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1 2. *The association may not charge a fee to a unit's owner*
2 *who is seeking approval to install drought tolerant landscaping*
3 *pursuant to this section.*

4 3. Installation of drought tolerant landscaping within any
5 common element or conversion of traditional landscaping or
6 cultivated vegetation, such as turf grass, to drought tolerant
7 landscaping within any common element shall not be deemed to be
8 a change of use of the common element unless:

9 (a) The common element has been designated as a park, open
10 play space or golf course on a recorded plat map; or

11 (b) The traditional landscaping or cultivated vegetation is
12 required by a governing body under the terms of any applicable
13 zoning ordinance, permit or approval or as a condition of approval
14 of any final subdivision map.

15 ~~{3-}~~ 4. As used in this section, "drought tolerant landscaping"
16 means landscaping which conserves water, protects the environment
17 and is adaptable to local conditions. The term includes, without
18 limitation, the use of mulches such as decorative rock and artificial
19 turf.

20 Sec. 27. NRS 116.335 is hereby amended to read as follows:

21 116.335 1. Unless, at the time a unit's owner purchased his
22 or her unit, the declaration prohibited the unit's owner from renting
23 or leasing his or her unit, the association may not prohibit the unit's
24 owner from renting or leasing his or her unit.

25 2. Unless, at the time a unit's owner purchased his or her unit,
26 the declaration required the unit's owner to secure or obtain any
27 approval from the association in order to rent or lease his or her unit,
28 an association may not require the unit's owner to secure or obtain
29 any approval from the association in order to rent or lease his or her
30 unit.

31 3. If a declaration contains a provision establishing a maximum
32 number or percentage of units in the common-interest community
33 which may be rented or leased, that provision of the declaration may
34 not be amended to decrease that maximum number or percentage of
35 units in the common-interest community which may be rented or
36 leased.

37 4. The provisions of this section do not prohibit an association
38 from enforcing any provisions which govern the renting or leasing
39 of units and which are contained in this chapter or in any other
40 applicable federal, state or local laws or regulations.

41 5. Notwithstanding any other provision of law or the
42 declaration to the contrary:

43 (a) If a unit's owner is prohibited from renting or leasing a unit
44 because the maximum number or percentage of units which may be
45 rented or leased in the common-interest community have already



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1 been rented or leased, the unit's owner may seek a waiver of the
2 prohibition from the executive board based upon a showing of
3 economic hardship, and the executive board ~~may~~ *shall* grant such
4 a waiver *upon proof of economic hardship* and approve the renting
5 or leasing of the unit.

6 (b) If the declaration contains a provision establishing a
7 maximum number or percentage of units in the common-interest
8 community which may be rented or leased, in determining the
9 maximum number or percentage of units in the common-interest
10 community which may be rented or leased, the number of units
11 owned by the declarant must not be counted or considered.

12 Sec. 28. NRS 116.350 is hereby amended to read as follows:

13 116.350 1. In a common-interest community which is not
14 gated or enclosed and the access to which is not restricted or
15 controlled by a person or device, the executive board shall not and
16 the governing documents must not ~~provide~~ :

17 (a) *Provide* for the regulation of any road, street, alley or other
18 thoroughfare the right-of-way of which is accepted by the State or a
19 local government for dedication as a road, street, alley or other
20 thoroughfare for public use.

21 (b) *Except as otherwise provided in paragraph (s) of NRS*
22 *116.3102, interfere with the parking of any automobile, privately*
23 *owned standard pickup truck, motorcycle or any other vehicle not*
24 *specifically described in subsection 2.*

25 2. Except as otherwise provided in subsection 3, the provisions
26 of subsection 1 do not preclude an association from adopting, and
27 do not preclude the governing documents of an association from
28 setting forth, rules that reasonably restrict the parking or storage of
29 recreational vehicles, watercraft, trailers or commercial vehicles in
30 the common-interest community to the extent authorized by law.

31 3. In any common-interest community, the executive board
32 shall not and the governing documents must not prohibit a person
33 from:

34 (a) Parking a utility service vehicle that has a gross vehicle
35 weight rating of 20,000 pounds or less:

36 (1) In an area designated for parking for visitors, in a
37 designated parking area or common parking area, or on the
38 driveway of the unit of a subscriber or consumer, while the person is
39 engaged in any activity relating to the delivery of public utility
40 services to subscribers or consumers; or

41 (2) In an area designated for parking for visitors, in a
42 designated parking area or common parking area, or on the
43 driveway of his or her unit, if the person is:

44 (I) A unit's owner or a tenant of a unit's owner; and



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1 (II) Bringing the vehicle to his or her unit pursuant to his
2 or her employment with the entity which owns the vehicle for the
3 purpose of responding to emergency requests for public utility
4 services; or

5 (b) Parking a law enforcement vehicle or emergency services
6 vehicle;

7 (1) In an area designated for parking for visitors, in a
8 designated parking area or common parking area, or on the
9 driveway of the unit of a person to whom law enforcement or
10 emergency services are being provided, while the person is engaged
11 in his or her official duties; or

12 (2) In an area designated for parking for visitors, in a
13 designated parking area or common parking area, or on the
14 driveway of his or her unit, if the person is:

15 (I) A unit's owner or a tenant of a unit's owner; and

16 (II) Bringing the vehicle to his or her unit pursuant to his
17 or her employment with the entity which owns the vehicle for the
18 purpose of responding to requests for law enforcement services or
19 emergency services.

20 4. An association may require that a person parking a utility
21 service vehicle, law enforcement vehicle or emergency services
22 vehicle as set forth in subsection 3 provide written confirmation
23 from his or her employer that the person is qualified to park his or
24 her vehicle in the manner set forth in subsection 3.

25 5. *In a common-interest community which is not gated or*
26 *enclosed and the access to which is not restricted or controlled by*
27 *a person or device, the association shall display a sign in plain*
28 *view on or near any property on which parking is prohibited or*
29 *restricted in a certain manner.*

30 6. As used in this section:

31 (a) "Emergency services vehicle" means a vehicle:

32 (1) Owned by any governmental agency or political
33 subdivision of this State; and

34 (2) Identified by the entity which owns the vehicle as a
35 vehicle used to provide emergency services.

36 (b) "Law enforcement vehicle" means a vehicle:

37 (1) Owned by any governmental agency or political
38 subdivision of this State; and

39 (2) Identified by the entity which owns the vehicle as a
40 vehicle used to provide law enforcement services.

41 (c) "Utility service vehicle" means any motor vehicle:

42 (1) Used in the furtherance of repairing, maintaining or
43 operating any structure or any other physical facility necessary for
44 the delivery of public utility services, including, without limitation,



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1 the furnishing of electricity, gas, water, sanitary sewer, telephone,
2 cable or community antenna service; and

3 (2) Except for any emergency use, operated primarily within
4 the service area of a utility's subscribers or consumers, without
5 regard to whether the motor vehicle is owned, leased or rented by
6 the utility.

7 Sec. 29. NRS 116.4117 is hereby amended to read as follows:

8 116.4117 1. Subject to the requirements set forth in
9 subsection 2, if a declarant, community manager or any other person
10 subject to this chapter fails to comply with any of its provisions or
11 any provision of the declaration or bylaws, any person or class of
12 persons suffering actual damages from the failure to comply may
13 bring a civil action for damages or other appropriate relief.

14 2. ~~{Subject to the requirements set forth in NRS 38.310 and~~
15 ~~except}~~ Except as otherwise provided in NRS 116.3111, a civil
16 action for damages or other appropriate relief for a failure or refusal
17 to comply with any provision of this chapter or the governing
18 documents of an association may be brought:

19 (a) By the association against:

- 20 (1) A declarant;
21 (2) A community manager; or
22 (3) A unit's owner.

23 (b) By a unit's owner or a tenant or an invitee of a unit's
24 owner or a tenant against:

- 25 (1) The association;
26 (2) A declarant; or
27 (3) Another unit's owner of the association.

28 (c) By a class of units' owners constituting at least 10 percent of
29 the total number of voting members of the association against a
30 community manager.

31 3. Except as otherwise provided in NRS 116.31036, punitive
32 damages may be awarded for a willful and material failure to
33 comply with any provision of this chapter if the failure is established
34 by clear and convincing evidence.

35 4. The court may award reasonable attorney's fees to the
36 prevailing party.

37 5. The civil remedy provided by this section is in addition to,
38 and not exclusive of, any other available remedy or penalty.

39 Sec. 30. NRS 116.745 is hereby amended to read as follows:

40 116.745 As used in NRS 116.745 to 116.795, inclusive, and
41 section 1 of this act, unless the context otherwise requires,
42 "violation" means a violation of any provision of this chapter, any
43 regulation adopted pursuant thereto or any order of the Commission
44 or a hearing panel.



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1 Sec. 31. NRS 116.757 is hereby amended to read as follows:

2 116.757 1. Except as otherwise provided in this section and
3 NRS 239.0115, a written affidavit filed with the Division pursuant
4 to NRS 116.760, all documents and other information filed with the
5 written affidavit and all documents and other information compiled
6 as a result of an investigation conducted to determine whether to file
7 a formal complaint with the Commission are confidential. ~~{The}~~
8 *Except as otherwise provided in this subsection, the Division shall*
9 not disclose any *findings or other* information that is confidential
10 pursuant to this subsection, in whole or in part, to any person,
11 ~~[including, without limitation, a person who is the subject of an~~
12 ~~investigation or complaint,]~~ unless and until a formal complaint is
13 filed pursuant to subsection 2 and the disclosure is required pursuant
14 to subsection 2. *The Division shall provide to each party to the*
15 *dispute for which the written affidavit was filed a copy of the*
16 *documents and other information submitted by the other party.*

17 2. A formal complaint filed by the Administrator with the
18 Commission and all documents and other information considered by
19 the Commission or a hearing panel when determining whether to
20 impose discipline or take other administrative action pursuant to
21 NRS 116.745 to 116.795, inclusive, *and section 1 of this act* are
22 public records.

23 Sec. 32. NRS 116.765 is hereby amended to read as follows:

24 116.765 1. Upon receipt of an affidavit that complies with
25 the provisions of NRS 116.760, the Division shall refer the affidavit
26 to the Ombudsman.

27 2. The Ombudsman shall give such guidance to the parties as
28 the Ombudsman deems necessary to assist the parties to resolve the
29 alleged violation. *The Ombudsman shall provide each party an*
30 *opportunity to respond to any allegations or statements made by*
31 *the other party or the Division.*

32 3. If the parties are unable to resolve the alleged violation with
33 the assistance of the Ombudsman, the Ombudsman shall provide to
34 the Division a report concerning the alleged violation and any
35 information collected by the Ombudsman during his or her efforts to
36 assist the parties to resolve the alleged violation.

37 4. Upon receipt of the report from the Ombudsman, the
38 Division shall conduct an investigation to determine whether good
39 cause exists to proceed with a hearing on the alleged violation.

40 5. If, after investigating the alleged violation, the Division
41 determines that the allegations in the affidavit are not frivolous,
42 false or fraudulent and that good cause exists to proceed with a
43 hearing on the alleged violation, the Administrator shall file a
44 formal complaint with the Commission and schedule a hearing on
45 the complaint before the Commission or a hearing panel.



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- 1 **Sec. 33.** NRS 38.310 is hereby amended to read as follows:
2 **38.310** 1. ~~{No}~~ *Except as otherwise provided in subsections*
3 *2 and 3, no civil action based upon a claim relating to:*
4 (a) The interpretation, application or enforcement of any
5 covenants, conditions or restrictions applicable to residential
6 property or any bylaws, rules or regulations adopted by an
7 association; or
8 (b) The procedures used for increasing, decreasing or imposing
9 additional assessments upon residential property,
10 ↪ may be commenced in any court in this State unless the action
11 has been submitted to mediation or arbitration pursuant to the
12 provisions of NRS 38.300 to 38.360, inclusive, and, if the civil
13 action concerns real estate within a planned community subject to
14 the provisions of chapter 116 of NRS or real estate within a
15 condominium hotel subject to the provisions of chapter 116B of
16 NRS, all administrative procedures specified in any covenants,
17 conditions or restrictions applicable to the property or in any
18 bylaws, rules and regulations of an association have been exhausted.
19 2. *If:*
20 (a) *A civil action described in subsection 1 concerns real estate*
21 *within a planned community subject to the provisions of chapter*
22 *116 of NRS and relates to a citation of a unit's owner or a tenant*
23 *of a unit's owner for a violation of any covenants, conditions or*
24 *restrictions applicable to residential property or any bylaws, rules*
25 *or regulations adopted by an association; and*
26 (b) *All administrative procedures specified in any covenants,*
27 *conditions or restrictions applicable to the property or in any*
28 *bylaws, rules and regulations of an association have been*
29 *exhausted,*
30 ↪ *the unit's owner or tenant may submit the civil action to*
31 *mediation or arbitration pursuant to the provisions of NRS 38.300*
32 *to 38.360, inclusive, or commence the civil action in a court of*
33 *competent jurisdiction without complying with the provisions of*
34 *NRS 38.300 to 38.360, inclusive.*
35 3. *If a civil action described in subsection 1 concerns real*
36 *estate within a planned community subject to the provisions of*
37 *chapter 116 of NRS and is brought by an invitee of a unit's owner*
38 *or a tenant of a unit's owner, the invitee may submit the civil*
39 *action to mediation or arbitration pursuant to the provisions of*
40 *NRS 38.300 to 38.360, inclusive, or commence the civil action in a*
41 *court of competent jurisdiction without complying with the*
42 *provisions of NRS 38.300 to 38.360, inclusive.*
43 4. A court shall dismiss any civil action which is commenced
44 in violation of the provisions of ~~{subsection 1.}~~ *this section.*



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1 Sec. 34. NRS 38.330 is hereby amended to read as follows:

2 38.330 1. If all parties named in a written claim filed
3 pursuant to NRS 38.320 agree to have the claim submitted for
4 mediation, the parties shall reduce the agreement to writing and
5 shall select a mediator from the list of mediators maintained by the
6 Division pursuant to NRS 38.340. Any mediator selected must be
7 available within the geographic area. If the parties fail to agree upon
8 a mediator, the Division shall appoint a mediator from the list of
9 mediators maintained by the Division. Any mediator appointed must
10 be available within the geographic area. Unless otherwise provided
11 by an agreement of the parties, mediation must be completed within
12 60 days after the parties agree to mediation. Any agreement
13 obtained through mediation conducted pursuant to this section must,
14 within 20 days after the conclusion of mediation, be reduced to
15 writing by the mediator and a copy thereof provided to each party.
16 The agreement may be enforced as any other written agreement. *If a*
17 *party commences a civil action based upon any claim which was*
18 *the subject of mediation, the findings of the mediator are not*
19 *admissible in that action.* Except as otherwise provided in this
20 section, the parties are responsible for all costs of mediation
21 conducted pursuant to this section.

22 2. If all the parties named in the claim do not agree to
23 mediation, the parties shall select an arbitrator from the list of
24 arbitrators maintained by the Division pursuant to NRS 38.340. Any
25 arbitrator selected must be available within the geographic area. If
26 the parties fail to agree upon an arbitrator, the Division shall appoint
27 an arbitrator from the list maintained by the Division. Any arbitrator
28 appointed must be available within the geographic area. Upon
29 appointing an arbitrator, the Division shall provide the name of the
30 arbitrator to each party. An arbitrator shall, not later than 5 days
31 after the arbitrator's selection or appointment pursuant to this
32 subsection, provide to the parties an informational statement relating
33 to the arbitration of a claim pursuant to this section. The written
34 informational statement:

35 (a) Must be written in plain English;
36 (b) Must explain the procedures and applicable law relating to
37 the arbitration of a claim conducted pursuant to this section,
38 including, without limitation, the procedures, timelines and
39 applicable law relating to confirmation of an award pursuant to NRS
40 38.239, vacation of an award pursuant to NRS 38.241, judgment on
41 an award pursuant to NRS 38.243, and any applicable statute or
42 court rule governing the award of attorney's fees or costs to any
43 party; and

44 (c) Must be accompanied by a separate form acknowledging that
45 the party has received and read the informational statement, which



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1 must be returned to the arbitrator by the party not later than 10 days
2 after receipt of the informational statement.

3 3. The Division may provide for the payment of the fees for a
4 mediator or an arbitrator selected or appointed pursuant to this
5 section from the Account for Common-Interest Communities and
6 Condominium Hotels created by NRS 116.630, to the extent that:

7 (a) The Commission for Common-Interest Communities and
8 Condominium Hotels approves the payment; and

9 (b) There is money available in the Account for this purpose.

10 4. *The fees for a mediator or an arbitrator selected or*
11 *appointed pursuant to this section must not exceed \$750 and,*
12 *except as otherwise provided in subsection 3, each party to the*
13 *mediation or arbitration must pay an equal percentage of the fees*
14 *for the mediator or arbitrator.*

15 5. *A party to a mediation or an arbitration conducted*
16 *pursuant to this section is not liable for the costs or attorney's fees*
17 *incurred by another party during the mediation or arbitration.*

18 6. *If a party to a mediation or an arbitration conducted*
19 *pursuant to this section submits a written statement to the Division*
20 *alleging that the mediator or arbitrator has a conflict of interest or*
21 *is biased against that party and submits with the written statement*
22 *evidence to substantiate the allegation, the Division shall remove*
23 *the mediator or arbitrator and appoint a mediator or arbitrator*
24 *from the list maintained by the Division pursuant to NRS 38.340*
25 *who is acceptable to each party. A mediator or arbitrator who has*
26 *been removed by the Division pursuant to this subsection shall*
27 *refund to the parties any payments made by the parties for the fees*
28 *of the mediator or arbitrator.*

29 7. Except as otherwise provided in this section and except
30 where inconsistent with the provisions of NRS 38.300 to 38.360,
31 inclusive, the arbitration of a claim pursuant to this section must be
32 conducted in accordance with the provisions of NRS 38.231,
33 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At
34 any time during the arbitration of a claim relating to the
35 interpretation, application or enforcement of any covenants,
36 conditions or restrictions applicable to residential property or any
37 bylaws, rules or regulations adopted by an association, the arbitrator
38 may issue an order prohibiting the action upon which the claim is
39 based. An award must be made within 30 days after the conclusion
40 of arbitration, unless a shorter period is agreed upon by the parties to
41 the arbitration.

42 ~~{5.}~~ 8. If all the parties have agreed to nonbinding arbitration,
43 any party to the nonbinding arbitration may, within 30 days after a
44 decision and award have been served upon the parties, commence a
45 civil action in the proper court concerning the claim which was



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1 submitted for arbitration. Any complaint filed in such an action must
2 contain a sworn statement indicating that the issues addressed in the
3 complaint have been arbitrated pursuant to the provisions of NRS
4 38.300 to 38.360, inclusive. *If an action is commenced within that*
5 *period, the findings of the arbitrator are not admissible in that*
6 *action. If* such an action is not commenced within that period, any
7 party to the arbitration may, within 1 year after the service of the
8 award, apply to the proper court for a confirmation of the award
9 pursuant to NRS 38.239.

10 ~~{6.}~~ 9. If all the parties agree in writing to binding arbitration,
11 the arbitration must be conducted in accordance with the provisions
12 of this chapter. An award procured pursuant to such binding
13 arbitration may be vacated and a rehearing granted upon application
14 of a party pursuant to the provisions of NRS 38.241.

15 ~~{7.}~~ 10. If, after the conclusion of binding arbitration, a party:

16 (a) Applies to have an award vacated and a rehearing granted
17 pursuant to NRS 38.241; or

18 (b) Commences a civil action based upon any claim which was
19 the subject of arbitration,

20 the party shall, if the party fails to obtain a more favorable award
21 or judgment than that which was obtained in the initial binding
22 arbitration, pay all costs and reasonable attorney's fees incurred by
23 the opposing party after the application for a rehearing was made or
24 after the complaint in the civil action was filed.

25 ~~{8.}~~ *If a party commences a civil action based upon any claim*
26 *which was the subject of arbitration, the findings of the arbitrator*
27 *are not admissible in that action.*

28 11. Upon request by a party, the Division shall provide a
29 statement to the party indicating the amount of the fees for a
30 mediator or an arbitrator selected or appointed pursuant to this
31 section.

32 ~~{9.}~~ 12. As used in this section, "geographic area" means an
33 area within 150 miles from any residential property or association
34 which is the subject of a written claim submitted pursuant to
35 NRS 38.320.

36 Sec. 35. The provisions of NRS 116.31164, as amended by
37 section 23 of this act, apply only if a notice of default and election to
38 sell is recorded pursuant to NRS 116.31162 on or after July 1, 2011.

39 Sec. 36. This act becomes effective on July 1, 2011.

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EXHIBIT 9

ADOPTED DECEMBER 8, 2010

**COMMISSION FOR COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS
ADVISORY OPINION NO. 2010-01**

Subject: Inclusion of Fees and Costs as an Element of the Super Priority Lien

QUESTION

Under NRS 116.3116, the super priority of an assessment lien includes "assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration" during the 6 or 9 month super priority period. May the association also recover, as part of the super priority lien, the costs and fees incurred by the association in collecting such assessments?

ANSWER

An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

ANALYSIS

Statutory Super Priority. NRS Chapter 116 provides for a "super priority" lien for certain association assessments. NRS 116.3116 provides, in pertinent part, as follows:

NRS 116.3116 Liens against units for assessments.

1. The association has a lien on a unit for . . . any assessment levied against that unit . . . from the time the . . . assessment . . . becomes due. . . .
2. A lien under this section is prior to all other liens and encumbrances on a unit except:
 - (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
 - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or,

ADOPTED DECEMBER 8, 2010

In a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312¹ and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. . .

NRS 116.3116 further provides that "Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section."

UCIOA. The "super priority" provisions of NRS Chapter 116, like the rest of the chapter, are based on the 1982 version of the Uniform Common Interest Ownership Act (UCIOA) adopted by the National Conference of Commissioners

¹ NRS 116.310312, enacted in 2009, provides for the recovery by the association of certain costs incurred by an association with respect to a foreclosed or abandoned unit, including costs incurred to "Maintain the exterior of the unit in accordance with the standards set forth in the governing documents" or "Remove or abate a public nuisance on the exterior of the unit...."

of Uniform State Laws (NCCUSL). A comparison of the statutory language in UCIOA² and NRS reveals few material changes:

| <u>UCIOA 3-116. (1994)</u> | <u>NRS 116.3116 Liens against units for assessments.(2009)</u> |
|---|---|
| <p>(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.</p> <p>(b) A lien under this section is prior to all other liens and encumbrances on a unit except</p> <p>(i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to,</p> <p>(ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and</p> | <p>1. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.</p> <p>2. A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;</p> <p>(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and</p> |

² The 1982 version of UCIOA was superseded by a 1994 version, which is used here, and a 2008 version, discussed below.

| | |
|--|---|
| <p>(iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.</p> <p>The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien.</p> | <p>(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.</p> <p>The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.</p> |
|--|---|

Reported Cases. There are no reported Nevada cases addressing the issue of whether the super priority lien may include amounts other than just the 6 or 9 months of assessments. Because NRS Chapter 116 is based on a Uniform

Act, however, decisions in other states that have adopted UCIOA can be helpful. Colorado and Connecticut are both UCIOA states; reported cases in both these states have addressed the question presented in this opinion.

In *Hudson House Condominium Association, Inc. v. Brooks*, 611 A.2d 862 (Conn., 1992), the Connecticut Supreme Court rejected an argument by the holder of the first mortgage that "because [the statute] does not specifically include 'costs and attorney's fees' as part of the language creating [the association's] priority lien, those expenses are properly includable only as part of the nonpriority lien that is subordinate to [the first mortgagee's] interest." In reaching its conclusion, however, the court relied on a non-uniform statute dealing with the judicial enforcement of the association lien.³ In a footnote the court also noted that the super priority language of the Connecticut version of UCIOA 3-116 had since been amended to expressly include attorney's fees and costs in the priority debt.

The two Colorado cases that have considered this issue reached their conclusion, that the priority debt *includes* attorneys' fees and costs, based on statutory language similar to Nevada's. The language of the court in *First All. Mortgage, LLC v. Sunstone N. Homeowners Ass'n*, 121 P.3d 254 (Colo. App 2005) is very helpful:

Within the meaning of Section 2(b), a "lien under this section" may include any of the expenses listed in subsection (1), including "fees, charges, late charges, attorney fees, fines, and interest." Thus, ***although the maximum amount of a super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments.***[Emphasis added.]

³ C.G.S.A. Section 47-258(g)

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In support of its holding, the Sunstone court quoted the following language from James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act*, 27 Wake Forest L. Rev. 363, 367:

A careful reading of the . . . language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. The reference in Section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien.

The decision of the court in Sunstone was followed in *BA Mortgage, LLC v. Quail Creek Condominium Association, Inc.*, 192 P.2d 447 (Colo. App, 2008).

A comparison of the language of the Colorado statute and the language of the Nevada statute reveals that the two are virtually identical:

| CRS 38-33.3-316 Lien for assessments. (2008) | NRS 116.3116 Liens against units for assessments. (2009) |
|--|---|
| (1) The association . . . has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, <u>fees, charges, late charges, attorney fees, fines, and interest</u> charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. . . . | . The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any . . . <u>fees, charges, late charges, fines and interest</u> charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. . . . |

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| | |
|---|---|
| <p>(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>***</p> <p>(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:</p> <p>(I) <u>An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding</u> institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien. [Emphasis added.]</p> | <p>2. A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>***</p> <p>The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and <u>to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding</u> institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [Emphasis added.]</p> |
|---|---|

2008 UCIOA. In 2008 NCCUSL proposed the following amendment to 3-116 of UCIOA⁴:

SECTION 3-116. LIEN FOR ASSESSMENTS; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit . . . Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this fact, or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)~~ (1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which that the association creates, assumes, or takes subject to;

~~(ii)~~ (2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

~~(iii)~~ (3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) A The lien under this section is also prior to all security interests described in subsection (b)(2) clause (ii) above to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. . . . [Emphasis added.]

⁴ The changes noted are to 1994 UCIOA.

New Comment No. 8 to 3-116 states as follows:

8. Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b).⁵ The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state. [Emphasis added.]

Discussion. The Colorado Court of Appeals and the author of the Wake Forest Law Review article quoted by the court in the *Sunstone* case both concluded that although the assessment portion of the super priority lien is limited to a finite number of months, because the assessment lien itself includes "fees, charges, late charges, attorney fees, fines, and interest," these charges may be included as part of the super priority lien amount. This language is the same as NRS 116.3116, which states that "fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments." As the *Sunstone* court noted "although the maximum amount of the super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments."

⁵ The statutory change noted by the Connecticut Supreme Court in the Hudson House case referred to above.

The referenced statute, NRS 116.3102, provides that an association has the power to:

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

It is immediately apparent that the charges authorized by NRS 116.3102(1)(j) through (n) cover a wide variety of circumstances. The fact that "fees, charges, late charges, fines and interest" that may be included as part of the assessment lien under NRS 116.3116 include amounts unrelated to monthly assessments does not mean, however, that such amounts should not be included in the super lien if they do relate to the applicable super priority monthly assessments. It appears that only those association charges authorized under NRS 116.3102(1) Subsections (k) and a portion of (n) apply to the collection of unpaid assessments, i.e., Subsection (k)'s charges for late payment of

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assessments and Subsection (n)'s charges for preparing any statements of unpaid assessments. Subsection (j)'s charges for use of common elements or providing association services, Subsection (l)'s construction penalties and Subsection (n)'s amendments to the declaration and providing resale information clearly do not relate to the collection of monthly assessments.

The inclusion of the word "fines" authorized by NRS 116.3102(1)(m) as part of the assessment lien presents an additional problem in Nevada. The "fines" referred to in NRS 116.3116/NRS 116.3102(1)(m) are fines authorized by NRS 116.31031. While fines may be imposed for "violations of the governing documents," which, of course, could include non-payment of assessments required by the governing documents, the hearing procedure mandated by NRS 116.31031 prior to the imposition of "fines" refers to an inquiry involving conduct or behavior that violates the governing documents, not the failure to pay assessments. Because "fines" involve conduct or behavior, enforcement of fines are given special treatment under NRS 116.31162:

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Thus, to use the words of the *Sunstone* court, the "plain language" of NRS 116.3116, when read in conjunction with NRS 116.3102(1) (j) through (n), supports the conclusion that the only additional amounts that can be included as part of the super priority lien in Nevada are "charges for late payment of

assessments pursuant to NRS 116.3115" and "reasonable charges for the preparation and recordation of . . . any statements of unpaid assessments." NRS 116.3102(1)(k),(n). Note that the reference in Subsection (k) to NRS 116.3115 appears to be solely for the purpose of identifying what is meant by the word "assessment," though NRS 116.3115(3) provides for the payment of interest on "Any assessment for common expenses or installment thereof that is 60 days or more past due...."

Conclusion. The super priority language contained in UCIOA 3-116 reflected a change in the traditional common law principle that granted first priority to a mortgage lien recorded prior to the date a common expense assessment became delinquent. The six month priority rule contained in UCIOA 3-116 established a compromise between the interests of the common interest community and the lending community. The argument has been advanced that limiting the super priority to a finite amount, i.e., UCIOA's six months of budgeted common expense assessments, is necessary in order to preserve this compromise and the willingness of lenders to continue to lend in common interest communities. The state of Connecticut, in 1991, NCCUSL, in 2008, as well as "Fannie Mae and local lenders"⁶ have all concluded otherwise.

Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and the policy determinations of commentators, the state of Connecticut and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority lien. We reach a similar conclusion in finding that Nevada law

⁶ See New Comment No. 8 to UCIOA 3-116(2008) quoted above.

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authorizes the collection of "charges for late payment of assessments" as a portion of the super lien amount.

In 2009, Nevada enacted NRS 116.310313, which provides as follows:

NRS 116.310313 Collection of past due obligation; charge of reasonable fee to collect.

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Since Nevada law specifically authorizes an association to recover the "costs of collecting" a past due obligation and, further, limits those amounts, we conclude that a reasonable interpretation of the kinds of "charges" an association

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may collect as a part of the super priority lien include the "costs of collecting" authorized by NRS 116.310313. Accordingly, the following amounts may be included as part of the super priority lien amount, to the extent the same relate to the unpaid 6 or 9 months of super priority assessments: (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration in accordance with NRS 116.3102(1)(k), (c) charges for preparing any statements of unpaid assessments pursuant to NRS 116.3102(1)(n) and (d) the "costs of collecting" authorized by NRS 116.310313.

EXHIBIT 10



COMMUNITY INSIGHTS

Special Edition

VOLUME VI, ISSUE I

Department of Business and Industry, Real Estate Division

Winter 2010

Nevada Real Estate Division

OUR MISSION

The mission of the Nevada Real Estate Division is to safeguard and promote interest in real estate transactions by developing an informed public and a professional real estate industry.

Office of the Ombudsman

OUR MISSION

To provide a neutral and fair venue to assist homeowners in handling issues that may arise while living in a common-interest community.

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2009 Legislative Summary

NRS 116, the law governing HOAs in Nevada, was modified by 15 bills, most of which are now in effect. This special edition of the Community Insights newsletter offers a brief overview of the changes affecting homeowners associations from the 2009 Nevada Legislative Session and related information.

Changes to NRS 116 are reflected in the new law, copies of which may be purchased from the Office of the Ombudsman for \$15. This publication emphasizes key changes that affect the vast majority of associations statewide. It is distributed with the intent of bringing attention to new provisions that require action by most associations. For details on the implementation or adoption of new policies, associations are advised to consult an attorney, accountant, reserve study specialist or other appropriate professional.

Bill Digest

EDITOR'S NOTE: The following summaries reflect the Real Estate Division's understanding of the changes to NRS 116 as it pertains to enforcement and administration. Some matters may be clarified further through regulations adopted by the Commission on Common-Interest Communities and Condominium Hotels, through hearings on specific complaints, or other means.

There are nearly 3,000 homeowner associations throughout the state, and the application of the law to any given association will vary depending upon its circumstances. Boards must exercise sound business judgment to determine the poli-

cies to ensure their associations are in compliance. They are advised to consult with their attorneys, CPAs or other appropriate expert on any matters in which they are in doubt.

ASSOCIATION POWERS/ DUTIES/ RESTRICTIONS

AB 129 prohibits HOAs from restricting the parking of utility vehicles 20,000 lbs. or less, law enforcement vehicles and emergency service vehicles. Regarding utility vehicles, parking must be allowed
See Digest on Page 2

Focus shifts to regulatory changes

Following numerous changes to NRS 116, several new sections of regulations are under consideration that potentially will affect the way homeowners associations and community managers conduct business.

The Real Estate Division recently presented the text of several proposed regulations at public workshops held in Las Vegas and teleconferenced to Carson City.

See Regulations on Page 5

COMMUNITY INSIGHTS

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Bill Digest

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where visitors can park, on common parking areas or in the driveways of the consumer while utility services are being provided to that unit. Also, these vehicles can also be parked in these same locations by owners and tenants if they are required by their employers to have these vehicles at home in order to respond to emergencies. For law enforcement and emergency vehicles, these same parking rules apply if they are engaged in their official duties or are required by their employers to have the vehicles at their homes. Associations can require written proof of the requirement of the employer. (NRS 116.350) (Eff. 10/1/09)

AB 204 requires the HOA Board to make available to unit owners -- at the time it makes the budget available -- the policies for collecting fees, fines, assessments, and costs from owners and include information on the rights and responsibilities regarding these collections. (NRS 116.31151) It also allows HOAs to have a super-priority lien for 9 months of unpaid assessments and related costs (increased from 6 months). (NRS 116.3116) (Eff. 10/1/09)

AB 350 (1.7) creates a new section of law authorizing associations to charge "reasonable fees" for collecting any past due obligations. (NRS 116.3102) (Eff. 6/9/09 for regulations, 1/1/10 for all other purposes)

AB 361 authorizes associations to improve the appearance of vacant and foreclosed properties. It allows, without liability for violating trespass laws, entry on the grounds of these kinds of properties to maintain the exteriors, or abate nuisances (visible, threaten health or safety, result in blight, adversely affect the use and enjoyment of neighbors' properties). This maintenance work can begin if -- after notice and a hearing -- the owner refuses to do so. Further, the costs for the maintenance can become a priority lien if the owner doesn't pay the costs. In addition, people who acquire foreclosed properties, including banks, must give the association contact information within 30 days after filing an action to recover the debt (such as the first mortgage) or recording a notice of a breach of the obligation and the election to sell the unit. (NRS 116.3102, .310312 and .3116) (Eff. 10/1/09)

SB 68 relates to security walls and provides that associations must maintain them unless the governing documents provide otherwise. However, for associations created before Oct. 1, 2009, the requirements of this bill do not apply until January 2013. (Eff. 1/1/13, or earlier)

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SB 182 (28) and SB 183 (31) prohibit the association from interrupting utility services except for nonpayment of utility charges. Before any interruption, the owner or tenant must get at least a 10-day notice. (NRS 116.345) (Eff. 10/1/09)

SB 183 (28) An association's official publications (newsletters, Web sites, bulletin boards, magazines) now must provide "equal space" to opposing points of view upon request and at no cost. This equal space requirement is with respect to certain specific subject areas, including but not limited to: mentions of candidates or ballot questions, views or opinions on matters of official interest such as adoption of rules, issues on which there will be a vote, and so forth. In addition, there is protection from civil or criminal liability for the association, officers, employees and agents for any act or omission that arises out of the publication of information pursuant to this provision. (NRS 116.31175) (Eff. 10/1/09)

BOARD MEMBERS

AB 350 (3.5, 5.5, and 16.5) adds to the duties of executive board members to clarify that not only must they act as fiduciaries but they must act: 1) on an informed basis, 2) and in the honest belief that their actions are in the best interest of the association. (NRS 116.3103) On the other hand, board members and officers are protected from punitive damages for acts and omissions that occur in their capacity as board members and officers. (NRS 116.31036) There is an exception to the protection from punitive damages where acts are willful and establish a material failure to comply with the law (NRS 116.4117);

New NRS 116 on sale

Copies of NRS 116 are available for sale through the Office of the Ombudsman, as well as the Legislative Counsel Bureau. The latest copies contain all of the changes from last year's Legislative session. The price is \$15 per copy.

In Southern Nevada, interested parties may purchase copies at the Ombudsman's Office at 2501 E. Sahara Ave, Suite 202, or at the LCB on the fourth floor of the Sawyer Building, 555 E. Washington Ave.

In Carson City, copies are available at the Real Estate Division, 788 Fairview Drive, Suite 102, or the LCB at 401 S. Carson St.

these damages can be sought not only against the association but against unit owners and the declarant as well. (Eff. 7/1/09)

SB 182 (14) also addresses executive board and officer liability. It provides that punitive damages cannot be recovered from the association, the board members or officers for acts or omissions that occur in their official capacities as board members or officers. (NRS 116.31036) (Eff. 10/1/09)

SB 182 (13) When a declarant has fully terminated control of the HOA, the owners shall elect an executive board of at least 3 members, all of whom must be owners (previously a "majority" had to be owners). Then the executive board shall elect officers, but unless the governing documents provide otherwise, officers of the association are not required to be unit owners. (NRS 116.31034) (Eff. 10/1/09)

SB 182 (25) and SB 183 (29) prohibit executive board members and officers from contracting with the association to provide financing (this was added to provisions which already disallowed the providing of goods and services to the association). (NRS 116.31183 and NRS 116.31187) (Eff. 10/1/09)

SB 183 (3) and SB 253 (2) provide that an executive board member who will gain personal profit or compensation from a matter before the board must:

- 1) disclose that matter to the board and
- 2) abstain from voting on that matter.

If a board member is an employee or affiliate of the declarant, those factors do not by themselves violate this provision, nor does the fact that a board member is also a unit owner constitute a violation of this provision. SB 253 also provides that executive board members must disclose if members of households or certain relatives will profit from matters before the board. (NRS 116.31084) (Eff. 10/1/09)

SB 183 (14) Terms for executive board members may be increased from 2 to 3 years but there is no limitation on the number of terms -- unless the governing documents provide otherwise. (NRS 116.31034) (Eff. 10/1/09)

SB 351 (9) Unless the governing documents provide that executive board vacancies must be filled by a vote of the membership, vacancies can be filled by appointment by the remaining board members. (NRS 116.3103) (Eff. 10/1/09)

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Questions? Contact Compliance

The laws are in place and hopefully, by now, most homeowner associations have implemented the necessary changes to their elections, meetings and policies. For associations uncertain of their obligations under the new laws, the Real Estate Division offers a valuable resource.

Compliance, the office within the Division charged with enforcement of NRS 116, offers regular hours to call or visit and seek answers to HOA-related questions.

Any party within an association may call statewide toll-free 877-829-9907 from 8 a.m. to 5 p.m. weekdays and ask to speak with an investigator. For more in-depth issues, investigators are available by appointment Tuesdays through Thursdays from 9-11 a.m. and 1:30-3:30 p.m. in Las Vegas, and weekdays from 8 a.m. to 1 p.m. and 2 p.m. to 5 p.m. in Carson City.

Bruce Alitt, chief investigator, encourages associations to contact his office, stating his office has helped many associations get into compliance with as little as a phone call or a letter of instruction.

"We're in the resolution business more than the punishment business," Alitt said. "While we have the tools to deal with serious matters, some things can be handled through simpler means."

Ultimately, Alitt said, associations must determine policies that are proper for their particular circumstances, using the appropriate expert's advice as needed.

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UNIT OWNERS - RIGHTS/RESPONSIBILITIES

AB 350 (12.5) allows an owner who is retaliated against by the executive board, board members, officers, employees or agents for complaining in good faith about violations of laws or governing documents - or requesting to review association records - to bring a separate action in court to recover compensatory damages and attorney's fees. (NOTE: The definition of retaliatory action means "taking actions that affect the unit owner's rights as a unit owner," according to the Commission on Common-Interest Communities at its July 31, 2007 meeting.) (NRS 116.31183) (Eff. 7/1/09)

AB 350 (13.7) (15.5) These provisions clarify that the public offering or resale package contains a statement listing all current and expected fees per unit - association fees, fines, assessments, late charges and penalties, interest rates for assessments, additional costs for collecting past due fines, and charges for opening and closing files (NRS 116.4103 and NRS 116.4109) (Eff. 7/1/09)

SB 114 prohibits CC&Rs from prohibiting or unreasonably restricting the use of solar or wind energy systems, and specifically allows the use of black solar glazing (NRS 111.239 and NRS 278.0208) (Eff. 6/9/09)

SB 182 (19) provides that when the executive board receives a written complaint from an owner alleging that the board has violated NRS 116 or the governing documents, the board shall acknowledge receipt of the complaint within 10 days. The board shall also notify the owner that he or she may make a written request to

place the subject of the complaint on the agenda of the next board meeting. (NRS 116.31087) (Eff. 10/1/09)

SB 182 (26) increases the number of political signs allowed on property, though the size limit remains the same (24 x 36 inches). There can now be one sign for each candidate, political party or ballot question, and an owner cannot place signs on property where there is a tenant without the tenant's consent. All other laws governing political signs still apply. (NRS 116.325) (Eff. 10/1/09)

SB 182 (27) clarifies that owners cannot be prohibited from installing drought-tolerant landscaping in their own front and back yards, but still must submit plans for architectural review, and the plans must still be compatible with the community's style. However, executive boards shall not unreasonably deny approval. Also, "drought-tolerant landscaping" specifically is now defined to include decorative rock and artificial turf along with other landscaping that conserves water. (NRS 116.330) (Eff. 10/1/09)

SB 216 Associations may not unreasonably restrict, prohibit or withhold approval for owners to add shutters to improve security or conserve energy, even if they will be attached to certain common elements or limited common elements. The owner is responsible for their maintenance. A CC&R that does not unreasonably restrict shutters and that is in the governing documents or policies is enforceable if it existed as of July 1, 2009 or was in the governing documents in effect on the close of escrow of the first sale of a unit. (NRS 116.2111) (Eff. 7/1/09)

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SB 253 (6) Unless at the time of purchase there is a rental prohibition, the association may not prohibit an owner from renting a unit. Further, unless at the time of purchase the declaration requires the owner to receive approval from the association to rent the unit, this approval cannot be required. If the declaration has a limit on the number of units that can be rented, it cannot be amended to decrease the number of units which can be rented. Even if there is a limitation on the number of rentals, an owner can seek a waiver based upon a showing of "economic hardship." Where there is a limit on the number of rental units, the units owned by the declarant cannot be counted or considered when determining the maximum number of rental units allowed. (NRS 116.335) (Eff. 10/1/09)

SB 253 (8) It is the responsibility of the owner to pay for the resale package when the property is being sold. Further, this resale package must include information on transfer fees, transaction fees, and other fees involved in unit resales. (NRS 116.4109) (Eff. 6/9/09 pursuant to AB 350)

ELECTIONS AND VOTING

AB 251 changes procedures for elections where the number of candidates running is the same or less than the number of vacancies. In such cases, the executive board must send out a notice informing owners that those nominated will be deemed to be elected to the

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Regulations

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The first workshop of the year was for R-204-09, which would affect conditions under which an association could deposit funds with an out-of-state bank. The workshop was conducted by the Division with two members of the Commission on Common-Interest Communities and Condominium Hotels in attendance.

Workshops provide the opportunity for the public to view regulations and submit comment in person before adoption. Both the Division and the Commission hold scheduled workshops.

Future workshops will affect standards for receiving credentials to serve as a community manager or reserve study specialist, the way reserve studies are conducted, among several other matters. For a list of upcoming workshops and adoption hearings, visit www.red.state.nv.us, click on Common-Interest Communities and then Workshops and Adoptions (on the left side of the page). Visitors may also find the copies of proposed text on adjoining links.

Workshops conducted by the Commission are usually held in conjunction with regular meetings, the schedule of which may also be found online, under the heading Commission Meetings and Agendas on the Division's Web site.



The Commission on Common-Interest Communities and Condominium Hotels holds hearings on violations of NRS 116 at a 2009 meeting.

Regulations add specifics to laws passed by the Legislature and have the full effect of law. In time, those regulations pertaining to NRS 116, the section of law governing common-interest communities, are codified into NAC 116.

Those who wish to write to the Division or Commission regarding a proposed regulation may do so through Administrative Legal Officer Joanne Gierer at Nevada Real Estate Division, 2501 E. Sahara Ave., Las Vegas, NV, 89104.

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board unless an owner submits a nomination form within 30 days after receiving the board's notice (the nomination period). In that case, a regular election will be held with the normal balloting procedure. If no one else is nominated, then no ballots will be mailed out and the previously nominated candidates will be considered elected to the board 30 days after the date of the closing of the nomination period. (NRS 116.31034) (Eff. 7/1/09)

SB 182 (3) states that persons who knowingly, willfully and with fraudulent intent alter the outcome of executive board elections can be found guilty of a category D felony (1 to 4 year sentence, possible fine up to \$5,000). (NRS 116.31034) (Eff. 10/1/09)

SB 182 (4) provides that community managers or executive board members who ask for or receive compensation to influence a vote, opinion or action are guilty of a category D felony, along with those who offer or give such compensation. (NRS 116.31189) (Eff. 10/1/09)

SB 182 (13) prohibits an association from adopting rules or regulations that effectively prohibit or unreasonably interfere with election campaigns for the executive board. However, campaigning can be limited to 90 days before the date ballots are required to be returned. Also, candidates may request (to the secretary or officer specified in the bylaws) that the association send - 30 days before the election date - a "candidate informational statement." This statement may be limited to a single typed page and may be sent either with the ballot, or in a separate mailing, at the association's expense. This campaign material cannot contain defamatory, libelous or profane information. Further, the association, directors, officers, employees and agents are immune from criminal and civil liability for any act or omission resulting from the publication or disclosure of information regarding any individuals that occurs during this election process. (NRS 116.31034) (Eff. 10/1/09)

SB 182 (14) **Removal elections:** It is now easier to remove members of the executive board. If at least 35% of the voting members vote - and a majority of those voting vote in favor of removal - then the board member is removed. In a practical sense, this means that in a community of 100 voting members, if 35 vote, and 18 vote in favor of removal, then the board member is removed. (NRS 116.31036) Also, pursuant to SB 182 (16), the association cannot adopt any rule or regulation that prevents or unreasonably interferes with the collection of signatures for a petition for a special meeting for a removal election. (NRS 116.3108) (Eff. 10/1/09)

SB 183 (8) (14) (15) (18) (20) (21) provides that there cannot be delegate voting in the election or removal of executive board members. (NRS 116.31105(1)) (Eff. 10/1/09)

SB 183 (22) provides an exception to the prohibition on delegates during the period of declarant control and 2 years after declarant control is terminated. (NRS 116.1201) (Eff. 10/1/11)

SB 183 (14) requires that the association distribute the candidate disclosure statements with the ballots but the association is not obligated to distribute any disclosure if it contains information that is believed to be defamatory, libelous or profane. (NRS 116.31034) (Eff. 10/1/09)

RECORDS

AB 350 (6.5, 7.5) provides that owners may receive a copy or summary of unit owner or executive board meeting minutes cost-free in an electronic format or, if not in electronic format, at the following costs: 25 cents per page for the first 10 pages, 10 cents per page thereafter. (NRS 116.3108, 116.31083) (Eff. 7/1/09)

AB 350 (10.5, 12.2) provides that association books and records, including the budget, must be made available at a location not to exceed 60 miles from the CIC. (NRS 116.31151, NRS 116.31175) (Eff. 7/1/09)

SB 182 (23.5) now includes attorney's contracts as records that are available for review by owners. (NOTE: It is the opinion of the Division that this applies to current contracts that were in place on the day the statute went into effect, not to past ones.) (NRS 116.31175) (Eff. 10/1/09)

SB 183 (28) provides that although books, records and other papers of the association are generally available to owners - if that document (including minutes, a reserve study, and budget) is in a draft stage and has not been placed on the agenda for final approval by the board - it does not have to be provided to the owner. (NRS 116.31175) (Eff. 10/1/09)

SB 351 (13) Regarding records which are to be made available to owners upon written request, this new law protects the privacy of an owner's architectural plans or specifications submitted for approval to the association's

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architectural review committee. (NRS 116.31175) (Eff. 10/1/09)

MEETINGS

AB 350 (7.5) Regarding executive board meetings, on an annual basis, two of the meetings must be held outside "standard business hours." (NRS 116.31083) (Eff. 7/1/09) NOTE: NAC 116.300 defines standard business hours as follows: "As used in this section, 'regular business hours' means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays."

SB 182 (17) requires audio recordings of executive board meetings (but not of the executive sessions). Within 30 days of that meeting, the audio recordings, the minutes and/or a summary of the minutes must be made available to owners, including copies. (NRS 116.31083) (Eff. 10/1/09)

SB 182 (18) now requires that if the association is taking any action on contracts with the association's attorney, it must be done during the open portion of the executive board meeting (in the past attorney's contracts were only allowed to be discussed in executive session). Further, these contracts can be reviewed by owners. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (19) provides that executive board meetings must be held at least once every quarter, and not less than once every 100 days (previously the reference was to every 90 days). (NRS 116.31083) (Eff. 10/1/09)

SB 253 (3) provides that if the association solicits bids for an "association project", the bids must be opened during executive board meetings. Such project is defined as including maintenance, replacement and restoration of common elements or the provision of services to the association. (NRS 116.31144) (Eff. 10/1/09)

BUDGETS/ ACCOUNTS

AB 311 (1) changes audit requirements. If the HOA budget is under \$75,000, financial statements only have to be reviewed by a CPA during the year immediately preceding the year of the reserve study (Audits are no longer required). If budgets are \$75,000 to \$150,000, there just needs to be an annual review (again, no audit). For both of these types of associations, however, 15% of the voting members can submit a written request for an audit. Further, if budgets are above \$150,000 there must be an annual audit by a CPA. (NRS 116.31144) (Eff. 10/1/09)

SB 182 (21) provides that even if the governing documents state otherwise, the executive board has authority to impose assessments to establish adequate reserves - without seeking or obtaining the approval of owners. These assessments, however, must be based on the reserve study. (NRS 116.3115) (Eff. 10/1/09)

SB 183 (26) Money in operating accounts may not be withdrawn without 2 signatures: one must be of an executive board member or an officer and the second must be of another member of an executive board, an officer or the community manager. However, there can be a withdrawal with just 1 signature for 2 limited purposes: transferring money to the reserve account at regular intervals, or making auto-

Pass it along

Got a newsletter in your community? Be sure to let your community know where they can review all of recent changes. Residents may see Community Insights, as well as related publications, online at www.red.state.nv.us.

SB 182 (17) also provides that there are 2 comment periods for owners. At the beginning of the meeting, comments are limited to agenda items. At the end of the meeting, comments can be on any subject. (NRS 116.31083) (Eff. 10/1/09)

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matic payments for utilities. This does NOT apply to limited-purpose associations. (NRS 116.31153) (Eff. 10/1/09)

SB 351 (3) This section provides that associations, executive boards and community managers must deposit association funds in financial institutions that are 1) in Nevada, 2) qualified to conduct business in Nevada, or 3) have consented to jurisdiction of Nevada courts and the Division, if out-of-state. In addition, except as otherwise provided by the governing documents, an association shall deposit, maintain and invest funds in:

- 1) properly insured accounts (FDIC, National Credit Union Share Insurance Fund, or Securities Investor Protection Corp.);
- 2) with a private insurer (approved under NRS 678.755); or
- 3) 3) in United States government backed securities. (NRS 116.311395) (Eff. 10/1/09)

SB 351 (12) (12.3) and (12.7) require that the association establish reserves not only for major components of the common elements but also for "any other portion of the CIC that the association is obligated to maintain, repair, replace or restore." (NRS 116.31151) (Eff. 10/1/09)

VIOLATIONS, ENFORCEMENT OF CC&RS

AB 350 (4.5) Past due fines can no longer accrue interest. (NRS 116.31031) However, interest can be accrued for past due assessments under AB 350 (9). (NRS 116.3115) (Eff. 7/1/09)

AB 350 (9) Past due assessments that are 60 days or more past due bear interest at a rate equal to the prime rate at the largest bank in Nevada, plus 2 percent. The official rate is posted at www.fid.state.nv.us. (NRS 116.3115) (Eff. 7/1/09)

SB 182 (12) Where there are fines against an owner for violations which have been committed by tenants or invitees, the board cannot impose a fine against the owner unless the unit owner 1) participated in or authorized the violation, 2) had prior notice of the violation, or 3) had an opportunity to stop the violation and failed to do so. (NRS 116.3101) (Eff. 10/1/09)

SB 182 (18) creates additional due process protections during violation hearings. Owners must be informed that they have the right to counsel, the right to present

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Glossary

Assembly Bill (AB) – One of two potential prefixes for legislation in Nevada, the other being Senate Bill (SB). Nevada has a bicameral Legislature, similar to the U.S. Congress. Legislation may originate in either the state Senate or the state Assembly. Even though it must eventually pass both houses, a bill retains its original name, which also includes a number based upon the order it was drafted (e.g., SB 183 followed right after SB 182). There is no practical difference between the two.

Assessments (or dues) – Each unit owner is obligated pay a share of the common expenses of the association, such as the cost of landscape maintenance, insurance, utilities and administrative costs. The amount the unit owner is obligated to pay is the assessment. This may be paid monthly, annually, or anywhere in between depending upon the HOA's governing documents.

Common-Interest Community (CIC)/ Homeowners Association (HOA or association) – means real estate described in a declaration with respect to which a person, by virtue of his ownership of a unit, is obligated to

pay for a share of the real estate taxes, insurance premiums, maintenance or other improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration (NRS 116.021). The more familiar term "homeowners association" is used interchangeably with CIC.

Commission on Common-Interest Communities and Condominium Hotels (Commission) – A seven-member (as of Oct. 1, 2009) panel, appointed by the governor, charged with adopting regulations and holding hearings regarding violations of NRS 116. The commission comprises an attorney, a CPA, a community manager, a development company executive, and three homeowner association members.

Executive Board/ Board of Directors/ Board – These terms are used interchangeably. As the governing body of an association, it may create policy, hold hearings on violations of governing documents, and perform administrative roles. After an association transitions from developer to homeowner control, directors are

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witnesses, and the right to present information regarding any conflict of interest of anyone on the hearing panel. The Commission may be adopting regulations on these rights in the future. Also, these rights are minimum due process rights, and do not preempt any governing document provisions that provide greater protections. (NRS 116.31085) (Eff. 10/1/09)

SB 183 (12) With respect to not only owners and tenants but also invitees, there are some changes regarding fines. There can be no fines imposed against an owner, tenant or invitee regarding the delivery of goods or services by vehicle. In addition, "notice" requirements have been expanded so that fines cannot be imposed unless the owner AND, if different, the person against whom the fine will be imposed, has written notice of the violation. An owner will not be deemed to have received written notice unless it was mailed to the address of the unit AND, if different, to a mailing address specified by the owner. At the hearings, an executive board member who has not paid all assessments cannot participate in the hearing or vote. Such actions will render the board's actions void. The party who receives the fine can request, within 60 days after paying any payment on the fine, a

statement of any remaining balance owed. (NRS 116.31031) (Eff. 10/1/09)

SB 183 (13) Associations shall establish a compliance account to account for fines, which must be separate from any account established for assessments. (NRS 116.310315) (Eff. 10/1/11)

CREDENTIALLED PROFESSIONALS

SB 182 (24) Community managers are prohibited from taking retaliatory action against an owner who complained in good faith about violations of the law or governing documents, or recommended the selection or replacement of an attorney, community manager or vendor. These prohibitions also apply to executive board members and officers, employees and agents of the HOAs. (NRS 116.31183) (Eff. 10/1/09)

SB 182 (29) A civil suit can now be filed against a manager for failing to comply with NRS 116 or the governing documents. These suits can be filed by the association – or by a class of owners (at least 10% of the voting members). Further, managers are subject to punitive

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Glossary

elected by the membership, although vacancies of unexpired terms may be appointed by the board (if the governing documents allow). Directors typically select officers (president, etc.) from amongst themselves, although officers are not required by law to be directors.

Nevada Administrative Code (NAC) – Many Nevada Revised Statutes (see below) include provisions for regulations that "fill in the details." These details become part of the Nevada Administrative Code. Regulations have the power of law, but are subordinate to the statutes that authorize them and may be adopted only for the purposes specified by the statute. After regulations are adopted, they are later "codified" into the Nevada Administrative Code. The Commission on Common-Interest Communities and Condominium Hotels holds hearings and adopts regulations authorized by NRS 116. These become part of NAC 116.

Nevada Revised Statutes (NRS) – The laws passed by the Nevada Legislature, which are organized by subject into chapters. For instance, Chapter 116 of the Nevada

Revised Statutes (NRS 116) is called "Common-Interest Ownership" and directly pertains to homeowners associations. Other chapters of state law also apply to HOAs, such as the chapters affecting the towing of vehicles, pools and spas, energy efficiency and fair housing.

Ombudsman for Owners in Common-Interest Communities and Condominium Hotels (Ombudsman) – The office, part of the Real Estate Division, that produces this newsletter. It also educates HOA residents on their rights and responsibilities, assists in resolving HOA-related disputes, and maintains a registry of all HOAs in Nevada. Its duties are supplemented by other sections of the Division, which licenses and regulates community managers and investigates issues relating to NRS 116.

Senate Bill (SB) – See Assembly Bill.

Unit Owner/ Homeowner/ Member – These terms are used interchangeably. The members of a homeowners association are the owners, not the tenants. A more detailed definition may be found in NRS 116.095.

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damages under certain conditions. (NRS 116.4117) (Eff. 10/1/09)

SB 182 (39) provides for the issuance of temporary certificates for community management for a period of one year under certain circumstances. (NRS 116A.410) (Eff. 1/1/10)

SB 183 (39) Reserve study specialists must be registered with the Division (changed from being required to have a permit). (NRS 116A.260) (Eff. 10/1/09)

ARBITRATORS

SB 182 (40) This provision establishes that arbitrators must provide specific information to parties, in plain English, that explains the procedures and law, including information on confirmation of awards, judgments on awards, and applicable laws and court rules regarding attorney's fees and costs. It also clarifies that in nonbinding arbitration, parties have 30 days to commence an action in court, and a year to apply to court for confirmation of the award. In binding arbitration, if a party seeks to have that award vacated, or commences an action in court, that person will be responsible for the opposing party's attorney fees and costs if a more favorable award or judgment is not received. (NRS 38.330) (Eff. 10/1/09)

DECLARANT ISSUES

SB183 (16) provides that the declarant must provide to the association an accounting for money of the association and audited financial statements for each fiscal year and any ancillary period from the date of the last audit.

Further, the declarant must pay for this ancillary audit and must deliver it within 210 days after the date the declarant's control ends. (NRS 116.31038) (Eff. 10/1/09)

SB 183 (17) provides that, with respect to the converted building reserve deficit which the declarant must deliver to the association, it is defined as the amount necessary to replace major components within 10 years after the date of the first close of escrow of a unit (previously had been the date of the first sale). (NRS 116.310395) (Eff. 10/1/09)

OMBUDSMAN/REAL ESTATE DIVISION

SB 182 (5) allows petitions to the Division for advisory opinions and rulings. (NRS 116.623) (Eff. 10/1/09)

SB 182 (30) adds 2 members who are unit owners to the CICCH Commission. (NRS 116.600) (Eff. 10/1/09)

SB 253 (9) The CICCH Commission now can impose administrative fines of up to \$10,000 per violation (previously the limit was \$5,000). (NRS 116A.900) (Eff. 10/1/09)

NOTE: This bill digest is not a legal document or legal advice. It is a summary of select laws from the 2009 Nevada Legislative session relating to common-interest communities. It is not a complete listing of all Legislative changes.

HOAs: Forms have changed — Get yours up to date

When the law changes, so does everything else. This is true especially of all the myriad paperwork associated with a homeowner association.

Some of these changes are internal: Do your agendas list both homeowner comment periods? Do your candidate disclosures forms ask all the relevant questions? Do your resale packages contain a statement listing all current and expected fees, fines, assessments and other costs?

Just as important: Is your association using the most updated form to do business with the Office of the Ombudsman? To ensure compliance with the law, associations should check the Real Estate Division's Web site, www.red.state.nv.us, each time they have business with

the state. From the main page, select the gray button marked Forms on the home page, then look for the form by Type (click on the word "Type" to sort). Scroll down to the set of forms marked as Common-Interest Community.

Some of the documents affected by the 2009 Legislative Session include: Annual Association Registration, Reserve Study Summary and the Candidacy Disclosure Statement.

In addition, associations submitting payment for annual registration must remember that all HOA operating expenses now require two signatures (except limited-purpose ones), one from a director or officer AND another from a director, officer or community manager.

Educational Opportunities expand in 2010

Outreach classes cover fundamentals of managing an association

It is a duty and legal responsibility of all HOA board members to keep informed of changes to the law. While there is much to learn, the Office of the Ombudsman hopes to make this task a little easier. Our staff has created publications and classes to make learning the new material as simple and convenient as possible.

The first class dates are already under way. Basics for Board Members is presented monthly at locations throughout the state. This 3-hour presentation addresses HOA basics, such as meetings, elections, recordkeeping, and fiduciary duty. It also offers a forum for asking ques-

tions, and presents information on addressing common association challenges.

Additional classes on various HOA topics will be scheduled throughout the year. In addition, seminars taught by contracted subject matter experts are planned throughout the year. Visit

http://www.red.state.nv.us/CIC/Seminars/omb_seminars for an updated listing of class opportunities.

Registration is required as seating is limited. Contact Nicholas Haley at 486-4480 or email to nhaley@red.state.nv.us to register.



HOA residents attend the first "Basics for Board Members" class, held at the Bradley Building and teleconferenced to Carson City. The three-hour presentation covers the fundamentals of serving as a board member and incorporates changes to the law from the 2009 session. Additional dates are scheduled monthly throughout 2010, as well as classes on specific subjects.

Publications synthesize old, new law on meetings, elections

Adding new law to old, the Office of the Ombudsman recently issued updated brochures on meetings, elections, and general information for Spanish speakers.

The brochures are available online at <http://www.red.state.nv.us/CIC/cic.htm> and in print form at select state offices, including the Real Estate Division at 2501 E. Sahara Ave. in Las Vegas and 788 Fairview Drive in Carson City.

Association Meetings explains the different kinds of meetings, the general purpose of each, and scheduling and agenda requirements. It lists the varying timelines for all types of meetings—reason alone to keep it handy.

Association Elections gives a start-to-finish overview of how to comply with HOA election law, including a depiction of a three-envelope system.

The Ombudsman's Spanish brochure covers the very basics of how an association works, as well as information on our office. It is useful for bridging the communication gap with residents not well versed in English.

"The brochures bring together all of the details of a particular subject within NRS 116," said Nick Haley, education and information officer for the Office of the Ombudsman. "While some of our products speak to changes in the law, the brochures take a particular topic—say elections—and present the topic as a whole. This is ultimately how all of us will come to understand these changes: within the context of the existing law."

Additional subjects are coming online. Check the Web site for updates, or ask the Ombudsman staff what's new.

Frequently used links to government agencies

Following are links to public agencies used by HOAs:

List of registered Reserve Study Specialists —
<http://www.red.state.nv.us/CIC/rss.htm>

Nevada Secretary of State (used for HOA's corporate filing) - <http://www.nvsos.gov/online/>

Upcoming classes — http://www.red.state.nv.us/CIC/Seminars/omb_seminars.pdf

Prime rate (basis for which associations may charge interest on assessments) —
<http://www.fid.state.nv.us/Prime/PrimeInterestRate.pdf>

Mortgage Lending Division — <http://mld.nv.gov/>

Neighborhood Services, Henderson —
http://www.cityofhenderson.com/neighborhood_services/index.php

Neighborhood Services, Las Vegas —
<http://www.lasvegasnevada.gov/Government/neighborhoodservices.htm>

Neighborhood Services, North Las Vegas —
<http://cityofnorthlasvegas.com/Departments/CityManager/NeighborhoodServices.shtm>

Real Estate Division Forms and links

Real Estate Division — <http://www.red.state.nv.us/>

Annual Associations Registration —
<http://www.red.state.nv.us/forms/562.pdf>

Reserve Study Summary —
<http://www.red.state.nv.us/forms/609.pdf>

Declaration of Certification (signed by new board members) —
<http://www.red.state.nv.us/forms/602.pdf>

Before You Purchase in a Common-Interest Community Did you Know? —
<http://www.red.state.nv.us/forms/584.pdf>

Intervention Affidavit —
<http://www.red.state.nv.us/forms/530.pdf>

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3820
 State of Nevada
 Department of Business & Industry
 Real Estate Division
 2501 E. Sahara Avenue, Suite 202
 Las Vegas, NV 89104-4137

EXHIBIT 11

REGISTER OF ACTIONS

CASE No. 06A523959

Korbel Family Living Trust vs Spring Mountain Ranch Master
Assn, Bay Capital Corp

Case Type: Title to Property

Subtype: Liens

Date Filed: 06/27/2006

Location: Department 16

Conversion Case Number: A523959

PARTY INFORMATION

Lead Attorneys

Defendant Bay Capital Corp

Defendant Spring Mountain Ranch Master Assn

John Eric Leach

Retained

702-538-9074(W)

Intervenor Recontrust Company

Jeremy T. Bergstrom

Retained

702-369-5960(W)

Plaintiff Korbel Family Living Trust

Anita K. Holden-
McFarland

Retained

702-952-5000(W)

EVENTS & ORDERS OF THE COURT

09/18/2006 All Pending Motions (9:00 AM) (Judicial Officer Glass, Jackie)
ALL PENDING MOTIONS 9/18/06 Court Clerk: Sandra Jeter Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass

Minutes

09/18/2006 9:00 AM

- APPEARANCES CONTINUED: Steven Yarmy, Esq., present representing the Intervenor. INTERVENOR RECONSTRUST CO'S MOTION TO INTERVENE: MOTION TO INTERPLEAD EXCESS PROCEEDS...PLTFS' MOTION FOR PRELIMINARY INJUNCTION Mr. Yarmy stated he wishes to interplead the excess funds. Mr. Leach advised he has no objection to the interpleader; however, he does object to the amount of legal fees Mr. Yarmy requested. Further advised, deft. agreed to the preliminary injunction and has provided Pltf. with an accounting; however, there is a legal dispute over the interpretation of NRS 116. Brief argument by Mr. Yarmy in support of his request for attorney's fees. COURT ORDERED, Motion to Interplead Funds, GRANTED. FURTHER, Mr. Yarmy to prepare the Order, attach a detailed billing and leave a blank for the amount of attorney's fees. Mr. Yarmy moved to be relieved as a stake holder. SO ORDERED. Matter trailed for Ms. McFarland's presence. Matter recalled. Ms. McFarland present and stated she told Mr. Yarmy not to file an interpleader because she would make sure he gets his fees and costs. Court informed Ms. McFarland regarding the status of Mr. Yarmy's request for fees. Mr. Leach stated deft. has stipulated to the entry of the Preliminary Injunction and requested that if a bond is required, that it be diminimus. Further, the parties have reached an agreement with everything except the interpretation of the one statute and could probably stipulate to the facts. Colloquy. Ms. McFarland requested the Court elaborate on its decision reference the legal issue stating it keeps coming up over and over again. COURT ORDERED, counsel are to prepare a stipulation of the facts and matter CONTINUED and SET for ARGUMENT. 10/16/06 9:00 AM ARGUMENT

Parties Present

Return to Register of Actions

EXHIBIT 12

ORIGINAL
FILED

OCT 30 3 57 PM '06

BREF
Anita KH McFarland, Esq.
Nevada Bar No. 8118
Marty G. Baker, Esq.
Nevada Bar No. 7591
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Attorneys for Plaintiff
KORBEL FAMILY LIVING TRUST

CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

KORBEL FAMILY LIVING TRUST

Plaintiff(s),

v.

SPRING MOUNTAIN RANCH
MASTER ASSOCIATION; BAY
CAPITAL CORP.,

Defendant(s).

Case No.: A523959

Dept. No.: V

PLAINTIFF'S BRIEF

Hearing Date: November 6, 2006.

Hearing Time: 9:00 a.m.

Plaintiff KORBEL FAMILY LIVING TRUST (hereinafter "Plaintiff"), by and through its attorneys of record, Anita KH McFarland, Esq. and Marty G. Baker, Esq. of The Cooper Christensen Law Firm, LLP, hereby respectfully submits this brief pursuant to the Court's minute order of September 18, 2006 and in support of its position regarding the judicial interpretation of NRS 116.3116.

I. STATEMENT OF THE CASE

This case concerns the determination of what homeowners assessment amounts are owed

THE COOPER CHRISTENSEN LAW FIRM, LLP
820 South Valley View Blvd \$ Las Vegas, Nevada 89107
Phone: 702.435.4175 \$ Fax: 702.877.7424

RECEIVED

OCT 30 2006

COUNTY CLERK

1 by a new property owner who purchases real property a foreclosure sale conducted by the
2 beneficiary of a first deed of trust
2 beneficiary of a first deed of trust.
3

4 **II. LEGAL ISSUE PRESENTED**

5 What is the correct application of NRS 116.3116(2), which states:

6 "The lien [for assessments] is also prior to all security interests described in
7 paragraph (b) to the extent of the assessments for common expenses based on the
8 periodic budget adopted by the association pursuant to NRS 116.3115 which
9 would have become due in the absence of acceleration during the 6 months
immediately preceding institution of an action to enforce the lien."

10 **III. ARGUMENT**

11 **A. GENERAL STATEMENT OF ISSUES AND PROBLEMS**

12 Although NRS 116.3116 establishes lien priorities with respect to the rights and
13 obligations as to a homeowners association such as Defendant Spring Mountain Ranch Master
14 Association (hereinafter "Spring Mountain"), there has been a great deal of confusion with
15 respect to what payment may be demanded from persons who purchase property at foreclosure
16 sales conducted by the beneficiaries of first deeds of trust held against the property. As a general
17 rule, the first mortgage security interest is of the highest priority, and any junior lien or mortgage
18 is extinguished when there is a foreclosure by the first deed of trust.
19

20 Nevada, however, has adopted what is known as a "superpriority" lien statute with
21 respect to planned community/homeowner's associations. According to NRS 116.3116(2), a lien
22 assessment for delinquent "common expenses" (ie. association dues, common area maintenance
23 dues, etc., as set forth in NRS 116.3115) incurred up to six (6) months prior to institution of an
24 action to enforce said lien, does have a priority over a first security interest regardless of the prior
25 recording. Landscape violations, fines, and collection costs are clearly not "common expenses
26
27
28

1 based on the periodic budget adopted by the association."

2 Unfortunately, since there has been no judicial interpretation of this statute by the
2 Unfortunately, since there has been no judicial interpretation of this statute by the
3 Supreme Court of Nevada, homeowners associations, as well as the collection agencies who
4 work for them, very frequently and improperly demand payment of thousands of dollars from
5 new purchasers for items that are not properly included in this superpriority portion of the lien.
6 Sometimes lien release fees and other items are demanded from both the new owner (as a
7 superpriority claim) and from available excess proceeds (as a non-superpriority claim).
8 Frequently, a lien which was only a few hundred dollars balloons into a demand for thousands of
9 dollars for attorney fees and costs for simply recording a standard lien and notice of default. The
10 legal and collection fees are often many times the amount of the lien.

11 Like Plaintiff in this case, most parties who purchase homes at foreclosure sales are banks
12 or investors who intend to refurbish and resell the property as quickly as possible. Frequently,
13 the amounts demanded remain unknown until the property is to be sold to a subsequent bona fide
14 purchaser. At this point an Escrow Demand is generally requested from the pertinent association
15 in order to clear the lien and provide clear title to the subsequent purchaser. Typically, at this
16 point an escrow has already been opened and the transaction with the buyer must close within a
17 short period of time. When the owner/investor is faced with an excessive and incorrect demand,
18 they are forced to make the decision as to whether or not it is financially feasible to file suit
19 against the association and their agents to have the lien reduced, which may result in the loss of a
20 sale to a subsequent purchaser because clear title cannot be provided until the association
21 releases the lien. The owner/investor's other and often more feasible option is to simply pay the
22 amount demanded by the association in order to preserve the sale to the subsequent purchaser.

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1 purchaser with clear title, Plaintiff was forced to deposit \$10,000.00 with the title company
2 pending the outcome of this case
2 pending the outcome of this case.
3

4 Because of the dispute between the parties, Counsel for the trustee who conducted the
5 foreclosure sale on the first deed of trust elected to intervene in this case, interplead the excess
6 proceeds, and request attorneys' fees for doing so pursuant to NRS 40.462. The excess proceeds
7 have now been depleted by thousands of dollars because of Spring Mountain's refusal to
8 reapportion its demand.
9

10 Under the clear and precise application of NRS 116.3116(2), the only amounts that
11 survived the foreclosure sale and constitute the superpriority portion of the lien are "assessments
12 for common expenses based on the periodic budget adopted by the association pursuant to NRS
13 116.3115 which would have become due in the absence of acceleration during the 6 months
14 immediately preceding institution of an action to enforce the lien." Based on this language,
15 Plaintiff's position is that it should have to pay only six months of monthly assessments with
16 interest thereon, any assessments which accrued during Plaintiff's ownership of the Property, and
17 any charges incident to the transfer of the Property (Assessments of \$219.00 plus interest;
18 Escrow Demand of \$150.00; and Transfer Fee of \$300.00, for a total owing of \$669.00 plus
19 interest on the assessments).
20
21
22

23 In discussing statutory interpretation generally, the Supreme Court of Nevada stated in
24 Irving v. Irving, 122 Nev. Adv. Rep. 44, 134 P.3d. 718, 720 (2006), as follows:

25 "This court follows the plain meaning of a statute absent an ambiguity. Whether
26 a statute is deemed ambiguous depends upon whether the statute's language is
27 susceptible to two or more reasonable interpretations. When a statute is
28

1 ambiguous, we look to the Legislature's intent in interpreting the statute."

2 In this case, the language of the statute regarding "assessments for common expenses based on
2 In this case, the language of the statute regarding "assessments for common expenses based on
3 the periodic budget adopted by the association" is unambiguous. This language clearly includes
4 delinquent assessments within the statutory six month period, and clearly does not include fines,
5 late fees, collection costs, or attorneys' fees. Following the plain meaning of NRS 116.3116,
6 Plaintiff should not have to pay Spring Mountain for these other items. Spring Mountain may
7 still collect these non-superpriority expenses from the excess proceeds on deposit with the Court.
8
9

10 **C. SPRING MOUNTAIN SEEKS AN EXPANSIVE INTERPRETATION OF**
11 **NRS 116.3116**

12 The Supreme Court of Nevada has yet to interpret NRS 116.3116. The State of
13 Connecticut has adopted a superpriority statute similar to Nevada's, and Spring Mountain relies
14 on the Connecticut case of Hudson House Condominium Association, Inc. v. Brooks, 223 Conn.
15 610, 611 A.2d 862 (1992) in support of its revised demand of \$1,963.00. However, the
16 Connecticut statute and the Connecticut court's interpretation thereof are inapposite. Nevada and
17 Connecticut are as far apart legally and they are geographically. As set forth above, the better
18 interpretation for the Court in this case is to look at the plain meaning of the Nevada statute.
19
20

21 Based upon the Connecticut court's decision, in addition to six months of delinquent
22 assessments, Spring Mountain contends that it is entitled to recover collection costs and
23 attorneys' fees from Plaintiff as part of its superpriority lien. These costs and fees are associated
24 with the former owners' delinquency, and pursuant to the plain meaning of NRS 116.3116 are
25 properly recoverable from the excess proceeds as part of the non-superpriority portion of the lien.
26

27 * * *

1 **D. THE EQUITIES OF THE INSTANT CASE ALSO DEMAND A STRICT**
2 **INTERPRETATION OF NRS 116.3116**
2 **INTERPRETATION OF NRS 116.3116**
3

4 In the instant case, the beneficiary of the second deed of trust foreclosed and Bay Capital
5 became the vested owner of the Property. Thus, after satisfaction of junior liens and mortgages
6 under NRS 40.462(2)(c), Bay Capital is entitled to recover any excess proceeds remaining
7 pursuant to NRS 40.462(2)(d). After Bay Capital became the owner of the Property it paid none
8 of the amounts that were owing to Spring Mountain and did not correct the landscaping
9 condition, causing additional fines and violations to continually accrue while Bay Capital was the
10 owner.
11

12 Spring Mountain originally insisted that the superpriority portion of the lien was
13 \$7,528.07, and stated that non-superpriority demand was an additional \$2,151.67. Since there
14 was \$7,495.65 in excess proceeds, Spring Mountain's interpretation of the statute would have
15 resulted in Bay Capital being awarded approximately \$5,000.00 from the excess proceeds even
16 though it failed and refused to pay Spring Mountain or correct violations.
17
18

19 If this Court were to honor Spring Mountain's request for the adoption of the Connecticut
20 court's interpretation of our Nevada statute, the result would be that Plaintiff would be forced to
21 pay an additional \$1,234.00 to Spring Mountain. Since these funds would be paid by Plaintiff
22 under the superpriority portion of the lien, this amount would not need to come from the
23 remaining excess proceeds and Bay Capital would therefore benefit by this amount. Spring
24 Mountain's interpretation of the statute would thus reward Bay Capital's bad behavior by
25 allowing Bay Capital to profit from not paying amounts it should have paid to Spring Mountain.
26
27

28 Additionally, inclusion of these additional fees and costs in the superpriority portion of

1 the lien would give association collection agencies free reign to continue charging thousands of
2 dollars in collection costs and attorneys' fees for filing a couple of simple, standard documents.
2 dollars in collection costs and attorneys' fees for filing a couple of simple, standard documents.

3 Purchasers at foreclosure sales would thereby be forced to either pay the exorbitant amounts
4 demanded or seek court review of the lien amounts pursuant to NRS 108.2275. Both of these
5 options result in improper and excessive expenditures for foreclosure sale purchasers.
6

7 IV. CONCLUSION

8 At the outset of this matter, Spring Mountain had the choice of collecting \$669.00 from
9 Plaintiff and collecting the bulk of the remaining monies it was owed from excess proceeds that
10 were held by the sale trustee. Spring Mountain's refusal to amend it's demand resulted in a
11 depletion of available excess proceeds, and caused Plaintiff to seek relief from the Court.
12

13 Additionally, Spring Mountain's interpretation of NRS 116.3116 would reward persons
14 collecting excess proceeds under NRS 40.462(2)(d), such as Bay Capital in this case, for not
15 paying homeowners assessments, while saddling the foreclosure sale purchaser with thousands of
16 dollars in additional costs. Finally, Spring Mountain's suggested interpretation of NRS 116.3116
17 would allow the associations' collection agencies to continue demanding thousands of dollars for
18 fines, late fees, attorneys' fees and collection costs from foreclosure sale purchasers.
19

20 Both the clear language of the statute and the equities of this case demand a strict
21 interpretation of the statute. Pursuant to NRS 116.3116, Plaintiff is entitled to a ruling that
22 Plaintiff only owes \$669.00 (plus interest on six months of assessments) to Spring Mountain.
23 Plaintiff is also entitled to an order pursuant to NRS 108.2275 releasing Spring Mountain's lien,
24

25 ***

26 ***

1 and a ruling that Plaintiff recover its attorneys' fees pursuant to NRS 108.2275(6)(b).

2 DATED this 30th day of October 2006
2 DATED this 30th day of October, 2006

3
4 THE COOPER CHRISTENSEN LAW FIRM, LLP

5
6 By: 

Anita KH McFarland, Esq.
Nevada Bar No. 8118
Marty G. Baker, Esq.
Nevada Bar No. 7591
820 South Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff
KORBEL FAMILY LIVING TRUST

11
12 CERTIFICATE OF MAILING

13
14 I HEREBY CERTIFY that I am an employee of THE COOPER CHRISTENSEN LAW
15 FIRM, LLP, and that on the 30th day of October, 2006, I served a true and correct copy of the
16 foregoing **PLAINTIFF'S BRIEF**, via First Class United States mail, postage prepaid, on the
17 parties indicated below.

18
19 John E. Leach, Esq.
20 Santoro, Driggs, Walch, Kearney, Johnson & Thompson
21 400 South Fourth Street, Third Floor
22 Las Vegas, Nevada 89101
23 Attorneys for Defendant
24 Spring Mountain Ranch Master Association

25
26 
27 An employee of
28 THE COOPER CHRISTENSEN LAW FIRM, LLP

EXHIBIT 13

BREF

JOHN E. LEACH, ESQ.
Nevada Bar No. 1225
TRACY A. GALLEGOS, ESQ.
Nevada Bar No. 9023
SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Spring Mountain Ranch Master Association

FILED
FILED

Nov 16 4 36 PM '06

Shirley C. Ruggione
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

KORBEL FAMILY TRUST

Plaintiff,

v.

**SPRING MOUNTAIN RANCH MASTER
ASSOCIATION; BAY CAPITAL CORP.,**

Defendants.

Case No.: 06-A-523959-C
Dept. No.: V

**DEFENDANT SPRING MOUNTAIN
RANCH ASSOCIATION'S BRIEF**

Hearing Date: November 20, 2006
Time: 9:00 A.M.

Defendant Spring Mountain Ranch Master Association (hereinafter the "Association"), by and through its attorneys of record, John E. Leach, Esq. of the law firm of Santoro, Driggs, Walch, Kearney, Johnson & Thompson respectfully submits this Brief pursuant to the Court's Minute Order of September 18, 2006, and in support of its position regarding the judicial interpretation of Nevada Revised Statutes ("NRS") 116.3116.

STATEMENT OF THE FACTS

On or about August 26, 2004, Jose Olivera ("Olivera") purchased the real property located at 9021 Little Horse Avenue, Las Vegas, Nevada (the "Property"). The Property is located within the community known as Spring Mountain Ranch (the "Community") and, therefore, is subject to the terms and conditions of the Amended and Restated Master Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Spring Mountain Ranch (the "Declaration"), which was recorded with the Clark County Recorder's Office on November

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25, 1998, in Book No. 981125, as Instrument No. 03642. A true and correct copy of relevant portions of the Declaration are attached hereto as Exhibit "1" and incorporated herein by this reference.

Concurrent with the purchase of the Property, Olivera executed and consented to the recordation of a first deed of trust against the Property. Also concurrent with the purchase of the Property, Olivera executed and consented to the recordation of a second deed of trust against the Property.

According to the Declaration, Olivera was required to pay assessments for common expenses, among other things, to the Association. See Declaration, Article V, Section 5.1(a). The Declaration further provides that if an owner fails or refuses to pay assessments due and owing to the Association, then the Association may place a lien upon the Property and ultimately foreclose upon the same. See Exhibit "1", Article V, Section 5.10.

On or about February 16, 2005, the Association caused a Notice of Delinquent Assessment Lien (the "Lien") to be recorded against the Property. A true and correct copy of the Lien is attached hereto as Exhibit "2" and incorporated herein by this reference. When Olivera continued to fail or refuse to pay his assessments, the Association caused a Notice of Default and Election To Sell Under Homeowners Association Lien (the "Notice of Default") to be recorded against the Property on March 25, 2005. A true and correct copy of the Notice of Default is attached hereto as Exhibit "3" and herein incorporated by this reference.

On or about March 14, 2006, the beneficiary of the second deed of trust conducted a non-judicial foreclosure sale and sold the Property to Defendant Bay Capital Corp. ("Capital") who recorded its Trustee's Deed Upon Sale on March 22, 2006. A true and correct copy of the Trustee's Deed Upon Sale is attached hereto as Exhibit "4" and incorporated herein by this reference.

On or about April 28, 2006, the beneficiary of the first deed of trust conducted a non-judicial foreclosure sale and sold the Property to Plaintiff Korbel Family Living Trust ("Plaintiff"), who recorded its Trustee's Deed Upon Sale on May 9, 2006. A copy of the Trustee's Deed Upon Sale is attached hereto as Exhibit "5" and incorporated herein by this

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1 reference.

2 Based on the information provided by the Plaintiff, the Plaintiff paid the sum of Three
3 Hundred Thousand Forty-Seven Three Hundred Dollars (\$347,300.00) for the Property. The
4 foreclosing beneficiary of the first deed of trust was only owed Three Hundred Thousand Thirty-
5 Nine Eight Hundred Four Dollars and Thirty-Nine Cents (\$339,804.35). As a result, surplus
6 funds in the amount of Seven Thousand Four Hundred Ninety-Five Dollars and Sixty-Five Cents
7 (\$7,495.65) remained to be distributed in accordance with NRS 40.462.

8 After the foreclosure sale, Plaintiff requested that the Association provide it with a payoff
9 on the Association's lien so that it could clear title to the Property. The Association initially
10 presented Plaintiff with a demand for Seven Thousand Five Hundred Twenty-Eight Dollars and
11 Seven Cents (\$7,528.07). A true and correct copy of the Association's initial payoff is attached
12 hereto as Exhibit "6" and incorporated herein by this reference. The Association subsequently
13 provided a payoff demand in the amount of Two Thousand One Hundred Fifty-One Dollars and
14 Sixty-Seven Cents (\$2,151.67). A true and correct copy of the subsequent payoff demand is
15 attached hereto as Exhibit "7" and incorporated herein by this reference.

16 When the Plaintiff and the Association could not agree on the apportionment of the
17 Association's claim, Plaintiff initiated this instant action against the Association. The issue
18 currently before the court is the value of the superpriority portion of the Association's lien,
19 which is the responsibility of Plaintiff, and the amount of the surplus funds that should be
20 distributed to the Association.

21 STATEMENT OF THE LAW

22 In 1991, the Nevada Legislature adopted the Uniform Common-Interest Ownership Act
23 (the "Act"). The Act, which was originally created by the Uniform Law Commissioners, was
24 codified at NRS 116 and became effective January 1, 1992. Included in the Act is a section that
25 governs the association assessment liens and the priority of those liens. Specifically, NRS
26 116.3116(2) reads, as follows:

27 A lien under this section is prior to all other liens and
28 encumbrances on a unit except:

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1 (a) Liens and encumbrances recorded before the
2 recordation of the declaration and, in a cooperative, liens and
3 encumbrances which the association creates, assumes or takes
4 subject to;

5 (b) A first security interest on the unit recorded before
6 the date on which the assessment sought to be enforced became
7 delinquent or, in a cooperative, the first security interest
8 encumbering only the unit's owner's interest and perfected before
9 the date on which the assessment sought to be enforced became
10 delinquent; and

11 (c) Liens for real estate taxes and other governmental
12 assessments or charges against the unit or cooperative. The lien is
13 also prior to all security interests described in paragraph (b) to the
14 extent of the assessments for common expenses based on the
15 periodic budget adopted by the association pursuant to NRS
16 116.3115 which would have become due in the absence of
17 acceleration during the 6 months immediately preceding institution
18 of an action to enforce the lien. This subsection does not affect the
19 priority of mechanics' or materialmen's liens, or the priority of
20 liens for other assessments made by the association.

21 This statute provides for the "superpriority" of a portion of an association's lien over
22 even a first deed of trust or mortgage recorded against the property. In the comments to the
23 Uniform Common-Interest Ownership Act, it states as follows:

24 To ensure prompt and efficient enforcement of the association's
25 lien for unpaid assessments, such liens should enjoy statutory
26 priority over most other liens. Accordingly, subsection (b)
27 provides that the association's lien takes priority over all other
28 liens and encumbrances except those recorded prior to the
recordation of the declaration, those imposed for real estate taxes
or other governmental assessments or charges against the unit, and
first security interests recorded before the date the assessment
became delinquent. However, as to prior first security interests,
the association's lien does have priority for 6 months' assessments
based on the periodic budget. A significant departure from
existing practice, the 6 months' priority for the assessment lien
strikes an equitable balance between the need to enforce collection
of unpaid assessments and the obvious necessity for protecting the
priority of the security interests of lenders. As a practical matter,
secured lenders will most likely pay the 6 months' assessments
demanded by the association rather than having the association
foreclose on the unit.

29 The Nevada Supreme Court has never ruled on the scope and extent of the six (6) month
30 "superpriority" portion of the Association's lien. Plaintiff requests that the court limit it to no
31 more than the six (6) months assessments. However, the Association asserts that the
32 Association's priority should be greater.

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1 A. **The Association's Lien Has Priority Over the Second Deed of Trust.**

2 As set forth in NRS 116.3116(2), the Association's Lien has priority over all other liens
3 or encumbrances recorded against the Property, except: (1) those recorded prior to the
4 recording of the Declaration, (2) those imposed for real estate taxes or other governmental
5 assessments or charges against the Property, and (3) first security interests recorded before the
6 assessments became due.

7 The Declaration was recorded on November 25, 1998. See Exhibit "1". The second deed
8 of trust was recorded on August 26, 2004. The second deed of trust was not imposed for real
9 estate taxes or other governmental assessments. A second deed of trust is not a first security
10 interest. Accordingly, the Association's lien has priority over the second deed of trust.

11 When the second deed of trust holder foreclosed on the Property, the purchaser, Capital,
12 acquired title to the Property subject to the Association's lien. The Association's lien claim
13 survived the second deed of trust foreclosure and has priority over any claim made by Capital.
14 See NRS 116.3116(2).

15 B. **Association Lien Has Priority Over the First Deed of Trust.**

16 As set forth in NRS 116.3116(2) a portion of the Association's lien has priority over even
17 the first deed of trust. Plaintiff acknowledges the Association's position of priority but
18 challenges the calculation of the Association's claim.

19 C. **The Superpriority Portion of the Association's Claim Should Include**
20 **Interest, Collection Costs, Late Fees and Interest.**

21 The Plaintiff contends that the Association's "superpriority" claim should be in the
22 amount of Six Hundred Ninety Nine Dollars (\$699.00), plus interest. The Association contends
23 that its "superpriority" claim should be valued at One Thousand Nine Hundred Sixty-Three
24 Dollars (\$1,963.00), plus interest. As noted above, the Nevada Supreme Court has not ruled on
25 this issue.

26 The State of Connecticut has also adopted and codified the Uniform Common-Interest
27 Ownership Act, including the assessment lien and priority of lien provisions. The Connecticut
28 statute is identical to the one adopted by the Nevada legislature and codified at NRS

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1 116.3116(2).¹ Unlike Nevada, the Connecticut Supreme Court has had an opportunity to
2 interpret this provision. In Hudson House Condominium Association, Inc. v. Brooks, 223 Conn.
3 610, 611 A.2d 862 (1992), the Connecticut Supreme Court held that the superpriority portion of
4 an association's lien for assessments should include attorneys' fees (collection costs) and other
5 expenses incurred.

6 On January 8, 1991, the plaintiff association began an action to foreclose a statutory lien
7 for delinquent common expense assessments due on a condominium unit owned by the
8 defendant Brooks. Hudson House, *supra*, 223 Conn. at 613, 611 A.2d at 864. The Connecticut
9 Housing Finance Authority ("CHFA") was named as an additional defendant as a result of its
10 interest as the assignee of the first mortgage on the unit. *Id.* The trial court agreed with the
11 plaintiff association's calculation of the amounts due, but concluded that only six months of
12 common expense assessments, i.e. \$570, together with interest, were entitled to the statutory
13 priority over CFHA's the first mortgage. *Id.* The trial court refused to include attorneys' fees
14 (collection costs) and other costs in the amount entitled to priority. *Id.* Thereafter, the trial court
15 rendered a judgment of strict foreclosure unless the first mortgage holder paid the plaintiff
16 association the \$570, plus interest, in order to redeem the premises. *Id.* The plaintiff association
17 appealed to the appellate court and the matter was ultimately transferred to the Connecticut
18 Supreme Court. *Id.*

19 The Connecticut Supreme Court noted that the statute in question was contrary to the

20 ¹ Connecticut General Statutes (Rev. to 1989) § 47-258 provides: "(a) The association has a statutory lien on a unit
21 for any assessment levied against that unit of fines imposed against its unit owner from the time the assessment or
22 fine becomes delinquent. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest
23 charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of the section 47-244 are enforceable as
24 assessments under this section. If an assessment is payable in instalments, the full amount of the assessment is a lien
25 from the time the first instalment thereof becomes due. (b) A lien under this section is prior to all other liens and
26 encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration and, in
27 a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or
28 second security interest on the unit recorded before the date on which the assessment sought to be enforced became
delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or
cooperative. The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent
of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection
(a) of section 47-257 which would have become due in the absence of acceleration during the six months
immediately preceding institution of an action to enforce either the association's lien or a security interest described
in subdivision (2) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's
liens, or the priority of liens for other assessments made by the association."

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1 tenet that the priority of liens is governed by the common law rule that first in time is first in
2 right. Id. at 614, 611 A.2d at 865. The Connecticut Supreme court further noted that the statute
3 "carves out an exception and grants a priority to the lien for common expense assessments. The
4 priority, however, is temporally limited by Section 47-258(b) to the amount 'of the common
5 expense assessments . . . which would have become due in the absence of acceleration during the
6 six months immediately preceding institution of an action to enforce . . . the association's
7 lien . . .'" Id. The Connecticut Supreme Court held:

8 In construing this statute, we assume that 'the legislature intended
9 to accomplish a reasonable and rational result.' . . . Section 47-
10 258(a) creates a statutory lien for delinquent common expense
11 assessments . . . Section 47-258(j) authorizes the foreclosure of the
12 lien thus created. Section 47-258(b) provides for a limited priority
13 over other secured interests for a portion of the assessment
14 accruing during the six month period preceding the institution of
15 the action. Section 47-258(g) specifically authorizes the inclusion
16 of the costs of collection as part of the lien. Since the amount of
17 monthly assessments are, in most instances, small, and since the
18 statute limits the priority status to only a six month period, and
19 since in most instances, it is going to be only the priority debt that
20 in fact is collectible, it seems highly unlikely that the legislature
21 would have authorized such foreclosure proceedings without
22 including the costs of collection and the sum entitled to a
23 priority. To conclude that the legislature intended otherwise
24 would have that body fashioning a bow without a string or
25 arrows. We conclude that [Section] 47-258 authorizes the
26 inclusion of attorneys' fees and costs and the sums entitled to a
27 priority.

28 Id. at 616-17, 611 A.2d 866 (citations omitted and emphasis
added).

Applying the Hudson House decision to the case at hand, Nevada law creates a statutory
lien for delinquent common expense assessments. See NRS 116.3116(1). Furthermore,
NRS 116.31162(1) authorizes the foreclosure of the common expense assessment lien. NRS
116.3116(2) provides for a limited priority over other secured interests for the superpriority
portion of the association's assessment accruing during the six (6) month period preceding the
institution of the action. NRS 116.3116(1) also specifically authorizes the inclusion of costs of
collection, late fees and interest as part of the lien.

If this court adopts the holding and rationale of the Hudson House court, then, in the case
at hand, the Association's superpriority claim would be in the amount of One Thousand Nine

1 Hundred Sixty-Three Dollars (\$1,963.00), plus interest. This figure is calculated as follows:

| 2 | <u>Item</u> | <u>Total due</u> | <u>Superpriority</u> | <u>Other Portion</u> |
|----|-------------------|------------------|----------------------|----------------------|
| 3 | <u>Item</u> | <u>Total due</u> | <u>Superpriority</u> | <u>Other Portion</u> |
| 4 | | | <u>Portion</u> | <u>Portion</u> |
| 5 | | | <u>Portion</u> | |
| 6 | Assessments | \$926.30 | \$ 219.00 | \$ 707.30 |
| 7 | Late Fees | \$210.00 | 60.00 | 150.00 |
| 8 | Interest | \$433.97 | - 0 - | 433.97 |
| 9 | Demand Letter | \$95.00 | 95.00 | - 0 - |
| 10 | Lien | \$295.00 | 295.00 | - 0 - |
| 11 | Pre NOD Letter | \$75.00 | 75.00 | - 0 - |
| 12 | Release Lien | \$30.00 | 30.00 | - 0 - |
| 13 | Trustee's Fees | \$400.00 | 400.00 | - 0 - |
| 14 | Trustee's Sale | \$360.00 | 360.00 | - 0 - |
| 15 | Guaranty | | | |
| 16 | Recording Fee | \$57.00 | 57.00 | - 0 - |
| 17 | Postage | \$72.00 | 72.00 | - 0 - |
| 18 | Escrow Demand | \$150.00 | - 0 - | 150.00 |
| 19 | Management | \$45.00 | 45.00 | - 0 - |
| 20 | Company Fee Costs | | | |
| 21 | Management | \$100.00 | - 0 - | 100.00 |
| 22 | Company | | | |
| 23 | Transfer Fee | \$300.00 | 300.00 | - 0 - |
| 24 | Violations | \$4,025.00 | - 0 - | 4,025.00 |
| 25 | TOTALS | | \$ 1,963.00 | \$ 5,611.27 |

22 The Nevada Supreme Court has established the rule of statutory interpretation that the
 23 words in a statute "should be given their plain meaning unless this violates the spirit of the act."
 24 State, Dep't of Ins. v. Humana Health Ins., 112 Nev. 356,360 (1999) (quoting McKay v. Bd. Of
 25 Supervisors, 102 Nev. 644, 648 (1986)).

26 In the case at hand, the Association contends that the Nevada Legislature, while
 27 attempting to balance the interests of the respective parties, intended to provide a modest
 28 protection to the interests of associations by granting the right to recover the fees, costs, interest,

SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON
400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101
(702) 791-0308 - FAX (702) 791-1912

late fees and assessments that accrued as a result of the association exercising its enforcement remedy. To interpret the statute otherwise would create an impediment to association enforcement of unpaid assessments. It would truly create the bow, without strings or arrows, as referenced in Hudson House case. If these costs are not recoverable as part of the superpriority portion of an association's claim, then they must be borne by the individual owners in the community. This is particularly punitive since the same owners are already required to share the burden of the uncollected assessments.

Based on the foregoing, the Association contends that the superpriority portion of its claim is in the amount of \$1,963, plus interest and that payment of this amount must be made by the Plaintiff in order to have clear title to the Property.

D. The Association is Entitled to Recover the Balance of Its Claim From the Excess Proceeds.

The superpriority portion of the Association's claim is only a part of the balance due and owing to the Association. The remaining balance is Five Thousand Five Hundred Sixty-Five Dollars and Seven Cents (\$5,565.07)². The Association claims it has priority over all other claims to the surplus or excess funds in this foreclosure and that any surplus funds remaining, after payment of legal fees to the stake holder, must first be distributed to the Association. On September 22, 2006, this court awarded the law firm of Miles, Bauer, Bergstrom & Winters, LLP One Thousand Five Hundred Dollars (\$1,500.00) in legal fees and One Hundred Sixty Three Dollars (\$163.00) in costs for interpleading these funds. After payment of this amount, the balance of the excess funds should be Five Thousand Eight Hundred Thirty-Two Dollars and Sixty-Five Cents (\$5,832.65).

...

...

...

² A payment in the amount of \$46.20 was applied to the non-priority portion of the past due balance leaving a balance due, prior to the calculation of interest, of \$5,565.07.

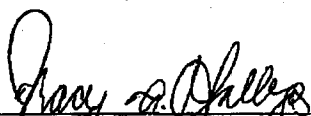
SANTORO, DRIGGS, WALCH, KEARNEY, JOHNSON & THOMPSON
400 SOUTH FOURTH STREET, THIRD FLOOR, LAS VEGAS, NEVADA 89101
(702) 791-0308 - FAX (702) 791-1912

SUMMARY

In conclusion, the Association contends that pursuant to NRS 116.3116(2) and the Hudson House case, the Association's superpriority claim should be established in the amount of One Thousand Nine Hundred Sixty-Three Dollars (\$1,963.00), plus interest. The Plaintiff should be responsible for tendering this payment to the Association. Upon receipt thereof, the Association's superpriority claim would be extinguished against the Property and the Property would be free and clear of any claims from the Association. In addition, the Association contends that the balance of its claim in the amount of Five Thousand Five Hundred Sixty-Five Dollars and Seven Cents (\$5,565.07) has priority over any other mortgage or lien recorded against the Property. See NRS 40.462(c). Thus, any remaining surplus funds should first be applied to the Association's claim.

Dated this 16th day of November, 2006.

SANTORO, DRIGGS, WALCH,
KEARNEY, JOHNSON & THOMPSON



JOHN E. LEACH, ESQ.
Nevada Bar No. 1225
TRACY A. GALLEGOS, ESQ.
Nevada Bar No. 9023
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

*Attorneys for Defendant Spring Mountain
Ranch Master Association*

EXHIBIT 14

REGISTER OF ACTIONS**CASE NO. 06A523959****Korbel Family Living Trust vs Spring Mountain Ranch Master
Assn, Bay Capital Corp**§
§
§
§
§
§
§**Case Type: Title to Property****Subtype: Liens****Date Filed: 06/27/2006****Location: Department 16****Conversion Case Number: A523959**

PARTY INFORMATION

Lead Attorneys**Defendant Bay Capital Corp****Defendant Spring Mountain Ranch Master Assn****John Eric Leach***Retained*

702-538-9074(W)

Intervenor Recontrust Company**Jeremy T. Bergstrom***Retained*

702-369-5960(W)

Plaintiff Korbel Family Living Trust**Anita K. Holden-
McFarland***Retained*

702-952-5000(W)

EVENTS & ORDERS OF THE COURT

11/20/2006 Hearing (9:00 AM) (Judicial Officer Glass, Jackie)**ARGUMENT/ PLTF'S MTN FOR PRELIMINARY INJUNCTION /5 Court Clerk: Sandra Jeter Reporter/Recorder: Francesca
Haak Heard By: Jackie Glass****Minutes****11/20/2006 9:00 AM**

- Arguments by counsel regarding who is going to pay what and what are common expenses as outlined in NRS 116.
COURT ORDERED, the Association can collect the superpriority lien including up to six months of late fees, collection fees and attorney's fees; however anything after foreclosure is not included - only what was before - and counsel is to make sure everyone has notice. **COURT FURTHER ORDERED**, the previously interpled funds are to be **RELEASED**. Mr. Leach to prepare the Order and submit to Mr. Baker for approval as to form and content.

Parties Present**Return to Register of Actions**

EXHIBIT 15

ORD
JOHN B. LEACH, ESQ.
Nevada Bar No. 1211
TRACY A. CALLEGOS, ESQ.
Nevada Bar No. 9023
SANTORI, DRIGGS, WALCH,
KARNITZ, JOHNSON & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912
Attorneys for Spring Mountain Ranch Master Association

FILED
Dec 22 11 33 AM '06
Shirley R. Byrnes
CLERK.

DISTRICT COURT
CLARK COUNTY, NEVADA
KORSH, FAMILY TRUST
Plaintiff
v.
SPRING MOUNTAIN RANCH MASTER
ASSOCIATION, BAY CAPITAL CORP.,
Defendants
Case No. 05-cv-023959-C
Dist. No. V
ORDER
Hearing Date: November 20, 2006
Time: 9:00 A.M.

ORDER

The above-referenced matter having come before this Court, the Plaintiff being represented by Mary G. Baker, Esq. of The Cooper Clarke Law Firm, and Defendant Spring Mountain Ranch Master Association (the "Association") being represented by John B. Leach, Esq. of the law firm of Santori, Driggs, Walch, Karnitz, Johnson & Thompson, each party having briefed the issues, good cause appearing therefore and thereby no just reason to the contrary.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Nevada Revised Statutes 116.3116(2), a portion of the Association's assessment lien has priority over the first deed of trust. This portion of the Association's assessment lien comprises the super-priority portion of the lien. The Association's assessment lien, with the exception of the super-priority portion of the lien, is extinguished by a foreclosure of the first deed of trust.

WCS-0012774.1

2005-11-22, 11:33 AM - 05-cv-023959-C
CLERK
JAN 2 2 2007
CLERK

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of the Association's super-priority claim shall include the following overbills:

- (x) Six (6) months of the association for common expenses;
- (ix) Six (6) months of late fees imposed for non-payment of the assessments for common expenses;
- (x) Interest on the principal amount of six (6) months of the unpaid assessments for common expenses, as set forth in the Association's governing documents;
- (d) The Association's costs of collection, which may include legal fees and costs, that accrue prior to the date of foreclosure of the first deed of trust; and
- (e) The transfer fee for conveyance and change of ownership of the property foreclosed pursuant to the first deed of trust.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant Association's assessment lien has priority over the second deed of trust and any claims originating from the second deed of trust. See IRS 1163116(2).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Association's super-priority claim, in the event of a sale, to be paid by the Priority to the Defendant Association is \$1,050,00.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the remaining balance of the Association's claim is \$3,563.07, and that said claim has priority over all other claims in this matter.

7101-101-0000-0000-0000


W0001500000

Santos, Deane, Smith, Brown, Johnson, Thompson
400 South Point Avenue, Suite 1000, Las Vegas, NV 89101
702.735.1000

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Clerk of the Court
2 shall issue a check payable to the Spring Mountain Ranch Master Association, in the amount of
3 \$5,565.07, which payment shall be issued from the funds previously deposited with the Court on
4 October 4, 2006, by Miles, Sauer, Bergstrom & Whiters, LLP, on behalf of the Intervenor,
5 Reconstruct Company, N.A.


6 Dated this 20 day of December, 2006


DISTRICT COURT JUDGE

10 Submitted by:
11 SANTORO, DRIGGS, WALCH,
12 KEARNEY, JOHNSON & THOMPSON
13 
14 JOHN R. DRACH, ESQ.,
15 Nevada Bar No. 1225
16 TRACY A. GALLAGHER, ESQ.,
17 Nevada Bar No. 9083
18 400 South Point Avenue, Third Floor
19 Las Vegas, Nevada 89101

20 Attorneys for Defendant Spring Mountain Ranch Master Association

21 Approved as to Form and Content:
22 THE COOPER CASTLE LAW FIRM

23 
24 JOHN H. MCFARLAND, ESQ.,
25 Mary C. Baker, Esq.
26 320 S. Valley View Blvd.
27 Las Vegas, NV 89107

28 Attorneys for Corbel Family Trust

00406047077000

EXHIBIT 16

The Cooper Castle Law Firm, LLP
2821 W. Horizon Ridge Parkway, Suite 201
Henderson, NV 89052
Phone (702)435-4175 * Fax (702)877-7425

FACSIMILE COVER SHEET

If there is a problem with transmission or if all pages are not received,
Please call (702)435-4175 for retransmission

TO: Sun City Anthem

FAX NO.: (702)614-5813

FROM: Linda Logue

July 15, 2010

RE: UNIT OWNER'S REQUEST FOR NRS 116.4109 COMPLETE RESALE PACKAGE AND ACCOUNT
LEDGER

HOA: Sun City Anthem
Property: 2982 Strathspey Court, Henderson, NV 89044
Our File No.: 11892NVREO

Number of Pages including the cover page: _____

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is PRIVILEGED, CONFIDENTIAL and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original to us by mail without making a copy. Thank you.

YOU ARE REQUIRED BY LAW TO FURNISH ALL OF THE FOLLOWING WITHIN 10 CALENDAR DAYS OF RECEIPT OF THIS REQUEST:

- ☐ Declaration (Other Than Any Plans and Plans)
- ☐ Bylaws
- ☐ Rules and Regulations of the Association
- ☐ NRS § 116.41095 Required Information Statement
- ☐ A copy of the Current Operating Budget
- ☐ Year to Date Financial Statement
- ☐ A Certificate Good Through August 6, 2010 Which Sets Forth a Statement of:
 - ☐ Amount of Monthly Assessment
 - ☐ Any Unpaid Assessment of any kind Due & Owed by Unit Owner
 - ☐ Any Unsatisfied Judgments
- ☐ A Statement of any Transfer Fees, Transaction Fees, or any Other Fees associated with the resale of the unit
- ☐ Account Ledger Supporting Said Certificate (FDCPA Requirement)
- ☐ Completed W-9 Form (IRS Requirement)

HOA Resale Package

11892NVREO

July 15, 2010

Sun City Anthem
2450 Hampton Rd
Henderson, NV 89052
Via Facsimile to (702)614-5813

RE: REQUEST FOR COMPLETE RESALE PACKAGE PURSUANT TO NRS 116.4109
Name of Master HOA:
Name of HOA: SUN CITY ANTHEM
Property Address: 2982 Strathspey Court, Henderson, NV 89044
File No.: 11892NVREO

Please be advised that the Cooper Castle Law Firm, LLP represents the current owner of the above referenced property, Federal Home Loan Mortgage Corporation (FreddieMac). FreddieMac has contracted to sell this property, and via this letter is requesting that you provide them a COMPLETE resale package as required by NRS § 116.4109, as listed on our cover page attached hereto.

As the Community Manager, you should be aware that pursuant to NRS § 116.4109(4), "Within 10 days after receipt of a written request by a owner or his authorized agent, the association shall furnish all of the following to the owner or his authorized agent for inclusion in the resale package:

- a. Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and
- b. A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1.

In preparing the certificate, you should also be aware that the current owner of the property acquired it via a foreclosure of the first deed of trust. Consequently, we will only accept a certificate which is prepared in accordance with NRS § 116.3116(2), also known as a "super-priority demand." Pursuant to County District Court ruling in *Pursuant to the Clark County District Court's interpretation of the statute (Korbel vs. Spring Mountain Ranch Master Association)*, the amount may include 9 months of pre-foreclosure common area expenses, interest, late fees, and reasonable costs of collection. Please note that pre-foreclosure violations are not common area expenses and will not be paid. If there are any post-foreclosure violations claimed on this account, please provide proof of compliance with Notice and Hearing as required by NRS § 116.31031. Pursuant to the Fair Debt Collection Practices Act, please provide us with proof of the underlying obligation via a complete account ledger which breaks out the dates and amounts to be paid.

Resale Package for 2982 Strathspey Court, Henderson, NV 89044

Our transaction is scheduled to close escrow on August 6, 2010. Consequently, we are requesting that the Certificate provided be GOOD THROUGH August 6, 2010. Pursuant to NRS § 4109(b)-(d), the association may charge the owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The association may charge the owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3. Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

HOA Resale Package

11892NVREO

Upon confirmation that the COMPLETE resale package is ready, we will submit payment in full by either credit card or check. We will NOT accept piecemeal, incomplete packages or multiple charges for the resale package. Please note that pursuant to NRS § 116.4109(5), if you fail to furnish all of the items required within ten (10) days of the date of this letter, the seller is not liable for the delinquent assessment, and we will close the transaction without paying any assessments.

Please contact me via telephone, email, or fax as designated below to notify me when the complete resale package is available so that I can arrange to pay for and receive the items. Please contact me immediately if you have any questions regarding the foregoing, or if you do not represent this Association.

Sincerely,

Linda Logue
Email: llogue@ccfirm.com
Phone: (702)435-4175, Ext. 4163

Fax: (303)285-5743

Restatement of Required Items for Complete NRS § 116.4109 Resale Package:

- ☐ Declaration (Other Than Any Plans and Plans)
- ☐ Bylaws
- ☐ Rules and Regulations of the Association
- ☐ NRS § 116.41095 Required Information Statement
- ☐ A copy of the Current Operating Budget
- ☐ Year to Date Financial Statement
- ☐ A Certificate Good Through August 8, 2010 Which Sets Forth a Statement of:
 - ☐ Amount of Monthly Assessment
 - ☐ Any Unpaid Assessment of any kind Due & Owning by Unit Owner
 - ☐ Any Unsatisfied Judgments
- ☐ A Statement of any Transfer Fees, Transaction Fees, or any Other Fees associated with the resale of the unit
- ☐ Account Ledger Supporting Said Certificate (FDCPA Requirement)
- ☐ Completed W-9 Form (IRS Requirement)

HOA Resale Package

11892NVREO

EXHIBIT 17



20050706-0003420
 Fee: \$111.00
 REC Fee: \$8.00

13:11:34

97/06/2365
 70059121729

Requestor:

WILBUR M. ROADHOUSE

Francis Deane RUF

Clark County Recorder Pgs: 98

APN: 177-35-601-011

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
 4760 South Pecos Road, Suite 203
 Las Vegas, Nevada 89121
 (702) 966-6388

(Space Above Line for Recorder's Use Only)

DECLARATION OF
 COVENANTS, CONDITIONS & RESTRICTIONS
 AND RESERVATION OF EASEMENTS
 FOR
 HORIZONS AT SEVEN HILLS

(a Nevada Residential Condominium Common-Interest Community)
 CITY OF HENDERSON, CLARK COUNTY, NEVADA

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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS FOR HORIZONS AT SEVEN HILLS

THIS DECLARATION ("Declaration"), made as of the 7th day of June, 2005, by GOOSE DEVELOPMENT, LLC, a Nevada limited-liability company ("Declarant");

WITNESSETH:

WHEREAS:

A. Declarant currently owns certain real property and project located in the City of Henderson, Clark County, Nevada, and sometimes generally referred to as HORIZONS AT SEVEN HILLS, or HORIZONS AT SEVEN HILLS; and

B. Said property, including an aggregate maximum number of three hundred twenty-eight (328) residential units ("Maximum Units"), as more particularly described in Exhibit "A" hereto, shall constitute the property covered by this Declaration ("Properties"); and

C. Declarant intends that the Properties shall be a Nevada Common-Interest Community, and a Condominium, as respectively defined in NRS § 116.021 and § 116.027, created pursuant to NRS § 116.2101 upon the recordation of this Declaration, and a common-interest community containing converted buildings pursuant to NRS Chapter 116; and

D. Declarant intends to convey the Properties pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

E. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Properties pursuant to the provisions of this Declaration, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein), administering and enforcing the covenants and restrictions, and collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause, or has caused, the Association to be formed for the purpose of exercising such functions; and

F. The name of the Community shall be known as HORIZONS AT SEVEN HILLS, and the name of the Nevada nonprofit corporation which has been organized as the homeowners association in connection therewith is HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION ("Association");

G. This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of the Community.

NOW, THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration and to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose

of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale and lease of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth in this Declaration shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, and their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved and limited exclusively to single Family residential use.

ARTICLE 1 DEFINITIONS

Section 1.1 "Act" (sometimes referred to as "NRS Chapter 116") shall mean Nevada's Uniform Common Interest Ownership Act, set forth in Chapter 116 of Nevada Revised Statutes, as the same may be amended from time to time. Except as otherwise indicated, capitalized terms herein shall have the same meanings ascribed to such terms in the Act.

Section 1.2 "Allocated Interests" shall mean the following interests allocated to each Unit: an undivided fractional pro-rata interest in the Common Elements (other than any Common Elements conveyed to the Association), in which the numerator is one (1) and the denominator is 328; the Allocated Interests of each Unit shall be 1/328; a non-exclusive easement of enjoyment of all Common Elements in the Properties; allocation of Exclusive Use Areas (Limited Common Elements) pursuant to the Plat and as set forth herein; liability for assessments pro-rata for Common Expenses in the Properties (in addition to any Specific Assessments as set forth herein); membership and one vote in the Association, per Unit owned, which membership and vote shall be appurtenant to the Condominium Unit; and an Assigned Parking Space, as designated by Declarant.

Section 1.3 "ARC" shall mean the Architectural Review Committee created pursuant to Article 18 hereof.

Section 1.4 "Articles" shall mean the Articles of Incorporation of the Association as filed in the Office of the Nevada Secretary of State, as such Articles may be amended from time to time.

Section 1.5 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments, Supplemental Assessments, and Specific Assessments.

Section 1.6 "Assessment Annual" shall mean the annual or supplemental charge against each Owner and his Unit, representing a portion of the Common Expenses, which are to be paid in advance in equal periodic (monthly, or quarterly as determined from time to time by the Board) installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner and at the times and proportions provided herein.

Section 1.7 "Assessment Capital" shall mean a charge against each Owner and his Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction of any improvements on any portion of the Common Elements which the Association may from

time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.8 "Assessment Specific" shall mean a charge against a particular Owner and his Unit, directly attributable to or reimbursable by that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or levied by the Board as a reasonable fine or penalty for noncompliance herewith, plus interest and other charges on such Specific Assessment as provided for in this Declaration.

Section 1.9 "Assessment Supplemental" shall mean a charge against each Owner and his or her Unit, representing a prorated portion of extraordinary costs which the Association may from time to time encounter and need to authorize payment thereof, pursuant to the provisions of this Declaration, including but not necessarily limited to Section 6.13 hereof. Supplemental Assessments normally shall be prorated and levied among all Owners and their Units in the same proportion as Annual Assessments, or in such other reasonable manner as the Board in its reasonable discretion may determine.

Section 1.10 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.11 "Assigned Parking Space" shall mean a parking space, identified as such on the Plat and/or expressly designated by Declarant as an Assigned Parking Space, which shall be an Exclusive Use Area for a designated Unit.

Section 1.12 "Association" shall mean HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, and its successors and assigns.

Section 1.13 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article 6 hereof.

Section 1.14 "Balcony" shall mean a balcony, as originally constructed, which shall be an Exclusive Use Area as to a designated Condominium Unit, as set forth on the Plat. No Owner or Person shall have any right to materially alter or to construct, or shall materially alter or construct, any Balcony from and after the date of recordation of this Declaration.

Section 1.15 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.16 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board is an "Executive Board" as defined by NRS § 116.045.

Section 1.17 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared, approved, and ratified pursuant to the provisions of this Declaration, including, but not limited to, Section 8.4 below.

Section 1.18 "Building" shall mean a Condominium Building.

Section 1.19 "Bylaws" shall mean the Bylaws of the Association, which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.20 "Capital Contributions" shall have the meaning set forth in Section 6.8 below.

Section 1.21 "City" shall mean the City of Henderson, Nevada.

Section 1.22 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.23 "Common Elements" shall mean all portions of the Properties, other than the Units, as provided in NRS § 116.017, and all improvements thereon. Subject to the foregoing, and subject further to NRS § 116.2102, Common Elements may include, without limitation: Common Recreational Area; entry area features, gates and monumental; emergency access "crash gate"; Private Streets; private street lights, building lights and entrance lights; walls, fences, bearing walls and perimeter walls; landscape and greenbelt areas; hardscapes and parking areas; wetlandscape and common water features; roofs, exterior walls, and foundations; all water and sewer systems, lines and connections, from the boundaries of the Properties, to the boundaries of Units (but not including such internal lines and connections located inside Units); pipes, ducts, flues, chases, conduits, wires, and other utility systems and installations (other than outlets located within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air conditioning, as installed by or for the Association for common use (but not including HVAC which serves a single Unit exclusively).

Section 1.24 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti from perimeter walls, unpaid Specific Assessments, and/or Capital Assessments; the costs of any commonly metered utilities and other commonly metered charges for the Units, and Common Elements (including, but not necessarily limited to, the allocated costs of master water supply and sewage disposal, and costs of master trash pickup and disposal); costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to the Manager, accountants, attorneys, consultants, and employees; costs of all utilities, gardening, and other services benefiting the Properties; costs covering the Association, Common Elements, or Properties, or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, Manager, or any other Person handling the funds of the Association; any statutorily required ombudsman fees; taxes paid by the Association (including, but not limited to, any and all unsegregated or "blanket" real property taxes for all or any portions of the Properties); amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties, or portions thereof or deemed prudent and necessary by the Board; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116.

Section 1.25 "Common Recreational Area" shall mean the common recreational area, as shown on the Plat, the improvements on which may consist of, but not necessarily be limited to, a swimming pool, spa, cabana, or similar amenity, for common use by all Owners, subject to the Rules and Regulations.

Section 1.26 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.021, and a Condominium, as defined in NRS § 116.027.

Section 1.27 "Condominium Building" shall mean each residential condominium building housing Units within the Properties, as shown on the Plat.

Section 1.28 "Condominium Unit" shall mean a Unit, as set forth in Section 1.70, below.

Section 1.29 "County" shall mean Clark County, Nevada.

Section 1.30 "Declarant" shall mean GOOSE DEVELOPMENT, LLC, a Nevada limited-liability company, its successors and any Person(s) to which it shall have assigned any rights hereunder by an express written and Recorded assignment (but specifically excluding Purchasers, as defined in NRS § 116.079). A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then-existing Declarant and encumbering all or any portion of the Properties, which beneficiary has acquired any of the Properties by foreclosure, power of sale, or deed in lieu thereof, and has elected in writing to become the Declarant.

Section 1.31 "Declarant Control Period" shall have the meaning set forth in Section 3.7 below.

Section 1.32 "Declarant Rights Period" shall mean the period during which Declarant owns any real property subject to this Declaration.

Section 1.33 "Declaration" shall mean this instrument as may be further amended from time to time.

Section 1.34 "Deed of Trust" shall mean a mortgage or deed of trust, as the case may be.

Section 1.35 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.36 "Dwelling" shall mean a Condominium Unit, designed and intended for use and occupancy as a residence by a single family.

Section 1.37 "Eligible Holder" or "Eligible Mortgage" shall mean each Beneficiary, Insurer and/or guarantor of a first Mortgage encumbering a Unit, which has filed with the Board a written request for notification as to relevant matters as specified in this Declaration.

Section 1.38 "Exclusive Use Areas" shall mean the Limited Common Elements.

Section 1.39 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable Ordinances.

Section 1.40 "FHA" shall mean the Federal Housing Administration.

Section 1.41 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

Section 1.42 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.43 "FNMA or GNMA". FNMA shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation. GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.44 "Garage" shall mean an enclosed garage, identified as such on the Plat and/or expressly designated and assigned by Declarant as a Garage, appurtenant to and part of a designated Unit. A Condominium Unit shall not have a Garage appurtenant thereto, unless specifically so designated in writing by Declarant. A Garage shall consist of a fee simple interest bounded by the interior surfaces of the walls, floor, ceiling, and exterior door (and any exterior window) thereof, in like manner as a Unit is bounded. A Garage includes both the portions of the building so described and the airspace so encompassed. A Garage shall not be deemed independently to constitute a Unit, but shall be a part of and appurtenant to a Unit as designated and assigned by Declarant pursuant to this Declaration.

Section 1.45 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and the Rules and Regulations. Any irreconcilable inconsistency among the Governing Documents shall be governed pursuant to Sections 17.13 and 17.18, below.

Section 1.46 "HVAC" shall mean heating, ventilation, and/or air conditioning equipment and systems. HVAC located on easements in Common Elements, which serve one Unit exclusively, shall constitute Exclusive Use Areas as to such Unit, pursuant to Sections 2.15 and 2.16, below.

Section 1.47 "Identifying Number", pursuant to NRS § 116.053, shall mean the number which identifies a Unit on the Plat.

Section 1.48 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, located in the Properties, including but not limited to Condominium Buildings and other structures, walkways, sprinkler pipes, Common Recreational Areas, Balconies, swimming pools, spas, and other recreational facilities, carports, roads, Private Streets, entry way, parking areas, walls, perimeter walls, landscape, curbs, gutters, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hardscape features, hedges, windbreaks, rainings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 1.49 "Limited Common Elements" (sometimes referred to herein as "Exclusive Use Areas") shall mean the Balconies, Patios, entryways, and/or exterior stairways, and areas shown as limited common elements on the Plat, and allocated exclusively to individual Units, together with such HVAC designed to serve a single Unit, but located outside of the Unit's boundaries. Use, maintenance, repair and replacement of Limited Common Elements shall be as set forth in this Declaration. If any chule, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion respectively thereof serving only the Unit is a Limited Common Element allocated solely to that Unit, and any portion respectively thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

Section 1.50 "Manager" shall mean the Person, whether an employee or independent contractor, hired as such by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.51 "Maximum Units" shall mean the total "not to exceed" maximum number of aggregate Units within the Properties (i.e., 328 Units).

Section 1.52 "Member", "Membership". "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.53 "Member in Good Standing" shall mean a Member whose voting rights have not been suspended in accordance with the Governing Documents or applicable Nevada law.

Section 1.54 "Mortgage", "Mortgagee", "Mortgageor". "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage". "Mortgagee" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgage" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgageor" shall mean a Person who mortgages his Unit to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgageor", and "Beneficiary" shall be synonymous with "Mortgagee". For purposes of this Declaration, "first Mortgage" or "first Deed of Trust" shall mean a Mortgage or Deed of Trust with first priority over other mortgages or deeds of trust on a Unit in the Properties and "first Mortgagee" or "first Beneficiary" shall mean the holder of a first Mortgage or Beneficiary under a first Deed of Trust.

Section 1.55 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.56 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.57 "Ordinances" shall mean any and all applicable ordinances, resolutions, and rules of the City, and/or any other local governmental entity or agency with jurisdiction.

Section 1.58 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees. A vendee under an installment land sale contract shall be deemed an "Owner" hereunder, provided the Board has received written notification thereof, executed by both vendor and vendee thereunder.

Section 1.59 "Patio" shall mean a patio as originally constructed, which shall be an Exclusive Use Area as to a designated Condominium Unit, as set forth on the Plat. No Owner or

Person shall have any right to materially alter or construct, or shall materially alter or construct, a Patio from and after the date of recordation of this Declaration.

Section 1.60 "Perimeter Wall(s)/Fence(s)" shall mean the walls and/or fences located generally around the exterior boundary of the Properties.

Section 1.61 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.62 "Plat" shall mean, the final recorded plat of HORIZONS AT SEVEN HILLS RANCH, recorded on June 29, 2005, in Book 125 of Plats, Page 0058, as the same may have been or may be amended and/or supplemented from time to time, and any other map(s) which may hereafter affect the Properties.

Section 1.63 "Private Streets" shall mean all private streets, rights of way, street escapes, and vehicular ingress and egress easements in the Properties, shown as such on the Plat.

Section 1.64 "Project" shall mean the Properties.

Section 1.65 "Properties" shall mean all of the real property described in Exhibit "A," attached hereto.

Section 1.66 "Purchaser" shall have that meaning as provided in NRS § 118.078.

Section 1.67 "Record," "Recorded," "Filed," or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.68 "Resident" shall mean any Owner, tenant or other person who is physically residing in a Unit.

Section 1.69 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board pursuant to the Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.70 "Unit" or "Condominium Unit" shall mean each Dwelling unit space identified as such on the Plat, and shall consist of a fee simple interest bounded by the interior surfaces of the following features of Units as originally constructed: (a) exterior walls and party walls, (b) floors and ceilings, and (c) exterior windows and doors thereof (and all interior: lath, furring, wallboard, plasterboard, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished interior surfaces thereof), and a Unit includes both the portions of the Condominium Building so described and the airspace encompassed; together with the exclusive right to use, possess and occupy the Limited Common Elements serving such Unit exclusively; an undivided pro-rata fractional interest as tenants in common in the Common Elements (other than the Common Recreational Area, and any other Common Element conveyed in fee to the Association); easements of ingress and egress over and across all entry or access areas and Private Streets and of use and enjoyment of all other Common Elements in the Properties; membership and one vote in the Association (which membership and vote shall be appurtenant to the Condominium Unit); and the right to use an Assigned Parking Space as an Exclusive Use Area, pursuant and subject to the Governing Documents.

Section 1.71 "VA" shall mean the United States Department of Veterans Affairs.

Any capitalized term not separately defined in this Declaration shall reasonably have the meaning ascribed thereto in applicable provision of NRS Chapter 118.

ARTICLE 2 OWNERS' PROPERTY RIGHTS: EASEMENTS

Section 2.1 **Ownership of Unit; Owners' Easements of Enjoyment.** Title to each Unit in the Properties shall be conveyed in fee to an Owner. Ownership of each Unit within the Properties shall include (a) a Condominium Unit, (b) an undivided interest in the Common Elements as designated on the Plat, which have not separately been conveyed to the Association, (c) one membership in the Association, and (d) any exclusive or non-exclusive easements appurtenant to such Unit over those Common Elements conveyed, or to be conveyed, to the Association, as described in this Declaration, the Plat, and the deed to the Unit. Each Owner shall have a nonexclusive right and easement of ingress and egress and of use and enjoyment in, to and over all Common Elements, including, but not limited to, the Common Recreational Area and Private Streets, which easement shall be appurtenant to and shall pass with the title to the Owner's Unit, subject to the following:

(a) the right of the Association to reasonably limit the number of guests an Owner or Resident may authorize to use the Common Elements;

(b) the right of the Association to establish uniform Rules and Regulations regarding use, maintenance and upkeep of the Common Elements, and to amend same from time to time (such Rules and Regulations may be amended upon a majority vote of the Board), provided that such Rules and Regulations shall not irreconcilably conflict with this Declaration or the other Governing Documents;

(c) the right of the Association in accordance with the Declaration, Articles and Bylaws, with the vote of at least two-thirds (2/3) of the voting power of the Association and a majority of the voting power of the Board, to borrow money for the purpose of improving or adding to the Common Elements, and, in aid thereof, and subject further to the Mortgagee protection provisions of Article 12 and elsewhere in this Declaration, to mortgage, pledge, deed in trust or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners;

(d) subject to the voting and approval requirements set forth in Subsection 2.1(c) above, and subject further to the provisions of Article 12 and 13 of this Declaration, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be approved by the Association and the Members;

(e) subject to the Declarant reserved rights provisions of Article 13 hereof, the right of Declarant and its sales agents, representatives and prospective Purchasers, to the non-exclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and/or any other development(s), until the last Close of Escrow for the marketing and/or sale of a Unit in the Properties or such other

development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) the other easements, and rights and reservations of Declarant as set forth in this Article 2, in Article 13, and elsewhere in this Declaration;

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof in the Common Elements in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties; as the case may be; and if not substantially in accord with the original design, finish or standard of construction, only with the vote or written consent of Owners holding a majority of the voting power of the Association and the vote or written consent of a majority of the voting power of the Board, and the approval of a majority of the Eligible Holders;

(h) the right of the Association, acting through the Board, to replace destroyed trees or other vegetation and to plant trees, shrubs and other ground cover upon any portion of the Common Elements;

(i) the right of the Association, acting through the Board, and/or of Declarant, pursuant to Article 13 hereof, to place and maintain upon the Common Elements such signs as the Board reasonably may deem appropriate for the identification, marketing, advertisement, sale, use and/or regulation of the Properties or any other project of Declarant;

(j) the right of the Association, acting through the Board, to reasonably restrict access to and use of portions of the Common Elements;

(k) the right of the Association, acting through the Board, to reasonably suspend voting rights and to impose fines as Specific Assessments and to reasonably suspend the right of an Owner and/or Resident to use Common Elements for nonpayment of any Assessment levied by the Association against the Owner's Unit, or if an Owner or Resident is otherwise in breach of obligations imposed under the Governing Documents;

(l) the obligation of all Owners to observe "quiet hours" in the Common Recreational Area and other Common Elements, during the hours of 10:00 p.m. until 9:00 a.m. (or such other hours as shall be reasonably established from time to time by the Board in advance) during which "quiet hours," loud music, loud talking, shouting, and other loud noises shall not be permitted;

(m) the right of all Owners to similarly use and enjoy the Common Elements, subject to the Governing Documents;

(n) the exclusive rights of individual Units (and the Owners thereof) with regard to Limited Common Elements, as set forth in this Declaration - the obligations and covenants of Owners as set forth in Article 8 and elsewhere in this Declaration;

(o) the restrictions, prohibitions, limitations, and/or reservations set forth in Article 9 and elsewhere in this Declaration;

(p) the easements reserved in various sections of Article 2 and/or any other provision of this Declaration; and

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(q) the rights of any other easement holders.

Section 2.2 **Easements for Parking.** Subject to the parking and vehicular restrictions set forth in Section 9.14, below, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, to accommodate ordinary and reasonable guest parking, and to establish Rules and Regulations governing such parking and to reasonably enforce such parking limitations and rules by all means which would be lawful for such enforcement on public and/or private streets, including the removal of any violating vehicle by those so empowered, at the expense of the owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked for such purpose. Without limiting the foregoing, no vehicle may be continuously parked in the same Association parking space for more than forty-eight consecutive hours, and no Association parking space may be used for any storage purpose whatsoever.

Section 2.3 **Easements for Vehicular and Pedestrian Traffic.** In addition to the general easements for use of the Common Elements reserved herein, there are hereby reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, non-exclusive easements for vehicular and pedestrian traffic over the private main entry gate area and all Private Streets and common walkways within the Properties, subject to the parking provisions set forth in Section 2.2, above, and the use restrictions set forth in Article 9, below.

Section 2.4 **Easement Right of Declarant Incident to Cosmetic, Marketing and/or Sales Activities.** An easement is hereby reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests, and other invitees, for access, ingress, and egress over, in, upon, under, and across the Common Elements and Common Recreational Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use and cosmetic, advertising, marketing and/or sales related to the Properties, or any portions thereof, or any other project of Declarant; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his or her family, guests, or invitees, to or of that Owner's Unit, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 13.1(a) below. Without limiting the generality of the foregoing, Declarant reserves the right to control any and all entry gate(s) to the Properties until such time as the Close of Escrow to a Purchaser of the last Unit in the Properties, or for so long as Declarant utilizes sales and/or management offices and/or model homes in connection with Declarant's marketing and/or sale of other projects of Declarant pursuant to Section 13.1(c) below, and neither the Association nor any one or more of the Owners shall at any time or in any way, without the prior written approval of Declarant in its discretion, cause any entry gate to the Properties to be closed during Declarant's marketing or sales hours (including on weekends and holidays), or shall in any other way impede or hinder Declarant's cosmetic, marketing or sales activities.

Section 2.5 **Easements for Public Service Use.** In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement, use, maintenance and/or replacement of any fire hydrants on portions of Common Elements, and other purposes regularly or normally related thereto; and (b) City, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees

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and agents, to enter upon any part of the Properties, for the purpose of carrying out their official duties

Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes. In addition to the foregoing easements there shall be and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements reasonably upon, over and across Common Elements and portion of Units, for installation, maintenance, repair and/or replacement of public and private utilities, electric power, telephone, cable television, water, sewer, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district, of ingress or egress over the Common Elements and portions of Units; and easements for purposes of reading and maintaining meters; and using and maintaining any fire hydrants located on the Common Elements). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any). By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the Close of Escrow of the last Unit in the Properties, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the ordinary development of any portion of the Properties. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not unreasonably interfere with the occupancy or use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant thereof. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Units, for the control, installation, use, inspection, maintenance, repair and replacement of water and/or sewage lines and components and/or systems for watering or irrigation of any landscaping on, and/or sewage disposal from or related to Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

Section 2.7 Additional Reservations of Easements. Declarant hereby expressly reserves for the benefit of each Owner and his Unit, reciprocal, non-exclusive easements over the adjoining Unit(s), for the support, control, maintenance and repair of the Owner's Unit and the utilities serving such Unit. Declarant further expressly reserves, for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, non-exclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Properties, for drainage of water resulting from the normal use thereof or of neighboring Units and/or Common Elements, for the inspection, painting, maintenance and/or repair of those Limited Common Elements for which the Association is expressly responsible pursuant to this Declaration, and for painting, maintenance and repair of any Unit or portion thereof pursuant to this Declaration. In the event that any utility or third Person exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or damaged

Owners shall pursue any resultant claim against the offending utility or third Person, and not against Declarant or the Association. In the event of any minor encroachment of an Exclusive Use Area upon the Common Elements (or vice versa), or other Unit or Exclusive Use Area, as a result of original construction, or as a result of reconstruction, repair, siting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant and each Owner of a Unit shall have an easement appurtenant to such Unit over the Unit line to and over the adjacent Unit and/or Common Elements, for the purposes of accommodating any natural movement or settling of any Unit, any encroachment of any Unit due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, balconies, patios, and architectural features comprising parts of the original construction of any Unit. Declarant hereby further reserves a non-exclusive easement, appurtenant to the Common Elements and/or Unit (as the case may be, for the benefit of Declarant and the Association, and their respective agents and/or contractors, on and over the Common Elements and any Unit(s), for any inspections, and a non-exclusive easement, on and over the Common Elements, for the benefit (but not obligation) of the Association, and its agents, contractors, and/or any other authorized party, for the maintenance and/or repair of any and all landscaping and/or other improvements located on the Common Elements. The provisions of this Section 2.7 shall be deemed to apply to Garages as well as to Condominium Units and Exclusive Use Areas.

Section 2.8 Encroachments. The physical boundaries of an existing Unit (or Exclusive Use Area), or of a Unit (or Exclusive Use Area) reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than any metes and bounds expressed in the Plat or in an instrument conveying, granting or transferring a Unit, regardless of settling or lateral movement and regardless of minor variances between boundaries shown on the Plat or reflected in the instrument of grant, assignment or conveyance and the actual boundaries existing from time to time. The provisions of this Section 2.8 shall be deemed to apply to Garages as well as to Condominium Units and Exclusive Use Areas.

Section 2.9 Easement Data. The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any and all easements and licenses shown on and created by the Plat is the same as the Recording data for the Plat.

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his Unit reasonably over and across the Common Elements, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his interest in any of the Common Elements, or in any part of the component interests which comprise his Unit, except in conjunction with a conveyance of his Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Ownership of Common Elements. Subject to Article 2 hereof, each Owner shall own an undivided fractional interest in the Common Elements (other than the Common Recreational Area, or other Common Element(s) conveyed to the Association), pro rata with all other Owners. Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a

place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Unit. The fractional undivided interest of each Owner in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned in the conveyance or other instrument.

Section 2.13 Common Recreational Area. The Association shall or may hold title to the Common Recreational Area (and may, but need not necessarily, hold title to the Private Streets and/or other Common Elements); provided that each Owner, by virtue of Membership in the Association, shall be entitled to non-exclusive use and enjoyment of the Common Recreational Area, Private Streets, and other Common Elements, subject to the Rules and Regulations therefor.

Section 2.14 Limited Common Elements. Each Owner of a Unit shall have an exclusive easement for the use of the Patio (if any) or Balcony (if any), and the entry designed for the sole use of said Unit, as Limited Common Elements, appurtenant to the Unit. The foregoing easements shall not entitle an Owner to construct anything or to change any structural part of the easement area. HVAC serving one Unit exclusively are also Limited Common Elements, as set forth in Section 2.15 below.

Section 2.15 HVAC. Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association, for the purpose of maintenance, repair and replacement of any heating, ventilation, and/or air conditioning and/or heating equipment and systems ("HVAC") located in the Common Elements; provided, however, that no HVAC shall be placed in any part of the Common Elements other than its original location as installed, unless the approval of the Board is first obtained. Notwithstanding the foregoing or any other provision in this Declaration, any HVAC which is physically located within the Common Elements, but which serves an individual Unit exclusively, shall constitute a Limited Common Element as to the Unit exclusively served by such HVAC, and the Owner of the Unit (and not the Association) shall have the duty, at the Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving the Unit, subject to the original appearance and condition thereof as originally installed, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common Elements.

Section 2.16 Garages. Declarant shall have the right to convey fee title to Garages to Owners of Units, as designated by Declarant in any manner not prohibited by this Declaration, provided that each such Garage shall be deemed to be appurtenant to the designated Unit, and shall not be deemed to independently constitute a Unit. The boundaries and dimensions of a Garage shall be as set forth in the Plat. Upon conveyance of a Garage by Declarant to a Purchaser in fee, the Garage shall be deemed forever after to be an inseparable part of the Unit to which appurtenant. In no event shall the Garage thereafter be conveyed, encumbered, or released from any lien except in conjunction with, and as an integral part of, the conveyance, encumbrance, or release of said Unit. Any purported conveyance, encumbrance, or release of a Garage, separate from the entire Unit, shall be void and of no effect. Each Owner of a Garage, as and to the extent, if any, reasonably necessary, shall have an easement reasonably over portions of the adjoining Garage(s) for purposes of reasonable access to and maintenance and repair of electrical, sewer, and other utility lines servicing such Garage. The use provisions set forth in Article 9 of the Declaration (including, but not limited to the nuisance provisions thereof) shall apply to Garages and activities therein or related thereto. No parking shall be permitted in any areas where such parking would hinder or obstruct ingress or egress by any Owner to or from his or her Garage

(provided that temporary loading and unloading may be permitted on an occasional and reasonable basis).

Section 2.17 Assigned Parking Spaces. Additionally, Declarant shall have the right to assign an Assigned Parking Space as an Exclusive Use Area for a designated Unit, as designated by Declarant in any manner not prohibited by this Declaration. Any purported conveyance, encumbrance, or release of an Assigned Parking Space shall be void and of no effect.

Section 2.18 Cable Television. Each Owner, by acceptance of a deed to his Unit, acknowledges and agrees that, in the event a Unit has been pre-wired or installed with a cable television system ("CATV") (including, but not limited to, cable television outlets for the Unit), such CATV system and all components as so installed, shall not constitute the property of the Owner, but shall be the sole property of a cable company selected by the Association), and there shall be, and hereby is, reserved a non-exclusive easement in gross on, over, under or across the Unit for purposes of installation and maintenance of such cable television equipment, for the benefit of the Association, or such cable company as may be selected thereby.

Section 2.19 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or any facilities thereon, or by abandonment of his Unit or any other property in the Properties.

Section 2.20 Alteration of Units. Declarant reserves the right to change the interior design and arrangement of any Unit and to alter the boundaries between Units, so long as Declarant owns the Units so altered. No such change shall increase the number of Units nor alter the boundaries of the Common Elements.

Section 2.21 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Condominium Unit. If any taxes or assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Specific Assessment.

Section 2.22 Additional Provisions for Benefit of Disabled Persons. To the extent required by applicable law, provisions of the Governing Documents, and policies, practices, and services, shall be reasonably accommodated to afford disabled Residents with equal opportunity to use and enjoy their Dwellings. Pursuant to the foregoing, Declarant may cause to be installed certain handrails or other accommodations for the benefit of disabled Residents, on or within certain Common Element areas, or areas appurtenant or proximate to certain Units, or other areas of the Properties, as may be deemed by Declarant to be reasonably necessary. Handrails in areas which pertain to certain designated Units shall be Limited Common Elements appurtenant to such Units. To the extent required by applicable law, the Association shall reasonably accommodate disabled Residents, to afford such Residents equal opportunity to use and enjoy their Dwellings, and the Association shall permit disabled Residents to make reasonable modifications to their living areas which are necessary to enable them to have full enjoyment of the premises. The Association shall comply with all applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person. In the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, applicable law shall prevail, and the Association shall not adhere to or enforce any

provision of the Governing Documents which irreconcilably contravenes applicable law. Installation by Declarant of handrails in certain areas (or installation by Declarant of other devices to reasonably accommodate disabled Residents in other areas of the Properties) shall raise absolutely no inference that such devices are in any regard "standard" or that they will or may be installed with respect to all or any other Units or all or any other areas of the Properties.

Section 2.23 Aviation Easements. Declarant hereby reserves, for itself, and for the Association, the unilateral right to grant aviation easements over Common Elements, to applicable governmental entity or entities with jurisdiction; and each Owner hereby covenants to sign such documents and perform such acts as may be reasonably required to effectuate the foregoing.

Section 2.24 Master Metered Water. Water for Common Elements and Units may, in Declarant's discretion, be master metered. Periodic water costs allocable to each Unit shall be paid by the Owner of said Unit, regardless of level or period of occupancy (or vacancy) or use. Currently, master metered water charges are allocated equally to each Unit, regardless of size or usage. The Association, acting through the Board, reserves the right, in its business judgment, to allocate master metered water charges on any other reasonable basis. The Las Vegas Valley area is currently experiencing, and may continue to experience drought conditions. Without being limited by the preceding sentence, Owners and other occupants of Units, and their Families, shall not waste water in the Properties, and any person who is found to be using water in an unreasonable manner shall be subject to a Specific Assessment therefor, subject to Notice and Hearing.

Section 2.25 Boundaries of Units. The boundaries of each Unit created by the Declaration are the Unit lines shown on the Plat, along with their identifying number, and are described further as follows:

- (a) **Upper Boundary:** The uppermost horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams and rafters, extended to an intersection with the vertical perimeter boundaries.
- (b) **Lower Boundary:** The lowest horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries and open horizontal unfinished surfaces of trim, sills and structural components.
- (c) **Vertical Perimeter Boundaries:** The planes defined by the unfinished inner surfaces of poured concrete walls (if any); and the unfinished inner surfaces of closed windows and closed perimeter doors.
- (d) **Inclusions:** Each Unit will include the spaces and improvements lying within the boundaries described in (a), (b) and (c) above. Additionally, each Unit will have appurtenant to it one or more of the following items (as applicable): stairs provided for the exclusive use of a Unit; spaces and the improvements within those spaces outside the boundaries of (a), (b) and (c) above containing any space heating, water heating and air conditioning apparatus, all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, electrical receptacles and light fixtures and boxes serving that Unit exclusively.

(e) **Exclusions:** Except when specifically included by other provisions of this Section, the following are excluded from each Unit: The spaces and improvements lying outside of the boundaries described in (a), (b) and (c) above; all interior bearing studs and framing of bearing walls, columns, and bearing partitions and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose

of furnishing utility and similar services to all or any one or more of the other Units, or Common Elements.

(f) Inconsistency with Plat: If this definition is inconsistent with the information contained in the Plat, then this definition will control.

Section 2.26 Compliance with Applicable Law. It is the intent of Declarant that this Declaration and the other Governing Documents shall be enforceable pursuant to their respective terms, to the maximum extent permissible under the Act or other applicable law. Without limiting the foregoing, in the event any provision of this Declaration or other Governing Document is found to irreconcilably violate any applicable provision of the Act, or other applicable law, or any section respectively thereof, such violating provision of the relevant Governing Document shall be deemed automatically modified (or deleted, if necessary) to the minimum extent necessary to conform to the Act and/or other applicable law.

ARTICLE 3 HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION

Section 3.1 Organization of Association. The Association is or shall be, by not later than the date the first Unit is conveyed to a Purchaser, incorporated under the name of HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION (or, if said name is not then available from the Nevada Secretary of State, such other name as is available), as a non-profit corporation, under NRS Chapter 92. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents, and in compliance with applicable Nevada law.

Section 3.2 Duties, Powers and Rights. Duties, powers and rights of the Association are as set forth in the Governing Documents. The Association shall make available for inspection at its office by any prospective purchaser of a Unit, any Owner, and the Beneficiaries, Insurers and guarantors of the first Mortgage on any Unit, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents and all other books, records, and financial statements of the Association.

Section 3.3 Membership. Each Owner (including Declarant, by virtue of owning title to any Unit), upon acquiring title to a Unit, shall automatically become a Member of the Association, and shall remain a Member until such time as his ownership of the Unit ceases, at which time, his membership in the Association shall automatically cease. Membership shall not be assignable, except to the Person to whom title to the Unit has been transferred, and each Membership shall be appurtenant to, and may not be separated from, fee ownership of the Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

Section 3.4 Transfer of Membership. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to his

Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the transferee shall have a valid proxy from the transferor of said Unit, pursuant to Section 4.6, below. The Association may levy a reasonable chargeable to such new Owner and his Unit (which fee shall be added to the Annual Assessment transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Manager, timely attend an orientation to the Community and the Properties, conducted by an Association Officer or the Manager, and will be required to pay any costs necessary to obtain keys to Common Elements, special identification for use of Common Elements, and entry gate keys and/or remote controls, if not obtained from the prior Owner at Close of Escrow.

Section 3.5 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be supplemented by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. The Bylaws shall include, without limitation, the following:

- (a) the number of Directors (subject to Section 3.6 below) and the titles of the Officers;
- (b) for election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;
- (c) the qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;
- (d) which, if any, respective powers the Board or Officers may delegate to other Persons or to a Manager;
- (e) which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association;
- (f) procedural rules for conducting meetings of the Association, and
- (g) a method for amending the Bylaws.

Section 3.6 Board of Directors

- (a) The affairs of the Association shall be managed by a Board of not less than three (3) Directors, nor more than such number of Directors as set forth from time to time in the Bylaws, the majority of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association and all such Members must be Members in Good Standing. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable

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provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his or her role as a Director, the Association shall indemnify him for his or her losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton mistreatment or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. In the event a Unit is owned by a trust or entity (and not by an individual), an officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority to serve as an Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

- (b) The term of office of a Director shall not exceed two (2) years. A Director may be elected to succeed himself or herself. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held in the same month as the Annual Meeting, as set forth in Section 4.3 below.

- (c) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

Section 3.7 Declarant's Control of Board. During the period of Declarant's control ("Declarant Control Period"), as set forth below, Declarant, at any time, with or without cause, may remove or replace any Director appointed by Declarant. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations:

- (a) Not later than sixty (60) days after conveyance from Declarant to Purchasers of twenty-five percent (25%) of the Maximum Units, at least one (1) Director and not less than twenty-five percent (25%) of the total Directors must be elected by Owners other than Declarant.
- (b) Not later than sixty (60) days after conveyance from Declarant to Purchasers of fifty percent (50%) of the Maximum Units, not less than one-third of the total Directors must be elected by Owners other than Declarant.
- (c) The Declarant Control Period shall terminate on the earliest of: (i) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Maximum

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Units; (ii) five (5) years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (iii) such time as Declarant, in its sole discretion, specifically and expressly elects to turn over control of the Board to the Owners other than Declarant.

Section 3.8 Control of Board by Owners. The following portions of this Section 3.8 shall be subject to and shall be applicable after the end of the Declarant Control Period. The Owners shall elect a Board of at least three (3) Directors, and the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within ninety (90) days of his or her appointment or election, certify in writing that he or she is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and the President, Secretary, Treasurer and Vice President additionally must all be Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 3.9 Election of Directors. The following portion of this Section 3.9 shall be subject to and following Declarant's control, as set forth in Section 3.7, above. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause notice to be given to each Owner of his or her eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his or her name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, for so long as so required by applicable Nevada law, with the vote publicly counted (which counting may be done as the meeting agenda progresses).

Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated in writing by the Owner; In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

(b) As used in this Section 3.10, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners; (3) requires the immediate attention of, and possible action by, the Board; and (4) makes it impracticable to comply with regular notice and/or agenda provisions.

(c) The notice of the Board meeting must state the time and place of the meeting and include a copy of the agenda for the meeting (or the date on which and the locations where copies of the agenda may be conveniently obtained by Owners). The notice must include notification of the right of an Owner to: (1) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request (and, if required by the Board, upon payment to the Association of the cost of making the distribution), and (2) speak to the Association or Board during such time and for such periods of time as designated on the agenda for homeowner comments, or as designated by the President at the meeting, in the President's discretion (but not during such time as the Board is meeting in Executive Session and Owners generally are excluded pursuant to applicable Nevada law).

(d) The agenda of the Board meeting must comply with the provisions of NRS § 116.3108.3. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the Board may take action on an item which is not listed on the agenda as an item on which action may be taken.

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current reconciliation of the Operating Fund (as defined in Section 6.2 below); (2) a current reconciliation of the Reserve Fund (as defined in Section 6.3 below); (3) the actual deposits and withdrawals for the Reserve Fund, compared to the Reserve Budget for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the Operating Fund and Reserve Fund; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

(f) The minutes of a Board meeting must be made available to Owners in accordance with NRS § 116.3108.5.

Section 3.11 Attendance by Owners at Board Meetings: Executive Sessions. Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

(a) consulting with an attorney for the Association on matters relating to proposed or pending litigation, if the contents of the discussion would otherwise be governed by the privilege set forth in NRS §§ 49.035 to 49.115, inclusive, or to enter into, renew, modify, terminate or take any other action regarding a contract between the Association and an attorney; or

(b) discussing the character, alleged misconduct, professional competence, or physical or mental health of a Manager or an employee of the Association; or

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by a person who may be sanctioned for the Alleged Violation ("Involved Person") (provided that the Involved Person shall be entitled to attend the hearing and testify concerning the Alleged Violation,

but the Involved Person may be excluded by the Board from any other portion of such hearing, including, without limitation, the Board's deliberation).

Pursuant to applicable Nevada law, no other matter may be discussed in Executive Session, and any matter discussed in Executive Session must be generally described in the minutes of the Board meeting, provided that the Board shall maintain detailed minutes of the discussion of any Alleged Violation, and, upon request, shall provide a copy of said detailed minutes to the Involved Person or his or her designated representative.

Section 3.12 General Record of Violations of Governing Documents. The Board shall cause to be maintained a general record concerning each violation of the Governing Documents, (other than a violation involving a failure to pay an Assessment), for which the Board has imposed a fine, or any other sanction. The general record:

- (a) must contain a general description of the nature of the violation and the type amount of the fine;
- (b) must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the Unit, if any, that is associated with the violation; and
- (c) must be maintained in an organized and convenient filing system or data system that allows an Owner to search and review the general records concerning violations of the Governing Documents.

Section 3.13 Board of Directors and ARC Discretion. Except as may be expressly provided in this Declaration, any consent or approval of the Board of Directors, ARC, or Association, that is required under the provisions hereof, may be granted or withheld in the sole discretion of the Board of Directors, ARC, or Association, as applicable. Further, the approval or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

ARTICLE 4

MEMBERS' VOTING RIGHTS; MEMBERSHIP MEETINGS

Section 4.1 Owners' Voting Rights. Subject to Section 3.7 above and other reserved rights of Declarant, and subject further to following provisions of this Section 4.1, and to Section 4.6 below, each Member in Good Standing shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The non-voting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or

in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent.

Section 4.2 Transfer of Voting Rights. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of fee interest in any Unit to a new Owner shall operate to transfer the appurtenant Membership and voting rights without the requirement of any express reference thereto. Each Owner shall, within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Unit, notify the Association in writing of such sale, transfer or conveyance, with the name and address of the transferee, the nature of the transfer and the Unit involved, and such other information relative to the transfer and the transferee as the Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor.

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting". The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following. A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President; (b) a majority of the Directors; or (c) Members in Good Standing representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

Section 4.4 Meeting Notices; Agendas; Minutes. Meetings of the Members shall be held in the Properties or at such other convenient location near the Properties and within the County as may be designated in the notice of the meeting.

(e) Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: (i) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request, if the Owner pays the Association the cost of making the distribution; and (ii) speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

- (i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to any of the Governing Documents, any fees or assessments to be imposed or increased by the Association, any budgetary changes, and/or any proposal to remove an Officer or Director; and
- (ii) a list describing the items on which action may be taken, and clearly denoting that action may be taken on those items ("Agenda Items"); and

(iii) a period devoted to comments by Owners and discussion of such comments; provided that, except in emergencies, no action may be taken upon a matter raised during this comment and discussion period unless the matter is an Agenda item. If the matter is not an Agenda item, it shall be tabled at the current meeting, and specifically included as an Agenda item for discussion and consideration at the next following meeting, at which time, action may be taken thereon.

(c) In an "emergency" (as said term is defined in Section 3.10(b) above), Members in Good Standing may take action on an item which is not listed on the agenda as an item on which action may be taken.

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner thereof, a specific schedule of fines that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 17.4, below.

(e) Not more than thirty (30) days after any meeting, the Board shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy.

Section 4.5 **Record Date.** The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any Budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur.

Section 4.6 **Proxies.** Every Member in Good Standing entitled to attend and vote at, or exercise consents with respect to, any meeting of the Members, may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting to which the proxy is applicable. A Member in Good Standing may give a proxy only to a member of his or her immediate family, or a tenant of said Member who resides in the Community, or another Member in Good Standing, who resides in the Community, or as otherwise may be authorized from time to time by applicable Nevada law. No proxy shall be valid after the conclusion of the meeting (including continuation of such meeting) for which the proxy was executed. Such powers of designation and revocation may be exercised by the legal guardian of any Member in Good Standing or by his or her conservator, or in the case of a minor having no guardian, by the parent legally entitled to permanent custody, or during the administration of any Member's estate where the interest in the Unit is subject to administration in the estate, by such Member's executor or administrator. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonably specified conditions, that where the person solicited specifies a choice with respect to any such

matter, the vote shall be cast in accordance with such specification. Unless applicable Nevada law provides otherwise, a proxy is void if: (a) it is not dated or purports to be revocable without notice; (b) it does not designate the votes that must be cast on behalf of the Member in Good Standing who executed the proxy; or (c) the holder of the proxy does not disclose at the beginning of the meeting (for which the proxy is executed) the number of proxies pursuant to which the proxy holder will be casting votes and the voting instructions received for each proxy. If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director.

Section 4.7 **Quorums.** The presence at any meeting of Members in Good Standing who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members in Good Standing present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members in Good Standing to leave less than a quorum. If any action taken other than adjournment is approved by at least a majority of the Members in Good Standing required to constitute a quorum, unless a greater vote is required by applicable law or by this Declaration, if any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by applicable law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members in Good Standing entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership as set forth in this Declaration.

Section 4.8 **Actions.** If a quorum is present, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by applicable law or by this Declaration.

Section 4.9 **Action by Meeting and Written Approval of Absentee Owners.** The proceedings and transactions of any meeting of Members, either regular or special, however called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members in Good Standing not present in person or by proxy signs a written waiver of notice, a consent to the holding of such meeting, or an approval of the minutes thereof. Neither the business to be transacted at, nor the purpose for any regular or special meeting of Members, need be specified in any written waiver of notice. All such waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the meeting.

Section 4.10 **Action By Written Consent Without Meeting.** Any action which may be taken at any regular or special meeting of the Members may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Members in Good Standing having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members in Good Standing were present

and voted, and filed with the Association Secretary, provided, however, that Directors may not be elected by written consent except by unanimous written consent of all Members in Good Standing. Any Member giving a written consent, or such Member's proxy holder, may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Members in Good Standing required to authorize the proposed action have been filed upon its receipt by the Association Secretary. Unless the consents of all Members in Good Standing have been solicited in writing and have been received, prompt notice shall be given, in the manner as for regular meetings of Members, to those Members in Good Standing who have not consented in writing, of the taking of any Association action approved by Members in Good Standing without a meeting, where practicable. Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

- (a) approval of any reorganization of the Association;
- (b) a proposal to approve a contract or other transaction between the Association and one or more Directors, or any corporation, firm or association in which one or more Directors has a material financial interest; or
- (c) approval for the indemnification of any person.

Section 4.11 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members in Good Standing present either in person or by proxy thereof, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in this Section 4.11. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members in Good Standing may transact any business that might have been transacted at the original meeting.

ARTICLE 5 FUNCTIONS OF ASSOCIATION

Section 5.1 Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations, if any, upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. The Association's obligations to maintain the Common Elements shall commence on the date Annual Assessments commence on Units, until commencement of Annual Assessments, the Common Elements shall be maintained by Declarant, at Declarant's expense. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

- (a) Assessments. The power and duty to levy assessments against the Owners of Units, and to enforce payment of such assessments in accordance with the provisions of Articles 6 and 7 below.

- (b) Maintenance and Repair of Common Elements. The power and duty to cause the Common Elements to be reasonably maintained and kept in good repair (which shall include the power to enter into one or more maintenance and/or repair contract(s), including contract(s) for materials and/or services with any Person(s) for the maintenance and/or repair of the Common Elements), pursuant to this Declaration and in accordance with standards adopted by the Board, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Elements. Notwithstanding the foregoing, the Association shall have no responsibility to provide any of the services referred to in this subsection 5.1(b) with respect to any improvement which is accepted for maintenance by any state, local or municipal governmental agency or public entity. Such responsibility shall be that respectively of the applicable agency or public entity.

- (c) Removal of Graffiti. The power to remove or paint over any graffiti from walls or fences, pursuant to Section 8.10, below.

- (d) Liabilities. The power and duty to cause to be obtained and maintained the insurance coverages in accordance with the provisions of Article 11 below.

- (e) Taxes. The power and duty to pay all taxes and similar assessments levied upon the Common Elements (except to the extent, if any, that property taxes on Common Elements are assessed pro-rata on the Units), and all taxes and assessments payable by the Association, and to timely file all tax returns required to be filed by the Association.

- (f) Utility Services. The power and duty to obtain, for the benefit of the Common Elements, any commonly metered water, gas, and/or electric services, (or other similar services) and/or refuse collection, and the power but not the duty to provide for all cable or master television service, if any, for all or portions of the Properties. The Association, by Recordation of this Declaration, and each Owner, by acquiring title to a Unit, acknowledge and agree that water for the Properties shall or may be commonly metered and paid by the Association, and allocated and billed by the Association to each Condominium Unit on such basis deemed by the Board to be reasonable and necessary, regardless of the actual levels or periods of use or occupancy (or non-use or vacancy) of or by the Unit.

- (g) Easements and Rights-of-Way. The power (subject to rights of Declarant licenses and rights-of-way in, on, over or under the Common Elements, and (j) with the consent of a majority of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Common Elements, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder, (A) roads, streets, walks, driveway areas, parkways, park areas and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public improvements or facilities.

- (h) Manager. The power, subject to Section 5.5 below, but not the duty, to employ or contract with a Professional Manager to perform all or any part of the duties and responsibilities of the Association, and the power, but not the duty, to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Manager to the Association, shall be subject to cancellation

by either party, without cause, at any time upon not less than sixty (60) days written notice, or at any time immediately for cause.

(i) Rights of Entry and Enforcement. The power, but not the duty, after Notice and Hearing (except in the event of bona-fide emergency which poses an (a) imminent and substantial threat to health, or (b) imminent and substantial threat (as verified by an engineer, architect, or professional building inspector, duly licensed in the State of Nevada) of material property damage, in which event of emergency, Notice and Hearing shall not be required), to peacefully enter upon any area of a Unit, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Specific Assessment pursuant to Section 6.12 below, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment pursuant to Article 7 below. The foregoing notwithstanding, the Association, through its agents, employees, or contractors, shall have the right to enter any Unit for the purpose of performing inspection, maintenance and/or repair of any Common Element or Limited Common Element not reasonably accessible other than through the Unit. Such entry for other than emergencies shall be made only after not less than three (3) days written notice to the Owner. Any such entry into a Unit shall be made with the least inconvenience to the Owner or Resident reasonably necessary to accomplish the purpose of such entry, and any damage to the Unit caused by such entry shall be repaired by the entering party at its expense. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Unit without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 5.3 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(j) Rights of Enforcement. Without limiting any other provision of the Governing Documents, and subject to Section 5.3 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(k) Other Services. The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Elements.

(l) Employees, Agents and Consultants. The power but not the duty, if deemed appropriate by the Board, to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(m) Acquiring Property and Construction on Common Elements. The power but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including improvements and personal property. The power but not the duty, by action of the Board, to construct new improvements or additions to the Common Elements, or demolish existing improvements (other than maintenance or repairs to existing improvements), subject to Section 2.1(g) hereof.

(n) Contracts. The power, but not the duty, to enter into contracts with Owners to provide services or to maintain and repair improvements within the Properties which the Association is not otherwise required to maintain pursuant to this Declaration, and the power, but not the duty, to contract with third parties for such services. Any such contract or service agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(o) Records and Accounting; Annual Audit. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) A pro forma operating statement (Budgets, including a Reserve Budget); and Reserve Studies for each fiscal year shall be distributed pursuant to Section 6.4, below.

(ii) Reviewed or audited Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets (including, but not limited to, Association Reserve Funds) and liabilities of the Association as at the end of each Fiscal Year), and a statement of cash flow for the Fiscal Year, shall be made available within one hundred twenty (120) days after the close of each Fiscal Year.

(p) Maintenance of Other Areas. The power and duty to maintain and repair slopes, parkways, entry structures, and Community signs identifying the Properties, to the extent deemed by the Board to be reasonable or prudent.

(q) Use Restrictions. The power and duty to enforce use restrictions pertaining to the Properties.

(r) Licenses and Permits. The power and duty to obtain from applicable governmental authority any and all licenses and permits necessary or reasonably appropriate to carry out Association functions hereunder.

Section 5.2 Rules and Regulations. The Board, acting on behalf of the Association, shall be empowered to adopt, amend, repeal, and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties, as follows:

(a) General. A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member and also kept on file with the Association. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having

any interest in, or making any use of any part of, the Properties, whether or not Members; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

- (i) reasonably related to the purpose for which adopted;
- (ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;
- (iii) adopted without intent to evade any obligation of the Association;
- (iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);
- (v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and
- (vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

(c) Enforcement. Subject to Sections 5.3, 5.8, and Articles 15 and 17, below, the Association shall have the right to enforce any of the Rules and Regulations and the obligations of any Owner under any provision of the other Governing Documents, by assessing a reasonable fine as a Specific Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use the Common Recreational Area or other Common Elements (other than ingress and egress, by the most reasonably direct route, to the Condominium Unit), subject to the following:

- (i) the person alleged to have violated the provision must have had written notice (either actual or constructive, by inclusion in any Recorded document) of the provision for at least thirty (30) days before the alleged violation; and
- (ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;
- (iii) no fine imposed under this Section 5.2 may exceed the maximum permitted from time to time by applicable Nevada law for each failure to comply or may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of

a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially threatens the health and welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2(b), above);

(v) subject to Section 5.2(c)(iii) above, if any such Specific Assessment imposed by the Association on an Owner or Resident by the Association is not paid within thirty (30) days after written notice of the imposition thereof, then such Specific Assessment shall be enforceable pursuant to Articles 6 and 7; and

(v) subject to Section 5.3 below, the Association may also take judicial action against any Owner or Resident to enforce compliance with such Rules and Regulations and/or provision of other Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(d) Responsibility for Violations. Should any Resident violate any of the Rules and Regulations or any provision of the other Governing Documents, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident.

Section 5.3 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "proceeding"). Subject to Article 16, below, the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment, or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding". The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies". To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent

to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 5.3 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Two Thousand Dollars (\$2,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members in Good Standing for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, and shall obtain the written opinions of each and every one of: (A) a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); (B) a reputable appraiser and/or real estate consultant regularly conducting business in Clark County, Nevada, expressly opining that the marketability and market value of Units will not be substantially or materially affected by such Non-Operational Controversy ("Appraiser's Opinion"); and (C) a senior executive from a reputable lender in the business of regularly making residential loans in Clark County, Nevada, that financing and refinancing of Units will not be affected by such Non-Operational Controversy, and that such financing and refinancing will be readily available ("Lender's Opinion"). (The Legal Opinion, Appraiser's Opinion, and Lender's Opinion are sometimes collectively referred to herein as the "Opinions"). The Board shall be authorized to spend up to an aggregate of Two Thousand Dollars (\$2,000.00) to obtain such Opinions, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or procuring reports and/or information in connection therewith. The Board may increase said \$2,000.00 limit, with the express consent of seventy-five percent (75%) or more of all of the Members in Good Standing of the Association, at a special meeting called for such purpose.

(2) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including without limitation court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs"), which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said Legal Opinion shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee

arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written Legal Opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(3) Upon receipt and review of the Attorney Letter, the Appraiser's Opinion, and the Lender's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, the Appraiser's Opinion, and the Lender's Opinion, together with a written report ("Specific Assessment Report") prepared by the Board (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Appraiser's Opinion, Lender's Opinion, and Specific Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members in Good Standing, whereupon: (x) if not more than seventy-five percent (75%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than seventy-five percent (75%) of the total voting power of the Association (i.e., more than seventy-five percent (75%) of all of the Members in Good Standing of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Specific Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys' fees and costs incurred to date in connection therewith.

(4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association Reserve Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited

to any Non-Operational Controversy). Association Reserve Funds, pursuant to Sections 6.2 and 6.3, below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding, and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors, and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

Section 5.4. Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) the current management contract with the Manager, or (iii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration.

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for reasonable expenses incurred in carrying on the business of the Association, subject to the Governing Documents.

Section 5.5. Manager. The Association shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be subject to cancellation by either party, without cause, at any time upon not less than sixty (60) days written notice, or at any time immediately for cause.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant to the provisions of NRS Chapter 645 and/or NRS §118.700, or duly exempted pursuant to NRS §118.700.6. Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee of the Manager, may be a Director or Officer of the Association.

(d) As a condition precedent to the employ of, or agreement with, a Manager, the Manager (or any replacement Manager) first shall be required, at its expense, to review the Governing Documents, Plat, and any and all Association Reserve Studies and inspection reports pertaining to the Properties.

(e) By execution of its agreement with the Association, each and every Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; (3) to comply fully, at its expense, with all regulations of the Nevada Real Estate Division applicable to qualifications, certification, and regulation of community managers; (4) to refrain, without specific prior written direction of a majority of the voting power of the Board, from referring or introducing to the Association, or contacting directly or indirectly for or on behalf of the Association, any attorney regarding any matter in any way related to the Community or any portion thereof; (5) prior to time of hire, and from time to time thereafter upon request of the Board; (a) to disclose to the Board, in writing, the identities of any and all other communities, managed by Manager (at such time, and within the three year period preceding such time), and involved in litigation involving any claim of construction defect, and the current status of any and all such litigation, and (b) to certify in writing to the Board that Manager, and its then current and prior employees, have had no relationship to and have received no benefit or thing of value from, the attorney(s) commencing and/or prosecuting such litigation, and/or any attorney referred to the Association at the specific written direction of the Board (or if there was or is any such relationship or benefit, to disclose and identify the same); and (6) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in the event of a turnover, in any event not later than thirty (30) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed).

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed, by qualified Person designated by the Board, of the books and records of the Association, to verify assets, provided that the Association shall retain the right, in its business judgment, to be self-managed.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. To the extent reasonably practicable, such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

Section 5.8 Inspection of Books and Records

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the Association, with the exception of: (1) personnel records of employees (if any) of the Association; and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location: (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies.

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page for such maximum amount as permitted by applicable Nevada law.

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records.

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties, or any portion(s) thereof. Declarant further reserves the right and easement, without obligation, from time to time whether before or after the end of Declarant Control Period, throughout the term of this Declaration, to enter upon the Properties at reasonable times to conduct inspections. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited or reviewed annual reports, as required in Section 5.1(n), above. Such notices and information shall be delivered to Declarant at its most recently designated address. This Section 5.7 may not be amended or terminated without

Declarant's prior written consent, and any purported amendment or termination of this Section 5.7 in violation of the foregoing shall be null and void.

Section 5.8 Compliance with Applicable Laws. The Association and its governance shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a dwelling because of a disability of such person) relating thereto. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or applicable Ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

Section 5.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association (including the Board and any committees) nor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Properties cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Section 5.10 Security Covenants of Owners. Each Owner acknowledges, understands and covenants to inform all residents of its Units and their respective families and invitees, that neither the Association (including the Board and any committees) nor all other persons involved with the governance, maintenance, and management of the Properties, including Declarant, are insurers of safety or security within the Properties. All Owners and Residents, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, Units, and the contents of Units, and further acknowledge that neither the Association (including the Board and any committees), nor Declarant have made representations or warranties regarding any entry gate, patrolling of the properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties. All Owners and Residents, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

ARTICLE 6 ASSESSMENTS AND FUNDS

Section 6.1 Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments; (b) Specific Assessments; (c) Supplemental Assessments; (d) any Capital Assessments; and (e) any other charge levied by the Association on one or more Owner(s), such Assessments to be established and collected as provided in this Declaration. All assessments, together with interest thereon, late charges, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing

lien upon the Unit against which such assessment is made. Each such assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors-in-life of any Owner unless expressly assumed by such successors.

Section 6.2 Association Funds. The Board shall establish and maintain at least the following separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as accounts in the name of the Association, at a federally insured banking or savings institution and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, (2) an Association reserve fund ("Reserve Fund") for capital repairs and replacements, as set forth in Section 6.3 below, and (3) any other funds which the Board of Directors may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than the Reserve Fund which shall be kept segregated), provided that the integrity of each individual disbursement from and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate savings or checking account, at a federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer. In the event that either the President or the Treasurer is absent or not reasonably available, the Secretary may co-sign in lieu of the absent officer (but not in lieu of both). In the event that either the President or the Treasurer is absent or not reasonably available, and the Secretary also is absent or not reasonably available, the Vice President may co-sign in lieu of the absent President or Treasurer (but not in lieu of both). After the Declarant Control Period, all of the Directors must also all be Owners, and the President, Vice President, Secretary and Treasurer must also first be Directors.

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding, (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacements of major components of the Common Elements (including, without limitation, repair and replacement of roofs, building exteriors, private streets, walkways, hardscape, waterfalls, and Common Recreational Area) ("Major Components"); (iii) in no event shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any proceeding, or for any other purpose whatsoever; and (iv) the Reserve Fund shall be kept in a segregated account, withdrawable from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary or Vice President may co-sign in lieu of either the President or the Treasurer, if either is not reasonably available and provided further that if the Secretary also is absent or not reasonably available, the Vice President may co-sign in lieu of the absent President or Secretary (but not in lieu of both)); and (vi) under no

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circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

(b) The Board, in its reasonable judgment, shall periodically retain the services of a qualified reserve study analyst, with reasonably sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study").

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event initially within one (1) year after the Close of Escrow for the first Unit within the Properties, and thereafter at least once every five (5) years (or at such other intervals as may be required from time to time by applicable Nevada law). The Board shall review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient, and shall make such adjustments as the Board deems reasonable and prudent to maintain the required reserves from time to time (i.e., by increasing Assessments). It shall be an obligation of the Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Manager who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation: (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore; (2) an identification of the Major Components which have a remaining useful life of less than 30 years; (3) an estimate of the remaining useful life of each Major Component so identified; (4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and (5) an estimate of the total annual assessment that may be required to cover the cost of repairing, replacement or restoration of the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study). The Reserve Study shall be conducted in accordance with any applicable regulations promulgated from time to time by the Nevada Real Estate Division.

(e) Each Reserve Study shall be prepared in accordance with any legal requirements from time to time as applicable, applied in each instance on a prospective basis. Subject to the foregoing sentence, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally agreed that the following, among others, shall be deemed reasonable and prudent for and in connection with preparation of each Reserve Study: (i) utilization, by a Reserve Analyst, of the "book-of-the-hour" method, or other generally recognized method, and/or (ii) utilization or reliance, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to the Reserve Fund (provided that, subject to and without limiting Sections 6.4 or 6.5 below, no assumption shall be made of such future increases in excess of 10% per year plus an annual inflationary factor), with corresponding increases in Assessments.

Section 6.4 Budget; Reserve Budget.

(a) The Board shall adopt a proposed annual Budget (which shall include a Reserve Budget) at least thirty (30) days prior to the first Annual Assessment period for each Fiscal Year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget

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is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as aforesaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

(b) Notwithstanding the foregoing, except as otherwise provided in subsection (c) below, the Board shall, not less than 30 days or more than 60 days before the beginning of each Fiscal Year, prepare and distribute to each Owner a copy of:

(i) the Budget (which must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the Reserve Fund); and

(ii) the Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each Major Component;

(B) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the Major Components;

(C) a statement as to whether the Board has determined or anticipates that the levy of one or more Capital Assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves for that purpose; and

(D) a general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (B) above, including, without limitation, the qualifications of the Reserve Analyst.

(c) In lieu of distributing copies of the Budget and Reserve Budget, the Board may distribute to each Owner a summary of those budgets, accompanied by a written notice that the budgets are available for review at the business office of the Association or other suitable location and that copies of the budgets will be provided upon request.

Section 8.5. Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members in Good Standing representing at least a majority of the total voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification as provided in Section 8.4, above.

Section 8.6. Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant to a Purchaser, the Purchaser of such Unit shall be required to pay an initial capital contribution to the Association, in an amount not to exceed 1/3 of the initial or then-applicable Annual Assessment. Such initial capital contribution is in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and shall be deposited at each Close of Escrow as follows: (a) an amount equal to two (2) full monthly installments of the initial or then-applicable Annual Assessment shall be deposited into the Association Reserve Fund, and used exclusively to help fund the Association Reserve Fund, and (b) the remainder of the initial capital contribution shall be deposited into an Association Operating Fund, and/or applied to operating expenses, as the Board deems appropriate in its reasonable business judgment. Additionally, at the Close of Escrow for each subsequent resale of a Unit by an Owner (other than Declarant), the Purchaser of such Unit shall be required to pay a resale capital contribution to the Association, in an amount equal to 1/6 of the then-applicable Annual Assessment. Such resale capital contribution is in addition to the foregoing described initial capital contribution, and is further in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and may be applied to working capital needs and/or for the Reserve Fund, in the Board's business judgment.

Section 8.7. Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be the first day of the calendar month following the Close of Escrow to a Purchaser of the first Unit in the Properties; provided that Declarant may establish, in its sole and absolute discretion, a later Assessment Commencement Date, uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. From and after the Assessment Commencement Date, Declarant may, but shall not be obligated to, make loan(s) to the Association, to be used by the Association for the sole purpose of paying Common Expenses, to the extent the budget therefor exceeds the aggregate amount of Annual Assessments for a given period, provided that any such loan shall be repaid by Association to Declarant as soon as reasonably possible. The first Annual Assessment for each Unit shall be prorated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all assessments remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be deposited into the Association Reserve Fund, or may be retained by the Association for purposes determined by the Board, which may include, but are not limited to, in reducing the following year's Annual Assessment. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 8.8. Application of Payments. Unless otherwise requested by an Owner before or at the time of payment, assessment payments shall be applied to the Owner's obligations in the following order: first, attorneys' fees, late charges, interest, Supplemental Assessments, Annual Assessments, and other Assessments, if any. An Owner's request may be denied or modified by the Board, in its sole discretion.

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 **HORIZONS AT SEVEN HILLS**
3 **HOMEOWNERS ASSOCIATION,**

4 Appellant,

5 v.

6 **IKON HOLDINGS, LLC, a Nevada**
7 **limited liability company,**

8 Respondent.

Supreme Court No. 63178

District Court Case No. A-11-647850-B

Electronically Filed
Nov 21 2013 10:32 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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10
11 **APPELLANT'S APPENDIX**

12 **VOLUME 6 OF 11**

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| Ex. | Pleading | Date | Vol. | Pages |
|-----|--|------------|------|-----------|
| 2 | Answer to Complaint | 11/3/2011 | I | 0099-0105 |
| 16 | Appendix of Exhibits to Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief | 2/6/2012 | V | 1002-1172 |
| 7 | Business Court Order | 12/8/2011 | IV | 0781-0785 |
| 1 | Complaint | 9/6/2011 | I | 0001-0098 |
| 49 | Correspondence dated 3/28/13 re: Proposed Final Judgment | 4/10/2013 | X | 2114-2140 |
| 10 | Court Minutes: Decision re: Plaintiff's Motion for Partial Summary Judgment & Defendant's Countermotion | 12/16/2011 | IV | 0833-0834 |
| 9 | Court Minutes: All Pending Motions | 12/12/2011 | IV | 0831-0832 |
| 27 | Court Minutes: All Pending Motions | 3/12/2012 | VII | 1538-1539 |
| 34 | Court Minutes: All Pending Motions | 5/7/2012 | VIII | 1755 |
| 38 | Court Minutes: All Pending Motions | 6/11/2012 | IX | 1888 |
| 63 | Court Minutes: All Pending Motions | 6/3/2013 | XI | 2464 |
| 48 | Court Minutes: Bench Trial | 3/12/2013 | X | 2112-2113 |
| 46 | Court Minutes: Calendar Call | 2/19/2013 | IX | 2101 |
| 30 | Court Minutes: Decision | 3/28/2012 | VII | 1550 |
| 40 | Court Minutes: Decision | 6/22/2012 | IX | 1893 |
| 11 | Court Minutes: Mandatory Rule 16 Conference | 1/9/2012 | IV | 0835-0836 |
| 25 | Court Minutes: Minute Order | 3/7/2012 | VII | 1511-1512 |
| 64 | Court Minutes: Minute Order – Decisions re: 6/3/13 Motion for Attorney Fees and Costs | 6/28/2013 | XI | 2465 |
| 43 | Court Minutes: Motion for Reconsideration | 7/12/2012 | IX | 2081-2082 |
| 60 | Court Minutes: Motion to Retax | 5/28/2013 | XI | 2427 |
| 29 | Decision | 3/28/2012 | VII | 1547- |

| | | | | |
|----|--|------------|---------|-----------|
| | | | | 1549 |
| 39 | Decision | 6/22/2012 | IX | 1889-1892 |
| 65 | Decision | 6/28/2013 | XI | 2466-2470 |
| 56 | Defendant's Case Appeal Statement | 5/8/2013 | X | 2328-2331 |
| 70 | Defendant's Case Appeal Statement | 9/5/2013 | XI | 2505-2508 |
| 15 | Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief | 2/6/2012 | V | 0975-1001 |
| 37 | Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief | 6/8/2012 | VIII-IX | 1774-1887 |
| 52 | Defendant's Motion to Retax Costs | 4/25/2013 | X | 2173-2186 |
| 69 | Defendant's Notice of Appeal and Notice of Related Case | 9/5/2013 | XI | 2485-2504 |
| 55 | Defendant's Notice of Appeal and Notice of Related Cases | 5/8/2013 | X | 2253-2327 |
| 57 | Defendant's Notice of Filing Cost Bond on Appeal | 5/10/2013 | X | 2332-2337 |
| 59 | Defendant's Opposition to Motion for Attorney's Fees and Costs | 5/24/2013 | XI | 2377-2426 |
| 5 | Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment and Counter-Motion for Summary Judgment | 11/30/2011 | III-IV | 0544-0756 |
| 18 | Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Counter-Motion for Summary Judgment | 2/14/2012 | VI-VII | 1181-1433 |
| 33 | Defendant's Opposition to Plaintiff's Third Motion for Summary Judgment / Countermotion for Summary Judgment | 4/25/2012 | VIII | 1668-1754 |
| 23 | Defendant's Reply In Support of Motion for Clarification or, in the alternative, Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief | 3/6/2012 | VII | 1486-1507 |

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|----|--|-----------|------|-----------|
| 42 | Defendant's Reply in Support of Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief | 7/9/2012 | IX | 1952-2080 |
| 36 | Defendant's Reply Memorandum in Support of Countermotion for Summary Judgment | 6/4/2012 | VIII | 1766-1773 |
| 22 | Defendant's Reply to Plaintiff's Opposition to Defendant's Counter-Motion for Summary Judgment | 3/6/2012 | VII | 1477-1485 |
| 50 | Final Judgment | 4/11/2013 | X | 2141-2168 |
| 53 | Final Judgment | 5/1/2013 | X | 2187-2212 |
| 17 | Joint Case Conference Report | 2/10/2012 | VI | 1173-1180 |
| 47 | Joint Pre-Trial Memorandum | 3/11/2013 | IX | 2102-2111 |
| 68 | Judgment | 8/18/2013 | XI | 2481-2484 |
| 54 | Motion for Attorney Fees and Costs | 5/2/2013 | X | 2213-2252 |
| 66 | Order Denying Motion to Retax Costs | 7/3/2013 | XI | 2471-2475 |
| 32 | Order Denying Plaintiff's Motion for Summary Judgment/Order Granting Defendant's Countermotion for Summary Judgment | 4/16/2012 | VIII | 1661-1667 |
| 71 | Order for Return of Monies on Deposit | 9/9/2013 | XI | 2509-2510 |
| 28 | Order re: Defendant's Motion for Clarification | 3/16/2012 | VII | 1540-1546 |
| 45 | Order re: Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief | 7/24/2012 | IX | 2095-2100 |
| 67 | Order re: Plaintiff's Motion for Attorney Fees and Costs and Defendant's Motion to Retax Costs | 7/23/2013 | XI | 2476-2480 |
| 14 | Order re: Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief | 1/19/2012 | V | 0967-0974 |

| | | | | |
|----|---|-----------|----------|-----------|
| | and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief | | | |
| 44 | Order re: Plaintiff's Motion for Summary Judgment on Declaratory Relief and Defendant's Counter-Motion for Summary Judgment | 7/20/2012 | IX | 2083-2094 |
| 13 | Order re: Rule 16 Conference | 1/18/2012 | V | 0964-0966 |
| 24 | Order Setting Civil Non-Jury Trial and Calendar Call | 3/6/2012 | VII | 1508-1510 |
| 51 | Plaintiff's Memorandum of Costs and Disbursements | 4/16/2013 | X | 2169-2172 |
| 4 | Plaintiff's Motion for Partial Summary Judgment on Issue of Declaratory Relief | 11/7/2011 | I-III | 0108-0543 |
| 12 | Plaintiff's Motion for Summary Judgment | 1/16/2012 | IV-V | 0837-0963 |
| 31 | Plaintiff's Motion for Summary Judgment on Issue of Declaratory Relief | 3/30/2012 | VII-VIII | 1551-1660 |
| 19 | Plaintiff's Opposition to Motion for Clarification or in the alternative for Reconsideration of Order Granting Summary Judgment | 2/27/2012 | VII | 1434-1472 |
| 41 | Plaintiff's Opposition to Motion for Reconsider [sic] of Order Granting Summary Judgment on Claim of Declaratory Relief | 6/27/2012 | IX | 1894-1951 |
| 58 | Plaintiff's Opposition to Motion to Retax Costs | 5/23/2013 | X-XI | 2338-2376 |
| 62 | Plaintiff's Reply to Opposition to Motion for Attorney Fees and Costs | 5/29/2013 | XI | 2444-2463 |
| 35 | Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment | 5/18/2012 | VIII | 1756-1765 |
| 3 | Plaintiff's Request to Transfer to Business Court | 11/4/2011 | I | 0106-0107 |
| 61 | Plaintiff's Supplement to Memorandum of Costs and Disbursements | 5/29/2013 | XI | 2428-2443 |
| 26 | Recorder's Transcript of Proceedings: Plaintiff's Motion for Summary | 3/12/2012 | VII | 1513-1537 |

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|----|---|------------|--------|-----------|
| | Judgment/Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment | | | |
| 6 | Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment | 12/7/2011 | III-IV | 0757-0780 |
| 21 | Scheduling Memo | 2/28/2012 | VII | 1476 |
| 20 | Scheduling Order | 2/28/2012 | VII | 1473-1475 |
| 8 | Transcript of Proceedings: Motions | 12/12/2011 | IV | 0786-0830 |


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability
company,

Plaintiff,
vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No. A-11-647850-B

Dept: No. 13

JOINT CASE CONFERENCE REPORT

DISCOVERY PLANNING/DISPUTE CONFERENCE REQUESTED:

YES: _____

NO: X

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

A. Date of Filing Complaint: 9/6/2011

B. Date of Filing Answer: 11/3/2011

- 1 B. Date of Filing Counter Claim: N/A
- 2 C. Date of Filing Reply to Counter Claim: N/A
- 3 E. Date that Early Case Conference was held and who attended: Early Case Conference held
- 4 on the 9th day of February, 2012, at the hour of 2:00 p.m. James. R. Adams, Esq., was in
- 5 attendance for Plaintiff and Eric Hinckley, Esq., was in attendance for Defendant.

6

7 **II.**

8 **A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND**

9 **EACH CLAIM FOR RELIEF OR DEFENSE**

10 **16.1(c)(1)**

11 A. Description of the Action:

12 Plaintiff brought suit alleging violation of NRS 116.3116(2) and violation of covenants,

13 conditions and restrictions by Defendant homeowners' association by allegedly over charging

14 Plaintiff lien amounts pursuant to Defendant's statutory homeowners' association lien. Defendant

15 denies these allegations and raises affirmative defenses.

16 B. Claims for Relief:

- 17 1. Breach of Contract;
- 18 2. Breach of the Implied Covenant of Good Faith and Fair Dealing;
- 19 3. Violation of NRS 116.3116;
- 20 4. Negligent Misrepresentation;
- 21 5. Breach of Fiduciary Duty;
- 22 6. Injunctive Relief;
- 23 7. Declaratory Relief;

24 C. Affirmative Defenses to Complaint:

- 25 1. The incident alleged in the Complaint, and the resulting damage, if any, to Plaintiff,
- 26 was proximately caused or contributed to by the Plaintiff's own negligence, and such
- 27 negligence was greater than the negligence, if any, of this Defendant.
- 28 2. Defendant alleges that the occurrence referred to in the Complaint, and all injuries
- and damages, if any, resulting therefrom, were caused by the acts or omissions of a

1 third party or parties over whom this Defendant has no control.

2 3. All risks and dangers involved in the factual situation described in the Complaint
3 were open, obvious and known to Plaintiff, and said Plaintiff voluntarily assumed
4 said risks and dangers.

5 4. Plaintiff's Complaint on file herein fails to state a claim against this Defendant upon
6 which relief can be granted.

7 5. Defendant alleges that recovery of unlimited punitive or exemplary damages is barred
8 because N.R.S. Chapter 42, as amended, denies this Defendant equal protection of
9 the law under Article Four, Section Twenty of the Nevada Constitution, and the
10 Fourteenth Amendment to the United States Constitution.

11 6. Defendant alleges that any award of punitive or exemplary damages in this action is
12 barred as excessive, as the product of bias or passion and/or by proceedings lacking
13 sufficient guidelines and/or the basic elements of fundamental fairness, under the
14 Due Process Clause of the Fourteenth Amendment to the United States Constitution,
15 and Article One, Section Eight, of the Nevada Constitution.

16 7. Plaintiff has failed to plead any acts or omissions of Defendant sufficient to warrant
17 consideration of exemplary or punitive damages.

18 8. Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses may not have
19 been alleged herein, insofar as sufficient facts were not available after reasonable
20 inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the
21 right to amend its Answer to allege additional affirmative defenses if subsequent
22 investigation warrants.

23 9. The Plaintiff failed to mitigate its damages and may not recover from Defendant
24 herein.

25 10. The Plaintiff has unclean hands and is barred from recovery herein.

26 11. The Plaintiff is estopped from asserting a claim against Defendant herein.

27 12. The Plaintiff has waived any right to a claim against Defendant that may have
28 existed.

13. The Plaintiffs claims are barred pursuant to the Doctrine of Laches.

III.

**LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS
IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE
IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE
OR AS A RESULT THEREOF
16.1 (A)(1)(b) AND 16.1(c)(4)**

A. Plaintiff:

1. Horizons at Seven Hills Declaration. Bates No. 1001-1049.
2. Hawley McIntosh Grant, Bargain and Sale Deed. Bates No. 1050-1055.
3. Hawley McIntosh Deed of Trust. Bates No. 1056-1086.
4. Hawley McIntosh Notice of Default. Bates No. 1087-1088.
5. Horizons at Seven Hills Notice of Default. Bates No. 1089-1090.
6. Trustee's Deed. Bates No. 1091-1095.
7. Quit Claim Deed. Bates No. 1096-1099.
8. Notice of Delinquent Assessment Lien. Bates No. 1100.
9. NAS Demand and Spreadsheet. Bates No. 1101-1103.
10. Horizons at Seven Hills Notice of Default. Bates No. 1104-1105.

B. Defendant:

Will supply within 30 days of the date of February 9, 2012.

IV.

**LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE
INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING
IMPEACHMENT OR REBUTTAL WITNESSES
16.1(a)(1)(A) and 16.1(c)(3)**

A. Plaintiff:

1. Person(s) Most Knowledgeable of IKON HOLDINGS, LLC, a Nevada limited liability company
c/o Adams Law Group, Ltd.
8330 W. Sahara Ave., Suite 290
Las Vegas, Nevada 89117
2. Konnel Peterson
c/o Adams Law Group, Ltd.
8330 W. Sahara Ave., Suite 290

1 Las Vegas, Nevada 89117

- 2 3. Person(s) Most Knowledgeable of HORIZONS AT SEVEN HILLS HOMEOWNERS
3 ASSOCIATION
4 c/o Kurt Bonds, Esq.
5 Alverson Taylor Mortensen and Sanders
6 7401 W. Charleston Blvd.
7 Las Vegas, NV 89117-1401
8 Office: 702.384.7000
9 Fax: 702.385.7000

10 These witnesses will testify to the facts and circumstance which are the subject of this
11 lawsuit.

12 For those witnesses listed for whom no address or phone number has been provided, this
13 information will be supplemented as such information becomes known.

14 Plaintiff has not at this time retained any expert witnesses or consultants who may testify at
15 the time of trial. However, Plaintiff reserves the right to call an expert.

16 Plaintiff may call others now unknown who may have knowledge regarding the facts and
17 circumstances which are the subject of this lawsuit and reserves the right to supplement the
18 foregoing list of witnesses as their identities become known and as discovery continues.

19 Plaintiff may call as a witness any and all persons named as witnesses by any other party and
20 reserves the right to do so.

21 Plaintiff may call as a witness any and all persons identified in written discovery responses
22 by any party in this litigation.

23 Plaintiff may call any witness necessary for rebuttal or impeachment purposes.

24 Plaintiff reserves the right to supplement this list as discovery continues.

25 Plaintiff may call as witnesses any and all persons or custodians of records necessary to
26 authenticated any and all documents, maps, exhibits, recordings, or information of any kind.

27 B. Defendant:

- 28 1. Person(s) Most Knowledgeable of IKON HOLDINGS, LLC, a Nevada limited liability
company
c/o Adams Law Group, Ltd.
8330 W. Sahara Ave., Suite 290
Las Vegas, Nevada 89117

2. Konnel Peterson
c/o Adams Law Group, Ltd.
8330 W. Sahara Ave., Suite 290
Las Vegas, Nevada 89117

3. Person(s) Most Knowledgeable of HORIZONS AT SEVEN HILLS HOMEOWNERS
ASSOCIATION
c/o Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Office: 702.384.7000
Fax: 702.385.7000

These witnesses will testify to the facts and circumstance which are the subject of this lawsuit.

For those witnesses listed for whom no address or phone number has been provided, this information will be supplemented as such information becomes known.

Defendant has not at this time retained any expert witnesses or consultants who may testify at the time of trial. However, Defendant reserves the right to call an expert.

Defendant may call others now unknown who may have knowledge regarding the facts and circumstances which are the subject of this lawsuit and reserves the right to supplement the foregoing list of witnesses as their identities become known and as discovery continues.

Defendant may call as a witness any and all persons named as witnesses by any other party and reserves the right to do so.

Defendant may call as a witness any and all persons identified in written discovery responses by any party in this litigation.

Defendant may call any witness necessary for rebuttal or impeachment purposes.

Defendant reserves the right to supplement this list as discovery continues.

Defendant may call as witnesses any and all persons or custodians of records necessary to authenticated any and all documents, maps, exhibits, recordings, or information of any kind.

V.

DISCOVERY PLAN

16.1(b)(2) and 16.1(c)(2)

A. What changes, if any should be made in the timing, form or requirements for disclosures

- 1 under 16.1(a): None at this time.
- 2 B. When disclosures under 16.1(a)(1) were made or will be made:
- 3 See Sections III and IV above.
- 4 C. Subjects on which discovery may be needed: All claims, defenses, damages, and liabilities
- 5 arising out of the subject matters as set forth in the pleadings.
- 6 D. Should discovery be conducted in phases or limited to or focused upon particular issues:
- 7 At this time the parties agree that the discovery need not be conducted in phases or limited
- 8 to particular issues.
- 9 E. What changes, if any, should be made in limitations on discovery imposed under these rules
- 10 and what, if any, other limitations should be imposed: None at this time.
- 11 F. What, if any, other orders should be entered by Court under Rule 26(c) or Rule 16(b) and (c):
- 12 None at this time.
- 13 G. Estimated time for trial:
- 14 1. Plaintiff's view: 2 days
- 15 2. Defendant's view: 2 days.

16 **VI.**

17 **DISCOVERY AND MOTION DATES**

18 **16.1(c)(5)-(8)**

- 19 1. Close of Discovery: November 9, 2012.
- 20 2. Final date to file motions to amend pleadings or add parties (without further court
- 21 order): August 10, 2012.
- 22 3. Final dates for expert disclosures: Initial experts - August 10, 2012, rebuttal experts
- 23 September 7, 2012.
- 24 4. Final date to file dispositive motions: December 7, 2012.

25 **VII.**

26 **JURY DEMAND**

27 **16.1(c)(10)**

- 28 A jury demand has been filed: No.

1 VII.

2 INITIAL DISCLOSURES/OBJECTIONS

3 16.1(a)(1)

4 If a party objects during the Early Case Conference that initial disclosures are not appropriate
5 in the circumstances of this case, those objections must be stated herein. The Court shall determine
6 what disclosures, if any, are to be made and shall set the time for such disclosure.

7 All parties hereto hereby reserve the right to make all applicable evidentiary objections
8 during the course of discovery and at trial to all documents and witnesses disclosed or that may be
9 disclosed pursuant to the rules of civil procedure and the rules of evidence.

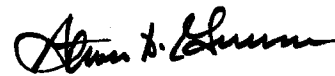
10 This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil
11 Procedure. Each signature constitutes a certification that to the best of the signer's knowledge,
12 information and belief, formed after a reasonable inquiry, the disclosure made by the signer are
13 complete and correct as of this time.

14
15 ADAMS LAW GROUP, LTD.

16 /s/ James R. Adams
17 JAMES R. ADAMS, ESQ.
18 Nevada Bar No. 6874
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21 Tel: 702-838-7200
22 Fax: 702-838-3636
23 Attorney for Plaintiff

24 Alverson, Taylor, Mortensen & Sanders

25 /s/ Eric Hinckley
26 Eric Hinckley, Esq.
27 7401 West Charleston Boulevard
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Ph: 702-384-7000
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Attorney for Defendant



CLERK OF THE COURT

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23 nelovelock@hollandhart.com

DISTRICT COURT

CLARK COUNTY, NEVADA

19 IKON HOLDINGS, LLC, a Nevada limited liability
20 company,

21 Plaintiff,

22 vs.

23 HORIZONS AT SEVEN HILLS HOMEOWNERS
24 ASSOCIATION, and DOES 1 through 10 and ROE
25 ENTITIES 1 through 10 inclusive,

26 Defendant.

Case No. A-11-647850-C
Dept. No. XXVIII

21) **DEFENDANT HORIZONS AT**
22) **SEVEN HILLS HOMEOWNERS'**
23) **ASSOCIATION'S OPPOSITION**
24) **TO PLAINTIFF'S MOTION FOR**
25) **FOR SUMMARY JUDGMENT**
26) **AND COUNTER-MOTION**
27) **FOR SUMMARY JUDGMENT**

KB/19223

**DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNERS' ASSOCIATION'S
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**


**AND
COUNTER-MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant Horizons at Seven Hills Homeowners' Association ("Defendant" or "Horizons"), by and through its counsel of record, Alverson, Taylor, Mortensen & Sanders, and hereby files its Opposition to Plaintiff's Motion for Summary Judgment and Counter-Motion for Summary Judgment.

This Opposition and Counter-Motion is made and based on the following Points and Authorities, the declaration of Debbie Kluska attached hereto as **Exhibit "1"** ("Kluska Declaration"), the papers and pleadings on file herein and any oral argument the Court entertains at the time of hearing on the Motion.

DATED this 14th day of February, 2012.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS


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POINTS AND AUTHORITIES

I.

INTRODUCTION

This litigation is brought by a real estate speculator who purchased a home with the intent of selling or "flipping" the property for a quick profit. When Plaintiff purchased this home, the property was subject to past due fees assessed by Horizons pursuant to the covenants, conditions, and restrictions ("CC&Rs"). However, Plaintiff did not make any payments to Horizons for

1 assessments for over a year, not payments on the past assessments, which Plaintiff claims is at
2 issue, or the assessments that were accruing monthly, which was never at issue. Attached hereto
3 as **Exhibit "1A"** is a true and correct copy of the HOA Payments.

4 It seems that Plaintiff contends that payment was not required because collection fees and
5 costs that are otherwise collectible are not part of a so-called "super-priority" lien and thus do not
6 survive a foreclosure conducted by the holder of a first deed of trust. However, this does not
7 explain why Plaintiff failed to make any payments to Horizons for over a year after obtaining
8 title. *See* Exhibit 1A. Horizons still has not paid any portion of the delinquent assessments that
9 accrued from July 2010, when it took title, until May 2011. *Id.* In addition, Horizons still has
10 not paid any portion of the super-priority lien, not even the amount it does not dispute. *Id.*

11 Importantly, this litigation concerns—and has the potential to significantly impact—the
12 role of homeowners associations ("HOAs") during these difficult economic times. With more
13 foreclosures in Nevada than in any other state, HOAs have stepped up to maintain homes that
14 have fallen into disrepair. Dead or overgrown landscaping is a common problem, as are
15 unattended pools rife with algae. Poorly kept residences create neighborhood blight that
16 depresses surrounding property values—values that have already been devastated by the worst
17 housing market downturn in Nevada history. If HOAs are unable to recover outstanding lien
18 amounts, which include late fees, collection costs, and interest, their task of maintaining these
19 communities becomes much more daunting. Plaintiff is simply upset because these lawful
20 charges impact the bottom line of its real estate speculation.

21 In reality, even under Plaintiff's reasoning, the amount in dispute is approximately
22 \$2,500 as the majority of the assessments were accrued after the foreclosure sale when Plaintiff
23 held title to the property. However, Plaintiff owes Horizons more than \$2,500 in assessments
24 since it did not make payments for approximately one year. *See* Exhibit 1, Kluska Declaration.

25 Still, Plaintiff seeks summary judgment with respect to one issue—that Horizons violated
26 Nevada Revised Statutes ("NRS") 116.3116(2) and its CC&Rs by issuing demand letters and
27 recording notices and liens that are authorized by statute. *See* Motion. However, not only
28

1 should this be rejected, but summary judgment should be granted in favor of Horizons because
2 Chapter 116 of NRS **does not** create a private right of action. Furthermore, Plaintiff is seeking
3 to turn a simple dispute over the meaning of NRS Chapter 116 into a sinister tort-filled action.
4 These wildly over-the-top claims, such as negligent misrepresentation, require dismissal. In
5 addition, without **any** damages, all claims against Horizons, with the exception of declaratory
6 relief, must be dismissed.

7 II.

8 **STATEMENT OF FACTS**

9
10 On or around June 28, 2010, Scott Ludwig purchased the real property located at 950
11 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (hereinafter the "Property") at a
12 foreclosure sale held by the first mortgage lender. The Property is located within Horizons.
13 Horizons had previously recorded a Notice of Delinquent Assessment Lien on June 17, 2009,
14 and a Notice of Default And Election to Sell Under Homeowners Association Lien on August 4,
15 2009 in the amount of \$4,289.50, which would increase until the amount became current.
16 Attached hereto as **Exhibit "2"** is a true and correct copy of the Notice of Delinquent
17 Assessment Lien; attached hereto as **Exhibit "3"** is a true and correct copy of the Notice of
18 Default And Election to Sell Under Homeowners Association Lien. Mr. Ludwig then transferred
19 title of the Property to Plaintiff on or around July 21, 2010. *See* Exhibit 7 to Motion, Quitclaim
20 Deed. As the lien documents were recorded prior to the title transfer, Plaintiff was on notice of
21 Horizons' lien when it obtained title to the Property. Plaintiff did not make any payments to
22 Horizons until May 2011 when it began making monthly assessment payments. *See* Exhibit 1-A.

23 On or around September 30, 2010, Horizons recorded a Notice of Delinquent Assessment
24 Lien ("Lien") against the Property, including the amounts that survived as a super-priority lien
25 and the amounts due and owing as Plaintiff held title to the Property. Attached hereto as **Exhibit**
26 **"4"** is a true and correct copy of the Notice of Lien. On or around November 18, 2010, Horizons
27 recorded a Notice of Default And Election to Sell Under Homeowners Association Lien against
28 the Property. Attached hereto as **Exhibit "5"** is a true and correct copy of the Notice of Lien.

III.

LEGAL AUTHORITY

A. ALL CLAIMS ARE BARRED BECAUSE THE SUPER PRIORITY LIEN PROVIDED IN NRS 116.3116 INCLUDES ASSESSMENTS, INTEREST, COLLECTION COSTS AND ATTORNEY'S FEES

Because collection fees and costs may be included in a HOA's super-priority lien under NRS 116.3116, Horizons complied with NRS 116.3116 when it included such costs in the super-priority lien on the Property.

1. The Plain Language of NRS 116.3116 and Nevada Law Do Not Permit An Illogical Interpretation of NRS 116.3116

The Court must give a clear and unambiguous statute its plain meaning, unless doing so violates the spirit of the act. D.R. Horton, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark, 123 Nev. 468, 476, 168 P.3d 731, 737 (2007). It is well established in Nevada that the words in a statute, "should be given their plain meaning unless this violates the spirit of the act." State Dep't of Ins. v. Humana Health, Ins., 112 Nev. 356, 360 (1999) (*quoting McKay v. Bd. of Supervisors*, 102 Nev. 644, 648 (1986)). When interpreting the plain language of a statute, Nevada courts "presume that the Legislature intended to use words in their usual and natural meaning." McGrath v. Dep't of Public Safety, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007). In doing so, the Court must consider a statute's provisions as a whole, reading them "in a way that would not render words or phrases superfluous or make provisions nugatory." S. Nev. Homebuilders Ass'n v. Clark County, 121 Nev. 446, 339, 117 P.3d 171, 173 (2005) (quotation omitted). Meaningless or unreasonable results should be avoided by courts when interpreting statutes. Matter of Petition of Phillip A.C., 122 Nev. 1284, 1293 (2006). As such, "where a statute is susceptible to more than one interpretation it should be construed in line with what reason and public policy would indicate the legislature intended." County of Clark, ex rel. Univ. Med. Ctr. v. Upchurch, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998) (quotation omitted). Moreover, "when the legislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded." Coast Hotels & Casinos, Inc. v. Nev. State

1 Labor Comm'n, 117 Nev. 835, 841, 34 P.3d 546, 550 (2001).

2 Here, pursuant to the plain language of NRS Chapter 116 and the important policy
3 considerations behind these statutes, Plaintiff's interpretation of NRS 116.3116 is without merit.
4 While the super-priority lien authorized by NRS 116.3116 has one material *temporal* limitation,
5 there is no *numerical* limit capping the lien. Moreover, fees and costs of collection are clearly
6 intended to be considered as part of the super-priority lien. Accordingly, HOAs are entitled to
7 collect fees and costs of collection as a portion of the super-priority lien.

8
9 **2. Assessments Enforceable Under NRS 116.3116 and Given Super Priority
10 Status Include All Reasonable Collection Costs and Fees Relating to the
11 Relevant Nine Month Period**

12 Pursuant to NRS 116.3116, HOAs have a lien on real property to recover assessments
13 owed by delinquent homeowners, a portion of which has a superior position over even a first
14 deed of trust recorded before the delinquency. Nevada law is clear that the component portions
15 of the super-priority lien include both common expenses and multiple other charges and fees that
16 are also deemed to be "enforceable as assessments under this section [NRS 116.3116]" unless
17 said charges are restricted by a community HOA's governing documents.

18 NRS 116.3116 is titled "Liens against units for assessments" and states that:

- 19 1. **The Association has a lien on a unit for any construction**
20 **penalty that is imposed against the unit's owner pursuant to**
21 **NRS 116.310305, any assessments against that unit or any**
22 **finances imposed against the unit's owner from the time the**
23 **construction penalty, assessment or fine becomes due. Unless**
24 **the declaration provides otherwise, any penalties, fees,**
25 **charges, late charges, fines and interest charged pursuant**
26 **to paragraphs (j) to (n), inclusive, of subsection 1 of NRS**
27 **116.3102 are enforceable as assessments under this section.**
28 **If an assessment is payable in installments, the full amount of**
the assessment is a lien from the time the first installment
thereof becomes due.
2. **A lien under this section . . . is also prior to all security**
interests described in paragraph (b) ["a first security interest
on the unit recorded before the date on which the assessment
sought to be enforced became delinquent . . ."] to the extent of
any charges incurred by the Association on a unit pursuant to
NRS 116.310312 and to the extent of the assessments for
common expenses based on the periodic budget adopted by
the Association pursuant to NRS 116.3115 which would

1 have become due in the absence of acceleration during the 9
2 months immediately preceding institution of an action to
3 enforce the lien . . .

4 NRS 116.3116 (emphasis added). Thus, the plain language describing a lien for assessments
5 under the statute clearly incorporates each of the following component assessments into the lien
6 amount "unless the declaration provides otherwise:" (1) any assessment levied against the unit
7 from the time the assessment comes due, (2) penalties, (3) fees, (4) charges, (5) late charges, (6)
8 fines, and (7) interest. There can be no doubt that all charges itemized in NRS 116.3116(1) are
9 meant to be a part of an HOA's lien for assessments where the statute clearly denotes that said
10 charges are "enforceable as assessments under this section" – a section aptly titled "Liens
11 against units for assessments" by the Nevada Legislature in the Nevada Revised Statutes. NRS
12 116.3116 (see statute section title) (emphasis added). The plain language of the statute
13 unequivocally establishes that these are "assessments." Indeed, NRS 116.3116(7) goes on to
14 state that collection costs and attorney's fees are recoverable as part of the lien. Thus, not only
15 does NRS 116.3116 grant an association an enforceable lien for assessments, which includes
16 assessments for common expenses, penalties, fees, charges, interest, attorney's fees, and costs of
17 suit, but Nevada law additionally deems the super-priority portion of the lien to be "prior to all
18 security interests."

19 Importantly, subsection (2) of NRS 116.3116 does not set a numerical cap on the super-
20 priority lien based upon any particular HOA's assessments charged to homeowners. The only
21 material proviso placed on the amount of the HOA's super-priority lien is that any assessment
22 for common expenses "based on the periodic budget adopted by the Association pursuant to NRS
23 116.3115" be limited to a *period* of "9 months preceding institution of an action to enforce the
24 lien."¹ The portion of the HOA lien given super-priority status is defined with regard to a
25 particular time period only – there is no mention in the statute of any numerical limitation or
26 simple mathematical calculation. Indeed, if the Legislature wanted to define the super-priority

27 ¹ There is one other limiting proviso found outside of NRS 116.3116. NRS 116.31162(4) states that "[t]he
28 association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of
the Association . . ." Thus, any portion of assessments for violation fines cannot, by definition (with some limiting
exceptions), be incorporated into a super priority lien for assessments that could be the impetus for foreclosure.

1 lien by some simple mathematical calculation it could have done so simply by setting forth that
2 mathematical calculation in the statute.

3 In addition, NRS 116.3115 defines assessments for common expenses as those “made at
4 least annually.” NRS 116.3115 sets forth several different categories of common expenses that
5 are to be included in the assessments, many of which do not apply equally to all owners. These
6 categories include:

- 7 1. Common expenses for repair of limited common elements, Subsection 4(a);
- 8 2. Common expenses benefitting fewer than all of the units, Subsection 4(b);
- 9 3. Common expenses to pay the cost of insurance, Subsection 4(c);
- 10 4. Common expenses to pay a judgment, Subsection 5; and, most importantly,
- 11 5. **Common expenses caused by the misconduct of any unit’s owner**, Subsection
- 12 6.

13 NRS 116.3115. Clearly (and Plaintiff does not contend otherwise), if an owner fails to pay his or
14 her assessments, that failure is misconduct. If the HOA incurs expenses in an effort to collect
15 those unpaid assessments, under NRS 116.3115(6), those expenses are chargeable to the unit’s
16 owner **as part of the association’s periodic budget under NRS 116.3115.** Because they are
17 part of the HOA’s periodic budget under NRS 116.3115, they are included in the super priority
18 portion of the HOA’s lien under NRS 116.3116(2).

19 **3. NRS 116.3116 is Broader than the UCIOA.**

20 “It is a well-known rule of statutory construction that words shall be given their plain
21 meaning, unless to do so would clearly violate the evident spirit of the statute . . . unless from
22 a consideration of the entire act it appears that some other intendment should be given to it. We
23 cannot arbitrarily ignore plain language, but must be controlled by it, except in the instance
24 mentioned.” Ex parte Zwissig, 178 P. 20, 21 (Nev. 1919) (emphasis added). Thus, where the
25 intent of the Legislature or the evident spirit of the statute would be violated under a plain
26 language interpretation of the statute, effect must be given to the intent of the Legislature and the
27 spirit of the statute.
28

1 In this matter, Plaintiff has relied heavily on the UCIOA in support of its position,
2 neglecting to note that *Nevada's statute is materially different from the UCIOA*. In order to
3 fully understand the intent of the Legislature and the spirit of NRS Chapter 116, it is important to
4 look first at the UCIOA. The UCIOA was originally promulgated in 1982 by the National
5 Conference on Commissioners on Uniform State Laws ("Uniform Law Commissioners" or
6 "ULC"). The UCIOA is a comprehensive act that governs the formation, management, and
7 termination of common interest communities. In 1991, Nevada adopted the UCIOA, with some
8 changes, by enacting NRS Chapter 116.

9 Notably, the super-priority lien as provided in the UCIOA is much more limited than the
10 actual super-priority lien adopted by Nevada. The super-priority lien in all three (3) versions of
11 the UCIOA (1982, 1994 and 2008) is limited to the extent of "common expenses based on the
12 periodic budget adopted by the Association pursuant to section 3-115(a)." *Nevada, however,*
13 *specifically removed the limitation to subsection (a)* (which is Subsection 1 of NRS 116.3115 in
14 Nevada's statutory format). Thus, common expenses for purposes of the super-priority lien
15 under the UCIOA are limited to 3-115(a), while common expenses for purposes of the super-
16 priority lien in Nevada include *all* of NRS 116.3115. In other words, "common expenses" is
17 much broader under the Nevada statute than it is under the UCIOA, and includes amounts
18 assessed against a specific unit. Such common expenses, including those costs and fees caused
19 from a unit owner's misconduct, must be included in Nevada's super-priority lien amount. Thus,
20 by broadening the super-priority lien to include common expenses under all subsections of NRS
21 116.3116, the Nevada Legislature plainly intended to allow Nevada HOA's and their attorneys or
22 collection agencies to assess and recover as assessments the fees and costs of collection while
23 enforcing the super-priority lien.

24
25 **4. Plaintiff's Interpretation of NRS 116.3116 Creates Unreasonable and Absurd**
26 **Results and Contradicts the Spirit of the Act.**

27 Plaintiff's interpretation of NRS 116.3116 violates the spirit of the Act and creates absurd
28 results. The obvious and undisputed public policy underlying the "super-priority" lien is to

1 compensate HOAs for the unpaid assessments that are incurred prior to a lender foreclosure.
2 Borrowers who are in default with their lenders simultaneously default on their HOA obligations,
3 almost without exception. *See* Exhibit 1, Kluska Declaration. This results in unpaid
4 assessments and neglected properties. *Id.* By giving priority to the HOA ahead of a lender's
5 deed of trust, HOAs are able to pay bills, abandoned properties do not become blighted, and
6 neighboring "good" homeowners who pay their bills are not subjected to higher HOA fees. *Id.*
7 Horizons (along with most other HOAs in Nevada) lacks the resources, staff, and ability to
8 pursue collections on its own. *Id.* While Horizons possesses a statutory lien pursuant to NRS
9 Chapter 116 on such assessments, it must take active steps to collect if it has any chance of
10 recovering amounts that are past due. *Id.* As a result, without collection agencies to pursue these
11 past due charges, HOAs would have little or no ability to enforce their rights to collect said
12 charges from homeowners who do not pay voluntarily, thereby significantly increasing the costs
13 to those homeowners who are not delinquent. *Id.*

14 As a result, Horizons has engaged Nevada Association Services, Inc. to pursue
15 collections of unpaid assessments and penalties. *Id.* Collecting interest, late fees, and costs of
16 collection as part of Nevada's super-priority lien is and has been common practice in the industry
17 for years. *Id.* An integral part of the collection process is the recording of a notice of lien with
18 the Clark County Assessor. *Id.* Such recordation provides notice of the super-priority lien to
19 subsequent purchasers after foreclosure. *Id.*

20 The types of charges HOAs retain their collection agencies to collect often include many
21 different categories of assessments for common expenses. *Id.* These assessments for common
22 expenses can include special assessments for repairs to common areas, charges for late payment
23 of assessments, and fees or charges for the use, rental or operation of the common elements. *Id.*

24 In addition, to pursue collection, HOAs and their collection agencies are forced to incur
25 out of pocket costs, such as publication costs in advance of a foreclosure sale. *Id.* The out of
26 pocket costs alone for publication and posting in advance of a foreclosure in Las Vegas are
27 approximately \$500.00. Depending on the monthly amount due from the homeowner, the
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1 publication costs alone often exceed the “nine times” super-priority lien calculation proposed by
2 Plaintiff in this case. Id. As a result, using the calculation proposed by the Plaintiff in this case,
3 a HOA would never bother to pursue collection through a collection agency, as the out-of pocket
4 costs alone would exceed the amount recoverable. Id.

5 Given the foregoing, if HOAs cannot recover reasonable collection costs, they will be
6 effectively unable to pursue and collect from property owners who are in violation of the CC&Rs
7 when there is a lender foreclosure. Id. As such, Plaintiff’s position, which offers the conclusion
8 that collection fees and costs are not assessments and the super-priority lien has “a maximum
9 figure equaling 9 times the association’s regular, monthly (not annual) assessments” would
10 create an “unreasonable” and “absurd” result.

11 Plaintiff’s position provides for an inherently inequitable result from a given HOA’s
12 perspective. Consider, for example, one HOA where the total common expenses that would
13 have become due in the 9 month period immediately preceding the first action to enforce the lien
14 totaled \$95, excluding collection fees and costs and another HOA where the total common
15 expenses that would have become due in the 9 month period immediately preceding the first
16 action to enforce the lien totaled \$950, excluding collection fees and costs. Under Plaintiff’s
17 argument, the relatively “poor” HOA will be able to recover only \$95, whereas the relatively
18 “rich” HOA will be able to recover \$950. Although it is highly unlikely even the “rich”
19 neighborhood could even absorb the prohibitive costs of collecting on such limited amounts, the
20 “poor” HOA would never be able to afford the cost of collecting from a delinquent homeowner.
21 Indeed, no HOA could possibly hope to recover its collection fees and out of pocket costs for a
22 mere \$95. It is fiscal nonsense to expect an HOA to pay several thousand dollars out of its own
23 pocket to collect only a few hundred dollars in assessments. This could not possibly have been
24 the result envisioned by the Legislature when it enacted NRS 116.3116.

25 Indeed, Plaintiff’s interpretation of the statute would encourage poor public policy. If
26 costs of collection were not recoverable as part of a super-priority lien, the Legislature would
27 have created a disincentive for HOA community managers and collection agencies to attempt
28

collection of delinquent assessments. Instead, the only alternative for a HOA would be to file a judicial foreclosure action in accordance with NRS 116.3116(7), which specifically allows for “costs and reasonable attorney’s fees” as part of the recovery.² However, this would necessarily require (1) the hiring of an attorney; (2) the filing of a civil action; and (3) a race to the courthouse between the HOA and the trust deed holder for the borrower which is in default. *See* Exhibit 1, Kluska Declaration. The obvious result would be a flood of civil lawsuits and a flood of foreclosures—results that are plainly contrary to the public purpose of the statute itself—that might otherwise be avoided. Such a ridiculous and obscene result promises to increase the number, speed, and cost of foreclosures at a time when Nevada’s real estate market (and its property values) are hanging on by a thread. Nevada law strictly forbids such a nonsensical statutory interpretation. *See Upchurch*, 114 Nev. at 753, 961 P.2d at 757 (“where a statute is susceptible to more than one interpretation, it should be construed in line with what reason and public policy would indicate the legislature intended.”) Accordingly, fees and costs of collection (without a numerical cap) clearly must have been intended to be part of the HOA’s super-priority lien.

Horizons’ concerns are particularly important and significantly impact the role of HOAs during these difficult economic times. With more foreclosures in Nevada than in any other state, HOAs have stepped up to maintain homes that have fallen into disrepair. *See* Exhibit 1, Kluska Declaration. Poorly kept residences create neighborhood blight that depresses surrounding property values – values that have already been devastated by the worst housing market downturn in Nevada history. *Id.* If HOAs are unable to recover the costs of collection, in addition to the delinquent assessments themselves, then HOAs have no ability to collect the delinquent assessments, and their task of maintaining these communities becomes much more daunting. *Id.*

For instance, the Winokur law review article relied upon by Plaintiff sets forth some of

² Interestingly, Plaintiff’s counsel argued in this case that the filing of a “civil action” is required to even recover any part of a super-priority lien, simply because the words “civil action” are used in NRS 116.3116(7). No court has adopted this argument. Of course, if a “civil action” is not required to recover any part of a super-priority lien, it follows that subsection 7 expressly allows for the recovery of reasonable fees and costs.

the important policy implications in granting HOAs the ability and the means to collect past due assessments. Indeed, the article notes that “the financial strength of an association often bears strongly on the value of the housing units in which both lenders and residents have invested.” Winokur, Meaner Lienor Community Associations: The “Super Priority” Lien and Related Reforms Under the Uniform Common Interest Ownership Act, 27 Wake Forest L. Rev. 353, 359 (1992). However, “[i]n hard economic times, assessment collection typically becomes both more important and less effective.” *Id.* at 357. Indeed, in difficult economic times—the current Nevada foreclosure crisis being a perfect example—foreclosures and abandonment of units severely deplete the assessment base, making it exceedingly difficult for HOAs to maintain common elements. *Id.* at 360. In fact, when “assessments go uncollected, . . . the defaulting homeowner’s share of community costs to maintain common elements currently falls on those least responsible for the default—neighboring homeowners who regularly pay their assessments, remain in good standing, and constitute the community association.” *Id.* at 359. In other words, when delinquent homeowners fail to pay assessments due the HOA, the resultant burden and expense will fall on those “good” homeowners, unless the HOA has a means to recover the delinquent assessments.³

The means to recover the delinquent assessments is the super-priority lien established by the Nevada Legislature. However, “since individual delinquencies are often small components of a substantial total of assessments owed by all residents in a community, *enforcement of assessment delinquencies will often not take place if the association lacks recourse to recover its expenses.*” Winokur, *supra*, at 363 (emphasis added). In other words, if an HOA is permitted to recover only a certain amount of its delinquent assessments without the ability to recover collection costs above that number, the HOA simply will not have the means to recover the past due assessments, unless, of course, the HOA passes those substantial collection costs onto the

³ It is also important to note that, although the “good” homeowners bear this financial responsibility, they have no control over the financial worthiness of their neighbors. The financial institutions, however, do. Financial institutions review (or at least were supposed to have reviewed) the income and credit worthiness of a prospective purchaser before making the decision to lend the purchase price. Having made a poor decision, the financial institutions should not now be able to impose the entire responsibility for that poor decision on the “good” homeowners.

1 law-abiding homeowners who pay their assessments.

2 In addition, this Court must consider Hudson House Condominium Ass'n, Inc. v. Brooks,
3 611 A.2d 862, 865 (Conn. 1992), the only legal authority on point fashioned by a state supreme
4 court. Hudson House goes precisely to the spirit and purpose of the legislation as a whole and
5 the unreasonable and absurd results created by "fashioning a bow without a string or arrows."
6 The Connecticut Supreme Court stated:

8 In construing a statute, we assume that "the legislature
9 intended to accomplish a reasonable and rational result."
10 Section 47-258(a) creates a statutory lien for delinquent
11 common expense assessments. Section 47-258(j) authorizes
12 the foreclosure of the lien thus created. Section 47-258(b)
13 provides for a limited priority over other secured interests for
14 a portion of the assessment accruing during the six month
15 period preceding the institution of the action. Section 47-
16 258(g) specifically authorizes the inclusion of the costs of
17 collection as part of the lien.

18 *Since the amount of monthly assessments are, in most
19 instances, small, and since the statute limits the priority
20 status to only a six month period, and since in most
21 instances, it is going to be only the priority debt that in fact
22 is collectible, it seems highly unlikely that the legislature
23 would have authorized such foreclosure proceedings
24 without including the costs of collection in the sum entitled
25 to a priority.*

26 *To conclude that the legislature intended otherwise would
27 have that body fashioning a bow without a string or arrows.*

28 611 A.2d at 866 (emphasis added) (citations omitted).

From a purely logical standpoint, it is absurd to imagine the Nevada Legislature granted
HOAs a super-priority lien with no practical ability to enforce it. The numerical maximum set
forth by Plaintiff, however, comes to just that conclusion. Indeed, if an HOA bills \$40 per
month⁴ to each homeowner, according to Plaintiff, the maximum of assessments, which may
include collection costs and fees, that the HOA could recover is \$360.⁵ Notwithstanding the

4 Another problem with setting a numerical maximum based on a multiple of 9 times the "monthly assessment amount" is Plaintiff's definition of "the monthly assessment amount." NRS 116.3115 provides many different manners in which a homeowner is assessed for common expenses. NRS 116.3115(1) mandates all HOAs to create an "annual assessment," but the manner in which this "annual assessment" is collected is determined by the HOA. Some associations collect this "annual assessment" yearly or quarterly.

5 The blatant unfairness of this numerical cap is readily apparent when one considers Regulation No. R199-09

1 blatant unfairness the numerical maximum concept imparts on HOAs with smaller assessments,
2 it is simply not possible to complete (or even begin) the collection process for a mere \$360.

3
4 Indeed, the out of pocket costs to publish and post prior to foreclosure exceed the
5 recoverable amount under such a scenario. Therefore, should that HOA decide to pursue
6 collection, it would be forced to pay more in collection costs than it would ever recover, and
7 pursuit of that collection would be cost prohibitive. The Nevada Legislature simply could not
8 have meant to give HOAs a lien with no means to enforce it—i.e., a bow without a string or
9 arrows. Indeed, if that was the intent of the Legislature, why did it bother establishing a super-
10 priority lien in the first place?

11 Thus, the numerical maximum simply is not logical from a practical standpoint. Instead,
12 to be able to actually recover assessments owed by a delinquent homeowner to the HOA, the
13 HOA must also have the ability to recover its reasonable collection costs. In making this
14 decision, the Court must take into account the practical results of the interpretation of NRS
15 116.3116, even though those results were effectively undisputed by Plaintiff. Accordingly,
16 Plaintiff's interpretation of NRS 116.3116 creates unreasonable and absurd results, and
17 contradicts the spirit of the act, as prohibited by Las Vegas Police Protective Ass'n, 122 Nev. at
18 242, 130 P.3d at 191.

19 **5. The Super-Priority Lien Must Be Read In Context, Including the Broad**
20 **Reference to NRS 116.3115.**

21 Plaintiff argues that there is not a significant difference between the UCIOA and NRS
22 Chapter 116. The relevant super-priority lien language in Nevada states the lien has a priority
23 "to the extent of the assessments for common expenses based on the periodic budget adopted by
24 the association pursuant to NRS 116.3115...." NRS 116.3116(2). In stark contrast, the
25 Uniform Acts (the 2008 version *and* prior versions) limit the super-priority lien to the extent of
26 common expenses adopted "pursuant to Section 3-115(a)." The Nevada statute is broader,
27 however, and limits the super-priority lien only to common expenses adopted pursuant to all of

28 recently adopted by the Commission, which establishes the amount of reasonable collection costs. *See Exhibit "6"*,
which is a true and correct copy of Regulation R199-09.

1 NRS 116.3115, with no subsection limitation. In other words, "common expenses" include
2 assessments imposed under all of NRS 116.3115, not just NRS 116.3115(1), which means that
3 assessments are not merely limited to the equivalent of nine monthly assessment payments by a
4 prototypical homeowner.

5 However, contrary to Plaintiff's argument that the language "to the extent of" means
6 there is a numerical maximum to the super-priority lien, NRS 116.3115, broad as it is,
7 demonstrates the statute contains no such maximum. The key question in the super-priority lien
8 analysis is "to the extent of" what? The answer is to the extent of assessments for common
9 expenses based on all of NRS 116.3115, not just NRS 116.3115(1).

10 Notably, the UCIOA, upon which Plaintiff relies so heavily, is much more limited than
11 the version that was actually adopted by Nevada. The super-priority lien in all three (3) versions
12 of the UCIOA (1982, 1994, 2008) is stated as to the extent of "common expense assessments
13 based on the periodic budget adopted by the association pursuant to Section 3-115(a)."
14 (emphasis added). Nevada, however, specifically removed the reference to subsection (a) (which
15 would be subsection (1) as set forth in Nevada's statute). Thus, while common expenses for
16 purposes of the super-priority lien under the UCIOA are limited to the extent of 3-115(a),
17 common expenses for purposes of the super-priority amount in Nevada include all of NRS
18 116.3115. In other words, the calculation of "assessments" within the super-priority period is
19 much broader under the Nevada statute than it is under the Uniform Act and includes specific
20 amounts assessed against a specific unit during that time period, such as unit specific utility costs
21 pursuant to NRS 116.3115(4)(c) and specific costs of misconduct pursuant to NRS 116.3115(6).
22 The Nevada super-priority lien therefore exists to the extent of such common expenses, including
23 those costs and fees caused from a unit owner's misconduct.

24 NRS 116.3115 has a rather broad formulation of assessments for common expenses.
25 Generally, other than those "assessments under subsections 4 to 7," common expenses must be
26 assessed against all units and the association must establish adequate reserves. NRS
27 116.3115(2). Those "assessments under subsections 4 to 7" include, e.g., amounts assessed for
28

1 maintenance and restoration under subsection (4)(a), common expenses benefiting fewer than all
2 units under subsection 4(b), and costs of insurance and utilities under subsection 4(c).
3 Significantly, NRS 116.3115(6) states “[i]f any common expense is caused by the misconduct of
4 any unit’s owner, the association may assess that expense exclusively against his or her unit.”
5 NRS 116.3115(6). Undoubtedly, a failure to pay amounts due and owing to the HOA is
6 considered misconduct on the part of a homeowner and therefore costs and fees accrued due to
7 this misconduct are chargeable to that particular unit.

8 Therefore, because the super-priority lien under NRS 116.3116 exists “*to the extent* of
9 *the assessments for common expenses* based on the periodic budget adopted by the association
10 *pursuant to NRS 116.3115*,” the super-priority lien exists to the extent of those common
11 expenses included in ALL of NRS 116.3115. The limitation “to the extent of” does not specify
12 or refer to some arbitrary numerical limitation based upon one subsection of NRS 116.3115.
13 Instead, “to the extent” of must be read in the context and language of the whole sentence, *i.e.*,
14 “to the extent” of those assessments for common expenses defined in NRS 116.3115 that would
15 have become due in the relevant nine-month period.⁶ See Karcher Firestopping v. Meadow
16 Valley Contractors, Inc., 204 P.3d 1262, 1263 (Nev. 2009) (“Plain meaning may be ascertained
17 by examining the context and language of the statute as a whole.”).

18 Given the foregoing, the broad Nevada super-priority lien exists “to the extent” of
19 common expenses as listed in all of NRS 116.3115. The plain language of the super-priority lien
20 does not set forth a numerical maximum but, instead, a limitation as set forth in NRS 116.3115.
21 Because Nevada’s super-priority lien broadly relates to all of NRS 116.3115, as opposed to only
22 the first subsection in the Uniform Acts, the Nevada Legislature adopted a broad super-priority
23 lien that includes all costs of collection. Horizons therefore requests that the Court deny
24 Plaintiff’s Motion for Summary Judgment as there is no numerical maximum to Nevada’s super-
25

26 ⁶ By way of another example, HOAs at high-rise condominium developments typically have one electrical meter,
27 the charges from which are paid by the HOA. Such a charge is unquestionably a common expense. Indeed, under
28 NRS 116.3115(4)(c), the HOA must assess the costs of this utility proportionally based on usage, in which these
HOAs do in fact bill, on a monthly basis, the specific utility costs to the specific owner. Because this utility charge
is yet another common expense that is assessed under NRS 116.3115, it too would be included in the super-priority
lien.

1 priority lien, so that amounts arising under NRS 116.3115 during the relevant nine month period
2 (which would include reasonable collection costs) are included in the super-priority lien.
3

4 **6. Legislative History Does Not Support a Decision by the Legislature to**
5 **Exclude Collection Fees and Costs.**

6 Plaintiff has brought to the attention of the Court the fact that there have been several
7 proposed amendments to NRS 116 that have not passed. Plaintiff argues the fact that these
8 amendments have not passed is evidence that the Legislature does not intend fees and costs of
9 collection to be included in the super-priority lien. This is a flawed argument, however, foremost
10 because the Legislature's decision not to pass a bill is not controlling here. Furthermore, and along
11 those same lines, the proposed amendments made multiple changes to the statute and there is no
12 indication in the record that the failure to enact these changes was in any way related to the
13 issues before this Court. In fact, when the Legislature was considering the most recently
14 proposed amendment to this statute, AB 174, it was undoubtedly aware of the Korbel decision
15 and the fact that at least some district court judges have held the fees and costs of collection are
16 included in the super-priority lien. For example, in the April 15, 2011 Senate Committee on
17 Judiciary, Michael Buckley stated, "There is a decision in the Eighth Judicial District Court
18 that attorney's fees and collection costs are part of the super priority." See Exhibit "7", p. 16,
19 which is a true and correct copy of the Minutes of the Senate Committee on Judiciary.

20 Similarly, with regard to AB 174, Plaintiff contends that Senator Allison Copenig
21 proposed this bill to change the current law to allow for inclusion of fees and costs of collection
22 in the super-priority lien. This is simply not the case. In discussing AB 174, Senator Copenig
23 states, "These are the costs a collection company can charge. A homeowners' association can
24 retain an attorney to foreclose on a home, for example, and it is part of the super-priority lien. *We*
25 *are not changing law.*" See Exhibit "7", p.8 (emphasis added).

26 In addition to the proposed amendments cited by Plaintiff, AB 448 proposed amending the
27 statutory super priority language to read:
28

///

The lien is also prior to all security interests described in paragraph (b) but only in an amount not to exceed charges incurred by the association on a unit pursuant to NRS 116.310312 plus an amount not to exceed *nine times the monthly assessment* for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which is in effect at the time of the commencement of a *civil action* to enforce the association's lien . . .

See Exhibit "8", p.43-44. This amendment appears to have been designed to change NRS 116.3116 to more closely match Plaintiff's proposed interpretation of that statute. Significantly, AB 448 was not passed.

7. The Commission Recently Adopted an Advisory Opinion Supporting The Association's Interpretation of the Super-Priority Lien.

On December 8, 2010, the CCIC issued its advisory opinion ("Advisory Opinion") that specifically concludes that all reasonable costs of collecting are part of the super-priority lien. The Advisory Opinion explicitly rejected a numerical maximum for the super-priority lien:

The argument has been advanced that limiting the super priority to a finite amount . . . is necessary in order to preserve this compromise and the willingness of lenders to continue to lend in common interest communities. The State of Connecticut, in 1991, NCCUSL, in 2008, as well as "Fannie Mae and local lenders" have all concluded otherwise.

Accordingly, both a plain reading of the applicable provisions of NRS §116.3116 and the policy determinations of commentators, the state of Connecticut, and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority lien."

See Exhibit "9", which is a true and correct copy of the Advisory Opinion. The Nevada Supreme Court has made it clear that courts are to give "great deference" to administrative interpretation. Imperial Palace, 108 Nev. at 1067, 843 P.2d at 818; DaimlerChrysler Services, 121 Nev. 541, 119 P.3d 135; Thomas v. City of N. Las Vegas, 122 Nev. 82, 101 127 P.3d 1057 (1070) (2006) (citing Chevron U.S.A. v. Not. Res. Def. Council, 467 U.S. 837 (1984). Indeed, particularly for pure questions of statutory interpretation, courts should defer to agency interpretations. See, e.g., Human Soc'y of U.S. v. Locke, ___ F.3d ___, 2010 WL 4723195, at 9

1 (9th Cir. 2010) ("If a statute is ambiguous, and if the implementing agency's construction is
2 reasonable, Chevron requires a federal court to accept the agency's construction of the statute,
3 even if the agency's reading differs from what the court believes is the best statutory
4 interpretation.'" (quoting Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Serv., 545 U.S.
5 967, 980 (2005)).

6 The conclusion reached by the CCIC in issuing its Advisory Opinion clearly
7 demonstrates the intent of the CCIC to allow recovery of fees and collection costs where all other
8 assessments accruing during the relevant time period remain unpaid. Accordingly, the following
9 amounts may be included as part of the super-priority lien amount, to the extent the same relate
10 to the unpaid 6 or 9 months of super priority assessments: (a) interest permitted by NRS
11 116.3115, (b) late fees or charges authorized by the declaration in accordance with NRS
12 116.3102(1)(k), (c) charges for preparing any statements of unpaid assessments pursuant
13 to NRS 116.3102(1)(n) and (d) the "costs of collecting" authorized by NRS 116.310313. **Exhibit**
14 **"9"**, CCIC Advisory Opinion, p.14. Thus, when the CCIC wrote that the "costs of collecting"
15 may be included as part of the super-priority lien, the CCIC did so with the express
16 contemplation that such "costs of collecting" would be part of the SPL, even where there are "6 or
17 9 months of super priority assessments" that are unpaid.

18 Moreover, the CCIC Advisory Opinion explicitly rejected the position taken by Plaintiff,
19 stating:

21 The argument has been advanced that limiting the super priority to
22 a finite amount . . . is necessary in order to preserve this
23 compromise and the willingness of lenders to continue to lend in
24 common interest communities. The State of Connecticut, in 1991,
NCCUSL, in 2008, as well as "Fannie Mae and local lenders"
have all concluded otherwise.

25 Accordingly, both a plain reading of the applicable provisions of
26 NRS §116.3116 and the policy determinations of commentators,
the state of Connecticut, and lenders themselves support the
27 conclusion that associations should be able to include specified
costs of collecting as part of the association's SPL.

28 ///

1 Id., p.12. Indeed, the CCIC Advisory Opinion contemplates only a temporal limitation on the
2 amount of the HOA's lien that is entitled to super priority:
3

4 [A]lthough the assessment portion of the SPL is limited to a finite
5 number of months, because the assessment lien itself includes 'fees,
6 charges, late charges, attorney fees, fines, and interest,' these
7 charges may be included as part of the SPL amount.

8 Thus, the super-priority lien is that portion of the HOA lien that accrues during the finite number
9 of months (nine months) preceding an action to enforce the lien. The super-priority lien itself is
10 the only limitation on that portion of the HOA's lien entitled to super priority, and the super-
11 priority lien is defined temporally, not numerically.

12 Because there is a reasonable opinion as to the statutory interpretation of NRS
13 116.3116(2) that was issued by the agency tasked with enforcing NRS Chapter 116, the
14 Nevada Real Estate Division, this opinion should be considered highly persuasive authority.
15 The Nevada Supreme Court has made it clear that courts are to "give deference to
16 administrative interpretations." Thomas v. City of N. Las Vegas, 122 Nev. 82, 101, 127 P.3d
17 1057, 1070 (2006) (citing Chevron U.S.A. v. Nat. Res. Def. Council, 467 U.S. 837 (1984)).

18 Finally, the Nevada Real Estate Division's Winter 2010 Publication referenced AB 204,
19 which became effective 2009 and increased the time period of the SPL from six months to nine
20 months. *See Exhibit "10"*, which is a true and correct copy of the Nevada Real Estate Division
21 Winter 2010 Publication. In that publication, the division specifically characterized AB 204 as
22 allowing for the collection of "related costs" in addition to assessments. Id. at 2. While not
23 binding, it is extremely telling that the agency's own characterization of NRS 116.3116 indicates
24 that collection costs are part of the super-priority lien.

25 Because this is a reasonable opinion as to the statutory interpretation of NRS
26 116.3116(2) that was issued by the Nevada Real Estate Division, the same agency that
27 administers the procedures for CC&R's and HOA's, this opinion should be considered highly
28 persuasive authority. Indeed, the Nevada Supreme Court has explicitly stated deference must
be given to agency interpretations. As such, the Association requests that the Court deny

1 Plaintiff's Motion for Summary Judgment as the super-priority lien contains no numerical cap.
2

3 **8. The Eighth Judicial District Court Properly Decided Korbel**

4 The instant issue was previously decided in the Eighth Judicial District Court resulting in
5 a ruling wherein the super priority lien included interest, collection costs and attorney's fees.
6 Plaintiff has argued that the Korbel decision should not be given much weight because the
7 Court's Order was not detailed. Although the Korbel order is short, it is undisputed that the
8 arguments resulting in that order were detailed, fully argued, and regarding the same issues as
9 occurring in the instant case.
10

11 Like here, the principal issue in *Korbel* was whether HOA collection fees survived
12 foreclosure based upon the so-called "super priority" lien of NRS 116.3116. Indeed, in a hearing
13 on September 18, 2006, Judge Glass noted the legal dispute over the interpretation of NRS 116
14 and specifically directed the parties submit additional briefing on the super-priority lien issue.
15 See Minutes of September 18, 2006 Hearing, attached hereto as **Exhibit "11"**. The parties
16 thereafter submitted detailed briefs, focusing solely on interpreting the super-priority lien in NRS
17 116.3116(2). See Plaintiff's Brief, attached hereto as **Exhibit "12"** (stating the legal issue
18 presented was what is the correct application of NRS 116.3116(2)); Defendant's Brief, attached
19 hereto as **Exhibit "13"** (stating its brief supported its position regarding judicial interpretation of
20 NRS 116.3116).
21

22 The court thereafter held a hearing on the matter on November 20, 2006, which was
23 memorialized in an order dated December 22, 2006. See Minutes of November 20, 2006
24 Hearing, attached hereto as **Exhibit "14"**; Order, attached hereto as **Exhibit "15"**. While the
25 prevailing counsel who prepared the order did not prepare specific findings, it is clear from the
26 ruling, after specific briefing as to a discrete issue, that Judge Glass held that collection fees and
27 costs were recoverable as part of the super-priority lien, and that Mr. Korbel's legal challenge
28

1 under NRS 116.3116 could not prevail. As a result, Judge Glass concluded the HOA was
2 entitled to recover assessments for common expenses, late fees, interest, costs of collection, and
3 a transfer fee. See **Exhibit "15"**. Mr. Korbel did not appeal Judge Glass's decision. Moreover,
4 Korbel has become the recognized law in the industry, with acceptance of this precedent by the
5 Federal Home Loan Mortgage Corporation ("Freddie Mac"). See **Exhibit "16"**.
6

7 Therefore, the Korbel order's lack of specific reasoning for the judge's decision in no
8 way detracts from the fact that Judge Glass actually and thoroughly considered the Nevada
9 super-priority lien, obtained thorough briefing, analyzed the competing readings of the statute,
10 heard oral argument and, only then, did she make a ruling that the super-priority lien did indeed
11 contain collection costs, with no numerical maximum. Horizons therefore respectfully requests
12 the Court deny Plaintiff's Motion for Summary Judgment based on the Korbel opinion, the only
13 known district court decision involving Nevada's super-priority lien.
14

15 **B. HORIZONS COMPLIED WITH ITS CC&Rs**

16 Plaintiff claims that Horizons violated the CC&Rs because Horizons was only entitled to
17 "6 times Defendants monthly assessment for the period of time prior to" the foreclosure sale. See
18 Motion. However, as discussed above, this argument is not supported by law, and the CC&R's
19 clearly indicate that Horizons is not limited to some numerical formula. Section 7.9 of the
20 Association's CC&R's provides:
21

22 A lien for assessments, including interest, costs and attorneys' fees as provided
23 for herein, shall be prior to all other liens and encumbrances on a Unit, except for:
24 (a) liens and encumbrances Recorded before the Declaration was Recorded; (b) a
25 first Mortgage Recorded before the delinquency of the assessment sought to be
26 enforced (except to the extent of Annual Assessments which would have become
27 due in the absence of acceleration during the six (6) months immediately
28 preceding institution of an action to enforce the lien), and (c) liens for real estate
taxes and other governmental charges, and is otherwise subject to NRS §
116.3116. **The sale or transfer of any Unit shall not affect an assessment lien.**

///

See CC&Rs, attached hereto as **Exhibit "17"**. The CC&R's indicate that Horizons' lien would remain on the property following a sale of any kind, including a foreclosure sale. Horizons further granted itself authority to recover all costs associated with collecting on the past due assessments. As the CC&R's permit Horizons to file a lien on the property following delinquent assessments and 'the sale or transfer of any Unit shall not affect an assessment lien,' Horizons did not breach the CC&R's by attempting to collect its super-priority lien from Plaintiff.

Still, while the CC&R's seemingly limit the super-priority lien to six months, NRS Chapter 116 allows recovery for nine months. Even if the CC&R's are conflicting amongst themselves or even allegedly extinguish the amounts owed under Horizons' lien prior to the foreclosure sale, NRS 116 prevails over all CC&R's. NRS 116.1206 provides,

1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

(emphasis added).

Assuming *in arguendo* that Horizons' CC&R's indicate that the subsequent homeowner is not liable for the portion of Horizons' assessment lien that became due prior to the foreclosure sale, NRS 116 supersedes any such provision regardless of when the CC&R's were adopted. NRS 116, in fact, provides no relief for Plaintiff's position that the portion of the Horizons' assessment lien which became due prior to the foreclosure sale is extinguished upon the foreclosure sale and does not remain on the property for the new owners. In actuality, as fully discussed above, NRS 116.3116 provides that the lien remains on the subject property and receives 'super priority,' even over a first mortgage. Clearly, Horizons' position is unsupported

1 by NRS Chapter 116.

2 **C. NRS CHAPTER 116 DOES NOT CREATE A PRIVATE RIGHT OF ACTION**

3
4 Plaintiff's claim for relief is based upon NRS 116.3116. However, this claim must fail
5 because NRS 116.3116 does not create a private right of action. The legislative scheme
6 expressed in Chapter 116 establishes a purely regulatory enforcement mechanism. *See* NRS 116
7 *et. seq.* NRS expressly states the Nevada Real Estate Division has **exclusive** jurisdiction to
8 interpret and administer the provisions of NRS Chapter 116. *See, e.g.,* NRS 116.615.
9 Importantly, NRS 116.760 states as follows:

10
11 **1. Except as otherwise provided in this section, a person who is**
12 **aggrieved by an alleged violation may, not later than 1 year**
13 **after the person discovers or reasonably should have**
14 **discovered the alleged violation, file with the Division a written**
15 **affidavit that sets forth the facts constituting the alleged**
16 **violation. The affidavit may allege any actual damages suffered by**
17 **the aggrieved person as a result of the alleged violation.**

18 NRS 116.760. As such, the remedies for violations of NRS Chapter 116 are contained
19 exclusively in NRS 116.745 through 116.795 and can be enforced ***only*** by Nevada's Real Estate
20 Division. Thus, not only does Plaintiff fail to allege any facts supporting a claim under NRS
21 Chapter 116, but Plaintiff has no right to bring such a claim even if it could allege adequate facts.
22 The simple fact is, claims for violations under NRS Chapter 116 must be brought to the Nevada
23 Real Estate Division and are enforceable only by said division. As such, Plaintiff's claim for
24 violations under NRS 116 fails as a matter of law and must be dismissed.

25 **D. BECAUSE PLAINTIFF HAS NOT SUFFERED DAMAGES, EACH CAUSE OF**
26 **ACTION, WITH THE EXCEPTION OF DECLARATORY RELIEF, MUST BE**
27 **DISMISSED**

28 Plaintiff has asserted the following causes of actions against Horizons: (i) breach of
contract; (ii) breach of the implied covenant of good faith and fair dealing; (iii) violation of NRS
116; (iv) negligent misrepresentation; (v) breach of fiduciary duty; (vi) injunctive relief; and (vii)
declaratory relief. Each cause of action is based upon the premise that collection fees and costs

1 that are otherwise collectible are not part of a so-called "super-priority" lien and thus do not
2 survive a foreclosure conducted by the holder of a first deed of trust. *See* Complaint. However,
3 importantly, with the exception of declaratory relief and injunctive relief, each cause of action
4 requires damages. However, quite simply, Plaintiff has not been damaged.

5 Plaintiff has not alleged nor suffered any damages. Plaintiff has not made any payment
6 to Horizons in relation to the super-priority lien, not even the amount that it does not dispute.
7 *See* Exhibit 1. In fact, Plaintiff did not make any of the monthly payments that were due to
8 Horizons for over a year and still has not paid for those delinquent amounts. *Id.* As such,
9 Plaintiff has not sustained any damages.

10 It is well-settled law that breach of contract and breach of the implied covenant of good
11 faith and fair dealing requires that Plaintiff sustain damages as a result of the breach. *See, e.g.,*
12 Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000)(Plaintiff must sustain damages
13 as a result of the breach of contract.); Great American Ins. Company v. General Builders, Inc.,
14 113 Nev. 346, 934 P.2d 257 (1997)(Plaintiff must suffer damages as a result of the breach of the
15 implied covenant of good faith.). Moreover, a cause of action for breach of the fiduciary duty
16 also requires damages to be suffered by the breach. *See, e.g.,* Shoen v. SAC Holding Corp., 122
17 Nev. 621, 137 P.3d 1171 (2006). In addition, a claim for negligent misrepresentation also
18 demands that a Plaintiff suffer damages. *See, e.g.,* Barmettler v. Reno Air, Inc., 114 Nev. 41, 956
19 P.2d 1382 (1998). Because Plaintiff has suffered no damages, the causes of action for breach of
20 contract, breach of the implied covenant of good faith and fair dealing, violation of NRS 116,
21 negligent misrepresentation, and breach of fiduciary duty must be dismissed.

22
23 **E. PLAINTIFF'S NEGLIGENT MISREPRESENTATION CLAIM IS BARRED AS A**
24 **MATTER OF LAW**

25 Claims for negligence must be based on an existing duty of care. Kite v. Zimmer US,
26 Inc., 2006 WL 3386765, at *4 (D. Nev. Nov. 22, 2006) (citing Jordan v. State ex rel. Dept. of
27 Motor Vehicles and Public Safety, 110 P.3d 30, 51 (Nev. 2005)). Moreover, the Nevada
28 Supreme Court has adopted the Restatement (Second) of Torts § 522 for negligent

1 misrepresentation claims, under which a claim for negligent misrepresentation is viable if, and
2 only if, a plaintiff can show all of the following elements: (1) a false representation, (2) in the
3 course of the defendant's business, (3) for the guidance of others in their business transactions,
4 (4) that plaintiff justifiably relies on, (5) resulting in pecuniary loss, (6) and that the defendant
5 failed to exercise reasonable care in obtaining or communicating the information. Barmettler v.
6 Reno Air, Inc., 114 Nev. 441, 449-50, 956 P.2d 1382, 1387 (1998). The Restatement further
7 discusses the limits of this tort:

8 The rule stated in this Section subjects the negligent supplier of misinformation to
9 liability only to those persons for whose benefit and guidance it is supplied. In
10 this particular his liability is somewhat more narrowly restricted than that of the
11 maker of a fraudulent representation (see § 531), which extends to any person
12 whom the maker of the representation has reason to expect to act in reliance upon
13 it.

14 Restatement (Second) of Torts § 522 cmt. h.

15 Plaintiff has not and cannot set forth any duty owed to it by Horizons. Indeed, this action
16 involves arms-length deals made between sophisticated parties. Plaintiff is a sophisticated real
17 estate investor who has made significant profits from flipping properties. As in all real estate
18 transactions, certain fees and costs arise. One of those fees and costs is the super-priority lien
19 amount. In fact, Plaintiff admits that they owed certain amounts based on the super-priority lien.
20 Given the foregoing, there simply is no legal duty owed to Plaintiff in this case. Demands for
21 payment certainly do not constitute "guidance of others in their business transactions." There
22 was absolutely no guidance here, there were merely demands for payment from an HOA to an
23 unrelated debtor.

24 Accordingly, there is no justifiable reliance involved in Plaintiff's scheme to buy, sell,
25 and then go after Horizons to collect even more profits. In reality, the transactions at issue in this
26 case involved no duty, no guidance, no reliance, but, instead were transactions between
27 sophisticated parties. Although the parties might dispute the amounts owed, there simply is no
28 viable tort claim. The claim for negligent misrepresentation therefore should be dismissed.

///

1 In addition, pursuant to Nevada Rule of Civil Procedure 9(b), “[i]n all averments of fraud
2 or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.”
3 Rule 9(b) “requires the identification of the circumstances constituting fraud so that the
4 defendant can prepare an adequate answer from the allegations.” Odom v. Microsoft Corp., 486
5 F.3d 541, 553 (9th Cir. 2007) (quotation omitted).⁷ “The pleader must state the time, place, and
6 specific content of the false representations as well as the identities of the parties to the
7 misrepresentation.” Id. (alteration and quotation omitted); *see also* Morris v. Bank of Nev., 110
8 Nev. 1274, 1276 n.1, 886 P.2d 454, 455 n.1 (1994). The particularity requirements of Rule 9(b)
9 apply to claims for negligent misrepresentation. *See, e.g.,* Neilson v. Union Bank of Cal., N.A.,
10 290 F. Supp. 2d 1101, 1141 (C.D. Cal. 2003) (“It is well-established in the Ninth Circuit that
11 both claims for fraud and negligent misrepresentation must meet Rule 9(b)’s particularity
12 requirements.”); Weingartner v. Chase Home Finance, LLC, --- F. Supp. 2d ---, 2010 WL
13 1006708, at *12-13 (D. Nev. 2010) (dismissing negligent misrepresentation claim for a failure to
14 state allegations with particularity); Larson v. Homecomings Financial, LLC, 680 F. Supp. 2d
15 1230, 1234 (D. Nev. 2009) (“Plaintiffs’ claim for negligent misrepresentation fails because it
16 was not pled with specificity under Rule 9(b).”); Ritter v. Countywide Home Loans, Inc., 2010
17 WL 2342545, at *2 (D. Nev. 2010) (“Rule 9(b)’s heightened pleading standard applies to claims
18 for fraud, intentional misrepresentation, and negligent misrepresentation.”); Velasquez v. HSBC
19 Mortg. Servs., 2009 WL 2338852, at *8 (D. Nev. 2009) (“Claims of intentional and negligent
20 misrepresentation must be pled with particularity.”).

21 In the Complaint, there are absolutely no allegations of time, place, or specific content of
22 the purported misrepresentations alleged by Horizons. Exactly what misrepresentations were
23 made? Who made them? To whom were they made? When were they made? And on and on.
24 Plaintiff’s allegations are particularly suspect because of the utter lack of detail or explanation as
25 to what actually transpired. Horizons suspects that Plaintiff is hoping to avoid as much detail as
26

27
28 ⁷ NRCP 9(b) is nearly identical to Fed. R. Civ. P. 9(b). The Nevada Supreme Court has “previously
recognized that federal decisions involving the Federal Rules of Civil Procedure provide persuasive authority when
this court examines its rules.” Nelson v. Heer, 121 Nev. 832, 834, 122 P.3d 1252, 1253 (2005).

possible because any explanation of detail will show that these claims have absolutely no merit. Regardless, Rule 9(b) absolutely prohibits Plaintiff's negligent misrepresentation claim from going forward, absent the kind of detail this rule requires.


III.

CONCLUSION

Horizons respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment in its entirety and grant summary judgment in favor of Horizons.

DATED this 14th day of February, 2012.

ALVERSON, TAYLOR,
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14th day of February, 2012, service of the foregoing DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNERS' ASSOCIATION'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTER-MOTION FOR SUMMARY JUDGMENT was made this date by depositing a true copy of the same for mailing, first class mail at Las Vegas, Nevada, addressed as follows:

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EXHIBIT 1

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7 *Attorneys for Plaintiffs Nevada Association*
8 *Services, Inc., RMI Management, LLC,*
and Angius & Terry Collections, LLC

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 PLAINTIFF HOLDINGS, LLC, a Nevada
12 limited liability company,

13 Plaintiff,

14 vs.

15 HORIZONS AT SEVEN HILLS
16 HOMEOWNERS ASSOCIATION; and
DOES 1 through 10; and ROE ENTITIES 1
through 10 inclusive,

17 Defendants.
18

Case No. : A-11-647850-B
Dept. No.: XIII

**DECLARATION IN SUPPORT
DEFENDANT HORIZONS AT SEVEN
HILLS HOMEOWNERS'
ASSOCIATION'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
COUNTER-MOTION FOR SUMMARY
JUDGMENT**

19
20 I, DEBBIE KLUSKA, do hereby declare:

21 1. I am over eighteen years old and make this declaration on my own behalf and in
22 support of Horizons At Seven Hills Homeowners Association's Opposition to Plaintiff's
23 Motion for Summary Judgment and Counter-Motion for Summary Judgment.

24 2. I am the Office Supervisor of Nevada Association Services ("NAS"). If called
25 upon as a witness, I could and would competently testify as to all of the matters stated herein.

26 3. NAS is a collection agency that works on behalf of several homeowners'
27 associations ("HOAs") in the State of Nevada, including Defendant At Seven Hills
28

1 Homeowners Association ("Horizons"). Defendant Horizons, along with most other HOAs in
2 Nevada, lack the resources, staff, and ability to pursue collections on its own.

3 4. Among other things, NAS pursues past due charges due to HOAs from
4 delinquent homeowners, a task of particular importance in the foreclosure crisis currently
5 overwhelming the Nevada housing market.

6 5. In my current position, I have been personally involved in protecting and
7 enforcing the rights of Horizons with respect to the property sued upon herein. As part of my
8 responsibilities, after the purchase of said loans, I am one of the custodians of the books,
9 records, and files of NAS as they relate to said property.

10 6. The books and records were prepared in the ordinary course of business by one
11 or more persons employed by NAS who had personal knowledge of the events being recorded
12 and had a business duty to so accurately report such events, acts, and conditions.

13 7. As one of the custodians of the books, records, and files of NAS as they relate
14 to the property sued upon herein, I am personally familiar with said books, records, and files.
15 Said business records are maintained in the ordinary course of the business and updated at or
16 near the time of the acts, conditions, or events to which said records relate. I am fully familiar
17 with such books, records, and files and as to the following facts set forth in this Declaration, I
18 know them to be true of my own personal knowledge or I have gained knowledge from the
19 business records of NAS prepared and maintained as aforesaid.

20 8. Based on the foregoing, if called upon as a witness, I could and would
21 competently testify as to all of the matters stated herein.

22 9. After NAS receives an account for delinquent assessments from an HOA, NAS
23 sends a letter to the homeowner notifying the homeowner of the past due amount for the
24 specific property at issue and the right to contest the debt ("Initial Demand Letter"). If a
25 homeowner does not comply with the Initial Demand Letter's request to pay the debt in full
26 within 10 days, NAS will record a Notice of Delinquent Assessment Lien and mail a copy of
27 the Notice to the homeowner as required by NRS 116.31162(1)(a). The Initial Demand Letters
28 informs homeowners of these facts.

1 10. When a homeowner does not comply, NAS records a Notice of Delinquent
2 Assessment Lien on the relevant property and sends a copy to the delinquent homeowner.
3 Exhibit 1. After recording and mailing a Delinquent Lien Notice, NAS will send another letter
4 that informs the homeowner he or she is still in default and if the account is not paid in full,
5 NAS will proceed with recordation of a Notice of Default and Election to Sell. .

6 11. When a homeowner remains delinquent, NAS will send additional letters to the
7 homeowner, reminding them of their debt and that a continued failure to pay could result in
8 foreclosure of the homeowner's property. NAS has every intention of foreclosing on the
9 property should a homeowner continue to fail to pay. Indeed, HOAs do foreclose on properties
10 owned by homeowners that fail to pay their bills.

11 12. Should a homeowner continue to be delinquent 30 days past the date the
12 Delinquent Lien Notice was mailed to the homeowner, NAS may record a Notice of Default
13 and Election to Sell ("NOD") as provided in NRS 116.31162(1)(b).

14 13. Should the homeowner continue to be delinquent 90 days following the
15 recording of the NOD, NAS may proceed by recording a Notice of Foreclosure Sale and
16 serving such notice as provided for in NRS 116.311635.

17 14. Without collection agencies to pursue these past due charges, HOAs would have
18 little or no ability to enforce their rights to collect said charges from homeowners who do not
19 pay voluntarily, thereby significantly increasing the costs to those homeowners who are not
20 delinquent.

21 15. Collecting interest, late fees, and costs of collection as part of Nevada's super
22 priority lien is and has been common practice in the industry for years.

23 16. Almost without exception, borrowers who are in default with their lenders
24 simultaneously default on their HOA obligations. This results in unpaid assessments and
25 neglected properties. By giving priority to the HOA ahead of a lender's deed of trust, HOAs
26 are able to pay bills, abandoned properties do not become blighted, and neighboring "good"
27 homeowners who pay their bills are not subject to increased HOA fees.
28

1 17. While Horizons possesses a statutory lien pursuant to NRS Chapter 116 on such
2 assessments, it must take active steps to collect if it has any chance of recovering amounts that
3 are past due. As a result, without collection agencies to pursue these past due charges, HOAs
4 would have little or no ability to enforce their rights to collect said charges from homeowners
5 who do not pay voluntarily, thereby significantly increasing the costs to those homeowners
6 who are not delinquent.

7 18. As a result, Horizons has engaged NAS to pursue collections of unpaid
8 assessments and penalties. Collecting interest, late fees, and costs of collection as part of
9 Nevada's super-priority lien is and has been common practice in the industry for years. An
10 integral part of the collection process is the recording of a notice of lien with the Clark County
11 Assessor. Such recordation provides notice of the super-priority lien to subsequent purchasers
12 after foreclosure.

13 19. The types of charges HOAs retain their collection agencies to collect often
14 include many different categories of assessments for common expenses. These assessments for
15 common expenses can include special assessments for repairs to common areas, charges for
16 late payment of assessments, and fees or charges for the use, rental or operation of the common
17 elements.

18 20. In addition, to pursue collection, HOAs and their collection agencies are forced
19 to incur out of pocket costs, such as publication costs in advance of a foreclosure sale. The out
20 of pocket costs for publication and posting in advance of a foreclosure in Las Vegas are
21 approximately \$500.00. Depending on the monthly amount due from the homeowner, the
22 publication costs alone often exceed the "nine times" super-priority lien calculation proposed
23 by Plaintiff in this case. As a result, using the calculation proposed by the Plaintiff in this case,
24 a HOA would never bother to pursue collection through a collection agency, as the out-of
25 pocket costs alone would exceed the amount recoverable.

26 21. Given the foregoing, if HOAs cannot recover reasonable collection costs, they
27 will be effectively unable to pursue and collect from property owners who are in violation of
28 the CC&Rs when there is a lender foreclosure.

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Phone: (702) 669-4600 • Fax: (702) 669-4650

1 22. Instead, the only alternative for a HOA would be to file a judicial foreclosure
2 action in accordance with NRS 116.3116(7), which specifically allows for "costs and
3 reasonable attorney's fees" as part of the recovery. However, this would necessarily require
4 (1) the hiring of an attorney; (2) the filing of a civil action; and (3) a race to the courthouse
5 between the HOA and the trust deed holder for the borrower which is in default. The obvious
6 result would be a flood of civil lawsuits and a flood of foreclosures—results that are plainly
7 contrary to the public purpose of the statute itself—that might otherwise be avoided.

8 23. Horizons' concerns are particularly important and significantly impact the role
9 of HOAs during these difficult economic times. With more foreclosures in Nevada than in any
10 other state, HOAs have stepped up to maintain homes that have fallen into disrepair. Dead or
11 overgrown landscaping is a common problem, as are unattended pools rife with algae. Poorly
12 kept residences create neighborhood blight that depresses surrounding property values – values
13 that have already been devastated by the worst housing market downturn in Nevada history. If
14 HOAs are unable to recover the costs of collection, in addition to the delinquent assessments
15 themselves, then HOAs have no ability to collect the delinquent assessments, and their task of
16 maintaining these communities becomes much more daunting.

17 24. After acquiring title to the property, Plaintiff did not make any payments to
18 Horizons from July 2010 until May 2011. Attached hereto as **Exhibit A** is a true and correct
19 copy of the Financial Transactions for the Property.

20 25. As of today, there has been no payment for assessments that survived the
21 foreclosure in June 2010 and there has been no payment to pay the amounts that became
22 delinquent from July 2010 until May 2011.

23 I declare under the penalty of perjury under the laws of the State of Nevada that the
24 foregoing is true and correct.

25 EXECUTED this 14th day of February, 2012, in Las Vegas, Nevada.

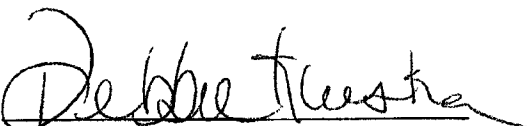
26
27 By: 
28 DEBBIE KLUSKA

EXHIBIT 1A

FINANCIAL TRANSACTIONS - 02/13/12

950 Seven Hills Dr # 1411
 Ikon Holdings, LLC
 Unit ID: 950SH1411
 STATUS: 03 - Lien Filed
 PREPAID BAL: 0.00

| DATE | PAYMT AMT | CHECK# | DEP DT | CODE | NA | DESCRIPTION | AMOUNT | BALANCE |
|--------|-----------|--------|--------|------|----|----------------------------|----------|---------|
| 063009 | | | | A1 | | ASSESSMENT | 1635.00 | 1635.00 |
| 063009 | | | | C1 | | Water Charges | 250.00 | 1885.00 |
| 063009 | | | | 01 | | Late Fees | 135.00 | 2020.00 |
| 063009 | | | | 03 | | Lien to Lien | 75.00 | 2095.00 |
| 063009 | | | | 05 | | Legal Fees | 235.00 | 2330.00 |
| 070109 | | | | A1 | | ASSESSMENT | 172.50 | 2502.50 |
| 070109 | | | | C1 | | Water Charges | 25.00 | 2527.50 |
| 080109 | | | | A1 | | ASSESSMENT | 172.50 | 2700.00 |
| 080109 | | | | C1 | | Water Charges | 25.00 | 2725.00 |
| 081709 | | | | 01 | | Late Fees | 10.00 | 2735.00 |
| 090109 | | | | C1 | | Water Charges | 25.00 | 2760.00 |
| 090109 | | | | C1 | | Water Charges | (146.58) | 2613.42 |
| 090109 | | | | | | Water assmt rebate applied | | |
| 090109 | | | | A1 | | ASSESSMENT | 172.50 | 2785.92 |
| 090809 | | | | | | acct with NAS /adr | | |
| 091509 | | | | 01 | | Late Fees | 10.00 | 2795.92 |
| 100109 | | | | C1 | | Water Charges | 25.00 | 2820.92 |
| 100109 | | | | A1 | | ASSESSMENT | 172.50 | 2993.42 |
| 101509 | | | | 01 | | Late Fees | 10.00 | 3003.42 |
| 110109 | | | | C1 | | Water Charges | 25.00 | 3028.42 |
| 110109 | | | | A1 | | ASSESSMENT | 172.50 | 3200.92 |
| 111609 | | | | 01 | | Late Fees | 10.00 | 3210.92 |
| 120109 | | | | C1 | | Water Charges | 25.00 | 3235.92 |
| 120109 | | | | A1 | | ASSESSMENT | 172.50 | 3408.42 |
| 121609 | | | | 01 | | Late Fees | 10.00 | 3418.42 |
| 010110 | | | | A1 | | ASSESSMENT | 190.00 | 3608.42 |
| 010110 | | | | C1 | | Water Charges | (146.58) | 3461.84 |
| 010110 | | | | | | Water Asmnt Rebate Applied | | |
| 011610 | | | | 01 | | Late Fees | 10.00 | 3471.84 |
| 020110 | | | | A1 | | ASSESSMENT | 190.00 | 3661.84 |

FINANCIAL TRANSACTIONS - 02/13/12

950 Seven Hills Dr # 1411
 Ikon Holdings, LLC
 Unit ID: 950SH1411
 STATUS: 03 - Lien Filed
 PREPAID BAL: 0.00

| DATE | PAYMT/AMT | CHECK# | DEP DT | CODE | N/A | DESCRIPTION | AMOUNT | BALANCE |
|--------|-----------|--------|--------|------|-----|--|---------|---------|
| 021610 | | | | 01 | | Late Fees | 10.00 | 3671.84 |
| 030110 | | | | A1 | | ASSESSMENT | 190.00 | 3861.84 |
| 031510 | | | | 01 | | Late Fees | 10.00 | 3871.84 |
| 040110 | | | | A1 | | ASSESSMENT | 190.00 | 4061.84 |
| 041610 | | | | 01 | | Late Fees | 10.00 | 4071.84 |
| 043010 | | | | 04 | | Interest | 29.60 | 4101.44 |
| 050110 | | | | A1 | | ASSESSMENT | 190.00 | 4291.44 |
| 051610 | | | | 01 | | Late Fees | 10.00 | 4301.44 |
| 053110 | | | | 04 | | Interest | 14.80 | 4316.24 |
| 060110 | | | | A1 | | ASSESSMENT | 190.00 | 4506.24 |
| 061610 | | | | 01 | | Late Fees | 10.00 | 4516.24 |
| 063010 | | | | 04 | | Interest | 15.62 | 4531.86 |
| 070110 | | | | A1 | | ASSESSMENT | 190.00 | 4721.86 |
| 071610 | | | | 01 | | Late Fees | 10.00 | 4731.86 |
| 073110 | | | | 06 | | Capital Contrib | 380.00 | 5111.86 |
| 073110 | | | | | | resale cap contrib for 072110 recording (cc) | | |
| 073110 | | | | | | undisc'd trans quit claim deed dtd 072110 (cc) | | |
| 073110 | | | | 04 | | Interest | 16.44 | 5128.30 |
| 080110 | | | | A1 | | ASSESSMENT | 190.00 | 5318.30 |
| 080210 | | | | | | updated ledger to Echna @ NAS/cc | | |
| 081610 | | | | 01 | | Late Fees | 10.00 | 5328.30 |
| 083110 | | | | 04 | | Interest | 18.08 | 5346.38 |
| 090110 | | | | C1 | | Water Charges | (35.00) | 5311.38 |
| 090110 | | | | | | Water Asmnt Rebate Applied 09 | | |
| 090110 | | | | A1 | | ASSESSMENT | 190.00 | 5501.38 |
| 090210 | | | | | | h/o dropped off letter for the BOD-cc | | |
| 090210 | | | | | | SEE OWENR MAINTAIN NOTES (cc) | | |
| 091610 | | | | 01 | | Late Fees | 10.00 | 5511.38 |
| 093010 | | | | 04 | | Interest | 18.90 | 5530.28 |
| 100110 | | | | A1 | | ASSESSMENT | (36.06) | 5494.22 |

FINANCIAL TRANSACTIONS - 02/13/12

950 Seven Hills Dr # 1411
 Ikon Holdings, LLC
 Unit ID: 950SH1411
 STATUS: 03 - Lien Filed
 PREPAID BAL: 0.00

| DATE | PAYMENT | CHECK # | DEBIT | CODE | DESCRIPTION | AMOUNT | BALANCE |
|--------|-------------------------------|---------|--------|------|---------------|----------|---------|
| 100110 | | | | C1 | Water Charges | (71.84) | 5422.38 |
| 100110 | | | | A1 | ASSESSMENT | 190.00 | 5612.38 |
| 100810 | updt ldgr to Veronica@NAS /ed | | | | | | |
| 101810 | | | | 01 | Late Fees | 10.00 | 5622.38 |
| 103110 | | | | 04 | Interest | 19.56 | 5641.94 |
| 110110 | | | | A1 | ASSESSMENT | 190.00 | 5831.94 |
| 111610 | | | | 01 | Late Fees | 10.00 | 5841.94 |
| 113010 | | | | 04 | Interest | 20.38 | 5862.32 |
| 120110 | | | | A1 | ASSESSMENT | 190.00 | 6052.32 |
| 121610 | | | | 01 | Late Fees | 10.00 | 6062.32 |
| 123110 | | | | 04 | Interest | 21.20 | 6083.52 |
| 010111 | | | | A1 | ASSESSMENT | 190.00 | 6273.52 |
| 011711 | | | | 01 | Late Fees | 10.00 | 6283.52 |
| 013111 | | | | 04 | Interest | 22.02 | 6305.54 |
| 020111 | | | | A1 | ASSESSMENT | 190.00 | 6495.54 |
| 021611 | | | | 01 | Late Fees | 10.00 | 6505.54 |
| 022811 | | | | 04 | Interest | 21.32 | 6526.86 |
| 030111 | | | | A1 | ASSESSMENT | 190.00 | 6716.86 |
| 031611 | | | | 01 | Late Fees | 10.00 | 6726.86 |
| 033111 | | | | 04 | Interest | 23.66 | 6750.52 |
| 040111 | | | | A1 | ASSESSMENT | 190.00 | 6940.52 |
| 041611 | | | | 01 | Late Fees | 10.00 | 6950.52 |
| 043011 | | | | 04 | Interest | 24.48 | 6975.00 |
| 050111 | | | | A1 | ASSESSMENT | 190.00 | 7165.00 |
| 050611 | 190.00 | 9010 | 050611 | A1 | ASSESSMENT | (190.00) | 6975.00 |
| 050611 | pstd pmt, fwd ldgr to NAS/hc | | | | | | |
| 051611 | | | | 01 | Late Fees | 10.00 | 6985.00 |
| 053111 | | | | 04 | Interest | 24.48 | 7009.48 |
| 060111 | | | | A1 | ASSESSMENT | 190.00 | 7199.48 |
| 060411 | 190.00 | 9016 | 060411 | A1 | ASSESSMENT | (190.00) | 7009.48 |

DATE: 2/13/12 TIME: 2:38 PM

Horizons at Seven Hills HOA

Page: 4

FINANCIAL TRANSACTIONS - 02/13/12

950 Seven Hills Dr # 1411
 Ikon Holdings, LLC
 Unit ID: 950SH1411
 STATUS: 03 - Lien Filed
 PREPAID BAL: 0.00

| DATE | PAYMENT | CHECK # | DEBIT | CODE | N/A | DESCRIPTION | AMOUNT | BALANCE |
|--------|-----------------------------------|---------|--------|------|-----|-------------|----------|---------|
| 061611 | | | | 01 | | Late Fees | 10.00 | 7019.48 |
| 063011 | | | | 04 | | Interest | 24.48 | 7043.96 |
| 070111 | | | | A1 | | ASSESSMENT | 190.00 | 7233.96 |
| 070511 | 190.00 | 9027 | 070511 | A1 | | ASSESSMENT | (190.00) | 7043.96 |
| 070611 | pmt posted; updated lgr to NAS/ap | | | | | | | |
| 071811 | | | | 01 | | Late Fees | 10.00 | 7053.96 |
| 073111 | | | | 04 | | Interest | 24.48 | 7078.44 |
| 080111 | | | | A1 | | ASSESSMENT | 190.00 | 7268.44 |
| 080511 | 190.00 | 9039 | 080511 | A1 | | ASSESSMENT | (190.00) | 7078.44 |
| 081611 | | | | 01 | | Late Fees | 10.00 | 7088.44 |
| 083111 | | | | 04 | | Interest | 24.48 | 7112.92 |
| 090111 | | | | A1 | | ASSESSMENT | 190.00 | 7302.92 |
| 090611 | 190.00 | 9050 | 090611 | A1 | | ASSESSMENT | (190.00) | 7112.92 |
| 090711 | payt pstd; fwd ledger to NAS/hcs | | | | | | | |
| 091611 | | | | 01 | | Late Fees | 10.00 | 7122.92 |
| 093011 | | | | 04 | | Interest | 23.66 | 7146.58 |
| 100111 | | | | A1 | | ASSESSMENT | 190.00 | 7336.58 |
| 101111 | 190.00 | 9061 | 101111 | A1 | | ASSESSMENT | (190.00) | 7146.58 |
| 101711 | pmt pstd; fwd ledger to NAS/mef | | | | | | | |
| 101711 | | | | 01 | | Late Fees | 10.00 | 7156.58 |
| 103111 | | | | 04 | | Interest | 23.66 | 7180.24 |
| 110111 | | | | A1 | | ASSESSMENT | 190.00 | 7370.24 |
| 110211 | 190.00 | 9070 | 110211 | A1 | | ASSESSMENT | (190.00) | 7180.24 |
| 110411 | pmt pstd; fwd ledger to NAS/ls | | | | | | | |
| 111611 | | | | 01 | | Late Fees | 10.00 | 7190.24 |
| 113011 | | | | 04 | | Interest | 23.66 | 7213.90 |
| 120111 | | | | A1 | | ASSESSMENT | 190.00 | 7403.90 |
| 120311 | 190.00 | 9081 | 120311 | A1 | | ASSESSMENT | (190.00) | 7213.90 |
| 121611 | | | | 01 | | Late Fees | 10.00 | 7223.90 |
| 123111 | | | | 04 | | Interest | 23.66 | 7247.56 |
| 010112 | | | | A1 | | ASSESSMENT | 190.00 | 7437.56 |

DATE: 2/13/12 TIME: 2:38 PM

Horizons at Seven Hills HOA

Page: 5

FINANCIAL TRANSACTIONS - 02/13/12

950 Seven Hills Dr # 1411
Ikon Holdings, LLC
Unit ID: 950SH1411
STATUS: 03 - Lien Filed
PREPAID BAL: 0.00

| DATE | PAYMT AMT | CHECK# | DEBIT | CODE | N/A | DESCRIPTION | AMOUNT | BALANCE |
|--------|-----------|--|--------|------|-----|-------------|----------|---------|
| 011312 | 190.00 | 9090 | 011312 | A1 | | ASSESSMENT | (190.00) | 7247.56 |
| 011712 | | APPLY LATE FEE | | 01 | | Late Fees | 10.00 | 7257.56 |
| 011312 | | pstd pmt; fwd updated ledger to NAS.ng | | | | | | |
| 013112 | | INTEREST | | 04 | | Interest | 23.66 | 7281.22 |
| 020112 | | APPLY CHARGES | | A1 | | ASSESSMENT | 190.00 | 7471.22 |
| 020312 | 190.00 | 9099 | 020312 | A1 | | ASSESSMENT | (190.00) | 7281.22 |
| 021312 | | updated ledger to NAS.ng | | | | | | |

EXHIBIT 2

Receipt/Conformed Copy

Requestor:
NORTH AMERICAN TITLE COMPANY
06/17/2009 10:22:54 T20090211078
Book/Instr: 20090517-0001827
Lien Page Count: 1
Fees: \$14.00 N/C Fee: \$0.00

APN # 177-35-610-137
N47664

Debbie Conway
Clark County Recorder

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 06, 2005, as instrument number 0003420 Book 20050706, of the official records of Clark County, Nevada, the Horizons at Seven Hills has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 950 Seven Hills Drive #1411 Henderson, NV 89052 and more particularly legally described as: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Hawley McIntosh

Mailing address(es):
11 Creeping Bend Court, Henderson, NV 89052

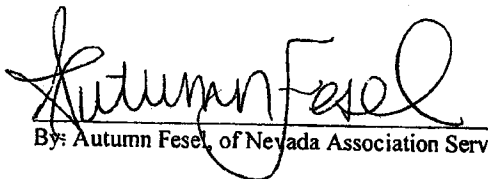
*Total amount due through today's date is \$2,896.00.

This amount includes late fees, collection fees and interest in the amount of \$911.00.

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: June 15, 2009



By: Autumn Fesel, of Nevada Association Services, Inc., as agent for Horizons at Seven Hills.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N47664
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

EXHIBIT 3

APN # 177-35-610-137
Trustee's Sale # N47664
North American Title # 17927
Property Address: 950 Seven Hills Drive #1411

Inst #: 200908040003419
Fees: \$15.00
N/C Fee: \$0.00
08/04/2009 10:22:10 AM
Receipt #: 2550
Requestor:
NORTH AMERICAN TITLE
COMPANY
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER
HOMEOWNERS ASSOCIATION LIEN**

IMPORTANT NOTICE

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT
MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in
good standing by paying all your past due payments plus permitted costs and expenses within the time permitted
by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice
of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$4,289.50 as of July 28, 2009 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes)
required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and
Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the
property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your
Covenants Conditions and Restrictions, the Horizons at Seven Hills (the Association) may insist that you do so in
order to reinstate your account in good standing. In addition, the Association may require as a condition to
reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard
insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You
may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you
must pay all amounts in default at the time payment is made. However, you and your Association may mutually
agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the
default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default;
or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the
obligation being foreclosed upon or a separate written agreement between you and your Association permits a
longer period, you have only the legal right to stop the sale of your property by paying the entire amount
demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your
property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Horizons at
Seven Hills, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or
toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of
assessment on your property.

Trustee's Sale # N47664

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT
TAKE PROMPT ACTION.
NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Hawley McIntosh, dated June 15, 2009, and recorded on June 17, 2009 as instrument number 0001827 Book 20090617 in the official records of Clark County, Nevada, executed by Horizons at Seven Hills, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 06, 2005, as instrument number 0003420 Book 20050706, as security has occurred in that the payments have not been made of homeowner's assessments due from September 01, 2008 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

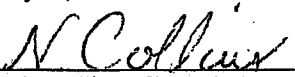
That by reason thereof, the Association has executed and delivered to said agent a written authorization and has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby immediately due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal Description: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark

Dated: July 28, 2009


By: Natasha Collins, of Nevada Association Services, Inc.
on behalf of Horizons at Seven Hills

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

EXHIBIT 4

APN # 177-35-610-137
N47664

Inst #: 201009300002154

Fees: \$14.00

N/C Fee: \$0.00

09/30/2010 12:02:24 PM

Receipt #: 522903

Requestor:

CLARK RECORDING SERVICE

Recorded By: STN Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

20
NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 06, 2005, as instrument number 0003420 Book 20050706, of the official records of Clark County, Nevada, the Horizons at Seven Hills has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 950 Seven Hills Drive #1411 Henderson, NV 89052 and more particularly legally described as: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Ikon Holdings LLC

Mailing address(es):
209 S. Stephanie Ste B123, Henderson, NV 890112

*Total amount due through today's date is \$6,050.14.

This amount includes late fees, collection fees and interest in the amount of \$2,692.64.

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: September 28, 2010


By: Winter Henrie, of Nevada Association Services, Inc., as agent for Horizons at Seven Hills.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N47664
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-554

EXHIBIT 5

APN # 177-35-610-137
NAS # N47664
First American Title Nevada/NDTS # 4787654
PropertyAddress: 950 Seven Hills Drive #1411

DOCUMENT RECORDED ON 11/18/2010
DOCUMENT # 0001634 Book 20101118
Clark COUNTY
DATE MAILED 11/24/2010

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER
HOMEOWNERS ASSOCIATION LIEN**

IMPORTANT NOTICE

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS
NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT
IS IN DISPUTE!**

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is \$7,349.50 as of November 16, 2010 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, the Horizons at Seven Hills (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Horizons at Seven Hills, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N47664

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION
SERVICES, INC.**

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Ikon Holdings LLC, dated September 28, 2010, and recorded on September 30, 2010 as instrument number 0002154 Book 20100930 in the official records of Clark County, Nevada, executed by Horizons at Seven Hills, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on July 06, 2005, as instrument number 0003420 Book 20050706, as security has occurred in that the payments have not been made of homeowner's assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

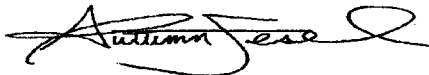
That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal_Description: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark

Dated: November 16, 2010



By: Autumn Fesel, of Nevada Association Services, Inc.
on behalf of Horizons at Seven Hills

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

EXHIBIT 6

**ADOPTED REGULATION OF THE
COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS**

LCB File No. R199-09

Effective May 5, 2011

EXPLANATION - Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 116.310313.

A REGULATION relating to common-interest communities; establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner; and providing other matters properly relating thereto.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 5, to cover the costs of collecting any past due obligation of a unit's owner, an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed a total of \$1,950, plus the costs and fees described in subsections 3 and 4.

2. An association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice

--1--

Adopted Regulation R199-09

of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed the following amounts:

| | |
|---|--------------|
| <i>(a) Demand or intent to lien letter</i> | <i>\$150</i> |
| <i>(b) Notice of delinquent assessment lien</i> | <i>325</i> |
| <i>(c) Intent to notice of default letter</i> | <i>90</i> |
| <i>(d) Notice of default.....</i> | <i>400</i> |
| <i>(e) Intent to notice of sale letter</i> | <i>90</i> |
| <i>(f) Notice of sale.....</i> | <i>275</i> |
| <i>(g) Intent to conduct foreclosure sale.....</i> | <i>25</i> |
| <i>(h) Conduct foreclosure sale.....</i> | <i>125</i> |
| <i>(i) Prepare and record transfer deed.....</i> | <i>125</i> |
| <i>(j) Payment plan agreement - One-time set-up fee.....</i> | <i>30</i> |
| <i>(k) Payment plan breach letter.....</i> | <i>25</i> |
| <i>(l) Release of notice of delinquent assessment lien.....</i> | <i>30</i> |
| <i>(m) Notice of rescission fee</i> | <i>30</i> |
| <i>(n) Bankruptcy package preparation and monitoring</i> | <i>100</i> |
| <i>(o) Mailing fee per piece for demand or intent to lien letter, notice of delinquent assessment lien, notice of default and notice of sale.....</i> | <i>2</i> |
| <i>(p) Insufficient funds fee.....</i> | <i>20</i> |
| <i>(q) Escrow payoff demand fee.....</i> | <i>150</i> |
| <i>(r) Substitution of agent document fee</i> | <i>25</i> |

| | |
|---------------------------|-----|
| (s) Postponement fee..... | 75 |
| (t) Foreclosure fee | 150 |

3. If, in connection with an activity described in subsection 2, any costs are charged to an association or a person acting on behalf of an association to collect a past due obligation by a person who is not an officer, director, agent or affiliate of the community manager of the association or of an agent of the association, including, without limitation, the cost of a trustee's sale guarantee and other title costs, recording costs, posting and publishing costs, sale costs, mailing costs, express delivery costs and skip trace fees, the association or person acting on behalf of an association may recover from the unit's owner the actual costs incurred without any increase or markup.

4. If an association or a person acting on behalf of an association is attempting to collect a past due obligation from a unit's owner, the association or person acting on behalf of an association may recover from the unit's owner:

- (a) Reasonable management company fees which may not exceed a total of \$200; and
- (b) Reasonable attorney's fees and actual costs, without any increase or markup, incurred by the association for any legal services which do not include an activity described in subsection 2.

5. If an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner is engaging in the activities set forth in NRS 116.31162 to 116.31168, inclusive, with respect to more than 25 units owned by the same unit's owner, the association or person acting on behalf of an association may not charge the unit's owner fees

to cover the costs of collecting a past due obligation which exceed a total of \$1,950 multiplied by the number of units for which such activities are occurring, as reduced by an amount set forth in a resolution adopted by the executive board, plus the costs and fees described in subsections 3 and 4.

6. For a one-time period of 15 business days immediately following a request for a payoff amount from the unit's owner or his or her agent, no fee to cover the cost of collecting a past due obligation may be charged to the unit's owner, except for the fee described in paragraph (q) of subsection 2 and any other fee to cover any cost of collecting a past due obligation which is imposed because of an action required by statute to be taken within that 15-day period.

7. As used in this section, "affiliate of the community manager of the association or of an agent of the association" means any person who controls, is controlled by or is under common control with a community manager or such agent. For the purposes of this subsection:

(a) A person "controls" a community manager or agent if the person:

(1) Is a general partner, officer, director or employer of the community manager or agent;

(2) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the community manager or agent;

(3) Controls in any manner the election of a majority of the directors of the community manager or agent; or

(4) Has contributed more than 20 percent of the capital of the community manager or its agent.

(b) A person "is controlled by" a community manager or agent if the community manager or agent:

(1) Is a general partner, officer, director or employer of the person;

(2) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;

(3) Controls in any manner the election of a majority of the directors of the person; or

(4) Has contributed more than 20 percent of the capital of the person.

(c) Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

EXHIBIT 7

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
April 15, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 7:10 a.m. on Friday, April 15, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Orrin J. H. Johnson, Washoe County Public Defender's Office
Keith Lee, Lawyers Title Insurance Corporation; First American Title Company
Michael Buckley, Commission for Common-Interest Communities and
Condominium Hotels
Pamela Scott, Howard Hughes Corporation
Renny Ashleman, City of Henderson

Senate Committee on Judiciary
April 15, 2011
Page 2

CHAIR WIENER:

We will begin this work session with Senate Bill (S.B.) 103. The State Gaming Control Board brought S.B. 218 as the regulatory agency bill. Senate Bill 103 was brought, and everything from S.B. 103 was moved into S.B. 218, which was passed out of this Committee. One portion of legislation was moved from S.B. 218 into S.B. 103 that dealt with the Live Entertainment Tax. That is what we have before us today.

SENATE BILL 103: Authorizes a licensed interactive gaming service provider to perform certain actions on behalf of an establishment licensed to operate interactive gaming. (BDR 41-828)

SENATE BILL 218: Revises provisions governing the regulation of gaming. (BDR 41-991)

LINDA J. EISSMANN (Policy Analyst):

The amendment you received this morning (Exhibit C) is identical to the amendment in the work session document (Exhibit D), pages 2 through 8.

CHAIR WIENER:

Senate Bill 103 clarifies the Live Entertainment Tax.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 103 AND REREFER TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR ROBERSON VOTED NO.)

CHAIR WIENER:

We will address S.B. 150, which deals with public storage facilities. I am concerned about protected property and how to ensure that property is kept safe. This includes medical, insurance and financial records. People store their records in boxes, and we want to ensure those records are secure and treated with respect. This will be a model bill for the Country in terms of steps taken to hold people accountable for this important information. Bradley Wilkinson will go over the amendment.

Senate Committee on Judiciary
April 15, 2011
Page 3

SENATE BILL 150: Revises certain provisions governing liens of owners of facilities for storage. (BDR 9-907)

BRADLEY A. WILKINSON (Counsel):

The amendment changes the definition of "electronic mailing" in conjunction with the definition of "verified mail" (Exhibit E), page 3. To be an electronic mailing, there must be an electronic confirmation of receipt of the message. The reference to electronic mail is removed from the definition of "verified mail," which would include actual mailing for which evidence is provided, such as certified, return receipt requested or registered mail.

The next change relates to some of the definitions of "rental agreement" and "occupant," page 4, Exhibit E. This conveys that the law will continue to apply. These rental agreements will apply to one space at a time rather than multiple spaces.

Section 14 contains changes to protected property, page 4, Exhibit E. As part of the rental agreement when occupants store protected property, section 14 requires they clearly and prominently label that property as protected property. The general type of protected property must be identified, such as medical records or legal records, etc. If the occupant is subject to regulation by a licensing board—a doctor, for example—he or she is required to provide the licensing board with written notice that protected property is being stored at the facility. The occupant must provide contact information for the facility and for a secondary contact.

Section 16, Exhibit E, page 5, includes provisions relating to protected property and a specific priority for disposition when the owner of a storage facility finds protected property. It provides the owner can first contact the occupant and return the protected property to the occupant. If that does not work, the owner would try to return the property to the secondary contact listed in the rental agreement. If that fails, the owner would contact the appropriate state or federal authorities, which might include a licensing board, and ascertain whether it will accept the protected property. If so, the owner would deliver the property to the authority. If those attempts fail, the owner would destroy the protected property in a manner that ensures it is completely destroyed and cannot be accessed by the public.

Senate Committee on Judiciary
April 15, 2011
Page 4

Section 19, Exhibit E, page 7, relates to protected property and states that if protected property is found and subject to a sale, the person who purchased the property in good faith has a duty to return it to the occupant. If that fails, the purchaser would return the property to the owner of the facility who would dispose of it in the priority just discussed.

CHAIR WIENER:

By notifying a licensing board that protected property is stored at a facility, it is on notice that a license holder is possibly violating a requirement of licensure because he or she is not securing the documents of his or her clients or customers by being in arrears or abandoning the storage unit where protected documents are stored. We wanted to hold the occupant accountable because he or she is not being responsible for the records. We have done everything we can to protect records for people who do not know they are in jeopardy.

SENATOR GUSTAVSON:

I am concerned with section 14 of the bill where a person must disclose to the owner what he or she is storing or clearly mark the boxes as protected property. An occupant must clearly mark the boxes as containing medical, legal or financial records; pharmaceuticals; alcoholic beverages or firearms. I would not want to label my boxes with their contents. People break into storage units quite often, and this will make it easier for them to locate what they might steal. We should not be going in this direction. I cannot support the bill.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 150.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

CHAIR WIENER:

We will address S.B. 283, which relates to postconviction petitions for habeas corpus where the petitioner has been sentenced to death.

Senate Committee on Judiciary
April 15, 2011
Page 5

SENATE BILL 283: Revises provisions governing the appointment of counsel for a postconviction petition for habeas corpus in which the petitioner has been sentenced to death. (BDR 3-1059).

MS. EISSMANN:

I have a work session document (Exhibit F). Two amendments were offered and are included in Exhibit F. I have received nothing else.

SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 283, INCLUDING AMENDMENT 6215.

SENATOR ROBERSON SECONDED THE MOTION.

CHAIR WIENER:

This will retain law stating there must be an appointment. However, it will include the education requirements.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address S.B. 347. We have a conceptual amendment I worked on with the sponsor of the bill. This relates to allowing the Aging and Disability Services Division of the Department of Health and Human Services to use a subpoena to access financial records to determine whether it has probable cause to go after other information it needs. The sponsor agrees with this amendment.

SENATE BILL 347: Authorizes the issuance of a subpoena to compel the production of certain financial records as part of an investigation of the exploitation of an older person. (BDR 15-1075)

MS. EISSMANN:

I have a work session document (Exhibit G).

SENATOR ROBERSON:

This bill is unconstitutional.

Senate Committee on Judiciary
April 15, 2011
Page 6

MR. WILKINSON:

This amendment might eliminate concerns about constitutionality because there would be no administrative subpoenas. This person would be law enforcement and would have to seek a warrant with probable cause like any other law enforcement officer.

ORRIN J. H. JOHNSON (Washoe County Public Defender's Office):

When we talked with the people in the Aging and Disability Services Division who are trying to get this information, their problem was not that they did not want to get a warrant. The problem was they could not get a warrant because no one in the office had the power to apply for it. There was an administrative hurdle to get to the judge. I wanted a magistrate to look at it before a search or seizure was conducted. This bill allows that to happen, and everyone is happy with that. We have no problem with the amendment.

CHAIR WIENER:

Does this amendment address everything you suggested?

MR. JOHNSON:

Yes.

SENATOR ROBERSON:

This amendment does require a warrant?

MR. JOHNSON:

Yes.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 347.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address S.B. 356. I moved this bill forward to add the word "monetary." We have a work session document (Exhibit H).

Senate Committee on Judiciary
April 15, 2011
Page 7

SENATE BILL 356: Establishes the crime of stolen valor. (BDR 15-999)

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 356.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address S.B. 174. We received a mock-up of what we have discussed and paperwork we received (Exhibit I), and we have a work session document (Exhibit J).

SENATE BILL 174: Revises provisions relating to common-interest communities.
(BDR 10-105)

SENATOR COPENING:

I want to bring your attention to page 25 of Exhibit I. I worked with people for many hours going over this bill to ensure there were no misunderstandings about what the bill does. One of the comments was to make sure we included an amount in the collections portion. The cap of \$1,950 appears on page 25 of Exhibit I, line 16, which is the wrong place. This was added to mirror what the Commission on Common-Interest Communities and Condominium Hotels adopted to cap the collection fees. It should be on page 26 of Exhibit I at line 4 in the subsection relating to collection costs, which says this is the maximum that can be collected. Other than that, we reviewed all these things.

CHAIR WIENER:

I sent a letter to Michael Buckley and met with the Chair of the Legislative Commission regarding my concerns about this issue. In my letter, I requested to start at the difference between the measures we considered, which would be \$1,500. My intention was to make it lower. I have received a response from Mr. Buckley that will be presented for consideration.

Senate Committee on Judiciary
April 15, 2011
Page 8

SENATOR KIHUEN:

For the record, under this bill the fees cannot exceed \$1,950. We will not have bills of \$40,000 and \$50,000 for late charges, etc. I want to confirm costs will not exceed \$1,950. I would prefer a lower amount, but inserting a cap solves the problem for now because there is no cap.

SENATOR COPENING:

These are the costs a collection company can charge. A homeowners' association (HOA) can retain an attorney to foreclose on a home, for example, and it is part of the superpriority lien. We are not changing law. However, a board of directors of an association can charge whatever they want for attorney fees. Therefore, we included "reasonable" attorney fees. "Reasonable" is defined in statute. The court goes by a median price for attorney's fees, depending on the kind of work the attorney is doing. We wanted to make sure we included the word "reasonable."

SENATOR KIHUEN:

Aside from reasonable attorney fees, will \$1,950 be the absolute cap on any other fees?

SENATOR COPENING:

I believe so, but I am not an expert in this area.

KEITH LEE (Lawyers Title Insurance Corporation; First American Title Company):
When a decision is made to issue a notice of default and go forward with a sale, *Nevada Revised Statute* (NRS) 116 requires notice be given to everyone in the chain of title and everyone who has requested special notice of any proceeding against that particular title. We issue a trustee sale guarantee (TSG) that ranges in fees from \$290 to \$400, depending upon several factors. My understanding was we would be carved out of this cap. In reviewing this, I am not sure we are carved out.

In direct answer to Senator Kihuen's question, the intent was the fee would be capped at \$1,950, but the TSG and other items necessary to ensure clear title would be in addition to that. That is what the regulation says. The title fees are capped by the rate schedule filed with the Division of Insurance, Department of Business and Industry.

Senate Committee on Judiciary
April 15, 2011
Page 9

That would be additional cost if we go forward with the intent during our negotiations and the pending regulation.

SENATOR KIHUEN:

Aside from the \$1,950, there would be these additional charges you are discussing, the \$290 to \$400?

MR. LEE:

Yes. That was the understanding. I do not know if that is still the intent because I do not see that carveout in this mock-up.

MR. WILKINSON:

I was trying to ascertain exactly what the intent was. We are talking specifically about the items included in the superpriority lien, not necessarily the cap on fees set forth in NRS 116.310313. Presumably, those could be different. I have not studied this language carefully enough to determine that. We can do whatever the Committee desires. We can draft this in a manner that would include those costs or not include them.

SENATOR KIHUEN:

I would prefer we cap it at \$1,950 with all the fees included. This has been my concern. People are struggling, and these management and collection companies have been abusing people. I want to make sure there is an absolute cap aside from the reasonable attorney fees.

SENATOR OPENING:

Our intent was to mirror the Commission's regulations. The Commission's regulations say collection fees are capped at \$1,950. Those are the fees a collection company can charge. The foreclosure process includes other fees, such as title company fees, the collection company is not privy to. Those are costs of doing business the HOA must pay if it is going through the title process. The money does not go into the pockets of the collection companies. I realize now by including what we did in this bill, we are creating an unintended consequence because NRS 116.310313 is the regulation. We thought by making it well known that we did not want collection companies getting more than \$1,950, we may be doing the wrong thing regarding other charges that may come with a foreclosure.

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If we can pass this, we will fix it on the Senate Floor with whatever you need, Senator Kihuen, to make sure we know collection costs are capped. Anything a collection company can get is capped at \$1,950.

MR. LEE:

If it is any solace to you, the way the regulation is written and everyone involved in the collection process agreed, the title company charges—\$290 to \$350—are absolute charges. No surcharge can be placed on that. Neither the collection agency nor the HOA can bump that amount so as to realize something. The HOA or debt collection agency could do a title search and come up with the names, but title searching is not easy. Title companies have been doing this for years and have a system that works. Most important, they give a guarantee, the TSG, that the information they have is correct. They insure that up to a certain amount, usually in the range of \$50,000. There is recourse if a mistake is made so there is no cloud on title. There is no risk that sometime down the road there might be a break in the chain of title causing difficulty with the way the title goes forward.

MR. WILKINSON:

This provision in Exhibit I, page 25, line 10 refers to the "cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313." *Nevada Revised Statute* 116.310313 states:

"Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation

This type of fee would be included in that definition and would therefore be included within the \$1,950 cap.

SENATOR ROBERSON:

It is unclear to me where this language should be. If we are being asked to vote on this now, it would help to see where the language should be.

I received an e-mail the day before yesterday regarding a friend who lives in Anthem. We have a serious problem with collection agencies. This person bought an existing home in Anthem nine years ago. The original owner lived in the home and had landscaping installed. When my friend moved in, he received a notice from the HOA requiring a landscaping plan. He said he did not have one because he bought an existing home with landscaping. He was assessed a fine of \$400. That is the only documentation he received from the HOA or management company for nine years. He went to pay off the loan on his home and received a letter from Associated Community Management wherein that \$400 is now \$27,827. This is a problem.

The proposed language does nothing to prevent this problem because it appears the \$1,950 cap does not include reasonable attorney fees. The word "reasonable" does not give me a lot of comfort. I do not see where management or collection companies would be prevented from continuing to charge large amounts of money for attorney's fees, whether they are attorneys or they hire an attorney. I do not see how this closes that hole allowing management and collection companies to charge outrageous fees.

I asked the other day if S.B. 195 was going to be heard for a vote. I was told no, we are not going to institute caps because the regulators are going to handle that. I am confused because we have a cap of sorts in S.B. 174. In this case, we are not waiting for the regulators to make this decision. I do not understand that.

SENATE BILL 195: Revises provisions relating to the costs of collecting past due financial obligations in common-interest communities. (BDR 10-832)

SENATOR COPENING:

You are right. We did say we were not going to do that. I am open to removing it. I was working with some of my colleagues who wanted that. We wanted to make sure it could not be raised, but our intent was to lower it. That was important to Senator Kihuen. We can take it out, but I do not want to do that without Senator Kihuen. That was where his comfort level was.

SENATOR ROBERSON:

The point is, we are not being consistent. When it comes to Senator Elizabeth Halseth's bill, we want to wait for the regulators to decide. When it comes to your bill, it is okay to put in the cap. I have a problem with this.

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SENATOR KIHUEN:

Page 26, lines 3 and 4 of the mock-up, Exhibit I, say, "... any reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation" If we were to put in this cap of \$1,950, would it cover those fees?

MR. WILKINSON:

As Senator Copeney pointed out, that language would fit better on line 5, page 26 of Exhibit I. If the cap was there, it would include attorney's fees and other fees to cover the cost of collecting. We would have to be careful of the wording and make it clear on the record. It refers specifically to NRS 116.310313. I would read those things together to mean everything authorized under NRS 116.310313 would be capped at \$1,950.

SENATOR KIHUEN:

That is my concern. We agreed on the reasonable attorney's fees. Many attorneys have abused the word "reasonable." I am not comfortable with the other fees. If the \$1,950 cap would cover these other fees, it would make me feel better. It would not please me 100 percent, but I just want to make sure the cap will cover those fees.

MR. WILKINSON:

It is important to make it clear on the record regarding the amount of the superpriority with respect to attorney's fees and all costs if the intent is to cap it at \$1,950. We can draft that in a manner to make it clear.

CHAIR WIENER:

Are the other fees concerning you because the bill says reasonable attorney's fees and other fees? It is the other fees you want addressed in the \$1,950?

SENATOR KIHUEN:

Yes.

CHAIR WIENER:

Reasonable attorney's fees would be separate?

SENATOR KIHUEN:

Other fees are not defined.

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MICHAEL BUCKLEY (Commission for Common-Interest Communities and Condominium Hotels):

Mr. Wilkinson is clear that if the \$1,950 is moved to page 26 of Exhibit I, it would be everything. It would include title costs, attorney's fees and everything within the \$1,950. It would be an absolute cap. That is not the same as the Commission. As Mr. Lee pointed out, the Commission distinguished between out-of-pocket amounts—the recorder's fees, title fees, etc. We included those as separate costs because of the concern that anything not recovered comes back to the other owners who are paying their dues and would be picking up the slack for those who are delinquent.

SENATOR COPENING:

We have established we are okay with keeping the reasonable attorney's fees separate. We are concerned about the other fees that are undefined. Since we know the other fees could be passed along to all the homeowners, what are they?

PAMELA SCOTT (Howard Hughes Corporation):

The other fees were probably included to address the \$200 that can go to a management company for preparing a file to turn over to collection. That would come under the \$1,950. I understand Mr. Lee's concerns, and the associations should have the same concerns because it does cost to record and send registered mail. That is a hard cost. It does not go to the collection company. The association will have to eat that cost if it is included in the \$1,950.

SENATOR ROBERSON:

Mr. Buckley is under the impression the \$1,950 would include reasonable attorney's fees, or it would include attorney's fees generally. Senator Copening is saying it would not; that would be outside of the \$1,950. We are not all comfortable with that. We need to get a handle on who is correct in the interpretation of this amendment.

CHAIR WIENER:

That is what we are deciding. They will take their lead from whatever we decide to include in this amount. Based on the conversation we just had regarding Senator Kihuen's concern about other add-on fees, reasonable attorney's fees would be outside that. As we discussed in Committee, the word "reasonable" is not addressed. That is where some of the egregious charges come from. There are legal standards for "reasonable." Courts have evaluated what "reasonable"

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should be. We added "reasonable," which we have not had before. Is your concern the hard cap of collection and other fees and "reasonable" attorney's fees being outside the cap?

SENATOR KIHUEN:

Yes. Ideally, I would want to cap 100 percent of everything, but I understand a definition for "reasonable" attorney's fees is in statute. I am not happy with the \$1,950. I would prefer a lower amount. Some fees in the regulation—\$150 for a lien letter and \$400 for a notice of default—could be lower. There is no cap now. I would rather have something than nothing in this bill.

SENATOR ROBERSON:

I hear the argument that if these fees are charged and a collection company is not able to collect on them, all the other homeowners who are paying their dues would have to absorb those costs. That misses the point. We should be looking at the HOA management companies and boards. The boards have a fiduciary duty to the residents of their communities. They need to do a better job in negotiating agreements with collection companies so the law-abiding homeowners are not stuck with the bill. We are looking at the wrong issue when we say bills like this will protect the homeowners who pay their dues. That makes no sense.

A judge will decide whether attorney's fees are reasonable. If a homeowner gets stuck with a \$27,000 lien, does he or she have to hire an attorney and go to court to argue with the collection company over whether its attorney's fees are reasonable? For practical purposes, how often will a homeowner be able to do that? Will the homeowner have to take it because he or she does not have the money to argue their position in court? I can assure you, the collection company attorneys have the money. They can tie this up in court forever. It is more and more put on the backs of homeowners. The word "reasonable" attorney's fees does not give me a lot of comfort because the homeowners will ultimately have to fight that in court.

The superpriority question seems to be the big issue. It is being proposed we codify that the fees, potentially the attorney's fees, have a superpriority lien. It is my understanding this issue is being debated in the courts. I am concerned because the collection companies want this bill. I would like Chris Ferrari's comments about this new language we have just seen.

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CHAIR WIENER:

We have had debate on this issue. This is probably the only new language putting in a cap, and there are often caps in statute. I do not want to rehear a bill. We need to move forward. We have had two days of hearings on this and a day of hearing on each other bill.

SENATOR ROBERSON:

Senator Copening, how do you see this working if a homeowner gets a bill for \$27,000 or \$2,700, and it includes attorney's fees? How is that homeowner supposed to dispute whether those attorney's fees are reasonable? Must they hire an attorney and spend more in legal fees to argue with other attorneys about whether those attorney's fees are reasonable?

SENATOR COPENING:

We wanted to make sure the word "reasonable" was included regarding attorney's fees so HOAs, boards and management companies could not go crazy with attorney's fees. Including "reasonable" attorney's fees is a protection for homeowners.

The Commission adopted caps that must be approved by the Legislative Commission. Those caps will preclude costs of collection from being more than \$1,950. Our Chair sent a letter to the Commission saying this Committee is not satisfied with that and would like a lower cap. I expect the Chair of the Commission will take that into consideration and probably hold additional hearings. *Nevada Revised Statute* 116 allows aggrieved homeowners to go before the Commission, and it includes many steps—mediation and arbitration—at no or very low cost. We are trying to include these caps so egregious fees do not occur.

Originally in this bill, we struck the first section. The first section included an extra step of due process by allowing a homeowner to appeal to the Commission if he or she received an unfavorable ruling from the Ombudsman's Office. We received approximately 15 e-mails from people who did not like section 1. We tried to do what the homeowners wanted, and we struck section 1. Administrator Gail J. Anderson from the Real Estate Division created a bill allowing that extra due process because it is good for homeowners. Attorney's fees are part of the superpriority. People do not like it, and it is being disputed in court.

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SENATOR ROBERSON:

Where are attorney's fees already part of the superpriority in this statute?

SENATOR COPENING:

It is not in my bill. It is already in the law.

SENATOR ROBERSON:

Where, other than new language, does it say attorney's fees?

MR. BUCKLEY:

There is a decision in the Eighth Judicial District Court that attorney's fees and collection costs are part of the superpriority. There are a number of lawsuits dealing with this issue. There are decisions on both sides. It will not be settled until the Nevada Supreme Court makes a decision or this legislation addresses it. We are only talking about the superpriority. In cases of a delinquency, the association will most likely be paid when the lender forecloses. Senator Roberson's issue of the fine is not addressed in this bill; it is a separate issue. It cannot be foreclosed. It is a lien but cannot be foreclosed.

To put this into context, S.B. 254, which would create mediation at a reduced cost and speedy arbitration, would create a forum where people could use the Real Estate Division or speedy arbitration to resolve an issue on attorney's fees. But remember, fines cannot be imposed unless a hearing is held with due process. If there was not a hearing, a fine would not be right. This bill only deals with the superpriority amount, and it would include everything capped at \$1,950.

SENATOR ROBERSON:

This is about superpriority. Attorney's fees are not included in superpriority in statute. As Mr. Buckley pointed out, this issue is being litigated in the courts. What we are doing today is fundamentally changing statutory law to allow attorney's fees in the superpriority lien. For those of you on this Committee who are concerned about homeowners being stuck with attorney's fees in the superpriority, this does not help. This statutorily blows a hole wide open to allow attorney's fees whether reasonable or not. We can debate that. But for the first time, we are allowing attorney's fees to be included in the superpriority lien by statute. That is my problem with this bill.

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SENATOR COPENING:

It is law that they are awarded. I will point to the e-mail sent about Paradise Spa in Senator Roberson and Senator Breeden's district. The HOA was raided. An investor bought the majority of the units. He foreclosed on them. He stopped paying his assessments before foreclosing approximately two years ago. Paradise Spa, which is mostly senior citizens, is nearly broke. On April 18, the gas, which is on one meter owned by this investor, will be shut off. The residents got an extension. It was supposed to be shut off on April 8 in 261 units where mostly senior citizens live.

I have stayed on top of this to ensure these senior citizens are not out on the street. The unpaid assessments are nearly \$1 million. This facility has gone downhill. In a few days, the gas will be turned off. I do not know when these people will be evicted. They have accumulated significant fees. They are chasing past due amounts of nearly \$1 million, and their collection costs are way beyond \$1,950. They had to enlist the help of an attorney to get this investor out of their unit. He has been arrested. These people do not have the money to come up with \$1 million and pay the gas bill of \$41,000. The gas will be turned off unless people help them. If you take this away, they are done. These are your constituents, Senator Roberson.

SENATOR ROBERSON:

That is a complete red herring. There is allegedly criminal activity going on. We do not need this statute to deal with that. I do not see how this statute helps that situation. They are my constituents, but that is a false argument.

RENNY ASHLEMAN (City of Henderson):

The mock-up includes language never discussed that is contrary to my agreement with the working committee. The working committee agreed to the language, "unless a person has accepted the responsibility." On page 11 of Exhibit 1, section 6, subsection 1 says, "... unless a governmental entity has accepted responsibility" This is a concern to the City of Henderson. It should say "person" rather than "governmental entity." These walls are not on our property. They are not our responsibility. We were only interested in the issue because they were a safety concern on our right-of-way.

CHAIR WIENER:

That was agreed to.

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MR. ASHLEMAN:

It was agreed to. The language in lines 24 through 27 on page 11 of Exhibit I was not agreed upon by anyone and does not appropriately describe the relationship between the people. There are thousands of these walls. You can imagine us having to accept or deny responsibility for interior walls. We did not build them. They are not on our property. We did not ask anyone to do anything about them. Please remove that language.

CHAIR WIENER:

You want the word "person" at line 14 on page 11 of Exhibit I?

MR. ASHLEMAN:

Yes. I do not want the new language on page 11 of Exhibit I, lines 24 through 27.

MR. WILKINSON:

This is an important distinction, and it is a drafting issue. It needs to be clear. The term "person" as used in NRS does not include a governmental entity unless we specifically state that it does. If the desire is to exclude "governmental entity," the effect of using the term "person" would be to entirely exclude "governmental entities" unless we said "person," and then we further said as used in the statute that a "person" includes a "governmental entity."

CHAIR WIENER:

My understanding was that sometimes a municipality does need to get involved. Sometimes, it is the complex itself. I do not remember entirely excluding a municipality. It would be if it is appropriate to bring in the municipality; if it is appropriate, it is the complex. It was not just one or the other.

MR. ASHLEMAN:

I have no objection to using the word "person or other entity." Would that pick up the municipalities?

SENATOR COPENING:

You are right. This is wrong. We took all the amendments we went through the other day and asked our legal staff to include them in a mock-up. They misunderstood, and we got it this morning. I can see there are things missing in the portion saying, "not the responsibility of the unit owner." It is not in here.

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There are mistakes. I apologize. Did you review the amendments we went through?

MR. ASHLEMAN:
Yes.

SENATOR COPENING:
Were they good?

MR. ASHLEMAN:
I had agreed to the one Mr. Buckley presented.

SENATOR COPENING:
That is what was supposed to be in Exhibit I. We will fix this section. If Exhibit I does not match up to the amendments we reviewed two days ago, we need to match them so we do not include something incorrect.

CHAIR WIENER:
In the work session, we went through item by item what the parties agreed to.

SENATOR MCGINNESS:
You recognize the problem, but everyone who has a part in this has not been able to come to the table. We got this amendment this morning just like Mr. Ashleman. I am concerned we will try to fix it on the Senate Floor or fix it in the other House. That makes me nervous.

CHAIR WIENER:
I am ready for a motion on the bill with the amendments as we discussed in our work session document, Exhibit J. We walked through each one two days ago with the addition of the cap. We need clarity on the \$1,950 cap on page 26 of Exhibit I, "any reasonable attorney's fees" and capping all other fees at \$1,950. Is that the intention?

SENATOR BREEDEN:
There is nothing in statute; it is just status quo. We have heard from many constituents who have been affected by these escalated fees. We need a starting place to help our constituents. This is a good start.

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SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 174.

SENATOR COPENING SECONDED THE MOTION.

SENATOR KIHUEN:

For the record, I will support this bill now because it puts a cap on the fees. I am not 100 percent comfortable with the cap, but it is better than the status quo. I reserve my right to change my vote on the floor. I want to consult further with my constituents who will be directly impacted by this bill before I vote on the Senate Floor.

SENATOR ROBERSON:

This is not a good start. It is a step backward because under the statute, there is no provision allowing attorney's fees to be included within the superpriority lien. Today, we are taking a step in the wrong direction by allowing attorney's fees, for the first time in statute, to be part of the superpriority lien.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

CHAIR WIENER:

We will address S.B. 185. We have a work session document (Exhibit K). I am requesting a one-week waiver.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

SENATOR COPENING MOVED TO REQUEST A ONE-WEEK WAIVER FROM SENATE LEADERSHIP ON S.B. 185.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 204. We have a work session document (Exhibit L). This bill enacts amendments to the Uniform Common-Interest Ownership Act. We have had other uniform acts before the Committee. We have not updated our uniform acts since 1991. Most of this bill consists of technical changes and updates to the Uniform Act.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

MR. WILKINSON:

Most of the changes are technical in nature, and they are not substantive. They are changes in internal references and include drafting issues and minor changes the Uniform Law Commission made to the Uniform Act to update it.

CHAIR WIENER:

Has the 1991 law been worked on since then? We have not joined the other states?

MR. WILKINSON:

Some efforts were made last Session, in particular, to include some of the changes from the Uniform Act. This is the first time those things have been carefully looked at. The Uniform Law Commissioners approved the final version in 2008. This is the most comprehensive review of that.

MR. BUCKLEY:

Mr. Wilkinson is correct.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 204.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND
ROBERSON VOTED NO.)

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CHAIR WIENER:

We will address S.B. 254. We have a work session document (Exhibit M). This bill relates to alternative dispute resolution. You have a handwritten markup of the amendments, Exhibit M, pages 4 through 30. We have a mock-up of the amendments to S.B. 254 (Exhibit N).

SENATE BILL 254: Revises provisions relating to common-interest communities.
(BDR 10-264)

SENATOR COPENING:

We went through the proposed amendments, and we put them into a mock-up version, Exhibit N. Mr. Buckley and some not on the working group worked on these amendments.

MR. BUCKLEY:

We went through all the amendments included in Exhibit N.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 254 WITH AMENDMENT 6327.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

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CHAIR WIENER:

Is there any public comment? There being nothing further to come before the Committee, we are adjourned at 8:33 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

| <u>EXHIBITS</u> | | | |
|------------------------|----------------|-------------------------|-----------------------------------|
| Bill | Exhibit | Witness / Agency | Description |
| | A | | Agenda |
| | B | | Attendance Roster |
| S.B. 103 | C | Linda Eissmann | Proposed Amendment 6332 to SB 103 |
| S.B. 103 | D | Linda Eissmann | Work Session Document |
| S.B. 150 | E | Bradley A. Wilkinson | Work Session Document |
| S.B. 283 | F | Linda Eissmann | Work Session Document |
| S.B. 347 | G | Linda Eissmann | Work Session Document |
| S.B. 356 | H | Valerie Wiener | Work Session Document |
| S.B. 174 | I | Senator Valerie Wiener | Proposed Amendment 6328 |
| S.B. 174 | J | Senator Valerie Wiener | Work Session Document |
| S.B. 185 | K | Senator Valerie Wiener | Work Session Document |
| S.B. 204 | L | Senator Valerie Wiener | Work Session Document |
| S.B. 254 | M | Senator Valerie Wiener | Work Session Document |
| S.B. 254 | N | Senator Valerie Wiener | Proposed Amendment 6327 |

EXHIBIT 8

A.B. 448

ASSEMBLY BILL NO. 448—ASSEMBLYMAN MUNFORD

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to real property.
(BDR 10-513)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

EXPLANATION — Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to real property; providing for the issuance of cease and desist orders by the Administrator of the Real Estate Division of the Department of Business and Industry under certain circumstances; revising provisions governing access to a unit in a common-interest community; prohibiting an association of a common-interest community from charging certain fees; prohibiting an association from enacting certain restrictions on antennae and certain other devices for receiving broadcast signals; revising provisions governing the powers of an association; revising provisions governing the filling of vacancies on an executive board; revising provisions governing the powers and duties of the executive board; revising provisions governing construction penalties; revising provisions governing sanctions for violations of the governing documents; revising provisions governing the collection of certain past due financial obligations; revising provisions governing eligibility to be a member of the executive board or an officer of the association; requiring members of the executive board to complete certain courses of education; revising provisions governing meetings of the units' owners and of the executive board; revising provisions governing surplus funds of an association; revising provisions governing the budget of an association; revising provisions governing certain expenditures by an association; revising provisions governing assessments to fund the reserves of an association; revising provisions governing studies of the reserves of an association; revising provisions governing liens of an association; revising provisions governing the books, records and papers of an association; revising provisions governing parking in a common-interest community; revising provisions governing claims based on alleged violations of certain laws and the interpretation, application and enforcement of the governing documents; revising various other provisions relating to common-interest communities; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

Section 1 of this bill provides for the issuance of orders to cease and desist by the Administrator of the Real Estate Division of the Department of Business and Industry under certain circumstances.

Existing law prohibits an association of a common-interest community from unreasonably restricting, prohibiting or otherwise impeding the right of a unit's owner to have access to his or her unit. (NRS 116.2111) Section 2 of this bill prohibits the association from restricting, prohibiting or otherwise impeding the access to the unit of the parents and children of the unit's owner. Section 2 also prohibits the association from: (1) charging a fee to a unit's owner for obtaining permission to change the exterior appearance of a unit or the landscaping; and (2) restricting in a manner which violates certain federal regulations the installation, maintenance or use of an antenna or other device for receiving certain broadcast signals.

Existing law requires an association to provide certain notice at least 48 hours before directing the removal of a vehicle which is improperly parked on property owned or leased by the association unless the vehicle is blocking a fire hydrant, fire lane or handicapped parking space or poses a threat to the health, safety and welfare of residents. (NRS 116.3102) Section 3 of this bill requires the association to provide the 48-hour notice before removing a vehicle which is blocking a handicapped parking space.

Section 4 of this bill provides for an emergency election to fill certain vacancies on the executive board if the executive board is unable to obtain a quorum because of such vacancies and requires the Division to apply for the appointment of a receiver for the association if the units' owners are unable to fill such vacancies. Section 4 also: (1) requires the association to make available to members of the executive board, at no charge, certain books, records and papers; and (2) requires the executive board to notify the units' owners if the executive board has been found to have violated the provisions of existing law governing common-interest communities or the governing documents.

Existing law authorizes an association to impose a construction penalty against a unit's owner who fails to adhere to a schedule. (NRS 116.310305) Section 5 of this bill prohibits the imposition of a construction penalty if the failure to adhere to the schedule is caused by circumstances beyond the control of the unit's owner.

Existing law authorizes an association to prohibit a unit's owner or a tenant or an invitee of a unit's owner or a tenant from using the common elements as a sanction for a violation of the governing documents. (NRS 116.31031) Section 6 of this bill provides that the association may prohibit only the use of a common element to which the violation relates, unless the violation is failure to pay an assessment. Section 6 also revises provisions relating to fines for violations of the governing documents by: (1) providing a lifetime cap of \$2,500 on the amount of fines which may be imposed on a unit's owner and his or her spouse; (2) prohibiting an association from imposing a fine if another association has imposed a fine for the same conduct; (3) authorizing the postponement of a hearing on a violation for medical reasons; and (4) requiring a hearing before the imposition of a fine for a continuing violation.

Existing law authorizes, but does not require, an association to enter the grounds of a unit to maintain the exterior of the unit under certain circumstances. (NRS 116.310312) Section 7 of this bill provides that this authorization expires if the unit's owner or the agent of the unit's owner performs the maintenance necessary for the unit to meet the community standards.

Section 8 of this bill limits the type of collection fees which an association may charge to a unit's owner and establishes a cap on the amount of such fees which is based on the amount of the outstanding balance.



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- 3 -

54 Section 9 of this bill requires a member of the executive board to successfully
 55 complete 2 hours of education concerning the duties of members of an executive
 56 board each year. Section 9 also provides that: (1) unless the governing documents
 57 provide otherwise, officers of the association are required to be units' owners; and
 58 (2) a person who resides with, or is related within the first degree of consanguinity
 59 to, an officer of the association or member of the executive board may not become
 60 an officer of the association or a member of the executive board.

61 Section 11 of this bill revises various provisions relating to meetings of the
 62 units' owners by: (1) authorizing a unit's owner to request that an item be included
 63 on the agenda for the meeting; (2) authorizing a guest of a unit's owner to attend
 64 the meeting; and (3) authorizing a unit's owner to record the meeting on videotape
 65 as well as audiotape.

66 Section 12 of this bill revises various provisions relating to meetings of the
 67 executive board by: (1) requiring the meetings which are held at a time other than
 68 standard business hours to start no earlier than 6 p.m.; (2) requiring the agenda to
 69 be available not later than 5 days before the meeting; (3) requiring a copy of certain
 70 financial information required to be reviewed at an executive board meeting to be
 71 made available at no charge to each person present at the meeting and to be
 72 provided in electronic format at no charge to a unit's owner who requests the
 73 information; and (4) providing that a page limit on materials, remarks or other
 74 information to be included in the minutes of the meeting must not be less than two
 75 double-sided pages.

76 Section 13 of this bill revises provisions governing the right of a unit's owner
 77 to speak at a meeting of the units' owners or the executive board by: (1) requiring a
 78 limitation of not less than 3 minutes on the time a unit's owner may speak; (2)
 79 requiring the association to comply with the Americans with Disabilities Act in
 80 providing access to the meeting; (3) requiring the executive board to provide a
 81 period of comments by the units' owners before voting on a matter; and (4)
 82 authorizing a person to be represented by a person of his or her choosing at a
 83 hearing concerning an alleged violation of the governing documents.

84 Section 14 of this bill requires bids for the provision of durable goods to the
 85 association to be opened during a meeting of the executive board.

86 Existing law requires an executive board which receives a complaint from a
 87 unit's owner alleging that the executive board has violated existing law or the
 88 governing documents to place the subject of the complaint on the agenda for its
 89 next meeting if the unit's owner requests that action. (NRS 116.31087) Section 15
 90 of this bill requires the executive board to discuss the complaint fully and
 91 completely and attempt to resolve the complaint at the meeting.

92 Existing law creates certain crimes related to voting by units' owners. (NRS
 93 116.31107) Section 16 of this bill requires these provisions to be printed on each
 94 ballot provided to the units' owners.

95 Section 17 of this bill defines "surplus funds" for the purpose of determining
 96 whether the association is required to pay the surplus funds to units' owners.

97 Existing law requires a review or audit of the financial statement of an
 98 association at certain times. (NRS 116.31144) Section 18 of this bill requires the
 99 association to provide a copy of the review or audit to a unit's owner in either paper
 100 or electronic format at no charge to the unit's owner if the unit's owner requests
 101 such a copy.

102 Under existing law, the proposed budget of an association takes effect unless
 103 the units' owners reject the proposed budget. (NRS 116.3115, 116.31151) Sections
 104 19 and 20 of this bill provide that the proposed budget does not take effect unless
 105 the units' owners ratify the proposed budget. If the proposed budget is not ratified,
 106 the most recently ratified budget continues in effect.

107 Section 19 also revises provisions governing special assessments by: (1)
 108 removing provisions which specifically authorize the executive board to impose



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109 necessary and reasonable assessments to carry out a plan to adequately fund the
110 reserves of the association without seeking or obtaining the approval of the units'
111 owners; (2) providing that an assessment to fund the reserves of the association
112 may not exceed \$35 per unit per month; and (3) requiring the approval of the units'
113 owners for capital expenditures exceeding a certain amount and for any visible
114 changes to the interior or exterior of a common element.

115 Section 20 requires the collections policy of the association to establish a
116 certain period after which a delinquent fee, fine, assessment or cost may be referred
117 for collection.

118 Existing law requires an association to conduct a study of the reserves required
119 to repair, replace and restore the major components of the common elements and
120 any other portion of the common-interest community that the association is
121 obligated to maintain. (NRS 116.31152) Section 21 of this bill prohibits the
122 executive board from taking any action based on the study of the reserves,
123 including, without limitation, establishing a funding plan to provide adequate
124 funding for the required reserves, unless and until the executive board approves the
125 study of the reserves at a meeting of the executive board. Section 21 also: (1)
126 requires the reserve study to be made available to a unit's owner in electronic
127 format at no charge; and (2) provides for notice of the meeting to a unit's owner.

128 Section 22 of this bill revises provisions governing the amount of the
129 association's lien which is prior to a first security interest on a unit.

130 Section 23 of this bill prohibits the foreclosure of an association's lien and the
131 filing of a civil action to obtain a judgment for the amount due if: (1) the
132 foreclosure sale does not occur within 120 days after mailing the notice of default
133 and election to sell; or (2) an agreement extending that period is not reached.

134 Section 24 of this bill revises provisions governing the access of a unit's owner
135 to the books, records and papers of an association and requires the publication of
136 the views or opinions of a unit's owner in the association's official newsletter under
137 certain circumstances.

138 Existing law provides for a civil action if the executive board, a member of the
139 executive board, a community manager or an officer, employee or agent of the
140 association take, direct or encourage certain retaliatory action against a unit's
141 owner. (NRS 116.31183) Section 25 of this bill specifies certain actions which
142 constitute retaliatory action.

143 Section 26 of this bill prohibits an association from charging a fee to a unit's
144 owner to obtain approval for the installation of drought tolerant landscaping.

145 Section 27 of this bill replaces the authorization of an executive board to
146 approve the renting or leasing of a unit under certain circumstances with a
147 provision requiring the executive board to grant such approval under certain
148 circumstances.

149 Section 28 of this bill: (1) prohibits the executive board and the governing
150 documents from interfering with the parking of an automobile, privately owned
151 standard pickup truck, motorcycle or certain other vehicles; and (2) requires the
152 association of a common-interest community which is not gated or enclosed to
153 display signs on or near any property on which parking is prohibited or restricted.

154 Sections 29 and 33 of this bill revise provisions governing mediation and
155 arbitration of claims relating to the interpretation, application or enforcement of
156 certain governing documents by authorizing a civil action concerning certain claims
157 to be commenced without submitting the claims to mediation or arbitration. Section
158 29 also authorizes a civil action concerning a violation of existing law governing
159 common-interest communities to be brought by a tenant or an invitee of a unit's
160 owner or a tenant.

161 Sections 31 and 32 of this bill require the sharing of information by the parties
162 to an affidavit filed with the Division alleging a violation of existing law governing
163 common-interest communities.



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164 Section 34 of this bill revises provisions governing the mediation and
165 arbitration of certain claims relating to the governing documents by: (1) prohibiting
166 the findings of a mediator or arbitrator from being admitted in a civil action; (2)
167 limiting the fees of a mediator or an arbitrator to \$750; (3) requiring each party to a
168 mediation or arbitration to pay an equal percentage of the fees of a mediator or
169 arbitrator; (4) providing that a party to a mediation or arbitration is not liable for the
170 costs and attorney's fees incurred by another party during the mediation or
171 arbitration; and (5) providing for the removal of a mediator or arbitrator under
172 certain circumstances.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 116 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. If the Administrator has reasonable cause to believe that*
4 *any person or executive board has engaged in any activity in*
5 *violation of any provision of this chapter, any regulation adopted*
6 *pursuant thereto or any order, decision, demand or requirement of*
7 *the Commission or Division or a hearing panel, or is about to*
8 *commit such a violation, and that the violation or potential*
9 *violation has caused or is likely to cause irreversible harm, the*
10 *Administrator may issue an order directing the person or*
11 *executive board to desist and refrain from continuing to commit*
12 *the violation or from doing any act in furtherance of the violation.*

13 *2. Within 30 days after the receipt of such an order, the*
14 *person may file a verified petition with the Administrator for a*
15 *hearing before the Commission.*

16 *3. The Commission shall hold a hearing at the next regularly*
17 *scheduled meeting of the Commission. If the Commission fails to*
18 *hold such a hearing, or does not render a written decision within*
19 *30 days after the hearing, the cease and desist order is rescinded.*

20 *4. The decision of the Commission at a hearing held*
21 *pursuant to subsection 3 is a final decision for the purposes of*
22 *judicial review.*

23 Sec. 2. NRS 116.2111 is hereby amended to read as follows:

24 116.2111 1. Except as otherwise provided in this section and
25 subject to the provisions of the declaration and other provisions of
26 law, a unit's owner:

27 (a) May make any improvements or alterations to his or her unit
28 that do not impair the structural integrity or mechanical systems or
29 lessen the support of any portion of the common-interest
30 community;

31 (b) May not change the appearance of the common elements, or
32 the exterior appearance of a unit or any other portion of the



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1 common-interest community, without permission of the association;
2 and

3 (c) After acquiring an adjoining unit or an adjoining part of an
4 adjoining unit, may remove or alter any intervening partition or
5 create apertures therein, even if the partition in whole or in part is a
6 common element, if those acts do not impair the structural integrity
7 or mechanical systems or lessen the support of any portion of the
8 common-interest community. Removal of partitions or creation of
9 apertures under this paragraph is not an alteration of boundaries.

10 2. An association may not:

11 (a) ~~[Unreasonably restrict,]~~ *Restrict*, prohibit or otherwise
12 impede the lawful rights of a unit's owner, *and the children or*
13 *parents of a unit's owner*, to have reasonable access to his or her
14 unit ~~[,]~~, *unless directed otherwise by the unit's owner.*

15 (b) Charge any fee for a person to enter the common-interest
16 community to provide services to a unit, a unit's owner or a tenant
17 of a unit's owner or for any visitor to the common-interest
18 community or invitee of a unit's owner or a tenant of a unit's owner
19 to enter the common-interest community.

20 (c) Unreasonably restrict, prohibit or withhold approval for a
21 unit's owner to add to a unit:

22 (1) Improvements such as ramps, railings or elevators that
23 are necessary to improve access to the unit for any occupant of the
24 unit who has a disability;

25 (2) Additional locks to improve the security of the unit;

26 (3) Shutters to improve the security of the unit or to reduce
27 the costs of energy for the unit; or

28 (4) A system that uses wind energy to reduce the costs of
29 energy for the unit if the boundaries of the unit encompass 2 acres or
30 more within the common-interest community.

31 (d) With regard to approving or disapproving any improvement
32 or alteration made to a unit, act in violation of any state or federal
33 law.

34 (e) *Charge any fee to a unit's owner for obtaining permission*
35 *to change the exterior appearance of a unit or the landscaping*
36 *associated with a unit.*

37 (f) *Restrict in a manner which violates the provisions of 47*
38 *C.F.R. § 1.4000 the installation, maintenance or use of any*
39 *antenna or other device described in that section.*

40 3. Any improvement or alteration made pursuant to subsection
41 2 that is visible from any other portion of the common-interest
42 community must be installed, constructed or added in accordance
43 with the procedures set forth in the governing documents of the
44 association and must be selected or designed to the maximum extent



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1 practicable to be compatible with the style of the common-interest
2 community.

3 4. An association may not unreasonably restrict, prohibit or
4 withhold approval for a unit's owner to add shutters to improve the
5 security of the unit or to reduce the costs of energy for the unit,
6 including, without limitation, rolling shutters, that are attached to a
7 portion of an interior or exterior window, interior or exterior door or
8 interior or exterior wall which is not part of the unit and which is a
9 common element or limited common element if:

10 (a) The portion of the window, door or wall to which the
11 shutters are attached is adjoining the unit; and

12 (b) The shutters must necessarily be attached to that portion of
13 the window, door or wall during installation to achieve the
14 maximum benefit in improving the security of the unit or reducing
15 the costs of energy for the unit.

16 5. If a unit's owner adds shutters pursuant to subsection 4, the
17 unit's owner is responsible for the maintenance of the shutters.

18 6. For the purposes of subsection 4, a covenant, restriction or
19 condition which does not unreasonably restrict the addition of
20 shutters and which is contained in the governing documents of a
21 common-interest community or a policy established by a common-
22 interest community is enforceable so long as the covenant,
23 restriction or condition was:

24 (a) In existence on July 1, 2009; or

25 (b) Contained in the governing documents in effect on the close
26 of escrow of the first sale of a unit in the common-interest
27 community.

28 7. A unit's owner may not add to the unit a system that uses
29 wind energy as described in subparagraph 4 of paragraph (c) of
30 subsection 2 unless the unit's owner first obtains the written consent
31 of each owner of property within 300 feet of any boundary of the
32 unit.

33 Sec. 3. NRS 116.3102 is hereby amended to read as follows:

34 116.3102 1. Except as otherwise provided in this section, and
35 subject to the provisions of the declaration, the association may do
36 any or all of the following:

37 (a) Adopt and amend bylaws, rules and regulations.

38 (b) Adopt and amend budgets for revenues, expenditures and
39 reserves and collect assessments for common expenses from the
40 units' owners.

41 (c) Hire and discharge managing agents and other employees,
42 agents and independent contractors.

43 (d) Institute, defend or intervene in litigation or administrative
44 proceedings in its own name on behalf of itself or two or more units'
45 owners on matters affecting the common-interest community.



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1 (e) Make contracts and incur liabilities, Any contract between
2 the association and a private entity for the furnishing of goods or
3 services must not include a provision granting the private entity the
4 right of first refusal with respect to extension or renewal of the
5 contract.

6 (f) Regulate the use, maintenance, repair, replacement and
7 modification of common elements.

8 (g) Cause additional improvements to be made as a part of the
9 common elements.

10 (h) Acquire, hold, encumber and convey in its own name any
11 right, title or interest to real estate or personal property, but:

12 (1) Common elements in a condominium or planned
13 community may be conveyed or subjected to a security interest only
14 pursuant to NRS 116.3112; and

15 (2) Part of a cooperative may be conveyed, or all or part of a
16 cooperative may be subjected to a security interest, only pursuant to
17 NRS 116.3112.

18 (i) Grant easements, leases, licenses and concessions through or
19 over the common elements.

20 (j) Impose and receive any payments, fees or charges for the use,
21 rental or operation of the common elements, other than limited
22 common elements described in subsections 2 and 4 of NRS
23 116.2102, and for services provided to the units' owners, including,
24 without limitation, any services provided pursuant to
25 NRS 116.310312.

26 (k) Impose *collection costs and* charges for late payment of
27 assessments pursuant to NRS 116.3115.

28 (l) Impose construction penalties when authorized pursuant to
29 NRS 116.310305.

30 (m) Impose reasonable fines for violations of the governing
31 documents of the association only if the association complies with
32 the requirements set forth in NRS 116.31031.

33 (n) Impose reasonable charges for the preparation and
34 recordation of any amendments to the declaration or any statements
35 of unpaid assessments, and impose reasonable fees, not to exceed
36 the amounts authorized by NRS 116.4109, for preparing and
37 furnishing the documents and certificate required by that section.

38 (o) Provide for the indemnification of its officers and executive
39 board and maintain directors' and officers' liability insurance.

40 (p) Assign its right to future income, including the right to
41 receive assessments for common expenses, but only to the extent the
42 declaration expressly so provides.

43 (q) Exercise any other powers conferred by the declaration or
44 bylaws.



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1 (r) Exercise all other powers that may be exercised in this State
2 by legal entities of the same type as the association.

3 (s) Direct the removal of vehicles improperly parked on property
4 owned or leased by the association, as authorized pursuant to NRS
5 487.038, or improperly parked on any road, street, alley or other
6 thoroughfare within the common-interest community in violation of
7 the governing documents. In addition to complying with the
8 requirements of NRS 487.038 and any requirements in the
9 governing documents, if ~~{a}~~ any vehicle, *regardless of the person*
10 *who owns the vehicle*, is improperly parked as described in this
11 paragraph, the association must post written notice in a conspicuous
12 place on the vehicle or provide oral or written notice to the owner or
13 operator of the vehicle at least 48 hours before the association may
14 direct the removal of the vehicle, unless the vehicle:

15 (1) Is blocking a fire hydrant ~~{,}~~ or fire lane ; ~~{or parking~~
16 ~~space designated for the handicapped,}~~ or

17 (2) Poses an imminent threat of causing a substantial adverse
18 effect on the health, safety or welfare of the units' owners or
19 residents of the common-interest community.

20 (t) Exercise any other powers necessary and proper for the
21 governance and operation of the association.

22 2. The declaration may not impose limitations on the power of
23 the association to deal with the declarant which are more restrictive
24 than the limitations imposed on the power of the association to deal
25 with other persons.

26 3. Notwithstanding any provision of this chapter or the
27 governing documents to the contrary, an association may not impose
28 any assessment pursuant to this chapter or the governing documents
29 on the owner of any property in the common-interest community
30 that is exempt from taxation pursuant to NRS 361.125. For the
31 purposes of this subsection, "assessment" does not include any
32 charge for any utility services, including, without limitation,
33 telecommunications, broadband communications, cable television,
34 electricity, natural gas, sewer services, garbage collection, water or
35 for any other service which is delivered to and used or consumed
36 directly by the property in the common-interest community that is
37 exempt from taxation pursuant to NRS 361.125.

38 Sec. 4. NRS 116.3103 is hereby amended to read as follows:

39 116.3103 1. Except as otherwise provided in the declaration,
40 the bylaws, this section or other provisions of this chapter, the
41 executive board may act in all instances on behalf of the association.
42 In the performance of their duties, the officers and members of the
43 executive board are fiduciaries and shall act on an informed basis, in
44 good faith and in the honest belief that their actions are in the best
45 interest of the association. The members of the executive board are



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1 required to exercise the ordinary and reasonable care of directors of
2 a corporation, subject to the business-judgment rule.

3 2. The executive board may not act on behalf of the association
4 to amend the declaration, to terminate the common-interest
5 community, or to elect members of the executive board or determine
6 their qualifications, powers and duties or terms of office, but the
7 executive board may fill vacancies in its membership for the
8 unexpired portion of any term *if the executive board is able to*
9 *obtain a quorum pursuant to subsection 3 of NRS 116.3109* unless
10 the governing documents provide that a vacancy on the executive
11 board must be filled by a vote of the membership of the association.
12 *If the executive board is authorized to fill vacancies in its*
13 *membership pursuant to this subsection, the executive board may*
14 *not appoint to the executive board a person who has been removed*
15 *from the executive board pursuant to NRS 116.31036 within the*
16 *immediately preceding 6 years.*

17 3. Notwithstanding the provisions of NRS 116.31175,
18 116.31177 and 116.3118, upon the request of a member of the
19 executive board, the association shall make available to the
20 member of the executive board, at no charge, the books, records
21 and other papers of the executive board and the association,
22 including, without limitation, records, invoices, contracts,
23 agreements, letters of instruction issued by the Division,
24 correspondence between a unit's owner and the community
25 manager, notices of violations, financial records, bank statements,
26 personnel records, employment contracts, reserve studies, notices
27 of delinquent assessments and notices of default and election to
28 sell mailed pursuant to NRS 116.31162, architectural plans and
29 specifications submitted by a unit's owner, minutes of executive
30 sessions of the executive board, voice recordings and any other
31 book, record or paper created by the executive board or the
32 association, its agents or a member of the executive board acting
33 in the course and scope of his or her duties as a member of the
34 executive board.

35 4. If the Commission, a mediator or an arbitrator who
36 conducts a mediation or arbitration pursuant to NRS 38.300 to
37 38.360, inclusive, or a court finds that the executive board has
38 committed a violation of any provision of the governing
39 documents, this chapter, any regulation adopted pursuant thereto
40 or any order of the Commission or a hearing panel, the executive
41 board must notify the units' owners of the findings by mailing a
42 statement of the findings to the mailing address of each unit
43 within the common-interest community or to any other mailing
44 address designated in writing by a unit's owner.



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1 5. Notwithstanding any provision of this chapter or the
2 governing documents, if the executive board is unable to obtain a
3 quorum pursuant to subsection 3 of NRS 116.3109 because of
4 vacancies on the executive board, the association must, within 30
5 days, hold a meeting of the units' owners for the purpose of
6 conducting an election to fill such vacancies as necessary to
7 provide a quorum for the executive board. The meeting and
8 election must be conducted in the following manner:

9 (a) Not later than 10 days in advance of the meeting, the
10 secretary or other officer specified in the bylaws shall cause notice
11 of the meeting to be hand-delivered, sent prepaid by United States
12 mail to the mailing address of each unit or to any other mailing
13 address designated in writing by the unit's owner or, if the
14 association offers to send notice by electronic mail, sent by
15 electronic mail at the request of the unit's owner to an electronic
16 mail address designated in writing by the unit's owner. The notice
17 of the meeting must state the time and place of the meeting and
18 that the meeting is being held for the purpose of filling vacancies
19 on the executive board. The notice must include notification of the
20 right of a unit's owner to:

21 (1) Have a copy of the minutes or a summary of the
22 minutes of the meeting provided to the unit's owner upon request,
23 in electronic format at no charge to the unit's owner or, if the
24 association is unable to provide the copy or summary in electronic
25 format, in paper format at a cost not to exceed 25 cents per page
26 for the first 10 pages, and 10 cents per page thereafter.

27 (2) Speak to the association regarding the election to fill
28 vacancies on the executive board.

29 (b) At the meeting:

30 (1) A quorum of the units' owners is not required for the
31 nomination of any candidate to fill a vacancy on the executive
32 board or for the election to fill the vacancy.

33 (2) A unit's owner may attend the meeting in person or by
34 proxy. The provisions of NRS 116.311 apply to the use of proxies
35 at the meeting.

36 (3) The units' owners present in person or by proxy shall
37 nominate candidates to fill such vacancies on the executive board
38 as are necessary to create a quorum for the executive board.

39 (4) After nominations are taken, the election to fill a
40 vacancy must be conducted by secret written ballot.

41 (5) The secret written ballots must be opened and counted
42 at the meeting and the candidate receiving a majority of the votes
43 cast for that seat on the executive board is elected to the executive
44 board for the period provided in paragraph (d).



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1 (c) The provisions of subsections 8, 9, 11 and 12 of NRS
2 116.3108 regarding the minutes of the meeting and the recording
3 of the meeting by a unit's owner are applicable to the meeting.

4 (d) Upon the election of members to the executive board
5 pursuant to this subsection:

6 (1) A candidate elected to the executive board pursuant to
7 this subsection is elected for a term of 90 days, except that if the
8 regular election for that seat on the executive board must be
9 conducted within 180 days after the candidate's election, the
10 candidate is elected for the unexpired portion of the term.

11 (2) The executive board may not fill any vacancy remaining
12 after the election but, within 90 days after the election pursuant to
13 this subsection, must call for an election to be conducted pursuant
14 to NRS 116.31034 to fill:

15 (I) Each remaining vacancy for which a regular election
16 is not required within 180 days; and

17 (II) The seats on the executive board which were filled
18 pursuant to this subsection, unless an election for such a seat is
19 required to be conducted within 180 days.

20 6. If, at an election conducted pursuant to subsection 5, the
21 units' owners do not fill a sufficient number of vacancies on
22 the executive board to provide a quorum for the executive board,
23 the Division must apply to a court of competent jurisdiction for the
24 appointment of a receiver for the association. In the application
25 for the appointment of the receiver, notice of a temporary
26 appointment of a receiver may be given to the association alone,
27 by process as in the case of an application for a temporary
28 restraining order or injunction. The hearing thereon may be had
29 after 5 days' notice unless the court directs a longer or different
30 notice and different parties. The court may appoint one or more
31 receivers to carry out the business of the association. The
32 members of the executive board must be preferred in making the
33 appointment. The powers of any receiver appointed pursuant to
34 this subsection may be continued as long as the court deems
35 necessary and proper. At any time, for sufficient cause, the court
36 may order the receivership terminated. Any receiver appointed
37 pursuant to this subsection has, among the usual powers, all the
38 functions, powers, tenure and duties to be exercised under the
39 direction of the court as are conferred on receivers and as
40 provided in NRS 78.635, 78.640 and 78.645, whether or not the
41 association is insolvent. Such powers include, without limitation,
42 the powers to:

43 (a) Take charge of the estate and effects of the association;

44 (b) Appoint an agent or agents;



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1 (c) Collect any debts and property due and belonging to the
2 association and prosecute and defend, in the name of the
3 association, or otherwise, any civil action as may be necessary or
4 proper for the purposes of collecting debts and property;

5 (d) Perform any other act in accordance with the governing
6 documents of the association and this chapter that may be
7 necessary for the association to carry out its obligations; and

8 (e) By injunction, restrain the association from exercising any
9 of its powers or doing business in any way except by and through
10 a receiver appointed by the court.

11 Sec. 5. NRS 116.310305 is hereby amended to read as
12 follows:

13 116.310305 1. A unit's owner shall adhere to a schedule
14 required by the association for:

15 (a) The completion of the design of a unit or the design of an
16 improvement to a unit;

17 (b) The commencement of the construction of a unit or the
18 construction of an improvement to a unit;

19 (c) The completion of the construction of a unit or the
20 construction of an improvement to the unit; or

21 (d) The issuance of a permit which is necessary for the
22 occupancy of a unit or for the use of an improvement to a unit.

23 2. ~~{The}~~ Except as otherwise provided by subsection 3, the
24 association may impose and enforce a construction penalty against a
25 unit's owner who fails to adhere to a schedule as required pursuant
26 to subsection 1 if:

27 (a) The maximum amount of the construction penalty and the
28 schedule are set forth in:

29 (1) The declaration;

30 (2) Another document related to the common-interest
31 community that is recorded before the date on which the unit's
32 owner acquired title to the unit; or

33 (3) A contract between the unit's owner and the association;
34 and

35 (b) The unit's owner receives notice of the alleged violation
36 which informs the unit's owner that he or she has a right to a
37 hearing on the alleged violation.

38 3. The association may not impose or enforce a construction
39 penalty against a unit's owner pursuant to subsection 2 if the
40 failure to adhere to the schedule as required pursuant to
41 subsection 1 is caused by circumstances beyond the control of the
42 unit's owner.

43 4. For the purposes of this chapter, a construction penalty is not
44 a fine.



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1 Sec. 6. NRS 116.31031 is hereby amended to read as follows:

2 116.31031 1. Except as otherwise provided in this section, if
3 a unit's owner or a tenant or an invitee of a unit's owner or a tenant
4 violates any provision of the governing documents of an association,
5 the executive board may, if the governing documents so provide:

6 (a) Prohibit, for a reasonable time, the unit's owner or the tenant
7 or the invitee of the unit's owner or the tenant from:

8 (1) Voting on matters related to the common-interest
9 community.

10 (2) Using the *specific common [elements] element to which*
11 *the violation relates, if the violation relates to a common element.*
12 The provisions of this subparagraph do not prohibit the *executive*
13 *board from prohibiting a unit's owner from using the common*
14 *elements if the unit's owner is delinquent in the payment of any*
15 *assessment and do not prohibit the unit's owner or the tenant or the*
16 *invitee of the unit's owner or the tenant from using any vehicular or*
17 *pedestrian ingress or egress to go to or from the unit, including any*
18 *area used for parking.*

19 (b) Impose a fine against the unit's owner or the tenant or the
20 invitee of the unit's owner or the tenant for each violation, except
21 that:

22 (1) A fine may not be imposed for a violation that is the
23 subject of a construction penalty pursuant to NRS 116.310305; and

24 (2) A fine may not be imposed against a unit's owner or a
25 tenant or invitee of a unit's owner or a tenant for a violation of the
26 governing documents which involves a vehicle and which is
27 committed by a person who is delivering goods to, or performing
28 services for, the unit's owner or tenant or invitee of the unit's owner
29 or the tenant.

30 ↪ If the violation poses an imminent threat of causing a substantial
31 adverse effect on the health, safety or welfare of the units' owners or
32 residents of the common-interest community, the amount of the fine
33 must be commensurate with the severity of the violation and must
34 be determined by the executive board in accordance with the
35 governing documents. If the violation does not pose an imminent
36 threat of causing a substantial adverse effect on the health, safety or
37 welfare of the units' owners or residents of the common-interest
38 community, the amount of the fine must be commensurate with the
39 severity of the violation and must be determined by the executive
40 board in accordance with the governing documents, but the amount
41 of the fine must not exceed \$100 for each violation or a total amount
42 of \$1,000, whichever is less. *During the lifetime of the unit's*
43 *owner and any successor in interest who is the spouse of the unit's*
44 *owner, the total amount of fines imposed against the unit's owner*
45 *and the successor in interest must not exceed \$2,500. The*



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1 limitations on the amount of the fine do not apply to any charges or
2 costs that may be collected by the association pursuant to this
3 section if the fine becomes past due.

4 2. *Notwithstanding any other provision of this chapter, the*
5 *executive board may not impose a fine pursuant to subsection 1*
6 *against a unit's owner or a tenant or an invitee of a unit's owner*
7 *or a tenant if the executive board of another association has*
8 *imposed a fine against the unit's owner, tenant or invitee for the*
9 *same action, or failure to act, on the part of the unit's owner,*
10 *tenant or invitee.*

11 3. The executive board may not impose a fine pursuant to
12 subsection 1 against a unit's owner for a violation of any provision
13 of the governing documents of an association committed by an
14 invitee of the unit's owner or the tenant unless the unit's owner:

- 15 (a) Participated in or authorized the violation;
16 (b) Had prior notice of the violation; or
17 (c) Had an opportunity to stop the violation and failed to do so.

18 {3-} 4. The executive board may not impose a fine pursuant to
19 subsection 1 unless:

20 (a) Not less than 30 days before the *alleged* violation, the unit's
21 owner and, if different, the person against whom the fine will be
22 imposed had been provided with written notice of the applicable
23 provisions of the governing documents that form the basis of the
24 *alleged* violation; and

25 (b) Within a reasonable time after the discovery of the *alleged*
26 violation, the unit's owner and, if different, the person against whom
27 the fine will be imposed has been provided with:

28 (1) Written notice specifying the details of the *alleged*
29 violation, *the location of the alleged violation*, the amount of the
30 fine, and the date, time and location for a hearing on the violation;
31 and

32 (2) A reasonable opportunity to contest the *alleged* violation
33 at the hearing.

34 ↪ For the purposes of this subsection, a unit's owner shall not be
35 deemed to have received written notice unless written notice is
36 mailed to the address of the unit and, if different, to a mailing
37 address specified by the unit's owner.

38 {4-} 5. The executive board must schedule the date, time and
39 location for the hearing on the *alleged* violation so that the unit's
40 owner and, if different, the person against whom the fine will be
41 imposed is provided with a reasonable opportunity to prepare for the
42 hearing and to be present at the hearing.

43 {5-} *A hearing may be postponed if the unit's owner or, if*
44 *different, the person against whom the fine will be imposed*
45 *presents to the executive board or an officer of the association*



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1 *medical documentation indicating that he or she is unable to*
2 *participate in the hearing for medical reasons. At the hearing on*
3 *the alleged violation, the unit's owner and, if different, the person*
4 *against whom the fine will be imposed may be represented by an*
5 *attorney or any other representative. Notwithstanding any other*
6 *provision of this chapter, the cost of an attorney representing the*
7 *association or executive board at a hearing pursuant to this*
8 *section may not be charged to the unit's owner or other person*
9 *against whom the fine will be imposed.*

10 6. The executive board must hold a hearing before it may
11 impose the fine, unless the fine is paid before the hearing or unless
12 the unit's owner and, if different, the person against whom the fine
13 will be imposed:

14 (a) Executes a written waiver of the right to the hearing; or

15 (b) Fails to appear at the hearing after being provided with
16 proper notice of the hearing.

17 ~~[6. If a fine is imposed pursuant to subsection 1 and the~~
18 ~~violation is not cured within 14 days, or within any longer period~~
19 ~~that may be established by the executive board, the violation shall~~
20 ~~be deemed a continuing violation. Thereafter, the executive board~~
21 ~~may impose an additional fine for the violation for each 7-day~~
22 ~~period or portion thereof that the violation is not cured. Any~~
23 ~~additional fine may be imposed without notice and an opportunity to~~
24 ~~be heard.]~~

25 7. If the governing documents so provide, the executive board
26 may appoint a committee, with not less than three members, to
27 conduct hearings on violations and to impose fines pursuant to this
28 section. While acting on behalf of the executive board for those
29 limited purposes, the committee and its members are entitled to all
30 privileges and immunities and are subject to all duties and
31 requirements of the executive board and its members.

32 8. A member of the executive board shall not participate in any
33 hearing or cast any vote relating to a fine imposed pursuant to
34 subsection 1 if the member has not paid all assessments which are
35 due to the association by the member. If a member of the executive
36 board:

37 (a) Participates in a hearing in violation of this subsection, any
38 action taken at the hearing is void.

39 (b) Casts a vote in violation of this subsection, the vote is void.

40 9. *If a unit's owner or, if different, a person against whom a*
41 *fine was imposed pursuant subsection 1 files a claim with the*
42 *Division pursuant to NRS 38.320 which alleges that the executive*
43 *board violated a provision of the governing documents in*
44 *connection with the imposition of the fine, the imposition and*
45 *collection of the fine is stayed until the conclusion of mediation or,*



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1 *if applicable, the issuance of an arbitration decision. If a unit's*
2 *owner or, if different, a person against whom a fine was imposed*
3 *pursuant to subsection 1 files an affidavit with the Division*
4 *pursuant to NRS 116.760 which alleges that the executive board*
5 *violated a provision of the governing documents in connection*
6 *with the imposition of the fine, the imposition and collection of the*
7 *fine is stayed until the resolution of the matter pursuant to*
8 *subsection 1 of NRS 116.785, the issuance of a decision by the*
9 *Division to not file a formal complaint pursuant to subsection 5 of*
10 *NRS 116.765 or the final decision of the Commission, whichever*
11 *is applicable.*

12 10. The provisions of this section establish the minimum
13 procedural requirements that the executive board must follow before
14 it may impose a fine. The provisions of this section do not preempt
15 any provisions of the governing documents that provide greater
16 procedural protections.

17 ~~{10.}~~ 11. Any past due fine must not bear interest, but may
18 include any costs incurred by the association during a civil action to
19 enforce the payment of the past due fine.

20 ~~{11.}~~ 12. If requested by a person upon whom a fine was
21 imposed, not later than 60 days after receiving any payment of a
22 fine, an association shall provide to the person upon whom the fine
23 was imposed a statement of the remaining balance owed.

24 Sec. 7. NRS 116.310312 is hereby amended to read as
25 follows:

26 116.310312 1. A person who holds a security interest in a
27 unit must provide the association with the person's contact
28 information as soon as reasonably practicable, but not later than 30
29 days after the person:

30 (a) Files an action for recovery of a debt or enforcement of any
31 right secured by the unit pursuant to NRS 40.430; or

32 (b) Records or has recorded on his or her behalf a notice of a
33 breach of obligation secured by the unit and the election to sell or
34 have the unit sold pursuant to NRS 107.080.

35 2. If an action or notice described in subsection 1 has been
36 filed or recorded regarding a unit and the association has provided
37 the unit's owner with notice and an opportunity for a hearing in the
38 manner provided in NRS 116.31031, the association, including its
39 employees, agents and community manager, may, but is not
40 required to, enter the grounds of the unit, whether or not the unit is
41 vacant, to take any of the following actions if the unit's owner
42 refuses or fails to take any action or comply with any requirement
43 imposed on the unit's owner within the time specified by the
44 association as a result of the hearing:



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1 (a) Maintain the exterior of the unit in accordance with the
2 standards set forth in the governing documents, including, without
3 limitation, any provisions governing maintenance, standing water or
4 snow removal. *The authorization to enter the grounds of the unit*
5 *for the purposes set forth in this paragraph continues until the*
6 *unit's owner or an agent of the unit's owner performs the*
7 *maintenance necessary to maintain the exterior of the unit in*
8 *accordance with the standards set forth in the governing*
9 *documents.*

10 (b) Remove or abate a public nuisance on the exterior of the unit
11 which:

12 (1) Is visible from any common area of the community or
13 public streets;

14 (2) Threatens the health or safety of the residents of the
15 common-interest community;

16 (3) Results in blighting or deterioration of the unit or
17 surrounding area; and

18 (4) Adversely affects the use and enjoyment of nearby units.

19 3. If a unit is vacant and the association has provided the unit's
20 owner with notice and an opportunity for a hearing in the manner
21 provided in NRS 116.31031, the association, including its
22 employees, agents and community manager, may enter the grounds
23 of the unit to maintain the exterior of the unit or abate a public
24 nuisance as described in subsection 2 if the unit's owner refuses or
25 fails to do so.

26 4. The association may order that the costs of any maintenance
27 or abatement conducted pursuant to subsection 2 or 3, including,
28 without limitation, reasonable inspection fees, notification and
29 collection costs and interest, be charged against the unit. The
30 association shall keep a record of such costs and interest charged
31 against the unit and has a lien on the unit for any unpaid amount of
32 the charges. The lien may be foreclosed under NRS 116.31162 to
33 116.31168, inclusive.

34 5. A lien described in subsection 4 bears interest from the date
35 that the charges become due at a rate determined pursuant to NRS
36 17.130 until the charges, including all interest due, are paid.

37 6. Except as otherwise provided in this subsection, a lien
38 described in subsection 4 is prior and superior to all liens, claims,
39 encumbrances and titles other than the liens described in paragraphs
40 (a) and (c) of subsection 2 of NRS 116.3116. If the federal
41 regulations of the Federal Home Loan Mortgage Corporation or the
42 Federal National Mortgage Association require a shorter period of
43 priority for the lien, the period during which the lien is prior and
44 superior to other security interests shall be determined in accordance
45 with those federal regulations. Notwithstanding the federal



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1 regulations, the period of priority of the lien must not be less than
2 the 6 months immediately preceding the institution of an action to
3 enforce the lien.

4 7. A person who purchases or acquires a unit at a foreclosure
5 sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS
6 107.080 is bound by the governing documents of the association and
7 shall maintain the exterior of the unit in accordance with the
8 governing documents of the association. Such a unit may only be
9 removed from a common-interest community in accordance with the
10 governing documents pursuant to this chapter.

11 8. Notwithstanding any other provision of law, an association,
12 its directors or members of the executive board, employees, agents
13 or community manager who enter the grounds of a unit pursuant to
14 this section are not liable for trespass.

15 9. As used in this section:

16 (a) "Exterior of the unit" includes, without limitation, all
17 landscaping outside of a unit and the exterior of all property
18 exclusively owned by the unit owner.

19 (b) "Vacant" means a unit:

20 (1) Which reasonably appears to be unoccupied;

21 (2) On which the owner has failed to maintain the exterior to
22 the standards set forth in the governing documents the association;
23 and

24 (3) On which the owner has failed to pay assessments for
25 more than 60 days.

26 Sec. 8. NRS 116.310313 is hereby amended to read as
27 follows:

28 116.310313 1. ~~{Am} If the governing documents authorize~~
29 ~~an association {may} to charge a unit's owner {reasonable fees to~~
30 ~~cover} for the costs of collecting any past due obligation {The~~
31 ~~Commission shall adopt regulations establishing the amount of the~~
32 ~~fees that an association may charge pursuant to this section.}, the~~
33 ~~governing documents may not authorize the association to charge~~
34 ~~the unit's owner for any costs of collecting other than costs~~
35 ~~relating to filing, recording, title searches, bankruptcy searches~~
36 ~~and postage. The rate established by the association for the costs~~
37 ~~of collecting the past due obligation:~~

38 (a) May not exceed \$40, if the outstanding balance is less than
39 \$200.

40 (b) May not exceed \$75, if the outstanding balance is \$200 or
41 more but is less than \$500.

42 (c) May not exceed \$125, if the outstanding balance is \$500 or
43 more but is less than \$1,000.

44 (d) May not exceed \$175, if the outstanding balance is \$1,000
45 or more but is less than \$5,000.



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1 (e) May not exceed \$200, if the outstanding balance is \$5,000
2 or more.

3 2. The provisions of this section apply to any costs of
4 collecting a past due obligation charged to a unit's owner, regardless
5 of whether the past due obligation is collected by the association
6 itself or by any person acting on behalf of the association, including,
7 without limitation, an officer or employee of the association, a
8 community manager or a collection agency.

9 3. As used in this section:

10 (a) "Costs of collecting" includes any fee, charge or cost, by
11 whatever name, including, without limitation, any collection fee,
12 filing fee, recording fee, fee related to the preparation, recording or
13 delivery of a lien or lien rescission, title search lien fee, bankruptcy
14 search fee, referral fee, fee for postage or delivery and any other fee
15 or cost that an association charges a unit's owner for the
16 investigation, enforcement or collection of a past due obligation.
17 The term does not include any costs incurred by an association if a
18 lawsuit is filed to enforce any past due obligation or any costs
19 awarded by a court.

20 (b) "Obligation" means any assessment, fine, construction
21 penalty, fee, charge or interest levied or imposed against a unit's
22 owner pursuant to any provision of this chapter or the governing
23 documents.

24 Sec. 9. NRS 116.31034 is hereby amended to read as follows:

25 116.31034 1. Except as otherwise provided in subsection 5 of
26 NRS 116.212, not later than the termination of any period of
27 declarant's control, the units' owners shall elect an executive board
28 of at least three members, all of whom must be units' owners. The
29 executive board shall elect the officers of the association. Unless the
30 governing documents provide otherwise, the officers of the
31 association are ~~not~~ required to be units' owners. The members of
32 the executive board and the officers of the association shall take
33 office upon election. *If two persons reside together in a unit, are*
34 *married to each other or are related by blood, adoption or*
35 *marriage, within the first degree of consanguinity or affinity, and*
36 *if one of those persons is an officer of the association or a member*
37 *of the executive board, the other person may not be an officer of*
38 *the association or a member of the executive board.*

39 2. The term of office of a member of the executive board may
40 not exceed 3 years, except for members who are appointed by the
41 declarant. Unless the governing documents provide otherwise, there
42 is no limitation on the number of terms that a person may serve as a
43 member of the executive board.

44 3. The governing documents of the association must provide
45 for terms of office that are staggered in such a manner that, to the



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1 extent possible, an equal number of members of the executive board
2 are elected at each election. The provisions of this subsection do not
3 apply to:

4 (a) Members of the executive board who are appointed by the
5 declarant; and

6 (b) Members of the executive board who serve a term of 1 year
7 or less.

8 4. Not less than 30 days before the preparation of a ballot for
9 the election of members of the executive board, the secretary or
10 other officer specified in the bylaws of the association shall cause
11 notice to be given to each unit's owner of the unit's owner's
12 eligibility to serve as a member of the executive board. Each unit's
13 owner who is qualified to serve as a member of the executive board
14 may have his or her name placed on the ballot along with the names
15 of the nominees selected by the members of the executive board or a
16 nominating committee established by the association.

17 5. Before the secretary or other officer specified in the bylaws
18 of the association causes notice to be given to each unit's owner of
19 his or her eligibility to serve as a member of the executive board
20 pursuant to subsection 4, the executive board may determine that if,
21 at the closing of the prescribed period for nominations for
22 membership on the executive board, the number of candidates
23 nominated for membership on the executive board is equal to or less
24 than the number of members to be elected to the executive board at
25 the election, then the secretary or other officer specified in the
26 bylaws of the association will cause notice to be given to each unit's
27 owner informing each unit's owner that:

28 (a) The association will not prepare or mail any ballots to units'
29 owners pursuant to this section and the nominated candidates shall
30 be deemed to be duly elected to the executive board unless:

31 (1) A unit's owner who is qualified to serve on the executive
32 board nominates himself or herself for membership on the executive
33 board by submitting a nomination to the executive board within 30
34 days after the notice provided by this subsection; and

35 (2) The number of units' owners who submit such a
36 nomination causes the number of candidates nominated for
37 membership on the executive board to be greater than the number of
38 members to be elected to the executive board.

39 (b) Each unit's owner who is qualified to serve as a member of
40 the executive board may nominate himself or herself for
41 membership on the executive board by submitting a nomination to
42 the executive board within 30 days after the notice provided by this
43 subsection.

44 6. If the notice described in subsection 5 is given and if, at the
45 closing of the prescribed period for nominations for membership on



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1 the executive board described in subsection 5, the number of
2 candidates nominated for membership on the executive board is
3 equal to or less than the number of members to be elected to the
4 executive board, then:

5 (a) The association will not prepare or mail any ballots to units'
6 owners pursuant to this section;

7 (b) The nominated candidates shall be deemed to be duly elected
8 to the executive board not later than 30 days after the date of the
9 closing of the period for nominations described in subsection 5; and

10 (c) The association shall send to each unit's owner notification
11 that the candidates nominated have been elected to the executive
12 board.

13 7. If the notice described in subsection 5 is given and if, at the
14 closing of the prescribed period for nominations for membership on
15 the executive board described in subsection 5, the number of
16 candidates nominated for membership on the executive board is
17 greater than the number of members to be elected to the executive
18 board, then the association shall:

19 (a) Prepare and mail ballots to the units' owners pursuant to this
20 section; and

21 (b) Conduct an election for membership on the executive board
22 pursuant to this section.

23 8. Each person who is nominated as a candidate for a member
24 of the executive board pursuant to subsection 4 or 5 must:

25 (a) Make a good faith effort to disclose any financial, business,
26 professional or personal relationship or interest that would result or
27 would appear to a reasonable person to result in a potential conflict
28 of interest for the candidate if the candidate were to be elected to
29 serve as a member of the executive board; and

30 (b) Disclose whether the candidate is a member in good
31 standing. For the purposes of this paragraph, a candidate shall not be
32 deemed to be in "good standing" if the candidate has any unpaid and
33 past due assessments or construction penalties that are required to be
34 paid to the association.

35 The candidate must make all disclosures required pursuant to this
36 subsection in writing to the association with his or her candidacy
37 information. Except as otherwise provided in this subsection, the
38 association shall distribute the disclosures, on behalf of the
39 candidate, to each member of the association with the ballot or, in
40 the event ballots are not prepared and mailed pursuant to subsection
41 6, in the next regular mailing of the association. The association is
42 not obligated to distribute any disclosure pursuant to this subsection
43 if the disclosure contains information that is believed to be
44 defamatory, libelous or profane.

45 9. Unless a person is appointed by the declarant:



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1 (a) A person may not be a member of the executive board or an
2 officer of the association if the person, the person's spouse or the
3 person's parent or child, by blood, marriage or adoption, performs
4 the duties of a community manager for that association.

5 (b) A person may not be a member of the executive board of a
6 master association or an officer of that master association if the
7 person, the person's spouse or the person's parent or child, by
8 blood, marriage or adoption, performs the duties of a community
9 manager for:

10 (1) That master association; or

11 (2) Any association that is subject to the governing
12 documents of that master association.

13 10. An officer, employee, agent or director of a corporate
14 owner of a unit, a trustee or designated beneficiary of a trust that
15 owns a unit, a partner of a partnership that owns a unit, a member or
16 manager of a limited-liability company that owns a unit, and a
17 fiduciary of an estate that owns a unit may be an officer of the
18 association or a member of the executive board. In all events where
19 the person serving or offering to serve as an officer of the
20 association or a member of the executive board is not the record
21 owner, the person shall file proof in the records of the association
22 that:

23 (a) The person is associated with the corporate owner, trust,
24 partnership, limited-liability company or estate as required by this
25 subsection; and

26 (b) Identifies the unit or units owned by the corporate owner,
27 trust, partnership, limited-liability company or estate.

28 11. Except as otherwise provided in subsection 6 or NRS
29 116.31105, the election of any member of the executive board must
30 be conducted by secret written ballot in the following manner:

31 (a) The secretary or other officer specified in the bylaws of the
32 association shall cause a secret ballot and a return envelope to be
33 sent, prepaid by United States mail, to the mailing address of each
34 unit within the common-interest community or to any other mailing
35 address designated in writing by the unit's owner.

36 (b) Each unit's owner must be provided with at least 15 days
37 after the date the secret written ballot is mailed to the unit's owner
38 to return the secret written ballot to the association.

39 (c) A quorum is not required for the election of any member of
40 the executive board.

41 (d) Only the secret written ballots that are returned to the
42 association may be counted to determine the outcome of the
43 election.

44 (e) The secret written ballots must be opened and counted at a
45 meeting of the association. A quorum is not required to be present



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1 when the secret written ballots are opened and counted at the
2 meeting.

3 (f) The incumbent members of the executive board and each
4 person whose name is placed on the ballot as a candidate for a
5 member of the executive board may not possess, be given access to
6 or participate in the opening or counting of the secret written ballots
7 that are returned to the association before those secret written ballots
8 have been opened and counted at a meeting of the association.

9 12. An association shall not adopt any rule or regulation that
10 has the effect of prohibiting or unreasonably interfering with a
11 candidate in the candidate's campaign for election as a member of
12 the executive board, except that the candidate's campaign may be
13 limited to 90 days before the date that ballots are required to be
14 returned to the association. A candidate may request that the
15 secretary or other officer specified in the bylaws of the association
16 send, 30 days before the date of the election and at the association's
17 expense, to the mailing address of each unit within the common-
18 interest community or to any other mailing address designated in
19 writing by the unit's owner a candidate informational statement. The
20 candidate informational statement:

21 (a) Must be no longer than a single, typed page;

22 (b) Must not contain any defamatory, libelous or profane
23 information; and

24 (c) May be sent with the secret ballot mailed pursuant to
25 subsection 11 or in a separate mailing.

26 The association and its directors, officers, employees and agents
27 are immune from criminal or civil liability for any act or omission
28 which arises out of the publication or disclosure of any information
29 related to any person and which occurs in the course of carrying out
30 any duties required pursuant to this subsection.

31 13. Each member of the executive board shall, within 90 days
32 after his or her appointment or election, certify in writing to the
33 association, on a form prescribed by the Administrator, that
34 the member has read and understands the governing documents of
35 the association and the provisions of this chapter to the best of his or
36 her ability. The Administrator {may} shall require the association to
37 submit a copy of the certification of each member of the executive
38 board of that association at the time the association registers with
39 the Ombudsman pursuant to NRS 116.31158.

40 14. *Within 3 months after his or her election or appointment*
41 *to the executive board, a member of the executive board shall*
42 *successfully complete 2 hours of instruction in a course of*
43 *education relating to the duties of a member of the executive*
44 *board. Every year thereafter during which the member of the*
45 *executive board is a member of the executive board, he or she*



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1 shall complete 2 hours of instruction in such a course of
2 education.

3 Sec. 10. NRS 116.31038 is hereby amended to read as
4 follows:

5 116.31038 In addition to any applicable requirement set forth
6 in NRS 116.310395, within 30 days after units' owners other than
7 the declarant may elect a majority of the members of the executive
8 board, the declarant shall deliver to the association all property of
9 the units' owners and of the association held by or controlled by the
10 declarant, including:

11 1. The original or a certified copy of the recorded declaration
12 as amended, the articles of incorporation, articles of association,
13 articles of organization, certificate of registration, certificate of
14 limited partnership, certificate of trust or other documents of
15 organization for the association, the bylaws, minute books and other
16 books and records of the association and any rules or regulations
17 which may have been adopted.

18 2. An accounting for money of the association and audited
19 financial statements for each fiscal year and any ancillary period
20 from the date of the last audit of the association to the date the
21 period of the declarant's control ends. The financial statements must
22 fairly and accurately report the association's financial position. The
23 declarant shall pay the costs of the ancillary audit. The ancillary
24 audit must be delivered within 210 days after the date the period of
25 the declarant's control ends.

26 3. A complete study of the reserves of the association,
27 conducted by a person who is registered as a reserve study specialist
28 pursuant to chapter 116A of NRS. At the time the control of the
29 declarant ends, the declarant shall:

30 (a) Except as otherwise provided in this paragraph, deliver to the
31 association a reserve account that contains the declarant's share of
32 the amounts then due, and control of the account. If the declaration
33 was recorded before October 1, 1999, and, at the time the control of
34 the declarant ends, the declarant has failed to pay his or her share of
35 the amounts due, the executive board shall authorize the declarant to
36 pay the deficiency in installments for a period of 3 years, unless the
37 declarant and the executive board agree to a shorter period.

38 (b) Disclose, in writing, *to the units' owners* the amount by
39 which the declarant has subsidized the association's dues on a per
40 unit or per lot basis.

41 4. The association's money or control thereof.

42 5. All of the declarant's tangible personal property that has
43 been represented by the declarant as property of the association or,
44 unless the declarant has disclosed in the public offering statement
45 that all such personal property used in the common-interest



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1 community will remain the declarant's property, all of the
2 declarant's tangible personal property that is necessary for, and has
3 been used exclusively in, the operation and enjoyment of the
4 common elements, and inventories of these properties.

5 6. A copy of any plans and specifications used in the
6 construction of the improvements in the common-interest
7 community which were completed within 2 years before the
8 declaration was recorded.

9 7. All insurance policies then in force, in which the units'
10 owners, the association, or its directors and officers are named as
11 insured persons.

12 8. Copies of any certificates of occupancy that may have been
13 issued with respect to any improvements comprising the common-
14 interest community other than units in a planned community.

15 9. Any renewable permits and approvals issued by
16 governmental bodies applicable to the common-interest community
17 which are in force and any other permits and approvals so issued
18 and applicable which are required by law to be kept on the premises
19 of the community.

20 10. Written warranties of the contractor, subcontractors,
21 suppliers and manufacturers that are still effective.

22 11. A roster of owners and mortgagees of units and their
23 addresses and telephone numbers, if known, as shown on the
24 declarant's records.

25 12. Contracts of employment in which the association is a
26 contracting party.

27 13. Any contract for service in which the association is a
28 contracting party or in which the association or the units' owners
29 have any obligation to pay a fee to the persons performing the
30 services.

31 Sec. 11. NRS 116.3108 is hereby amended to read as follows:

32 116.3108 1. A meeting of the units' owners must be held at
33 least once each year. If the governing documents do not designate
34 an annual meeting date of the units' owners, a meeting of the units'
35 owners must be held 1 year after the date of the last meeting of the
36 units' owners. If the units' owners have not held a meeting for 1
37 year, a meeting of the units' owners must be held on the following
38 March 1.

39 2. Special meetings of the units' owners may be called by the
40 president, by a majority of the executive board or by units' owners
41 constituting at least 10 percent, or any lower percentage specified in
42 the bylaws, of the total number of voting members of the
43 association. The same number of units' owners may also call a
44 removal election pursuant to NRS 116.31036. To call a special
45 meeting or a removal election, the units' owners must submit a



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1 written petition which is signed by the required percentage of the
2 total number of voting members of the association pursuant to this
3 subsection and which is mailed, return receipt requested, or served
4 by a process server to the executive board or the community
5 manager for the association. If the petition calls for a special
6 meeting, the executive board shall set the date for the special
7 meeting so that the special meeting is held not less than 15 days or
8 more than 60 days after the date on which the petition is received. If
9 the petition calls for a removal election and:

10 (a) The voting rights of the owners of time shares will be
11 exercised by delegates or representatives as set forth in NRS
12 116.31105, the executive board shall set the date for the removal
13 election so that the removal election is held not less than 15 days or
14 more than 60 days after the date on which the petition is received; or

15 (b) The voting rights of the units' owners will be exercised
16 through the use of secret written ballots pursuant to NRS 116.31036,
17 the secret written ballots for the removal election must be sent in the
18 manner required by NRS 116.31036 not less than 15 days or more
19 than 60 days after the date on which the petition is received, and the
20 executive board shall set the date for the meeting to open and count
21 the secret written ballots so that the meeting is held not more than
22 15 days after the deadline for returning the secret written ballots.

23 ➔ The association shall not adopt any rule or regulation which
24 prevents or unreasonably interferes with the collection of the
25 required percentage of signatures for a petition pursuant to this
26 subsection.

27 3. Not less than 15 days or more than 60 days in advance of
28 any meeting of the units' owners, the secretary or other officer
29 specified in the bylaws shall cause notice of the meeting to be hand-
30 delivered, sent prepaid by United States mail to the mailing address
31 of each unit or to any other mailing address designated in writing by
32 the unit's owner or, if the association offers to send notice by
33 electronic mail, sent by electronic mail at the request of the unit's
34 owner to an electronic mail address designated in writing by the
35 unit's owner. The notice of the meeting must state the time and
36 place of the meeting and include a copy of the agenda for the
37 meeting. The notice must include notification of the right of a unit's
38 owner to:

39 (a) Have a copy of the minutes or a summary of the minutes of
40 the meeting provided to the unit's owner upon request, in electronic
41 format at no charge to the unit's owner or, if the association is
42 unable to provide the copy or summary in electronic format, in
43 paper format at a cost not to exceed 25 cents per page for the first 10
44 pages, and 10 cents per page thereafter.



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1 (b) Speak to the association or executive board, unless the
2 executive board is meeting in executive session.

3 4. The agenda for a meeting of the units' owners must consist
4 of:

5 (a) A clear and complete statement of the topics scheduled to be
6 considered during the meeting, including, without limitation, any
7 proposed amendment to the declaration or bylaws, any fees or
8 assessments to be imposed or increased by the association, any
9 budgetary changes and any proposal to remove an officer of the
10 association or member of the executive board.

11 (b) A list describing the items on which action may be taken and
12 clearly denoting that action may be taken on those items. In an
13 emergency, the units' owners may take action on an item which is
14 not listed on the agenda as an item on which action may be taken.

15 (c) A period devoted to comments by units' owners and
16 discussion of those comments. Except in emergencies, no action
17 may be taken upon a matter raised under this item of the agenda
18 until the matter itself has been specifically included on an agenda as
19 an item upon which action may be taken pursuant to paragraph (b).

20 5. *Before the agenda is mailed to the units' owners pursuant*
21 *to subsection 3, a unit's owner may request items to be placed on*
22 *the agenda and any requested items must be included on the*
23 *agenda.*

24 6. If the association adopts a policy imposing fines for any
25 violations of the governing documents of the association, the
26 secretary or other officer specified in the bylaws shall prepare and
27 cause to be hand-delivered or sent prepaid by United States mail to
28 the mailing address of each unit or to any other mailing address
29 designated in writing by the unit's owner, a schedule of the fines
30 that may be imposed for those violations.

31 {6.} 7. *A guest of a unit's owner must be allowed to attend*
32 *any meeting of the units' owners.*

33 8. The secretary or other officer specified in the bylaws shall
34 cause minutes to be recorded or otherwise taken at each meeting of
35 the units' owners. Not more than 30 days after each such meeting,
36 the secretary or other officer specified in the bylaws shall cause the
37 minutes or a summary of the minutes of the meeting to be made
38 available to the units' owners. Except as otherwise provided in this
39 subsection, a copy of the minutes or a summary of the minutes must
40 be provided to any unit's owner upon request, in electronic format at
41 no charge to the unit's owner or, if the association is unable to
42 provide the copy or summary in electronic format, in paper format
43 at a cost not to exceed 25 cents per page for the first 10 pages, and
44 10 cents per page thereafter.



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1 ~~{7.}~~ 9. Except as otherwise provided in subsection ~~{8.}~~ 10, the
2 minutes of each meeting of the units' owners must include:

- 3 (a) The date, time and place of the meeting;
4 (b) The substance of all matters proposed, discussed or decided
5 at the meeting; and
6 (c) The substance of remarks made by any unit's owner at the
7 meeting if the unit's owner requests that the minutes reflect his or
8 her remarks or, if the unit's owner has prepared written remarks, a
9 copy of his or her prepared remarks if the unit's owner submits a
10 copy for inclusion.

11 ~~{8.}~~ 10. The executive board may establish reasonable
12 limitations on materials, remarks or other information to be included
13 in the minutes of a meeting of the units' owners.

14 ~~{9.}~~ 11. The association shall maintain the minutes of each
15 meeting of the units' owners until the common-interest community
16 is terminated.

17 ~~{10.}~~ 12. A unit's owner may record on audiotape, *videotape*
18 or any other means of sound *or video* reproduction a meeting of the
19 units' owners if the unit's owner, before recording the meeting,
20 provides notice of his or her intent to record the meeting to the other
21 units' owners who are in attendance at the meeting.

22 ~~{11.}~~ 13. The units' owners may approve, at the annual
23 meeting of the units' owners, the minutes of the prior annual
24 meeting of the units' owners and the minutes of any prior special
25 meetings of the units' owners. A quorum is not required to be
26 present when the units' owners approve the minutes.

27 ~~{12.}~~ 14. As used in this section, "emergency" means any
28 occurrence or combination of occurrences that:

- 29 (a) Could not have been reasonably foreseen;
30 (b) Affects the health, welfare and safety of the units' owners or
31 residents of the common-interest community;
32 (c) Requires the immediate attention of, and possible action by,
33 the executive board; and
34 (d) Makes it impracticable to comply with the provisions of
35 subsection 3 or 4.

36 Sec. 12. NRS 116.31083 is hereby amended to read as
37 follows:

38 116.31083 1. A meeting of the executive board must be held
39 at least once every quarter, and not less than once every 100 days
40 and must be held at a time other than during standard business hours
41 , *but not before 6 p.m.*, at least twice annually.

42 2. Except in an emergency or unless the bylaws of an
43 association require a longer period of notice, the secretary or other
44 officer specified in the bylaws of the association shall, not less than
45 10 days before the date of a meeting of the executive board, cause



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1 notice of the meeting to be given to the units' owners. Such notice
2 must be:

3 (a) Sent prepaid by United States mail to the mailing address of
4 each unit within the common-interest community or to any other
5 mailing address designated in writing by the unit's owner;

6 (b) If the association offers to send notice by electronic mail,
7 sent by electronic mail at the request of the unit's owner to an
8 electronic mail address designated in writing by the unit's owner; or

9 (c) Published in a newsletter or other similar publication that is
10 circulated to each unit's owner.

11 3. In an emergency, the secretary or other officer specified in
12 the bylaws of the association shall, if practicable, cause notice of the
13 meeting to be sent prepaid by United States mail to the mailing
14 address of each unit within the common-interest community. If
15 delivery of the notice in this manner is impracticable, the notice
16 must be hand-delivered to each unit within the common-interest
17 community or posted in a prominent place or places within the
18 common elements of the association.

19 4. The notice of a meeting of the executive board must state the
20 time and place of the meeting and include a copy of the agenda for
21 the meeting or the date, *which must not be later than 5 days before*
22 *the meeting*, on which and the locations where copies of the agenda
23 may be conveniently obtained by the units' owners. The notice must
24 include notification of the right of a unit's owner to:

25 (a) Have a copy of the audio recording, the minutes or a
26 summary of the minutes of the meeting provided to the unit's owner
27 upon request, in electronic format at no charge to the unit's owner
28 or, if the association is unable to provide the copy or summary in
29 electronic format, in paper format at a cost not to exceed 25 cents
30 per page for the first 10 pages, and 10 cents per page thereafter.

31 (b) Speak to the association or executive board, unless the
32 executive board is meeting in executive session.

33 5. The agenda of the meeting of the executive board must
34 comply with the provisions of subsection 4 of NRS 116.3108. A
35 period required to be devoted to comments by the units' owners and
36 discussion of those comments must be scheduled for both the
37 beginning and the end of each meeting. During the period devoted
38 to comments by the units' owners and discussion of those comments
39 at the beginning of each meeting, comments by the units' owners
40 and discussion of those comments must be limited to items listed on
41 the agenda. In an emergency, the executive board may take action
42 on an item which is not listed on the agenda as an item on which
43 action may be taken.

44 6. At least once every quarter, and not less than once every 100
45 days, unless the declaration or bylaws of the association impose



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1 more stringent standards, the executive board shall review, at a
2 minimum, the following financial information at one of its
3 meetings:

- 4 (a) A current year-to-date financial statement of the association;
5 (b) A current year-to-date schedule of revenues and expenses for
6 the operating account and the reserve account, compared to the
7 budget for those accounts;
8 (c) A current reconciliation of the operating account of the
9 association;
10 (d) A current reconciliation of the reserve account of the
11 association;
12 (e) The latest account statements prepared by the financial
13 institutions in which the accounts of the association are maintained;
14 and

15 (f) The current status of any civil action or claim submitted to
16 arbitration or mediation in which the association is a party.

17 *A copy of the information described in paragraphs (a) to (f),
18 inclusive, must be made available at no charge to each person
19 present at the meeting. If a unit's owner requests a copy of such
20 information, the association must provide a copy of the
21 information in electronic format at no charge to the unit's owner.*

22 7. The secretary or other officer specified in the bylaws shall
23 cause each meeting of the executive board to be audio recorded and
24 the minutes to be recorded or otherwise taken at each meeting of the
25 executive board, but if the executive board is meeting in executive
26 session, the meeting must not be audio recorded. Not more than 30
27 days after each such meeting, the secretary or other officer specified
28 in the bylaws shall cause the audio recording of the meeting, the
29 minutes of the meeting and a summary of the minutes of the
30 meeting to be made available to the units' owners. Except as
31 otherwise provided in this subsection, a copy of the audio recording,
32 the minutes or a summary of the minutes must be provided to any
33 unit's owner upon request, in electronic format at no charge to the
34 unit's owner or, if the association is unable to provide the copy or
35 summary in electronic format, in paper format at a cost not to
36 exceed 25 cents per page for the first 10 pages, and 10 cents per
37 page thereafter.

38 8. Except as otherwise provided in subsection 9 and NRS
39 116.31085, the minutes of each meeting of the executive board must
40 include:

- 41 (a) The date, time and place of the meeting;
42 (b) Those members of the executive board who were present and
43 those members who were absent at the meeting;
44 (c) The ~~substance~~ details of all matters proposed, discussed or
45 decided at the meeting;



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1 (d) A record of each member's vote on any matter decided by
2 vote at the meeting; and

3 (e) The substance of remarks made by any unit's owner who
4 addresses the executive board at the meeting if the unit's owner
5 requests that the minutes reflect his or her remarks or, if the unit's
6 owner has prepared written remarks, a copy of his or her prepared
7 remarks if the unit's owner submits a copy for inclusion.

8 9. The executive board may establish reasonable limitations on
9 materials, remarks or other information to be included in the
10 minutes of its meetings ~~[-]~~, *but any limitation on the page number*
11 *of such materials, remarks or information must not be less than*
12 *two double-sided pages.*

13 10. The association shall maintain the minutes of each meeting
14 of the executive board until the common-interest community is
15 terminated.

16 11. A unit's owner may record on audiotape or any other
17 means of sound reproduction a meeting of the executive board,
18 unless the executive board is meeting in executive session, if the
19 unit's owner, before recording the meeting, provides notice of his or
20 her intent to record the meeting to the members of the executive
21 board and the other units' owners who are in attendance at the
22 meeting.

23 12. As used in this section, "emergency" means any occurrence
24 or combination of occurrences that:

25 (a) Could not have been reasonably foreseen;

26 (b) Affects the health, welfare and safety of the units' owners or
27 residents of the common-interest community;

28 (c) Requires the immediate attention of, and possible action by,
29 the executive board; and

30 (d) Makes it impracticable to comply with the provisions of
31 subsection 2 or 5.

32 Sec. 13. NRS 116.31085 is hereby amended to read as
33 follows:

34 116.31085 1. Except as otherwise provided in this section, a
35 unit's owner may attend any meeting of the units' owners or of the
36 executive board and speak at any such meeting. The executive board
37 may establish ~~reasonable limitations~~ *a limitation of not less than 3*
38 *minutes on the time in which a unit's owner may speak at such a*
39 *meeting. With respect to each meeting of the units' owners and of*
40 *the executive board, the association shall comply with the*
41 *requirements of the Americans with Disabilities Act of 1990, 42*
42 *U.S.C. §§ 12101 et seq., and the regulations adopted pursuant*
43 *thereto.*

44 2. *At a meeting of the executive board, after a discussion by*
45 *the members of the executive board concerning an item for which*



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1 a vote will be taken by the executive board and before such a vote,
2 the executive board must provide a period devoted to comments by
3 the units' owners on that item, but may establish a limitation of
4 not less than 3 minutes on the time a unit's owner may speak on
5 that item.

6 3. An executive board may not meet in executive session to
7 open or consider bids for an association project as defined in NRS
8 116.31086, or to enter into, renew, modify, terminate or take any
9 other action regarding a contract.

10 {3-} 4. An executive board may meet in executive session only
11 to:

12 (a) Consult with the attorney for the association on matters
13 relating to proposed or pending litigation if the contents of the
14 discussion would otherwise be governed by the privilege set forth in
15 NRS 49.035 to 49.115, inclusive.

16 (b) Discuss the character, alleged misconduct, professional
17 competence, or physical or mental health of a community manager
18 or an employee of the association.

19 (c) Except as otherwise provided in subsection {4-} 5, discuss a
20 violation of the governing documents, including, without limitation,
21 the failure to pay an assessment.

22 (d) Discuss the alleged failure of a unit's owner to adhere to a
23 schedule required pursuant to NRS 116.310305 if the alleged failure
24 may subject the unit's owner to a construction penalty.

25 {4-} 5. An executive board shall meet in executive session to
26 hold a hearing on an alleged violation of the governing documents
27 unless the person who may be sanctioned for the alleged violation
28 requests in writing that an open hearing be conducted by the
29 executive board. If the person who may be sanctioned for the
30 alleged violation requests in writing that an open hearing be
31 conducted, the person:

32 (a) Is entitled to attend all portions of the hearing related to the
33 alleged violation, including, without limitation, the presentation of
34 evidence and the testimony of witnesses;

35 (b) Is entitled to due process, as set forth in the standards
36 adopted by regulation by the Commission, which must include,
37 without limitation, the right to counsel {1-} or any other
38 representative chosen by the person, the right to present witnesses
39 and the right to present information relating to any conflict of
40 interest of any member of the hearing panel; and

41 (c) Is not entitled to attend the deliberations of the executive
42 board.

43 {5-} 6. The provisions of subsection {4-} 5 establish the
44 minimum protections that the executive board must provide before it
45 may make a decision. The provisions of subsection {4-} 5 do not



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1 preempt any provisions of the governing documents that provide
2 greater protections.

3 {6.} 7. Except as otherwise provided in this subsection, any
4 matter discussed by the executive board when it meets in executive
5 session must be generally noted in the minutes of the meeting of the
6 executive board. The executive board shall maintain minutes of any
7 decision made pursuant to subsection {4} 5 concerning an alleged
8 violation and, upon request, provide a copy of the decision to the
9 person who was subject to being sanctioned at the hearing or to the
10 person's designated representative.

11 {7.} 8. Except as otherwise provided in subsection {4.} 5, a
12 unit's owner is not entitled to attend or speak at a meeting of the
13 executive board held in executive session.

14 Sec. 14. NRS 116.31086 is hereby amended to read as
15 follows:

16 116.31086 1. If an association solicits bids for an association
17 project, the bids must be opened during a meeting of the executive
18 board.

19 2. As used in this section, "association project" includes,
20 without limitation, a project that involves the maintenance, repair,
21 replacement or restoration of any part of the common elements or
22 which involves the provision of *durable goods or services* to the
23 association.

24 Sec. 15. NRS 116.31087 is hereby amended to read as
25 follows:

26 116.31087 1. If an executive board receives a written
27 complaint from a unit's owner alleging that the executive board has
28 violated any provision of this chapter or any provision of the
29 governing documents of the association, the executive board shall,
30 upon the written request of the unit's owner, place the subject of the
31 complaint on the agenda of the next regularly scheduled meeting of
32 the executive board.

33 2. Not later than 10 business days after the date that the
34 association receives such a complaint, the executive board or an
35 authorized representative of the association shall acknowledge the
36 receipt of the complaint and notify the unit's owner that, if the unit's
37 owner submits a written request that the subject of the complaint be
38 placed on the agenda of the next regularly scheduled meeting of the
39 executive board, the subject of the complaint will be placed on the
40 agenda of the next regularly scheduled meeting of the executive
41 board.

42 3. *At the meeting, the executive board shall discuss fully and*
43 *attempt to resolve any complaint placed on the agenda of the*
44 *meeting pursuant to this section. Any decision of the executive*



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1 *board with respect to the complaint must be included in detail in*
2 *the minutes of the meeting.*

3 Sec. 16. NRS 116.31107 is hereby amended to read as
4 follows:

5 116.31107 1. A person shall not knowingly, willfully and
6 with the intent to fraudulently alter the true outcome of an election
7 of a member of the executive board or any other vote of the units'
8 owners engage in, attempt to engage in, or conspire with another
9 person to engage in, any of the following acts:

10 (a) Changing or falsifying a voter's ballot so that the ballot does
11 not reflect the voter's true ballot.

12 (b) Forging or falsely signing a voter's ballot.

13 (c) Fraudulently casting a vote for himself or herself or for
14 another person that the person is not authorized to cast.

15 (d) Rejecting, failing to count, destroying, defacing or otherwise
16 invalidating the valid ballot of another voter.

17 (e) Submitting a counterfeit ballot.

18 2. A person who violates ~~[this section]~~ *subsection 1* is guilty of
19 a category D felony and shall be punished as provided in
20 NRS 193.130.

21 3. *Each ballot provided to the units' owners pursuant to this*
22 *chapter must contain in clear and prominent text a copy of the*
23 *provisions of this section.*

24 Sec. 17. NRS 116.3114 is hereby amended to read as follows:

25 116.3114 1. Unless otherwise provided in the declaration,
26 any surplus funds of the association remaining after payment of or
27 provision for common expenses and any prepayment of reserves
28 must be paid to the units' owners in proportion to their liabilities for
29 common expenses or credited to them to reduce their future
30 assessments for common expenses.

31 2. *For the purpose of this section:*

32 (a) *An association of a common-interest community with 200*
33 *or less units has "surplus funds" if the amount remaining after*
34 *payment of or provision for the common expenses and any*
35 *prepayment of reserves is greater than three times the monthly*
36 *operating expenses of the association based on the periodic budget*
37 *adopted by the association pursuant to NRS 116.3115.*

38 (b) *An association of a common-interest community with more*
39 *than 200 units has "surplus funds" if the amount remaining after*
40 *payment of or provision for the common expenses and any*
41 *prepayment of reserves is greater than two times the monthly*
42 *operating expenses of the association based on the periodic budget*
43 *adopted by the association pursuant to NRS 116.3115.*



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1 Sec. 18. NRS 116.31144 is hereby amended to read as
2 follows:

3 116.31144 1. Except as otherwise provided in subsection 2,
4 the executive board shall:

5 (a) If the annual budget of the association is less than \$75,000,
6 cause the financial statement of the association to be reviewed by an
7 independent certified public accountant during the year immediately
8 preceding the year in which a study of the reserves of the
9 association is to be conducted pursuant to NRS 116.31152.

10 (b) If the annual budget of the association is \$75,000 or more
11 but less than \$150,000, cause the financial statement of the
12 association to be reviewed by an independent certified public
13 accountant every fiscal year.

14 (c) If the annual budget of the association is \$150,000 or more,
15 cause the financial statement of the association to be audited by an
16 independent certified public accountant every fiscal year.

17 2. For any fiscal year, the executive board of an association to
18 which paragraph (a) or (b) of subsection 1 applies shall cause the
19 financial statement for that fiscal year to be audited by an
20 independent certified public accountant if, within 180 days before
21 the end of the fiscal year, 15 percent of the total number of voting
22 members of the association submit a written request for such an
23 audit.

24 3. The Commission shall adopt regulations prescribing the
25 requirements for the auditing or reviewing of financial statements of
26 an association pursuant to this section. Such regulations must
27 include, without limitation:

28 (a) The qualifications necessary for a person to audit or review
29 financial statements of an association; and

30 (b) The standards and format to be followed in auditing or
31 reviewing financial statements of an association.

32 4. *If a unit's owner requests a copy of a review or audit*
33 *performed pursuant to this section, the association must provide a*
34 *copy of the review or audit to the unit's owner in paper format or*
35 *electronic format, whichever is requested by the unit's owner, at*
36 *no charge.*

37 Sec. 19. NRS 116.3115 is hereby amended to read as follows:

38 116.3115 1. Until the association makes an assessment for
39 common expenses, the declarant shall pay all common expenses.
40 After an assessment has been made by the association, assessments
41 must be made at least annually, based on a budget adopted ~~at least~~
42 ~~annually~~ by the association *and ratified by the units' owners at*
43 *least annually* in accordance with the requirements set forth in NRS
44 116.31151. Unless the declaration imposes more stringent standards,
45 the budget must include a budget for the daily operation of the



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1 association and a budget for the reserves required by paragraph (b)
2 of subsection 2.

3 2. Except for assessments under subsections 4 to 7, inclusive:

4 (a) All common expenses, including the reserves, must be
5 assessed against all the units in accordance with the allocations set
6 forth in the declaration pursuant to subsections 1 and 2 of
7 NRS 116.2107.

8 (b) The association shall establish adequate reserves, funded on
9 a reasonable basis, for the repair, replacement and restoration of the
10 major components of the common elements and any other portion of
11 the common-interest community that the association is obligated to
12 maintain, repair, replace or restore. The reserves may be used only
13 for those purposes, including, without limitation, repairing,
14 replacing and restoring roofs, roads and sidewalks, and must not be
15 used for daily maintenance ~~{}~~ or capital improvements. The
16 association may comply with the provisions of this paragraph
17 through a funding plan that is designed to allocate the costs for the
18 repair, replacement and restoration of the major components of the
19 common elements and any other portion of the common-interest
20 community that the association is obligated to maintain, repair,
21 replace or restore over a period of years if the funding plan is
22 designed in an actuarially sound manner which will ensure that
23 sufficient money is available when the repair, replacement and
24 restoration of the major components of the common elements or any
25 other portion of the common-interest community that the association
26 is obligated to maintain, repair, replace or restore are necessary.
27 Notwithstanding any provision of *this chapter* or the governing
28 documents to the contrary, *a special assessment* to establish
29 adequate reserves pursuant to this paragraph, including, without
30 limitation, to establish or carry out a funding plan ~~{, the executive~~
31 ~~board may, without seeking or obtaining the approval of the units'~~
32 ~~owners, impose any necessary and reasonable assessments against~~
33 ~~the units in the common-interest community. Any such assessments~~
34 ~~imposed by the executive board must be based on the study of the~~
35 ~~reserves of the association conducted pursuant to NRS 116.31152.}~~
36 *may not exceed \$35 per unit per month.*

37 3. Any assessment for common expenses or installment thereof
38 that is 60 days or more past due bears interest at a rate equal to the
39 prime rate at the largest bank in Nevada as ascertained by the
40 Commissioner of Financial Institutions on January 1 or July 1, as
41 the case may be, immediately preceding the date the assessment
42 becomes past due, plus 2 percent. The rate must be adjusted
43 accordingly on each January 1 and July 1 thereafter until the balance
44 is satisfied.

45 4. Except as otherwise provided in the governing documents:



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1 (a) Any common expense associated with the maintenance,
2 repair, restoration or replacement of a limited common element
3 must be assessed against the units to which that limited common
4 element is assigned, equally, or in any other proportion the
5 declaration provides;

6 (b) Any common expense or portion thereof benefiting fewer
7 than all of the units must be assessed exclusively against the units
8 benefited; and

9 (c) The costs of insurance must be assessed in proportion to risk
10 and the costs of utilities must be assessed in proportion to usage.

11 5. Assessments to pay a judgment against the association may
12 be made only against the units in the common-interest community at
13 the time the judgment was entered, in proportion to their liabilities
14 for common expenses.

15 6. If any common expense is caused by the misconduct of any
16 unit's owner, the association may assess that expense exclusively
17 against his or her unit.

18 7. The association of a common-interest community created
19 before January 1, 1992, is not required to make an assessment
20 against a vacant lot located within the community that is owned by
21 the declarant.

22 8. If liabilities for common expenses are reallocated,
23 assessments for common expenses and any installment thereof not
24 yet due must be recalculated in accordance with the reallocated
25 liabilities.

26 9. The association shall provide written notice to each unit's
27 owner of a meeting at which an assessment or expenditure for a
28 capital improvement in an amount of \$500 or more is to be
29 considered or action is to be taken on such an assessment or
30 expenditure at least 21 calendar days before the date of the meeting.
31 An assessment for a capital improvement may not exceed \$35 per
32 unit per month.

33 10. In a common-interest community with less than 500
34 units, the association shall not make or cause to made any visible
35 changes to the interior or exterior of the common elements,
36 including, without limitation, landscaping, unless:

37 (a) At least 21 calendar days before a meeting of the units'
38 owners to consider and take action on the changes, the association
39 provides written notice to each unit's owner of the meeting; and

40 (b) At the meeting, a majority of the units' owners approve the
41 changes by secret written ballot.

42 11. In a common-interest community:

43 (a) With less than 150 units, the association shall not make an
44 expenditure for a capital improvement of \$7,500 or more unless a



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1 majority of the units' owners who vote on such an expenditure
2 approve the expenditure.

3 (b) With at least 150 but less than 250 units, the association
4 shall not make an expenditure for a capital improvement of
5 \$15,000 or more unless a majority of the units' owners who vote
6 on such an expenditure approve the expenditure.

7 (c) With at least 250 but less than 500 units, the association
8 shall not make an expenditure for a capital improvement of
9 \$25,000 or more unless a majority of the units' owners who vote
10 on such an expenditure approve the expenditure.

11 (d) With 500 or more units, the association shall not make an
12 expenditure for a capital improvement of \$35,000 or more unless a
13 majority of the units' owners who vote on such an expenditure
14 approve the expenditure.

15 12. As used in this section, "capital improvement" means an
16 expenditure by the association for the construction of a new
17 common element, an addition or improvement to an existing
18 common element or the installation of landscaping where no
19 landscaping previously existed.

20 Sec. 20. NRS 116.31151 is hereby amended to read as
21 follows:

22 116.31151 1. Except as otherwise provided in subsection 2
23 and unless the declaration of a common-interest community imposes
24 more stringent standards, the executive board shall, not less than 30
25 days or more than 60 days before the beginning of the fiscal year of
26 the association, prepare and distribute to each unit's owner a copy
27 of:

28 (a) The budget for the daily operation of the association. The
29 budget must include, without limitation, the estimated annual
30 revenue and expenditures of the association and any contributions to
31 be made to the reserve account of the association.

32 (b) The budget to provide adequate funding for the reserves
33 required by paragraph (b) of subsection 2 of NRS 116.3115. The
34 budget must include, without limitation:

35 (1) The current estimated replacement cost, estimated
36 remaining life and estimated useful life of each major component of
37 the common elements and any other portion of the common-interest
38 community that the association is obligated to maintain, repair,
39 replace or restore;

40 (2) As of the end of the fiscal year for which the budget is
41 prepared, the current estimate of the amount of cash reserves that
42 are necessary, and the current amount of accumulated cash reserves
43 that are set aside, to repair, replace or restore the major components
44 of the common elements and any other portion of the common-



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1 interest community that the association is obligated to maintain,
2 repair, replace or restore;

3 (3) A statement as to whether the executive board has
4 determined or anticipates that the levy of one or more special
5 assessments will be necessary to repair, replace or restore any major
6 component of the common elements or any other portion of the
7 common-interest community that the association is obligated to
8 maintain, repair, replace or restore or to provide adequate funding
9 for the reserves designated for that purpose; and

10 (4) A general statement describing the procedures used for
11 the estimation and accumulation of cash reserves pursuant to
12 subparagraph (2), including, without limitation, the qualifications of
13 the person responsible for the preparation of the study of the
14 reserves required by NRS 116.31152.

15 2. In lieu of distributing copies of the budgets of the
16 association required by subsection 1, the executive board may
17 distribute to each unit's owner a summary of those budgets,
18 accompanied by a written notice that:

19 (a) The budgets are available for review at the business office of
20 the association or some other suitable location within the county
21 where the common-interest community is situated or, if it is situated
22 in more than one county, within one of those counties but not to
23 exceed 60 miles from the physical location of the common-interest
24 community; and

25 (b) Copies of the budgets will be provided upon request.

26 3. Within 60 days after adoption of any proposed budget for
27 the common-interest community, the executive board shall ~~provide~~
28 :

29 (a) *Cause a summary of the proposed budget ~~{to each}~~, a secret*
30 *ballot and a return envelope to be sent, prepaid by United States*
31 *mail, to the mailing address of each unit within the common-*
32 *interest community or to any other mailing address designated in*
33 *writing by the unit's owner. ~~{and shall set}~~*

34 (b) *Set a date for a meeting of the units' owners to ~~{consider~~*
35 *ratification of the proposed budget} open and count the secret*
36 *written ballots. The meeting must be not less than 14 days or more*
37 *than 30 days after the mailing of the ~~{summaries. Unless}~~ ballots. At*
38 *the meeting, the president of the association shall preside, a*
39 *committee of the units' owners shall open and count only the*
40 *secret written ballots that are returned to the association. A*
41 *quorum is not required to be present when the secret written*
42 *ballots are opened and counted. If, at that meeting, a majority of*
43 *~~{all units' owners, or any larger vote specified in the declaration,~~*
44 *~~reject~~ the votes cast are cast in favor of ratifying the proposed*
45 *budget, the proposed budget is ratified. ~~{, whether or not a quorum~~*



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1 ~~is present.~~ If the proposed budget is ~~rejected,~~ *not ratified*, the
 2 periodic budget last ratified by the units' owners must be continued
 3 until such time as the units' owners ratify a subsequent budget
 4 proposed by the executive board.

5 4. The executive board shall, at the same time and in the same
 6 manner that the executive board makes the budget available to a
 7 unit's owner pursuant to this section, make available to each unit's
 8 owner the policy established for the association concerning the
 9 collection of any fees, fines, assessments or costs imposed against a
 10 unit's owner pursuant to this chapter. The policy must include,
 11 without limitation:

12 (a) ~~[The responsibility of]~~ *A provision that a fee, fine,*
 13 *assessment or cost may not be referred for collection unless the*
 14 *unit's owner [to pay any such fees, fines, assessments or costs in a*
 15 *timely manner.] has not paid the fee, fine, assessment or cost*
 16 *within 60 days after the first day of the month following the month*
 17 *in which notice of the fee, fine, assessment or cost is sent or*
 18 *otherwise communicated to the unit's owner or, if the amount of*
 19 *the fee, fine, assessment or cost is \$1,000 or more, within 90 days*
 20 *after the period set forth in this paragraph; and*

21 (b) The association's rights concerning the collection of such
 22 fees, fines, assessments or costs if the unit's owner fails to pay the
 23 fees, fines, assessments or costs ~~[in a timely manner.]~~ *within the*
 24 *period set forth in paragraph (a),*

25 Sec. 21. NRS 116.31152 is hereby amended to read as
 26 follows:

27 116.31152 1. The executive board shall:

28 (a) At least once every 5 years, cause to be conducted a study of
 29 the reserves required to repair, replace and restore the major
 30 components of the common elements and any other portion of the
 31 common-interest community that the association is obligated to
 32 maintain, repair, replace or restore;

33 (b) At least annually, review the results of that study to
 34 determine whether those reserves are sufficient; and

35 (c) At least annually, make any adjustments to the association's
 36 funding plan which the executive board deems necessary to provide
 37 adequate funding for the required reserves.

38 2. Except as otherwise provided in this subsection, the study of
 39 the reserves required by subsection 1 must be conducted by a person
 40 who holds a permit issued pursuant to chapter 116A of NRS. If the
 41 common-interest community contains 20 or fewer units and is
 42 located in a county whose population is 50,000 or less, the study of
 43 the reserves required by subsection 1 may be conducted by any
 44 person whom the executive board deems qualified to conduct the
 45 study.



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- 1 3. The study of the reserves must include, without limitation:
- 2 (a) A summary of an inspection of the major components of the
- 3 common elements and any other portion of the common-interest
- 4 community that the association is obligated to maintain, repair,
- 5 replace or restore;
- 6 (b) An identification of the major components of the common
- 7 elements and any other portion of the common-interest community
- 8 that the association is obligated to maintain, repair, replace or
- 9 restore which have a remaining useful life of less than 30 years;
- 10 (c) An estimate of the remaining useful life of each major
- 11 component of the common elements and any other portion of the
- 12 common-interest community that the association is obligated to
- 13 maintain, repair, replace or restore identified pursuant to
- 14 paragraph (b);
- 15 (d) An estimate of the cost of maintenance, repair, replacement
- 16 or restoration of each major component of the common elements
- 17 and any other portion of the common-interest community identified
- 18 pursuant to paragraph (b) during and at the end of its useful life; and
- 19 (e) An estimate of the total annual assessment that may be
- 20 necessary to cover the cost of maintaining, repairing, replacement or
- 21 restoration of the major components of the common elements and
- 22 any other portion of the common-interest community identified
- 23 pursuant to paragraph (b), after subtracting the reserves of the
- 24 association as of the date of the study, and an estimate of the
- 25 funding plan that may be necessary to provide adequate funding for
- 26 the required reserves.
- 27 4. *Upon completion of the study of the reserves required by*
- 28 *this section, the association shall notify the units' owners that the*
- 29 *study is available for review and make the study available in*
- 30 *electronic format to a unit's owner at no charge. Not earlier than*
- 31 *20 days after the association notifies the units' owners of the*
- 32 *completion of the study, the executive board must conduct a*
- 33 *meeting of the executive board for the purpose of approving the*
- 34 *study. Before approving the study at the meeting, the executive*
- 35 *board shall accept, review and consider comments by the units'*
- 36 *owners in the manner required by NRS 116.31085.*
- 37 *Notwithstanding any other provision of this chapter or the*
- 38 *governing documents, the executive board may not take any*
- 39 *actions based on the study, including, without limitation,*
- 40 *establishing a funding plan to provide adequate funding for the*
- 41 *reserves, unless and until the executive board approves the study*
- 42 *at a meeting of the executive board.*
- 43 5. A summary of the study of the reserves required by
- 44 subsection 1 must be submitted to the Division not later than 45



1 days after the date that the executive board adopts the results of the
2 study.

3 ~~{§-}~~ 6. If a common-interest community was developed as part
4 of a planned unit development pursuant to chapter 278A of NRS and
5 is subject to an agreement with a city or county to receive credit
6 against the amount of the residential construction tax that is imposed
7 pursuant to NRS 278.4983 and 278.4985, the association that is
8 organized for the common-interest community may use the money
9 from that credit for the repair, replacement or restoration of park
10 facilities and related improvements if:

11 (a) The park facilities and related improvements are identified as
12 major components of the common elements of the association; and

13 (b) The association is obligated to repair, replace or restore the
14 park facilities and related improvements in accordance with the
15 study of the reserves required by subsection 1.

16 Sec. 22. NRS 116.3116 is hereby amended to read as follows:

17 116.3116 1. The association has a lien on a unit for any
18 construction penalty that is imposed against the unit's owner
19 pursuant to NRS 116.310305, any assessment levied against that
20 unit or any fines imposed against the unit's owner from the time the
21 construction penalty, assessment or fine becomes due. Unless the
22 declaration otherwise provides, any penalties, fees, charges, late
23 charges, fines and interest charged pursuant to paragraphs (j) to (n),
24 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
25 assessments under this section. If an assessment is payable in
26 installments, the full amount of the assessment is a lien from the
27 time the first installment thereof becomes due.

28 2. A lien under this section is prior to all other liens and
29 encumbrances on a unit except:

30 (a) Liens and encumbrances recorded before the recordation of
31 the declaration and, in a cooperative, liens and encumbrances which
32 the association creates, assumes or takes subject to;

33 (b) A first security interest on the unit recorded before the date
34 on which the assessment sought to be enforced became delinquent
35 or, in a cooperative, the first security interest encumbering only the
36 unit's owner's interest and perfected before the date on which the
37 assessment sought to be enforced became delinquent; and

38 (c) Liens for real estate taxes and other governmental
39 assessments or charges against the unit or cooperative.

40 The lien is also prior to all security interests described in
41 paragraph (b) ~~{to the extent of any}~~ but only in an amount not to
42 exceed charges incurred by the association on a unit pursuant to
43 NRS 116.310312 ~~{and to the extent of}~~ plus an amount not to
44 exceed nine times the ~~{assessments}~~ monthly assessment for
45 common expenses based on the periodic budget adopted by the



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1 association pursuant to NRS 116.3115 which ~~would have become~~
2 ~~due in the absence of acceleration during the 9 months immediately~~
3 ~~preceding institution of an~~ *is in effect at the time of the*
4 *commencement of a civil* action to enforce the association's lien,
5 unless federal regulations adopted by the Federal Home Loan
6 Mortgage Corporation or the Federal National Mortgage
7 Association require a ~~shorter period of~~ *lesser amount for the*
8 *amount of the* priority for ~~the lien~~ *assessments*. If federal
9 regulations adopted by the Federal Home Loan Mortgage
10 Corporation or the Federal National Mortgage Association require a
11 ~~shorter period of~~ *lesser amount for the amount of the* priority for
12 ~~the lien~~ *assessment*, the ~~period during which the lien is prior to~~
13 ~~all security interests described in paragraph (b)~~ *amount of*
14 *assessments to be given priority pursuant to this subsection* must
15 be determined in accordance with those federal regulations, except
16 that notwithstanding the provisions of the federal regulations, the
17 ~~period of~~ *amount of assessments to be given priority* ~~for the lien~~
18 must not be less than ~~the 6 months immediately preceding~~
19 ~~institution of an~~ *six times the monthly assessment for common*
20 *expenses based on the periodic budget adopted by the association*
21 *pursuant to NRS 116.3115 which is in effect at the time of the*
22 *commencement of a civil* action to enforce the association's lien.
23 This subsection does not affect the priority of mechanics' or
24 materialmen's liens, or the priority of liens for other assessments
25 made by the association.

26 3. Unless the declaration otherwise provides, if two or more
27 associations have liens for assessments created at any time on the
28 same property, those liens have equal priority.

29 4. Recording of the declaration constitutes record notice and
30 perfection of the lien. No further recordation of any claim of lien for
31 assessment under this section is required.

32 5. A lien for unpaid assessments is extinguished unless
33 proceedings to enforce the lien are instituted within 3 years after the
34 full amount of the assessments becomes due.

35 6. This section does not prohibit actions to recover sums for
36 which subsection 1 creates a lien or prohibit an association from
37 taking a deed in lieu of foreclosure.

38 7. A judgment or decree in any action brought under this
39 section must include costs and reasonable attorney's fees for the
40 prevailing party.

41 8. The association, upon written request, shall furnish to a
42 unit's owner a statement setting forth the amount of unpaid
43 assessments against the unit. If the interest of the unit's owner is real
44 estate or if a lien for the unpaid assessments may be foreclosed
45 under NRS 116.31162 to 116.31168, inclusive, the statement must



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1 be in recordable form. The statement must be furnished within 10
2 business days after receipt of the request and is binding on the
3 association, the executive board and every unit's owner.

4 9. In a cooperative, upon nonpayment of an assessment on a
5 unit, the unit's owner may be evicted in the same manner as
6 provided by law in the case of an unlawful holdover by a
7 commercial tenant, and:

8 (a) In a cooperative where the owner's interest in a unit is real
9 estate under NRS 116.1105, the association's lien may be foreclosed
10 under NRS 116.31162 to 116.31168, inclusive.

11 (b) In a cooperative where the owner's interest in a unit is
12 personal property under NRS 116.1105, the association's lien:

13 (1) May be foreclosed as a security interest under NRS
14 104.9101 to 104.9709, inclusive; or

15 (2) If the declaration so provides, may be foreclosed under
16 NRS 116.31162 to 116.31168, inclusive.

17 Sec. 23. NRS 116.31164 is hereby amended to read as
18 follows:

19 116.31164 1. The sale must be conducted in the county in
20 which the common-interest community or part of it is situated, and
21 may be conducted by the association, its agent or attorney, or a title
22 insurance company or escrow agent licensed to do business in this
23 State, except that the sale may be made at the office of the
24 association if the notice of the sale so provided, whether the unit is
25 located within the same county as the office of the association or
26 not. The association or other person conducting the sale may from
27 time to time postpone the sale by such advertisement and notice as it
28 considers reasonable or, without further advertisement or notice, by
29 proclamation made to the persons assembled at the time and place
30 previously set and advertised for the sale.

31 2. *If the sale does not occur within 120 days after the date on*
32 *which a copy of the notice of default and election to sell was*
33 *mailed to the unit's owner or his or her successor in interest in the*
34 *manner required by paragraph (b) of subsection 3 of NRS*
35 *116.31162, the association and any person acting on behalf of the*
36 *association may not:*

37 (a) *Foreclose the association's lien by sale pursuant to NRS*
38 *116.31162 to 116.31168, inclusive; or*

39 (b) *File a civil action to obtain a judgment against the unit's*
40 *owner for the amount due,*

41 *unless, within the period set forth in this subsection, the*
42 *association, the unit's owner and any other person with a lien on*
43 *the unit execute and record in the office of the county recorder of*
44 *the county in which the unit is located a written agreement*
45 *extending the period. The written agreement must be*



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1 *acknowledged as required by law for the acknowledgment of*
 2 *deeds. If the sale does not occur within the time provided in the*
 3 *written agreement, the association and any person acting on*
 4 *behalf of the association may not foreclose the association's lien*
 5 *by sale pursuant to NRS 116.31162 to 116.31168, inclusive, or file*
 6 *a civil action to obtain a judgment against the unit's owner for the*
 7 *amount due.*

8 3. On the day of sale originally advertised or to which the sale
 9 is postponed, at the time and place specified in the notice or
 10 postponement, the person conducting the sale may sell the unit at
 11 public auction to the highest cash bidder. Unless otherwise provided
 12 in the declaration or by agreement, the association may purchase the
 13 unit and hold, lease, mortgage or convey it. The association may
 14 purchase by a credit bid up to the amount of the unpaid assessments
 15 and any permitted costs, fees and expenses incident to the
 16 enforcement of its lien.

17 ~~{3-}~~ 4. After the sale, the person conducting the sale shall:

18 (a) Make, execute and, after payment is made, deliver to the
 19 purchaser, or his or her successor or assign, a deed without warranty
 20 which conveys to the grantee all title of the unit's owner to the unit;

21 (b) Deliver a copy of the deed to the Ombudsman within 30
 22 days after the deed is delivered to the purchaser, or his or her
 23 successor or assign; and

24 (c) Apply the proceeds of the sale for the following purposes in
 25 the following order:

26 (1) The reasonable expenses of sale;

27 (2) The reasonable expenses of securing possession before
 28 sale, holding, maintaining, and preparing the unit for sale, including
 29 payment of taxes and other governmental charges, premiums on
 30 hazard and liability insurance, and, to the extent provided for by the
 31 declaration, reasonable attorney's fees and other legal expenses
 32 incurred by the association;

33 (3) Satisfaction of the association's lien;

34 (4) Satisfaction in the order of priority of any subordinate
 35 claim of record; and

36 (5) Remittance of any excess to the unit's owner.

37 Sec. 24. NRS 116.31175 is hereby amended to read as
 38 follows:

39 116.31175 1. Except as otherwise provided in this
 40 subsection, the executive board of an association shall, upon the
 41 written request of a unit's owner, make available the books, records
 42 and other papers of the association, *including, without limitation,*
 43 *the budget, the reserve study, contracts to which the association is*
 44 *a party, records filed with a court relating to civil or criminal*
 45 *action to which the association is a party, minutes of meetings of*



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1 the units' owners and of the executive board, attorney opinions
 2 which do not relate to current litigation involving the association,
 3 any architectural plan or specification submitted by a unit's
 4 owner, agendas of meetings of the units' owners and of the
 5 executive board, records of violations of the governing documents
 6 excluding names and addresses, records relating to the
 7 investments of the association, bank statements, cancelled checks,
 8 insurance policies and any permits, even if the book, record or
 9 paper is in draft form or is unapproved or in the process of being
 10 developed, for review at the business office of the association or a
 11 designated business location not to exceed 60 miles from the
 12 physical location of the common-interest community and during the
 13 regular working hours of the association. ~~[- including, without~~
 14 ~~limitation, all contracts to which the association is a party and all~~
 15 ~~records filed with a court relating to a civil or criminal action to~~
 16 ~~which the association is a party.]~~ The provisions of this subsection
 17 do not apply to:

18 (a) The personnel records of the employees of the association,
 19 except for those records relating to the number of hours worked and
 20 the salaries and benefits of those employees;

21 (b) The records of the association relating to another unit's
 22 owner ~~[- including, without limitation, any architectural plan or~~
 23 ~~specification submitted by a unit's owner to the association during~~
 24 ~~an approval process required by the governing documents, except~~
 25 ~~for those records described in subsection 2; and~~

26 ~~— (c) Any document, including, without limitation, minutes of an~~
 27 ~~executive board meeting, a reserve study and a budget, if the~~
 28 ~~document:~~

29 ~~— (1) Is in the process of being developed for final~~
 30 ~~consideration by the executive board; and~~

31 ~~— (2) Has not been placed on an agenda for final approval by~~
 32 ~~the executive board.] other than records specifically mentioned in~~
 33 ~~this subsection.~~

34 2. The executive board of an association shall maintain a
 35 general record concerning each violation of the governing
 36 documents, other than a violation involving a failure to pay an
 37 assessment, for which the executive board has imposed a fine, a
 38 construction penalty or any other sanction. The general record:

39 (a) Must contain a general description of the nature of the
 40 violation and the type of the sanction imposed. If the sanction
 41 imposed was a fine or construction penalty, the general record must
 42 specify the amount of the fine or construction penalty.

43 (b) Must not contain the name or address of the person against
 44 whom the sanction was imposed or any other personal information



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1 which may be used to identify the person or the location of the unit,
2 if any, that is associated with the violation.

3 (c) Must be maintained in an organized and convenient filing
4 system or data system that allows a unit's owner to search and
5 review the general records concerning violations of the governing
6 documents.

7 3. If the executive board refuses to allow a unit's owner to
8 review the books, records or other papers of the association, the
9 Ombudsman may:

10 (a) On behalf of the unit's owner and upon written request,
11 review the books, records or other papers of the association during
12 the regular working hours of the association; and

13 (b) If the Ombudsman is denied access to the books, records or
14 other papers, request the Commission, or any member thereof acting
15 on behalf of the Commission, to issue a subpoena for their
16 production.

17 4. The books, records and other papers of an association must
18 be maintained for at least 10 years. The provisions of this subsection
19 do not apply to:

20 (a) The minutes of a meeting of the units' owners which must be
21 maintained in accordance with NRS 116.3108; or

22 (b) The minutes of a meeting of the executive board which must
23 be maintained in accordance with NRS 116.31083.

24 5. The executive board shall not require a unit's owner to pay
25 an amount in excess of \$10 per hour to review any books, records,
26 contracts or other papers of the association pursuant to the
27 provisions of this section.

28 6. If an official publication contains or will contain any
29 mention of a candidate or ballot question, the official publication
30 must, upon request and without charge, provide equal space to the
31 candidate or a representative of an organization which supports the
32 passage or defeat of the ballot question.

33 7. If an official publication contains or will contain the views
34 or opinions of the association, the executive board, a community
35 manager or an officer, employee or agent of an association
36 concerning an issue of official interest, the official publication must,
37 upon request and without charge, provide equal space to opposing
38 views and opinions of a unit's owner, tenant or resident of the
39 common-interest community. *If the views or opinions of the*
40 *association, the executive board, a community manager or an*
41 *officer, employee or agent of an association are published in an*
42 *official newsletter or other similar publication that is circulated to*
43 *each unit's owner, in addition to any other manner of official*
44 *publication for the opposing views or opinions of a unit's owner,*
45 *tenant or resident, those opposing views or opinions may be*



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1 published in the same such newsletter or publication or in the next
 2 such newsletter or publication but the opposing views or opinions
 3 must be published in an official newsletter or similar publication
 4 within 45 days after publication of the views or opinions of the
 5 association, the executive board, community manager or officer,
 6 employee or agent of the association. If the views or opinions of
 7 the association, the executive board, a community manager or an
 8 officer, employee or agent of an association are published on an
 9 official website or on an official bulletin board that is available to
 10 each unit's owner, in addition to any other manner of official
 11 publication for the opposing views or opinions, the opposing views
 12 or opinions of a unit's owner, tenant or resident must be published
 13 in the next official newsletter or other similar publication that is
 14 circulated to each unit's owner or in an official newsletter or
 15 similar publication published within 45 days after publication of
 16 the views or opinions of the association, executive board,
 17 community manager or officer, employee or agent of the
 18 association, whichever is earlier.

19 8. The association and its officers, employees and agents are
 20 immune from criminal or civil liability for any act or omission
 21 which arises out of the publication or disclosure of any information
 22 related to any person and which occurs in the course of carrying out
 23 any duties required pursuant to subsection 6 or 7.

24 9. As used in this section:

25 (a) "Issue of official interest" includes, without limitation:

26 (1) Any issue on which the executive board or the units'
 27 owners will be voting, including, without limitation, the election of
 28 members of the executive board; and

29 (2) The enactment or adoption of rules or regulations that
 30 will affect a common-interest community.

31 (b) "Official publication" means:

32 (1) An official website;

33 (2) An official newsletter or other similar publication that is
 34 circulated to each unit's owner; or

35 (3) An official bulletin board that is available to each unit's
 36 owner,

37 which is published or maintained at the cost of an association and
 38 by an association, an executive board, a member of an executive
 39 board, a community manager or an officer, employee or agent of an
 40 association.

41 Sec. 25. NRS 116.31183 is hereby amended to read as
 42 follows:

43 116.31183 1. An executive board, a member of an executive
 44 board, a community manager or an officer, employee or agent of an
 45 association shall not take, or direct or encourage another person to



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1 take, any retaliatory action against a unit's owner , including,
2 without limitation, demanding money from a unit's owner,
3 prohibiting the use of the common elements by the unit's owner,
4 restricting the access of friends, relatives or any invitee of a unit's
5 owner, filing against the unit's owner a false or fraudulent
6 affidavit with the Division pursuant to NRS 116.760, filing against
7 the unit's owner a false or fraudulent claim with the Division
8 pursuant to NRS 38.320, or filing a frivolous civil action for the
9 purpose of harassing the unit's owner, because the unit's owner
10 has:

11 (a) Complained in good faith about any alleged violation of any
12 provision of this chapter , ~~for~~ the governing documents of the
13 association ~~for~~ or any federal, state, county or municipal law,
14 ordinance or code;

15 (b) Recommended the selection or replacement of an attorney,
16 community manager or vendor; or

17 (c) Requested in good faith to review the books, records or other
18 papers of the association.

19 2. In addition to any other remedy provided by law, upon a
20 violation of this section, a unit's owner may bring a separate action
21 to recover:

22 (a) Compensatory damages; and

23 (b) Attorney's fees and costs of bringing the separate action.

24 Sec. 26. NRS 116.330 is hereby amended to read as follows:

25 116.330 1. The executive board shall not and the governing
26 documents must not prohibit a unit's owner from installing or
27 maintaining drought tolerant landscaping within such physical
28 portion of the common-interest community as that owner has a right
29 to occupy and use exclusively, including, without limitation, the
30 front yard or back yard of the unit's owner, except that:

31 (a) Before installing drought tolerant landscaping, the unit's
32 owner must submit a detailed description or plans for the drought
33 tolerant landscaping for architectural review and approval in
34 accordance with the procedures, if any, set forth in the governing
35 documents of the association; and

36 (b) The drought tolerant landscaping must be selected or
37 designed to the maximum extent practicable to be compatible with
38 the style of the common-interest community.

39 The provisions of this subsection must be construed liberally in
40 favor of effectuating the purpose of encouraging the use of drought
41 tolerant landscaping, and the executive board shall not and the
42 governing documents must not unreasonably deny or withhold
43 approval for the installation of drought tolerant landscaping or
44 unreasonably determine that the drought tolerant landscaping is not
45 compatible with the style of the common-interest community.

