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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,

vs.

ADMIRAL'S COVE BEACH CLUB, a
Washington non-profit corporation; and
JEAN SALLS, MARIA CHAMBERLAIN,
KAREN SHAAK, ROBERT PEETZ,
ELSA PALMER, ED DELAHANTY AND
DAN JONES, individuals,

Defendants.

SUE CORLISS,

Intervenor,

vs.

DUSTIN FREDERICK, ROBERT
WILBUR, ADMIRAL'S COVE BEACH
CLUB, a Washington non-profit
corporation, and its BOARD OF
DIRECTORS.

Defendants.

NO. 13-2-00741-4

**PLAINTIFF'S AMENDED MOTION
FOR SUMMARY JUDGMENT**

I. RELIEF REQUESTED

The Plaintiff, Robert Wilbur, requests the entry of summary judgment in his favor as follows:

- A. Granting a permanent injunction which enjoins and restrains the Defendant, Admiral's Cove Beach Club, and its board of directors, from

1 taking any action, including the employment of third parties, contractors
2 or subcontractors, to demolish, decommission, remove, damage,
3 destroy, fill in, or otherwise render inoperative, the Admiral's Cove Beach
4 Club swimming pool complex and all related facilities. This permanent
5 injunction should remain in effect for as long as the stated purposes for
6 the formation of Admiral's Cove Beach Club set forth in Article V of the
7 Articles of Incorporation, as amended; and the "Object" of ACBC as
8 described in Article II, Section 1, remain the same or similar to what is
9 currently set forth in each of those documents.
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11 B. Granting a permanent injunction which enjoins and restrains the
12 Defendant, Admiral's Cove Beach Club, and its board of directors, from
13 imposing or levying or attempting to enforce or collect an assessment of
14 any type against any lot within the plat of Admiral's Cove, the purpose of
15 which is to pay for any part of the costs of decommissioning, de-
16 activating, demolishing, or in any manner filling, grading, removing,
17 destroying or otherwise rendering unusable, the swimming pool and
18 related facilities owned by the Admiral's Cove Beach Club, except as
19 allowed under paragraph A of this Order. This permanent injunction
20 should remain in effect for as long as the stated purposes for the
21 formation of Admiral's Cove Beach Club set forth in Article V of the
22 Articles of Incorporation, as amended; and the "Object" of ACBC as
23 described in Article II, Section 1, remain the same or similar to what is
24 currently set forth in each of those documents.
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27 C. Granting a permanent injunction which affirmatively requires and directs
28 the Defendant, Admiral's Cove Beach Club, and its board of directors, to
29 properly operate and maintain the Admiral's Cove Beach Club swimming
30 pool and facilities, by:
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1. meeting any and all local, state or federal standards that may be applicable and which are required for the swimming pool to be functional and fully operational, including all usual and customary maintenance tasks and practices necessary to keep the swimming pool in good operating condition and reasonably safe and clean; and
2. ensuring all actions which should be taken in accordance with the ACBC Bylaws are appropriately facilitated, and
3. completing any and all maintenance and repairs required or recommended by federal, state, or local law; and
4. approving and implementing an annual budget that provides for sufficient funds, from dues and assessments, to maintain the swimming pool and other community assets, including the accumulation of reserves for repairs and maintenance.

This permanent injunction should remain in effect for as long as the stated purposes for the formation of Admiral's Cove Beach Club set forth in Article V of the Articles of Incorporation, as amended; and the "Object" of ACBC as described in Article II, Section 1, remain the same or similar to what is currently set forth in each of those documents.

- D. Granting a permanent injunction which enjoins and restrains the Defendant, Admiral's Cove Beach Club, and its board of directors, from attempting to take any action that is contrary to or inconsistent with the terms of the Motion to save the pool unanimously approved by the members of Admiral's Cove Beach Club at the October 27, 2012, annual meeting of the membership.
- E. Granting the Plaintiff's request for declaratory judgment by making the following determinations:

- 1 1. That the Plaintiff, as an ACBC member, has a clear expectation and
2 legal right to the continued operation, and proper and adequate
3 maintenance and repair and upgrade of the ACBC swimming pool
4 and pool facilities.
- 5 2. That the Plaintiff has a well-grounded fear of invasion of that right,
6 and will be actually and substantially injured if the Defendant, ACBC,
7 through its Board of Directors or through any action of the
8 membership, take any action to decommission or de-activate the
9 ACBC swimming pool or impose or attempt to enforce any special
10 assessment intended to fund the decommissioning, removal or de-
11 activation of the swimming pool.
- 12 3. That the Plaintiff would be actually and substantially injured if the
13 Board was allowed to proceed with these actions.
- 14 4. That the Plaintiff has no adequate remedy at law.
- 15 5. That, by virtue of the “purposes” of ACBC as stated in Article V. of its
16 Articles of Incorporation, and the association’s “Object” as described
17 in Article II, Section 1 of its Bylaws, the Plaintiff and all other owners
18 of property within the Plat of Admiral’s Cove Beach have a vested
19 and contractual ownership interest, expectation and right to require
20 the Defendant, Admiral’s Cove Beach Club, to continue operating the
21 swimming pool and community facilities unless and until the Object of
22 the association and its “Purposes” are properly amended pursuant to
23 the Amendment provisions of both documents.
- 24 6. Declaring and reaffirming that no action can be taken to change the
25 Association’s purposes as set forth in its Articles of Incorporation, or
26 its “Object” as described in the Bylaws, without a two – thirds (2/3)
27 majority vote of the membership as expressly provided in Article VII
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1 of the Articles of Incorporation and Article XVI, Section 1 of the
2 Bylaws.¹

3 7. Declaring, as a matter of law, that the special assessment submitted
4 and approved by the members to decommission the pool, which
5 assessment vote was imposed by the defendant ACBC Board on or
6 about August 14, 2013, was invalid for, at minimum, the following
7 two reasons:
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- 9 i. The Board's action was contrary to the October 27, 2012
10 Motion and resulting resolution of the members and,
11 ii. The Board's action was contrary to the provisions of the
12 Association's Bylaws and Articles of Incorporation.
13

14 II. PERTINENT FACTS

15 The Plat of Admiral's Cove, Divisions 1 through 7, is located in Island County,
16 Washington. The owners of parcels of property within this plat are entitled, by virtue of
17 that ownership, to an "Active" membership in the non-profit corporation known as
18 Admiral's Cove Beach Club ("ACBC"). The original grant of deed for many parcels of
19 property within the Admiral's Cove Plat conveyed both the real estate and, in addition,
20 "one family membership in Admiral's Cove Beach Club, Inc. (sic), a Washington
21 nonprofit corporation, which will own and maintain certain beach rights, recreational
22 areas, swimming pool and other tracts, as shown on plat of Admirals Cove... .
23

24 Plaintiff is a member of ACBC. According to its Articles of Incorporation, ACBC
25 was formed in 1969, "[t]o construct, install, maintain and/or operate athletic and
26 recreational facilities of all types and kinds for benefit of the members."² ACBC is
27 governed by a board of directors who are elected by and serve at the pleasure of the
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31 ¹ The Articles and Bylaws are attached as Exhibits A and B to the Declaration of Ed Delahanty, which
32 was filed in response to the first Motion for Summary Judgment submitted by Plaintiff.

² Article V, Articles of Incorporation. A copy of the Articles of Incorporation is attached to the Declaration
of Ed Delahanty and marked as "Exhibit A."

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

3 Article II of ACBC's Bylaws states that the "object" of the Club shall be to:

4 "[p]rovide and operate recreational facilities for the benefit of the members;" and
5 to "[p]rocur[e], maintain, operate and protect the recreational (and associated
6 safety) concerns of the members of the community of Admiral's Cove, subject to
7 the approval of the members of the club."

8 Although Article II of the Bylaws refers, generally, to the members' ability to
9 "approve" procurement, operation, maintenance and protection of the "recreational
10 concerns" of the members of ACBC, this section of the bylaws conflicts with Article V
11 of the Articles of Incorporation delegating that authority and responsibility to the Board
12 alone. A decision to decommission or fail to maintain the swimming pool and related
13 facilities would be contrary to the stated objects and purposes of ACBC. Any action of
14 that nature requires a full two-thirds majority vote of the members in the manner
15 described in the Articles of Incorporation and Bylaws.
16

17 The primary asset and recreational facility of ACBC is a competition sized
18 swimming pool located in a common area within the Plat of Admiral's Cove, located on
19 Whidbey Island in Island County, Washington. The Plaintiff and other persons who
20 own property within the plat purchased their properties, in part, because they would be
21 entitled to have access to the swimming pool and related facilities as an incident of
22 owning property within the plat. When making the decision to purchase their property
23 within the plat of Admiral's Cove, the Plaintiff and other owners of property within the
24 plat, relied upon the fact that as a property owner within the plat, they would have the
25 right to have access to a community owned swimming pool and related facilities, and
26 that this right was being conveyed as part of the ownership rights to the lot or lots and
27 inherent as an element of ownership. The Plaintiff and other property owners paid a
28 price for their property that reflected the benefits of membership in the Admiral's Cove
29 Beach Club.
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1 The Plaintiff brought suit in this case against ACBC as an entity and the ACBC
2 board of directors who were in office in September of 2013. At the time the action was
3 commenced, the defendant board members were identified in the initial complaint as
4 Defendants Jean Salls, Marilyn Chamberlain, Karen Shaak, Robert Peetz, Elsa
5 Palmer, Ed Delahanty and Dan Jones. This board attempted to decommission and
6 demolish the swimming pool without proper authority and without the required
7 approval of the members of ACBC. The defendant board members attempted to
8 impose a special assessment for the demolition or decommissioning of the swimming
9 pool is contrary to the stated purposes of ACBC and in contravention of the Plaintiff's
10 right to have access to the swimming pool and related facilities. In addition, the
11 defendant board members created a deceptive and misleading ballot for submission to
12 the general membership in connection with the swimming pool "assessment." The
13 board of directors then in office, individually or as a majority of the members on the
14 board, failed to abide by and adhere to the express provisions of a motion that was
15 unanimously passed by the members at their annual membership meeting conducted
16 in 2012.

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19 At this annual meeting of the members of ACBC, a motion was made and
20 unanimously approved by the membership that required the Board to meet and confer
21 with the "Pool Operations and Maintenance" and "Long Range Planning" committees
22 to investigate various funding alternatives for paying the costs of renovating and/or
23 repairing the swimming pool. In addition, the members directed the board to work with
24 these committee members to develop a ballot to be submitted to the members for the
25 purpose of voting on a special membership assessment.

26
27 The former defendant Board members failed and refused to abide by the
28 membership's direction as memorialized by the motion. The existence and operation
29 of the ACBC swimming pool is a material element of the value and desirability of the
30 parcels of property owned by the Plaintiffs and other property owners within the Plat of
31 Admiral's Cove. Since the swimming pool and related facility represent the primary
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1 and most valuable recreational facility owned by ACBC, any decision of the
2 association's board of directors that operates to decommission the swimming pool
3 without a corresponding, definitive plan to repair or renovate it, improperly violates the
4 purpose and object of the ACBC.

5 The Plaintiffs and other property owners within the Plat of Admiral's Cove have
6 a property interest and expectation in the continued existence of the swimming pool.
7 The Plaintiffs and other property owners owning property within the plat reasonably
8 relied upon the swimming pool's continued existence and operation as part of the
9 consideration received when they purchased their respective parcels.
10

11 On December 30, 2013, this court granted the Plaintiff's motion for the entry of
12 a temporary injunction which, provided, among other things, that the defendant board
13 of directors was precluded from taking any action directed toward the removal or
14 decommissioning of the swimming pool. The defendant board was also enjoined from
15 making any effort to collect or impose assessments against the association members
16 or their property for the purpose of decommissioning or removing the swimming pool.
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18 In its oral ruling, the court made several, dispositive statements that should be
19 considered as part of the record for this motion. For example, the court, in its oral
20 ruling concluded the following:

21 So it seems obvious that the Bylaws of the association clearly presupposed the
22 existence of the pool, and any action taken that would decommission the pool
23 would be contrary to the Bylaws.

24 It's also important to note that the deeds of beach club members contain
25 specific language granting them memberships in the beach club and further
26 provides that the beach club, quote, "will own and maintain certain beach
27 rights, recreational areas, swimming pool" -- underscore the words swimming
28 pool -- "and other tracts." Unquote. So the property owners have a property
29 right in this connection.

30 It also seems obvious that the plaintiffs in this case, as members of the
31 association, have a clear legal right to the continued operation and
32 maintenance of the pool, a well-grounded fear of the immediate invasion of that

1 right based on the Board's decision to follow the unauthorized vote to
2 decommission the pool and impose a special assessment to do so, and they
3 would be actually and substantially injured if the Board was allowed to proceed
4 with these actions. Clearly, they have no adequate remedy at law in this
5 connection either. So, again, by agreement, the restraint against the
6 decommissioning of the pool is granted.

7 Since the date of the entry of the court's order granting the Plaintiff's motion for
8 a temporary injunction, a new board of directors was elected at an annual meeting of
9 the membership. The new board replaced several of the members who were named
10 as individual defendants in this lawsuit and who voted to decommission the swimming
11 pool and assess members for the costs associated.

12 Among those new board members is former Plaintiff, Dustin Frederick. Mr.
13 Frederick dismissed his complaint against the named defendants and is no longer a
14 party to this proceeding. The remaining plaintiff is association member Robert Wilbur.

15 By agreement, the individual board members who were originally named as
16 defendants in this case have been dismissed from the lawsuit. The only remaining
17 defendant in this case now is the entity known as Admiral's Cove Beach Club, a non-
18 profit corporation.
19

20 III. LAW AND DISCUSSION

21 **Summary Judgment.** Summary judgment is appropriate where "the pleadings,
22 depositions, answers to interrogatories, and admissions on file, together with the
23 affidavits, if any, show that there is no genuine issue as to any material fact and that
24 the moving party is entitled to a judgment as a matter of law." CR 56(c); *Sanders v.*
25 *City of Seattle*, 160 Wn.2d 198, 207, 156 P.3d 874 (2007). "The rationale underlying
26 summary procedures is to eliminate trials where only questions of law remain to be
27 determined." *Brown v. Fire Prot. Dist.*, 100 Wn.2d 188, 203, 668 P.2d 571 (1983).
28 "One of the important functions of the summary judgment procedure is the avoidance
29 of long and expensive litigation productive of nothing." *Padron v. Goodyear Tire*, 34
30 Wn. App. 473, 475, 662 P.2d 67 (1983). "Conclusory allegations, speculative
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1 statements or argumentative assertions that unresolved factual matters remain are not
2 sufficient to preclude an order of summary judgment.” *Turngren v. King County*, 33
3 Wn. App. 78, 84, 649 P.2d 153 (1982). Instead, the non-moving party must put forth
4 specific disputed facts that are material to the legal issue before the court.

5 Summary judgment is appropriate here because it is undisputed that one of the
6 primary purposes for which the Admiral’s Cove Beach Club association was formed
7 was the maintenance of recreational facilities, including, the swimming pool which is
8 the subject of this action. Absent a two-thirds vote by the association members to
9 change the association’s purposes, the actions of the Board of Directors of ACBC
10 must remain consistent with the Association’s stated purpose. No disputes of fact
11 exist with regard to this particular argument.

12
13 **Declaratory Judgment.** Under the Uniform Declaratory Judgments Act, RCW
14 Ch. 7.24, courts of record are authorized to “declare rights, status and other legal
15 relations”. RCW 7.24.010; *Williams v. Poulsbo Rural Tel. Ass’n*, 87 Wn. 2d 636, 643,
16 555 P.2d 1173 (1976). Accordingly, a person whose rights are affected may obtain a
17 declaration of rights thereunder. RCW 7.24.020; see also *State ex rel. Lvon v. Board*
18 *of Cy. Comm’rs*, 31 Wn. 2d 366, 373, 196 P.2d 997 (1948).

19
20 Previously in Washington it was held that a lack of an adequate remedy at law
21 is a prerequisite to the right to a declaratory judgment, see *Watson v. Washington*
22 *Preferred Life Ins. Co.*, 81 Wn. 2d 401, 502 P.2d 1016 (1972); however, existence of
23 an alternative remedy no longer precludes judgment for declaratory relief in
24 appropriate cases, *Ronken v. Commissioners*, 89 Wn. 2d 304, 572 P.2d 1 (1977), see
25 also CR 57: “The existence of another adequate remedy does not preclude
26 a judgment for declaratory relief in cases where it is appropriate.” Declaratory relief is
27 considered appropriate when judgment will serve useful purpose in clarifying and
28 settling legal relations in issue, and when it will terminate and afford relief from
29 uncertainty, insecurity, and controversy giving rise to proceeding. *Guerra v. Sutton*,
30 783 F.2d 1371 (C.A.9, Wash, 1986).
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1 In applying the Uniform Declaratory Judgments Act, Washington courts have
2 maintained that, absent issues of major public importance, a justiciable controversy
3 must exist before a court's jurisdiction may be invoked under the act. *DiNino v. State*,
4 102 Wn. 2d 327, 330, 684 P.2d 1297 (1984). For purposes of declaratory relief, a
5 justiciable controversy warranting declaratory relief is:
6

7 (1) ... an actual, present and existing dispute, or the mature seeds of one, as
8 distinguished from a possible, dormant, hypothetical, speculative, or moot
9 disagreement, (2) between parties having genuine and opposing interests,
10 (3) which involves interests that must be direct and substantial, rather than
11 potential, theoretical, abstract or academic, and (4) a judicial determination
12 of which will be final and conclusive. *Diversified Indus. Dev. Corp. v. Ripley*,
13 82 Wn. 2d 81, 815, 514 P.2d 137 (1973).

14 While it has commonly been indicated that the burden of proof, in
15 a declaratory relief action, is on the Plaintiff to produce evidence in support
16 of judgment, *Taylor v. State*, 291 Wn. 2d 638, 188 P. 2d 671 (1948), it has also been
17 noted that in declaratory judgment cases the question of has the burden of proof is
18 governed not by the formal position of parties but by the nature of the relief
19 sought, *Seattle Audubon Soc. V. Lyons*, 871 F.Supp. 1291, affirmed 80 F.3d 1401
20 (W.D. Wash 1994). Regardless, the evidentiary standard is a preponderance of the
21 evidence, *Ohio Cas. Ins. Co. V. Nelson*, 49 Wn. 2d 748, 306 P. 2d 201 (1957),
22 although granting of declaratory relief is discretionary with the trial court, *Ronkin v.*
23 *County Commissioners*, 89 Wn. 2d at 310, and thus the court may, after full
24 consideration of the merits, exercise its discretion to refuse to grant declaratory relief
25 because the state of the record is inadequate to support the extent of the relief
26 sought. *U.S. v. State of Wash.*, 759 F. 2d 1353, *certiorari denied* 106 S.Ct. 407, 474
27 U.S. 994, 88 L.Ed.2d 358 (C.A. Wash. 1985).
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29 It is also important to note a declaratory judgment action is not the same or
30 similar to a summary judgment action. In a declaratory judgment action a trial court
31 may decide only those issues of fact which are necessary or incidental to the
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1 declaration of legal relations sought by the parties. *Progressive Casualty Ins. v.*
2 *Cameron*, 45 Wn. App. 272, 724 P.2d 1096 (1986) and the court does not view facts in
3 a light favorable to the nonmoving party but rather decides those facts necessary in
4 support of the requested judgment and relief.

5 If proceeding under a request for declaratory relief, the appropriate standard of
6 review, on appeal, is whether the trial court abused its discretion in declining to
7 grant declaratory relief. In declaratory judgment actions, appellate review may ensue
8 in two situations. First, under the Uniform Declaratory Judgments Act, trial courts have
9 discretion to determine whether to entertain a declaratory judgment action.

10 Accordingly, an appellate court may be called upon to determine whether the trial,
11 court erroneously exercised its discretion either to consider or refuse to consider such
12 an action. Second, in cases in which a court decides the declaratory judgment action
13 on its merits, an appellate court may be called upon to determine the propriety of the
14 lower court's grant or denial of declaratory relief. *Nollette v. Christianson*, 115 Wn.2d
15 594, 599, 800 P.2d 359 (1990).

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18 When a Court issues a declaratory judgment, it has also been found proper, if
19 appropriate in such situation, for the trial court to retain jurisdiction and issue, together
20 with its declaratory judgment, appropriate relief or a coercive remedy of injunction as a
21 convenient and appropriate method for settling the issues presented. *Ronken v.*
22 *County Commissioners*, 89 Wn. at 309. That continuing jurisdiction is important in the
23 case at bar because of the fluid and ongoing nature of the Board of Directors actions
24 and activities relative to the swimming pool and related facilities.

25
26 Plaintiff is entitled to a declaratory judgment as part of the claim for relief in this
27 case if (1) Plaintiff and Defendant have existing and genuine rights or interests; (2)
28 these rights or interests [are] direct and substantial; (3) the determination will be a final
29 judgment that extinguishes the dispute identified; and (4) the proceeding [is] genuinely
30 adversarial in character." *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186
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1 (2007); see also RCW 7.24.010. Inherent in these requirements is a standing
2 requirement. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411 (2001).

3 The purpose of these requirements is to ensure that the court enters a final decision
4 on an actual dispute between opposing parties with a genuine stake in the court's
5 decision. *Id.* The court's determination of the corporation's purpose and the
6 corresponding role and function of the ACBC swimming pool and related facilities as
7 part of that corporate purpose will guide the parties in this dispute and any future
8 decisions made concerning the retention, maintenance and operation of the swimming
9 pool.
10

11
12 The evidence presented in this case unequivocally supports the Plaintiff's
13 contention that the formerly elected ACBC board of directors took action that was
14 different than or contrary to the express intentions of the members. Those intentions
15 were expressed in the form of the approved motion that was made and seconded at
16 the 2012 annual membership meeting. The former board's actions were contrary to
17 the authority vested in them and a declaration from this court concerning the manner
18 in which the board has acted in furtherance of the members' express desires is
19 necessary to resolve the dispute between the Plaintiff, other association members and
20 the Defendant, ACBC.
21

22 There is a present and actual controversy between Plaintiff and Defendant
23 ACBC regarding whether ACBC and its board have a legal right to decommission or
24 remove the swimming pool and use a special assessment of the membership to fund
25 that action. There is also an actual controversy about whether the Defendant and the
26 formerly constituted board of directors complied with the purpose, meaning and intent
27 of the membership's unanimous decision and resolution submitted and approved at
28 the 2012 membership meeting. The court should determine and "declare" that The
29 Admiral's Cove Beach Club community pool cannot be demolished or
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32 decommissioned by an action of the Board of Directors that is not predicated by a two

1 thirds vote of the members to change the purposes of the association as provided in
2 the Articles of Incorporation.

3 **Permanent Injunction.** A permanent injunction precluding any such action
4 should be ordered as part of the relief requested in this motion. The primary reason
5 that the Plaintiff amended his Motion for Summary Judgment, was to clarify the fact
6 that he is not seeking a determination, through injunctive relief, that the directors and
7 members of ACBC are obligated to operate, maintain, and repair the swimming pool
8 and related facilities simply because deeds included language granting some owners
9 rights to the use of the ACBC swimming pool and related facilities as part of the
10 conveyance. The injunctive and declaratory relief sought by the Plaintiff in this
11 proceeding are premised primarily upon the fact that both the Articles of Incorporation
12 and the Bylaws of ACBC describe express purposes and “objects” for the
13 Association’s creation and existence. Those purposes were fulfilled by the construction
14 and maintenance of the current ACBC swimming pool and facilities. The Plaintiff and
15 many other property owners relied upon the existence of these stated purposes when
16 they made their decision to purchase. As noted in his request for relief described in
17 this Amended Motion, the Plaintiff does not intend for the injunctions to supersede or
18 supplant the ACBC members right and ability to change the purposes and object of the
19 association through a 2/3 majority vote of the members taken on that specific subject.
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22 In order to preserve the integrity of the Association’s organizational purposes,
23 the court should not only permanently enjoin the Board of Directors from taking
24 affirmative action to decommission the swimming pool and related facilities, but also
25 provide affirmative injunctive relief by ordering the Board, in conjunction with the two
26 pool committees specified in and consistent with the October 2012 Motion, to
27 immediately determine an appropriate funding mechanism for renovation, rehabilitation
28 and ongoing maintenance and repair of the swimming pool, such as a membership
29 dues increase and/or assessment. The Board should also be directed to use all legal
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1 means to enforce collection of dues and assessments as it is obligated to do,
2 consistent with Article V of the Articles of Incorporation.

3 If the pool is demolished, the injury to Plaintiff and other association members
4 will be irreparable and cannot be compensated by *post hoc* money damages. "Courts
5 have generally found remedies to be inadequate in three circumstances: (1) the injury
6 complained of by its nature cannot be compensated by money damages, (2) the
7 damages cannot be ascertained with any degree of certainty, and (3) the remedy at
8 law would not be efficient because the injury is of a continuing nature." *Kucera*, 140
9 Wn.2d at 210. Here, all three circumstances are present. First, a loss of the ability to
10 recommission or reconstruct the swimming pool in the future because of
11 environmental and shoreline restrictions by its very nature cannot be compensated by
12 money damages. Second, the loss of the value to each individual lot owner of the fair
13 market value of their property due to Defendant's potential activity and prior activities
14 to decommission or demolish the swimming pool, cannot be ascertained with any
15 degree of certainty. Third, the injury is or will be continuing because if the swimming
16 pool is ever demolished or decommissioned in the future, the swimming pool and
17 related facilities may never be replaced because of environmental regulations and
18 permitting restrictions that are now in place that did not exist at the time the pool was
19 originally constructed and ACBC was formed.
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23 24 III. CONCLUSION

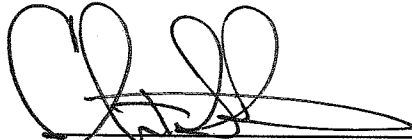
25 The facts upon which Plaintiff Robert Wilbur relies are undisputed. The purpose
26 and essential function of ACBC is the maintenance and operation of a recreational
27 facility that includes a swimming pool. Many of the persons who acquired property
28 within the plat did so with the express understanding that they were receiving not only
29 an interest in a parcel of real estate, but also the right to membership in an
30 organization that operated a unique swimming pool and related facilities. So long as
31 the association's stated purpose and object remain the same as originally declared in
32

1 the Articles and Bylaws, any effort by an elected Board of defendant, ACBC to
2 decommission or remove or fail to maintain the swimming pool, including the failure to
3 raise adequate funds for maintenance and repair, violates the property rights and
4 expectations of the association's members and could deprive them of the value of their
5 property without proper authority. The court should enjoin any activity that is contrary
6 to this stated purpose and declare as a matter of law that the Board is obligated to
7 both refrain from decommissioning or destroying the swimming pool but also to raising
8 sufficient funds through dues and assessments to properly maintain the swimming
9 pool and related facilities so that its value is not lost through neglect or inaction.
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15 Dated this 12th day of January, 2015.
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17 Law Office of Christon C. Skinner, P.S.
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CHRISTON C. SKINNER/ #9515
Attorney for Plaintiff