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Court of Appeals
Division II
State of Washington
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Court of Appeals No. 49038-2-II

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

SPINNAKER RIDGE COMMUNITY ASSOCIATION, INC.

Plaintiff /Respondent,

v.

CHRISTOPHER and SUZANNE GUEST, and their marital community,
Defendants/Appellants.

CHRISTOPHER and SUZANNE GUEST, and their marital community,
Third Party Plaintiffs/Appellants.

v.

DAVID LANGE and KAREN LANGE, individually and the marital
community comprised thereof; JOHN FARRINGTON, individually and
the marital community comprised of John Farrington and Jean Farrington;
WALLACE "BOB" TIRMAN, individually and the marital community
comprised of Wallace "Bob" Tirman and Valerie Tirman: and JOHN
DOES 1-50,
Third Party Defendants/Respondents.

AMENDED
APPELLANT SUZANNE GUEST BRIEF

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I. INTRODUCTION

Appellant Suzanne Guest (“Guest”), without any Guest waiver of any kind, respectfully submits this brief on her own behalf and also on behalf of the Guest marital community who was also sued by the Spinnaker Ridge Community Association corporation (the “Association”, the “Association Club”, the “Club” or the “Social Club”) in a statutorily *barred* May 2014 Association Complaint and action if the Guest marital community is deemed a separate party in this action.

Under the Guests’ June 1, 2016 Deed of Trust contract, recorded with the Pierce County Auditor on June 3, 2016, as Auditor Document No. 201606030884, entered into before any Court of Appeals *Guest v. Lange* opinions or any mandates were issued, Guest is also required to defend, protect and preserve the integrity of the Spinnaker Ridge Development subdivision Gig Harbor, Washington (“SRD” or “SR”) Lot 5, 6833 Main Sail Lane, title that the Guests transferred and conveyed to the Deed of Trust Trustee on June 1, 2016, and the integrity of the lender’s Lot 5 loan security, collateral and primary lien. Appendix A (annotated by Guest); CP _____.

The Trustee and lender are not named parties in this action, in *Guest v. Lange* or in these appellate proceedings. The Trustee and lender, however, have intervening statutory, contract and common law rights in this

action and in *Guest v. Lange*, and a defined interest in the Lot 5 real and personal property.

Christopher Guest, a separate party in this action and a separate appellant, is filing a separate RAP 10.1(g)(2) brief. RAP 10.1(g)(2) states and provides in pertinent part that in cases involving multiple parties that a party may file a “separate brief and adopt by reference any part of the brief of another”. If a separate Christopher Guest brief is not permitted, then in that event Christopher Guest joins in this brief.

In a separate Christopher Guest brief, Christopher Guest adopts the entirety of this brief including the Introduction, any Appendix Exhibits, any facts, any authorities, any assigned errors, any issues related to those assigned errors, any arguments and any requests for relief, remedies or recovery including an award of RAP 18.1 and RAP 18.9 attorney’s fees, costs, expenses, indemnity, and any RAP 18.9 Guest damages, as well as any statutory, constitutional, contract, and common law fees, costs and expenses available to the Guests including litigation bad faith fees, costs, expenses, damages and interest pursuant to RAP 10.1(g)(2). If a separate Christopher Guest brief is permitted, Guest adopts the entirety of that brief including all sections, authorities, facts, arguments, requests for relief, remedies and recovery and any Appendix Exhibits under RAP 10.1(g)(2) also.

If the Guests are remanded, Guest respectfully requests that the Guests be remanded to one of two adjacent Pierce County Superior Court judicial districts for the entry of judgments and any necessary injunctions in the Guests' favor along with any necessary superior court reversal and vacation of any and all orders, rulings, decisions, acts, actions, injunctions and/or judgments in the Association, David Lange and Karen Lange (the "Langes" or "Lange"), Third Party Defendants, State Farm insurance company (an un-named but driving force entity in this action), any un-named but indispensable parties, and any of their *Spinnaker Ridge Community Association, Inc. v. Guest* attorneys' favor.

Guest respectfully submits that the lack of jurisdiction and the lack of standing issues in this action and in these appellate proceedings are dispositive in the Guests' favor requiring reversal and vacation of any and all superior court orders, rulings, decisions, acts, actions, injunctions and judgments adverse to the Guests and/or in favor of the Association, the Langes, the Third Party Defendants, State Farm and any of their attorneys in this action as a matter of law.

This is a land use, LUPA, chapter 36.70C RCW, chapter 58.17 RCW, title, Association, Lange, Third Party Defendant and their attorneys and insurers lack of standing, a "real estate bluff", a superior court lack of jurisdiction, lack of standing, separation of powers, "unclean hands",

complex fraud and deceit case and an Association, Lange and Third Party Defendant sham. Appendix B (selected LUPA, chapter 36.70C RCW statutes annotated by Guest); Appendix C (selected chapter 58.17 RCW statutes annotated by Guest).

Fraud and deceit, particularly organized, collective and multi-participant orchestrated long term and long standing fraud and deceit complicate even the simplest case.

Absent organized and orchestrated fraud and deceit, this case would not exist. It should not exist. The *Guest v. Lange* case was over in the Guests' favor in December 2011, with only judgment in the Guests' favor to be entered, Lange removal of the April 2011 Lange constructed deck on the Guests' Lot 4 property removed, any necessary Guest injunctions to be issued in the Guests' favor removing the Lange constructed deck on Lot 5 and any Lange, Lange successor and/or any Lange assign ejectment injunction, along with any Guest trespass and other damages, loss and injury judgments to be entered in the Guests' favor along with an award of Guest attorneys fees, costs and expenses and interest.

In the absence of fraud and deceit, the *Guest v. Lange* action was a simple case. In the absence of fraud and deception, the *Spinnaker Ridge* case was and would a simple case. The Langes stipulated as part of the December 6, 2011, City land use Lange and Lot 4, 6801 Mainsail Lane, Gig

Harbor, Lange and City final LUPA 'after-the-fact' Lot 4 deck construction permit with a permit mandate that the Langes "shall' remove all portions of the Lange April 2011 deck that the Langes constructed "outside the lot lines of parcel #7837000040", i.e. Lot 4, 6801 Mainsail Lane, Gig Harbor, "including any footing and support structures." Appendix D (CP 549-553, 624-628, 630, 637-640, 652, 673 (as annotated by Guest); Appendix E (Spinnaker Ridge Development platted subdivision recorded final plat, 5 pages) and Appendix E (Guest enlarged and/or annotated excerpts from Appendix E, page 3 of 5, showing the location of SR Lot 4 owned by the Langes, and immediately adjacent Lot 5 owned by the Guests with its shared common northwest to southeast absolutely straight linear Lot side perimeter property boundary line).

The law required and mandated that the Langes - at a minimum - remove all portions of any deck located on any part of SR Lot 5 in December 2011 at the Langes' sole cost and expense. The Langes did not comply with the December 6 2011, final City land use LUPA Lot 4 deck construction building permit and mandated permit removal of all portions of the deck on the Guests' Lot 5 property. The Guests sued the Langes in September 2011, and filed the lawsuit with the Pierce County Superior Court on December 6, 2011 when the Langes refused to remove the deck they had constructed

on Lot 5 when the Guests were out of town over the Guests' known objections and opposition despite numerous requests and demands.

On December 6, 2011, the Guests obtained what the Guests sued for in September 2011, a Lange stipulated final City deck permit mandating Lange removal of the entirety of the Lange constructed deck from Lot 5, an unappealed City land use LUPA decision that became final on December 31, 2011, when no one appealed the permit, a LUPA land use deck removal mandate not subject to any appeal, challenge, alteration, modification, amendment, change, litigation or interference by any person entity or individual – including with respect by any court - thereafter in any forum. The Guests were the prevailing parties in *Guest v. Lange* in December 2011, retroactive to September 2011, and retroactive to April 2011 when the Langes constructed part of deck on the Guests' Lot 5 property when the Guests were out of town over the Guests' known objections.

On December 3, 2013, the City approved the Guests' Lot 5 deck demolition and new Guest deck construction permit application that included independent Guest removal of the entirety of the Lange deck still sitting on the Guests' Lot 5 property, with new Guest deck construction in the exact same location. The City issued its December 3, 2013, land use LUPA Guest Lot 5 deck demolition and deck construction permit and mailed the permit to the Guests. No one appealed that December 3, 2013

City LUPA land use Guest Lot 5 permit. On December 28, 2013, that unappealed City LUPA land use permit became final, no longer subject to challenge, dispute, alteration, modification, change, amendment, litigation or any interference by any person, entity or individual – including with respect by any court or subject to any judicial review.

On December 28, 2013, retroactive to December 3, 2013, the Guests became prevailing parties ab initio in what would become the May 19, 2014, LUPA barred Association Complaint and over four (4) years of barred Association litigation. Under LUPA, the only order that the superior court could enter in 2014 was an order dismissing the Association Complaint with prejudice. Appendix G, Appendix H (Guest enlarged excerpts of CP 50 attached to the Guests' January 21, 2014 email to John Farrington City permit stamps, and notations regarding removal of the Lange deck subject only to the Lot 4 and Lot 5 shared common Lot property boundary line not being altered, adjusted, changed or modified by any superior court).

The Association sued the Guests in 2014 to alter, interfere with, 'appeal', challenge, and modify the Guests' already vested statutory, constitutional, contract and common law rights in the December 6, 2011, final LUPA permit mandate for complete removal of all portions of the Lange deck from Lot 5, and the Guests December 3, 2013 final City LUPA deck demolition and deck construction permit, in a continued effort to force

and compel the Guests to ‘move far away’ from Spinnaker Ridge. Appendix K (July 21, 2011 “Second Thoughts” email authored by then Association vice president John English and Association board member transmitted to Langes and two Williamson spouse board members).

II. ASSIGNED ERRORS

The focus of this brief is dispositive lack of jurisdiction, lack of standing and “unclean” hands.

1. The superior court erred when it exercised any original general trial court or any original general appellate court jurisdiction over the Association Complaint and failed to enter any order ab initio dismissing the Association Complaint with prejudice as barred by LUPA.

2. The superior court erred when it signed and entered any order, ruling, decision, injunction and/or judgment against and/or adverse to the Guests in the case as it had no jurisdiction.

3. The superior court erred when it failed to reverse and vacate all of its orders, rulings, decisions, injunctions and judgments in the Association, Lange, Third Party Defendants, State Farm and their attorneys favor.

III. ISSUES PERTAINING TO ASSIGNED ERRORS

1. Did the superior court have any jurisdiction to hear, entertain, consider, rule on and sign or enter any order, ruling, decision,

injunction or judgment in the Association, Lange or Third Party Defendants, State Farm's or any of the attorneys favor under LUPA? (AOE 1-3). No.

2. Did the superior court have any jurisdiction or authority to interfere with the Guests' constitutional, statutory, contract and common law rights in the December 6, 2011 and December 3, 2013 City final land use LUPA permits? (AOE 1-3). No.

III. STATEMENT OF THE CASE AND FACTS

A. Guests Were And Are Prevailing Parties

Guest respectfully submits to the Court that the Guests in fact, in reality and under law were and are the prevailing parties in the underlying, related and linked *Guest v. Lange* matter ab initio, and also the prevailing parties in this action as well also ab initio as further outlined below under the Washington Land Use Petition Act ("LUPA), chapter 36.70C RCW statutes, and Washington land use law, notwithstanding the limited and restricted *Guest v. Lange* jury trial, two *Guest v. Lange* opinions, and the two *Guest v. Lange et al.* mandates on jurisdictional grounds.

B. The Langes

The Langes are named parties in the underlying *Guest v. Lange* action and in this case. The Langes owned SRD Lot 4, 6801 Main Sail Lane, Pierce County Tax parcel #7837000040. The Guests own SR Lot 5, 6833 Main Sail Lane immediately adjacent to SR Lot 4.

Lot 4 and Lot 5 share a common northwest to southeast absolutely straight linear Lot side perimeter property boundary line, as evidenced by the recorded City of Gig Harbor (“City”) approved, certified and executed mapped and surveyed SRD chapter 58.17 RCW final subdivision plat, recorded on January 31, 1986 as Pierce County Auditor Document No. 8601310176, at 10:20:00 a.m, on page 3 of 5. Appendix E (true and correct letter sized copy of the January 31, 1986 recorded SRD final plat). Appendix F (Guest enlarged and/or annotated excerpt of that document attached as Appendix E).

The Lot 4/Lot 5 shared common Lot property boundary line remains in the exact same location today that it was in 1986, in 1993 when the Langes purchased SR Lot 4, and in November 2004 when the Guests purchased Lot 5.

In March 2011, the Langes tore down and demolished their then existing Lot 4 deck and part of a deck that had been constructed on part of the Guests’ Lot 5 property with the “friendly neighbor understanding’, permission, consent and/or acquiescence of all prior residential owners of Lot 5. In April 2011, the Langes constructed a new Lange deck on their Lot 4 property and part of a deck on the Guests’ Lot 5 property when the Guests were out of town and out of state over the Guests’ known objections. The

Langes did not have a City deck construction building permit to construct that deck. The Langes no longer live at Spinnaker Ridge.

C. The Guests

As above, the Guests own SR Lot 5 immediately adjacent to Lot 4. The Guests continue to live at Spinnaker Ridge. Guest complained to the City after the Langes refused to remove the deck that they had constructed on the Guests' Lot 5 property over the Guests' objections despite numerous request and Guest demands that the Langes constructed their deck in April 2011 without a City deck construction permit. Guest notified the City that the Guests wanted the Lange constructed deck on their property removed.

D. The December 6, 2011, Final City Lange And Lot 4 LUPA Deck Construction Building Permit Mandating Complete Removal Of Any Lange Constructed Deck From Lot 5

On December 6, 2011, after the Langes had already constructed a new Lange deck on Lot 4 in April 2011 and part of a deck on part of the Guests' Lot 5 property when the Guests were out of town (and state) over the Guests' known objections, the City issued its first ever SR Lot 4 deck construction building permit. Although the City issued a prior final land use Lot 4, 6801 Main Sail Lane, building construction permit in August 1986 that did not permit construction of any deck on any part of Lot 4, that final City Lot 4 construction permit stated on its face as part of the permit and if there was ever going to be a Lot 4 deck, that a separate City building

permit will be required. No one applied for any SR Lot 4, or obtained, the mandatory City SR Lot 4 deck construction permit until The December 6, 2011, City Lange and Lot 4 deck construction building permit was the first Spinnaker Ridge Development subdivision deck construction permit that the City That December 6, 2011, Lange and Lot 4 City 'after the April 2011 Lange deck construction fact' City permit approved the Langes' November 2011 application for a Lot 4, 6801 Main Sail Lane, Lange constructed deck on the Langes Lot 4 property within the lot lines of SR Lot 4, and also affirmatively required and mandated that the Langes "shall" remove all portions of the already Lange constructed deck located "outside of the lot lines of parcel #7837000040", i.e. outside the lot lines of SR Lot 4, "including any footing and support structure. Appendix D (annotated by Guest).

The Langes stipulated to the December 6, 2011, City permit, its terms, words, provisions, conditions, and mandates. The Langes did not file a LUPA compliant Petition appealing or challenging any part of the December 6, 2011, City Lange and Lot 4 deck construction permit and Lot 5 deck removal. On December 31, 2011, the Lange and Lot 4 City land use LUPA permit became final and not subject to any appeal, challenge, alteration, modification, change, or interference by any person, entity or individual, or subject to any judicial review, alteration, modification,

interference or change the day after the 21 day LUPA appeal deadline passed and no one appealed. The Association did not appeal the December 6, 2011, Lange and Lot 4 City deck construction and Lot 5 deck removal permit, only permitting the Langes to construct a Lange deck within the “lot lines of parcel #7837000040”.

The already final unappealed December 6, 2011, City Lange and Lot 4 LUPA Lot 4 limited deck construction permit with the mandated removal of all portions of the Lange constructed deck from Lot 5 barred any Lange litigation or any other litigation after December 6, 2011 (at a minimum) in any forum by any person, entity or individual, including in this case, attempting to ‘appeal’, ‘challenge’ or alter the Lange stipulated permit mandate requiring complete removal of all portions of the April 2011 Lange constructed deck from Lot 5. Under LUPA, the *Guest v. Lange* case was over and resolved in the Guests’ favor by December 2011. The only matter that should and could been addressed in *Guest v. Lange* after the December 6, 2011, City LUPA Lange and Lot 4 permit became final, was the Guests’ attorney’s fees, costs, expenses, immediate removal of the Lange constructed deck on Lot 5, and ultimately the Guests’ damages with any necessary judgments, orders and/or injunction in the Guests’ favor.

Guest v. Lange fees, costs and expenses and ultimately the Guests' damages to be addressed in *Guest v. Lange*. There is no *Guest v. Lange* supported judgment The 2012 *Guest v. Lange* Lange answer, affirmative defenses and counterclaims attempting to 'appeal', 'challenge' and alter the final December 6, 2011, City On December 31, 2011, retroactive to December 6, 2011, and also retroactive to September 22, 2011 (the day the Guests sued the Langes) and retroactive to April 7, 2011 the day the Langes began constructing a deck on the Guests' Lot 5 property when the Guests were out of state over the Guests known objections, the Guests became the prevailing parties in the *Guest v. Lange* action. The purpose of the *Guest v. Lange* lawsuit was to remove the Lange constructed deck from Lot 5, and eject the Langes, any Lange successor and any Lange assign from Lot 5.

On December 3, 2013, the City issued a final unappealed Guest land use LUPA permit to the Guests barring any Association Complaint.

E. The Washington Land Use Petition Act (LUPA)

As further outlined below, Guest submits that under LUPA and its mandatory procedures and processes any judicial review of any local legislative body land use decision that is covered by the Act (which includes building permits under RCW 36.70C.020), including the December 6, 2011, City Lange and Lot 4 'after the fact' Lot 4, 6801 Main Sail Lane, was and is barred under RCW 36.70C.040 (1)(2) and (3) if a timely LUPA Petition

appeal of any such land use decision was not filed in a superior court within 21 days after it was issued to preserve any right to appeal or challenge, thereafter barring any subsequent challenge or appeal by any person, entity or individual – and with respect by any court - attempting to alter, modify, change or extinguish any permit condition, term, provision, words or stipulation.

In November 2011, the Langes submitted an ‘after-the April 2011 Lange new deck construction- fact’ application to the City of Gig Harbor (“City”) for a Lange Lot 4, 6801 Mainsail Lange, Gig Harbor, Washington Spinnaker Ridge Development platted subdivision (“SRD” or “SR”) deck construction permit after the Guests had already sued the Langes in September 2011 to remove the April 2011 new Lange deck that the Langes had constructed on part of the Guests’ Lot 5 property and to eject the Langes. The Langes submitted the mandatory deck permit application to the City, required by City Municipal Code, after Guest complained to the City before the Guests sued the Langes in September that the Langes had constructed a new Lange deck on part of the Guests’ Lot 5 property without a City permit, and the City wrote to the Langes notifying the Langes that they were required to apply for and obtain a City deck construction permit before construction.

The Langes did not apply for a City deck construction permit on any part of SR Lot 5. The Langes did not obtain a City deck construction permit for any Lange constructed deck on any part of SR Lot 5. On December 6, 2011, the City issued a Lange and Lot 4, 6801 Mainsail Lane, Gig Harbor, Spinnaker Ridge Development platted subdivision land use Lot 4 deck construction LUPA building permit that mandated as part of the permit that the Langes “shall” remove all portions of “the deck located outside of the lot lines of parcel #7837000040”, i.e. outside of the lot lines of SR Lot 4, “including any footing and support structure”.

The December 6, 2011, Lange and Lot 4 City LUPA unappealed land use ‘after the fact’ deck Lot 4 construction permit and mandated Lange removal of all portions of said deck constructed on the Guests’ Lot 5 property which was and is “outside of the lot lines of parcel #7837000040”. The Langes stipulated to the terms, words, conditions, provisions and mandates of the December 6, 2011 City Lange and Lot 4 deck removal and deck construction permit. The December 6, 2011, Lange and Lot 4 City LUPA deck construction and building permit became final as a matter of law on December 31, 2011 when no person, entity or individual filed and served a LUPA compliant Petition naming the City and the Guests, and the Langes if someone other than the Langes had filed a Petition, as mandatory Petition Respondents on or before December 30, 2011. RCW 36.70C.020;

RCW 36.70C.030(1); RCW 36.70C.040(1)(2) and (3); Appendix B (annotations by Guest).

Guest respectfully submits that the Guests were the prevailing parties in *Guest v. Lange* ‘as of’ December 6, 2011, retroactive to September 2011 (when the Guests first sued the Langes), and retroactive to April 2011 when the Langes constructed an unpermitted new Lange deck on part of the Guests’ Spinnaker Ridge Development subdivision Gig Harbor, Washington (“SRD” or “SR”) Lot 5 property when the Guests were out-of-town and out-of-state over the Guests’ known objections. No *Spinnaker Ridge Community Association, Inc. v. Guest* There should be no *Spinnaker Ridge v.* The Guests sued the Langes to remove the Lange deck that the Langes constructed on the Guests’ Lot 5 property in April 2011 and to eject the Langes and any Lange successor and/or assign when the Langes refused to remove the deck despite the Guests’ repeated requests and demands. The Guests filed their original Complaint with the Pierce County Superior Court on December 6, 2011.

In the meantime, the Langes submitted an ‘after-the-fact’ application to the City of Gig Harbor (“City”), the Guests sued the Langes on September 22, 2011 serving the Langes then attorney Gig Harbor attorney David Gordon (who had also been Association counsel) with a

copy of the original Complaint along with Lange Summons that Attorney Gordon accepted on the Langes behalf.

The Guests' status as the prevailing parties in the *Guest v. Lange* action preceded and pre-dated the filing of any *Guest v. Lange* Lange Answer or Counterclaim both of which were barred under LUPA as an untimely Lange 'appeal' and challenge of the City of Gig Harbor's ("City") December 6, 2011, 'after - the Lange construction-fact' already final Lange and Lot 4 Lange stipulated deck construction and **mandatory deck removal from Lot 5** LUPA building permit. The 2012 Lange *Guest v. Lange* answer and counterclaim, put in the *Spinnaker Ridge* record by Association and Lange attorney Sharon Ambrosia-Walt, of counsel at the Wilson Smith Cochran Dickerson ("Wilson") law firm, was also a barred untimely 'appeal' and attempted challenge to the August 1986 City Lot 4 already final unappealed construction building permit that required as part of the August 1986 building permit that any Lot 4 deck required an application for a separate City building permit, with a mandatory 5 foot set back from the Lot 4 property line for any Lot 4 structure.

The Association did not file and serve a LUPA compliant Petition in December 2011 naming the City, the Guests and the Langes as mandatory Petition Respondent's appealing any part of the December 6, 2011 City Lange and Lot 4 LUPA deck construction building permit within 21 days

after it was issued. RCW 36.70C.030(1) and RCW 36.70C.040(1)(2)(3) and (4)(a). The Association did not file and serve a LUPA compliant Petition naming the City and the Guests as mandatory Petition Respondents within 21 days after the City issued the Guest Lot 5 deck demolition and new deck construction December 3, 2013, building permit as an appeal of any part of that City LUPA building permit.

No one filed a LUPA Petition appealing the Lange and Lot 4 December 6, 2011, after-the-fact mandatory removal of the Lange constructed deck from Lot 5 and new Lange Lot 4, 6801 Mainsail Lane, deck construction permit. No one filed a LUPA Petition appealing the December 3, 2013, City Guest Lot 5 deck demolition LUPA building permit that provided the Guests with the permit “authority of law” to independently remove (demolish) the Lange constructed deck on the Guests’ Lot 5 property and new Guest deck construction permit to construct a Guest deck in that exact location *up to* but of course not crossing over the absolutely straight linear Lot 4 and Lot 5 shared and common northwest to southeast Lot side property boundary line.

The December 6, 2011 Lange deck removal and deck construction City permit became final on December 31, 2011 under LUPA. The December 3, 2013, Guest Lange deck removal and Guest new deck construction City LUPA permit became final on December 28, 2013. The

August 1986 SR Lot 4 City land use construction building permit without any permit for any Lot 4 deck, requiring a separate permit application to the City and issuance of a separate City permit with a mandatory 5 foot set back from the Lot 4/Lot 5 shared and common side Lot boundary property line became final thirty (30) days after it was issued under land use appeal deadlines before LUPA was enacted in 1995 with a shorter 21 day appeal deadline.

In *Spinnaker Ridge*, the superior court adopted the not yet final *Guest v. Lange* September 19, 2014 non-compliant RCW 4.64.030(b) ‘interest’ in real property ‘Judgment’ in the the Langes’ favor as res judicata, collateral estoppel and ‘law of the case’ prohibiting the Guests from allegedly ‘relitigating’ the Lange ‘easement’ issue in the face of the Guests’ RAP 8.1(b), (b)(1), and (b)(2) and (c) *Guest v. Lange* Notices of Stay and Cash Supersedeas Deposits staying any enforcement of any *Guest v. Lange* decision adversely affecting the Guests’ rights to possession, ownership and/or use of any and all SR Lot 5 real or tangible personal property.

IV. ARGUMENT

A. Lack Of Jurisdiction, Lack of Standing, Absolute Bar

The focus of this Brief is lack of jurisdiction, lack of standing, “unclean hands” and the absolute Land Use Petition Act (“LUPA”), chapter

36.70C RCW, bar to any Association, Lange, Third Party Defendant, attorney, title company, insurance company, and/or any State Farm *Spinnaker Ridge* Complaint, lawsuit or action against the Guests. Appendix B (selected chapter 36.70C RCW statutes annotated by Guest).

B. No Time Limit or Deadline To Assert Lack of Jurisdiction, Lack of Jurisdiction Standing, Bar, Null And Void

There is no time limit or any deadline to raise the issue that a superior court and/or that an appellate court did not and does not have jurisdiction, that a party lacks and/or lacked jurisdictional standing, that an action was barred by statute, or by legislative enactment, or that a court's order, ruling, decision, act, actions, injunctions and/or 'judgments' and/or opinions were and are null and void, and must be reversed and vacated. RAP 2.5(a).

A trial court's lack of jurisdiction can be raised for the first time on appeal. RAP 2.5(a)(1). Guest can also raise the Association, Langes, Third Party Defendants and their attorneys failure to establish facts upon which relief could have been granted, and manifest error affecting a Guest constitutional right for the first time on appeal. RAP 2.5(a)(2) and (3). A party or the court "may raise **at any time** the question or appellate court jurisdiction". RAP 2.5(a) (emphasis in bold added).

In this instance (and in *Guest v. Lange*), if the superior court had any threshold original general trial court or any original general appellate court jurisdiction over the Association Complaint (which it did not), the superior court would sit as an appellate court under *James v. County of Kitsap*, 154 Wn. 2d 574, 115 P.3d 286 (2005) sat as an appellate court. If a court lacked or lacks jurisdiction for any reason, any order, ruling, decision, act, action, injunction, 'judgment' or opinion (or mandate) issued or entered by that court was and/or is null and void *ab initio*, and must be reversed and vacated without exception.

C. The Guests Were And Are The Prevailing Parties In *Guest v. Lange* And Also In This Matter Under LUPA And Other Grounds

The Guests, in reality, in fact and with respect under law, were and are the prevailing parties in the underlying, related and linked *Guest v. Lange* matter, and also in this matter under LUPA.

D. The Superior Court Did Not Have Any Jurisdiction Over The Association Complaint

The superior court below did not have any original general trial court or any original general appellate court jurisdiction over the May 2014 Association Complaint.

E. The Guests Have And Had A Constitutional, Statutory, Contract And Common Law Right to Compliance With And Enforcement Of The December 6, 2011, Lange And Lot 4 Deck Lot 5 Removal Permit, And The Guests Lot 5 Lange Deck Removal and New Guest Construction LUPA Final Building Permits

The Guests were and are the prevailing parties in the underlying, related and linked *Guest v. Lange* matter, case and appellate proceedings and as above in this action under LUPA, chapter 36.70C RCW, chapter 58.17 RCW, the *Maytown Sand and Gravel, LLC v. Thurston County*, Appeal No. 94452-1(Washington Supreme Court August 9, 2018) opinion, the *Johnson v. Lake Cushman Maintenance Co.*, Appeal No. 50113-9-II (Court of Appeals, Division II, August 28, 2018), aand *J.L. Cooper & Co. v. Anchor Securities Co.*, and the dispositive City unappealed December 6, 2011, final Lange and Lot 4 Lange stipulated Lot 4, 6801 Main Sail Lane, Gig Harbor, deck demolition and new deck construction LUPA land use building permit, and the City December 3, 2013, final Guest SR Lot 5 unappealed deck demolition and deck construction LUPA land use building permit.

A court's lack of subject matter jurisdiction is never waived and can be raised at any time. RAP 2.5 (a) (1). "*Consent*" or agreement by the parties

cannot confer jurisdiction of subject matter. *Silver Surprise, Inc. v. Sunshine Min. Co.*, 74 Wn. 2d. 519, 523, 445 P.2d 334 (1968); *Skagit Surveyors and Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998); *In Re Marriage of Ortiz*, 108 Wn. 2d 643, 649, 740 P.2d 843 (1987) *Bour v Johnson*, 80 Wn. App. 646-47. The only thing the trial court could do as it lacked jurisdiction was dismiss SRCA's action and vacate any and all orders, judgments, rulings and decisions. *Davis v. Washington State Department of Labor & Industries*, 159 Wn. App. 437, 245 P. 3d 253 (2011).

Whether a party has standing to invoke a court's jurisdiction is a question of law, which is reviewable de novo. *In re Irrevocable Trust of McKean*, 144 Wn. App. 333, 339, 183 P.3d 317 (2008); *Pacific Marine Insurance Co. v. State ex rel. Department of Revenue*, 180 Wn. App. 730, 740, 329 P.3d 101 (2014). Guests challenge to SRCA's standing to bring this action is based upon 4.2.4 of Articles 4.13 and the Articles of Incorporation of SRCA. CP 6092. Article 4.13 provides SRCA shall comply with Section 501 (c) (7) of the Internal Revenue Code. CP 6092. Article 4.2.4 provides SRCA shall not conduct or carry on activities not permitted to be carried on by organizations exempt under Section 501 (c) (7) of the Internal Revenue Code. CP 6092. Internal Revenue Ruling 75-494 provides, in pertinent part, a club providing social and recreational

facilities, whose membership is limited to homeowners of a housing development, will be precluded from qualifying for the exemption under section 501 (c) (7) by enforcing restrictive covenants. CP 6105.

SRCA Article 4.2 provides one of its purposes is to acquire, develop, improve, maintain and operate community facilities appropriate for the use and benefit of its members. CP 6090. SRCA Article 6 provides its members are lot owners. CP 6093. SRCA Article 4.8 provides one of its stated purposes is to enforce the declaration of restrictive covenants that have been recorded with Pierce County. CP 6091. SRCA's complaint alleges in paragraph 18 Guests violated Article 8 of the CC&Rs. CP 4. In paragraph 19, SRCA seeks to enforce Section 13.1 of the Articles. CP 4.

Revenue Ruling 75-494 makes clear by enforcing the CC&Rs, SRCA has violated section 501 (c) (7): “...*A club which administers and enforces covenants for the preservation of the architecture and appearance of the housing development is not being operated exclusively for pleasure, recreation, and other purposes as required by section 501 (c) (7) of the Code.*” CP 6106.

SRCA acknowledges Guests' argument regarding § 501 (c) (7) is an argument on standing. CP 6205. SRCA and Guests differ however whether lack of standing is jurisdictional. SRCA argues standing is not jurisdictional, relying upon *Trinity Universal Insurance Co. of Kansas v.*

Ohio Casualty Insurance Co., 176 Wn. App. 185, 312 P. 3d 976 (2013) and *Ullery v. Fullerton*, 162 Wn. App. 596, 256 P.3d 406 (2011). CP 6205.

The weight of authority in Washington however recognizes standing is jurisdictional. *Knight v. City of Yelm*, 173 Wn. 2d 325, 336, 267 P.3d 973 (2011); *High Tide Seafoods v. State*, 106 Wn. 2d 695, 702, 725 P.2d 411 (1986); *Pacific Marine Insurance Co. v. State ex rel. Department of Revenue*, 180 Wn. App. 730, 740, 329 P.3d 101 (2014); *In re Estate of Alsup*, 181 Wn. App. 856, 874-75, 327 P.3d 1266 (2014); *International Association of Firefighters, Local 1789 v. Spokane Airports*, 100 Wn. App. 764, 768, 14 P.3d 193 (2000); *Mitchel v. Doe*, 41 Wn. App. 846, 847-48, 706 P.2d 1100 (1985).

To have standing, a claimant must establish that injury has occurred to a legally protected right. *Pacific Marine Insurance Co. v. State ex rel. Department of Revenue*, 180 Wn. App. 740. Here, because section 501 (c) (7) prohibits enforcement of the architectural provisions of the CC&Rs, SRCA has suffered no injury to its legally protected rights at issue in this case. SRCA therefore lacks standing to maintain this action against Guests. The trial court lacked subject matter jurisdiction to hear SRCA's complaint.

V. CONCLUSION

Guests ask the Court to reverse and vacate the orders and judgments appealed by them and dismiss SRCA's complaint with prejudice, to remand the case for trial on Guests' counterclaims, award Guest and the Guests attorneys fees, costs, expenses, damages, loss, prejudgment and post-judgment interest, RAP 18.1 fees, RAP 18.9 fees, and for relief under RCW 64.38.050, and recuse the superior court, transfer the case to a different judicial district.

Respectfully submitted,



Suzanne Guest

VII. CERTIFICATE OF MAILING

The undersigned does hereby declare that on August 31, 2017, the undersigned delivered a copy of APPELLANT SUZANNE

GUEST'S BRIEF filed in the above-entitled case and served on
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