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WHATCOM COUNTY
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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY**

SCOTT HILLIUS, et al.,
Plaintiffs,

v.

18 PARADISE LLP et al.,
Defendants.

No. 20-2-00701-37

[PROPOSED] ORDER GRANTING
REVISION OF COURT'S ORDER ON
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT

Judge Robert E. Olson
February 26, 2021
Motions Calendar

This matter came before the Court on the motion of Plaintiffs for reconsideration on partial summary judgment. The Court having considered the motion, the responses of Defendants, and oral argument,

IT IS HEREBY ORDERED that Plaintiffs' request for Revision of Court's Order is granted.

IT IS FURTHER ORDERED that the Clerk of the Court revise the Court's Order on Plaintiffs' Motion for Partial Summary Judgment (file no. 115) as set forth here.

2. This Court rules as follows:

a. Because the parties have concurred on the record in this respect, the Court rules as a matter of law pursuant to CR 56(d) that 18 Paradise and MJ Management intended for the Lease Agreement to delegate full declarant rights to MJ Management and to confer on MJ Management complete discretion with respect to the exercise of those rights;

b. Questions of fact preclude summary judgment whether the plan of development set forth in the Declaration authorizes the adoption of the Sixth and Seventh Amendments by less than the unanimous consent of the affected homeowners;

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1 c. Questions of fact preclude summary judgment whether the Sixth and Seventh Amendments
2 violated applicable statutes and ordinances, and, if so, whether such a violation would
3 invalidate the amendments;

4 d. Questions of fact preclude summary judgment whether the Sixth and Seventh Amendments
5 violated the plan of development as set forth in the Declaration;

6 e. Pursuant to CR 56(d), the Court rules as a matter of law that the "Common Open Space"
7 as that term is used in the Declaration is limited to the property described in paragraph 1.3.8
8 of the Declaration and the phasing amendments recorded in compliance with paragraph 3.8
9 of the Declaration.

10 and

11 f. Pursuant to CR 56(d), the Court rules as a matter of law that the maintenance fees assessed
12 under the Declaration may only be spent on maintenance of the Common Open Space as
13 defined in paragraph 1.3.8 of the Declaration and the maintenance set forth in paragraph 3.8
14 of the Declaration, to wit, maintenance of the entry signs for the residential development and
15 surrounding landscaping, and mail box surrounds, payment of electric bills for street lights
16 serving the Homestead PRD, and maintenance of street lights withing the Homestead PRD to
17 the extent not maintained by the City of Lynden.

18 3. The Court finds insufficient evidence to rule on the question whether the failure to obtain the
19 City's approval of the Sixth and Seventh Amendments has any legal effect on the validity of the
20 amendments. These questions are reserved without prejudice.

21 4. Nothing in these rulings serves to establish that the Sixth and Seventh Amendments are valid
22 or invalid in fact or law.

23 DATED this ____ day of _____, 2020.

24 _____
25 Judge Robert E. Olson

26 Presented by:

27 DAVIS LEARY PLLC

By 

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Attorneys for Plaintiffs

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