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DIVISION II

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STATE OF WASHINGTON  
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No. 47843-9

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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COURTNEY RIDGE ESTATES OWNERS ASSOCIATION, a  
Washington limited liability company,

Appellant,

v.

PUYALLUP RIDGE LLC, a Washington limited liability company,

Respondent.

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BRIEF OF RESPONDENT PUYALLUP RIDGE LLC

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## I. INTRODUCTION

This appeal involves the administration of two separate and distinct condominiums. One, the “Master Condominium,” divided land into six parcels for development. The second, “Owners Condominium,” divided the buildings that were constructed on the parcels into individual residential units. This two-stage development plan was straightforward: as a building was built on a Master parcel, the parcel was “withdrawn” from the Master Condominium and the parcel and new building subjected to the Owners Condominium. There was no overlap; the land went from one condominium to the other in phases, each evidenced by a recorded amendment.

Four such amendments were recorded, and each amendment specified that the new units in the Owners Condominium were no longer subject to the Master Condominium documents. Two of the Master Condominium parcels remain undeveloped. The amendments reserved no ownership interest in the remaining Master Condominium parcels for owners of the units in the Owners Condominium; likewise, owners of units in the Master Condominium were given no interest in the Owners Condominium. The only overlap that remains between the condominiums is the shared use and responsibility for certain commonly used roads and utilities.

Appellant Courtney Ridge Estates Owners Association (“Courtney Ridge”) is the association of the unit owners in the Owners Condominium. It claims the individual owners it represents have the ongoing authority to vote in the Master Condominium, even though the four parcels on which their units are located were withdrawn from the Master Condominium. While acknowledging the intended two-step development process, Courtney Ridge essentially claims the steps were not properly performed. As a result, it attempts to generate ambiguities and inconsistencies between the documents and claims its members have some unspecified interest in the two undeveloped Master Condominium parcels.

Puyallup Ridge LLC (“Puyallup Ridge”) is the sole owner of the only two remaining units in the Master Condominium, and seeks a decision affirming the trial court’s Order recognizing its exclusive authority to amend the Master Declaration and to share in the management and upkeep of the roads and utilities that serve both developments.

## **II. COUNTER STATEMENT OF THE CASE**

An understanding of the two-step development concept behind the Owners and Masters Condominiums, as well as the governing documents of both condominiums, provides essential context for evaluation of the issues.

**A. The Master Condominium**

**1. Two-Step Process.**

The Master Condominium was created and governed by a condominium declaration (“Master Declaration”)<sup>1</sup> and accompanying survey map and plans.<sup>2</sup> The Master Declaration divided 4.83 acres of land into six undeveloped airspace units, units A through F. CP 103. At the time of their creation, units A through F were merely “envelope[s]” of unimproved but defined space, i.e., undeveloped land. These were essentially lots or parcels created for development, and each parcel was assigned a separate county tax parcel number.<sup>3</sup> Creation of these airspace units laid the framework for the future development of each parcel as a separate phase. The Master Condominium survey map is depicted below.<sup>4</sup>

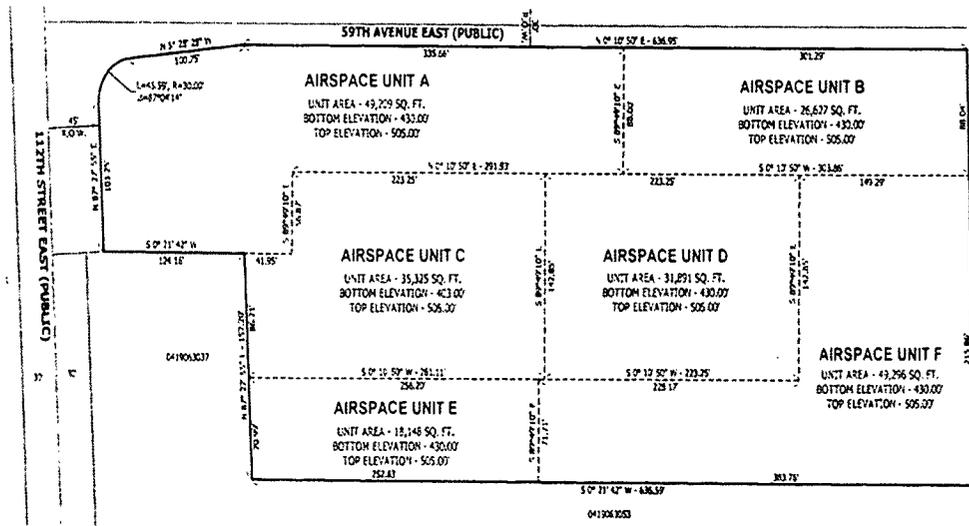
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<sup>1</sup> Condominium Declaration of the Courtney Ridge Estates Master Association recorded March 19, 2007, under Pierce County Auditor’s Recording No. 200703190705. CP 48-103.

<sup>2</sup> The survey map and plans are recorded under Pierce County AFN 200703195003. CP 105-107. Under the Washington Condominium Act, a condominium is created only by the simultaneous recording of a declaration and survey map and plans. RCW 64.34.200.

<sup>3</sup> Unit E is Pierce County APN 9007200050 and Unit F is Pierce County APN 9007200060. Units A through D had parcel numbers but, as buildings were built, parcel numbers were assigned to individual residential units in the buildings.

<sup>4</sup> CP 107.



Under the development concept outlined in the Master Declaration, the developer would construct a building on one of the six airspace parcels and then subject the completed building to a different declaration, the Owners Declaration, dividing that building into a number of individual dwelling units. Paragraph 33.1 of the Master Declaration provides:

Declarant's Right. This Condominium consists of six (6) airspace units. The Declarant reserves the right to withdraw each airspace unit from the Condominium and then convert that Condominium into another Condominium known as Courtney Ridge Owners Condominiums so that within each airspace unit there would be created units within buildings to be constructed in the airspace. Upon including that airspace unit within the Condominium to be known as Courtney Ridge Owners Condominiums, it shall be withdrawn from this Condominium and shall not be subject to any of the restrictions or conditions set forth in this Declaration. At such time as all of the airspace units have been withdrawn from the Condominium and have been included in the Condominium known as Courtney Ridge Owners Condominiums, then all of the

rights, obligations, and conditions under this declaration shall terminate. To effectuate the foregoing, the Declarant, upon its sole signature and without any further consent, shall file a Declaration and Survey Map and Plans for Courtney Ridge Owners Condominiums describing one or more of the airspace units created in this Condominium.

CP 98-99 (emphasis added). Subjecting each building to the Owners Declaration automatically “withdrew” the underlying airspace parcel from the Master Declaration.

**2. Master Association: Membership limited to parcel owners.**

The Master Declaration provides for a master condominium owners association (the “Master Association”) to act as its governing body. Membership in the Master Association was limited to the owners of the six airspace units (A-F), and is conditioned as follows:

Qualification. Each Owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit so owned; provided, that if a Unit has been sold on contract, the contract purchaser shall exercise the rights [sic] of the Unit Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall be the voting representative unless otherwise specified. Ownership of a Unit shall be the sole qualification for membership in the Association.

CP 58-59 (emphasis added). An “Owner” is defined as “the Owner of record, whether one or more persons, of a Unit.” CP 53. A “Unit” is defined as “a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in the Survey Map and

Plans and in this Declaration.” *Id.* In other words, there are as many Owners (and Members) as there are parcels in the Master Condominium.

At the outset, then, there were six members of the Master Association. As the project developed, four buildings were built, and the corresponding airspace units were withdrawn from the Master Declaration and subjected to the Owners Declaration. There are now only two members, the owners of airspace units E and F, the only two undeveloped units.

### **3. Voting and Amendments.**

Voting in the Master Association is limited to Owners. The total voting power of all Owners is equal to the number of Units and one vote is allocated to each Unit. CP 59 at ¶ 9.3.1.

Paragraph 29.1 of the Master Declaration addresses amendments to the Declaration and states:

“ . . . the declaration including Survey Map and Plans may be amended only by a vote or agreement of owners of units to which at least 67% of the votes in the Association are allocated.”

CP 95. Under Paragraph 29.1, only current Master Association members (i.e. Owners) may vote on amendments to the Master Declaration.

**B. The Courtney Ridge Estates Owners Condominiums**

Shortly after recording the Master Declaration, the original developer recorded the Owners Declaration for the first building.<sup>5</sup> The Owners Declaration and accompanying survey map and site plan created the Courtney Ridge Owners Condominiums referenced in Paragraph 33.1 of the Master Declaration. At the time of this initial recording, the Owners Declaration applied only to airspace unit A, and the first building was divided into 11 conventional condominiums (i.e. single-family dwelling units) as “Phase I” of the Owners Condominium. The Owners Declaration refers to airspace parcels B through F as “real property to be condominiumized in future phases” of development. CP 116. As many as 76 individual condominium units were originally planned in units A through F, including the first 11 units created in Phase I.<sup>6</sup> CP 117.

The Owners Declaration provides for the formation of Courtney Ridge Estates Owners Association, a nonprofit corporation (“Courtney Ridge”). Courtney Ridge membership is comprised of the Owners Condominium unit owners, that is, the owners of the dwellings in each building. CP 121. The unit owners elect a Board to manage Owners

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<sup>5</sup> Condominium Declaration of Courtney Ridge Estates. Recorded April 25, 2007, under Pierce County Auditor’s Recording No. 200704250758. CP 109-168.

<sup>6</sup> It was also clear, as discussed below, that all six parcels might not be developed in this manner. See Section III.C.4, *infra*.

Condominium business, including maintaining the “Common Elements” and imposing and collecting assessments for common expenses from unit owners. CP 124.

**C. The Common Elements**

As with any multi-building development, there are roads, utilities and other elements that will serve the whole project. They are shared. Both the Master Declaration and the Owners Declaration address access to and maintenance of shared roadways and other common areas. This was necessary because there were common elements of infrastructure that would serve the phased development (initially the undeveloped parcels, and over time the additional buildings that could be built). Roads and utilities would inevitably cross over other areas within the overall site to serve all of the buildings as they were built. Provisions were also needed to ensure access to those road and utilities if all phases of the development were not completed as originally envisioned.

Under the Master Declaration, an easement is specifically reserved for roadways and utilities over all of the six airspace units for the development of the phased project. CP 99 at ¶ 33.6. See also ¶ 33.4 reserving a similar right for the Declarant.

There is a corresponding and reciprocal easement for the benefit of the Declarant and its successors over the roadways and utilities in the

Owners Condominium phases as they are completed. CP 160 at ¶ 23.5.6(a-d). This is to allow the completion of subsequent phases or “otherwise developing portions of the land for other purposes if not completed as a Condominium phase.” CP 160 at ¶ 23.5.6(b).

The documents address the fact that buildings would be built in phases and that parcels might not be developed as part of the condominium initially envisioned. The Owners Declaration establishes the obligation of easement holders whose property is *not* part of the Owners Condominium (i.e., the remaining undeveloped airspace parcels in the Master Condominium) to contribute to expenses for maintenance of the Common Elements easement areas. CP 158 at ¶ 23.5.6(d).

**D. Amendments to Owners Declaration for Development Phases I through IV**

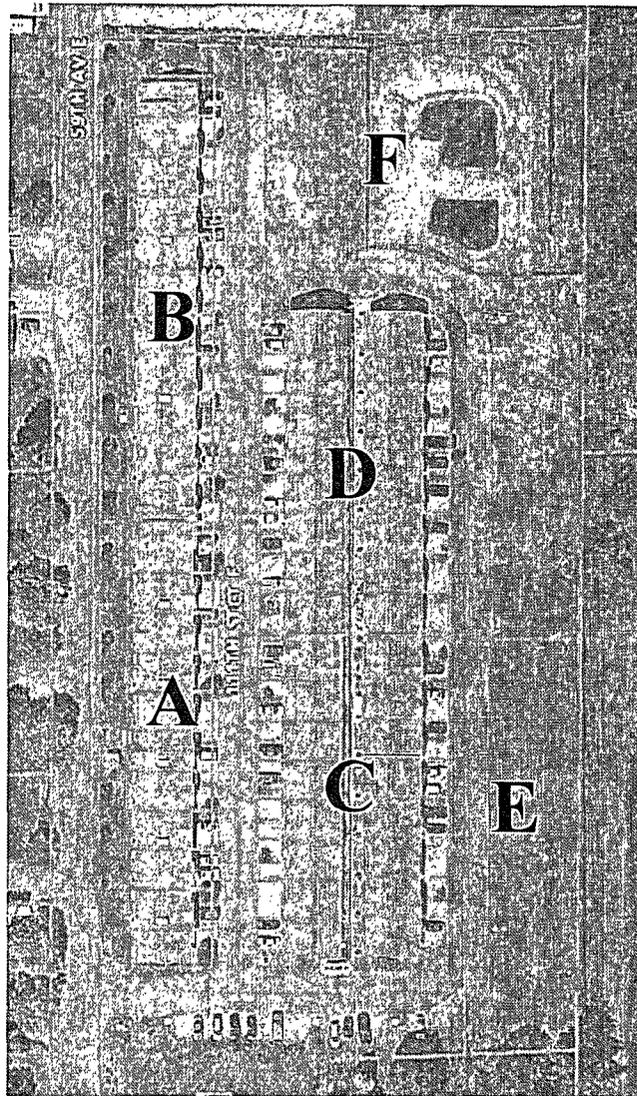
Simultaneously with the recording of the Owners Declaration, the original developer recorded an amendment to the Master Declaration that provided as follows:

1. Unit A of the Courtney Ridge Estates Master Association Condominium is and will constitute the first phase of Courtney Ridge Estates, which condominium will consist of eleven units which shall be situated within said Unit A.
2. Pursuant to the provisions of the Declaration [referring to the Master Declaration], each condominium unit of the Courtney Ridge Estates created within said airspace units shall not be subject to any of the restrictions or conditions as set forth in the above referenced Declaration.

CP 170. This is consistent with the “withdrawal” language and two-step development process described in Section A above, and with the explicit language of paragraph 33.1 of the Master Declaration. Airspace unit A was subjected to the Owners Declaration and simultaneously withdrawn from the Master Declaration.

Over several years, the original developer also constructed condominium buildings on airspace units B, C and D. An identical amendment to the Master Declaration was recorded for each of those three parcels, varying only in the number of condominium units created in each building. In total, there were four amendments. CP 170-181.

The original developer became insolvent and transferred undeveloped units E and F to the bank in lieu of foreclosure. CP 12 at ¶ 3.9; *see also* CP 29 at ¶ 2. Units E and F are now owned by Puyallup Ridge. *See* CP 32-35. Since no buildings were built on those last two parcels, the original developer never recorded an amendment to remove units E and F from the Master Association. Units E and F remain subject to the Master Declaration and are not subject to the Owners Declaration. The current development is depicted below, showing vacant units E and F:



CP 190 (airspace unit labels added).

Puyallup Ridge plans to construct 22 units on airspace units E and F, using a design consistent with the original site plan. *See* CP 30 at ¶ 5. However, the dwelling units will be rented, not sold. To facilitate this, Puyallup Ridge recorded an Amendment to Master Declaration to remove restrictions on the number of leased units and to lower the minimum rental

period from six months to thirty days. CP 40-41. Courtney Ridge challenged Puyallup Ridge's authority to amend the Master Declaration, claiming that "as holder of an allocated interest in the common elements of the Master Association," Courtney Ridge and its members are members of the Master Association and thus are entitled to vote on the amendment. *See* CP 12 at ¶ 3.12.

**E. History of Judicial Proceedings**

After its attempts to resolve the dispute proved unsuccessful, Puyallup Ridge filed a lawsuit in Pierce County Superior Court seeking declaratory and injunctive relief in connection with the rights and obligations of the parties with regard to amendment of the Master Declaration and the maintenance of shared facilities. Specifically, Puyallup Ridge sought a determination that Puyallup Ridge has a right to amend any provision of the Master Declaration, without Courtney Ridge's consent, and requested that Courtney Ridge be enjoined from withholding information regarding facilities shared with airspace units E and F or preventing Puyallup Ridge from making use of the shared facilities. CP 6.

Puyallup Ridge moved for summary judgment on May 8, 2015. CP 15-28. At the first hearing, the court denied Puyallup Ridge's motion for summary judgment and granted summary judgment to Courtney Ridge (even though it had not moved for relief). CP 367-368.

Puyallup Ridge moved for reconsideration on May 18, 2015, and the court allowed oral argument by Order dated June 9, 2014. CP 369-378. After oral argument on July 10, 2015, the court reversed its prior decision and entered an Order Granting Plaintiff's Motion for Reconsideration and Granting Summary Judgment to Plaintiff. CP 458-460. Courtney Ridge filed this appeal on July 29, 2015.

### **III. ARGUMENT**

#### **A. Standard of Review**

A trial court's decision to grant summary judgment is reviewed by this Court *de novo*. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). This Court should consider only evidence and issues called to the attention of the trial court during the summary judgment motion. *Green v. Normandy Park*, 137 Wn. App. 665, 677-78, 151 P.3d 1038 (2007). When reviewing an order granting summary judgment, the appellate court engages in the same inquiry as the trial court, and may affirm a trial court's disposition of a summary judgment motion on any basis supported by the record. *See Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994); *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994) (internal citations omitted).

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). Once the moving party has met its burden by alleging there is no genuine issue of material fact or insufficient evidence to support the claim against it, the burden shifts to the nonmoving party to set forth “specific facts showing there is a genuine issue for trial.” *Rathvon v. Columbia Pac. Airlines*, 30 Wn. App. 193, 201, 633 P.2d 122 (1981). In doing so, the nonmoving party can no longer rely on allegations in the pleadings, *Ashcroft v. Wallingford*, 17 Wn. App. 853, 854, 565 P.2d 1224 (1997), and cannot rely on speculation or argumentative assertions that unresolved factual issues remain. *Marshall v. Bally’s Pacwest, Inc.*, 94 Wn. App. 372, 377, 972 P.2d 475 (1999).

The trial court heard both parties’ arguments, reviewed all the evidence presented by the parties, and granted Puyallup Ridge’s claim for declaratory relief. Puyallup Ridge respectfully asks this Court in reviewing the evidence before it to again deny Courtney Ridge’s arguments and affirm the trial court’s decision granting summary judgment to Puyallup Ridge.

**B. Airspace Units A through D are no longer part of the Master Condominium.**

**1. The recording of the Owners Declaration and each amendment automatically withdrew airspace Units A through D from the Master Condominium.**

The Court's objective in interpreting a condominium declaration is to discern the drafter's intent, as expressed by the entire document. *See Roeder Co. v. Burlington Northern, Inc.*, 105 Wn.2d 567, 572, 716 P.2d 855 (1986). Where the terms of the instrument manifestly support one interpretation of the Declarant's intent, the Court's duty is to carry out the intent as expressed. *See Morsbach v. Thurston County*, 152 Wash. 562, 575, 278 P. 686 (1929) (holding that deed granted only right of way, not fee title, where deed did not express manifest intent to convey a fee). The Master Declaration and Owners Declaration must therefore be interpreted in light of the Declarant's intent, as reflected in all the provisions of each document. Unequivocal language in each document indicates the Declarant's intent that airspace units would be withdrawn one-by-one from the Master Condominium and transferred to the Owners Condominium. No language suggests any limitation, overlap, or residue.

The Master Declaration is explicit that for every phase of development of the Owners Condominium, one airspace unit would be removed from the Master Condominium and transferred to the Owners Condominium:

Declarant's Right. [The Master Condominium] consists of six (6) airspace units. The Declarant reserves the right to withdraw each airspace unit from the Condominium and then convert that Condominium into another Condominium known as Courtney Ridges Owners Condominiums so that within each airspace unit there would be created units within buildings to be constructed in the airspace. Upon including that airspace unit within the Condominium to be known as the Courtney Ridges Owners Condominiums, it shall be withdrawn from [the Master] Condominium and shall not be subject to any of the restrictions or conditions set forth in this Declaration.

CP 98-99 at ¶ 33.1 (emphasis added). The language is unequivocal: once an airspace unit was included in the Owners Condominium, it was automatically withdrawn from the Master Condominium by operation of the language. (“Upon . . . it shall . . .”) The terms “withdrawn,” “convert,” and “not subject to” are similarly unambiguous. No additional step was necessary to effectuate this transfer; no conveyance or other specific language was required. When an airspace unit was subjected to the Owners Declaration, it was simultaneously withdrawn from the Master Declaration.

The Declarant exercised its right under Paragraph 33.1 by recording four amendments to the Master Declaration that transferred airspace units A, B, C, and D out of the Master Condominium and subjected them instead to the Owners Declaration.<sup>7</sup> CP 170-181.

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<sup>7</sup> The language in these paragraphs was the same for each of the four amendments to the Master Declaration, with only the unit letter and the phase number changing.

Airspace units A through D were developed as Phases 1 through 4, respectively, of the Owners Condominium.

The effect of the amendments is also clear from language of the Owners Declaration:

For each subsequent phase following Phase 1, the Declarant shall execute and record an amendment to this Declaration stating that said subsequent phase is established as a Condominium under the Act. From and after the recording of said amendment, all of the land within Phase 1 and within the subsequent phase for which such an amendment has been recorded, together with all units, shall constitute a single Condominium pursuant to the Act and the provisions of this Declaration.

CP 159 at ¶ 23.5.2 (emphasis added). Upon recording of the amendments to the Owners Declaration that established each phase of the construction development, then, *all of the land* in airspace units A through D automatically became part of the Owners Condominium and *only* the Owners Condominium. No provision of the Master Declaration suggests that the Courtney Ridge owners retained any interest in the remaining undeveloped airspace units. The amendments plainly state that one phase of the Owners Condominium consisted of the *entire* underlying airspace unit, not merely the individual condominium units that would be built within that airspace. CP 170-181.

Moreover, under paragraph 33.1 of the Master Declaration, the Master Association would terminate entirely after the sixth airspace unit

was transferred to the Owners Condominium and subjected to the Owners Declaration. CP 98-99. If members of Courtney Ridge had some overlapping and continuing interest in the Master Condominium units, that interest would survive and the Master Association would necessarily go on. Courtney Ridge offers no explanation as to how this can be squared with its argument.

The Court should recognize the Declarant's unambiguous intent by affirming the trial court's decision that airspace units A through D were withdrawn from the Master Condominium and are now subject only to the Owners Declaration.

**2. The common elements and individual units together make up the entire airspace unit; there is no residual interest.**

Courtney Ridge concedes that the developed units (i.e., the individual residential units in each building) in the Owners Condominium were withdrawn from the Master Condominium.<sup>8</sup> But, Courtney Ridge contends only the "units" themselves were withdrawn, and that its members retain some residual interest in the Master Condominium. This is contrary to the fundamental nature of a condominium and, like Courtney Ridge's other arguments, finds no support in the provisions of either

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<sup>8</sup> CP 193, lines 20-22 ("Thus, the *individual units* in Phases I through IV of the Owners Condominium are not subject to the Master Declaration, but instead are subject to the restrictions and conditions of the Owners Declaration.").

condominium declaration or the statute. And, it is contrary to the clear intent reflected throughout the documents.

A condominium unit is a type of real property divided into two parts: (1) the individual units designated for separate ownership (most typically a residential unit within a building), and (2) the remainder common area owned in undivided interests by all of the unit owners. RCW 64.34.020(10). The entire property is either the unit or the common area (or as used here, a “common element”). That is true here. The units were defined as the portions designated for separate ownership, i.e. the individual dwellings. CP 116 at ¶ 1.8.35. And the common elements were defined as the “entire property, except for the units”. CP 118 at Art. 6.

The individual Owners Condominium units built within each of airspace units A through D, together with the common elements in each airspace unit, comprise the *entire* airspace unit. All of the airspace is part of either a unit or a common area. Once a phase was added to the Owners Condominiums, there was no interest left that could have remained subject to the Master Declaration.<sup>9</sup>

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<sup>9</sup> “Property” is defined very broadly under the Owners Declaration as:

[A]ny fee, leasehold, or other estate or interest in, over, or under the land described in Exhibit A, including buildings, structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass

Courtney Ridge contends that, because the amendments refer to “each condominium unit” being withdrawn rather than the underlying airspace parcel, some residual interest remained in the Master Condominium. That additional interest in property simply does not exist. When the amendment withdrew each unit from the Master Declaration, that included the unit’s proportionate interest in the Common Elements. When the condominium units in a phase were withdrawn, the entirety of the airspace parcel on which the phase was built (i.e., the unit plus the common elements) was withdrawn from the Master Declaration and no longer subject to its terms. The language in the amendments and paragraph 33.1 of the Master Declaration and in paragraph 23.5.2 of the Owners Declaration was unambiguous (“withdraw”, “not subject to”, “all of the land”, “a single Condominium”). CP 98-99, 159.

In the absence of explicit provisions to support its position, Courtney Ridge relies on technical challenges to the validity of the amendments. They acknowledge the clear intent, but claim the original

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with a conveyance of land although not described in the contract of sale or instrument of conveyance. “Property” included parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water, and all personalty intended for use in connection therewith. CP 114-115 at ¶ 1.8.29 (emphasis added).

It is hard to conceive a broader definition.

Declarant did not properly take the second of the two steps. Specifically, Defendant contends that the Declarant allegedly failed to comply with RCW 64.34.232 and RCW 64.34.236, by (1) not labeling land to be withdrawn in boldface on the survey map, and (2) not recording an amended survey map and plans for the Master Condominium with each phase of development. These challenges rely on hyper-technical arguments and defy the clear intent.

RCW 64.34.236 states that a survey map, declaration, or amendment need not describe separate portions of real property subject to the right of withdrawal if *all* the real property is subject to withdrawal. *See* RCW 64.34.236(3)(c). That was precisely the case here. The Declarant had the right to withdraw any and all of the airspace units A through F from the Master Condominium pursuant to the Master Declaration. CP 98-99 at ¶ 33.1. It was not necessary for the Declarant to record an amended survey map with each amendment merely to indicate that each remaining airspace unit “MAY BE WITHDRAWN FROM THE CONDOMINIUM.” The recording of the original Master Declaration, which explicitly specified that each of the six airspace units A through F was subject to Declarant’s right of withdrawal, was sufficient. Further, the text of each amendment to the Master Declaration made it clear that

airspace units A through D were withdrawn from the Master Declaration and thereafter subject only to the Owners Declaration.

Even if the Declarant erred in not recording an amended survey map illustrating each withdrawal from the Master Association, Courtney Ridge provides no citation indicating that the appropriate remedy is to revoke the withdrawal in direct contravention of the Declarant's unequivocal intent. Certainly no one can claim to have been misled. The overall plan and intended effect was clear to all.

**C. Courtney Ridge members have no voting rights in the Master Association.**

**1. There is no "subassociation" relationship between Courtney Ridge and the Master Association.**

Courtney Ridge seems to argue that its members have some ambiguous right to influence amendments to the Master Declaration by virtue of an equally ambiguous "subassociation" relationship between the Master Association and Courtney Ridge.<sup>10</sup> There is no basis in law or in the declarations themselves to support such a conclusion.

In its opening brief, Defendant describes a situation where the condominium association declaration delegates power explicitly to a master association to act as an "umbrella" organization and manage

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<sup>10</sup> Appellant's Opening Brief at 15.

certain aspects of the development.<sup>11</sup> Defendant also cites to the master association statute, RCW 64.34.276.<sup>12</sup> However, in *Bellevue Pacific Center Condominium Owners Ass'n v. Bellevue Pacific Tower Condominium Ass'n*, the Court of Appeals held that the provisions of the master association statute apply only if specific criteria are met:

For RCW 64.34.276(1) to apply, three elements must be present: (1) the declaration of the owners' associations must provide that powers granted to them by the WCA are to be exercised or delegated to another corporation; (2) that corporation exercises those powers on behalf of the development; and (3) there is one or more condominiums....

RCW 64.34.276(1), the master association statute, requires that the delegation of powers to a master association appear in a declaration. Additionally, the power to make budgets and impose assessments must be delegated to a master association, unless that association is acting as a unit owners' association under RCW 64.34.300 (organization of a unit owners' association). Even if the master association is also operating under RCW 64.34.300, it is granted the same powers. Because there is no delegation in the declaration, the declaration does not create a master association, and even if the Center Association was to be considered a master association it has the powers to act granted by RCW 64.34.300.

*Bellevue Pacific Center Condominium Owners Ass'n v. Folsom Pacific Tower Condominium Ass'n*, 124 Wn. App. 178, 189-90, 100 P.3d 832 (2004) (emphasis added). Thus, for an association to qualify as a "master association" within the meaning of RCW 64.34.276, the Owners

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<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.* at 12.

Declaration would have to contain an express delegation of power to the Master Association. *Id.*

There is no provision in the Owners Declaration under which any authority is delegated to the Master Association. Indeed, Courtney Ridge does not identify any instance in which the concept of a subassociation is mentioned or even hinted at in either declaration. The requirements of RCW 64.34.276 are not satisfied.

This is also clear from Article XXXIII of the Master Declaration, which states the Master Declaration would terminate once all phases had been transferred to the Owners Condominium and subjected to the Owners Declaration:

At such time as all of the airspace units have been withdrawn from the [Master Association] Condominium and have been included in the Condominiums known as the Courtney Ridge Owners Condominiums, then all of the rights, obligations, and conditions under this Declaration shall terminate.

CP 98-99 at ¶ 33.1. If the developer had fully carried out its plan, the Master Declaration would have terminated once all airspace units had been transferred to the Owners Condominium. Since the Master Association was to terminate, it was clearly not intended in this case to serve the role of a typical “umbrella” or “master” association with the ongoing management duties described in RCW 64.34.276. The term “master association” is used here in a different context than that cited, and

the Master Association filled a transitional role rather than a permanent oversight or management function described in the statute.

Nor could Courtney Ridge be a “subassociation” of the Master Association under RCW 64.34.278. For Courtney Ridge to qualify as a subassociation under RCW 64.34.278, there must be an explicit grant of authority in the Master Declaration. RCW 64.34.278(2). The subassociation must also exercise powers on behalf of unit owners that own “less than all of the units in a condominium,” implying that they must own at least *some* units in the overseeing condominium. RCW 64.34.278(1).

The Master Declaration does not grant any authority for Courtney Ridge to operate a subassociation. The Owners Declaration was clearly intended to supplant the Master Declaration, not govern concurrently. Numerous conflicting provisions between the Master Declaration and the Owners Declaration validate this interpretation.<sup>13</sup> No provision of the Master Declaration delegates any authority to the Owners Declaration that would qualify it as a subassociation with power to manage any affairs of the Master Association.

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<sup>13</sup> See Section III.C.3, *infra*.

**2. The members' interest in the common elements does not equate to an interest in the units of the Master Condominium.**

Courtney Ridge confuses ownership of Common Elements with an ownership interest in the Master Condominium. As discussed above, it is undisputed that the two condominiums share common amenities over which owners in both condominiums have usage rights.<sup>14</sup> However, with the transfer of each airspace unit to the Owners Condominium, the share of the Common Elements allocated to that airspace unit was also transferred. The end result is that the unit owners of the Owners Condominium are collectively entitled to a 2/3 (4/6) interest in the Common Elements, as defined under the Master Declaration, while a 1/3 (2/6) interest belongs to the owner of airspace units E and F in the Master Condominium.

The Owners Declaration and amendments define the specific percentage of the Common Elements allocated to each individual unit owner. Courtney Ridge misconstrues the language in Exhibit "C" of the Owners Declaration as evidence that unit owners in the Owners Condominium have an ownership interest in the "units" of the Master Condominium. Exhibit "C" shows the fractional interest allocated to each

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<sup>14</sup> Section II.C, *supra*.

individual unit in Phase 1, but fails to specify what interest is being allocated:

EXHIBIT "C"

Unit Numbers	Approximate Square Footage Unit	Allocated Interest	Allocated Interest in Courtney Ridge Master Association Condominium
1	1,307	1/11th	1/76th
2	1,323	1/11th	1/76th
3	1,323	1/11th	1/76th
4	1,323	1/11th	1/76th
5	1,323	1/11th	1/76th
6	1,323	1/11th	1/76th
7	1,323	1/11th	1/76th
8	1,323	1/11th	1/76th
9	1,323	1/11th	1/76th
10	1,323	1/11th	1/76th
11	1,323	1/11th	1/76th

See CP 168. Article VI of the Owners Declaration, however, clarifies the allocations shown in Exhibit "C":

"The percentages with respect to the Common Elements in the Courtney Ridge Estates, as well as the percentage obligations toward the cost of maintaining such Common Elements of the Courtney Ridge Master Association Condominium are set forth in Exhibit "C."

CP 118 at Art. 6 (emphasis added). Hence, the "allocated interest" provided in Exhibit "C" is specific to the Common Elements shared by the two condominiums (roads and utilities), *not* any interest in the Master Condominium airspace units.

**3. Allowing Courtney Ridge members to reap the benefits of membership in the Master Association without subjecting them to the restrictions of the Master Declaration is not supported by the Master Declaration and is inequitable.**

Courtney Ridge members have no obligation to the Master Association; their units were withdrawn. Indeed, Defendant concedes that the individual condominium units owned by its members are subject only to the Owners Declaration.<sup>15</sup> This amounts to an acknowledgement that the Owners Condominium units were withdrawn from the Master Declaration. Since Courtney Ridge members' units are not subject to the Master Declaration, they can have no obligations nor privileges as members of the Master Association.

Condominiums are created by statute. *Shorewood West Condominium Ass'n v. Sadri*, 140 Wn.2d 47, 53, 992 P.2d 1008 (2000) (internal citations omitted). In *Shorewood West*, the Supreme Court noted:

Central to the concept of condominium ownership is the principle that each owner, in exchange for the benefits of association with other owners, "must give up a certain degree of freedom of choice which he [or she] might otherwise enjoy in separate, privately owned property."

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<sup>15</sup> CP 414 at lines 17-18 ("[T]he individual unit owners are to look to the Owners Declaration for the restrictions and conditions to which their individual units are subject."); *see also* CP 410, at lines 1-2 ("[T]he individual units of Courtney Ridge Estates were made exempt from the restrictions and conditions of the Master Association.").

*Id.* (internal citations omitted) (emphasis added). Courtney Ridge has cited no authority to suggest a person could have benefits but not the obligations of a condominium. The argument is particularly absurd here, since Courtney Ridge contends its members would have the right to vote on restrictions that do not even apply to their property.

That such an outcome is contrary to the obvious intent of the parties is also evidenced by numerous conflicts between the two Declarations. These conflicts would arise directly if there was overlap and include:

1. Paragraph 7.3.2 of the Owners Declaration requires approval of 75 percent of the unit owners to reallocate a limited common element, while paragraph 7.3.2 of the Master Declaration only requires 67 percent approval.
2. Paragraph 10.2.1 of the Master Declaration specifies a different minimum Board size than the comparable paragraph 10.2.2 of the Owners Declaration, in addition to numerous other inconsistencies between paragraphs 10.2 generally.
3. Paragraph 11.2, Vehicle Parking Restrictions, is more restrictive under the Master Declaration than under the Owners Declaration.
4. Paragraph 11.3 of the Master Declaration establishes six months as the minimum lease term, while the Owners Declaration allows for leases as short as 30 days under paragraph 11.11.1.
5. Paragraph 17.1.2 of the Master Declaration requires the Master Association to maintain property insurance on every unit structure, including all structures and fixtures located within a unit structure, a requirement that is not included in Article 13 of the Owners Declaration.

*See* CP 48-103 (Master Declaration) and CP 109-168 (Owners Declaration). Surely the intent was not to leave the parties here in a sea of conflicting and overlapping Declarations.

Defendant's desired outcome would also leave a substantial question as to how Puyallup Ridge could even develop its two parcels. Puyallup Ridge can no longer add them to the Owners Condominium. That right terminated in 2012. *See* CP 162 at ¶ 23.5.9(b) (“[T]he Declarant’s right to add Phases 2 through 6 (or any additional phases)... shall expire five (5) years after the initial Declaration’s recording.”). If Puyallup Ridge does not have the right to add the last two lots to the Owners Declaration but is somehow tied to Courtney Ridge members by vote, how can it use its property? Is it at the whim of the residents?

Courtney Ridge also contends that its members remain obligated to the Master Association to the extent they are required to pay for a share of maintenance of common areas in the Master Condominium. Under Article 6 of the Owners Declaration, Courtney Ridge members are obligated to pay a percentage of maintenance costs for the shared facilities of the Master Condominium over which they have an easement. CP 118 at Art. 6. This shared maintenance obligation comes expressly from the members’ easement rights under the documents, not from any residual ownership interest in the remaining units of the Master Condominium.

**4. Owners Condominium purchasers were on notice that some airspace units might not be developed according to Declarant's original plan.**

The members of Courtney Ridge have no reasonable expectation that airspace units E and F would be developed identically to the units in the Owners Condominium. To the contrary, the governing documents repeatedly indicate the possibility that not all of the property would be developed in accordance with the original plan. These include:

1. The provision regarding addition of up to six phases describes that as “Declarant’s right,” not obligation.
2. Paragraph 3.3 of the Owners Declaration states: “There may be up to five additional phases.”
3. Paragraph 23.5.6(a) of the Owners Declaration reserves easements for the Declarant and its successors, and goes on to state: “Such reservations are for the purpose either of completing the subsequent phase, or otherwise developing portions of the land for other purposes if not completed as a condominium phase.”
4. Paragraph 23.5.8 of the Owners Declaration even gave the Declarant the right to withdraw a phase from the Owners Declaration after it was subject to the condominium regime. That section goes on to state that the land within the uncompleted phase “may be used for any other lawful purpose in Declarant’s discretion.”
5. Declarant’s authority to add phases terminated in 2012 under the provisions of the Owners Declaration, paragraph 23.5.9(b). Obviously, if the Declarant did not even have the right to add the property to the Owners Declaration, the property would have to be developed in some other manner.

See CP 48-103 (Master Declaration) and CP 109-168 (Owners Declaration) (emphasis added). It is clear from these and other provisions that Declarant had no obligation to complete the property with all six phases of development. No Owners Condominium purchaser had a good faith justification for believing that would occur.

#### IV. CONCLUSION

The Master Declaration was indisputably intended to operate independently from the Owners Declaration, so that units would be withdrawn from the former when subjected to the latter – never subject to both. An outcome in which the members of Courtney Ridge retain a voting interest in the Master Association was clearly not contemplated by the Declarant and is not supported by the language in the documents, the statute, or case law.

Respondent Puyallup Ridge LLC requests that the Court affirm the decision of the trial court.

Dated this 4th day of November, 2015.

Respectfully submitted,

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COURT OF APPEALS, DIVISION II  
OF STATE OF WASHINGTON

PUYALLUP RIDGE, LLC, a  
Washington limited liability  
company,

Respondent,

vs.

COURTNEY RIDGE ESTATES  
OWNERS ASSOCIATION, a  
Washington limited liability  
company,

Appellant,

NO. 47843-9

CERTIFICATE OF SERVICE

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THIS IS TO CERTIFY that on this 4<sup>th</sup> day of November, 2015, I  
did serve via email and U.S. Postal Service, a true and correct copy of the  
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