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DIVISION II

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STATE OF WASHINGTON

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No. 40426-5-II

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

MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION,
a Washington nonprofit corporation,

Respondent,

v.

JOHN J. HADALLER, an individual,

Appellant.

BRIEF OF RESPONDENT MAYFIELD COVE ESTATES
HOMEOWNERS ASSOCIATION

APPEAL FROM LEWIS COUNTY SUPERIOR COURT CASE
NO. 09-2-00052-1, THE HONORABLE JUDGE RICHARD L. BROSEY

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I. INTRODUCTION

Appellant John J. Hadaller is a rogue member of Respondent Mayfield Cove Estates Homeowners Association. Hadaller was the original property developer, but by 2007 Hadaller had sold six of the eight lots in the development and was legally committed to sell the seventh, leaving him with a single lot. After years of tyrannical mismanagement by Hadaller, all of the other Association members voted to incorporate for liability protection and provide for majority control and proper management of the Association properties. The newly elected Association Board of Directors and officers directed Hadaller to turn over all Association documents, records and funds and confirm Association ownership, control and management of common areas and water system. Hadaller refused, dared the Association to sue him, and when the Association did, proceeded to drag its members through more than a year of seemingly endless and largely frivolous legal proceedings. Throughout the process Hadaller refused to obey trial court orders, was repeatedly compelled by the trial court to perform, engaged in unauthorized self-help, and ultimately was held in contempt of court. Hadaller lost repeated motions for reconsideration and, following successful trial on the merits for the Association, lost his motion for reconsideration or a new trial.

After careful consideration, the trial court found substantial evidence supporting the Association's formation and votes, that the Association owned, controlled and managed the community water system,

and that Hadaller's efforts to reserve minority "veto power" over the Association through his "Amended Covenants" was invalid. The trial court allowed the parties ample opportunity to introduce evidence on these issues; Hadaller has failed to identify any evidence of irregularity of proceeding or surprise that ordinary prudence could not have guarded against. Moreover, Hadaller's failure to timely object to the evidence or arguments presented at trial precludes review on appeal. Finally, Hadaller failed to challenge the reasonableness of the Association's attorney's fees and cannot show abuse of discretion by the trial court in its award below.

Accordingly, Respondent Mayfield Cove Homeowners Association, on behalf of each of its members, save Hadaller, respectfully urges the Court to confirm the trial court's actions, and further to award the Association its attorney's fees and costs on appeal, as provided for by RAP 18.1, RCW 64.38.050 and the Association's governing document.

II. STATEMENT OF ISSUES

The Association disagrees with Hadaller's statement of issues on appeal, and restates the issues as follows:

A. ASSOCIATION FORMATION AND VOTE

Did substantial evidence support the trial court's findings that the Association was properly incorporated as a Washington State nonprofit corporation with sole authority to govern the Association properties and that its members voted to (1) ratify the incorporation, (2) adopt the Articles of Incorporation and Bylaws, (3) approve the initial Board of

Directors and officers, and (4) require Hadaller to turn over to the Association all documents and funds and confirm ownership and control necessary for management of the Association?

B. WATER SYSTEM OWNERSHIP, CONTROL AND MANAGEMENT

Did substantial evidence support the trial court's findings that the Mayfield Cove Estates Water System #1 and #2 ("water system") are owned, controlled and solely managed by the Association where (1) the water system and associated well house, power, water lines and easements are for the express and sole purpose of providing potable water to the owners of the Association properties, (2) Hadaller manifested a clear and unmistakable intent to dedicate the water system and associated well house, power, water lines and easements to the exclusive use, control and management of the Association, which dedication was accepted by the Association, and (3) Hadaller's claims to the contrary were not credible?

C. THE "VETO POWER" AMENDED COVENANTS

Did substantial evidence support the trial court's findings that the Amended Covenants sought by Hadaller are invalid where (1) uncontroverted testimony of Association members confirmed that they were either misled about the Amended Covenants and its "veto power" or they did not sign and their signature was forged on the document, (2) Hadaller admitted that the "veto power" he sought over the majority of Association members with the Amended Covenants was inappropriate, and (3) the original 2003 and rerecorded Association CCRs drafted by

Hadaller confirm the intent of the CCRs to assure an equal voice in the decision-making to each lot?

D. WAIVER OF RIGHT TO CHALLENGE TRIAL COURT'S EVIDENTIARY RULINGS

Did Hadaller waive his right to challenge the trial court's rulings on the admission of evidence pertaining to the Association's ownership, control and management of the water system and the validity of the Amended Covenants where (1) evidentiary objections are not treated as having constitutional magnitude and must therefore be raised at trial to preserve the issue for appeal, and (2) Hadaller never objected to the trial court's rulings on the admission of such evidence?

E. ABUSE OF DISCRETION IN ADMITTING EVIDENCE REGARDING THE WATER SYSTEM AND AMENDED COVENANTS

Assuming that Hadaller preserved challenge on appeal, did the trial court manifestly abuse its discretion regarding the admission of evidence pertaining to the Association's ownership, control and management of the water system and the validity of the Amended Covenants where (1) the trial court denied the Association's motion *in limine* to preclude Hadaller from introducing evidence not previously disclosed by Hadaller, (2) Hadaller was not precluded from introducing evidence on the issues on direct or redirect examination, (3) Hadaller declined express invitation from the trial court to present further evidence on redirect examination, and (4) Hadaller was granted a trial continuance specifically to allow an opportunity to introduce new evidence on the issues?

F. ABUSE OF DISCRETION IN DENYING HADALLER'S MOTION FOR A NEW TRIAL

Did the trial court manifestly abuse its discretion in denying Hadaller's motion for a new trial where (1) there was no evidence of irregularity of proceeding by which Hadaller was prevented from having a fair trial; (2) Hadaller failed to object to the introduction of testimony or other evidence on grounds of surprise at the time it was offered or request a continuance, (3) there was no evidence of surprise which ordinary prudence could not have guarded against where Hadaller (i) made the issue of the validity of the Amended Covenants central to the lawsuit and trial, (ii) voluntarily argued and testified at trial concerning the issue, and (iii) substantial evidence and argument was presented throughout the proceeding on the issue?

G. ABUSE OF DISCRETION IN AWARDING ATTORNEY'S FEES

Did the trial court abuse its discretion in awarding the Association attorney's fees pursuant to RCW 64.38.050 or the Association CCRs where (1) the statute explicitly provides for an award of attorney's fees to a prevailing homeowners association in matters regarding violation of RCW 64.38 and the CCRs provide for an award of fees for any dispute brought under the CCRs, (2) the lawsuit was brought pursuant to RCW 64.38 and the Association CCRs after Hadaller refused to turn over Association documents and funds and challenged the Association's ownership, control and management of the Association water system, which issues are inextricably linked, and (3) substantial evidence supports

the lodestar amount of reasonable and necessary attorney's fees awarded by the trial court, which was not challenged by Hadaller?

H. ATTORNEY'S FEES AND COSTS TO ASSOCIATION ON APPEAL

Should the Association be awarded its attorney's fees and costs on appeal on the same statutory or CCR basis as it was awarded attorney's fees and costs below?

III. STATEMENT OF THE CASE

The following background facts are drawn from the evidence of record in the trial court proceeding. The Association disagrees with the case background set forth in Hadaller's motion spanning pages 4-27 and notes that it consists substantially of unsupported assertions, *ad hominem* attacks on the Association members and their counsel, and false and purely gratuitous characterizations—all of which are wholly irrelevant to the issues on appeal and should be disregarded.

A. GENERAL FACTUAL AND PROCEDURAL BACKGROUND

Hadaller was a developer of property near Lake Mayfield in Lewis County. On or about September 25, 2003, Short Subdivision No. SP-02-00010 ("Plat 010") was recorded with the Lewis County Auditor, consisting of four lots. (Trial Ex. 1) On or about May 17, 2007, Short Subdivision No. SP-05-00017 ("Plat 017") was recorded with the Lewis County Auditor, consisting of four lots. (Trial Ex. 2)

In or about 2003, Hadaller prepared a Declaration of Covenants, Conditions, Restrictions, Road Maintenance Agreement, Water System

(“CCRs”) for the Association property thereafter referred to as Mayfield Cove Estates Homeowners Association, an unincorporated Washington association. These CCRs were recorded against all eight of the lots on Plats 010 and 017 on or about August 8, 2003. (RP 12/10/09 Vol. 3, p. 32, ll. 8-17; Trial Ex. 3) Hadaller established himself as secretary and treasurer and thereafter maintained all documents and records associated with, as well as collected all dues assessed to, the Association property. (RP 12/10/09 Vol. 3, p. 32, l. 18 – p. 33, l. 4)

Hadaller sold Lot 1 of Plat 010 to Clifford L. & Sheilah Lynn Schlosser on or about October 7, 2003 for \$70,000. Hadaller entered into a lease-option agreement for a portion of Lot 4 of Plat 010 with Dean & Pam Rockwood on or about January 31, 2004 for \$130,000 under which Hadaller was obligated to sell the property to the Rockwoods by January 30, 2009. Hadaller failed to do so, and thereafter was ordered to complete the sale to the Rockwoods in a separate legal proceeding. (Trial Ex. 4) Hadaller sold Lot 2 of Plat 010 to Maurice L. & Cheryl C. Greer on or about July 15, 2004 for \$70,000. Hadaller sold Lot 3 of Plat 010 to Randy L. Fuchs on or about September 13, 2005 for \$130,000. Hadaller sold Lots 1, 2 and 3 of Plat 017 to David A. & Sherry L. Lowe on or about October 16, 2007 for \$300,000. (RP 12/10/09 Vol. 3, p. 38, ll. 3-19)

Due to Hadaller’s mismanagement of the Association and failure to take necessary steps to ensure the common good of the majority of Association members, and the desire to incorporate for liability protection and provide for majority control and proper management of the

Association properties, all lot owners and members of the Association except Hadaller incorporated the Mayfield Cove Estates Homeowners Association on September 3, 2008. (Trial Ex. 21) The Association directed Hadaller to immediately turn over all Association documents, records and funds. Hadaller refused to relinquish the Association documents and funds, stating that the Association would have to sue him. (RP 12/10/09 Vol. 2, p. 49, l. 23 – p. 50, l. 7; Vol. 3, p. 52, l. 21 – p. 53, l. 12; Trial Exs. 22, 23) Hadaller was presented with a copy of the meeting minutes confirming the decision of the Association and directing Hadaller to immediately transfer the records and funds, which Hadaller ignored. The Association reiterated its request in writing on January 3, 2009. (Trial Ex. 24.) Hadaller refused, necessitating the present lawsuit.

The Association commenced legal action against Hadaller on or about January 14, 2009. (CP 489-536) Pursuant to RCW 64.38 et seq., the Association sought the immediate transfer of all Association documents and funds from Hadaller to the Association. At a show cause hearing held January 26, 2009, attended by Hadaller, the trial court granted the Association's request and ordered Hadaller to transfer all Association documents and funds pursuant to RCW 64.38.045. (RP 1/26/09 pp. 43-48) As part of the trial court's February 23, 2009 order, it found that the Association was a duly formed non-profit corporation accepted by the owners of the lots within the subdivision. (RP 2/23/09; Trial Ex. 25)

The trial court subsequently concluded that the Association was entitled to attorney's fees and costs related to its claims. Accordingly, on

February 27, 2009, the trial court made an interim award of attorney's fees and costs to the Association pursuant to RCW 64.38.050. (RP 2/27/09 pp. 25-28; Notice of Appeal Att. #2), reserving further award pending Hadaller's compliance with the trial court's transfer order.

Hadaller had failed to comply with the trial court's February 23, 2009 order to timely transfer all Association documents and funds. The Association brought a motion for contempt, which was heard March 13, 2009. Pursuant to the trial court's March 13, 2009 order, Hadaller was again ordered to deliver to the Association all original documents. (RP 3/13/09 pp. 12-15; Notice of Appeal Att. #3) At the time, the trial court reserved the issue of transfer of the Association's water system documents and funds (ordering the funds placed into the court's registry) and further attorney's fees.

Hadaller again failed to comply with the trial court's orders; the Association did not receive the documents and funds from Hadaller as ordered. This prompted the Association to file another motion for contempt against Hadaller, which was heard April 3, 2009. At that time the trial court denied Hadaller's request for reconsideration (Notice of Appeal Att. #4) and again ordered Hadaller to deliver to the Association all original documents or face specific sanctions. (RP 4/3/09 pp. 27-28, 32-36) On April 13, 2009, the trial court issued an order regarding contempt and an award of further attorney's fees and costs due to Hadaller's failure to timely comply with the trial court's transfer order. (Notice of Appeal Att. #5)

Yet again Hadaller failed to comply with the trial court's orders, requiring another hearing on May 15, 2009 to address the transfer of documents and contempt proceedings. At that hearing the trial court ruled that Hadaller was to deliver a declaration under oath to the Association describing in detail all documents and funds that had purportedly been transferred and the date(s) of transfer. The trial court further ordered that the issue of ownership, control and management of the Association water system and funds required trial. (RP 5/15/09 p. 31, ll. 9-24) Finally, the trial court ordered that the Association was entitled to the balance of the previously approved attorney's fees and costs, along with additional attorney's fees and costs incurred by the Association since the time of the interim award. (RP 5/15/09 pp. 31-39) Hadaller refused to sign for presentation of the order on these issues as prepared by the Association. Accordingly, the Association noted this order for a hearing on presentation for June 19, 2009. The Association also noted for the same date a hearing for the court to assess the remaining attorney's fees and costs awarded to the Association. Both orders were entered by the trial court on that date. (RP 6/19/09 pp. 15-17; Notice of Appeal Att. #6, 7)

The Association held its annual meeting July 3, 2009. At the meeting the Association voted to adopt amended CCRs, which CCRs were duly executed by Association members before a notary public and recorded with Lewis County under Auditor No. 3329633 on July 6, 2009 ("Amended CCRs"). (Trial Ex. 26) Consistent with the two CCRs previously recorded by Hadaller, the Amended CCRs confirmed the

Association's ownership, exclusive control and management of the community water system. (Trial Ex. 26, Section 1.7, 4.1, Exhibits C, D)

Notwithstanding the status of the litigation and the continuing dispute regarding management and control of the Association water system, Hadaller sought to take matters into his own hands, trespassing onto private property, turning off an Association member's water to their home and locking the water meter—on the July 4 holiday weekend! The Association was forced to seek and obtained a temporary restraining order requiring Hadaller to remove the lock and turn the water back on, and further preventing Hadaller from adversely affecting the water supply of any Association member pending a full hearing on the issue. (CP 1123-1126) On August 7, 2009 the Association converted the temporary restraining order into a preliminary injunction. (Notice of Appeal Att. #8)

Hadaller sought discretionary review of the trial court's February 2009 transfer and attorney's fees award orders. On August 26, 2009, the Court of Appeals denied Hadaller's appeal based on discretionary review, and specifically found:

- The trial court's transfer order as part of a show cause hearing was procedurally appropriate.
- The incorporation of the Association, formation of the Board of Directors and election of officers was consistent with the objective intent of the CCRs.
- The Association voting regarding formation and governance was appropriate.

- The “Amended Covenants” document recorded by Hadaller seeking to give him veto power within the Association is inconsistent with the intent of the CCRs, which is to assure an equal voice in the decision-making to each lot.

(Trial Ex. 28)

Between October 16 and November 21, 2009, Hadaller violated the trial court’s August 7, 2009 preliminary injunction by unilaterally interrupting water to Association members and working on and otherwise altering the Association water system without prior trial court approval of no fewer than fourteen days, causing substantial injury to the Association members. (RP 12/10/09 Vol. 2, p. 52, l. 7 – p. 56, l. 25; p. 73, l. 22 – p. 83, l. 10; CP 1108-1111, 1282-1290; Trial Exs. 29-35)

After the parties exchanged trial briefs (CP 1326-1348) and stipulated to admitted trial exhibits (CP 1357-1359), a two day bench trial was held December 10-11, 2009. Both parties were represented by attorneys licensed in the State of Washington. Because Hadaller failed to obey the case schedule mandating disclosure of witnesses or submission of exhibits beyond those stipulated to by the parties (CP 1276-1277), the Association brought a motion *in limine* seeking to exclude any testimony or additional exhibits. (CP 1397-1400) The trial court denied the Association’s motion. (RP 12/10/09 Vol. 1, pp. 4-11) Hadaller was given ample opportunity to cross examine each witness presented by the Association, including Cheryl Greer, Randy Fuchs and Pam Rockwood, and to present his own case. (RP 12/10/09 Vol. 2, pp. 17-29, 31, 57-58, 67-70, 83) After direct questions by the trial court relating specifically to

the water system and Amended Covenants issues, Hadaller specifically declined an opportunity provided by the trial court to ask further questions on these issues. (RP 12/10/09 Vol. 2, pp. 33, 65-71) The trial court granted Hadaller a recess and a trial continuance specifically to allow an opportunity to introduce new evidence on the issue of ownership of the water system, and admitted several new exhibits over the Association's objection. (RP 12/10/09 Vol. 3, pp. 73-85)

At the conclusion of the trial, the trial court made an oral ruling in favor of the Association. (RP 12/11/09 pp. 58-82) After further argument on December 30, 2009 (RP 12/30/09), the trial court subsequently entered findings of fact and conclusions of law and judgment in favor of the Association. (Notice of Appeal Att. #9, 10)

On January 11, 2010, Hadaller filed a motion seeking reconsideration or a new trial. After the hearing on February 5, 2010, the trial court denied Hadaller's motion, finding a lack of any basis under CR 59. (RP 2/5/10 pp. 35-40; Notice of Appeal Att. #11)

B. BACKGROUND SPECIFIC TO ISSUES ON APPEAL

1. Association Formation and Vote

By vote of a majority of the Association members at a special meeting held December 30, 2008, all members were found current in their Association assessments, the incorporation of the Association was ratified, the Association Articles of Incorporation and Bylaws were adopted, an initial Board of Directors was approved and new officers of the

corporation were elected. (RP 12/10/09 Vol.2 p. 10, ll. 9-23, p. 49, ll. 10-19; Trial Exs. 22, 23) As of the date of the meeting the Association properties subject to the CCRs were as follows:

Comprising Plat 010:

Clifford L. & Sheilah Lynn Schlosser	Lot 1
Maurice L. & Cheryl C. Greer	Lot 2
Randy L. Fuchs	Lot 3
John J. Hadaller	Lot 4
Constructive trust for Pam & Dean Rockwood	

Comprising Plat 017:

David A. & Sherry L. Lowe	Lot 1
	Lot 2
	Lot 3
John J. Hadaller	Lot 4

(Trial Exs. 1, 2) The Association confirmed the proper number of lots eligible for vote and the subsequent vote of the members. (RP 1/26/09, p. 9, ll. 20-24, p. 12, ll. 21-25) At the time of the show cause hearing, the trial court specifically considered the issue of proper lots and vote eligibility and concluded that the CCRs provided for one vote per legally recognizable lot, and Lot 4 of Plat 010 had only a single legally recognizable lot. (RP 1/26/09 p. 17, l. 15 – p. 18, l. 1, p. 27, ll. 21-23) Contrary to Hadaller’s assertion, the Association never admitted, and Hadaller failed to present any evidence, that the vote of a supermajority of Association members (every member except Hadaller) was insufficient.¹

¹ Hadaller’s claim that the Association “acknowledged law provides the developer has the right to control his CCR’s until the plat reaches 75% ownership by the homeowners” is false. In fact, in the referenced transcript the Association asserted that

At trial, evidence and argument was introduced regarding the issue of proper lots and vote eligibility. (RP 12/10/09 Vol. 1, p. 11, l. 20 – p. 12, l. 15) Randy Fuchs, Association member and secretary, testified as to the accuracy of the member votes at the Association meetings. (RP 12/10/09 Vol. 2, p. 49, l. 14 – p. 50, l. 17) Hadaller admitted that the Association approved the proper number of votes. (RP 12/10/09 Vol. 3, p. 23, l. 23 – p. 24, l. 3) Hadaller specifically admitted that there were only four lots on Plat 010 and four lots on Plat 017 for a total of eight voting lots, and that he was developing two new lots “in the future.” (RP 12/10/09 Vol. 3, p. 20, l. 21 – p. 21, l. 3; p. 24, ll. 19-20) Hadaller repeated this admission when he stated that he owns only two current lots (at that time, Lot 4 of Plat 010 which was in trust for the Rockwoods and Lot 4 of Plat 017) and that two more were pending but “not actually divided into two lots.” (RP 12/11/09 p. 3, l. 22 – p. 5, l. 1)

This was further confirmed by evidence at trial that Hadaller had not legally divided Lot 4 of Plat 010 as of the December 30, 2009 Association meeting. In fact, summary judgment against Hadaller was granted in favor of the Rockwoods on August 7, 2009, ordering Hadaller to take all necessary actions to place Lot 4 in legal condition to sell to the Rockwoods because Lot 4 was still a single, contiguous lot and unable to be divided for sale to the Rockwoods. (Trial Ex. 4)

(1) Hadaller owned less than 75% of the Association properties and was a minority owner, and (2) the law presumes that the majority of association homeowners should be entitled to control their destiny. (RP 4/3/09 p. 15, ll. 8-18)

In addition, the trial court's findings were confirmed once already by the Court of Appeals at the time Hadaller sought discretionary review of the trial court's February 2009 transfer and attorney's fees award orders. On August 26, 2009, the Court of Appeals denied Hadaller's appeal based on discretionary review, and specifically found that the :

- The incorporation of the Association, formation of the Board of Directors and election of officers was consistent with the objective intent of the CCRs; and
- The Association voting regarding formation and governance was appropriate.

(Trial Ex. 28, p. 5)

2. Water System Ownership, Control and Management

As part of obtaining approval for Plats 010 and 017, according to Lewis County Code 16.10.480, Hadaller was required to provide a water system supplying water to each lot on the two plats. (Trial Ex. 5). Plats 010 and 017 show express dedication by Hadaller of the required water system to the lots of each plat. (Trial Exs. 1, 2)

The purchasers of Lots 1-4 of Plat 010 and Lots 1-3 of Plat 017 were informed by Hadaller and understood that (a) they were obtaining guaranteed water rights as part of the value of the purchase price, and (b) that the Association owned, controlled and managed the water system. Consistent with their understanding, the purchasers of these lots have been paying water assessments to the Association since they purchased the property. These findings were supported by the testimony of Cheryl Greer,

Randy Fuchs and Pam Rockwood. (RP 12/10/09 Vol. 2, p. 4, ll. 12-20, p. 5, ll. 21-24, p. 6, ll. 3-5, p. 6, l. 23 – p. 7, l. 1, p. 35, ll. 12-23, p. 36, ll. 5-32, p. 45, ll. 8-16, p. 72, ll. 19 – p. 73, l. 21, p. 83, ll. 2-10; RP 12/11/09 p. 25, l. 7 – p. 26, l. 2; *see also* p. 33, l. 17 – p. 37, l. 2)

At the time Hadaller established the water system he did so in the name of the Association and confirmed the Association as owner and manager, in part by doing the following:

- Hadaller submitted a Well Site Inspection Form to Lewis County for review of the water system well on or about July 29, 2009, wherein he listed the owner of the water system as “Mayfield Cove Estates Homeowners Association.” (Trial Ex. 6.)
- Hadaller submitted and obtained approval of a Water Facilities Inventor Form (WFI) for the water system to the Washington Department of Health in his capacity as the “Treasurer” of the water system on or about December 1, 2003 wherein he listed in blocks 7 and 13 that the water system was owned by the Association. (Trial Ex. 7)
- Hadaller commissioned an engineering report on the water system on or about June 30, 2003, and again on September 15, 2003, wherein he listed the owner of the water system as “Mayfield Cove Estates Homeowners Association.” (Trial Exs. 8, 9)
- Hadaller contracted with Skyline Pump & Machine Co., Inc. to act as the required satellite water management agency for the water on or about September 9, 2003, wherein he listed the owner of the water system as “Mayfield Cove Estates Homeowners Association.” (Trial Ex. 10)
- Hadaller submitted and obtained approval of a Water Facilities Inventor Form (WFI) for the water system to the Washington Department of Health in his capacity as the “Treasurer” of the

water system on or about February 13, 2007 wherein he listed in blocks 7 and 13 that the water system was owned by the Association. (Trial Ex. 11)

- Hadaller contracted with Pacific Water Systems, Inc. to act as the required satellite water management agency for the water system on or about November 6, 2006, wherein he listed the owner of the water system as “Mayfield Cove Estates Homeowners Association.” (Trial Ex. 12) Pacific Water Systems has consistently invoiced the Association for its services. (Trial Ex. 13)

(RP 12/10/09 Vol. 2, p. 37, l. 3 – p. 40, l. 9, p. 41, l. 25 – p. 45, l. 2)

The original August 8, 2003 CCRs (Trial Ex. 3) prepared and recorded by Hadaller confirm that the Association is the owner and manager of the water system, providing as follows:

- Article I, Section 6 expressly defines the Association water system as the “certain approved water system along with all easements and utilities filed in conjunction with the Mayfield Cove Estate plat and as depicted on the attached Exhibit C by this reference incorporated herein.”
- Article III, Section 3 specifies the annual water assessment to be collected by the Association.
- Article III, Section 4 provides for special assessments to maintain the Association water system.
- Article III, Section 5(p) governs members’ interference with the Association water system.
- Exhibit C, expressly incorporated by reference into the CCRs, confirms that “all management of this system is governed by the [CCRs].” Exhibit C, Section 2 specifically confirms that the Association treasurer or secretary is responsible, among other things, to manage the Association water system as follows:
 - collect semi-yearly water assessments

- hire and supervise satellite management agency
- stay abreast and report to association as to the general conditions of system
- receive and pay electric/utility bills
- perform routine maintenance and hook up new meters
- read meters and bill members
- balance and report trust account to association members at members request
- Article 2 of Exhibit C further specifies the Association's responsibility for water meter installation, hook-up and assessments to members.

Since it was formed in 2003, the Association has consistently governed, managed and controlled the water system:

- The Association has collected all water assessments made by Association members as part of its collection of Association funds. (Trial Exs. 14, 15)
- Since April 2005, all assessments collected by the Association have been maintained in a Washington Mutual bank account in the name of "Mayfield Cove Estates Homeowners Assoc" as Association funds. (Trial Ex. 16)
- Since at least as early as 2005, Association funds have been used to pay for water management and testing by the satellite company and electrical utility service by the Lewis County PUD account in the name of "Mayfield Cove Estates." (Trial Exs. 17, 18)
- Hadaller, while Association treasurer/secretary, reported on the state of the water system and water assessments, identifying them as Association responsibilities and assets. (Trial Ex. 19)

On or about April 13, 2007, Hadaller re-recorded the CCRs confirming all aspects of the Association's water system ownership and management. (Trial Ex. 20) The July 6, 2009 CCRs approved by the majority of Association members (every member except Hadaller) confirm the Association's ownership and exclusive control and management of the water system. (Trial Ex. 26, Section 1.7, 4.1, Exhibits C, D)

Hadaller admitted at trial that it had been his clear and unmistakable intent to dedicate the water system and associated well house, power, water lines and easements to the exclusive use, control and management of the Association:

- Hadaller admitted the water system was intended to be a fixture to the Association property (RP 12/10/09 Vol. 3, p. 29, l. 15 – p. 30, l. 12)
- Hadaller admitted expressly dedicating the water system to the Association (RP 12/10/09 Vol. 3, p. 30, l. 13 – p. 31, l. 20)
- Hadaller admitted documents dedicating water system to Association, notwithstanding his intention to mislead the lot purchasers (RP 12/10/09 Vol. 3, p. 10, l. 7 – p. 16, l. 20, p. 20, l. 19 – p. 22, l. 21, p. 41, l. 20 – p. 46, l. 15; p. 46, l. 22 – p. 48, l. 1)
- Hadaller admitted pursuant to the original CCRs that the Association manages and controls all aspects of the water system (RP 12/10/09 Vol. 3, p. 33, l. 17 – p. 35, l. 24)
- Hadaller admitted that all lot purchasers understood when purchasing lots that the Association controlled and managed water system pursuant to CCRS (RP 12/10/09 Vol. 3, p. 39, l. 11 – p. 40, l. 1)

- Hadaller admitted collecting \$700,000 for the sale of the lots to purchasers. (RP 12/10/09 Vol. 3, p. 38, l. 3 – p. 39, l. 2)
- Hadaller admitted that the Association “should manage and control water system” (RP 12/10/09 Vol. 3, p. 46, ll. 16-21)

At the February 5, 2010 hearing on Hadaller’s motion for reconsideration or a new trial, the trial court specifically reiterated its findings that the Association’s ownership of the water system was supported by substantial evidence. (RP 2/5/10 p. 38, ll. 5-11)

3. *Validity of Hadaller’s “Veto Power” Amended Covenants*

A two day bench trial was held December 10-11, 2009. Both parties were represented by attorneys licensed in the State of Washington. The validity of the Amended Covenants was one of the central issues of the case; it was argued in both opening and closing arguments. (RP 12/10/09 Vol. 1, p. 12, ll. 18-22, p. 17, l. 7 – p. 18, l. 3; RP 12/11/09 p. 31, l. 9 – p. 33, l. 4, p. 42, l. 21 – p. 44, l. 4)

Uncontroverted testimony was introduced by Association members Cheryl Greer and Randy Fuchs regarding the invalidity of the Amended Covenants. Greer testified that Hadaller misled her about the Amended Covenants and its “veto power” for Hadaller, that she signed it only because of Hadaller’s misrepresentation, and that she never intended to give Hadaller the right to control the Association. (RP 12/10/09 Vol. 2, p. 8, l. 17 – p. 9, l. 19, p. 31, l. 23 – p. 33, l. 13) Fuchs testified that he did not sign the Amended Covenants—his signature was forged on the document. (RP 12/10/09 Vol. 2, p. 48, l. 5 – p. 49, l. 9, p. 65, ll. 19-24) Hadaller admitted that the “veto power” he sought over the majority of

Association members with the Amended Covenants was inappropriate. (RP 12/10/09 Vol. 3, p. 35, l. 25 – p. 38, l. 2)

Evidence was admitted at trial including the original 2003 CCRs drafted by Hadaller (Trial Ex. 3), which was rerecorded by Hadaller in 2007 (Trial Ex. 20), both of which confirm the intent of the CCRs to assure an equal voice in the decision-making to each lot. (Trial Ex. 3, Article II, Section 2) On this basis alone, prior to trial as part of the August 26, 2009 denial by the Washington Court of Appeals of Hadaller's appeal based on discretionary review, the Commissioner questioned the validity of the Amended Covenants. (Trial Ex. 28, p. 4 n.3)

4. Procedural History and Introduction of Evidence

The Association originally sought the transfer of all Association documents and funds pursuant to RCW 64.38. (CP 489-536) In answer and opposition to the Association's show cause proceeding to recover the documents and funds, Hadaller directly placed at issue the Association's incorporation, bylaws, and Hadaller's "veto power" Amended Covenants in resisting the transfer. (CP 3-4, 8-9, 12-14) Hadaller's answer quoted at length the Amended Covenants document as the claimed basis for Hadaller's refusal to recognize the will of the majority of Association members and turn over Association documents, funds and control to the newly elected Association Board of Directors and officers. (CP 8-9) Hadaller argued at length in the January 26, 2009 show cause hearing that his "veto power" trumped any majority vote of Association members.

(RP 1/26/09 p. 11, ll. 5-10, p. 21, ll. 4-9, p. 28, ll. 6-15, p. 29, ll. 14-16, p. 39, l. 6 – p. 41, l. 13) The trial court noted that the issues before the court included the Amended Covenants. (RP 1/26/09 p. 32, l. 13 – p. 34, p. 46, ll. 20-23)

After the Court ordered the transfer of Association documents, Hadaller sought reconsideration due to his claimed “veto power” based on the Amended Covenants. In his brief in support of the motion for reconsideration, Hadaller identified the “veto power” of the Amended Covenants as the issue for resolution by the Court:

Whether the existing covenants, conditions, restrictions, road maintenance agreements and water system provisions (CCRs) prevent the Defendant from being required to turn over association documents and funds of the Mayfield Cove Homeowner’s Association without the Defendants affirmative vote.

(CP 178) The parties focused their oral arguments regarding reconsideration on the validity of the Amended Covenants. (RP 2/23/09 p. 7, ll. 15-22, p. 8, ll. 6-9, p. 12, ll. 10 – p. 12, l. 12, p. 14, ll. 10-16; RP 2/27/09 p. 5, ll. 14-19, p. 9, ll. 13-20, p. 22, l. 20 – p. 23, l. 1, p. 23, l. 21 – p. 24, l. 4) The trial court offered Hadaller a full hearing on the merits of the validity of the Amended Covenants in advance of trial. (RP 2/27/09 p. 27, ll. 4-11)

At the March 13, 2009 hearing on the Association’s motion for contempt, Hadaller again put directly at issue the validity of the Amended Covenants as the basis for his refusal to turn over the water system documents and funds. (RP 3/13/09 p. 7, ll. 4-13) Hadaller admitted that the

validity of the Amended Covenants was an issue in the case. (RP 3/13/09 p. 9, ll. 6-10) After extensive argument on the issue of the validity of the Amended Covenants, the trial court identified it as a “major issue in this case” and declined to deal with the issue summarily, indicating the need for an evidentiary hearing or trial on the issue. (RP 3/13/09 p. 8, ll. 18-24, p. 10, l. 5 – p. 12, l. 9, p. 14, ll. 13-18, p. 15, ll. 8-18)

Contrary to Hadaller’s argument, the trial court did not indicate the validity of the Amended Covenants to be a separate issue; rather, pending Lewis County Case No. 09-2-934-0 pertained to a separate easement dispute issue between Hadaller and individual Association members and did not relate to the validity and enforceability of the Association’s incorporation, bylaws, new CCRs, or Hadaller’s attempted “veto power” Amended Covenants. (RP 3/13/09 p. 27, ll. 15-22, p. 28, ll. 5-9)

At the May 15, 2009 hearing on the Association’s motion for contempt, further attorney’s fees and to confirm Association ownership, control and management of the water system, Hadaller again argued that Amended Covenants were valid and that they precluded Association ownership of the water system. (RP 5/15/09 p. 4, l. 14 – p. 5, l. 1) The trial court concluded that the validity of the Amended Covenant created an issue of fact regarding ownership, control and management of the water system and transfer of related document and funds that required a trial. (RP 5/15/09 p. 5, ll. 17-23, p. 31, ll. 9-24) Hadaller acknowledged that the issue of the validity of the Amended Covenant would be part of the trial. (RP 5/15/09 p. 37, ll. 5-12)

Contrary to Hadaller's assertion, there was no stipulation between the parties limiting the issues set for trial. The November 17, 2009 letter from Hadaller's attorney Rasmussen to Hadaller is nothing more than a hearsay opinion by Hadaller's legal counsel about a pretrial meeting. (CP 432) The November 18, 2009 letter from Association attorney Lowe to Rasmussen was an ER 408 settlement offer letter from the Association that says absolutely nothing about limiting or otherwise stipulating to issues, evidence or witnesses at trial. (CP 434-436)

Contrary to Hadaller's assertion, the validity and enforceability of the Association's incorporation, bylaws, new CCRs, and Hadaller's attempted "veto power" Amended Covenants was specifically identified in the Association's trial brief and exhibits and was included in the exhibits Hadaller stipulated to admit into evidence. (CP 1326-1348, ¶¶ 17-21, 24, 29-32; CP 1357-1359, Exs. 20-23, 26-27) The only stipulation of record was the stipulated trial exhibit list (CP 1357-1359)

Ownership, control and management of the water system and the validity of the Amended Covenants were central issues of the two-day bench trial, and these issues were argued in both opening and closing arguments. (RP 12/10/09 Vol. 1, p. 12, ll. 18-22, p. 17, l. 7 – p. 18, l. 3; RP 12/11/09 p. 31, l. 9 – p. 33, l. 4, p. 42, l. 21 – p. 44, l. 4) Substantial and uncontroverted testimony was offered by Association members Cheryl Greer and Randy Fuchs, as well as by Pam Rockwood, on these issues.

Hadaller was given ample opportunity to present his own evidence and testimony and to cross examine each witness presented by the

Association. (RP 12/10/09 Vol. 2, pp. 17-29, 31, 57-58, 67-70, 83) After direct questions by the trial court relating specifically to the water system and Amended Covenants issues, Hadaller specifically declined an opportunity provided by the trial court to ask further questions. (RP 12/10/09 Vol. 2, pp. 33, 65-71) The trial court granted Hadaller a recess and a trial continuance specifically to allow an opportunity to introduce new evidence on the issue of ownership of the water system, and admitted several new exhibits over the Association's objection. (RP 12/10/09 Vol. 3, pp. 73-85)

Of particular note, Hadaller utterly failed to make any objection to the testimony offered by the Association pertaining to the water system, the validity and enforceability of the Association's incorporation, bylaws, new CCRs, or Hadaller's attempted "veto power" Amended Covenants. Hadaller failed to raise any objection when the trial court questioned each of the witnesses at length on the subject. Hadaller himself testified about the Amended Covenants during cross examination. (RP 12/10/09 Vol. 2, p. 8, l. 17 – p. 9, l. 19, p. 31, l. 23 – p. 33, l. 13, p. 48, l. 5 – p. 49, l. 9, p. 65, ll. 19-24; Vol. 3, p. 35, l. 25 – p. 38, l. 2) Likewise, Hadaller failed to seek trial continuance to present further evidence. After hearing the evidence, the trial court ruled that the transfer of records sought by the Association necessarily involved a determination as to who owns, controls and manages the water system. (RP 12/11/09 p. 59, ll. 12-21)

At the subsequent December 30, 2009 hearing for entry of findings of facts and conclusions of law, the trial court articulated how the case

involved, fundamentally, the Association majority's right to control its affairs—something Hadaller had fought at every turn. (RP 12/30/09 p. 22, l. 24 – p. 24, l. 19, p. 28, ll. 9-25) Hadaller acknowledged at the hearing that he had an opportunity to present additional evidence regarding the water system and Amended Covenants validity issues but failed to do so, and that such failure was an issue between him and his attorney. (RP 12/30/09, p. 46, l. 1 – p. 47, l. 7) Hadaller repeated this same admission at the February 5, 2010 hearing on his motion for reconsideration or a new trial. (RP 2/5/10 p. 14, l. 8 – p. 15, l. 16) At that hearing, the trial court specifically considered and rejected Hadaller's arguments that there had been any CR 59(a)(1) irregularity in the proceedings of the court or any CR 59(a)(3) accident or surprise which ordinary prudence could not have guarded against. (RP 2/5/10 p. 35, l. 25 – p. 39, l. 1)

5. *Award of Attorney's Fees Pursuant to RCW 64.38.050 or the Association CCRs*

RCW 64.38.050 provides that an aggrieved party may be awarded reasonable attorney's fees. The July 6, 2009 CCRs expressly provide for the recovery of attorney's fees and costs by the prevailing party in any dispute brought under the CCRs, including but not limited to any action to enforce or interpret the terms of the CCRs. (Trial Ex. 26, Section 6.7)

Hadaller denied Association ownership, control and management of the water system and refused to transfer documents and funds to the Association, forcing the Association to commence this lawsuit.

(RP 12/10/09 Vol. 2, p. 49, l. 23 – p. 50, l. 7; Vol. 3, p. 52, l. 21 – p. 53, l. 12; Trial Exs. 22-24) Hadaller repeatedly disobeyed trial court orders, including the transfer of documents and funds to the Association, only performing after compelled to do so by the trial court. (RP 3/13/09 pp. 12-15; RP 4/3/09 pp. 27-28, 32-36; RP 5/15/09 pp. 31-39; RP 6/19/09 pp. 15-17; Notice of Appeal Att. #3-7) Hadaller engaged in self-help, including unilaterally shutting off the Association water supply, necessitating an emergency temporary restraining and subsequent preliminary injunction proceeding. (CP 1086-1126; Notice of Appeal Att. #8) Hadaller was ultimately held in contempt of court. (RP 12/11/09 p. 71, l. 2 – p. 72, l. 10; Notice of Appeal Att. #9, Findings ¶¶ 39-54, Conclusions ¶¶ 18-19)

The Association provided declarations supporting the average hourly billing rates for attorney's in Lewis County and the time spent on the case by the Association legal counsel. (CP 623-626, 635-640, 712-717, 720-721, 758-760, 804-805, 866-869, 971-973, 1024-1028, 1061-1066, 1080-1085, 1127-1128, 1186-1188, 1207-1210, 1247-1250, 1349-1356, 1401-1408, 1416-1423, 1429-1436, 1459-1462, 1476-1480) After careful review of the evidence, the trial court found the hourly billing rates and time spent by the Association's attorneys to be reasonable and necessary for the services provided, and produced a successful result on behalf of the Association. Hadaller did not object to the findings of the trial court regarding the hourly billing rates or time spent. The trial court applied the lodestar formula and found the resulting award of attorney's fees and costs

incurred in this case by the Association to be reasonable and appropriate.
(Notice of Appeal Att. #1-11)

IV. AUTHORITY AND ARGUMENT

A. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURTS FINDINGS OF FACT

With respect to the first three issues, Hadaller challenges the trial court's findings regarding the Association formation and vote, water system ownership, control and management, and invalidity of the "veto power" Amended Covenants. Where the trial court has weighed the evidence, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether those findings of fact support the trial court's conclusions of law. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d1231 (1982); *Keever & Assocs., Inc. v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise. *Ridgeview Props.*, 96 Wn.2d at 719; *Green v. Cmty. Club*, 137 Wn. App. 665, 689, 151 P.3d 1038 (2007); *Keever & Assocs.*, 129 Wn. App. at 737. If that standard is satisfied, the reviewing court will not substitute its judgment for that of the trial court even though it might have resolved disputed facts differently. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003); *Green*, 137 Wn. App. at 689. Moreover, there is a presumption in favor of trial court's findings; the party claiming error has the burden of showing

that a finding of fact is not supported by substantial evidence. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). A trial court's factual findings are accorded great deference on appellate review, and all reasonable inferences are taken in favor of the party who prevailed below. *See Freeburg v. City of Seattle*, 71 Wn. App. 367, 859 P.2d 610 (1993).

For each of these three issues, the presumption is in favor of the trial court's findings, and all reasonable inferences must be taken in favor of the Association. Hadaller has failed to meet his burden of proving that this undisputed evidence does not support the trial court's findings of fact. To the contrary, in each case, the evidence is more than sufficient to persuade a fair-minded person of the truth of the declared premise. *Ridgeview Props.*, 96 Wn.2d at 719; *Green*, 137 Wn. App. at 689; *Keever & Assocs.*, 129 Wn. App. at 737. Accordingly, there is no basis for the reviewing court to substitute its judgment for that of the trial court. *Sunnyside*, 149 Wn.2d at 879; *Green*, 137 Wn. App. at 689.

I. Association Formation and Vote

Substantial evidence confirms that as of the date of the December 30, 2008 meeting, there were eight voting Association properties subject to the CCRs, one each owned by the Schlossers, Greers and Fuchs, three owned by the Lowes, and two owned by Hadaller. (Trial Exs. 1, 2; RP 12/10/09 Vol. 1, p. 11, l. 20 – p. 12, l. 15; Vol. 3, p. 20, l. 21 – p. 21, l. 3; p. 24, ll. 19-20; RP 12/11/09 p. 3, l. 22 – p. 5, l. 1) The CCRs

recognize one vote per legally recognizable lot, and Lot 4 of Plat 010 had only a single legally recognizable lot. (RP 1/26/09 p. 17, l. 15 – p. 18, l. 1, p. 27, ll. 21-23; Trial Exs. 3, 4, 20) The Association confirmed the proper number of lots eligible for vote. (RP 1/26/09, p. 9, ll. 20-24, p. 12, ll. 21-25; RP 12/10/09 Vol. 2, p. 49, l. 14 – p. 50, l. 17; Vol. 3, p. 23, l. 23 – p. 24, l. 3)

Substantial evidence confirms that by vote of a majority of the Association members, all members were found current in their Association assessments, the incorporation of the Association was ratified, the Association Articles of Incorporation and Bylaws were adopted, an initial Board of Directors was approved and new officers of the corporation were elected. (RP 12/10/09 Vol. 2 p. 10, ll. 9-23, p. 49, ll. 10-19; Trial Exs. 22, 23) The trial court's findings were confirmed once already by the Court of Appeals at the time Hadaller sought discretionary review of the trial court's February 2009 transfer and attorney's fees award orders. (Trial Ex. 28, p. 5)

Contrary to Hadaller's assertion, the Association never admitted, and Hadaller failed to present any evidence, that the vote by a 66.7% supermajority of Association members (every member except Hadaller) would be insufficient even if Hadaller had been entitled to an additional vote for his nonexistence lot. It is not disputed, and Hadaller admits, that the original Association CCRs expressly anticipated and reserved the authority to amend the CCRs "from time to time as is deemed necessary by the members." (Trial Ex. 3, Sec. 3) This reservation of authority has

been confirmed as appropriate by the Court of Appeals. *Shafer v. Board of Trustees*, 76 Wn. App. 267, 883 P.2d 1387 (1994).

Here, the CCRs do not set forth any voting requirement for CCR amendment, let alone to ratify the Association incorporation, adopt the Articles of Incorporation and Bylaws, approve the initial Board of Directors and officers, or require Hadaller to turn over to the Association all documents and funds and confirm ownership and control necessary for management of the Association. RCW 64.38.025 provides the only reference to voting requirements, namely, that with respect to removal of members of the board of directors, majority vote of the owners is sufficient. To the extent that the absence of CCR direction on this issue is considered an ambiguity, under well-established case law it is to be construed against Hadaller as the drafter and one claiming the benefit of the restriction. *Sandy Point Imp. Co. v. Huber*, 26 Wn. App. 317, 613 P.2d 160 (1980); *Parry v. Hewitt*, 68 Wn. App. 664, 669, 847 P.2d 483 (1992). Accordingly, regardless of Hadaller's claim to an additional vote based on the nonexistent proposed lot, substantial evidence confirms that a 66.7% supermajority of Association members is sufficient.²

² Hadaller's reliance on various legislative proposals to amend RCW 64.38 over the last five years is misplaced. First, the content of Hadaller's appendix consists of materials not contained in the review on review. Lacking permission from the appellate court, Hadaller's appendix violates RAP 10.3(a)(8) and should be stricken. Hadaller's appendix materials do not constitute the text of a statute, only various legislative proposals, and therefore do not fit with any recognizable exception. Second, legislative proposals are not law, nor persuasive authority, and the Court of Appeals should not base its review upon speculative proposals that have not, and may never be, enacted into law.

2. *Water System Ownership, Control and Management by the Association*

Substantial evidence confirms that Hadaller intended to annex and make appurtenant to the realty of Plat 010 and Plat 017 and dedicate the well house, power and water lines and related utility easements to the exclusive ownership, control and management of the Association, including:

- Hadaller's actions indicating Association ownership of the water system to state and county governmental bodies at the time of system creation. (RP 12/10/09 Vol. 2, p. 37, l. 3 – p. 40, l. 9, p. 41, l. 25 – p. 45, l. 2; Vol. 3, p. 10, l. 7 – p. 16, l. 20, p. 20, l. 19 – p. 22, l. 21, p. 41, l. 20 – p. 46, l. 15; p. 46, l. 22 – p. 48, l. 1; Trial Exs. 6-11, 13)
- Express language in the CCRs prepared by Hadaller and recorded August 8, 2003 and again April 13, 2007 making the Association water system a fixture appurtenant and permanent to the land. (Trial Ex. 3, Art. I, Sec. 6, Art. III, Secs. 3, 4, 5(p), Ex. C)
- Hadaller's representations to potential lot purchasers and the belief by lot purchasers that the Association owned, controlled and managed the water system. (RP 12/10/09 Vol. 2, p. 4, ll. 12-20, p. 5, ll. 21-24, p. 6, ll. 3-5, p. 6, l. 23 – p. 7, l. 1, p. 35, ll. 12-23, p. 36, ll. 5-32, p. 45, ll. 8-16, p. 72, ll. 19 – p. 73, l. 21, p. 83, ll. 2-10; RP 12/11/09 p. 25, l. 7 – p. 26, l. 2; *see also* p. 33, l. 17 – p. 37, l. 2; RP 12/10/09 Vol. 3, p. 39, l. 11 – p. 40, l. 1)
- Hadaller's successful efforts to sell the properties subject to the water system for a profit to lot purchasers who expected the

It is fundamental that the role of the judicial department is to interpret laws so as to give them effect and adjudge rights and obligations thereunder. *State ex rel. Reed v. Jones*, 6 Wash. 452, 461, 34 P. 201 (1893); *Bellevue Sch. Dist. No. 405 v. Brazier Constr. Co.*, 103 Wn.2d 111, 122-23, 691 P.2d 178 (1984). Third, even if otherwise relevant, or eventually became law, such could not be retroactively applied to this case.

Association to own, control and manage the water system. (RP 12/10/09 Vol. 3, p. 38, l. 3 – p. 39, l. 2)

- The consistent government, management and control of the water system by the Association since it was formed in 2003. (RP 12/10/09 Vol. 3, p. 33, l. 17 – p. 35, l. 24; Trial Exs. 14-19)
- Hadaller admissions that it had been his clear and unmistakable intent that the water system be a fixture and that the water system and associated well house, power, water lines and easements to the exclusive use, control and management of the Association: (RP 12/10/09 Vol. 3, p. 29, l. 15 – p. 30, l. 12; p. 30, l. 13 – p. 31, l. 20, p. 46, ll. 16-21)

3. Invalidity of the “Veto Power” Amended Covenants

Substantial and uncontroverted testimony confirms that Association members were either misled about the validity of the Amended Covenants and its “veto power” or they did not sign and their signature was forged on the document. (RP 12/10/09 Vol. 2, p. 8, l. 17 – p. 9, l. 19, p. 31, l. 23 – p. 33, l. 13; Vol. 2, p. 48, l. 5 – p. 49, l. 9, p. 65, ll. 19-24) Telling is that fact that Hadaller admitted during cross examination that the “veto power” he sought over the majority of Association members with the Amended Covenants was inappropriate. (RP 12/10/09 Vol. 3, p. 35, l. 25 – p. 38, l. 2)

In addition, the original 2003 and rerecorded Association CCRs drafted by Hadaller confirm the intent of the CCRs to assure an equal voice in the decision-making to each lot. (Trial Exs. 3, 20). On this basis alone, prior to trial as part of the August 26, 2009 denial by the Washington Court of Appeals of Hadaller’s appeal based on discretionary

review, the Commissioner questioned the validity of the Amended Covenants. (Trial Ex. 28, p. 4 n.3)

The trial court concluded after careful consideration of the evidence presented at trial that the Amended Covenants were invalid and unenforceable. The presumption is in favor of the trial court's findings, and all reasonable inferences must be taken in favor of the Association, and Hadaller has failed to meet his burden of proving that this undisputed evidence does not support the trial court's findings of fact.

B. HADALLER WAIVED HIS RIGHT TO CHALLENGE TRIAL COURT'S EVIDENTIARY RULINGS

With respect to the fourth issue, Hadaller appears to challenge the trial court's admission of evidence regarding the water system ownership, control and management and invalidity of the "veto power" Amended Covenants. But appellate courts will not consider an issue raised for the first time on appeal unless it rises to the level of a manifest error affecting a constitutional right. *State v. Scott*, 110 Wn.2d 682, 688, 757 P.2d 492 (1988); RAP 2.5(a). Evidentiary objections not raised in the trial court have generally not been treated as errors of constitutional magnitude. *State v. Markle*, 118 Wn.2d 424, 438, 823 P.2d 1101 (1992); *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985), *cert. denied*, 475 U.S. 1020 (1986). Rather, errors in admitting such evidence must be raised at trial to preserve the issue for appeal. *Guloy*, 104 Wn.2d at 422; *State v. Quigg*, 72 Wn. App. 828, 836-837, 866 P.2d 655 (1994). The trial court must be informed of the parties' contentions and theories concerning evidence

offered so that the court may rule on such contentions, consider such theories, and thus avoid committing error. *State v. Garrison*, 71 Wn.2d 312, 315, 427 P.2d 1012 (1967).

As documented above, in the references in Section III.B.4, ownership, control and management of the water system and the validity of the Amended Covenants were central issues of the two-day bench trial, and these issues were argued in both opening and closing arguments. Substantial and uncontroverted testimony was offered from Association members Cheryl Greer and Randy Fuchs, as well as Pam Rockwood, regarding these issues. The trial court directly questioned the Association witnesses on these issues, and thereafter provided the parties with an opportunity for redirect examination. Hadaller himself freely testified about both of these issues during his direct and cross examination. (Numerous evidentiary exhibits were introduced, admitted and discussed on these topics during the trial.

At no time did Hadaller make any objection to the testimony offered or evidence admitted by the Association pertaining to the ownership, control and management of the water system and the validity of the Amended Covenants. Likewise, Hadaller failed to seek any trial continuance in order to address any claimed evidentiary issue or to present further new evidence. Because Hadaller failed to make any evidentiary objection, he waived any challenge to the introduction of evidence on these issues and this Court should not consider them on appeal. *Scott*,

110 Wn.2d at 688; *McCullough*, 56 Wn. App. at 657; *Guloy*, 104 Wn.2d at 422; *Quigg*, 72 Wn. App. at 836-837; RAP 2.5(a).

Hadaller does not deny that his counsel failed to make any evidentiary or surprise objection, but suggests that his comments on the stand during his cross examination constitute legal objection preserving his right to appeal. Hadaller's argument is without merit. First, Hadaller's comments are not an objection to the introduction of the evidence. Rather, they are merely Hadaller's nonresponsive retort as to his opinion of the relevance of the Association's line of cross examination. (RP 12/10/09 Vol. 3, p. 36, l. 6 – p. 38, l. 2) Second, even if Hadaller's comments could be characterized as an objection to the introduction of his testimony, they could not be considered an objection to the testimony offered by other Association members or the evidence admitted and considered by the trial court. (RP 12/10/09 Vol. 2, p. 8, l. 17 – p. 9, l. 19, p. 31, l. 23 – p. 33, l. 13, p. 48, l. 5 – p. 49, l. 9, p. 65, ll. 19-24) Third, it would be unreasonable to expect either the Association or the trial court to tease from Hadaller's comments during cross examination proper notice of an evidentiary objection, thereby giving them the required opportunity to address any legitimate concern and avoid committing error. *Garrison*, 71 Wn.2d at 315. Fourth, and most important, Hadaller was represented by legal counsel throughout the trial. Pursuant to well-established authority, once a party has designated an attorney to represent him in regard to a particular matter, the court and the other parties to an action are entitled to rely upon that authority until the client's decision to terminate it has been

brought to their attention. *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978). Accordingly, both the Association and the trial court were entitled to rely upon the decisions and representations made by Hadaller's counsel on behalf of Hadaller at all relevant times. It is undisputed that Hadaller's counsel never objected to the testimony offered or evidence admitted by the Association pertaining to the ownership, control and management of the water system and the validity of the Amended Covenants.

C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ADMITTING EVIDENCE REGARDING THE WATER SYSTEM AND AMENDED COVENANTS

With respect to the fifth issue, even if Hadaller properly preserved his objection to the admission of evidence regarding water system ownership, control and management and invalidity of the “veto power” Amended Covenants—which he did not—Hadaller fails to prove that the trial court manifestly abused its discretion. *Markle*, 118 Wn.2d at 438; *Quigg*, 72 Wn. App. at 835 (trial court's ruling on the admission of evidence may be reversed only upon a showing of manifest abuse of discretion). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). A discretionary decision rests on “untenable grounds” or is based on “untenable reasons” if the trial court relies on unsupported facts or applies the wrong legal standard; the trial court's decision is “manifestly unreasonable” if the court, despite

applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take. *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 582-583, 220 P.3d 191 (2009). A “reasonable difference of opinion” does not amount to abuse of discretion. *Ermine v. City of Spokane*, 143 Wn.2d 636, 650, 23 P.3d 492 (2001); *Magana*, 167 Wn.2d at 583.

Ownership, control and management of the water system and the validity of the Amended Covenants were central issues of the two-day bench trial. Notwithstanding Hadaller’s disobedience to the case schedule and failure to timely disclose witnesses and evidence, the trial court denied the Association’s motion *in limine* seeking to exclude any testimony or additional exhibits, thereby allowing Hadaller unfettered opportunity to present his case. (RP 12/10/09 Vol. 1, pp.4-11) As noted above, substantial and uncontroverted testimony was offered from Association members regarding these issues. Numerous evidentiary exhibits were introduced, admitted and discussed on these topics during the trial. Hadaller was given ample opportunity to present his own evidence and testimony and to cross examine each witness presented by the Association. (RP 12/10/09 Vol. 2, pp. 17-29, 31, 57-58, 67-70, 83) After direct questions by the trial court relating specifically to the water system and Amended Covenants issues, Hadaller specifically declined an opportunity provided by the trial court to ask further questions. (RP 12/10/09 Vol. 2, pp. 33, 65-71) The trial court granted Hadaller a recess and a trial continuance specifically to allow an opportunity to introduce new

evidence on the issue of ownership of the water system, and admitted several new exhibits over the Association's objection. (RP 12/10/09 Vol. 3, pp. 73-85) Contrary to Hadaller's assertion, there is absolutely no evidence that Hadaller was prevented from bringing forth testimony and documents regarding the issues of water system ownership, control and management and the validity of the Amended Covenants.³

The trial court gave Hadaller every opportunity to present his case. The trial court relied upon substantial, supported facts when deciding to admit testimony and evidence regarding water system ownership, control and management and invalidity of the "veto power" Amended Covenants and there is no issue regarding application of an incorrect legal standard in admitting the evidence. Accordingly, Hadaller cannot point to any basis for claiming that the trial court's actions were based on "untenable grounds," "untenable reasons," or otherwise "manifestly unreasonable."

D. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING HADALLER'S MOTION FOR A NEW TRIAL

The grant or denial of a motion for a new trial is a matter within the trial court's discretion and will not be disturbed absent a showing of a clear abuse of that discretion. *Lockwood v. AC&S, Inc.*,

³ Hadaller's assertion that the trial court "rudely" cut him off and "shaped the testimony very prejudicially preventing him from presenting his own case" is without merit. The trial court has the inherent authority to control the presentation of evidence in the courtroom, particularly where, as here, Hadaller's testimony lacks any semblance of focus or restraint. Moreover, Hadaller cannot deny that notwithstanding whether the trial court "cut him off" during its questioning, or asked him pointed questions to which Hadaller responded poorly, Hadaller was given every opportunity to offer further testimony at the hands of his counsel, and declined. (RP 12/11/09 p. 22, ll. 22-25)

44 Wn. App. 330, 363, 722 P.2d 826 (1986), *aff'd*, 109 Wn.2d 235, 744 P.2d 605 (1987). In his motion at the trial court level and on appeal, Hadaller argued grounds for new trial pursuant to CR 59: (1) irregularity in the proceedings of the court or abuse of discretion by which Hadaller was prevented from having a fair trial; and (2) surprise which ordinary prudence could not have guarded against.

Irregularities occur when there is a failure to adhere to some prescribed rule or mode of proceeding, such as when a procedural matter that is necessary for the orderly conduct of trial is omitted or done at an unreasonable time or in an improper manner. *See Kennewick Irrigation Dist. v. 51 Parcels of Real Property*, 70 Wn. App. 368, 371, 853 P.2d 488 (1993); *Mosbrucker v. Greenfield Implement, Inc.*, 54 Wn. App. 647, 652, 774 P.2d 1267 (1989). Hadaller appears to argue that proceedings became “irregular” when the trial court (1) failed to respond to Hadaller’s comments made during his testimony on cross examination pertaining to the Amended Covenants issue, and (2) questioned Cheryl Greer about Hadaller’s misrepresentations to her about the “veto power” of the Amended Covenants. But as noted above, Hadaller’s comments during cross examination do not constitute an objection requiring trial court response, and the trial court is authorized to ask witnesses questions during a bench trial. Moreover, Hadaller was represented by counsel and had every opportunity to object, or to introduce testimony on direct, redirect or cross examination, or to introduce further evidence if he believed it helpful to his case. Hadaller can point to nothing unusual or

extraordinary in the trial court's handling of proceedings. Accordingly, Hadaller fails to prove that the trial court manifestly abused its discretion denying Hadaller's motion for a new trial on this basis.

One who makes no objection to testimony on grounds of surprise at the time it is offered and does not request a continuance waives any right to claim surprise as a ground for a new trial. *State v. McKenzie*, 56 Wn.2d 897, 901, 355 P.2d 834 (1960). Even if the objection is preserved, a party claiming surprise must prove that it could not have been avoided through ordinary prudence and that improper admission of surprise evidence amounts to prejudice. CR 59(a)(3); *Kramer v. J.I. Case Mfg. Co.*, 62 Wn. App. 544, 561-562, 815 P.2d 798 (1991). Only the trial court can assess the impact of surprise evidence. *Id.*

It is undisputed that Hadaller failed to make any objection to the testimony offered or evidence admitted by the Association pertaining to the ownership, control and management of the water system and the validity of the Amended Covenants. Likewise, Hadaller failed to seek trial continuance in order to address any claimed evidentiary issue or to present further new evidence. Thus, Hadaller waived his right to claim surprise as a ground for a new trial, and the trial court could not have abused its discretion in denying Hadaller's motion for new trial on that basis.

Even if the objection was preserved, the trial court properly denied surprise as a ground for a new trial because Hadaller failed to (1) prove the existence of any surprise, (2) that it could not have been avoided through ordinary prudence, or (3) that there was any resulting prejudice.

Starting with his answer to the complaint, and in virtually every paper filed and oral argument thereafter, Hadaller directly placed at issue the Association's incorporation, bylaws, and Hadaller's "veto power" Amended Covenants in resisting the Association's efforts to transfer Association documents and funds pursuant to RCW 64.38 and confirm its ownership, control and management of the water system, and it was the central theme running through the litigation and trial proceedings. (See RP and CP citations in factual background above, particular as cited in Section III.B.3 and III.B)

Hadaller acknowledged at the December 30, 2009 hearing for entry of findings of facts and conclusions of law that he had an opportunity to present additional evidence regarding the water system and Amended Covenants validity issues at trial but failed to do so, and that such failure was an issue between him and his attorney. (RP 12/30/09, p. 46, l. 1 – p. 47, l. 7) Hadaller repeated this same admission at the February 5, 2010 hearing on his motion for a new trial or reconsideration. (RP 2/5/10 p. 14, l. 8 – p. 15, l. 16) At that hearing, the trial court specifically considered and rejected Hadaller's arguments that there had been any CR 59(a)(1) irregularity in the proceedings of the court or any CR 59(a)(3) accident or surprise which ordinary prudence could not have guarded against. (RP 2/5/10 p. 35, l. 25 – p. 39, l. 1)

Courts will not tolerate blaming the attorney for the outcome of the case. *Cunningham v. Reliable Concrete*, 126 Wn. App. 222, 234-35, 108 P.2d 147 (2005). In general, the incompetence or negligence of a

party's attorney is not sufficient grounds for relief from a civil judgment. *M.A. Mortenson Co., Inc. v. Timberline Software Corp.*, 93 Wn. App. 819, 838, 970 P.2d 803 (1999). A party's challenge to the competence of trial counsel must "await resolution in an action before an appropriate tribunal in which [counsel] is named as a party called to answer specific complaints." *Tennant v. Lawton*, 26 Wn. App. 701, 702 n.1, 615 P.2d 1305 (1980). Absent any evidence that the trial court or opposing counsel colluded to bring about the incompetent acts, the opposing party "should not be penalized for the quality of representation provided by an attorney the [other party] voluntarily selected as their legal representative." *Lane v. Brown & Haley*, 81 Wn. App. 102, 108, 912 P.2d 1040 (1996).

Moreover, pursuant to CR 59(a)(3), there can be no accident or surprise "which ordinary prudence could not have guarded against" where Hadaller not only knew about the Amended Covenants aspect of the case months in advance of trial, but by asserting that the Amended Covenants were the reason for Hadaller's refusal to transfer Association documents and funds, created issues of fact that required the trial. *E.g., Holaday v. Merceri*, 49 Wn. App. 321, 329, 742 P.2d 127 (1987) (in a divorce decree modification proceeding, the husband's "ordinary prudence" should have guarded against surprise at the wife's arguing that a disparate property division satisfied her child support obligations, thus his "surprise" did not constitute grounds for reconsideration.)

Contrary to Hadaller's assertion, there was no stipulation between the parties limiting the issues set for trial, and the validity and enforceability of the Association's incorporation, bylaws, new CCRs, and Hadaller's attempted "veto power" Amended Covenants was specifically identified in the Association's trial brief and exhibits of all relevant documents introduced at trial as part of the exhibits Hadaller stipulated to admit into evidence. (CP 1326-1348, ¶¶ 17-21, 24, 29-32; CP 1357-1359, Exs. 20-23, 26-27) Indeed, even if there had been a stipulation to limit the issues at trial to the ownership and management of the water system, the trial could necessarily address the validity of the Amended Covenants because Hadaller relied upon the alleged "veto power" therein to deny the Association's ownership and management of the water system.

Finally, Hadaller fails to provide that he was prejudiced based on any claimed surprise. In point of fact, Hadaller knew full well that the issue of the Association's incorporation, bylaws, new CCRs and Hadaller's "veto power" Amended Covenants was a key part of the trial *because Hadaller himself raised the issue as a basis for refusing to turn over Association water system documents and funds and acknowledging ownership, control and management of the water system.* Hadaller cannot now challenge the trial court's findings and conclusions simply because he does not like the trial outcome. Accordingly, Hadaller fails to prove that the trial court manifestly abused its discretion in denying Hadaller's motion for a new trial.

**E. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN
AWARDING THE ASSOCIATION ATTORNEY’S FEES PURSUANT TO
RCW 64.38.050 OR THE ASSOCIATION CCRs**

A trial court’s decision to grant or deny attorney fees is reviewed for an abuse of discretion. *Taliesen Corp. v. Razore Land Co.*, 135 Wn. App. 106, 144 P.3d 1185 (2006). Attorney fees are awardable if authorized by statute, contract or equitable grounds. *Fawn Lake Maintenance Commission v. Aldons Abers et al.*, 149 Wn. App. 318, 328, 202 P.3d 1019 (2009); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 270-71, 138 P.3d 943 (2006); *Kennedy v. Martin*, 115 Wn. App. 866, 871, 63 P.3d 866 (2003). In this case, RCW 64.38.050 provides an aggrieved party may be awarded reasonable attorney’s fees. The July 6, 2009 CCRs expressly provide for the recovery of attorney’s fees and costs by the prevailing party in any dispute brought under the CCRs, including but not limited to any action to enforce or interpret the terms of the CCRs. (Trial Ex. 26, Section 6.7) The prevailing party is the party who receives an affirmative judgment in their favor, *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669 (1997), or who substantially prevails, *Hertz v. Riebe*, 86 Wn. App. 102, 936 P.2d 24 (1997).

The purpose of RCW 64.38 is in part to prevent mismanagement, minority control and developer oppression and provide the tools to form and administer their homeowners association in a manner that best protects the collective interests of the Association members. *See Riss*, 131 Wn.2d at 623-24; RCW 64.38.050. Contrary to Hadaller’s argument, there could be no clearer case for an award of attorney’s fees under

RCW 64.38.050 where a rouge minority member of the Association unreasonably denied Association ownership, control and management of the water system and refused to transfer documents and funds to the Association, forcing the Association to commence and prosecute this lawsuit. (RP 12/10/09 Vol. 2, p. 49, l. 23 – p. 50, l. 7; 12/10/09 Vol. 3, p. 52, l. 21 – p. 53, l. 12; Trial Exs. 22-24) Hadaller repeatedly disobeyed trial court orders, including the transfer of documents and funds to the Association, only performing after compelled to do so by the trial court. (RP 3/13/09 pp. 12-15; RP 4/3/09 pp. 27-28, 32-36; RP 5/15/09 pp. 31-39; RP 6/19/09 pp. 15-17; Notice of Appeal Attachment #3-7) Hadaller engaged in self-help, including unilaterally shutting off the Association water supply, necessitating an emergency temporary restraining and subsequent preliminary injunction proceeding. (CP 1086-1126; Notice of Appeal Att. #8) Hadaller was ultimately held in contempt of court. (RP 12/11/09 p. 71, l. 2 – p. 72, l. 10; Notice of Appeal Att. #9, Findings ¶¶ 39-54, Conclusions ¶¶ 18-19) After multiple hearing and trial, the trial court ruled in favor of the Association on all issues.

The Association is the prevailing party in this case. Accordingly, pursuant to both RCW 64.38.050 and the provisions of the Association CCRs, each providing independent basis for the award, the Association was entitled to an award of reasonable attorney's fees and costs incurred in this action, including those related to the Association's efforts to secure the transfer of Association documents and funds, to confirm its control and management of the Association water system, and to ensure throughout

the process that a potable water source was maintained for the benefit of the Association members. Consistent with the intent of RCW 64.38.005 and the Association's CCR, all of these issues are inextricably linked and related to the provisions and powers enumerated in RCW 64.38.020, RCW 64.38.045 and the CCRs, which Hadaller has violated and for which statutory or contractually provided attorney's fees awards are authorized. Accordingly, the award pertained to all reasonable attorney's fees and costs in this action. *Fawn Lake*, 149 Wn. App. at 328.

The Association provided declarations supporting the average hourly billing rates for attorneys in Lewis County and the time spent on the case by the Association legal counsel. (*See above*, in particular CP references in Section III.B.5) This constitutes substantial evidence upon which the trial court relied in its award. After careful review of the evidence, the trial court found the hourly billing rates and time spent by the Association's attorneys to be reasonable and necessary for the services provided, and produced a successful result on behalf of the Association. Hadaller did not object to the findings of the trial court regarding the hourly billing rates or time spent. The trial court applied the lodestar formula and found the resulting award of attorney's fees appropriate. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597-99, 675 P.2d 193 (1983); *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 149-51, 859 P.2d 1210 (1993); *Fisher Properties*, 115 Wn.2d at 378-79. The amount of the recovery, while a relevant consideration in determining the reasonableness of the fee award, is not a conclusive factor. *Beeson*

v. Atlantic-Richfield Co., 88 Wn.2d 499, 511, 563 P.2d 822 (1977). The appeal courts will not overturn a large attorney fee award in civil litigation merely because the amount at stake in the case is small. *Mahler v. Szucs*, 135 Wn.2d 398, 434-435, 957 P.2d 632 (1998). The trial court also found the costs incurred in this case by the Association to be reasonable and appropriate. (Notice of Appeal Att. #1-11)

Accordingly, Hadaller fails to prove that the trial court manifestly abused its discretion in granting the Association its attorney's fees and costs, as provided for by statute and the controlling Association CCRs.

F. THE ASSOCIATION IS ENTITLED TO ATTORNEY'S FEES AND COSTS ON APPEAL

For the same reasons the Association was entitled to attorney's fees and costs before, namely, pursuant to RCW 64.38.050 and the express provisions of the Association CCRs, the Association is entitled to an award of attorney's fees and costs on appeal in this matter. RAP 18.1(a); *Carrara, LLC v. Ron & E Enters., Inc.*, 137 Wn. App. 822, 155 P.3d 161 (2007); *Bushong v. Wilsbach*, 151 Wn. App. 373, 377, 213 P.3d 42 (2009).

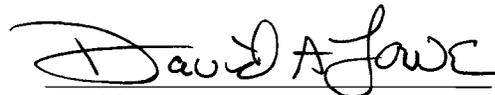
V. CONCLUSION

The Association has sought to put an end to Hadaller's tyrannical mismanagement of the Association through the proper establishment of community government, control and management based on the voice and vote of the majority of Association members. Hadaller has resisted the majority at every turn, refusing to turn over all Association documents,

records and funds and confirm Association ownership, control and management of Association common areas and water system. After seemingly endless and largely frivolous legal proceedings, multiple hearings and trial, the Association prevailed at trial. After careful consideration, the trial court found substantial evidence supporting the Association's formation and votes, that the Association owned, controlled and managed the community water system, and that Hadaller's efforts to reserve minority "veto power" over the Association through his Amended Covenants was invalid. Substantial evidence supported the trial court's finding and it properly exercised its discretion with respect to evidentiary, procedural, new trial and attorney's fees award issues.

Accordingly, the Association, on behalf of each of its members save Hadaller, respectfully urges the Court to confirm the trial court's actions, and further to award the Association its attorney's fees and costs on appeal, as provided for by RAP 18.1, RCW 64.38.050 and the Association's governing document.

RESPECTFULLY SUBMITTED this 10th day of February, 2011.



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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2011, a true copy of the foregoing was served via U.S. Mail, addressed as follows:

John J. Hadaller
135 Virginia Lee Lane
Mossyrock, WA 98564

Susan M. St