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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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SPINNAKER RIDGE COMMUNITY ASSOCIATION,  
Plaintiff/Respondent

v.

CHRISTOPHER AND SUZANNE GUEST,  
Defendant/Petitioners

v.

CHRISTOPHER AND SUZANNE GUEST,  
Third Party Plaintiff/Petitioners

v.

DAVID LANGE AND KAREN LANGE, JOHN FARRINGTON  
AND JEAN FARRINGTON, AND WALLACE "BOB" TIRMAN  
AND VALERIE TIRMAN  
Third Party Defendants/Respondents

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**RESPONDENT SPINNAKER RIDGE COMMUNITY  
ASSOCIATION'S BRIEF**

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## **I. INTRODUCTION**

This is an appeal from a lawsuit filed by the Spinnaker Ridge Community Association (SRCA) against Suzanne and Christopher Guest (Guests) to enjoin them from building in violation of the community's Covenants, Conditions, and Restrictions (CC&Rs) a controversial section of their deck that had not been approved by the committee charged with the responsibility of approving exterior changes to homes within the Spinnaker Ridge planned unit development. CP 1-5. The section of the deck was controversial because, unlike other decks in the community, the Guests sought to tightly abut and wrap the existing deck of their neighbor, Respondents David and Karen Lange (Lange). The Guests had unsuccessfully sued the Langes in a prior lawsuit over the Langes' deck which rests in part on an easement which burdens a portion of the Guests' property. *See Guest v. Lange*, 194 Wn. App. 1031(2016), *rev. denied*, 197 Wn.2d 1007, 386 P.3d 1081 (2017).

After two years of extensive litigation, the trial court found in favor of the SRCA on summary judgment, and on May 6, 2016, issued an injunction requiring the Guests to take down the unapproved section of their deck. CP 4934-4936, 4948-4952. The Guests now argue on appeal and without citation to the record that building permits issued to them and to the

Langes in 2013 and 2011 respectively stripped the court of jurisdiction to enter any order or judgment against them.

The Guests' appeal continues a misguided and relentless effort to relitigate in this case the entirely separate and fully resolved *Guest v. Lange* matter and to use that case as reason to continue to defy their obligations to comply with the covenants and restrictions that bind them as lot owners within Spinnaker Ridge Community. In this appeal, the Guests seek to void all orders below on the spurious argument that the court lacked subject matter jurisdiction. They raise no other alleged error. Because the Court has always had subject matter jurisdiction to adjudicate this case, the SRCA respectfully request that the Court deny and dismiss the Guests' appeal thereby affirming all orders and judgments below.

## **II. STATEMENT OF ISSUES**

A. Should the Court dismiss the Guests' appeal when, as a matter of law, the issuance of a building permit fails to create a jurisdictional bar under LUPA that deprives the Superior Court of its subject matter jurisdiction to hear actions for an injunction and to enforce restrictive covenants granted by the Washington State Constitution and Chap. 7.40. RCW?

B. Should the Court dismiss the Guests' appeal when, as a matter of law, any Lange building permit is irrelevant to this appeal and does not impact the preclusive effect of the *Guest v. Lange* judgment?

C. Should the Court dismiss the Guests' appeal, as a matter of law, because a reference to a tax exemption in the SRCA's Articles of Incorporation does not deprive the Court of subject matter jurisdiction or the SCRA's of standing to enforce restrictive covenants?

D. In any event, did the Guests waive their standing argument by failing to assert it prior to the entry of judgment?

E. Should the Court deny the Guests a request for attorney fees when they have failed to establish the necessary predicate to recovery of fees under the statute or court rule they cite?

F. If the SRCA prevails in this appeal, should the Court award it fees incurred on appeal when the trial court has previously found it entitled to a recovery of fees and costs?

### **III. STATEMENT OF THE CASE**

#### **A. PROCEDURAL HISTORY OF THE CASE**

Spinnaker Ridge is a planned unit development in Gig Harbor, Washington. In May 2014, the SRCA filed this lawsuit against the Guests to enjoin them from constructing in violation of the community's CC&Rs a controversial section of deck that had not been approved by the Architectural Control Committee (ACC), the committee charged with the responsibility of approving exterior changes to homes within the development. CP 1-5.

In their Answer to the Complaint, the Guests counterclaimed against the SRCA seeking indemnity and damages for alleged breaches of fiduciary duties and violations of the CC&Rs and the Washington Homeowners' Association Act. CP 398-436. The Guests also joined current and former Board members the Langes, Farringtons and Tirmans as Third Party Defendants alleging breaches of their fiduciary duties as officers and directors of the SRCA. *Id.*

After two years of extensive litigation, the trial court found in favor of the SRCA on summary judgment. In ruling on that motion, the court specifically found that the SRCA had standing to sue and that the Guests were bound by the CC&Rs. CP 4907-4911. On May 6, 2016, the court issued an injunction requiring the Guests to take down the unapproved section of their deck and entered judgment in favor of the SRCA. CP 4934-4936, 4948-4952. The trial court also dismissed on summary judgment the Guests' counterclaims and third party claims at the same time. CP 4944-4946, 4958-4962. On June 3, 2016, the trial court awarded the SRCA and the Third Party Defendants their attorneys' fees and costs incurred in the suit and entered money judgments against the Guests. CP 4968-4970, 4789-4797. On June 6, 2016, the Guests filed their first Notices of Appeal of the May 6 and June 3 Judgments as well as most of the trial court orders that preceded them. CP 4846-4997. The

Guests filed 10 more Notices of Appeal following several post-judgment motions and motions for reconsideration all of which have been consolidated into the subject appeal.

**B. THE AUTHORITY OF THE SRCA TO ENFORCE COVENANTS**

SRCA is a non-profit corporation organized for the administration of the common interest of property owners within the Spinnaker Ridge Community. SRCA is governed by its Articles of Incorporation, Declaration and amendments thereto, its Bylaws, and its Plat.

Articles of Incorporation of Spinnaker Ridge Community Association were filed with the Secretary of State on December 6, 1985 by John Tynes, as incorporator. CP 1779; 1797-1803. Nu-Dawn Homes Limited recorded the original Spinnaker Ridge Declaration of Restrictive Covenants on January 31, 1986, under Pierce County Auditor's No. 8601310432. CP 1805-1825. The Spinnaker Ridge plat was filed that same day under Auditor's No. 8601310176. CP 1827-1831. A Restated Spinnaker Ridge Declaration of Covenants, Conditions and Restrictions was recorded a few months later by Nu-Dawn Homes on August 8, 1986 under Pierce County Auditor's No.8608080472. CP 1833-1888. In 2007, the August 1986 CC&Rs were amended by the Association. CP 167-199.

The Articles of Incorporation outline the purposes, limitations, and powers of the Association under Article IV. It provides in part as follows:

PURPOSES, LIMITATIONS AND POWER:

...

4.4 To provide maintenance and care for certain portions of the improved and unimproved lots as may hereinafter be prescribed by by-laws and/or resolution of the corporation and in so doing to kill, destroy and/or remove from said lots or plots, grass, weeds, rodents, predatory [sic] animals and any unsightly or obnoxious things and to take any action with reference to such lot and plots as may be necessary or desirable in the opinion of the Board of Trustees of said corporation, to keep the property clean and in good order.

...

4.7 To enforce liens, charges, restrictions, conditions and covenants existing upon or created for the benefit of parcels and real property over which said corporation has jurisdiction or to which said parcels may be subject and to pay all expenses incidental thereto.

**4.8 To implement and enforce the declaration of restrictive covenants** which have been recorded with the Pierce County Auditor and the City of Gig Harbor and specifically to obligate said corporation to a declared maintenance program for the detention ponds and related facilities as heretofore declares a purpose of this non-profit corporation.

4.9 To approve and/or disapprove as provided by restrictions, conditions and covenants affecting said property, plans and specifications for and/or locations of fences, walls, poles, buildings or other structures to be erected or maintained upon said property or any portion thereof; and to approve or disapprove the kind, shape, height, and material for same and/or the plan indicating the location thereof or their respective building sites and such grading plans as may be required and to issue permits for the same, and to pay any and all expenses and charges in

connection with the performance of any said powers or the carrying out of any purpose

(Emphasis added) CP 1798.

The January 31, 1986 Declaration and the August 8 Restated Declaration recorded that same year both contain virtually identical sections establishing an Architectural Control Committee under Article VIII. CP 1817-1819; 1854-1856. Article VIII, Section 8.2 of both versions provides as follows:

8.2: Jurisdiction and Purpose: The Committee shall adopt architectural guidelines, establishing standards for the exterior design and placement of all structures to be constructed on Spinnaker Ridge, and exterior landscaping of all such structures...The Committee shall have the right to review all plans and specifications for any building or structure to be constructed or modified within the properties and any landscaping plans and either approve or reject such plans based upon whether they conform to the Architectural Guidelines. Enforcement of these covenants shall be carried out by the Association. The purpose of the Committee is to insure the development within Spinnaker Ridge maintains the aesthetic and structural quality as is established in its original design and that all future replacements of improvements and/or future improvements are compatible.<sup>1</sup>

CP 1818; 1854.

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<sup>1</sup> In 2007, the August 1986 CC&Rs were amended by the Association. Article VIII, Section 8.2 of the 2007 CC&R's is identical. CP 183-184.

**C. THE GUESTS ARE BOUND BY THE COVENANTS AND RESTRICTIONS**

The Guests received title to Lot 5 (the lot at issue in this litigation) by Statutory Warranty Deed, which was recorded on November 12, 2004 (hereafter “Lot 5 Deed”). CP 3349-3352. The Lot 5 Deed recites that the Guests received “Lot 5 of Spinnaker Ridge, According to the Plat thereof recorded on January 31, 1986 Under Recording No. 8601310176 in Pierce County, Washington.” The Lot 5 Deed then goes on to state that the conveyance is “SUBJECT TO those items disclosed on ‘EXHIBIT A’ attached hereto and made a part thereof.” Exhibit A to the Lot 5 Deed includes a list of a variety of exceptions, in particular an exception based upon the “Protective covenants and/or easements, but omitting restrictions, if any, based upon race, color, religion, sex, handicap, familial status or national origin: Recorded: August 8, 1986, Recording No.: 8608080472” (hereafter “August 1986 CC&R’s”). CP 3352. In 2007 the August 1986 CC&R’s were amended by the Association. The amendment binds the entirety of the Spinnaker Ridge Community, including the Guests’ Lot 5.

In January 2014 the Guests submitted a proposal to the Spinnaker Ridge Architectural Control Committee (hereafter “ACC”) to build a deck on their lot. CP 3, 207. The Guest deck proposal was divided into three separate phases; the ACC approved the first two phases but did not approve the third phase, as it tightly abutted and wrapped the deck of their

neighbor, the Langes. CP 3, 207. In May, 2014, the Guests announced their intention to move forward with their deck expansion notwithstanding the ACC's position with respect to the third phase of their deck. CP 3, 207. This suit ultimately followed when the SRCA filed its Complaint on May 19, 2014. CP 1-5.

#### **D. HISTORY OF GUEST V. LANGE LITIGATION**

Prior to the SRCA lawsuit, the Guests filed a lawsuit against Respondent Langes for breach of contract and trespass regarding a dispute over the easement upon which the Langes' deck in part rested. *See Guest v. Lange*, 194 Wn. App. 1031(2016), *review denied*, 197 Wn.2d 1007, 386 P.3d 1081 (2017) (No. 46802-6-II). The trial court found the easement valid, and the case proceeded to trial on the remaining issues. On July 16, 2014 a jury found that the Langes did not breach a contract with the Guests and that the Langes' deck did not trespass on the Guests' property. *Id.*; CP 1377-1378. The trial court thereafter entered judgment in favor of the Langes, quieted title to the Langes to "exclusively use, maintain, repair, and replace the deck serving their property as it now exists", and dismissed the Guests' claims with prejudice. *Id.*; CP 1375-1376. The Guests appealed, and on June 14, 2016, this Court affirmed. *Id.* Further review was denied. *Guest v. Lange*, 187 Wn.2d 1007 (2017).

Notwithstanding the termination of this appeal, the Guests persist in efforts to re-litigate the issues of that case.<sup>2</sup>

#### **IV. ARGUMENT**

##### **A. THE STANDARD OF REVIEW**

The Guests assign error to the trial court's orders and judgments based solely upon subject matter jurisdiction. Subject matter jurisdiction is a question of law, and the appellate court reviews the question de novo. *Ledgerwood v. Lansdowne*, 120 Wn. App. 414, 419, 85 P.3d 950 (2004) citing *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999). A party can raise subject matter jurisdiction at any time, including for the first time on appeal. *Bour v. Johnson*, 80 Wn. App. 643, 646-47, 910 P.2d 548 (1996); RAP 2.5(a).

That being said, all litigants are required to comply with the rules on appeal. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). A Court has the authority to refuse review when a party has failed to comply. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). At the outset, the Guests purposely defy the rules of appellate procedure in their opening brief. While the Guests' failure to provide a

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<sup>2</sup> The Guests have filed an additional appeal against the Langes arising from the cancelation of another lis pendens against the Lange property following the issuance of the mandate terminating the *Guest v. Lange* appeal. That matter is currently pending before the court as Appeal No. 50138-4-II.

Table of Contents and a Table of Cases in violation of RAP 10.3(a)(2) may not significantly impede review, their failure to include a reference to the record for almost all of their factual statements is of consequence. RAP 10.3(a)(5) requires that “[r]eference to the record must be included for each factual statement”. Where factual statements are not supported by proper references to the record, the Court has the authority to strike or otherwise disregard the material. *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wn. App. 491, 513, 857 P.2d 283 (1993) (“[a]llegations of fact without support in the record will not be considered by an appellate court”).

Moreover, the Guests’ brief refers to documents contained in an Appendix. However, no such documents are attached to the Guests’ brief and thus cannot be addressed. Even if the documents were attached, however, all but two contain a purported citation to the record, and at that the citation is incorrect. RAP 10.3(a)(8) provides “[A]n appendix may not include materials not contained in the record on review without permission from the appellate court...”. The Guests have not sought permission of the Court.

**B. THE WASHINGTON SUPERIOR COURTS HAVE SUBJECT MATTER JURISDICTION TO HEAR AN ACTION FOR AN INJUNCTION TO ENFORCE RESTRICTIVE COVENANTS.**

The Guests assign error to the entry of any order adverse to the Guests and to the trial court's refusal to vacate them because they claim the Court lacks subject matter jurisdiction under the Land Use Petition Act (LUPA). However, the Washington Superior Courts have subject matter jurisdiction to hear actions by homeowner associations to enforce restrictive covenants. LUPA does not control such a case.

**1. The Washington State Constitution Grants the Superior Court Broad Jurisdiction.**

The Washington Constitution places few constraints on Superior Court Jurisdiction. Section 4 of Article IV expressly grants the Superior Court original jurisdiction "in all cases at law which involve the title or possession of real property" and "in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court". Const. Art. IV, §6. The Superior Court also have concurrent jurisdiction with the district courts in cases in equity. *Id.*

A court has subject matter jurisdiction if it has authority to adjudicate the type of controversy involved in the action. *Banowsky v. Guy Backstrom, D.C.*, 4 Wn. App. 2d 338, 344, 421 P.3d 1030 (2018). The "type of controversy" refers to the nature of the case or the relief

sought. *Id.*; *Dougherty v. Dep't of Labor & Industries*, 150 Wn.2d 310, 317, 76 P.3d 1183 (2003); *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 209, 258 P.3d 70 (2011) (“The critical concept in determining whether a court has subject matter jurisdiction is the type of controversy.”); *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 542-43, 886 P.2d 189 (1994), *superseded by statute on other grounds*; *Pruczinski v. Ashby*, 185 Wn.2d 492, 499, 374 P.3d 102 (2016) (“To analyze whether a Washington court has subject matter jurisdiction, we focus on the ‘type of controversy’”). If an action is within the category of controversies a court has the authority to decide, subject matter jurisdiction is appropriate. *Id.*

Here the SRCA filed suit against the Guests to enjoin the Guests from building a noncompliant deck under restrictive covenants that required the Guests to obtain ACC approval. At the outset, the Superior Court has jurisdiction to hear cases where an injunction is sought. Chap. 7.40. RCW; *See also, Wimberly v. Caravello*, 136 Wn. App. 327, 149 P.3d 402 (2006) (holding the court had subject matter jurisdiction in an action for an injunction for violation of restrictive covenants.). Further, the Superior Court has jurisdiction to determine actions involving restrictive covenants.

2. **LUPA Does Not Strip the Court of Jurisdiction to Adjudicate Cases Arising Independently.**

LUPA pertains to judicial review of all land use decisions with some exceptions noted in the statute. RCW 36.70C.010-.030; *Chelan County v. Nykreim*, 146 Wn.2d 904, 916, 52 P.3d 1 (2002). Prior to enactment of LUPA, an aggrieved person could challenge a county's land use decision through a writ of certiorari. *Id.* at 317. In enacting LUPA in 1995, the Legislature replaced the writ of certiorari for appeal of land use decisions as stated in RCW 36.70C.030 and determined that LUPA “shall be the exclusive means of judicial review of land use decisions”. RCW 36.70C.030(1); *Chelan County v. Nykreim*, 146 Wn.2d at 917. LUPA's stated purpose “is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.” RCW 36.70C.010; *Chelan County v. Nykreim*, 146 Wn.2d at 917.

The Superior Court acts in an appellate capacity when it reviews the grant or denial of a building permit under LUPA, and it has only the jurisdiction that is conferred by law. *Canom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005). Thus, before a Superior Court may exercise its appellate jurisdiction to review land use decisions, statutory

procedural requirements must be satisfied. *Id.* A petition under LUPA must be filed within 21 days of the land use decision or the petition is barred. RCW 36.70C.040(3); *Asche v. Bloomquist*, 132 Wn. App. 784, 799, 133 P.3d 475 (2006). LUPA's statute of limitations begins to run on the date an agency issues a land use decision, and even illegal decisions must be challenged in a timely, appropriate manner. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 407-08, 120 P.3d 56 (2005).

The Guests attempt to turn LUPA on its head by claiming the failure of the SRCA to file a LUPA petition in 21 days stripped the Superior Court of subject matter jurisdiction or otherwise barred the SRCA from filing for an injunction against the Guests. However, the SRCA's lawsuit was not a review of land use decision. The type of controversy had nothing to do with whether the City of Gig Harbor lacked authority to issue, or violated its code when issuing, a building permit to the Guests. The SRCA's action instead arose independently from any building permit and directly from the restrictive covenants that govern the Guests' use of their lot. Moreover, the same argument the Guests make here was recently considered and rejected by the court in *City of Union Gap v. Printing Press Properties, LLC*, 2 Wn. App.2d 201, 409 P.3d 239 (2018).

*City of Union Gap* involved a development agreement that granted Union Gap the prerogative to deny direct access to an arterial it constructed. *Id.* at 203. Printing Press Properties (PPP) was an owner of commercial property abutting the arterial and a party to the development agreement. PPP desired to construct a driveway and cut a curb to gain direct access to the arterial. *Id.* at 204. Because PPP's property was within the City limits of Yakima, it sought and obtained excavation and engineering permits from the City of Yakima. *Id.* at 217. Union Gap, however, objected to the construction and sued PPP in superior court alleging breach of the development agreement and seeking an injunction to preclude the construction. *Id.* Like the Guests, PPP argued that Union Gap failed to appeal the permits under LUPA, and thus, LUPA barred Union Gap's suit. *Id.* at 219. The court agreed that the issuance of the permits constituted land use decisions under LUPA. *Id.* However, Union Gap was not challenging the issuance of the permits, and because its claims arose independently from the land use decision that resulted in the permits, LUPA did not control the case:

If Union Gap limited its claims to an argument that the city of Yakima lacked authority to issue the permits to Printing Press or that Yakima violated its code when issuing the permits, we might agree with Printing Press. Nevertheless, Union Gap's suit arises independently of the Yakima permits. Union Gap relies on its contract with Printing Press, which contract the parties entered outside of and

before the City of Yakima's permit issuances. If Printing Press started construction on the driveway in the absence of any permit, Union Gap would have filed this same suit alleging breach of contract under the parties' development agreement. Printing Press contravenes the intent of LUPA by using the act as an excuse to shirk its contractual obligations under the development agreement with Union Gap.

*Id.* at 221-222; *See also, Asche v. Bloomquist*, 132 Wn. App. at 800. ("Claims that do not depend on the validity of a land use decision are not barred" by LUPA.); *See e.g., Woods View II, LLC v. Kitsap County*, 188 Wn. App. 1, 352 P.3d 807 (2015) (holding action seeking damages against county for delay in rendering permits not barred by LUPA).

Notably, the court in *Union Gap* compared the case before it to a hypothetical one involving restrictive covenants. The court reasoned that if a restrictive covenant prohibited the harboring of large commercial animals, for example, the fact that a resident obtained a permit to do just that, would not prevent a neighbor who did not appeal the issuance of the permit from suing for a violation of the restrictive covenant. *Id.* at 222;

Here, the Guests similarly misuse LUPA to evade their obligations under the restrictive covenants governing the community in which they voluntarily chose to live. As was the case for Union Gap whose action arose from a development agreement, the SRCA's action also arises

independently from any permit. In short, LUPA provides no bar, jurisdictional or otherwise, to the SRCA's action.<sup>3</sup>

**3. The Guests May Not Use Their Permit to Avoid Their Obligations Under Restrictive Covenants.**

Additionally, the Guests cannot use their permit as a means of unilaterally altering the restrictive covenants that run with their land. *See e.g., Fawn Lake Maintenance Commission v. Abers*, 149 Wn. App. 318, 326-327, 202 P.3d 1019 (2009).

In *Fawn Lake*, the Abers purchased two separate but contiguous lots in a recreational property subdivision in Mason County. At the time, the lots were subject to a set of restrictive covenants providing that assessments would be levied against each residential lot. *Id.* at 321. Years later the Abers combined their two lots under a Mason County declaration of parcel combination. While Mason County thereafter only taxed on the basis of one lot, the homeowners' association (FLMC) objected to the Abers attempt to similarly limit their homeowner assessments to one lot as well. *Id.* at 322. FLMC filed a declaratory action asking the court to

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<sup>3</sup> It is also notable that a review of Washington cases involving the enforcement of restrictive covenants where a building permit is at least mentioned neither the court nor the parties assigned any significance to it. *See e.g., Bauman v. Turpen*, 139 Wn. App. 78, 160 P.3d 1050 (2007) (upholding the trial court's injunction of the construction of a house in violation of restrictive covenants notwithstanding mention that the landowner had obtained a building permit.); *Wimberly v. Caravello*, 136 Wn. App. 327, 149 P.3d 402 (2006) (granting a permanent injunction preventing homeowner from construction a garage in conflict with the restrictive covenants notwithstanding mention that the homeowner had obtained a building permit.).

determine whether dues must be paid on one or two lots given the Mason County declaration. The trial court sided with the association, and this Court affirmed holding that homeowners could not “unilaterally modify their contract with FLMC through an arrangement with a third party; in this case, Mason County.” *Id.* at 326. Although the Abers combined their lots for tax and building convenience, the Court held that their agreement with Mason County did not modify their obligations under the Fawn Lake covenants. *Id.*

Likewise, the Guests here cannot unilaterally alter their obligations under the CC&Rs to obtain the approval of the Architectural Control Committee before commencing construction of an exterior deck by virtue of obtaining a building permit from the City of Gig Harbor. The decision of the City to grant a building permit does not trump or modify the covenants that run with their land.

In short, the Court has subject matter jurisdiction over an action seeking injunctive relief. The Court has subject matter to adjudicate a matter arising from the obligations of restrictive covenants. The Guests’ building permit does not alter or otherwise extinguish the covenants and restrictions in the CC&Rs or the Guests’ obligations to comply with them, but more significantly, it does not deprive the Court of subject matter jurisdiction to issue an injunction to enforce those covenants.

**C. ANY PERMIT FOR THE LANGE'S DECK DOES NOT IMPACT THIS APPEAL NOR DOES IT VOID THE GUESTS' OBLIGATIONS TO COMPLY WITH RESTRICTIVE COVENANTS.**

The Guests devote pages of their brief asserting incredulously that they are the prevailing parties in *Guest v. Lange*. They base this claim upon a building permit for the Langes' deck without citation to the record because those facts are not part of the record in this case. This case is about the Guests' deck, not the Langes.

*Guest v. Lange* resolved the issues with regard to the Langes' easement rights and the Langes' right to use and maintain their existing deck. *Guest v. Lange*, 194 Wn. App. 1031(2016), *rev. denied*, 197 Wn.2d 1007, 386 P.3d 1081 (2017). Any alleged facts the Guests wish to argue have no bearing on the determination of this appeal because *Guest v. Lange* cannot be re-litigated in this case.<sup>4</sup>

The Guests cannot reargue *Guest v. Lange* against respondent Lange because once entered, a trial court's judgment operates as a resolution of the issues, and the parties are precluded from re-litigating them. *See Pederson v. Potter*, 103 Wn. App. 62, 11 P.3d 833 (2000) (res judicata applied to judgment by confession; subsequent action barred).

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<sup>4</sup> Because the Guests filed a lis pendens on Respondent Langes' property during the course of this lawsuit, the trial court ruled on summary judgment that the doctrines of claim preclusion barred the Guests from re-litigating the judgment that had been entered in the Langes favor in *Guest v. Lange* and canceled the lis pendens. CP 2526-2530.

Further, res judicata does not only preclude matters that were considered by the court, it also precludes matters that could have been considered in the prior action. See *Sound Built Homes, Inc. v. Windermere Real Estate/South, Inc.*, 118 Wn. App. 617, 72 P.3d 788 (2003).

Res judicata applies to points upon which the court was actually required by the parties to form opinion and pronounce judgment, and to every point which properly belonged to the subject litigation and which the parties, exercising reasonable diligence, might have brought forward at that time. *In re Marriage of Dicus*, 110 Wn. App. 347, 40 P.3d 1185 (2002) (res judicata barred ex-husband from seeking credit against child support obligation; should have been raised in earlier proceeding.). The purpose of the doctrine is not only to protect a successful litigant from the vexation and exhaustion of resources that repetitive litigation entails but also to encourage respect for judicial determinations by ensuring finality, and to conserve judicial resources by discouraging the same parties from re-litigating the same claims time and again:

[The general principle of res judicata] is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be involved for the vindication of rights of persons and property, if, as between parties,

conclusiveness did not attend the judgments of such tribunals...”

*Southern Pac. R. Co. v. U.S.*, 168 U.S. 1, 48, 18 S. Ct. 18, 27, 42 L. Ed. 355 (1897).

Nor can the Guests reargue the issues determined in *Guest v. Lange* against Respondents SRCA, Farringtons, and Tirmans. Like res judicata, collateral estoppel also encourages respect for judicial determinations by ensuring finality and preventing endless re-litigation. *Hadley v. Maxwell*, 144 Wn. 2d 360, 311, 27 P.3d 600 (2001). Collateral estoppel bars re-litigation of any issue that was actually litigated in a prior lawsuit. *State Farm Mutual Auto Ins. Co. v. Avery*, 114 Wn. App. 299, 304, 57 P.3d 300 (2002). Unlike res judicata, there need not be an identity of the parties for collateral estoppel to apply. A non-party to a prior adjudication may invoke collateral estoppel defensively against a party to an earlier action. *Dunlap v. Wild*, 22 Wn. App. 583, 589, 591 P.2d 834 (1979). Collateral estoppel applies when 1) the issue decided in the first action is the same as the second action; b) the prior action ended in a final judgment; c) the party to be estopped was a party or in privity with a party in the prior action; and 4) the application of the doctrine would not work an injustice. *Id.* at 589.

The Guest in their brief appear to argue (again without citation to the record because such facts are not part of this record) that Notices of Stay and Cash Supersedeas Deposits they allegedly made in *Guest v. Lange* should somehow prevent the application of the doctrines of claim preclusion. Again, even if this were material to this appeal, the Guests are incorrect. The filing of a supersedeas bond does not affect the claim preclusive effects of a judgment. A supersedeas bond does not operate against a judgment but against its enforcement only. *Malo v. Anderson*, 76 Wn. 2d 1, 454 P.2d 828 (1969); *State ex. rel. Gibson v. Superior Court of Pierce County*, 39 Wash. 115, 117, 80 P. 1108 (1905) (“An appeal and supersedeas does not destroy the intrinsic effect of a judgment; notwithstanding the appeal, the judgment is still the measure of such rights of the parties as is adjudicated; and until reversed it operates as res judicata as effectively as it would had no appeal been taken and no supersedeas bond given.”).

In short, the Guests’ arguments in regard to the Langes’ deck should be disregarded as they can have no impact to this appeal.

**D. THE GUESTS’ CHALLENGE TO STANDING IS NOT JURISDICTIONAL, BUT IN ANY EVENT, THE SRCA HAS STANDING TO ENFORCE RESTRICTIVE COVENANTS.**

The Guests further argue in their brief that SRCA does not have standing based on Articles 4.2.4 and 4.13 of the SRCA’s Articles of

Incorporation. These articles state a basis for a tax exemption under Section 501(c)(7) of the Internal Revenue Code for social and recreational clubs. Specifically, Articles 4.13 and 4.2.4 state respectively that the “corporation shall comply with Section 501C7 of the Internal Revenue Code” and “ shall not conduct or carry on activities not permitted to be conducted or carried on by organizations exempt under Section 501C7.” CP 1799. Ignoring all other Articles as well as all other governing documents, the Guests argue that Articles 4.13 and 4.2.4 deprive the SRCA of standing to enforce the CC&Rs because social and recreational clubs will lose their tax exempt status if they do so. Whether a party has standing to sue is a question of law reviewed de novo. *Spokane Airports v. RMA, Inc.*, 149 Wn. App. 930, 939, 206 P.3d 364 (2009).

1. **The Guests’ Standing Argument is Based Upon a Fundamental Misunderstanding of Subject Matter Jurisdiction.**

As previously explained, the critical concept in determining whether a court has subject matter jurisdiction is the “type of controversy.” *Pruczinski v. Ashby*, 185 Wn.2d 492, 499, 374 P.3d 102 (2016) (en banc); *Dougherty v. Dep’t of Labor & Indus. for State of Washington*, 150 Wn. 2d 310, 316, 76 P.3d 1183, 1185 (2003). A tribunal lacks subject matter jurisdiction when it attempts to decide a type of controversy over which it has no authority to adjudicate. *Marley v. Dep’t*

*of Labor & Indus. of State*, 125 Wn. 2d 533, 539, 886 P.2d 189 (1994). If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something else. *Dougherty*, at 316.

Subject matter jurisdiction is granted pursuant to Wash. Const. Art 4, § 6, which provides as follows:

Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property. . .

See also *Cole v. Harveyland, LLC*, 163 Wn.App. 199, 258 P.3d 70 (2011).

This case deals with the title and possession of real property in that the case arises from enforcement of covenants binding the Guests' property.

Further, as set forth previously, the Washington courts have subject matter jurisdiction to adjudicate cases seeking an injunction and enforcement of restrictive covenants. See also *Saunders v. Meyers*, 175 Wn. App. 427, 437, 306 P.3d 978 (2013); *Wimberly v. Caravello*, 136 Wn. App. 327, 333, 149 P.23d 402 (2006).

By contrast, the standing doctrine requires that a plaintiff must have a personal stake in the outcome of the case in order to bring suit. *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). “[T]he doctrine of standing prohibits a litigant from asserting another’s legal right.” *Miller v. U.S. Bank of Wash.*, 72 Wn. App. 416, 424, 865 P.2d

536 (1994) (as corrected). The claims of a plaintiff who lacks standing cannot be resolved on the merits and must fail. *Ullery v. Fulleton*, 162 Wn.App. 596, 604-05, 256 P.3d 406 (2011). In short, while the remedy may in some cases be ultimately the same (i.e., dismissal) the concepts are substantially different.

The Guests argue that that the “weight of authority in Washington recognizes standing is jurisdictional.”<sup>5</sup> The Guests in this instance are simply wrong. The Guests do not contend that another court has jurisdiction over this dispute, and they do not state what claims SRCA asserts that properly belong to another. Rather, their argument is more properly characterized as whether SRCA has the authority to enforce architectural provisions in its CC&Rs based on allegedly contradictory provisions in its Articles of Incorporation. This argument is neither one of standing nor of subject matter jurisdiction, but instead one of interpretation, as it questions SRCA’s authority to perform certain acts allowed under its CC&R’s by virtue of limited potentially conflicting provisions in its Articles of Incorporation.

The Guests conflate the authority of the Court to hear the subject matter of this case with an argument that the SRCA lacks authority to assert the claim in an effort to void the judgment. However,

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<sup>5</sup> App. Brief p. 26.

“[O]rganizations have standing to assert the interests of their members, so long as members of the organization would otherwise have standing to sue.” *Riverview Cmty. Grp. v. Spencer & Livingston*, 181 Wn.2d 888, 894, 337 P.3d 1076 (2014). SRCA’s governing documents make clear that an action for injunctive relief for failure to comply with a provision of the governing documents is maintainable by SRCA’s Board acting on behalf of the Owners, as well as by an aggrieved owner under certain circumstances. CP 4101-4102. In addition, enforcement of the architectural control committee provisions is entrusted to the Association pursuant to Article VIII, Section 8.2 of the CC&Rs. CP 1854.

The Court unquestionably has the jurisdiction to adjudicate a case to enforce restrictive covenants both under RCW 7.40.010 (“Restraining orders and injunctions may be granted by the superior court, or by any judge thereof.”) and the Court’s general jurisdictional powers granted by the Washington State Constitution, Art.IV, §6, as well as applicable case law. The Guests’ tax code standing argument does not deprive the Court of that jurisdiction because whether the SRCA had standing does not alter the type of controversy and thus does not implicate or otherwise vitiate the Court’s subject matter jurisdiction.

## 2. The SRCA Has Authority to Enforce the Covenants

SRCA is a Washington nonprofit corporation filed with the Secretary of State, formed for purposes of carrying out the provisions of its Declaration. Under the Washington Homeowners' Association Act, a homeowners association is defined as follows:

“Homeowners' association” or “association” means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. “Homeowners' association” does not mean an association created under chapter 64.32 or 64.34 RCW.

RCW 64.38.010(1).

While RCW 64.38.020 sets forth the possible powers of an homeowners' association including the power to institute litigation,<sup>6</sup> an association is empowered by its governing documents, meaning:

the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument *by which the association has authority to exercise any of the powers provided for in this chapter* or to manage,

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<sup>6</sup> RCW 64.38.020(11) provides that an association may “[I]nstitute, defend, or intervene in litigation ...in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association...” unless otherwise provided in the governing documents.

maintain, or otherwise affect the property under its jurisdiction.

RCW 64.38.010(10) (emphasis added).

The Guests essentially ask this Court to read the provisions contained within the Section 4.13 and 4.2.4 of the Articles of Incorporation as trumping the directives of any other provisions in the governing documents, including sections 4.4 (“to take any action with reference to such lot”), 4.7 (to take any action with reference to the improved or unimproved lots as may be necessary or desirable in the opinion of the Board of Trustees), 4.8 (to implement and enforce the declaration of restrictive covenants) and 4.9 (to approve and/or disapprove structures to be erected) of the Articles, and Article VIII of the CC&Rs, as amended (granting the Architectural Control Committee authority to review, approve, and/or reject plans for the building of any structure on any lot). CP 1798. The Guests’ position is nonsensical and contrary to Washington law.

In *Roats v. Blakely Island Maintenance Comm’n, Inc.*, 169 Wn.App. 263, 279 P.3d 943 (2012) the court stated that articles of incorporation, by-laws, and covenants are “correlated documents” that are construed together. *Id.* at 274. “Because the governing documents are correlated, the scope of a homeowners’ association’s authority is not determined based solely upon one such document; rather, such a

determination requires analyzing the documents as a whole.” *Id.* See also, *Rodruck v. Sand Point Maintenance Commission*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956).

The governing documents of a corporation are interpreted in accordance with accepted rules of contract interpretation. *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 696, 974 P.2d 836 (1999) (covenants); *Langan v. Valicopters, Inc.*, 88 Wn.2d 855, 859, 567 P.2d 218 (1977) (bylaws); *Walden Inv. Group v. Pier 67, Inc.*, 29 Wn.App. 28, 30-31, 627 P.2d 129. (1981) (articles of incorporation). The purpose of contract interpretation is to determine the parties’ intent. *Shafer v. Bd. Of Trustees of Sandy Hook Yacht Club Estates, Inc.*, 76 Wn. App. 267, 273, 883 P.2d 1387 (1994). Washington courts will apply the “context rule” of contract interpretation, which “allows a court, while viewing the contract as a whole, to consider extrinsic evidence, such as the circumstances leading to the execution of the contract, the subsequent conduct of the parties and the reasonableness of the parties’ respective interpretations.” *Roats* at 274.

Based upon the law outlined in *Roats*, the court cannot read Sections 4.13 and 4.2.4 of the Articles in isolation without considering the remainder of the governing documents, as well as the history of the operation of the SRCA as a homeowner’s association with restrictive covenants since its inception more than 30 years ago. Indeed, the Articles

of Incorporation, Section 4.8 sets out one of the purposes of the corporation as **implementing and enforcing the declaration of restrictive covenants**. CP 1798. This includes specific provisions in the CC&Rs that provide for formation of an architectural control committee. The purpose of the ACC is specifically identified as determining architectural guidelines for structures and buildings within the development which guidelines are enforced by the Association. CP 1818.

The Guests argue in their appellate brief that Revenue Ruling 75-494 “makes clear by enforcing the CC&Rs, SRCA has violated Section 501(c)(7). . .”<sup>7</sup> Notably, the Guests cite to no evidence in the record that the Association ever applied for an exemption under IRC 501(c)(7), let alone qualified for an exemption under that provision. Indeed, no such evidence was ever provided to the trial court. CP 6177. However, the only result of a “violation” of Section 501(c)(7) by SRCA’s enforcement of its CC&Rs is that the entity fails to qualify for a tax exemption under that provision.<sup>8</sup>

Moreover, whether or not SRCA qualifies for a federal tax exemption does not provide the Guests with any additional rights as it relates to their lot. For example, private citizens cannot enforce the

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<sup>7</sup> See pg. 25 of Appellant’s brief.

<sup>8</sup> SRCA has never applied for a tax exemption under IRC 501(c)(7). CP 6177.

provisions of the Tax Code. That is the duty of the Secretary of the Treasury and the Commissioner of the Internal Revenue Service, who are charged with the responsibility of administering and enforcing the Tax Code, including allegations of suspected fraud. *See United States v. LaSalle Nat'l Bank*, 437 U.S. 298 (1978). Federal courts consistently refuse to imply a private cause of action under the tax laws, including actions of employees against employers who have violated the requirements of the tax code. *See Deleu v. Scaife*, 775 F. Supp. 712, 716-17 (S.D.N.Y. 1991); *DiGiovanni v. City of Rochester*, 680 F. Supp. 80, 82 (W.D.N.Y. 1988).

**3. The Guests Have Waived their IRC 501(c)(7) Arguments**

Affirmative defenses are waived unless they are affirmatively pleaded; timely asserted in a motion under CR 12(b); or tried by the express or implied consent of the parties. *Henderson v. Tyrrell*, 80 Wn. App. 592, 624, 910 P.2d 522 (1996); *See also, Lybbert v. Grant County*, 141 Wn.2d 29, 39, 1 P.3d 1124 (2000) (A defendant waives an affirmative defense when dilatory in asserting the defense).

In *Lybbert* the Court explained, “the doctrine of waiver is sensible and consistent with ... our modern day procedural rules, which exist to foster and promote ‘the just, speedy, and inexpensive determination of

every action.”. *Lybbert*, 141 Wn.2d at 39 (quoting Civil Rule 1). Standing is an affirmative defense; if a party waives the defense, a Washington court can reach the merits. *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 198–99, 312 P.3d 976, 984 (2013).

In *Trinity*, Ohio Casualty argued that lack of standing meant that the trial court lacked subject matter jurisdiction in an effort to void an order of default against it. The court stated that “the critical concept in determining whether a court has subject matter jurisdiction is the type of controversy.” *Id* at 199. Finding that the court had subject matter jurisdiction over the type of action, the court held that Ohio Casualty waived its argument that Trinity lacked standing because it was raised too late. *Id*.

Here, the Guests never raised their arguments related to IRC 501(c)(7) prior to entry of the judgments. While the Guests did raise an argument of standing in defense of the SRCA’s motion for summary judgment, the Guests’ standing argument was based upon an erroneous reading of RCW 64.38.010(11) and the ownership of land. CP 3389-3390. The Court rejected the argument and ruled as a matter of law that the SRCA had standing irrespective of whether it owned land. CP 3848-3852. While the Guests moved for reconsideration, they did not raise the tax

exemption argument. CP 4103-4111. At no time prior to judgment, did the Guests' ever raise IRC 501(c)(7) or otherwise assert an argument based upon it.

The first time the Guests raised their tax exemption standing argument was in response to Plaintiff's Motion to Increase the Guests' Supersedeas Bond on Appeal, and thus more than two months after the May 6 judgments and a month after the attorney fee judgments were entered. CP 5401; *See also*, CP 5400-5413; CP 5414-5426. Thereafter they raised it at least two more times in the course of various other postjudgment motions. CP 5739-5750; CP 6158-6169. The Court denied these motions. CP 5932-5934; CP 6233-6235.

Here, there was no reason for the Guests not to have raised their tax exemption standing argument at the time summary judgment was entered. Their tax exemption argument is based entirely upon the content of SCRA's Articles of Incorporation. The Guests were aware and had a copy of the Articles of Incorporation prior to the lawsuit and as early as 2013. CP 6276.

In short, the standing issue the Guests raise here is not a matter of subject matter jurisdiction. It is instead an affirmative defense that they waived by not arguing it either at the time of summary judgment when the court determined that the SRCA had standing, on a timely motion for

reconsideration of that decision, or at any time thereafter prior to the entry of final judgment.<sup>9</sup>

**E. THE GUESTS ARE NOT ENTITLED TO ATTORNEY'S FEES ON APPEAL.**

A prevailing party may recover attorney fees only when authorized by statute, equitable principles, or agreement between the parties. *Wiley v. Rehak*, 143 Wn.2d 339, 348, 20 P.3d 404 (2001) (citing *Perkins Coie v. Williams*, 84 Wn. App. 733, 742-43, 929 P.2d 1215, *review denied*, 132 Wn.2d 1013, 940 P.2d 654 (1997)). Here, the Guests ask in the “Conclusion” of the brief for an award of attorney fees based upon RAP 18.1, RAP 18.9, and RCW 64.38.050. These authorities do not entitle them to fees.

RAP 18.1 merely provides that “[I]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expense as provided by the rule...” RAP 18.1(a). The rule does not provide the substantive legal basis for the recovery of fees.

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<sup>9</sup> Even if the Guests had raised their tax exemption argument in on a timely motion for reconsideration, the moving party must establish that there is newly discovered evidence that could not reasonably have been obtained at the time of summary judgment. CR 59(b). *Barrett v. Freise*, 119 Wn. App. 823, 850-51, 82 P.3d 1179, 1193 (2003), citing CR 59(a)(4). The Guests’ argument, while based on different facts, was never based upon *new* facts.

RAP 18.9 is a remedy for violation of the rules of appellate procedure. *See* RAP.8(d) (“The remedy for violation of these rules is set forth in rule 18.9.”). It allows the court on its own initiative or on motion of a party to order a party or counsel who “uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed...”. RAP 18.9(a). Here, the Guests have delayed this appeal for more than two years. They have delayed this appeal by filing repetitive postjudgment motions for which they were sanctioned. CP 7197-7202. As this Court is aware, they have requested multiple extensions to file their brief beginning in January of this year, and this Court too has had to levy sanctions against them. The Guests have no one but themselves to blame for the delay in the resolution of this appeal, and they provide no basis for sanctions against the Respondent under RAP 18.9.

Finally, the Guests are not entitled to fees pursuant to RCW 64.38.050 of the Washington Homeowners’ Act. RCW 64.38.050 entitles an aggrieved party to a remedy under law or equity for a violation of the Act, and further provides that the “court, in an appropriate case, may award reasonable attorneys’ fees to the prevailing party.” RCW 64.38.050. Significant to the recovery of fees under RCW 64.38.050 is that a party prevails in proving a violation of the Act or successfully

defends against a claim of a violation. Even at that, an award of fees is only proper in an “appropriate case”. See e.g., *Roats v. Blakely Island Maintenance Commission, Inc.*, 169 Wn. App. 263, 288, 279 P.3d 943 (2012) (denying an association defense fees under RCW 64.38.050 as not an “appropriate case” where the homeowner was able to prove 18 out of 28 violations alleged under the Act.).

Here, the Guests failed to prove any violation under the Washington Homeowners’ Act. Their counterclaims and third party claims were dismissed as a matter of law. CP 8174-8178. Even if the Guests were to succeed in this appeal on jurisdictional grounds, they still would not have established the necessary predicate under Chap 64.38 RCW to entitle them to fees.

In short, none of the bases the Guests claim entitle them to fees even if they prevail in this appeal.

**F. SRCA IS ENTITLED TO ATTORNEY’S FEES ON APPEAL.**

As the prevailing party below, the SRCA was awarded fees in the trial court on the basis of Section 13.1 of the 2007 CC&R’s. CP 4938-4939; CP 4968-4970; and CP 4972-4983. Section 13.1 provides as follows:

13.1 Judicial Enforcement. Continuing failure to comply with a provision of the Governing Documents or a Board Decision, or to comply with a decision of the Hearing

Board following notice of a violation and an opportunity for a hearing, shall be grounds for an action to recover sums due for damages. . .or for injunctive relief, or both, maintainable by the Board (acting through its officers or Manager on behalf of the owners)...In any action brought as provided in this Section, the prevailing party shall be entitled to recover as part of its judgment a reasonable sum for attorney fees incurred in connection with the action, in addition to its expenses and taxable costs, as permitted by law.

CP 4073-4074. RCW 4.84.330 allows for the recovery of fees to a prevailing party on a contract which allows for fees. Covenants are considered akin to contracts. See *Riss v. Angel*, 131 Wn.2d 612, 934 P.2d 669 (1997).

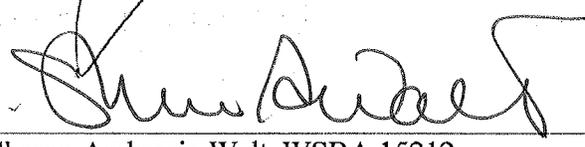
Should SRCA prevail on appeal, it requests fees as Plaintiff under the same basis as awarded by the trial court. RAP 18.1 allows for the recovery of reasonable attorney's fees on review pursuant to applicable law. SRCA is entitled to recovery under RCW 4.94.330 and the provisions of the 2007 Amended CC&R's.

Further, SRCA was the prevailing party below on all of the Guests counterclaims and was awarded fees for its successful defense of all claims alleging a violation of Chap 64.38.RCW. CP 4989-4997. Should the SRCA prevail in this appeal, it would be entitled to fees under the same basis pursuant to RAP 18.1.

DATED and submitted this 1st day of November, 2018.

By 

Kelly DeLaat-Maher, WSBA 26201  
Counsel for Respondent /Plaintiff SRCA

By 

Sharon Ambrosia-Walt, WSBA 15212  
Counsel for Respondents SCRA (as counterclaim  
defendant) and Third Party Defendants

## DECLARATION OF SERVICE

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DATED this 1<sup>st</sup> day of November, 2018, at Seattle, Washington.

  
Joy Lawrence  
Legal Assistant

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NO. 49058-2-11

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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SPINNAKER RIDGE COMMUNITY ASSOCIATION, INC.,  
Plaintiff/Respondent,

v.

CHRISTOPHER and SUZANNE GUEST,  
Defendants/Petitioners.

CHRISTOPHER and SUZANNE GUEST,  
Third Party Plaintiffs/Petitioners,

v.

DAVID LANGE and KAREN LANGE; JOHN FARRINGTON and  
JEAN FARRINGTON; and WALLACE "BOB" TIRMAN and  
VALERIE TIRMAN,  
Third Party Defendants/Respondents

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RESPONDENT SPINNAKER RIDGE COMMUNITY  
ASSOCIATION'S NOTICE OF PRAECIPE

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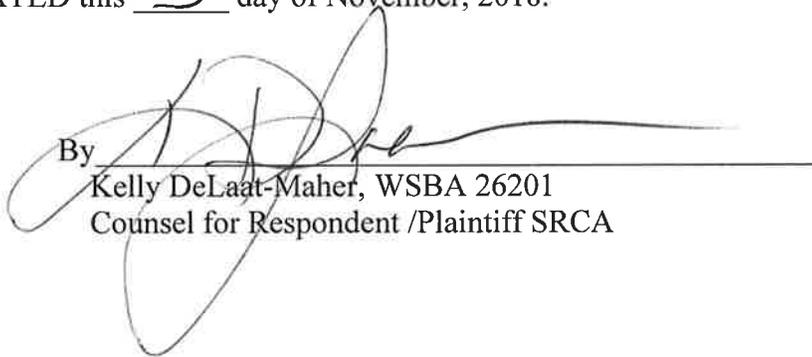
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Respondent Spinnaker Ridge Community Association (hereinafter SRCA) filed its Response Brief to Appellants' Amended Opening Brief at 5:00 on November 1, 2018.

The Response inadvertently omitted page 39 containing the Conclusion. Attached as Appendix 1 is the omitted Conclusion. Further, the Table of Authorities was incorrectly formatted and contained reference to improper authorities. Attached as Appendix 2 is a corrected Table of Authorities.

SRCA apologizes for the oversight and respectfully requests that the Clerk replace the Table of Authorities with the attached corrected table, and insert the attached Conclusion on page 39 of the brief.

DATED this 5 day of November, 2018.

By 

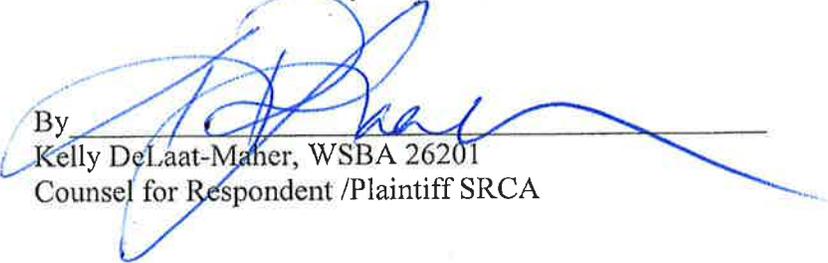
Kelly DeLaat-Maher, WSBA 26201  
Counsel for Respondent /Plaintiff SRCA

## APPENDIX 1

**V. CONCLUSION**

Based upon the foregoing, the SRCA respectfully requests that the Court deny and dismiss this appeal. The trial court had subject matter jurisdiction to decide this case, and the SRCA had standing to bring this action. The Guests have raised no other assignments of error or issues. The rulings, orders, and judgments of the trial court should be affirmed, and the appeal dismissed.

DATED and submitted this 1st day of November, 2018.

By   
\_\_\_\_\_  
Kelly DeLaat-Maher, WSBA 26201  
Counsel for Respondent /Plaintiff SRCA

By   
\_\_\_\_\_  
Sharon Ambrosia-Walt, WSBA 15212  
Counsel for Respondents SCRA (as counterclaim  
defendant) and Third Party Defendants

## APPENDIX 2

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## DECLARATION OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington, that on the below date she caused to be delivered to the Court and to the persons below, the attached document via the Washington State Appellate Court's Portal:

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