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5 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

6 **IN AND FOR THE COUNTY OF ISLAND**

7  
8 **ROBERT WILBUR,**  
9 **Plaintiffs**

10 **vs.**

**NO. 13-2-00741-4**

11 **ADMIRAL'S COVE BEACH CLUB,**  
12 **a Washington non-profit**  
13 **corporation;**

**PLAINTIFF ROBERT**  
**WILBUR'S MOTION FOR**  
**LEAVE TO AMEND**  
**COMPLAINT**

14 **Defendants.**

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16 \_\_\_\_\_  
17 **SUE CORLISS,**

**Intervenor,**

18 **vs.**

19 **DUSTIN FREDERICK, ROBERT**  
20 **WILBUR, ADMIRAL'S COVE BEACH**  
21 **CLUB, a Washington non-profit**  
22 **corporation, and its BOARD OF**  
23 **DIRECTORS.**

24 **Defendants**

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26 **I. RELIEF REQUESTED**

27 Plaintiff, ROBERT WILBUR moves the Court for the entry of an order granting  
28 leave to amend the plaintiff's complaint filed in this cause on September 11, 2013.  
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1 **II. BASIS**

2 This motion is made pursuant to CR 15 and is supported by the declaration of  
3 Robert Wilbur and the records and files previously submitted in this case.  
4

5 **III. STATEMENT OF PERTINENT FACTS**

6 This lawsuit involves a dispute among members of the Admiral's Cove Beach  
7 Club community association ("ACBC") about the future of the association's swimming  
8 pool and related facilities. The ACBC swimming pool and dressing areas were  
9 constructed at the time the plat of Admiral's Cove Beach Club was approved and are  
10 "common area" assets owned by the members of ACBC collectively. The Association's  
11 Articles of Incorporation provide that the object of the Association is to "own and  
12 operate athletic and recreational facilities for the benefit of the members."  
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15 In May 2013, the Board of Directors of defendant, Admiral's Cove Beach Club,  
16 (as then constituted in 2013) sent a ballot to all active ACBC members requesting that  
17 they "vote" on how to address the pool's future. The ballot presented two options: (1)  
18 refurbish, remodel, and update the pool at a cost of approximately \$650,000 or (2)  
19 remove the pool at a cost of approximately \$200,000. The first option (refurbish and  
20 update the pool) received 153 votes. The second option (removal of the pool)  
21 received a slight majority of votes: 166. This vote and the ballot submission were  
22 contrary to an earlier decision made by the members in 2012 in which they agree to  
23 repair and maintain the pool as contemplated in the Articles and bylaws.  
24

25 On September 11, 2013, before any action was taken in furtherance of the  
26 May, 2013 vote, Robert Wilbur and Dustin Frederick filed a complaint in this court  
27 against ACBC and the individual Board members who were then acting as members of  
28 the Admiral's Cove Beach Club.<sup>1</sup> The plaintiffs' complaint requested relief related to a  
29 number of issues affecting the board of directors' authority to demolish the swimming  
30

31 \_\_\_\_\_  
32 <sup>1</sup> Plaintiff Frederick was voluntarily dismissed as a plaintiff after he was elected to the Board of Directors  
of Admiral's Cove Beach Club.

1 pool facility. The complaint also sought injunctive and declaratory relief regarding the  
2 pool, including a declaration that (1) the pool is an integral part of the ACBC, (2) the  
3 pool could not be decommissioned, and (3) that the May 2013 ballot and vote to  
4 decommission the pool was invalid.

5 This court granted a temporary injunction on December 30, 2013, nullifying (1)  
6 the May 2013 vote to decommission the pool as being contrary to both the ACBC  
7 Articles of Incorporation and Bylaws and (2) the October 2012 motion, to the extent it  
8 was inconsistent with the intent to formulate a repair/renovation plan for the pool.  
9 Based on this ruling, ACBC was temporarily enjoined from imposing any assessment  
10 to decommission or demolish the pool, from failing to properly maintain the pool, and  
11 from acting inconsistent with the October 2012 motion.

12 The Board attempted to comply with the temporary injunction. The pool was  
13 open for approximately six weeks in the summer of 2014 after the necessary repairs,  
14 improvements, and permits were completed and obtained.

15 The Board's efforts to comply with the court's rulings were opposed by a vocal  
16 faction of "anti-pool" club members, including intervenor, Sue Corliss. The opponents  
17 insisted the Board had no authority to proceed with any repairs or maintenance  
18 because the Court's ruling was only "temporary". The "anti-pool" members also  
19 insisted any ballot placed before the members must include an option of  
20 decommissioning or doing nothing with the pool. The Board of Directors of ACBC was  
21 concerned that the "anti-pool" arguments, if allowed, would violate the superior court's  
22 rulings.

23 The conduct of certain members at Board meetings frequently deteriorated due  
24 to the various objections expressed (properly or not) by "anti-pool" members. The  
25 Board believed any further action regarding the swimming pool, prior to the court's  
26 final ruling, would invite further litigation.

27 While the lawsuit was pending, new Board members were elected to serve on  
28 the Board of Directors. Thereafter, a settlement was reached between Plaintiff, Bob  
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1 Wilbur and the ACBC Board which included an agreement to dismiss the individual  
2 members of the board, past and present, as parties. Admiral's Cove Beach Club  
3 remained as the sole defendant in the lawsuit and Mr. Wilbur was the sole plaintiff.

4 In September 2014, Wilbur moved for summary judgment seeking the  
5 declaratory relief asked for in the complaint and for a permanent injunction prohibiting  
6 the pool from being demolished. The Board responded to the summary judgment  
7 motion with a declaration from the Board President, Ed Delahanty, explaining that, due  
8 to the controversy regarding the pool and interpretation and understanding of the  
9 superior court's rulings, the Board chose not to take any official position on plaintiff's  
10 summary judgment motion. The ACBC Board simply asked the court to issue a final  
11 ruling clarifying the ACBC Board's duties and responsibilities regarding the pool to  
12 enable the Admiral's Cove Beach Club community to finally resolve the issues  
13 regarding the pool.  
14

15  
16 In November 2014, Susan Corliss, an ACBC member and property owner who  
17 is an "anti-pool" member moved to intervene in this litigation. Her motion for  
18 intervention was granted. Thereafter, in January 2015, Plaintiff filed an amended  
19 summary judgment motion. Corliss filed a cross-motion for summary judgment asking  
20 the court to implement the May 2013 vote to decommission the pool and to dissolve  
21 the temporary injunction.  
22

23 This court granted Wilbur's summary judgment motion in part, denied Corliss's  
24 summary judgment motion, dissolved its prior temporary injunction, and denied the  
25 request for a permanent injunction.

26 The court entered a summary judgment granting declaratory relief.

- 27  
28 1. The ACBC swimming pool and related facilities are among the athletic  
29 and recreational facilities contemplated under Article V of the Articles of  
30 Incorporation of ACBC which provides that the purpose of ACBC is "[t]o  
31 construct, install, maintain and/or own and operate athletic and  
32

1 recreational facilities of all types and kinds for the benefits of the  
2 members.”

- 3 2. ACBC and its Board of Directors must adhere to the requirements and  
4 directives set forth in the motion that was made and approved at the  
5 Defendant’s annual membership meeting on October 27, 2012, unless  
6 said motion is properly repealed or amended to remove the duties of the  
7 Board of Directors and ACBC, which duties are presently embodied in  
8 this motion. That particular motion, as approved, does not contain  
9 language that could be construed to permit the demolition or  
10 decommissioning of the swimming pool or related facilities as an option  
11 for the membership’s future consideration.  
12  
13 3. The prior Board’s action to present a ballot to the membership with the  
14 option to decommission the pool was contrary to the October 27, 2012,  
15 motion. It was therefore invalid and of no force and effect.  
16  
17 4. The prior Board’s action to authorize an assessment to demolish or  
18 decommission the ACBC swimming pool and related facilities is invalid  
19 and of no force and effect  
20  
21 5. The October 25, 2014, motion presented to the membership and  
22 characterized as the “Alternative Visions” motion does not supersede,  
23 repeal or replace the content or directive set forth in the October 27,  
24 2012 motion, which remains in effect.  
25  
26 6. In consideration of the applicable provision of the Articles of  
27 Incorporation and Bylaws, the context in which they were promulgated,  
28 the circumstances surrounding their promulgation, and the other rules for  
29 their interpretation, the general power to dispose of property as set forth  
30 in the Articles of Incorporation and Bylaws govern ACBC, does not  
31 provide authority to the Board to dispose of the ACBC swimming pool  
32 and related facilities.

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7. Any vote on a motion or other action item submitted to the membership at a regular or special meeting of the membership that would result in the demolition or decommissioning of the ACBC swimming pool, would be invalid and of no effect unless the governing documents of ACBC were first properly amended or changed to allow such action.

8. Under the governing documents as presently constituted, the members of the Board of Directors of ACBC have a legal duty and fiduciary obligation:

a. to maintain, repair and operate the swimming pool and its related facilities in a reasonable manner and as may be required by local, state and federal law and the governing documents themselves; and

b. to take affirmative action, consistent with the governing documents of Admiral's Cove Beach Club, to budget for and raise funds through properly authorized dues and assessments to carry out these duties.

9. The Board's duties in this regard include sufficient budgeting and funding decisions that will allow for the future and continued operation and maintenance of the swimming pool and related facilities.

10. When making decision about funding and budgeting, including dues and special assessment, the Board of Directors and the Members of Admiral's Cove Beach Club must adhere to the provision of ACBC's Articles of Incorporation, Bylaws, and all local, state and federal law.

In sum, the court concluded the pool is an athletic/recreational facility which the Board has a legal duty and fiduciary obligation to reasonably maintain, repair and operate and to take action to carry out these duties (including budgeting allowing for continued operation and maintenance); the October, 2012 Motion only addressed repair and renovation options and any conduct by the Board which included options

1 other than repair and renovations (i.e. decommissioning the pool) was improper  
2 (unless and until the Bylaws were amended to permit such conduct); the "Alternatives  
3 Visions" motion does not replace the October, 2012 Motion and resolution; and the  
4 general power to dispose of property in the Articles of Incorporation and Bylaws does  
5 not authorize the Board to decommission the pool.  
6

7 Ms. Corliss filed a timely appeal of this court's decision. In its decision filed  
8 August 1, 2016, the court of appeals summarized its decision as follows:

9 We conclude that the Club's current governing documents give it the power to  
10 remove or decommission the pool. We also conclude that the October 2012 motion did  
11 not prohibit the Club from allowing the members to vote whether to remove the pool.

12 The court also made the following statement in its written decision:

13 But the October 2012 motion governed only the actions of the committee. It did not  
14 impose any duties or constraints on the Board. And the Club's bylaws permit the Board  
15 to present special assessments to the members for a vote "at any time," regardless of  
16 whether they have been approved by motion. As a matter of law, Wilbur fails to  
17 establish the invalidity of the May, 2013 vote.

18 Prior to the decision of the court of appeals, in March of 2016, the members of  
19 ACBC voted to approve a special assessment that would be used to pay the costs  
20 associated with the repair and renovation of the ACBC pool. The 2016 ballot, offered  
21 members the choice to approve or disapprove a \$1,000.00 per lot assessment for  
22 renovation of the pool and an option to include installation of heat pumps as part of the  
23 pool improvements. (Assessments are only imposed on "buildable lots" i.e., those that  
24 can support onsite sewage disposal.) Both provisions in the 2016 ballot included the  
25 opportunity to vote "no", as required by the Bylaws. All ballots had to be signed in that  
26 vote.  
27

28 The assessment for renovation passed by seven per cent which was a larger  
29 margin than the 2013 vote to decommission the pool. The additional assessment to  
30 acquire and install new heat pumps failed. As part of the assessment process, the  
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1 board of directors offered payment plans for members who could not pay the full  
2 assessment at one time.

3 Since the membership's approval of that special assessment to renovate the  
4 swimming pool in March of 2016, over \$370,000 has been collected and funds  
5 continue to come in at a steady pace from those who elected payment plans. None of  
6 the funds collected from the special assessment approved in March of 2016 have  
7 been expended.

8  
9 The plaintiff would like to amend his Complaint to request declaratory relief on  
10 the questions of 1) whether the vote of the members in March of 2016 was a valid  
11 exercise of the board's authority to request a vote of the members to impose a special  
12 assessment for the purpose of renovating the swimming pool; and 2) whether that  
13 decision of the membership made in connection with the vote taken in March of 2016,  
14 supersedes and replaces the results of the membership vote taken in March of 2013.  
15

16  
17 **III. STATEMENT OF ISSUE**

18 Should Plaintiff Robert Wilbur, be granted leave to amend his complaint in the  
19 manner described in this motion and the proposed, amended complaint that is  
20 attached as Exhibit A to this motion?  
21

22 **IV. EVIDENCE RELIED UPON**

23 This motion is supported by the records and pleadings filed in this cause and  
24 the declarations of Plaintiff, Robert Wilbur and Ed Delahanty. (The Delahanty  
25 declaration was filed in the court of appeals matter involving this case.)  
26  
27

28 **III. AUTHORITY**

29 This motion is made pursuant to CR 15. Civil Rule 15(a) provides that a party  
30 to a lawsuit may amend his or her pleadings so long as "leave of court" if first  
31  
32



1 obtained. The rule also provides that such leave “shall be freely given when justice so  
2 requires.”<sup>2</sup>

3 A trial court's decision to grant leave to amend the pleadings is reviewed for an  
4 abuse of discretion. *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999). A  
5 trial court abuses its discretion if its discretionary decision is “manifestly  
6 unreasonable,” or the trial court bases its decision on untenable grounds, or made its  
7 decision for untenable reasons. *Wilson*, 137 Wn.2d at 505.

8  
9 The Washington Supreme Court has held that the amendment of pleadings is  
10 actually favored under the law:

11 These rules serve to facilitate proper decisions on the merits, to provide parties  
12 with adequate notice of the basis for claims and defenses asserted against  
13 them, and to allow amendment of the pleadings except where amendment  
14 would result in prejudice to the opposing party.

15 *Wilson*, 137 Wn.2d at 505 (citations omitted, emphasis added).

16  
17 “The touchstone for denial of a motion to amend is the prejudice such an amendment  
18 would cause to the nonmoving party.” *Id.* “Factors which may be considered in  
19 determining whether permitting amendment would cause prejudice include undue  
20 delay, unfair surprise, and jury confusion.” *Id.* at 505-06.

21  
22 The Plaintiff’s proposed amendment to the Complaint, if allowed, will serve to  
23 clarify the rights of both the “pro-pool” and “anti-pool” members of ACBC and will  
24 provide guidance to the ACBC board of directors about how to handle funds collected  
25 thus far in accordance with the March, 2016 membership decision to allow the special  
26 assessment to repair and maintain the swimming pool. Neither the intervenor, Corliss,  
27

28  
29 <sup>2</sup> **15(a) Amendments.** A party may amend the party’s pleading once as a matter of course at any time before a responsive  
30 pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon  
31 the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise, a party may amend the  
32 party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so  
requires. If a party moves to amend a pleading, a copy of the proposed amended pleading, denominated “proposed” and  
unsigned, shall be attached to the motion. If a motion to amend is granted, the moving party shall thereafter file the amended  
pleading and, pursuant to rule 5, serve a copy thereof on all other parties. A party shall plead in response to an amended pleading  
within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever  
period may be the longer, unless the court otherwise orders.


1 nor the defendant, ACBC and its governing board will be prejudiced in any manner  
2 since there is no trial date pending in this case and plenty of time exists to conduct  
3 additional discovery related to the issues identified in the Plaintiff's proposed,  
4 amended complaint.

5 **VI. CONCLUSION**

6 No prejudice will result to any party if the court permits the Plaintiff to amend  
7 his Complaint in the manner proposed. No trial date has been scheduled in this matter  
8 and all parties will have more than enough time to conduct discovery and prepare for  
9 pre-trial dispositive motions or trial on the merits related to the issues raised in the  
10 Plaintiff's proposed amended complaint. The motion for leave to amend the complaint  
11 should be GRANTED.  
12

13  
14 Dated this 22<sup>nd</sup> day of February, 2017.  
15  
16

17 Law Office of Christon C. Skinner, P.S.

18 

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21 CHRISTON C. SKINNER/ #9515  
22 Attorney for Plaintiff, Robert Wilbur  
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# **EXHIBIT A**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF ISLAND

**ROBERT WILBUR**  
**Plaintiff,**  
**vs.**  
**ADMIRAL'S COVE BEACH CLUB, a**  
**Washington non-profit**  
**corporation; and**  
**Defendant.**

**NO. 13-2-00741-4**  
**AMENDED COMPLAINT FOR**  
**DECLARATORY JUDGMENT**

**SUE CORLISS,**  
**Intervenor,**  
**vs.**  
**DUSTIN FREDERICK, ROBERT**  
**WILBUR, ADMIRAL'S COVE**  
**BEACH CLUB, a Washington non-**  
**profit corporation, and its BOARD**  
**OF DIRECTORS.**  
**Defendants.**

COMES NOW the Plaintiff, Robert Wilbur, for cause of action against the Defendant and Intervenor, and alleges as follows:

**I. PARTIES**

1.1 Plaintiff, Robert Wilbur, is an individual who owns a parcel of real property

1 within the Plat of Admiral's Cove located in Island County, Washington.

2 1.2 Defendant Admiral's Cove Beach Club ("ACBC") is a non-profit corporation  
3 organized under the laws of the state of Washington. At all times relevant to this  
4 action, ACBC has done business in Island County, Washington.

5 1.3 Intervenor, Sue Corliss, is an individual who owns real property within the  
6 Plat of Admiral's Cove, located in Island County, Washington.  
7

## 8 **II. JURISDICTION AND VENUE**

9  
10 2.1 The Court has original jurisdiction of this action pursuant to RCW  
11 2.08.010.

12 2.2 Venue is proper in this Court pursuant to RCW 4.12.025, because all  
13 Defendants reside in Island County, and RCW 4.12.010 because the action involves  
14 real property in Island County.

15 2.3 This court has authority to provide declaratory relief pursuant to RCW  
16 7.24 et seq.  
17

## 18 **III. PERTINENT FACTS**

19 3.1 Defendant, Admiral's Cove Beach Club was formed on June 2, 1969 at  
20 the time that its Articles of Incorporation were filed with the Washington Secretary of  
21 State's Office.

22 3.2 The Plat of Admiral's Cove, Divisions 1 through 7, is located in Island  
23 County, Washington  
24

25 3.3 The owners of parcels of property within this plat are entitled, by virtue of  
26 that ownership, to an "Active" membership in the non-profit corporation known as  
27 Admiral's Cove Beach Club.

28 3.4 The original grant of deed for each parcel of property within the Admiral's  
29 Cove Plat conveyed both the real estate and,  
30

31 "one family membership in Admiral's Cove Beach Club, Inc. (sic), a Washington  
32 nonprofit corporation, which will own and maintain certain beach rights,

1 recreational areas, swimming pool and other tracts, as shown on plat of  
2 Admirals Cove... .

3 3.5 ACBC is not a Homeowner's Association because it permits non-owners  
4 to be members of the corporation pursuant to an "Associate Membership."  
5

6 3.6 Article II of the corporation's Bylaws states that the object of the "Club"  
7 shall be to: "[p]rovide and operate recreational facilities for the benefit of the  
8 members;" and to "[p]rocur[e], maintain, operate and protect the recreational (and  
9 associated safety) concerns of the members of the community of Admiral's Cove,  
10 subject to the approval of the members of the club." The bylaws were amended from  
11 previous versions in October of 2012.

12 3.7 Article V of ACBC's Articles of Incorporation describes the corporation's  
13 purpose as including the purpose "[t]o construct, install, maintain and/or operate  
14 athletic and recreational facilities of all types and kinds for benefit of the members."  
15

16 3.8 Article XIV, Section 3, of ACBC's Bylaws provides that "Special  
17 Assessments" may be proposed by the Board of Directors, or members, at any time  
18 and must be presented to the membership at least thirty (30) days prior to a meeting  
19 called in accordance with ARTICLE IV, of these bylaws. They shall require approval by  
20 a majority vote as required by ARTICLE V, Sections 2 or 4 of these Bylaws.  
21

22 3.9 The primary recreational asset owned by ACBC is an Olympic sized  
23 swimming pool and locker room/lavatory located on property owned by ACBC.

24 3.10 ACBC is governed by a board of directors who are elected by and serve  
25 at the pleasure of the membership.

26 3.11 The ACBC swimming pool and associated lavatory/locker facility is in  
27 need of maintenance, repair or renovation, the extent of which has not yet been fully  
28 determined.  
29

30 3.12 At an annual meeting of the members of ACBC that took place in 2012, a  
31 motion was made and unanimously approved by the membership that required the  
32

1 Board to meet and confer with the "Pool Operations and Maintenance" and "Long  
2 Range Planning" committees to investigate various funding alternatives for paying the  
3 costs of renovating and/or repairing the swimming pool. In addition, the members  
4 directed the board to work with these committee members to develop a ballot to be  
5 submitted to the members for the purpose of voting on a special membership  
6 assessment.  
7

8 3.13 After the 2012 vote, the members of the Board at that time, failed and  
9 refused to abide by the membership's direction as memorialized by the motion.

10 3.14 Despite the membership's clear direction and intent to have the Board  
11 members explore funding options for renovating and/or repairing the swimming pool,  
12 (not removal or decommissioning) the Board, as it was constituted at that time,  
13 prepared a ballot which was mailed to the members in 2013, and which read as  
14 follows:  
15

16 *General Information:*

17 *Vote for only one option below by checking the box.*

18 *Do not put your name on this ballot.*

19 *Place your ballot in the pre-addressed stamped envelope.*

20 *Ballot must be received by US Post by June 28th 2013.*

21 *Information about refurbishment or removal of the Pool Facility can be  
22 found on the Q & A sheet in this package.*

23 *If members vole to refurbish the facility, a second ballot will be sent to  
24 select a finance option.*

25 *[ ] Refurbish, remodel and update the Pool Facility at a cost of  
26 approximately \$650,000.00*

27 *[ ] Remove the Pool Facility at a cost of approximately \$200,000.00*

28 No other ballot options were presented. No option to deny the assessment was  
29 provided in this ballot, resulting in a violation of Article XIV, section 3, which requires  
30 that all special assessments be approved by a majority vote.  
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32

1           3.15 The Board reported that 166 members voted to remove the pool facility  
2 “at a cost of approximately \$200,000.00” and 153 members voted to “refurbish,  
3 remodel and update the pool facility.”

4           3.16 In addition to being contrary to the clear intent of the membership  
5 described in the motion approved at the October 2012 membership meeting, the  
6 content of the 2013 ballot was confusing and misleading.  
7

8           a. Specifically, the form of the 2013 ballot requested an advisory  
9 vote on whether the pool should be renovated or decommissioned with special  
10 assessments associated with each option.

11           b. The form of the 2013 ballot did not allow Members to reject the  
12 special assessment altogether.

13           c. The form of the 2013 ballot did not allow Members the option to  
14 advise the Board to retain the swimming pool facility with alternate provisions for  
15 special assessments in lesser amounts.  
16

17           d. The form of the 2013 ballot did not comply with Article XIV,  
18 Section 3 of the ACBC Bylaws which required that all special assessments be  
19 approved by a majority vote of the membership. The form of the 2013 ballot did not  
20 allow Members the option of rejecting the special assessment.  
21

22           3.17 In March of 2016, the ACBC board of directors submitted a ballot to the  
23 members which offered members the choice to approve or disapprove a \$1,000.00 per  
24 lot assessment for renovation of the pool and an option to include installation of heat  
25 pumps as part of the pool improvements.

26           3.18 Both provisions in the 2016 ballot included the opportunity to vote “no”,  
27 as required by the Bylaws.

28           3.19 The assessment for the swimming pool renovation passed by a margin  
29 of seven per cent which was a larger margin than the 2013 vote to decommission the  
30 pool.  
31



1           3.20 The additional assessment on the 2016 ballot to acquire and install new  
2 heat pumps failed.

3           3.21 As part of the assessment process, the board of directors offered  
4 payment plans for members who could not pay the full assessment at one time.

5           3.22 The existence and operation of the ACBC swimming pool is a material  
6 element of the value and desirability of the parcels of property owned by the Plaintiffs  
7 and other property owners within the Plat of Admiral's Cove.

8           3.23 The swimming pool and related facility represent the primary and most  
9 valuable recreational facility owned by ACBC.

10           3.24 The Plaintiff and other property owners who own real estate within the  
11 Plat of Admiral's Cove have a contractual and/or real property interest and expectation  
12 in the continued existence of the swimming pool.

13           3.25 The Plaintiff and other property owners who own real estate within the  
14 plat of Admiral's Cove reasonably relied upon the swimming pool's continued  
15 existence and operation as part of the consideration received when they purchased  
16 their respective parcels.

17           3.26 The 2016 decision of the members of ACBC to approve a special  
18 assessment of \$1,000 per buildable lot for the purpose of renovating the swimming  
19 pool, replaces and supersedes any prior decisions of the board or membership to the  
20 contrary.

21           3.27 The 2016 decision of the members of ACBC to approve a special  
22 assessment of \$1,000 per buildable lot for the purpose of renovating the swimming  
23 pool, takes priority over and supersedes the decision of the members made after a  
24 vote in 2013, to decommission the swimming pool.

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30                           **IV. CAUSE OF ACTION- DECLARATORY RELIEF**

31           4.1 Plaintiff restates and realleges the allegations set forth in Sections I

1 through III above as though fully set forth.

2           4.2     Plaintiff and Defendant and the Intervenor have existing and genuine  
3 rights or interests related to the operation of Admiral's Cove Beach Club; Plaintiff and  
4 the Intervenor have differing views about the meaning of the Articles of Incorporation  
5 and Bylaws; a genuine dispute about the validity of the March, 2013 ballot and  
6 membership vote; and a genuine dispute about the significance and priority of the  
7 March, 2016 membership vote and decision concerning the repair and renovation of  
8 the swimming pool and the related special assessment.  
9

10           4.3     These rights or interests are directly related to and of substantial interest  
11 to the continued operation of the Admiral's Cove Beach Club community association  
12 and its individual members, including the Plaintiff and Intervenor.  
13

14           4.4     The determination of the priority of the conflicting ACBC membership  
15 votes conducted in 2013 and 2016, will be a final judgment that extinguishes a dispute  
16 between the Plaintiff and Intervenor with respect to the priority and preference to be  
17 given to the conflicting member decisions made in 2013 and 2016.

18           4.5     The decision of the members to approve a \$1,000 per buildable lot  
19 assessment for the renovation of the swimming pool should be accorded priority over  
20 the earlier decision of the membership to assess members for the decommissioning of  
21 the swimming pool and related facilities.  
22

23           4.6     The determination of the validity of the 2013 ballot and resulting vote and  
24 membership decision will be a final judgment that extinguishes a dispute between the  
25 Plaintiff and Intervenor on that subject.

26           4.7     The proceeding to have the court declare the rights of the parties is  
27 genuinely adversarial in character, at least with respect to the interests and position of  
28 the Plaintiff and Intervenor; and the Defendant and Intervenor.  
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3 **V. RELIEF REQUESTED**

4 Plaintiff respectfully requests that the Court award the following relief against  
5 the Defendant and the Intervenor as follows:  
6

7 5.1 For entry of declaratory relief in favor of the Plaintiff and against the  
8 Defendant and Intervenor and all ACBC members whose interest is represented by  
9 the Intervenor's position establishing, as a matter of law, that:

10 5.1.1 the ACBC members' 2016 decision, approving by a majority vote,  
11 an assessment of \$1,000 per buildable lot for the purpose of renovating the  
12 swimming pool, is a valid and enforceable act that is binding on all members of  
13 ACBC;  
14

15 5.1.2 the ACBC members' 2016 decision to approve an assessment of  
16 \$1,000 per buildable for the purpose of renovating the swimming pool takes  
17 priority over, supersedes and replaces any prior decisions of the members or  
18 the board of directors to demolish or decommission the swimming pool,  
19 including, but not limited to the decision of the members made in 2013 in  
20 response to the ballot submitted by the board and described in paragraph 3.14,  
21 above; and  
22

23 5.1.3 the 2013 member decision to approve a special assessment to  
24 decommission the ACBC swimming pool is invalid and unenforceable by virtue  
25 of the fact that the ballot submitted to members did not include an option to  
26 reject the special assessment altogether as required by Article XIV, Section 3 of  
27 the ACBC Bylaws; and because the ballot was confusing and misleading.  
28

29 5.2 For entry of judgment against the Intervenor for all attorney's fees,  
30 expenses, and costs incurred by the Plaintiff in securing relief against the Intervenor;

31 5.3 For leave to amend this Complaint to conform to proof later discovered,  
32

1 pled, or offered at trial and admitted into evidence; and

2 5.4 For such other relief as the Court deems just and equitable.  
3

4 DATED this 22<sup>nd</sup> day of February, 2017 at Oak Harbor, Washington.  
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CHRISTON C. SKINNER/#9515  
Attorney for Plaintiffs

**EXHIBIT A**  
**REDLINE VERSION**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF ISLAND

**ROBERT WILBUR** and ~~DUSTIN FREDERICK,~~

Plaintiffs Plaintiff,

vs.

**ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation; and JEAN SALLS, MARIA CHAMBERLAIN, KAREN SHAAK**

Defendant.

SUE CORLISS,

Intervenor,

vs.

DUSTIN FREDERICK, ROBERT PEETZ, ELSA PALMER, ED DELAHANTY AND DAN JONES, individuals, WILBUR, ADMIRAL'S COVE BEACH CLUB, a Washington non-profit corporation, and its BOARD OF DIRECTORS.

Defendants.

NO. 13-2-00741-4

AMENDED COMPLAINT FOR DECLARATORY RELIEF, PERMANENT INJUNCTION AND DAMAGES JUDGMENT

1 COME ~~COMES~~ NOW the ~~Plaintiffs~~ Plaintiff, Robert Wilbur, for cause of action  
2 against the ~~Defendants~~ Defendant and ~~allege~~ Intervenor, and alleges as follows:

### 3 I. PARTIES

4 1.1 ~~Plaintiffs~~ Plaintiff, Robert Wilbur and Dustin Frederick are ~~individuals, is an~~  
5 individual who each own ~~parcels~~ owns a parcel of real property within the Plat of  
6 Admiral's Cove located in Island County, Washington.

7 1.2 Defendant Admiral's Cove Beach Club ("ACBC") is a non-profit corporation  
8 organized under the laws of the state of Washington. At all times relevant to this  
9 action, ACBC has done business in Island County, Washington.

10 1.3 ~~Defendant Jean Salls~~ Intervenor, Sue Corliss, is an individual and, at all  
11 times relevant to this action, has been a resident who owns real property within the Plat  
12 of Admiral's Cove, located in Island County, Washington.

13 1.4 ~~Defendant Maria Chamberlain~~ is an individual and, at all times  
14 relevant to this action, has been a resident of Island County, Washington.

15 1.5 ~~Defendant Karen Shaak~~ is an individual and, at all times relevant to this  
16 action, has been a resident of Island County, Washington.

17 1.6 ~~Defendant Robert Peetz~~ is an individual and, at all times relevant to this  
18 action, has been a resident of Island County, Washington.

19 1.7 ~~Defendant Elsa Palmer~~ is an individual and, at all times relevant to this  
20 action, has been a resident of Island County, Washington.

21 1.8 ~~Defendant Ed Delahanty~~ is an individual and, at all times relevant to this  
22 action, has been a resident of Island County, Washington.

23 1.9 ~~Defendant Daniel Jones~~ is an individual and, at all times relevant to this  
24 action, has been a resident of Island County, Washington.

25 1.10 Each of the individual Defendants is a member of the Board of Directors  
26 of ACBC and acted in that capacity during the time material to the ~~Plaintiffs'~~  
27 claims.

### 28 II. JURISDICTION AND VENUE

1 2.1 The Court has original jurisdiction of this action pursuant to RCW  
2 2.08.010.

3 2.2 Venue is proper in this Court pursuant to RCW 4.12.025, because all  
4 Defendants reside in Island County, and RCW 4.12.010 because the action involves  
5 real property in Island County.

6 2.3 This court has authority to provide declaratory relief pursuant to RCW  
7 7.24 et seq.

9 **III. PERTINENT FACTS**

10 3.1 Defendant, Admiral's Cove Beach Club was formed on June 2, 1969 at  
11 the time that its Articles of Incorporation were filed with the Washington Secretary of  
12 State's Office.

13 3.2 The Plat of Admiral's Cove, Divisions 1 through 7, is located in Island  
14 County, Washington

15 3.3 The owners of parcels of property within this plat are entitled, by virtue of  
16 that ownership, to an "Active" membership in the non-profit corporation known as  
17 Admiral's Cove Beach Club.

18 3.4 The original grant of deed for each parcel of property within the Admiral's  
19 Cove Plat conveyed both the real estate and,  
20

21 "one family membership in Admiral's Cove Beach Club, Inc. (sic), a Washington  
22 nonprofit corporation, which will own and maintain certain beach rights,  
23 recreational areas, swimming pool and other tracts, as shown on plat of  
24 Admirals Cove... .

25 3.5 ACBC is not a Homeowner's Association because it permits non-owners  
26 to be members of the corporation pursuant to an "Associate Membership."

27 ~~3.6 Article V of ACBC's Articles of Incorporation describes the corporation's~~  
28 ~~purpose as including the purpose "[t]o construct, install, maintain and/or operate~~  
29 ~~athletic and recreational facilities of all types and kinds for benefit of the members."~~  
30

31 ~~3.7~~ 3.6 Article II of the corporation's Bylaws states that the object of the  
32



1 "Club" shall be to: "[p]rovide and operate recreational facilities for the benefit of the  
2 members;" and to "[p]rocur[e], maintain, operate and protect the recreational (and  
3 associated safety) concerns of the members of the community of Admiral's Cove,  
4 subject to the approval of the members of the club." The bylaws were amended from  
5 previous versions in October of 2012.

6 ~~3.8~~ 3.7 Article V of ACBC's Articles of Incorporation describes the  
7 corporation's purpose as including the purpose "[t]o construct, install, maintain and/or  
8 operate athletic and recreational facilities of all types and kinds for benefit of the  
9 members."

10  
11 3.8 Article XIV, Section 3, of ACBC's Bylaws provides that "Special  
12 Assessments" may be proposed by the Board of Directors, or members, at any time  
13 and must be presented to the membership at least thirty (30) days prior to a meeting  
14 called in accordance with ARTICLE IV, of these bylaws. They shall require approval by  
15 a majority vote as required by ARTICLE V, Sections 2 or 4 of these Bylaws.

16  
17 3.9 The primary recreational asset owned by ACBC is an Olympic sized  
18 swimming pool and locker room/lavatory located on property owned by ACBC.

19 3.9~~10~~ ACBC is governed by a board of directors who are elected by and serve  
20 at the pleasure of the membership.

21 ~~3.10 Defendants Salls, Chamberlain, Shaak, Peetz, Palmer, Delahanty and~~  
22 ~~Jones are the current members of the board of directors (the "Board").~~

23  
24 3.11 The ACBC swimming pool and associated lavatory/locker facility is in  
25 need of maintenance, repair or renovation, the extent of which has not yet been fully  
26 determined.

27 3.12 At an annual meeting of the members of ACBC that took place in 2012, a  
28 motion was made and unanimously approved by the membership that required the  
29 Board to meet and confer with the "Pool Operations and Maintenance" and "Long  
30 Range Planning" committees to investigate various funding alternatives for paying the  
31

1 costs of renovating and/or repairing the swimming pool. In addition, the members  
2 directed the board to work with these committee members to develop a ballot to be  
3 submitted to the members for the purpose of voting on a special membership  
4 assessment.

5 3.13 ~~The~~After the 2012 vote, the members of the Board at that time, failed  
6 and refused to abide by the membership's direction as memorialized by the motion.

7 3.14 Despite the membership's clear direction and intent to have the Board  
8 members explore funding options for renovating and/or repairing the swimming pool,  
9 members explore funding options for renovating and/or repairing the swimming pool,  
10 (not removal or decommissioning) the Board, as it was constituted at that time,  
11 prepared a ballot which was mailed to the members in 2013, and which read as  
12 follows:

13 *General Information:*

14 *Vote for only one option below by checking the box.*

15 *Do not put your name on this ballot.*

16 *Place your ballot in the pre-addressed stamped envelope.*

17 *Ballot must be received by US Post by June 28th 2013.*

18 *Information about refurbishment or removal of the Pool Facility can be  
19 found on the Q & A sheet in this package.*

20 *If members vote to refurbish the facility, a second ballot will be sent to  
21 select a finance option.*

22 *[ ] Refurbish, remodel and update the Pool Facility at a cost of  
23 approximately \$650,000.00*

24 *[ ] Remove the Pool Facility at a cost of approximately \$200,000.00*

25 ~~No other options were presented.~~

26 No other ballot options were presented. No option to deny the assessment was  
27 provided in this ballot, resulting in a violation of Article XIV, section 3, which requires  
28 that all special assessments be approved by a majority vote.

29 3.15 The Board reported that 166 members voted to remove the pool facility  
30  
31  
32

1 "at a cost of approximately \$200,000.00" and 153 members voted to "refurbish,  
2 remodel and update the pool facility."

3 3.16 In addition to being contrary to the clear intent of the membership  
4 described in the motion approved at the October 2012 membership meeting, the  
5 content of the ballot was confusing and misleading. Specifically, the form of the ballot  
6 requested an advisory vote on whether the pool should be retained and also an  
7 attempt to have the membership approve a special assessment. Members were not  
8 given the option to advise the Board to retain the swimming pool facility and  
9 subsequently consider alternate provisions for special assessments in varying  
10 amounts. 2013 ballot was confusing and misleading.

12 ~~3.17 Despite having been repeatedly asked to delay decommissioning the  
13 swimming pool and conduct a re-vote with a revised ballot, the ACBC Board has  
14 refused to cease and desist its efforts to immediately de-commission the swimming  
15 pool by drilling holes in the structure and filling it with sand or similar material.~~

17 ~~3.18 Because of its proximity to the shoreline, and the related permitting  
18 process associated with state and federal shoreline management, it will be difficult or  
19 impossible to construct a new swimming pool or similar facility in this location once it  
20 has been decommissioned. If ACBC and its Board are not enjoined from  
21 decommissioning the swimming pool as currently contemplated, the Plaintiffs and  
22 other members of ACBC will be irreparably harmed.~~

24 3.19 a. Specifically, the form of the 2013 ballot requested an  
25 advisory vote on whether the pool should be renovated or decommissioned with  
26 special assessments associated with each option.

27 b. The form of the 2013 ballot did not allow Members to reject the  
28 special assessment altogether.

29 c. The form of the 2013 ballot did not allow Members the option to  
30 advise the Board to retain the swimming pool facility with alternate provisions for  
31

1 special assessments in lesser amounts.

2 d. The form of the 2013 ballot did not comply with Article XIV,  
3 Section 3 of the ACBC Bylaws which required that all special assessments be  
4 approved by a majority vote of the membership. The form of the 2013 ballot did not  
5 allow Members the option of rejecting the special assessment.

6 3.17 In March of 2016, the ACBC board of directors submitted a ballot to the  
7 members which offered members the choice to approve or disapprove a \$1,000.00 per  
8 lot assessment for renovation of the pool and an option to include installation of heat  
9 pumps as part of the pool improvements.

10 3.18 Both provisions in the 2016 ballot included the opportunity to vote "no",  
11 as required by the Bylaws.

12 3.19 The assessment for the swimming pool renovation passed by a margin  
13 of seven per cent which was a larger margin than the 2013 vote to decommission the  
14 pool.

15 3.20 The additional assessment on the 2016 ballot to acquire and install new  
16 heat pumps failed.

17 3.21 As part of the assessment process, the board of directors offered  
18 payment plans for members who could not pay the full assessment at one time.

19 3.22 The existence and operation of the ACBC swimming pool is a material  
20 element of the value and desirability of the parcels of property owned by the Plaintiffs  
21 and other property owners within the Plat of Admiral's Cove.

22 3.20~~23~~ The swimming pool and related facility represent the primary and  
23 most valuable recreational facility owned by ACBC.

24 3.21 ~~Any decision of the board that operates to decommission the swimming~~  
25 ~~pool without a corresponding, definitive plan to repair or renovate it, improperly~~  
26 ~~violates the purpose and object of the ACBC.~~

27 3.22~~24~~ The Plaintiffs~~Plaintiff~~ and other property owners who own real estate

1 within the Plat of Admiral's Cove have a contractual and/or real property interest and  
2 expectation in the continued existence of the swimming pool.

3 3.25 The PlaintiffsPlaintiff and other property owners owning propertywho  
4 own real estate within the plat of Admiral's Cove reasonably relied upon the swimming  
5 pool's continued existence and operation as part of the consideration received when  
6 they purchased their respective parcels.

7  
8 3.23 Any action by the Board that operates26 The 2016 decision of the  
9 members of ACBC to approve a special assessment of \$1,000 per buildable lot for the  
10 purpose of renovating the swimming pool, replaces and supersedes any prior  
11 decisions of the board or membership to the contrary.

12 3.27 The 2016 decision of the members of ACBC to approve a special  
13 assessment of \$1,000 per buildable lot for the purpose of renovating the swimming  
14 pool, takes priority over and supersedes the decision of the members made after a  
15 vote in 2013, to decommission the swimming pool without a corresponding, definitive  
16 plan to repair or renovate it, will result in devaluation of the Plaintiffs' property and  
17 cause financial loss and damage to Plaintiffs.  
18

19  
20 **IV. CAUSES CAUSE OF ACTION- DECLARATORY RELIEF**

21 **A. Declaratory Relief.**

22 4.1 Plaintiffs restatePlaintiff restates and reallegerealleges the allegations  
23 set forth in Sections I through III above as though fully set forth.  
24

25 4.2 PlaintiffsPlaintiff and defendantsDefendant and the Intervenor have  
26 existing and genuine rights or interests related to the operation of the ACBC,Admiral's  
27 Cove Beach Club; Plaintiff and the Intervenor have differing views about the meaning  
28 of the Articles of Incorporation and Bylaws and; a genuine dispute about the purpose  
29 and intentvalidity of the membership's March, 2013 ballot and membership vote; and a  
30 genuine dispute about the significance and priority of the March, 2016 membership  
31

1 ~~vote and decision expressed in its unanimous vote on a motion presented at the 2012~~  
2 ~~annual meeting concerning the repair and renovation of the swimming pool and the~~  
3 ~~related special assessment.~~

4 4.3 These rights or interests are ~~direct~~ directly related to and of substantial  
5 interest to the continued operation of the Admiral's Cove Beach Club community  
6 association and its individual members, including the Plaintiff and Intervenor.

7 4.4 The determination of the rights priority of the conflicting ACBC  
8 membership votes conducted in 2013 and 2016, will be a final judgment that  
9 extinguishes the ~~a~~ dispute between the Plaintiffs ~~Plaintiff and Defendants~~ Intervenor with  
10 respect to the legal purpose of the corporation and the significance of the swimming  
11 pool as an asset of the corporation and the meaning of the membership's priority and  
12 preference to be given to the conflicting member decisions made in 2013 and 2016.

13 4.5 ~~The decision at the 2012 annual meeting of the members to approve a~~  
14 ~~\$1,000 per buildable lot assessment for the renovation of the swimming pool should be~~  
15 ~~accorded priority over the earlier decision of the membership to assess members for~~  
16 ~~the decommissioning of the swimming pool and related facilities.~~

17 4.5.6 ~~The determination of the validity of the 2013 ballot and resulting vote and~~  
18 ~~membership decision will be a final judgment that extinguishes a dispute between the~~  
19 ~~Plaintiff and Intervenor on that subject.~~

20 4.7 The proceeding to have the court declare the rights of the parties is  
21 genuinely adversarial in character, ~~at least with respect to the interests and position~~  
22 of the Plaintiff and Intervenor; and the Defendant and Intervenor.

23 4.6 ~~The ballot language approved and prepared by the Defendant Board was~~  
24 ~~contrary to the clear and express intent of the membership set forth in the motion~~  
25

1 ~~unanimously approved by the membership at its annual meeting of October 27, 2012.~~

2 ~~4.7 The ownership and operation of the ACBC swimming pool is an inherent~~  
3 ~~and necessary element of the corporate purpose and objective of ACBC.~~

4 ~~4.8 The ACBC Board's attempt to have the members vote to approve~~  
5 ~~decommissioning the swimming pool by mail in ballot is invalid because:—~~

6 ~~4.8.1 Such a vote is contrary to the articles and bylaws of the~~  
7 ~~corporation;~~

8 ~~4.8.2 Such a vote was not sanctioned or requested by the members at~~  
9 ~~their annual meeting;~~

10 ~~4.8.3 The ballot language formulated by the Board was misleading and~~  
11 ~~confusing; and~~

12 ~~4.8.4 The Defendants/Board of ACBC do not have the authority under~~  
13 ~~the bylaws to decommission or remove the swimming pool or any other recreational~~  
14 ~~facility owned and operated by ACBC.~~

15 ~~**B. Injunctive Relief and Damages**~~

16 ~~4.9 By attempting to decommission or remove the swimming pool facility,~~  
17 ~~ACBC and the Board have damaged or will damage the Plaintiff's property interests,~~  
18 ~~property values and expectancy associated with their ownership of property within the~~  
19 ~~Plat of Admiral's Cove, in such amounts as will be proven at trial.~~

20 ~~4.10 In connection with their efforts to decommission or remove the swimming~~  
21 ~~pool, some of the defendant directors, acting as a majority of the Board, or individually,~~  
22 ~~are arbitrarily attempting to prevent qualified members of ACBC from being nominated~~  
23 ~~to serve on the Board of Directors of the corporation.~~

24 ~~4.11 The Corporation's bylaws permit any member in good standing to be~~  
25 ~~nominated to serve as a director and such member shall be elected by a majority vote~~  
26 ~~of the members at an annual meeting of the membership.~~

27 ~~4.12 Some of the defendants who are on the Board of Directors, acting either~~

1 individually or as a majority of the Board, have arbitrarily and improperly refused or  
2 expressed an unwillingness to accept the nomination of qualified persons to stand for  
3 election to the Board at the 2013 annual member meeting. These actions are  
4 arbitrary, capricious and contrary to the express provisions of the bylaws.

5 ~~4.13 All members in good standing with ACBC are eligible to serve on the~~  
6 ~~Board of Directors and, unless expressly precluded from doing so in the Bylaws,~~  
7 ~~should be permitted to run and serve as a Director if they are elected in the manner~~  
8 ~~prescribed in the Bylaws.~~

10 ~~4.14 The defendants, individually and as a board, should be enjoined and~~  
11 ~~restrained from interfering with the election process at the annual meetings of the~~  
12 ~~membership and should be directed to only refuse the application or nomination of a~~  
13 ~~director if such person is not eligible for reasons specifically identified in the ACBC~~  
14 ~~Bylaws.~~

16 4.15 As a result of defendants' proposed actions and stated intentions,  
17 Plaintiffs will suffer actual and substantial injury if the Court does not grant injunctive  
18 relief and restrain the Defendants from taking any action to:

19 ~~4.15.1 decommission or damage or destroy the swimming pool and~~  
20 ~~related facilities;~~

21 ~~4.15.2 arbitrarily or wrongfully refuse to accept nominations to the~~  
22 ~~position of director of ACBC members in good standing and not otherwise expressly~~  
23 ~~disqualified from serving as a Director as may be specifically stated in the ACBC~~  
24 ~~Bylaws, a copy of which is attached as Exhibit A to this complaint.~~

26 4.16 Despite a clear referendum from the members of ACBC, Defendants  
27 continue to make decisions and take action designed to decommission the swimming  
28 pool and related facilities. As part of this unauthorized action, Defendants are also  
29 intending to levy a special assessment to fund the decommissioning process, contrary  
30 to the wishes and intent of the members.





1 of the corporation's purpose and cannot, therefore, be removed or  
2 decommissioned without total assurance that a replacement facility can be  
3 permitted, constructed and paid for in a manner consistent with the bylaws of  
4 the corporation; and

5 ~~5.1.2 the ballot created by the Board and described in paragraph 3.14,~~  
6 ~~above, is inconsistent with and contrary to the purpose and intent of the~~  
7 ~~membership as reflected by its unanimous decision reached at the 2012 annual~~  
8 ~~meeting of the corporation; and~~

9  
10 ~~5.1.3 the actions of the Board to assess the membership for the~~  
11 ~~decommissioning of the swimming pool and related facilities is contrary to the~~  
12 ~~express intention of the members as expressed in a vote taken at an annual~~  
13 ~~meeting; is ultra vires, and contrary to the express purpose and intent of the~~  
14 ~~ACBC Articles of Incorporation and Bylaws, as amended;~~

15  
16 ~~5.1.4 that any action by the Defendants or the Board to demolish or~~  
17 ~~decommission or damage or destroy the swimming pool will adversely affect~~  
18 ~~and damage the property interests and value of each member of ACBC without~~  
19 ~~valid compensation and contrary to the purpose and intent of the Articles of~~  
20 ~~Incorporation, Bylaws, as amended and the resolution of the membership at the~~  
21 ~~2012 annual meeting; and~~

22  
23 ~~5.1.5 That no member of ACBC should be precluded or barred or~~  
24 ~~prohibited from standing for election to the ACBC Board of Directors if that~~  
25 ~~person is properly nominated and is not otherwise ineligible for reasons~~  
26 ~~specifically identified or defined in the ACBC bylaws.~~

27 5.1.1 the ACBC members' 2016 decision, approving by a majority vote,  
28 an assessment of \$1,000 per buildable lot for the purpose of renovating the  
29 swimming pool, is a valid and enforceable act that is binding on all members of  
30 ACBC;  
31

1                    5.1.2 the ACBC members' 2016 decision to approve an assessment of  
2                    \$1,000 per buildable for the purpose of renovating the swimming pool takes  
3                    priority over, supersedes and replaces any prior decisions of the members or  
4                    the board of directors to demolish or decommission the swimming pool,  
5                    including, but not limited to the decision of the members made in 2013 in  
6                    response to the ballot submitted by the board and described in paragraph 3.14,  
7                    above; and

8                    5.1.3 the 2013 member decision to approve a special assessment to  
9                    decommission the ACBC swimming pool is invalid and unenforceable by virtue  
10                   of the fact that the ballot submitted to members did not include an option to  
11                   reject the special assessment altogether as required by Article XIV, Section 3 of  
12                   the ACBC Bylaws; and because the ballot was confusing and misleading.

13                   ~~\_\_\_\_\_ 5.2 For the entry of a permanent injunction requiring Defendants to~~  
14                   ~~cease and desist all current and future efforts to decommission or remove the~~  
15                   ~~swimming pool facility owned by ACBC.~~

16                   ~~\_\_\_\_\_ 5.3 For the entry of a permanent injunction affirmatively requiring Defendants~~  
17                   ~~to take action to operate the swimming pool facility as provided in the Bylaws,~~  
18                   ~~including action to repair, maintain or renovate the swimming pool as a recreational~~  
19                   ~~facility for the members of ACBC as may be necessary it ensure its continued~~  
20                   ~~operation.~~

21                   ~~\_\_\_\_\_ 5.4 For entry of a permanent injunction requiring Defendants to cease and~~  
22                   ~~desist in their attempts to request special assessment votes from the membership to~~  
23                   ~~allow decommissioning or removal of the swimming pool;~~

24                   ~~\_\_\_\_\_ 5.5 For entry of a permanent injunction requiring Defendants to cease and~~  
25                   ~~desist in their attempts to arbitrarily bar or preclude properly nominated members of~~  
26                   ~~ACBC from running for the Board of Directors for reasons that are arbitrary or not~~  
27                   ~~specifically identified in the ACBC Bylaws;~~

1 ~~5.5~~ For entry of Judgment against the defendants for any and all special  
2 damages suffered by Plaintiffs as a result of the acts or omissions of ACBC or the  
3 Board, in an amount to be proven;

4 ~~5.6~~ For entry of judgment against the Defendants for any and all general  
5 damages suffered by Plaintiffs as a result of the acts or omissions of ACBC or the  
6 Board, in an amount to be proven;

7 ~~5.7~~ For entry of judgment against the Defendants Intervenor for all attorney's  
8 fees, expenses, and costs incurred by the Plaintiffs Plaintiff in securing relief against  
9 the Defendants Intervenor;

10  
11 5.8~~3~~ For leave to amend this Complaint to conform to proof later discovered,  
12 pled, or offered at trial and admitted into evidence; and

13 5.9~~4~~ For such other relief as the Court deems just and equitable.

14  
15 DATED this ~~14<sup>th</sup>~~ 22<sup>nd</sup> day of ~~September, 2013~~ February, 2017 at Oak Harbor,  
16 Washington.

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21 CHRISTON C. SKINNER/#9515  
22 Attorney for Plaintiffs  
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