL SUMMARY JUDGMENT RE  
OWNERSHIP CLAIMS AND  
IMPROPER PROFITS CLAIMS, AND (2)  
CERTIFYING RULING ON  
OWNERSHIP CLAIMS UNDER  
CR 54(b)

~~PROPOSED~~

CLERK'S ACTION REQUIRED

ASSIGNED TO: Hon. David Freeman

ORDER ON MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND CERTIFYING  
RULING ON OWNERSHIP UNDER CR 54(b)

- 1

**MONTGOMERY PURDUE LLC**  
ATTORNEYS AT LAW  
701 FIFTH AVENUE, SUITE 5500  
SEATTLE, WA 98104-7096  
TEL (206) 682-7090 FAX (206) 625-9534

1 **I. ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT**

2 THIS MATTER came on before the undersigned judge of the above-entitled  
3 Court upon 18 Paradise, L.L.P.'s ("18 Paradise") motion for entry of order on  
4 summary judgment and certification under CR 54(b) ("Motion for Entry"). The Court  
5 heard argument of counsel on April 7, 2023, and reviewed the following:

- 6 1. 18 Paradise's Renewed Motion for Partial Summary Judgment ("Summary  
7 Judgment Motion");
- 8 2. The Declaration of Henry G. Ross in support of the Motion;
- 9 3. The Declaration of Raymond Chou in support of the Motion;
- 10 4. Plaintiffs' Response to the Motion;
- 11 5. 18 Paradise's Reply in Support of the Motion;
- 12 6. The Motion for Entry;
- 13 7. The Declaration of Henry G. Ross in Support of the Motion for Entry;
- 14 8. \_\_\_\_\_;
- 15 9. \_\_\_\_\_;
- 16 10. \_\_\_\_\_;
- 17 11. \_\_\_\_\_; and
- 18 12. \_\_\_\_\_;

19 Based on the foregoing, the Court rules as follows:

20 13. As to the first issue raised in the Summary Judgment Motion, there is no  
21 dispute of material fact that 18 Paradise holds title to the Homestead common open  
22 space. Paragraph 160 of Plaintiffs' original complaint alleged title of the common  
23 open space should be placed in a constructive trust for homeowners' benefit.  
24 Paragraph 209 of Plaintiffs' second amended complaint stated, "the Court should  
25 exercise its equitable powers to compel 18 Paradise to transfer the Common Open  
26 Space to the Homestead Owners Association." Paragraph 99 of Plaintiffs' fifth

1 amended complaint states: "Pursuant to RCW 19.86.090, plaintiffs are entitled to an  
2 injunction for 18 Paradise to cease its private ownership of the [common open  
3 space]." Paragraph 106 of Plaintiffs' fifth amended complaint requests a declaratory  
4 judgment that "[t]he declarant's ownership violates section 19.29.090" of the Lynden  
5 Municipal Code. Each of these claims, and any other claims by Plaintiffs to limit  
6 18 Paradise or a successor declarant's ownership or property rights in the  
7 Homestead common open space are referred to collectively as "Plaintiffs' Property  
8 Claims." Plaintiffs' Property Claims seek relief in this action that would either compel  
9 18 Paradise or a successor declarant to convey the common open space or make 18  
10 Paradise or a successor declarant's ownership of the common open space illegal.  
11 As a matter of law, Plaintiffs do not have a right to such relief.

12 14. As to the second issue raised in the Motion, there exist issues of material  
13 fact as to whether 18 Paradise may be liable to Plaintiffs for misappropriation of  
14 maintenance fees.

15 NOW, in light of these findings, IT IS HEREBY ORDERED that the MOTION IS  
16 GRANTED IN PART AND DENIED IN PART, as follows:

17 15. The Motion is granted as to any and all of Plaintiffs' Property Claims. Any  
18 and all of Plaintiffs' Property Claims are dismissed with prejudice.

19 16. The Motion is denied as to Plaintiffs' claims against 18 Paradise for  
20 damages arising out of misappropriation of maintenances fees because material  
21 facts remain disputed on that issue.

22 17. The Court's oral ruling on the Motion, issued April 14, 2023, is incorporated  
23 into this Order.

1 **II. ORDER ON CR 54(b) CERTIFICATION**

2 Furthermore, as to 18 Paradise's request for CR 54(b) certification in the Motion  
3 for Entry related to Plaintiffs' Property Claims, which are raised as the first issue in  
4 the Summary Judgment Motion and addressed in paragraph 13 and 15 above, the  
5 Court makes the following findings:

6 18. The four required elements of CR 54(b) are met as to Plaintiffs' Property  
7 Claims.

8 19. There are multiple claims against multiple parties in this action, as reflected  
9 in the pleadings. The Court finds there is no just reason for delay of certification of a  
10 final judgment on Plaintiffs' Property Claims, as addressed in paragraphs 13 and 15  
11 above. In analyzing whether there is just reason for delay, the Court looks to "(1) The  
12 relationship between the adjudicated and the unadjudicated claims, (2) whether  
13 questions which would be reviewed on appeal are still before the trial court for  
14 determination in the unadjudicated portion of the case, (3) whether it is likely that the  
15 need for review may be mooted by future developments in the trial court, (4) whether  
16 an immediate appeal will delay the trial of the unadjudicated matters without gaining  
17 any offsetting advantage in terms of the simplification and facilitation of that trial, and  
18 (5) the practical effects of allowing an immediate appeal." *Gull Indus., Inc. v. State*  
19 *Farm Fire & Cas. Co.*, 181 Wn. App. 463, 480, 326 P.3d 782 (2014).

20 20. Each of these factors weighs in favor of CR 54(b) certification. This is a  
21 complex case in which Plaintiffs have asserted claims of two distinct varieties. They  
22 have asserted monetary damage claims against all defendants, and they have  
23 asserted claims regarding the legality of declarant ownership of the Homestead  
24 common open space, defined above as Plaintiffs' Property Claims.

25 21. Plaintiffs' Property Claims are entirely unrelated to the monetary damages  
26 claims that remain in this action. The questions relevant to any appeal of this issue

1 are not before the trial court in the unadjudicated portions of the case, which relate  
2 solely to monetary damages claims. The need for review of this Court's ruling on  
3 Plaintiffs' Property Claims will not be mooted by future developments at the trial court  
4 level because the remaining claims are related to monetary damages, not the legality  
5 of ownership of Property under the CPA or PRD Ordinance. For the same reasons,  
6 any immediate appeal will not delay trial of the unadjudicated matters, as the  
7 unadjudicated matters are unrelated and may proceed. Finally, the practical effects  
8 of allowing an immediate appeal weigh in favor CR 54(b) certification, as the parties  
9 can address this court's ruling on Plaintiffs' Property Claim more expediently. This is  
10 particularly important as Plaintiffs' Property Claims have an immediate and ongoing  
11 effect on the entire Homestead community and the rights and responsibilities of the  
12 Declarant and the residents of Homestead. It is apparent to the Court that the  
13 dispute as to the legality of declarant ownership of Homestead continues to have a  
14 negative effect on the entire community. Resolving this as soon as possible is in all  
15 parties' interest.

16 NOW, THEREFORE, based on the foregoing findings, the Court ORDERS:

17 22. This Court's ruling on Plaintiffs' Property Claims, as provided in paragraphs  
18 13 and 15 above, is certified under CR 54(b) as a final judgment. The clerk of the  
19 court is directed to enter judgment on these claims and these claims only.

20 23. This certification does not affect any other claims remaining in this action.

21 DONE IN OPEN COURT this 26<sup>th</sup> day of January, 2024.

22  
23  
24   
25 Judge David Freeman  
26

ORDER ON MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND CERTIFYING  
RULING ON OWNERSHIP UNDER CR 54(b)

- 5

{21403/0001/03169560-4}

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Appendix -53

1 Presented by:

2 MONTGOMERY PURDUE PLLC

3  
4 By 

5 Benjamin I. Vandenberghe  
6 WA State Bar No. 35477  
7 Henry G. Ross  
8 WA State Bar No. 51591  
9 Attorneys for 18 Paradise, L.L.P.  
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ORDER ON MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND CERTIFYING  
RULING ON OWNERSHIP UNDER CR 54(b)

- 6

{21493/0001/03189560-4}

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SCANNED 4

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IN OPEN COURT

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WHATCOM COUNTY CLERK

20-2-00701-37  
ORGPSJ 875  
Order Granting Partial Summary Judgment  
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**SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY**

SCOTT HILLIUS; et. al.

Plaintiffs,

v.

18 PARADISE, L.L.P.; et. al.

Defendants,

MJ MANAGEMENT, LLC,

Counterclaimant.

MAUREEN AND ROGER DOWLING, a  
married couple, et. al.

Intervenors.

NO. 20-2-00701-37

ORDER GRANTING 18 PARADISE,  
L.L.P. AND MJ MANAGEMENT, LLC'S  
JOINT AND RENEWED MOTION FOR  
PARTIAL SUMMARY JUDGMENT RE  
CONSUMER PROTECTION ACT

THIS MATTER came on before the undersigned judge of the above-entitled Court upon 18 Paradise, L.L.P. ("18 Paradise") and MJ Management, LLC's ("MJ") Joint Renewed Motion for Partial Summary Judgment Re Consumer Protection Act Claims ("Joint and Renewed Motion"). The Court heard argument of counsel on February 23, 2024, and reviewed the following:

1. Plaintiffs' Fifth Amended Complaint Class Action;
2. 18 Paradise, L.L.P.'s Motion for Partial Summary Judgment Re Consumer

ORDER GRANTING JOINT AND RENEWED  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

1 Protection Act Claims;

- 2 3. The Declaration of Andy Hu in Support of 18 Paradise's Motion for Partial
- 3 Summary Judgment RE Consumer Protection Act, which was filed on
- 4 July 7, 2023;
- 5 4. The Declaration of Raymond Chou in Support of 18 Paradise's Motion for
- 6 Partial Summary Judgment Re Quiet Title and Improper Profits Claim, which
- 7 was filed on November 12, 2021;
- 8 5. Response to 18 Paradiese [sic] Motion for Partial Aummary [sic] Judgment
- 9 RE: Consumer Protections Act;
- 10 6. 18 Paradise's Reply in Support of Motion for Partial Summary Judgment RE
- 11 Consumer Protection Act;
- 12 7. 18 Paradise, L.L.P. and MJ Management, LLC's Joint and Renewed Motion
- 13 for Partial Summary Judgment RE Consumer Protection Act;
- 14 8. Plaintiffs' Response to Joint Motion for Partial Summary Judgment Re:
- 15 Consumer Protections Act; and
- 16 9. Entity Defendants' Reply in Support of 18 Paradise, L.L.P. and MJ
- 17 Management, L.L.C.'s Joint and Renewed Motion for Partial Summary
- 18 Judgment RE Consumer Protection Act.

19 Now, therefore, the Court considers itself fully advised. Accordingly, the Court  
20 makes the following findings of fact and conclusions of law:

21 1. *Hangman Ridge* sets forth a four-part test to determine if the public interest  
22 has been implicated in a private dispute. *Hangman Ridge Training Stables, Inc. v.*  
23 *Safeco Title Ins. Co.*, 105 Wn.2d 778, 790-791, 719 P.2d 531 (1986). Pursuant to  
24 *Hangman Ridge*, the Court considers (1) Were the alleged acts committed in the course  
25 of defendant's business? (2) Did defendant advertise to the general public? (3) Did  
26 defendant actively solicit this particular plaintiff, indicating potential solicitation of



1 others? (4) Did plaintiff and defendant occupy unequal bargaining positions? *Id.*

- 2 a. While the Fifth Amended Complaint alleges actions taken in the course  
3 of 18 Paradise's and MJ Management's (collectively, "Entity  
4 Defendants") business, the three remaining *Hangman Ridge* factors are  
5 not met.
- 6 b. Entity Defendants did not advertise to the public in general. The second  
7 *Hangman Ridge* factor is therefore not satisfied.
- 8 c. Further, Entity Defendants did not actively solicit Plaintiffs, and there is  
9 no indication or potential that Entity Defendants would solicit others.  
10 Plaintiffs correctly assert that the Plaintiff Class is a "captive audience."  
11 However, this is based on Plaintiffs' ownership of the property and the  
12 retained declarant rights in the original Master Declaration. The third  
13 *Hangman Ridge* factor is therefore not satisfied.
- 14 d. Finally, the parties had equal bargaining positions, as the successor  
15 Declarant and the homeowners both operated under the Master  
16 Declaration and CCRs that ran with title. Purchasers were clearly  
17 provided notice of the reserved right of the Declarant to amend the  
18 CCRs, and accepted that as a condition to the title upon purchase. The  
19 fourth *Hangman Ridge* factor is therefore not satisfied.
- 20 e. As Plaintiffs claim does not satisfy factors 2, 3, and 4 as set forth in  
21 *Hangman Ridge*, they are unable to establish the public interest element  
22 of the Consumer Protection Act ("CPA"). Accordingly, this claim fails as  
23 a matter of law.

24 2. Plaintiffs argue that the *Hangman Ridge* factors do not apply, asserting that  
25 the Court should apply the provisions of RCW 19.86.093. Subsection three of the  
26 statute provides that a plaintiff may establish a public interest in a private transaction

1 if the act "(a) Injured other persons; (b) had the capacity to injure other persons; or (c)  
2 has the capacity to injure other persons." RCW 19.86.093(3)(a)-(c). This argument  
3 fails, as the *Hangman Ridge* test has not been expressly overruled by the 2009  
4 amendment to RCW 19.86.093. To the contrary, Courts continue to apply the  
5 *Hangman Ridge* test when analyzing the public interest element of a CPA claim. See  
6 *Rush v. Blackburn*, 190 Wn. App. 945, 696, 361 P.3d 217, 228.

7 3. Even if the Court solely applied the provisions of RCW 19.86.093 in its  
8 analysis of Plaintiffs' CPA claim, the Claim would fail. The alleged actions at issue were  
9 between a fixed set of participants. The original declarant had the ability to, and did in  
10 fact reserve the right to, amend the covenants. See generally *Lakemoore Country*  
11 *Club, Inc. v. Swanson*, 24 Wn. App. 10 (1979). The filing of the original Master  
12 Declaration and the CCR's provided potential landowners notice of the reservation of  
13 authority by the Declarant. See *Mohandessi v. Urb. Venture LLC*, 13 Wn. App. 2d 681,  
14 696 (2020). Moreover, the subsequent recording of the respective amendments also  
15 provided notice to prospective purchasers. As such, the allegations contained in the  
16 Fifth Amended Complaint and the reasonableness of the Sixth and Seventh  
17 Amendments to the CCRs involve a fixed set of parties, i.e., those individuals with an  
18 ownership interest at the time of the amendments. Subsequent purchasers may be  
19 impacted by the rise in fees, but they do so with notice and acceptance of those terms  
20 at the time of purchase. Consequently, Plaintiffs claim also fails as a matter of law  
21 under a strict statutory reading of RCW 19.86.903(3).

22 4. The Court's Decision Re: Joint Motion for Partial Summary Judgment on  
23 Plaintiff's Consumer Protection Act Claim and Motion to Dismiss Defendants Williams  
24 and O'Bryan is incorporated into this Order.

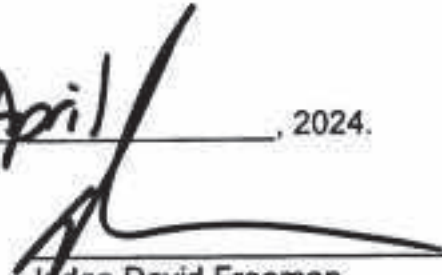
25 NOW, THEREFORE, based on the foregoing findings, the Court ORDERS:

26 The Joint and Renewed Motion is granted. Plaintiffs' Violation of the Consumer

ORDER GRANTING JOINT AND RENEWED  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT

1 Protection Act claims against 18 Paradise and MJ Management are dismissed  
2 with prejudice.

3  
4 DONE this 12<sup>th</sup> day of April, 2024.

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Judge David Freeman