

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

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Dated: 3/10/2010

Print Name(s) Larry Wolf

Signature(s) [Signature]

Unit Address 8730 Horizon Walk #103

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Dated: 5-9-10

Print Name(s) WILSON WONG

Signature(s) [Handwritten Signature]

Unit Address 8779 HORIZON WIND AVE. #103

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Dated: 5/31/2010

Print Name(s) Nelson Wong

Signature(s) Nelson Wong

Unit Address 8750 Starline Wind #101, Las Vegas, NV

Telephone # 760-741-9222

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Dated: 6-28-10

Print Name(s) MELISSA R WOODHOUSE-MARERT

Signature(s) Melissa R Woodhouse-Marert

Unit Address 8724 TRAVELLING Breeze #102

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Dated: 6/16/10

Print Name(s) PAUL WELWAT

Signature(s) Paul Welwat

Unit Address 8764 TRAVELING BREEZE #103

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Dated: 6/20/10

Print Name(s) HIROYOSHI YAMANO / Mayuka Yamano

Signature(s) Hiroyoshi Yamano / Mayuka Yamano

Unit Address 8648 Tom Noon Ave. #101

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Dated: 03-07-10

Print Name(s) JAMES W. YEATTS JR.

Signature(s) [Signature]

Unit Address 8828 TOM NOON AVE. #103

LAS VEGAS, NV 89178

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Dated: 8-23-10

Print Name(s) Michael A Young

Signature(s) Michael A Young

Unit Address 8734 Traveling Breeze #103
Las Vegas, NV 89178

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Dated: 8/11/10

Print Name(s) ZG SPORT, INC.

Signature(s) 
EDMUND C. LARK

Unit Address 8639 HORIZON WIND #103

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Dated: 8-14-10

Print Name(s) TAISON KIM

Signature(s) TAISON KIM

Unit Address 8638 TOLLBOON AVE UNIT 102

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Dated: 8/24/10

Print Name(s) Yihong Liu & Rumei Wang

Signature(s)  

Unit Address 8744 Traveling Breeze #101

Telephone # 702-837-7898

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 6-8-2010

Print Name(s) Debra K. Abbey

Signature(s) Debra K. Abbey

Unit Address 8797 Tom Noon Ave #101

Las Vegas, NV 89178

Telephone # 517 812 9118

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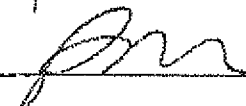
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Dated: 6/14/10

Print Name(s) PARIVASH AKHAVAN

Signature(s) 

Unit Address 8688 Tom Noon Ave # 102

P.S. Sorry I won't be able to attend the 2nd meeting.

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Dated: 3-8-10

Print Name(s) ALFRED + ROXANNE AMATO

Signature(s) Alfred Amato Roxanne Amato

Unit Address 8815 Traveling Breeze Ave.
Unit 102

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Dated: _____

Print Name(s) William Anderson

Signature(s) _____

Unit Address 8715 TRAVELING Breeze 101

Telephone # 714 623-1650

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Dated: 8/24/10

Print Name(s) Ezequiel Aranda-Rivera

Signature(s) Ezequiel Aranda-Rivera

Unit Address 8715 Traveling breeze ave #103 L.V. NV 89117

Telephone # (702) 869-6969

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Dated: 6/30/10

Print Name(s) Padua Armeni Androvandi

Signature(s) 

Unit Address 8654 Traveling Breeze Ave #103
LAS VEGAS, NV 89178

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Dated: 8/18/10

Print Name(s) Celeste F. Aupied

Signature(s) Celeste Aupied

Unit Address 8794 Traveling Breeze - U102
LV NV 89178

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Dated: 6/12/10

Print Name(s) Kathryn Mauer

Signature(s) Kathryn Mauer

Unit Address 8628 Tom Noun Ave

Las Vegas, Unit 103
NV 89178

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Dated: JUNE 14/10

Print Name(s)

PAUL BANNERMAN

Signature(s)

Paul Bannerman

Unit Address

8804 TRAVELLING TREE #102

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Dated: 6-12-10

Print Name(s) Zachary Bekoub

Signature(s) Zachary Bekoub

Unit Address 8659 Horizon Wind Ave. 102

Telephone # 702 375 6211

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3/11/2010

Print Name(s) Tiffany Byrnes

Signature(s) [Signature]

Unit Address 8750 Horizon Wind Ave #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. AS42616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated: 10/17/10

Print Name(s) BARBARA BOCKO

Signature(s) Barbara Bocko

Unit Address 8810 HORIZON WIND #102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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Dated: 8/7/10

Print Name(s) Robin Bonke

Signature(s) Robin Bonke

Unit Address 8744 Traveling Breeze #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 6/21/10

Print Name(s) KONRAD BROCK

Signature(s) [Signature]

Unit Address 8789 Horizon Wind Ave,
#102 Las Vegas, NV
89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 8/27/16

Print Name(s) Stefanie Benavides

Signature(s) [Signature]

Unit Address 8769 Horizon Wind Ave. #103

Telephone # (702) 271-7539

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

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Dated 5-27-10

Print Name(s) Kendrick Burt

Signature(s) 

Unit Address 8807 Tom Noon #102

Telephone # 702-499-1320

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. AS42616. D.R. Horton has refused to repair the defects.

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Dated: Aug. 04
2010

Print Name(s) Eric Butler Christine A. Butler

Signature(s) [Signature] [Signature]

Unit Address 8755 Traveling Breeze Ave #108
Las Vegas, NV

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated: 06/05/10

Print Name(s) Sam Carannante

Signature(s) [Signature]

Unit Address 8799 Horizon Wind Ave #101 Las Vegas NV 89178

Telephone # 702-493-7281

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated: 03/10/10

Print Name(s) Roger A. Carney

Signature(s) Roger A. Carney

Unit Address 8689 Tom Noon # 101

**HIGH NOON AT ARLINGTON RANCH
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Dated: 8/6/18/2010 Print Name(s) JANET CARIARZA - EDWARDS

Signature(s) [Signature]

Unit Address 8675 TRAVELING BREEZE DR.

L.V., NV. 89178 #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 6-18-10

Print Name(s) Marcia Carrero

Signature(s) 

Unit Address 8670 Horizon Wind Ave #102

Telephone # 451-9224

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated:

3/10/10

Print Name(s)

RONALD J. CARROLL

Signature(s)

Ronald J. Carroll

Unit Address

9490 Thunder Sky #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

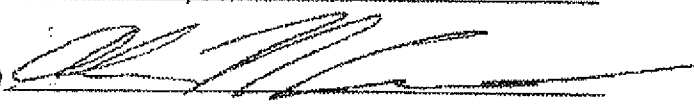
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Dated: 7-1-10

Print Name(s) Adam M. Gross

Signature(s) 

Unit Address 9430 Thunder Sky St #102

Telephone # (702) 401-7404

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 3-8-2010

Print Name(s) Joseph T. CARUSO DIANE D. CARUSO

Signature(s)

Joseph T. Caruso Diane D. Caruso

Unit Address

8820 HORIZON WIND AVE UNIT 102
LAS VEGAS, NEVADA 89178-7761

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 8/23/2010

Print Name(s)

GERALDINE DESTAREOIS

MARY ANN CASSIDY

PATRICIA GAMBINO

Signature(s)

Geraldine Destareois

Mary Ann Cassidy

Patricia Gambino

Unit Address

8638 Tom Noon

Unit 101

LAS VEGAS, NV 89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 29 May 2010

Print Name(s) HELEN H. CLOYD

Signature(s) [Signature]

Unit Address 8678 TOM NOON #102

Telephone # (702) 412-6288

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

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A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 7/16/10

Print Name(s) Dor & Sheila Cohn

Signature(s) 

Unit Address 8739 Horizon Wind #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3-9-10

Print Name(s) LAN CORWIN

Signature(s) 

Unit Address #103

8720 Horizon
Wind

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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Dated: 08/23/10

Print Name(s) NICOLETA COSTA

Signature(s) N. Costa

Unit Address 8779 HORIZON WIND #102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

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Dated: 5-28-10

Print Name(s) NINO CRAME

Signature(s) Nino Crame

Unit Address 8825 TRAVELING BREEZE UNIT 101

Telephone # 702-914-8431

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Dated: 3/7/10

Print Name(s) Jared Crawford

Signature(s) [Signature]

Unit Address 9490 Thunder Sky St #101

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Dated: 3/8/10

Print Name(s) Francois A. Dacheux, III

Signature(s) Francois A. Dacheux III

Unit Address 8618 Tom Noon Ave #102

**HIGH NOON AT ARLINGTON RANCH
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C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 6/16/10

Print Name(s) Jacob Dewees

Signature(s) [Signature]

Unit Address 8669 Horizon Wind Ave #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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Dated:

8/23/10

Print Name(s)

MIKALA JONES DILLARD

Signature(s)

[Signature]

Unit Address

8655 Traveling Breeze Rd #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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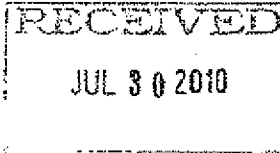
Dated: 3-12-10

Print Name(s) Cem DIZAR

Signature(s) [Signature]

Unit Address 8729 Horizon Wind Ave #101
LV, NV 89178

HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION



This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542516. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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Dated: 7/1/10

Print Name(s) Jennifer Doepper

Signature(s) [Signature]

Unit Address 8708 TOMMYDON AVE UNIT #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. AS42616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 213 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

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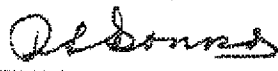
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Dated: 8/20/10.-

Print Name(s) ROSA DONOSO

Signature(s) 

Unit Address 8665 Traveling Breeze Ave, Unit 102
Las Vegas, NV 89178.-

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 3/9/2010

Print Name(s) DUANE R. EGGLELAND

Signature(s) Duane R. Egeland

Unit Address 8730 HORIZON WIND AVE, UNIT 101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated: 3/9/10

Print Name(s) Ghayda F. Eranyca

Signature(s) Ghayda Eranyca

Unit Address 8637 Tom Noon Ave Unit 102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 08-01-10

Print Name(s)

Lisa Evans

Signature(s)

[Signature]

Unit Address

8835 Traveling Breeze #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 1 June 2010

Print Name(s)

MARY B. FAGAN (Farley)

Signature(s)

Mary B. Fagan

Unit Address

8814 TRAVELING Breeze Unit 103

Telephone #

702-280-6805

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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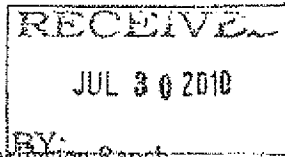
Dated: 3/15/10

Print Name(s) Melissa Fielding

Signature(s) [Signature]

Unit Address 9470 ThunderBolt St #101

HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION



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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 7/28/10

Print Name(s) Sean Finnegan

Signature(s) Sean Finnegan

Unit Address 9440 Thunder Sky 101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 8/23/16

Print Name(s) Jana Fisher

Signature(s) [Signature]

Unit Address 102

Telephone # 702 274 3862

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 213 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated:

AUG. 16, 10

Print Name(s)

STEVE FISHMAN

Signature(s)

Steve Fishman

Unit Address

8748 Tom Noon Ave #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated:

3.8.10

Print Name(s)

Jenifer Fitzgerald

Signature(s)



Unit Address

**8765 Traveling Breeze #101
LV, NV 89178**

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated: 6/22/10

Print Name(s) Randall Ford Tamar Ford

Signature(s)  Tamar S. Ford

Unit Address 8649 HORIZON WIND AVE Unit 102

Telephone # 702-824-7043

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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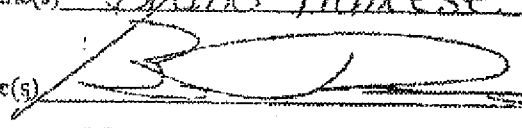
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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: June 8, 2010 Print Name(s) Bruno Fraxese

Signature(s) 

Unit Address #102, 8710 Horizon Wynd

Telephone # (780) 721-5700

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: _____

Print Name(s) Joey Frank

Signature(s) 

Unit Address 8654 Traveling Breeze #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. AS42616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

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Dated: 3/9/10

Print Name(s) William Frank

Signature(s) 

Unit Address 8675 Traveling Breeze #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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Dated: 6/15/10

Print Name(s) BRIAN GILLEN

Signature(s) [Signature]

Unit Address 8658 Tom Noon Ave. #102 Las Vegas, NV

Telephone # (702) 561-4166

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 8/28/2010

Print Name(s) Raymond R. Baker

Signature(s) [Signature]

Unit Address 8760 Horizon Wind Ave, Unit 101 LV, NV

Telephone # 661 319 78 35 89/38

NANCY QUEEN

HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION

RECEIVED
MAY - 6 2010

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Dated:

5/4/2010

Print Name(s)

MIKE GARDNER / SUE ANN MORELAND

Signature(s)

Mike Gardner / Sue Ann Moreland

Unit Address

8668 TOM NOON AVE #103
LAS VEGAS NV

**HIGH NOON AT ARLINGTON RANCH
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D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

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F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 21 June 2010

Print Name(s) Amanda J. Gardner

Signature(s) [Signature]

Unit Address 8144 Traverby Breeze Ave #102
Las Vegas NV 89175

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: MARCH 14 2010 Print Name(s) THOMAS A. GIBSON

Signature(s) Thomas A. Gibson

Unit Address 8777 Tom Noon #103, LV, NV 89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

FREDRICK R. GOMEZ

Dated: 3/11/10

Print Name(s) MARY BETH GOMEZ

Signature(s) 

Unit Address 9450 THUNDER SKY STREET, UNIT 102

LAS VEGAS, NV 89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. AS42616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 6/9/10

Print Name(s) ROBERT GRASSO

Signature(s) Robert Grasso

Unit Address 8794 TRAVELING HORSE #101 L.V.

Telephone # 781-942-1771

Exhibit 1

REGISTER OF ACTIONS
CASE No. 07A542616

High Noon At Arlington Ranch Homeowner vs D R Horton Inc

§
§
§
§
§
§

Case Type: **Construction Defect**

Subtype: **General**

Date Filed: **06/07/2007**

Location: **Department 22**

Conversion Case Number: **A542616**

PARTY INFORMATION

Lead Attorneys

Defendant **D R Horton Inc**

Joel D. Odou
Retained
7022220625(W)

Plaintiff **High Noon At Arlington Ranch
Homeowner**

Paul P. Terry, Jr.
Retained
7029902017(W)

Third Party Defendant **Allard Enterprises Inc *Doing Business*
As Iron Specialists**

Third Party Defendant **Anse Inc *Doing Business As* Nevada
State Plastering**

Third Party Defendant **Brandon LLC *Doing Business*
As Summit Drywall & Paint LLC**

Charlie H. Luh
Retained
7023678899(W)

Third Party Defendant **Bravo Underground Inc**

Third Party Defendant **Campbell Concrete Of Nevada Inc**

Jeffrey H. Ballin
Retained
7028933383(W)

Third Party Defendant **Circle S Development Corp *Doing*
Business As Deck Systems**

Bradley V. Gibbons
Retained
7028040706(W)

Third Party Defendant **Efficient Enterprises LLC *Doing*
Business As Efficient Electric**

Third Party Defendant **Firestop Inc**

Nicholas B Salerno
Retained
7022571997(W)

Third Party Defendant **Harrison Door Company**

Shannon G. Rooney
Retained
7022571997(W)

Third Party Defendant **Infinity Building Products LLC**

Third Party **Integrity Wall Systems LLC**

Defendant

Third Party Defendant Lukestar Corp

Third Party Defendant National Builders Inc

Leonard T. Fink
Retained
7028040706(W)

Third Party Defendant O P M Inc *Doing Business*
As Consolidated Roofing

Tomas V Mazeika
Retained
7023844048(W)

Third Party Defendant Quality Wood Products Ltd

Peter C. Brown
Retained
7022586665(W)

Third Party Defendant RCR Plumbing And Mechanical Inc

Third Party Defendant Reyburn Lawn & Landscape Designers
Inc

Lee J Grant
Retained
702-697-6500(W)

Third Party Defendant Rising Sun Plumbing LLC *Doing*
Business As RSP Inc

Charlie H. Luh
Retained
7023678899(W)

Third Party Defendant Southern Nevada Cabinets Inc

Third Party Defendant Sunrise Mechanical Inc

Kevin A. Brown
Retained
7029423900(W)

Third Party Defendant Sunstate Companies Inc *Doing*
Business As Sunstate Landscape

KIRK WALKER, ESQ
Retained
702-462-6300(W)

Third Party Defendant Sylvania Companies Inc *Doing*
Business As Drake Asphalt &
Concrete

Third Party Defendant United Electric Inc *Doing Business*
As United Home Electric

Third Party Defendant Walldesign Inc

Third Party Defendant Western Shower Door Inc

Third Party Plaintiff D R Horton Inc

Joel D. Odou
Retained
7022220625(W)

EVENTS & ORDERS OF THE COURT

01/25/2011 Minute Order (4:53 PM) (Judicial Officer Johnson, Susan)

DECISION RE: PLAINTIFF HIGH NOON AT ARLINGTON HOMEOWNERS ASSOCIATION'S MOTION FOR DECLARATORY RELIEF RE: STANDING (11/10/10)

Minutes

01/25/2011 4:53 PM

- IT IS HEREBY ORDERED, ADJUDGED AND DECREED Plaintiff High Noon at Arlington Homeowners Association's Motion for Declaratory Relief Re: Standing is GRANTED IN PART, DENIED IN PART as set forth below: IT IS FURTHER ORDERED, ADJUDGED AND DECREED Plaintiff High Noon at Arlington Homeowners Association has no standing to assert all constructional defect claims in the 194 units for which Plaintiff has procured an assignment of rights from the units' owners. IT IS FURTHER ORDERED, ADJUDGED AND DECREED Plaintiff High Noon at Arlington Homeowners Association may "institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community, including, as set forth in this case, constructional defects that may affect the 114 triplex "building envelopes," or exterior walls, wall openings and roofs. Such constructional defect claims do not include those affecting the units' owners' fire resistive, plumbing or electrical systems that may be located within the interior or exterior walls, whereby Plaintiff has not standing to assert those causes of actions in a representative capacity. CLERK'S NOTE: To obtain the full and complete text of the Court's ruling, please refer to the original order.//////mj 1/25/11

[Return to Register of Actions](#)

Exhibit 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

D.R. HORTON, INC., A DELAWARE
CORPORATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,

and

HIGH NOON AT ARLINGTON RANCH
HOMEOWNERS ASSOCIATION, A
NEVADA NON-PROFIT
CORPORATION,
Real Party in Interest.

No. 58533

FILED

JAN 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus or prohibition challenging a district court order holding that real party in interest may litigate, on behalf of individual homeowners, claims for alleged construction defects.

Petitioner D.R. Horton argues that, under this court's decision in D.R. Horton v. District Court, 125 Nev. 449, 215 P.3d 697 (2009) (First Light II), the district court erred in concluding that no NRCP 23 analysis was necessary for real party in interest High Noon at Arlington Ranch Homeowners Association to bring claims on behalf of individual

homeowners for alleged constructional defects occurring in building envelopes.¹

Standard of review

"A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion." State v. Dist. Ct., 116 Nev. 374, 379, 997 P.2d 126, 130 (2000). "Mandamus is an extraordinary remedy which 'will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously.'" Mineral County v. State, Dep't of Conserv., 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (quoting Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (citation omitted)). A writ of prohibition is an extraordinary remedy which may be used to arrest the proceedings of a district court when it has exceeded its jurisdiction. Mineral County, 117 Nev. at 243, 20 P.3d at 805. Both mandamus and prohibition are issued at the discretion of this court and are unavailable when a "petitioner has a plain, speedy, and adequate remedy in the ordinary course of law." Id.

Here, the challenged order granted a motion for declaratory relief regarding whether the case was appropriate for class action certification; thus, it is not independently appealable. As D.R. Horton lacks a plain, speedy, and adequate remedy at law, we elect to exercise our discretion to consider its petition. See id. In considering a writ petition,

¹High Noon has also filed a petition for a writ of mandamus, High Noon at Arlington v. Dist. Ct. (D.R. Horton, Inc.), Docket No. 58630, which arises from the same district court case that is the subject of this petition.

this court gives deference to a district court's factual determinations; however, we review questions of law de novo. Gonski v. Dist. Ct., 126 Nev. ___, ___, 245 P.3d 1164, 1168 (2010).

The district court failed to conduct a sufficient NRCP 23 analysis

This court has held that an HOA has standing to institute a representative action on behalf of its individual members if the HOA's claims meet the NRCP 23 requirements as directed in Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 846-52, 124 P.3d 530, 537-41 (2005). First Light II, 125 Nev. at 458-59, 215 P.3d at 703-04. Pursuant to NRCP 23, a class action may be maintained only if all four of the NRCP 23(a) requirements (numerosity, commonality, typicality, and adequacy) and one of three additional NRCP 23(b) requirements is met.

"[F]ailure of a common-interest community association to strictly satisfy the NRCP 23 factors does not automatically result in a failure of the representative action." Beazer Homes Holding Corp. v. Dist. Ct., 128 Nev. ___, ___, ___, P.3d ___, ___, (Adv. Op. No. 66, December 27, 2012). However, the district court must conduct and document an NRCP 23 analysis upon request. Id. Accordingly, even if an HOA has standing under NRS 116.3102(1)(d) to institute a representative action on behalf of two or more of its members, the HOA still must satisfy the requirements of NRCP 23 if it wishes to bring its representative action as a class-action suit. First Light II, 125 Nev. at 458, 215 P.3d at 703.

Here, the district court found that under First Light II, assignment of claims to an HOA did not eliminate the duty of the class to comply with the class-action requirements of NRCP 23. The district court then conducted a full NRCP 23 analysis as to the assigned claims and found that High Noon had not satisfied the NRCP 23 prerequisites and

therefore did not have standing to pursue those claims in a representative capacity.

However, the district court failed to perform a full and thorough NRCP 23 analysis as to the claims involving the building envelopes. The district court interpreted this court's holding in First Light II as applicable only to alleged interior defects of individual units located within a common-interest community. Consequently, the district court found, without performing an NRCP 23 analysis, that High Noon had standing to litigate representative claims based on the building envelopes. The district court reasoned that NRS 116.3102(1)(d) permits an HOA to bring representative claims on matters affecting the common-interest community, and the district court had "no doubt" that the building envelope claims affected the common-interest community.

This was error. This court previously directed the district court to review High Noon's claims in accordance with the analysis set forth in First Light II "to determine whether the claims conform to class action principles, and thus, whether High Noon may file suit in a representative capacity for constructional defects affecting individual units." In First Light II, this court held that although NRS 116.3102(1)(d) grants an HOA standing to file an action in a representative capacity, this statutory grant must be reconciled with the requirements of NRCP 23 and Shuette. First Light II, 125 Nev. at 458, 215 P.3d at 703. This court's holding in First Light II was not intended to apply only to defects that occur within individual units, but rather to all claims affecting individually owned units that an HOA brings in a representative capacity.

NRS 116.093 defines "[u]nit" as "a physical portion of the common-interest community designated for separate ownership or

occupancy, the boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105." NRS 116.2105(1)(e) states

In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit.

Accordingly, we look to the Community's declaration. Here, the Community's CC&Rs provide that the elements of the building envelope are part of the individually owned units. This court's decision in First Light II instructed district courts to perform a full and thorough NRCP 23 analysis for claims that affect individual units. Because the building envelopes are individually owned, any claims that High Noon wishes to bring relating to the building envelopes are in a representative capacity and must survive an NRCP 23 analysis. The district court therefore abused its discretion by failing to follow the mandate of this court and perform a full and thorough NRCP 23 analysis of the claims involving the building envelopes. Accordingly, writ relief is warranted, and we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to conduct further proceedings in light of this order and this court's recent decision in Beazer Homes Holding Corp. v. District Court.²

²In light of this order, D.R. Horton's alternative request for a writ of prohibition is denied.

We also vacate the stay of the underlying district court proceedings that was granted pending the consideration of this petition.³

Pickering C.J.
Pickering

Gibbons J.
Gibbons

Hardesty J.
Hardesty

Douglas J.
Douglas

Cherry J.
Cherry

Saitta J.
Saitta

cc: Hon. Susan Johnson, District Judge
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas
Angius & Terry LLP/Las Vegas
Eighth District Court Clerk

³The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in this matter.

Holly Woodard

From: efilling@nvcourts.nv.gov
Sent: Friday, January 25, 2013 1:49 PM
To: Holly Woodard
Subject: Notification of Electronic Filing in D.R. HORTON, INC. VS. DIST. CT. (HIGH NOON AT ARLINGTON), No. 58533

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Jan 25 2013 01:46 p.m.

Case Title: D.R. HORTON, INC. VS. DIST. CT. (HIGH NOON AT ARLINGTON)
Docket Number: 58533
Case Category: Original Proceeding

Document Category:

Filed Order Granting Petition. "ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to conduct further proceedings in light of this order and this court's recent decision in Beazer Homes Holding Corp. v. District Court. We also vacate the stay of the underlying district court proceedings that was granted pending consideration of this petition." Fn2[In light of this order, D.R. Horton's alternative request for a writ of prohibition is denied.] Fn3[The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in this matter.] EN BANC

Submitted by: Issued by Court
Official File Stamp: Jan 25 2013 10:20 a.m.
Filing Status: Accepted and Filed

Docket Text:

Filed Order Granting Petition. "ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to conduct further proceedings in light of this order and this court's recent decision in Beazer Homes Holding Corp. v. District Court. We also vacate the stay of the underlying district court proceedings that was granted pending consideration of this petition." Fn2[In light of this order, D.R. Horton's alternative request for a writ of prohibition is denied.] Fn3[The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in this matter.] EN BANC

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click [here](#) to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:

Paul Terry
Robert Carlson
Megan Dorsey
Ian Gillan

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

John Stander
Melissa Bybee

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

Exhibit 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH
HOMEOWNERS ASSOCIATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN H. JOHNSON, DISTRICT
JUDGE

Respondents,
and

D.R. HORTON, INC.,
Real Party in Interest.

No. 58630

FILED

JAN 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Mahan*
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus challenging a district court order refusing to permit a homeowners' association to assert certain construction defect claims on behalf of its members.

Petitioner High Noon at Arlington Ranch Homeowners Association is a homeowners' association (HOA) created pursuant to NRS Chapter 116 that operates and manages the High Noon at Arlington Ranch community, a planned community of 342 individually owned units. High Noon is also the assignee of the claims of 194 individual unit owners. High Noon filed a complaint against the developer, real party in interest D.R. Horton, alleging breach of implied and express warranties, breach of contract, and breach of fiduciary duty.

The instant petition arises from a district court order denying High Noon standing to proceed with a representative action on behalf of the 194 individual unit owners for which High Noon holds an assignment of claims and for claims based on the units' fire resistive and structural

components.¹ High Noon petitions this court for a writ of mandamus directing the district court to amend its order denying standing and to allow High Noon to proceed with its claims.

Standard of review

"A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion." State v. Dist. Ct., 116 Nev. 374, 379, 997 P.2d 126, 130 (2000). "Mandamus is an extraordinary remedy which 'will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously.'" Mineral County v. State, Dep't of Conserv., 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (quoting Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981) (citation omitted)). Mandamus is issued at the discretion of this court and is unavailable when a "petitioner has a plain, speedy, and adequate remedy in the ordinary course of law." Mineral County, 117 Nev. at 243, 20 P.3d at 805.

Here, the challenged order granted a motion for declaratory relief regarding whether the case was appropriate for class action certification; thus, it is not independently appealable. As High Noon lacks a plain, speedy, and adequate remedy at law, we elect to exercise our discretion to consider its petition. See id. In considering a writ petition, this court gives deference to a district court's factual determinations;

¹The order granted High Noon standing to pursue claims based on the building envelopes. D.R. Horton filed a petition for a writ of mandamus or prohibition based on this determination. D.R. Horton, Inc. v. Dist. Ct. (High Noon at Arlington), Docket No. 58533.

however, we review questions of law de novo. Gonski v. Dist. Ct., 126 Nev. ___, ___, 245 P.3d 1164, 1168 (2010).

This court applies an abuse of discretion standard in its review of a class action certification decision. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 846, 124 P.3d 530, 537 (2005). In determining whether to certify a class, a court should accept the allegations contained within a complaint as true. Meyer v. District Court, 110 Nev. 1357, 1363-64, 885 P.2d 622, 626 (1994). A court's class certification decision must be based on NRCP 23(a) and (b), which specify the circumstances under which a case is appropriate for resolution as a class action. Shuette, 121 Nev. at 846, 124 P.3d at 537.

The district court correctly concluded that High Noon lacked standing to assert constructional defect claims relating to individual units

This court has held that an HOA has standing to institute a representative action on behalf of its members if the HOA's claims meet the NRCP 23 requirements as directed in Shuette, 121 Nev. at 846-52, 124 P.3d at 537-41. D.R. Horton v. Dist. Ct., 125 Nev. 449, 458, 215 P.3d 697, 703 (2009) (First Light II). Pursuant to NRCP 23, a class action may be maintained only if all four of the NRCP 23(a) requirements (numerosity, commonality, typicality, and adequacy) and one of three additional NRCP 23(b) requirements is met.

"[F]ailure of a common-interest community association to strictly satisfy the NRCP 23 factors does not automatically result in a failure of the representative action." Beazer Homes Holding Corp. v. Dist. Ct., 128 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 66, December 27, 2012). However, a district court must conduct and document an NRCP 23 analysis upon request. Id. Accordingly, even if an HOA has standing under NRS 116.3102(1)(d) to institute a representative action on behalf of two or more of its members, the HOA still must satisfy the requirements

of NRCP 23 if it wishes to bring its representative action as a class-action suit. First Light II, 125 Nev. at 458, 215 P.3d at 703. Here, the district court conducted and documented a thorough NRCP 23 analysis and found that High Noon failed to meet the NRCP 23(a) commonality and typicality requirements and the NRCP 23(b)(3) predominance and superiority requirements.

Commonality

NRCP 23(a)'s commonality requirement provides that "members of a class may sue or be sued as representative parties on behalf of all only if . . . (2) there are questions of law or fact common to the class." NRCP 23(a). Following First Light II's instruction to reconcile NRS 116.3102(1)(d) with the requirements of NRCP 23, a court must consider whether the proposed representative's claims satisfy this commonality requirement in light of the principles and concerns discussed in Shuette. First Light II, 125 Nev. at 458-59, 215 P.3d at 703-04. Under Shuette, "[c]ommonality does not require that 'all questions of law and fact must be identical, but that an issue of law or fact exists that inheres in the complaints of all the class members.' Thus, this prerequisite may be satisfied by a single common question of law or fact." Shuette, 121 Nev. at 848, 124 P.3d at 538 (quoting Spera v. Fleming, Hovenkamp & Grayson, P.C., 4 S.W.3d 805, 811 (Tex. App. 1999)).

Here, the district court found that High Noon failed to meet the commonality requirement because

it has not adequately demonstrated an issue of law or fact exists that inheres in the complaints of all the 194 units' owners. Instead [High Noon] identifies a myriad of vague complaints in Paragraph 16 of the Complaint, which include, but are not limited to structural, fire safety, waterproofing defects, and deficiencies in the civil engineering/landscaping, roofing, stucco and

drainage, architectural, mechanical, plumbing, HVAC, acoustical, electrical, and those relating to the operation of windows and sliding doors.

This is a reasonable interpretation of First Light II's instruction to reconcile NRS 116.3102(1)(d) with NRCP 23 and the principles and concerns discussed in Shuette. Accordingly, we conclude that the district court did not err in finding that High Noon's claims did not meet NRCP 23(a)'s commonality requirement.

Typicality

NRCP 23(a)'s typicality requirement provides that "members of a class may sue or be sued as representative parties on behalf of all only if . . . (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class." NRCP 23(a). Under Shuette,

[t]he typicality prerequisite can be satisfied, then, by showing that each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability. Thus, the representatives' claims need not be identical, and class action certification will not be prevented by mere factual variations among class members' underlying individual claims. For instance, typicality of claims can result when each owner in a condominium complex suffer[s] damage by way of being assessed for repairs to leaky common area roofs, even though some of the individual unit owners have not otherwise suffered from leakage problems.

Shuette, 121 Nev. at 848-49, 124 P.3d at 538-39 (alteration in original) (footnotes omitted) (internal quotations omitted).

Here, the district court found that NRCP 23(a)'s typicality prerequisite was not met because "given the myriad of constructional defects alleged, it is also difficult to perceive whether they are typical of those found within the 194 assigned-claims' homes. Even [High Noon] has

admitted it has not visually inspected or destructively tested all 342, or even the 194 'assigned' units within the development." The court further noted that High Noon had not sustained its burden to show that the damage suffered by each of the 194 unit owners was the same and that the use of limited extrapolation data was unfair to both D.R. Horton and any unit owner who suffered additional or different harm. This is a reasonable interpretation of First Light II's instruction to reconcile NRS 116.3102(1)(d) with NRCP 23 and the principles and concerns discussed in Shuette. Accordingly, we conclude that the district court did not err in finding that High Noon's claims did not meet NRCP 23(a)'s typicality requirement.

Predominance

Under Shuette, the predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. The questions of law or fact at issue in this analysis are those that qualify each class member's case as a genuine controversy; therefore, the questions that class members have in common must be significant to the substantive legal analysis of the members' claims.

While the NRCP 23(b)(3) predominance inquiry is related to the NRCP 23(a) commonality and typicality requirements, it is more demanding. The importance of common questions must predominate over the importance of questions peculiar to individual class members. For example, common questions predominate over individual questions if they significantly and directly impact each class member's effort to establish liability and entitlement to relief, and their resolution can be achieved through generalized proof.

Shuette, 121 Nev. at 850-51, 124 P.3d at 540 (footnotes omitted) (internal quotations omitted).

Here, the district court noted Shuette's instruction that NRCP 23(b)(3)'s predominance requirement is more demanding than the NRCP 23(a) commonality and typicality requirements. Therefore, the court found that because High Noon failed to satisfy NRCP 23(a)'s commonality and typicality requirements, High Noon also failed to satisfy the more demanding predominance prong of NRCP 23(a). This is a reasonable interpretation of First Light II's instruction to reconcile NRS 116.3102(1)(d) with NRCP 23 and the principles and concerns discussed in Shuette. Accordingly, we conclude that the district court did not err in finding that High Noon's claims did not meet NRCP 23(b)(3)'s predominance requirement.

Superiority

Under Shuette, the superiority inquiry questions whether class action is the superior method for adjudicating the claims, thereby promoting the interests of efficiency, consistency, and ensuring that class members actually obtain relief. A proper class action prevents identical issues from being litigated over and over[,] thus avoid[ing] duplicative proceedings and inconsistent results. It also helps class members obtain relief when they might be unable or unwilling to individually litigate an action for financial reasons or for fear of repercussion.

Shuette, 121 Nev. at 851-52, 124 P.3d at 540-41 (alterations in original) (footnotes omitted) (internal quotations omitted).

When conducting this inquiry, a court should take into account individual interests in controlling the litigation, the status of any other litigation of the matter by class members, the desirability of the particular forum, whether the class action will be manageable, the time and effort a district court must expend, and whether other adjudication methods would allow for efficient resolution without compromising any

parties' claims or defenses. Id. at 852, 124 P.3d at 541. Additionally, a court should take into account the parties' ability to comply with the requirements of NRS Chapter 40, including the claimants' responsibility to give notice, the contractor's obligation to respond, both parties' continuing responsibilities of disclosure to prospective purchasers, and the claimants' opportunity to recover damages such as attorney fees. Id. at 853, 124 P.3d at 541-42.

Here, the district court found that High Noon failed to meet its burden of showing that a class action is the superior method of adjudication. It noted that High Noon had not demonstrated "that class certification would promote the interests of efficiency, consistency, and ensuring that class members actually obtain relief." (Internal quotations omitted). The court further noted that High Noon's inability to obtain assignments from the other 148 units' owners was an indication that additional litigation may occur if it were to certify the class, and the fact that damages are recoverable under NRS 40.655 weighed against finding that the 194 unit owners who did assign their claims would be unable or unwilling to litigate their claims individually. This is a reasonable interpretation of D.R. Horton's instruction to reconcile NRS 116.3102(1)(d) with NRCP 23 and the principles and concerns discussed in Shuette; therefore, we conclude that the district court did not err in finding that High Noon's claims did not meet NRCP 23(b)(3)'s superiority requirement.

The district court did not err in its findings that High Noon failed to meet the commonality, typicality, predominance, and superiority requirements of NRCP 23. We therefore conclude that the district court

did not err in denying standing to High Noon to sue for defects in individual units.² Accordingly, we

ORDER the petition DENIED.³

Pickering C.J.
Pickering

Gibbons J.
Gibbons

Hardesty J.
Hardesty

Douglas J.
Douglas

Cherry J.
Cherry

Saitta J.
Saitta

²High Noon also argues that it has standing to pursue all constructional defect claims relating to each of the 194 units for which it obtained an assignment of claims from its owner that is independent from the standing granted to it by NRS Chapter 116. However, we agree with the district court that the fact that High Noon obtained the right to bring claims on behalf of unit-owners by assignment instead of through NRS 116.3102(1)(d) did not eliminate High Noon's duty to fulfill the requirements of NRCF 23 as set forth in D.R. Horton v. District Court, 125 Nev. 449, 215 P.3d 697 (2009) (First Light II).

³The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in this matter.

cc: Hon. Susan Johnson, District Judge
Angius & Terry LLP/Las Vegas
Koeller Nebeker Carlson & Haluck, LLP/Las Vegas
Wood, Smith, Henning & Berman, LLP
Eighth District Court Clerk

Exhibit 4

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: _____

Print Name(s) _____

Signature(s) _____

Unit Address _____

Telephone # _____

ARLINGTON
RANCH
(High Noon)

ZIP →
CODE

89178

ROBERTA WEBBER

Roberta Webber

18685 Traveling Breeze Ave

LAS VEGAS NV (#101)

(702) 218 8711

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: Sept. 13, 2010

Print Name(s) GINGER O'STEEN

Signature(s)

Ginger O'Steen

Unit Address

8825 Traveling Breeze Ave #102

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F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

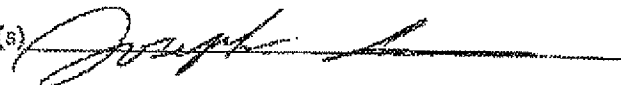
G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against architects, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 9/8/2010

Print Name(s) Joseph Lu

Signature(s) 

Unit Address 8787 Tom Moore Ave. #102 Las Vegas

Telephone # (317) 818-6604

**HIGH NOON AT ARLINGTON RANCH
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C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 9/2/10

Print Name(s) LARRY M. ALCHITARRA

Signature(s) 

Unit Address 8669 Horizon Wind Ave. Unit #102

Telephone # (626) 430-6016

**HIGH NOON AT ARLINGTON RANCH
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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated: 9/8/10

Print Name(s) Sabrina Nelson

Signature(s) 

Unit Address 8084 Traveling Breeze Ave #102

Telephone # 702 290 7665

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Dated: 5/4/10

Print Name(s) THOMAS R. SHEETS SANDRA E. SHEETS
SHEETS FAMILY TRUST d/b 10/18/99

Signature(s) [Signature]

Unit Address 8619 HOLLYWOOD BL # 101 LV, NV 89178

Telephone # 762-241-0140

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Dated: 3 Sept 10

Print Name(s) MARTHA Y Smith

Signature(s) *Martha Y Smith*

Unit Address #103 8778 TOM NOON AVE

Telephone # (702) 813-8411

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C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. IF THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 9/4/10

Print Name(s) NINON DE ROSA

Signature(s) [Signature]

Unit Address 9480 THUNDER SKY # 101 L.V. 89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 09-01-10

Print Name(s) MATIAS ZERPA

Signature(s) 

Unit Address 8680 HORIZON BLVD AVE. UNIT 103 LAS VEGAS NV. 89178

Telephone # (702) 263-7416

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

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A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated: 9/1/10

Print Name(s)

Galinda Warren

Signature(s)

Galinda Warren

Unit Address

8649 Horizon Wind Ave Unit #23

Telephone #

702-685-3986

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 9/1/10

Print Name(s) FARHAD GHOLAMI

Signature(s) Farhad Gh

Unit Address 8758 TOM NOON AVE #103 LV NV89178

Telephone # (702) 367-0263

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

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Dated: 8/31/2010

Print Name(s) Thomas + Gayle Steele

Signature(s) [Signature]

Unit Address 8818 TOM HORN AVE #103
LV, NV, 89128

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

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23
Dated: Aug 2010

Print Name(s) Leslie Schafferman

Signature(s) Leslie Schafferman

Unit Address Unit 102 8814 Traveling Cruise Ave #102

Telephone # 702 574 6357

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

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B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. AS42616. D.R. Horton has refused to repair the defects.

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Dated: 8/26/10

Print Name(s) Willy Wang

Signature(s) Willy Wang

Unit Address 3797 Tom Noon Ave #103 LV. NV 89178

Telephone # 626-780-0899

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated: 3/9/12 Print Name(s) Lisa F. Roth

Signature(s) Lisa F. Roth

Unit Address 9470 Thunder Sky
#103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 7/7/10

Print Name(s) Eugene Royte

Signature(s) 

Unit Address 8764 Traveling breeze Ave Unit 101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 3/7/10

Print Name(s) AZMATH Q. SADRUDIN

Signature(s) A. Sadrudin

Unit Address 8738 TOM NOOK AVE

#103. Las Vegas
NV 89178-4

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated:

3/10/2010

Print Name(s)

AMI SANDLER

Signature(s)

Ami Sandler

Unit Address

8650 Horizon Wind Ave. #103

HOMELANDER hereby assigns to the above named party all of the claims and causes of action which
HOMELANDER possesses against D.R. Horton, Inc., and all of the designers, contractors,
subcontractors and material suppliers that participated in any way in the design, construction or supply of
materials for construction of the townhome project and/or HOMELANDER'S unit, for defective construction.
Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of
action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any
express or implied warranties; (3) Any an all common law claims, including but not limited to claims in
negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40,
et seq., and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 6-19-16 Print Name(s) VITO SANTATE

Signature(s) 

Unit Address 8750 Hawthorn #102

Telephone # 702-236-2384

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

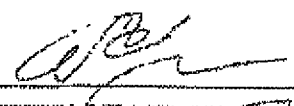
G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3/10/2010

Print Name(s) KOGARIK SARKISSIAN

Signature(s) 

Unit Address 8718 Tom Noon Ave, #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3-7-10

Print Name(s) PRISCILLA SCHMITT

Signature(s) 

Unit Address 8829 Horizon Wind Dr. #102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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Dated: 3/10/10

Print Name(s) David Sehnem

Signature(s) David Sehnem

Unit Address #8777 Tom Noon #102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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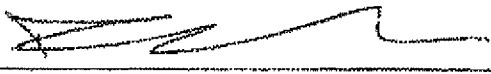
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Dated: 8/19/10

Print Name(s) BENJAMIN SCHNEIDER

Signature(s) 

Unit Address 8717 TOM NOON #102
LAS VEGAS NV 89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

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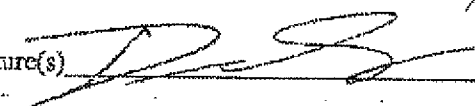
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NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3/18/12

Print Name(s) Dennis Sells

Signature(s) 

Unit Address 8754 Traveling Brave #105

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 03/25/2015

Print Name(s) JANET SEANE

Signature(s) [Signature]

Unit Address 8735 TRAVELLER BREEZE, #102
LAS VEGAS, 89175

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 8-23-10

Print Name(s) Robert Shaw Rosemary Shaw

Signature(s) [Handwritten Signature] RD Shaw

Unit Address 8725 Traveling Breeze #102

Telephone # 927-0144

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B-

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

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Dated: 8-24-10

Print Name(s) GARY B SILVEIRA

Signature(s) [Signature]

Unit Address 8804 TRAVELING BREEZE #101

Telephone # 702-838-5690

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 21 AUG 10

Print Name(s) ~~Christopher Standley~~ Christopher Standley

Signature(s) 

Unit Address 8639 Horizon Wind Ave #101

Telephone # 702 416 3344

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 3/8/10

Print Name(s)

Daniel C. Stephen

Signature(s)

Unit Address 8788 Tem Noon Ave, Unit 102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3-8-10

Print Name(s) BARRY & TINA STELOUIS

Signature(s) [Signature]

Unit Address 8819 HORRISON WIND AVE #102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

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HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any an all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 8/25/10

Print Name(s) Stephanie Stinson

Signature(s) Stephanie Stinson

Unit Address 8764 Traveling Breeze #102

Telephone # 702-290-4401

H

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated: 3/9/10

Print Name(s)

Anthony Stirling Whitney Stirling

Signature(s)

[Signature] [Signature]

Unit Address

8785 Traveling Bruce Ave 103
Las Vegas, NV 89178

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated: 3-8-10

Print Name(s) Patricia Strubehn

Signature(s) Patricia Strubehn

Unit Address 8665 Traveling Breeze Ave
Unit 101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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Dated:

8/18/10

Print Name(s)

Nawn Swallow

Signature(s)

[Signature]

Unit Address

8754 Traveling Breeze Unit 101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: _____

Print Name(s) Gregory P. Seto

Signature(s) Gregory P. Seto

Unit Address 8257 Tom Noon Ave #103

Telephone # 702 - 810 - 6754

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

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NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: Aug 12 2010

Print Name(s) MIKE TABAEE TABAEE

Signature(s) [Signature]

Unit Address 8658 Tom Noon, #103, Las Vegas

Telephone # 972-740-9555

89178

MAR 23 2010

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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Dated: 3.21.10

Print Name(s) YASMIN TAJIK

Signature(s) Yasmin Tajik

Unit Address 8718 TOM NOON AVE. #102

7

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

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Dated: 6/29/10

Print Name(s) YASAI TAKAHASHI

Signature(s) 

Unit Address 8668 Tom Noon Ave #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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RECITALS

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Dated: 09 March 2010 Print Name(s) KENNETH W. TAY

Signature(s) Kenneth W. T.

Unit Address 8737 Tom Noon Ave, # 102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 5-29-2010

Print Name(s)

Bruce Thetford

Signature(s)

Bruce Thetford

Unit Address

8640 Horizon Wind Ave #103

Telephone #

702-233-4470 cell # 702-210-2123

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 6/15/

Print Name(s) CARMINE TISO

Signature(s) Carmine Tiso

Unit Address 6740 HORIZON WIND UNIT 102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 8/16/12

Print Name(s) Amber Trask

Signature(s) [Handwritten Signature]

Unit Address 8817 TOM NOON #103

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ASSIGNMENT OF CAUSES OF ACTION**

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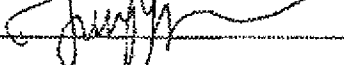
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Dated: June 1, 2010

Print Name(s) Katherine Tunz

Signature(s) 

Unit Address #101 8747 Tom Noon Ave

attn: Nancy

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Dated: 3-9-10

Print Name(s) Henry Kuohun Tung

Signature(s) Henry Tung

Unit Address 8808 Tom Noon # 102

Las Vegas, NV 89178

**HIGH NOON AT ARLINGTON RANCH
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Dated: 7.28-10

Print Name(s)

KATHRYN Turner, John Ashoori

Signature(s)

[Handwritten signatures of Kathryn Turner and John Ashoori]

Unit Address

8158 Unit 2 (Tom Noens)

**HIGH NOON AT ARLINGTON RANCH
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Dated: 5-30-10

Print Name(s) JESSE A. VADEZ / BERNARD P. VADEZ

Signature(s)

[Handwritten Signature] / [Handwritten Signature]

Unit Address 8768 TOM NOON AVE. #103, LAS VEGAS, NV. 89178

Telephone # (714) 538-4634

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Dated: 8-15-10

Print Name(s) Zachary Van Clave

Signature(s) _____

Unit Address 8807 Tom Noon #103

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Dated: 6/17/10

Print Name(s) Kathy & Ralph Varela

Signature(s) Kathy Varela Ralph Va

Unit Address 8729 Horizon Wind Ave. #102
Las Vegas, NV. 89178

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Dated: 5-25-10

Print Name(s) Chris Visciguerra

Signature(s) [Signature]

Unit Address 8694 Traveling Breeze #103

Telephone # 408-828-5057

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Dated: 3/8/10

Print Name(s) PATRICIA VOGEL

Signature(s) Patricia Vogel

Unit Address 8835 Traveling Bridge #103

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Dated: 6/1/10

Print Name(s) JAMES DOXSANA WEBSTER

Signature(s) [Signature]

Unit Address 8664 TRAVELING BREEZE #101

Telephone # 702-567-1653 371-7249
371-7388

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

This Assignment is made by the undersigned homeowner(s) at High Noon At Arlington Ranch ("HOMEOWNER") in order to insure that the High Noon At Arlington Ranch Homeowners Association (hereafter "THE ASSOCIATION") has the power to recover the cost of repairing defects in the project.

RECITALS

A. Significant defects have been discovered in the individual units at the High Noon At Arlington Ranch townhomes.

B. THE ASSOCIATION has brought a lawsuit against D.R. Horton, in High Noon At Arlington Ranch Homeowners Association v. D.R. Horton, Eighth Judicial District, Clark County Nevada, Case No. A542616. D.R. Horton has refused to repair the defects.

C. The Nevada Supreme Court, in its ruling entitled D.R. Horton v. Eighth Judicial District Court, 215 P.3d 697 (2009), held that a homeowners association has the right to sue the builder for claims arising from the individual units if it can meet the requirements for class action certification.

D. Although THE ASSOCIATION believes that it will be granted standing to pursue the claims of the individual unit owners under this analysis, it is not a certainty.

E. If THE ASSOCIATION is determined by the Court not to be allowed to sue the builder for some defects, only those HOMEOWNERS who have assigned their claims to THE ASSOCIATION will be able to share in the recovery.

F. HOMEOWNER and THE ASSOCIATION desire for THE ASSOCIATION to have the right to assert the individual claims that the HOMEOWNER has against D.R. Horton Inc., as well as any other entity that contributed to the defective development, design, construction, supply of materials, or sale of the townhome project and/or HOMEOWNER's unit.

G. It is understood that nothing in this Assignment shall be construed to obligate THE ASSOCIATION, in any way to undertake or pay for any particular repairs to any individual unit.

NOW, THEREFORE, and in exchange for valuable consideration,

HOMEOWNER hereby assigns to THE ASSOCIATION all of the claims and causes of action that HOMEOWNER possesses against D.R. Horton, Inc., and any and all of the designers, contractors, subcontractors and material suppliers that participated in any way in the design, construction or supply of materials for construction of the townhome project and/or HOMEOWNER'S unit, for defective construction. Such assigned claims and causes of action expressly include, but are not limited to, all claims and causes of action that arise out of (1) The contract for sale of the subject property from D.R. Horton, Inc., (2) Any express or implied warranties; (3) Any and all common law claims, including but not limited to claims in negligence, fraud and equitable claims; (4) Any and all claims relating to or arising out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to or arising out of Chapter 116, et seq.

Dated: 3/9/10

Print Name(s) FRED & MARY WEINTRAUB

Signature(s) Fred Weintraub
Mary Weintraub

Unit Address 8720 Horizon Wind #102

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 8/16/10

Print Name(s) CLARK RICHARD WELLS

Signature(s) Clark Richard Wells

Unit Address 8717 TOWN HARM #103

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 08/27/2010

Print Name(s) 8795 TRAVELING BREEZE TRUST
ZIVORAD NIKOLIC - TRUSTEE

Signature(s) Zivorad Nikolic

Unit Address 8795 TRAVELING BREEZE AVE. # 103

Telephone # 951-530-1546

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: 03-09-2010 Print Name(s) Todd E. Wilcox

Signature(s) Todd E. Wilcox

Unit Address 8778 Tom Noon Ave Unit #101

**HIGH NOON AT ARLINGTON RANCH
ASSIGNMENT OF CAUSES OF ACTION**

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Dated: August 19, 2010

Print Name(s)

Deborah A. Williams

Signature(s)

Deborah A. Williams

Unit Address

8739 Horizon Wind Ave #101
Las Vegas, NV 89178

**HIGH NOON AT ARLINGTON RANCH
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Dated: 7-9-10

Print Name(s) MARY L WILSON

Signature(s) Mary L Wilson

Unit Address 8679 Tom Noon Ave - 103

**HIGH NOON AT ARLINGTON RANCH
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Dated:

3/9/10

Print Name(s)

Stacia Wise

Signature(s)

Stacia Wise

Unit Address

8720 Horizon Wind #101

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

2 Supreme Court No.:
3 District Case Court No. 07A542616

4 Electronically Filed
5 Apr 18 2014 11:32 a.m.
6 Tracie K. Lindeman
7 Clerk of Supreme Court

8 HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION
9 a Nevada non-profit corporation,

10 Petitioner,

11 v.

12 EIGHTH JUDICIAL DISTRICT COURT
13 of the State of Nevada, in and for the COUNTY OF CLARK;
14 and the HONORABLE SUSAN H. JOHNSON, District Judge,

15 Respondent,

16 D.R. HORTON, INC.

17 Real Party in Interest.

18 **APPENDIX TO PETITIONER, HIGH NOON AT ARLINGTON RANCH**
19 **HOMEOWNERS ASSOCIATION'S PETITION FOR WRIT OF**
20 **PROHIBITION OR MANDAMUS VOLUME I OF V**

21 Paul P. Terry, Esq. (SBN 7192)
22 John J. Stander, Esq. (SBN 9198)
23 Scott P. Kelsey, Esq. (SBN 7770)
24 ANGIUS & TERRY, LLP
25 1120 N. Town Center Drive, Ste. 260
26 Las Vegas, NV 89144
27 Telephone: (702) 990-2017
28 Facsimile: (702) 990-2018
 pterry@angius-terry.com
 jstander@angius-terry.com
 skelsey@angius-terry.com

Attorneys for Petitioner, HIGH NOON AT ARLINGTON RANCH
 HOMEOWNERS ASSOCIATION

| No. | Document Description | Filed Date | Vol. | Bates |
|------------|--|-------------------|-------------|--------------|
| 1 | Plaintiff's Complaint | 06-07-07 | I | 0001-0012 |
| 2 | Order re: Plaintiff's Standing | 11-12-13 | I | 0013-0022 |
| 3 | Plaintiff's Motion for Reconsideration on Order Shortening Time | 01-08-14 | I | 0023-0250 |
| 3 | Plaintiff's Motion for Reconsideration on Order Shortening Time | 01-08-14 | II | 0251-0501 |
| 3 | Plaintiff's Motion for Reconsideration on Order Shortening Time | 01-08-14 | III | 0502-0531 |
| 4 | Defendant D.R. Horton, Inc.'s Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time | 01-13-14 | III | 0532-0598 |
| 5 | Plaintiff's Reply In Support of Plaintiff's Motion for Reconsideration on Order Shortening Time | 01-14-14 | III | 0599-0603 |
| 6 | Court Minutes on Plaintiff's Motion for Reconsideration on Order Shortening Time | 01-16-14 | III | 0604-0605 |
| 7 | Defendant D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 01-24-14 | III | 0606-0750 |
| 7 | Defendant D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 01-24-14 | IV | 0751-0884 |
| 8 | Third-Party Defendant OPM, Inc. dba Consolidated Roofing's Joinder to D.R Horton, Inc.'s Motion for Partial Summary Judgment | 01-29-14 | IV | 0885-0886 |
| 9 | Third-Party Defendant National Builders, Inc. Joinder to D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 01-29-14 | IV | 0887-0889 |
| 10 | Third-Party Defendant, Efficient Enterprises, LLC dba Efficient Electric's Joinder to D.R. Horton's Motion for Partial Summary Judgment | 01-29-14 | IV | 0890-0891 |
| 11 | Third-Party Defendant Circle S. Development Corp. dba Deck Systems' Joinder to Defendant/Third-Party Plaintiff D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 01-30-14 | IV | 0892-0894 |

| | | | | |
|----|--|----------|----|-----------|
| 12 | Third-Party Defendant Firestop, Inc.'s Joinder to D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 01-31-14 | IV | 0895-0896 |
| 13 | Third-Party Defendants, Quality Wood Products, Inc., Summit Drywall & Paint, LLC, and United Electric's Joinder to D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 02-03-14 | IV | 0897-0898 |
| 14 | Plaintiff's Opposition to Defendant, D.R. Horton, Inc.'s Motion for Partial Summary Judgment and Joinders Thereto | 02-10-14 | IV | 0899-0909 |
| 15 | Defendant D.R. Horton, Inc.'s Reply to Plaintiff's Opposition, and in Further Support of D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 02-20-14 | IV | 0910-0930 |
| 16 | Transcript of Proceedings: All Pending Motions | 02-27-14 | IV | 0931-0966 |
| 17 | Court Minutes on D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 02-27-14 | IV | 0967-0968 |
| 18 | Order in the matter of <i>Balle v. Carina Corp.</i> , Case No. A557753 | 09-09-09 | IV | 0969-0984 |
| 19 | Order Granting Defendant D.R. Horton, Inc.'s Motion for Partial Summary Judgment | 03-18-14 | IV | 0985-0995 |
| 20 | Order Regarding Plaintiff's Motion for Reconsideration | 03-20-14 | IV | 0996-0998 |
| 21 | Plaintiff's Motion for Stay of Proceedings on Order Shortening Time | 03-24-14 | V | 0999-1006 |
| 22 | Defendant, D.R. Horton, Inc.'s Non-Opposition to Plaintiff's Motion for Stay of Proceedings on Order Shortening Time | 03-26-14 | V | 1007-1008 |
| 23 | Order Granting Plaintiff's Motion for Stay of Proceedings on Order Shortening Time | 03-31-14 | V | 1009-1010 |

1 I HEREBY CERTIFY that on the 18 day of April, 2014, I submitted for
2 electronic filing and electronic service the foregoing APPENDIX TO
3
4 PETITIONER'S PETITION FOR WRIT OF PROHIBITION OR MANDAMUS,
5 VOLUME I OF V.

6
7 I HEREBY CERTIFY that on the 18 of April, 2014, a copy of APPENDIX
8 TO PETITIONER'S PETITION FOR WRIT OF PROHIBITION OR
9
10 MANDAMUS, VOLUME I OF V was hand delivered to the following:

11 Honorable Judge Susan H. Johnson
12 Regional Justice Center, Department XXII
13 Eighth Judicial District Court
14 200 Lewis Avenue
15 Las Vegas, NV 89101

16 I HEREBY CERTIFY that on the 18 of April, 2014, a copy of APPENDIX
17 TO PETITIONER'S PETITION FOR WRIT OF PROHIBITION OR
18
19 MANDAMUS, VOLUME I OF V was hand delivered to the following:

20 Joel D. Odou, Esq.
21 Victoria Hightower, Esq.
22 WOOD, SMITH, HENNING & BERMAN LLP
23 7674 West Lake Mead Boulevard, Suite 150
24 Las Vegas, NV 89128-6644
25 Attorneys for Real Party in Interest

26
27 
28 Employee of Angius & Terry, LLP

ORIGINAL

198
1 COMP

2 NANCY QUON, ESQ.

3 Nevada Bar No. 6099

4 JASON W. BRUCE, ESQ.

5 Nevada Bar No. 6916

6 JAMES R. CHRISTENSEN, ESQ.

7 Nevada Bar No. 3861

8 QUON BRUCE CHRISTENSEN LAW FIRM

9 2330 Paseo Del Prado, Suite C101

10 Las Vegas, NV 89102

11 (702) 942-1600

12 Attorneys for Plaintiff

FILED

JUN 7 4 50 PM '07

CLERK OF THE COURT

13 DISTRICT COURT

14 CLARK COUNTY, STATE OF NEVADA

15 HIGH NOON AT ARLINGTON RANCH)
16 HOMEOWNERS ASSOCIATION, a)
17 Nevada non-profit corporation, for itself)
18 and for all others similarly situated,)

19 Plaintiff,

20 v.

21 D.R. HORTON, INC., a Delaware)
22 Corporation DOE INDIVIDUALS 1-100,)
23 ROE BUSINESS or GOVERNMENTAL)
24 ENTITIES 1-100, inclusive,)

25 Defendants.

CASE NO.: A542616

DEPT. NO.: XXII

COMPLAINT

RECEIVED

JUN 07 2007

CLERK OF THE COURT

26 COMES NOW Plaintiff, HIGH NOON AT ARLINGTON RANCH HOMEOWNERS
27 ASSOCIATION, a Nevada non-profit corporation, by and through its counsel, Quon Bruce 0001
28 Christensen, and upon information and belief, hereby complains, alleges, and states as follows:

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I. PARTIES

1. Plaintiff, High Noon at Arlington Ranch Homeowners Association ("Plaintiff"), is a non-profit corporation organized and existing under and by virtue of the laws of the State of Nevada, and has its principal place of business within the County of Clark, State of Nevada.

2. The Association's members are collectively the owners, in fee simple, of the Common Areas of the Subject Property commonly known as High Noon at Arlington Ranch. The Common Areas of the Subject Property include the entire property, except the separate interests therein, as well as all facilities, improvements, and landscaping located within the Common Areas.

3. The Association has the responsibility to maintain the Common Areas of the Subject Property. Additionally its members have the duty, responsibility and obligation to paint, maintain, repair and replace all structures and appurtenances, including but not limited to, buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, retaining walls, landscaping, exterior air-conditioning components, including, but not limited to, paint, repair, replacement, and care of roofs, exterior building surfaces, building framing, and other exterior improvements within the Subject Property.

4. Plaintiff's members are the individual owners of units within the Subject Property. Plaintiff brings this suit in its own name on behalf of itself and all of the High Noon at Arlington Ranch Homeowners Association unit owners. The constructional deficiencies and damages resulting therefrom are matters affecting the High Noon at Arlington Ranch Common Interest Community. If it is subsequently determined that this action, and/or any claims within the scope of this action, should more properly have been brought in the name of each individual unit owner or as a class action, Plaintiff will seek leave to amend this Complaint to include unit owners and/or Class Representatives.

5. At all times relevant hereto, Defendant, D.R. HORTON, INC., was and remains a business entity doing business in the County of Clark, State of Nevada.

6. At all times relevant hereto, Defendant D.R. HORTON, INC., a Delaware Corporation⁰⁰⁰² ("Defendant"), was engaged in the business of planning, developing, designing, mass producing,

1 building, constructing, and selling residential real property in the County of Clark, State of
2 Nevada, and was the owner, developer, general contractor, and seller of the Subject Property.

3 7. As the owner, developer, general contractor, and seller of the Subject Property,
4 Defendant was directly responsible for the planning, design, mass production, construction,
5 and/or supervision of construction of the Subject Property and, therefore, is responsible in some
6 manner for the defects and deficiencies in the planning, development, design, and/or construction
7 of the Subject Property, as alleged herein, and Plaintiff's damages related to such defects and
8 deficiencies.

9 8. The true names and capacities of Defendants sued herein as DOE INDIVIDUALS 1-
10 100, ROE BUSINESS or GOVERNMENTAL ENTITIES 1-100, inclusive, and each of them, are
11 presently unknown to the Plaintiff and therefore are sued under fictitious names.

12 9. The DOE INDIVIDUALS 1- 100, and ROE BUSINESS or GOVERNMENTAL
13 ENTITIES 1-100, inclusive, and each of them, are responsible for the planning, development,
14 design, mass production, construction, supervision of construction, and/or sale of the Subject
15 Property and, therefore, they are responsible in some manner for the defects and deficiencies in
16 the planning, development, design, and/or construction, inspection and/or approval of the Subject
17 Property as alleged herein, and Plaintiff's damages related to such defects and deficiencies.

18 **II. GENERAL ALLEGATIONS**

19 10. The Subject Property is located in the County of Clark, State of Nevada. A site map
20 of the Subject Property is attached hereto as Exhibit 1. The Community is composed of 342
21 residences contained in 114 buildings. Sales of residences began in 2004 and continued through
22 2006.

23 11. At all times relevant herein, Defendants, including DOE and ROE INDIVIDUALS 1-
24 100 or ROE BUSINESS ENTITIES 1-100, were the officers, agents, employees and/or
25 representatives of each other in doing the things alleged herein and in so doing were acting in the
26 scope of their respective authority and agency.

27 12. Defendants, and each of them, (excluding, however, ROE GOVERNMENTAL 0003
28 ENTITIES 1-100 unless hereinafter specifically included), undertook certain works of

1 improvement upon the undeveloped Subject Property, including all works of development,
2 design, construction and sale of the Subject Property, products, and individual units therein to the
3 general public, including the Plaintiff, its members and/or their predecessors in interest.

4 13. Defendants were merchants and sellers with respect to the Subject Property, non-
5 integrated products, and all individual units therein, which are the subject of this action as
6 described above.

7 14. By reason of the sale, transfer, grant and conveyance to Plaintiff and its members,
8 Defendants impliedly warranted that the Subject Property and all individual units therein, were of
9 merchantable quality.

10 15. Defendants failed to properly and adequately investigate, design, inspect, plan,
11 engineer, supervise, construct, produce, manufacture, develop, prepare, market, distribute, supply
12 and/or sell the Subject Property, non-integrated products and all individual units therein, in that
13 said Subject Property, non-integrated products and individual units therein have experienced, and
14 continue to experience, defects and deficiencies, and damages resulting therefrom, as more
15 specifically described below.

16 16. The defects and deficiencies include, but are not necessarily limited to, structural
17 defects, fire-safety defects, waterproofing defects, civil engineering/landscaping, roofing, stucco
18 and drainage defects, architectural defects, mechanical defects, plumbing and HVAC defects,
19 sulfate contamination, acoustical defects, defects relating to the operation of windows and sliding
20 glass doors, and electrical defects.

21 17. The Subject Property may be defective or deficient in other ways and to other extent
22 not presently known to Plaintiff, and not specified above. Plaintiff reserves the right to amend
23 this Complaint upon discovery of any additional defects or deficiencies not referenced herein,
24 and/or to present evidence of the same at the time of trial of this action.

25 18. Due to the failures of Defendants and the defects, deficiencies, and resulting
26 damage, the Subject Property has been adversely impacted so as to diminish the function of the
27 Subject Property and individual units thereon, thereby affecting and interfering with the heal0004
28 safety and welfare of the Plaintiff and its members, and their use, habitation and peaceful and

1 quiet enjoyment of the Subject Property.

2 19. Plaintiff alleges generally that the defects and deficiencies as described above are,
3 among other things, violations or breaches of local building and construction practices, industry
4 standards, governmental codes and restrictions, manufacturer requirements, product
5 specifications, the applicable Building Department Requirements, Chapter 523 of the Nevada
6 Administrative Code, and the Uniform Building Code, National Electrical Code, Uniform
7 Plumbing Code, and Uniform Mechanical Code, as adopted by Clark County and the City of Las
8 Vegas at the time the Subject Property was planned, designed, constructed and sold.

9 20. The deficiencies in the construction, design, planning and/or construction of the
10 Subject Property described in this Complaint were known or should have been known by the
11 Defendants, including the ROE GOVERNMENTAL ENTITIES at all times relevant hereto.

12 21. All of the claims contained in this Complaint have been brought within the
13 applicable Statutes of Repose and/or Limitations.

14 22. Plaintiff alleges generally that the conduct of Defendants, including the ROE
15 GOVERNMENTAL ENTITIES, was and remains the actual, legal and proximate cause of
16 general and special damages to Plaintiff.

17 **III. FIRST CLAIM FOR RELIEF**
18 **(Breach of Implied Warranties of Workmanlike Quality and Habitability)**

19 23. Plaintiff hereby incorporates and realleges Paragraphs 1 through 22 of the Complaint
20 as though fully set forth herein.

21 24. Defendants expressly and impliedly warranted that the Subject Property, components
22 and associated improvements, were of workmanlike quality, were safely and properly constructed
23 and were fit for the normal residential purpose intended.

24 25. Further implied warranties arose by virtue of the offering for sale by Defendants of
25 the Subject Property to Plaintiff and its members, without disclosing that there were defects
26 associated with said property, thereby leading all prospective purchasers, including Plaintiff and
27 its members, to believe that there were no such defects.

28 26. Defendants gave similar implied warranties to any and all regulatory bodies who had

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1 to issue permits and/or provide approvals of any nature as to the Subject Property, which were at
2 all relevant times defective and known by Defendants to be so defective.

3 27. Defendants breached their implied warranties in that the Subject Property was not,
4 and is not, of workmanlike quality, nor fit for the purpose intended, in that the Subject Property
5 was not, and is not, safely, properly and adequately constructed.

6 28. Defendants have been notified and have full knowledge of the alleged breaches of
7 warranties and Defendants have failed and refused to take adequate steps to rectify and/or repair
8 said breaches.

9 29. As a proximate legal result of the breaches of said implied warranties by Defendants
10 and the defective conditions affecting the Subject Property, Plaintiff and its members have been,
11 and will continue to be, caused damage, as more fully describe herein.

12 30. As a further proximate and legal result of the breaches of the implied warranties by
13 Defendants and the defective conditions affecting said Subject Property, Plaintiff and its
14 members have been, and will continue to be, caused further damage in that the defects and
15 deficiencies have resulted in conditions which breach the implied warranty of habitability.

16 31. Plaintiff incorporates by reference, as if set forth herein, the particular statement of
17 damages described in the prayer for relief.

18 32. Plaintiff is entitled to recover damages pursuant to NRS 116.4114.

19 33. Plaintiff has been required to retain the services of Quon Bruce Christensen to
20 prosecute this matter and is entitled to an award of attorney's fees based thereon.

21 34. Plaintiff is entitled to recover its attorney's fees, costs and expenses pursuant to
22 NRS 116.4114.

23 35. The monies recoverable for attorney's fees, costs and expenses under NRS 40.600 *et*
24 *seq.* and NRS 116 *et seq.*, include, but are not limited to, all efforts by Quon Bruce Christensen
25 on behalf of Plaintiff prior to the filing of this Complaint.

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**IV. SECOND CLAIM FOR RELIEF
(Breach of Contract)**

36. Plaintiff realleges and incorporates by reference Paragraphs 1 through 35 of the Complaint as though fully set forth herein.

37. On various dates, each of the Plaintiff's members and Defendants entered into a written contract pursuant to which Plaintiff's members would purchase a unit in the Subject Property and Defendants would sell a code-compliant and habitable unit to purchasers.

38. Plaintiff and its members have at all times performed the terms of the contract in the manner specified by the contract, except those terms which could not be fulfilled without fault attributable to Plaintiff or its members.

39. Defendants have failed and refused, and continue to refuse to tender its performance as required by the contract in that said units were not and are not in a habitable and code-compliant condition.

40. Said contracts contain a provision that if the subject of the contract should go to litigation, the prevailing party is entitled to attorneys' fees and costs.

**V. THIRD CLAIM FOR RELIEF
(Breach of Express Warranties)**

41. Plaintiff incorporates and realleges paragraphs 1-41 hereof by reference as though fully set forth herein.

42. When marketing and selling the residences and improvements and appurtenances thereto to the general public and to Plaintiff and its members, Defendants, with the exception of ROE GOVERNMENTAL ENTITIES 1-100, by and through their agents or employees, expressly warranted by verbal, written and demonstrative means, that the design and construction of said residences and improvements and appurtenances thereto, were designed and constructed free from defect or deficiency in materials or workmanship in compliance with applicable building and construction codes, ordinances and industry standards, and are fit for human habitation.

43. By designing and constructing the residences, improvements and appurtenances incident thereto in a defective and deficient manner violating building and construction codes, ordinances and industry standards then in force as described herein above, Defendants breached

1 said express warranties made to Plaintiff and its members. As a proximate cause of Defendants'
2 conduct, Plaintiff and its members have and continue to suffer damages which include, without
3 limitation, the cost to repair the defects and deficiencies in the design and construction of the
4 residences and improvements and appurtenances thereto, which are now and will continue to
5 pose a threat to the health, safety and welfare of Plaintiff, its members, their guests and the
6 general public until such repairs are effected. Said damages are in excess of \$40,000.00 (Forty
7 Thousand Dollars) and continuing.

8 44. Plaintiff is entitled to damages pursuant to NRS 116.4113.

9 45. As a result of Defendants' breaches of express warranties, Plaintiff has been
10 compelled to retain the services of the Quon Bruce Christensen Law Firm in order to comply
11 with statutory requirements prior to litigation and to institute and prosecute these proceedings,
12 and to retain expert consultants and witnesses as reasonably necessary to prove their case, thus
13 entitling Plaintiff to an award of attorneys fees and costs in amounts to be established at the time
14 of trial.

15 **VI. FOURTH CLAIM FOR RELIEF**
16 **(Breach of Fiduciary Duty)**

17 46. Plaintiff incorporates and realleges paragraphs 1-45 hereof by reference as though
18 fully set forth herein.

19 47. Plaintiff is informed and believes and thereupon alleges that Defendants, with the
20 exception of ROE GOVERNMENTAL ENTITIES, inclusive, were the promoters, developers and
21 creators of the Association. In said capacities, Defendants served as directors and officers of the
22 Association, exercising direct and indirect control over the administration, management and
23 maintenance of the Association and its property, including but not limited to the Common Areas of
24 the Subject Property. As such, Defendants were obligated to maintain and repair said Common
25 Areas and the improvements and appurtenances incident thereto as the fiduciaries of all Association
26 members.

27 48. Plaintiff is informed and believes and thereupon alleges that, as regards the sale of
28 the units and accompanying interests in the Common Areas of the Subject Property, Defendants
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1 owed a fiduciary duty to disclose material facts pertinent to the condition and desirability of said
2 property which were neither known to nor reasonably discoverable by Plaintiff or its members at the
3 time of purchase, including the costs of maintaining and repairing same. Said fiduciary duties were
4 continuing in nature, including the duty to disclose to Plaintiff's members the nature and existence
5 of any defects or deficiencies in the design or construction of the Subject Property, the Common
6 Areas thereof and the improvements and appurtenances incident thereto.

7 49. Defendants breached their fiduciary duties by failing and refusing to disclose the
8 existence and nature of such defects to Plaintiff's members, by failing and refusing to repair said
9 defects, and by failing and refusing to take necessary action to have those responsible for the defects
10 and deficiencies in design and construction repair, or pay to repair, said defects and deficiencies.
11 Because Defendants and each of them were in some manner directly responsible for the
12 development, design and construction of the Subject Property, the Common Areas thereof and
13 improvements and appurtenances incident thereto, Defendants knew or should have known of said
14 defects and deficiencies therein at or before the commencement of sales to the public, and their
15 failure to disclose, repair or pay to repair said defects and deficiencies constitutes an act of self-
16 dealing in reckless disregard for the health, safety and well-being of Plaintiff and its members.

17 50. Plaintiff is informed and believes and thereupon alleges that Defendants have further
18 breached their fiduciary duties by (1) entering into agreements, contracts and financial arrangements
19 contrary to the best interests of the Association, (2) entering into unauthorized transactions resulting
20 in losses to the Association, (3) maintaining conflicts of interest with the Association and failing to
21 disclose said conflicts, (4) negligently and recklessly handling of Association revenues, income and
22 accounts to the detriment of the Association, (5) promoting a marketing scheme that directly
23 benefitted Defendants to the detriment of the Association, and (6) failing to collect adequate
24 assessment income and prepare adequate operating budgets to meet the reasonable repair and
25 maintenance needs and related Association needs.

26 51. As a proximate cause of Defendants' conduct, Plaintiff and its members have
27 suffered and continue to suffer damages, including without limitation, the cost to repair the ~~damages~~
28

1 and deficiencies in the design and construction of the Subject Property, the Common Areas thereof
2 and the improvements and appurtenances incident thereto, which are now and will continue to pose
3 a threat to the health, safety and welfare of Plaintiff, its members, and their guests and the general
4 public until such repairs are effected. Plaintiff is informed and believes and thereupon alleges that
5 said damages are in excess of \$40,000.00 (Forty Thousand Dollars) and continuing.

6 52. Defendants' breaches of the fiduciary duties owed to Plaintiff and its members were
7 was at all times malicious and undertaken with the intent to defraud and oppress Plaintiff and its
8 members for Defendants' own enrichment, thus warranting the imposition of punitive damages
9 sufficient to punish and embarrass Defendants, and to deter such conduct by them in the future.

10 53. As a result of Defendants' conduct, Plaintiff has been compelled to retain the
11 services of the law firm of Quon Bruce Christensen in order to comply with statutory requirements
12 prior to litigation and to institute and prosecute these proceedings, and to retain expert consultants
13 and witnesses as reasonably necessary to prove their case, thus entitling Plaintiff to an award of
14 attorneys' fees and costs in amounts to be established at the time of trial.

15 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 16 1. For general and special damages all in an amount in excess of \$10,000.00;
17 2. For such other relief that the Court deems just and proper, including, but not
18 limited to equitable relief.

19
20 Dated this 7th day of June, 2007.

21 **QUON BRUCE CHRISTENSEN**

22
23 By 

NANCY QUON, ESQ.

Nevada Bar No. 6099

JASON W. BRUCE, ESQ.

Nevada Bar No. 6916

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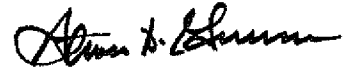
Las Vegas, Nevada 89102

(702) 942-1600

Attorneys for Plaintiff

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CLERK OF THE COURT

1 **ORDR**

2
3
4 **DISTRICT COURT**

5 **CLARK COUNTY, NEVADA**

6 **HIGH NOON AT ARLINGTON RANCH**
7 **HOMEOWNERS ASSOCIATION, a**
8 **Nevada non-profit corporation, for itself**
9 **and for all others similarly situated,**

10 **Plaintiff,**

11 **Vs.**

12 **D.R. HORTON, INC., a Delaware**
13 **Corporation; DOE INDIVIDUALS 1-100;**
14 **ROE BUSINESS or GOVERNMENTAL**
15 **ENTITIES 1-100, inclusive,**

16 **Defendants.**

17 **D.R. HORTON, INC.,**

18 **Third-Party Plaintiff,**

19 **Vs.**

20 **ALLARD ENTERPRISES, INC. d/b/a**
21 **IRON SPECIALISTS; ANSE, INC. d/b/a**
22 **NEVADA STATE PLASTERING;**
23 **BRANDON, LLC d/b/a SUMMIT**
24 **DRYWALL & PAINT, LLC; BRAVO**
25 **DRYWALL & PAINT, LLC; BRAVO**
26 **UNDERGROUND, INC.; CAMPBELL**
27 **CONCRETE OF NEVDA, INC.; CIRCLE**
28 **S DEVELOPMENT CORPORATION**
d/b/a DECK SYSTEMS; EFFICIENT
ENTERPRISES, LLC, d/b/a EFFICIENT
ELECTRIC; FIRESTOP, INC.;
HARRISON DOOR DOMPANY;
INFINITY BUILDING PRODUCTS, LLC;
INFINITY WALL SYSTEMS, LLC;
LUKESTAR CORPORATION;

Case No. 07A542616
Dept. No. XXII

Electronic Filing Case

ORDER

1 NATIONAL BUILDERS, INC.; O.P.M.,
2 INC. d/b/a CONSOLIDATED ROOFING;
3 QUALITY WOOD PRODUCTS, LTD.,
4 RCR PLUMBING AND MECHANICAL,
5 INC.; REYBURN LAWN & LANDSCAPE
6 DESIGNERS, INC.; RISING SUN
7 PLUMBING, LLC d/b/a RSP, INC.;
8 SOUTHERN NEVADA CABINETS, INC.;
9 SUNRISE MECHANICAL, INC.;
10 SUNSTATE COMPANIES, INC. d/b/a
11 SUNSTATE LANDSCAPE; THE
12 SYLVANIE COMPANIES, INC. d/b/a
13 DRAKE ASPHALT & CONCRETE;
14 UNITED ELECTRIC, INC. d/b/a UNITED
15 HOME ELECTRIC; WALLDESIGN,
16 INC.; WESTERN SHOWER DOOR, INC.;
17 DOES 1 through 150,

18
19 Third-Party Defendants.

20
21 **ORDER**

22 On or about January 25, 2013, the Supreme Court of Nevada issued a Writ of Mandamus to
23 JUDGE SUSAN H. JOHNSON of Department XXII of the Eighth Judicial District Court, in and for
24 Clark County, Nevada, with respect to the aforementioned matter. Specifically, the high court
25 instructed the judge to "conduct further proceedings in light of this order and this court's recent
26 decision in Beazer Homes Holding Corp. v. District Court, in the case entitled High Noon at
27 Arlington Ranch Homeowners Association vs. D.R. Horton, Inc., case no. A542616." In its Order
28 Granting Petition for Writ of Mandamus or Prohibition filed January 25, 2013, the Nevada Supreme
Court noted the district court did conduct a full NRCP 23 analysis as to the claims assigned by the
homeowners to Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS
ASSOCIATION—that being the alleged constructional defects located within the individual units—
however, the lower court "failed to perform a full and thorough NRCP 23 analysis as to the claims
involving the building envelopes." It further noted this Court interpreted the Supreme Court's

1 holding in *First Light II*¹ as applicable only to the alleged interior defects of individual units located
2 within a common-interest community, and thus, found, without performing a NRCP 23 analysis, that
3 Plaintiff had standing to litigate representative claims based upon building envelopes as “building
4 envelope claims affected the common-interest community.” In its view, such ruling was in error,
5 and the Supreme Court directed this Court to determine whether “building envelope” constructional
6 defect claims conformed to class action principles.
7

8 In light of the Nevada Supreme Court’s mandate, this Court rendered its analysis within
9 Findings of Facts, Conclusions of Law and Order issued April 29, 2013. There, this Court again
10 found Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION could
11 not satisfy the *commonality* and *typicality* requirements of NRCP 23(a), or the more demanding
12 *predominance* prong of NRCP 23(b)(3) with respect to the myriad of constructional defects located
13 within the individual units. It also so found with respect to the “building envelope,” which
14 encompasses the roof and stucco systems, fire walls/stops and exterior openings, such as windows
15 and doors. Further, Plaintiff had not met its burden to show proceeding in a class action fashion
16 would be the *superior* method for adjudicating the claims of the purported class, i.e. the 194
17 townhouse owners, the second prong of NRCP 23(b)(3).²
18

19 While this Court found Plaintiff HIGH NOON AT ARLINGTON RANCH
20 HOMEOWNERS ASSOCIATION had not met its burden under NRCP 23 to support its position the
21 homeowners’ claims should proceed as a class, it also noted its position was not conclusive.
22 Further, it was evident this Court needed to determine how certain individual homeowner claims
23 will proceed in a manner other than as a class action. This Court, therefore, ordered Plaintiff HIGH
24
25

26 ¹Lawyers and judges have referred to the case, *D.R. Horton, Inc. v. District Court*, 125 Nev. 449, 215 P.2d 697
27 (2009) as the *First Light II* decision.

28 ²As previously noted, the community consists of 114 buildings, each containing three (3) individual homes, for
a total 342 units. This Court understands Plaintiff has obtained the assignments of 194 townhouse owners, and thus, is
proceeding on behalf of these owners only.

1 NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION to report what constructional
2 defects, if any, are suffered by two or more owners within both the "building envelope" and
3 individual units. Once the question was answered, this Court noted it would determine how or
4 whether it is appropriate for the Association to bring claims for constructional defects on behalf of
5 such homeowner-members, in a class format or otherwise, or alternatively, whether the owners'
6 causes of action should proceed in another way.
7

8 In response to this Court's April 29, 2013 Findings of Fact, Conclusions of Law and Order,
9 Plaintiff filed its voluminous Errata to Notice of Plaintiff's Matrix Outlining the Defects Alleged and
10 Locations of Defects Pursuant to Court Order on September 17, 2013. Unfortunately, this
11 approximate 1,000-page document was difficult for this Court to follow, which prompted Plaintiff to
12 file a condensed Supplement to Notice of Plaintiff's Matrix Outlining the Defects Alleged and
13 Locations of the Defects Pursuant to Court Order on October 23, 2013. This Court has reviewed
14 Plaintiff's Supplement, and after hearing the attorneys' oral arguments, it took the matter under
15 advisement on October 24, 2013.
16

17 Plaintiff's Supplement to Matrix identified all defects found within the 194 units, including
18 their "building envelopes." It grouped them into categories: Roofs, Architectural, Electrical,
19 Plumbing³ and Structural. While, in some instances, this Supplement did not identify where the
20 particular defect was located,⁴ it did state, in summary fashion, the total number of units inspected,
21 those containing the defect and then the percentage found deficient. For example, in reviewing
22 "01.01.00 Roof Field Area – General," 114 units were inspected for "01.01.01 Broken Field Tile,"
23 and 111 of the homes were found to contain that defect. Plaintiff then extrapolated that figure,
24 111/114, to project this defect exists in 97 percent of all 194 units. Defect "01.01.03 Slipped or
25
26

27 ³As some of the defects are identified with an "M" within the "Plumbing Matrix," this Court assumes some of
28 these defects are "mechanical."

⁴The location of the particular defects is identified within the "Electrical" and "Plumbing" Matrices.

1 Unsecured Field Tile" was found in 46 of 114 inspected units. Plaintiff again extrapolates that
2 figure, 46/114, to project this constructional defect exists in 40 percent of all 194 units. There were
3 constructional defects, such as "01.06.03 Z-Bar Counterflashing Not Used" found in all 114
4 inspected units, which Plaintiff projects to exist in all 194 homes.

5 In its experience, this Court has observed staggering testing costs for constructional defects.
6 For that reason, it is not surprised Plaintiff elected to visually inspect and/or destructively test less
7 than 100 percent of the homes. In fact, Plaintiff and its homeowner-members are not necessarily
8 required to have every single unit inspected or destructively tested to determine whether a particular
9 constructional defect exists in order for the Association to send a notice of constructional defects
10 under NRS 40.645, or ultimately, to bring an action under NRS 40.600, *et seq.* on behalf of all
11 homeowners in its representative capacity.⁵ In light of the aforementioned information, this Court
12 concludes Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION
13 may represent its 194 homeowners, in a representative capacity, with respect to constructional
14 defects found in 100 percent of the number of residences inspected. That is, Plaintiff may act on
15 behalf of the 194 homeowner-members in a representative capacity with respect to the following
16 defects:
17
18

19 Roofs:

20 01.06.03 ("Z-bar Counterflashing Not Used") (Confined Rakes)
21 01.07.04 ("Z-bar Counterflashing Not Used") (Headwalls)

22 Architectural:

23 07.02 ("Failed water test) (SGD's)
24 07.03 ("Gap between frame and EPS") (SGD's)

25
26
27 ⁵As this Court has noted in other unrelated cases, if homeowner associations were required to destructively test
28 every single member's home, the risk to both plaintiffs and defendant contractors would substantially increase. Should
plaintiff associations not prevail, the costs of such destructive testing would be borne by not only the homeowners
association, but also the individual owners through special assessments. Should plaintiff association prevail on behalf of
the homeowners, such costs could be assessed against the defendant developers as damage under NRS 40.655.

08.02 ("Door water intrusion during testing Entry") (Exterior Doors)
08.05 ("Water intrusion during testing French Door") (Exterior Doors)
10.01 ("Garage Shear fastener too short") (Fire Resistive)
10.02 ("Garage No Shear fastener too short")
10.06 ("Unit Party Walls fastener too short") (Fire Resistive)
10.07 ("Attic Walls fastener too short") (Fire Resistive)
10.09 ("Fasteners not coated with joint compound") (Fire Resistive)
15.04 ("Garage door weather strip not attached") (Miscellaneous Architectural)
15.07 ("Attic insulation out of place") (Miscellaneous Architectural)
15.09 ("Excessive dryer vent length-Plan Type 102 and 103") (Miscellaneous Architectural)
16.03 ("Gap at EPS board/window frame") (Windows)
16.10 ("Stacked frame joint improper, discontinuous") (Windows)
16.12 ("Unsealed holes in single hung window jamb") (Windows)
16.13 ("Horizontal sliding window unsealed alarm contact") (Windows)

Electrical:

4 ("The grounding electrode system is not effectively bonded together as required under the Code. The grounding electrode bonding jumper was not present, or not visibly located, at the hot and cold water piping connection at the hot water heater to assure the secondary path to ground as required by the Code. The standard method of reliance upon the metal water piping underground system for a grounding electrode has been augmented in the Code in Articles 250-80, wherein all interior metal piping systems are to be bonded to the electrical system") ("Location: The hot and cold water lines and exposed sections of metal piping systems")

Plumbing:⁶

P1a, P4, P5a, P6, P10a, P10b, P10c, P11, P14, P15, P16, P17, P18, M1, M2

Structural:⁷

2.1103, 2.2101, 3.1104, 3.2102, 4.1208

Plaintiff may establish liability and entitlement to relief through the use of generalized proof with respect to the constructional defects found in 100 percent of the units inspected as identified above. Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION may extrapolate such information by way of statistical proof to show such constructional defects exist or may be present within the 194 residences of owners it seeks to represent. In this Court's view,

⁶These defects were identified by symbol, or combination of numbers and letters, only. Presumably, these defects are better identified within the 1,000 Errata filed September 17, 2013.

⁷See Footnote 6 *supra*.

1 presenting statistical or extrapolated proof does not negate admissibility, but may affect the weight
2 the jury gives to the evidence.

3 This Court notes there are numerous defects suffered by a large number of homeowners,
4 although not located in all the units inspected. For example, as noted above, forty-six (46) of 114
5 homes inspected contain Constructional Defect 01.01.03, or "slipped or unsecured field tile." Fifty-
6 five (55) of 114 inspected units have Defect 01.03.02, or "over exposed open rake trim tile." One
7 hundred ten (110) of 114 inspected homes contain Defect 01.03.07, or "tiles not secured as
8 required." In cases where the homeowners suffering constructional defects number forty (40) or
9 more, this Court concludes the deficient NRCP 23 elements of "commonality," "typicality,"
10 "predominance," and "superiority" are met, meaning Plaintiff may represent those homeowners, and
11 present such claims by generalized proof, or in a class-action format.⁸

12 This Court disagrees with Plaintiff's assessment it should be permitted to bring suit on behalf
13 of all 194 homeowner-members in its representative capacity with respect to constructional defects
14 existing in only some or a few of the limited units inspected. That is, Plaintiff will not be permitted
15 to extrapolate constructional defects found in only some homes to infer these deficiencies exist in a
16 corresponding percentage of all units. Plaintiff cannot pursue such claims on behalf of all
17 homeowners when the defects affect only a few. While there is no doubt NRS 116.3102(1)(d)
18 accords Plaintiff authority to institute litigation for constructional defects suffered by certain owners,
19 it is not appropriate for the homeowners association to seek recover for the entire "class," by way of
20 statistical and generalized proof, when the number of constructional defects may exist in only 6, 11
21
22
23
24

25 ⁸While this Court has provided examples, it notes within this Footnote which defects Plaintiff can pursue on
26 behalf of the homeowners suffering them as their representative and in class-action format:

27 Roofs 01.01.03 (46 owners); 01.03.02 (55), 01.03.07 (110), 01.04.01 (60) 01.04.04 (79), 01.06.01 (62),
28 01.06.02 (41) and 01.07.02 (58), Architectural 02.05 (73), 02.06 (68), 04.01 (119), 04.02 (66), 07.01 (44), 08.03 (45),
10.10 (119), 10.11 (100), 11.01 (128), 14.01 (125), 15.01 (40), 15.02 (132), 15.03 (70), 15.06 (142), 16.01 (40),
Electrical 1 (56), 2, (65), 3, (74), 6, (76), 9, (75), 10 (41), 11 (59), 13 (60), 14 (52) and 15 (83), Plumbing P1b (46), P2a
(46) and P7 (109), Structural 5.1401 (40), 5.1501 (49) and 7.11 (49).

1 or 15 percent of the limited number of units inspected. In other words, the entire class of 194 unit
2 owners should not be permitted to recover monies when the constructional defect allegedly is found
3 in only seven (7) of 114 homes inspected, as such could result in precluding the damaged
4 homeowner in seeking his remedies in the same or different forum at another time, obtaining full
5 relief within the instant lawsuit, and further, it would allow homeowners not suffering a particular
6 defect from reaping a benefit.

7
8 With the aforementioned said, Plaintiff HIGH NOON AT ARLINGTON RANCH
9 HOMEOWNERS ASSOCIATION may institute and/or maintain litigation on behalf of two or more
10 individual owners suffering the same constructional defects. See NRS 116.3102(1)(d). For
11 example, Plaintiff may institute and/or maintain litigation on behalf of owners of 8647 Tom Noon,
12 Unit 2, 8668 Tom Noon, Unit 102, 8679 Tom Noon Unit 103 and others listed on Plaintiff's
13 Supplement, Bates P000217, who suffered Electrical Defect 5. Plaintiff may institute and/or
14 maintain litigation on behalf of owners suffering Plumbing Defect P2b. However, if the number of
15 homeowners suffering from the same constructional defect does not meet the "numerosity"
16 requirement of NRCP 23(a), the Association cannot present evidence by way of generalized proof as
17 it would in a typical class action.
18

19
20 However, given the language of NRS 116.3102(1), which expressly grants standing to the
21 common-interest association to institute litigation on behalf of two or more unit owners on matters
22 affecting the community, it follows Plaintiff cannot bring suit on behalf of just one member. Thus,
23 Plaintiff cannot represent the one homeowner suffering Roof Defect 01.07.01 (Overexposed
24 Headwall Tiles), or the one experiencing Architectural Defect 04.06 (Horizontal membrane
25 missing). Further, Plaintiff cannot represent the homeowner suffering Structural Defect 3.2101.
26 Plaintiff does not have standing to "[i]nstitute, defend or intervene in litigation" on behalf of
27 individual owners suffering one isolated or unique defect. Claims for such constructional defects
28

1 must be brought by the real party in interest, which, in this case, are those homeowners. This Court
2 accords Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION
3 leave to file an amended complaint *only for the purpose of including claims of homeowners suffering*
4 *the constructional defect not encountered by their neighbors to prosecute their individual claims.*
5 Given the limited time before trial, such an amendment must be filed within fifteen (15) days of this
6 Order. Should such an amendment not be made, this court concludes the Association has no
7 statutory or other authority to represent these homeowners for the individual defects suffered only by
8 them, and such claims may be dismissed *without prejudice*.
9

10 Accordingly, based upon the aforementioned,


11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** Plaintiff HIGH NOON AT
12 ARLINGTON RANCH HOMEOWNERS ASSOCIATION may prosecute the claims of its 194
13 homeowner-members with respect to constructional defects that may exist in 100 percent of the
14 homes. It may also use statistical proof to extrapolate or show such constructional defects found in
15 100 percent of the homes inspected also exist within all 194 homes. Such constructional defects are
16 itemized above.
17

18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** where the NRCP 23(a)
19 "numerosity" element is met concerning claims of homeowners numbering more than 40, but less
20 than the total 194, Plaintiff may prosecute those claims as their representative in a sub-class format,
21 meaning the Association may use generalized proof to demonstrate such claims. The Association,
22 however, may not infer such claims are suffered by all 194 homeowner-members.
23

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Plaintiff HIGH NOON AT
25 ARLINGTON RANCH HOMEOWNERS ASSOCIATION may bring and maintain claims on
26 behalf of two or more homeowners who actually suffer certain constructional defects that may not
27 have been experienced or encountered by their neighbors pursuant to NRS 116.3102(1)(d).
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, however, Plaintiff may not institute or maintain a lawsuit on behalf of those homeowners who along suffer certain constructional defects. Those claims must be brought by the individual owners, and this Court accords Plaintiff leave to amend its Complaint to include these homeowners as plaintiffs pursuant to NRCP 10(a) within fifteen (15) days of the date of this Order.

DATED this 12th day of November 2013.


SUSAN H. JOHNSON, DISTRICT COURT JUDGE

3


CLERK OF THE COURT

Paul P. Terry, Jr., SBN 7192
Rachel Saturn, SBN 8653
Aaron C. Yen, SBN 11744
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Attorneys for Plaintiff

FILE WITH
MASTER CALENDAR

DISTRICT COURT

CLARK COUNTY, STATE OF NEVADA

HIGH NOON AT ARLINGTON RANCH
HOMEOWNERS ASSOCIATION, a Nevada
non-profit corporation, for itself and for all
others similarly situated,

Plaintiff

v.

D.R. HORTON, INC. a Delaware Corporation
DOE INDIVIDUALS, 1-100, ROE
BUSINESSES or GOVERNMENTAL
ENTITIES 1-100 inclusive

Defendants.

And Related Third Party Actions, Cross
Claims, and Consolidated Actions.

Case No. A542616

Dept. No. XII

Oral Argument Requested

**MOTION FOR RECONSIDERATION ON
ORDER SHORTENING TIME**

HEARING REQUIRED

Date:

Date: 1/16/14

Time:

Time: 9:00 a.m.

[ELECTRONIC FILING CASE]

MOTION FOR RECONSIDERATION ON ORDER SHORTENING TIME

COMES NOW Plaintiff HIGH NOON AT ARLINGTON RANCH HOMEOWNERS
ASSOCIATION (hereinafter "HIGH NOON" or "Plaintiff"), a Nevada non-profit mutual
benefit corporation, by and through its attorneys, hereby applies to and moves this Honorable
Court for an order shortening time for Plaintiff's Motion for Reconsideration, pursuant to
EDCR 2.26. This application is made upon the attached affidavit pursuant to EDCR 2.26.

1 Plaintiff's request for shortened time for hearing on its motion for reconsideration is
2 warranted and brought in the furtherance of justice and judicial efficiency. As will be further
3 discussed in Plaintiff's Motion for Reconsideration, good cause exists for reconsideration, and
4 an order shortening time to hear Plaintiff's motion will ensure that no prejudice will befall any
5 non-moving parties, relating to the resolution of Plaintiff's motion. Specifically, an order
6 shortening time would allow the motion to be heard and decided before expert depositions
7 advance. For instance, Plaintiff's expert Tim Valine is scheduled to proceed in the next few
8 weeks. For the reasons stated above, and in the affidavit attached to this application, Plaintiff
9 respectfully requests this Court to issue an order shortening time for the hearing of Plaintiff's
10 Motion for Reconsideration. Plaintiff proposes that the hearing date for said motion be set
11 within ten (12) days from the Court's decision on this application for shortened time.
12

13 Dated: January 7, 2014

ANGIUS & TERRY LLP

14
15 By: 

16 Paul P. Terry, Jr., SBN 7192
17 Rachel Saturn, SBN 8653
18 Aaron C. Yen, SBN 11744
19 ANGIUS & TERRY LLP
20 1120 N. Town Center Drive, Suite 260
21 Las Vegas, NV 89144
22 Attorneys for Plaintiff
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IT IS SO ORDERED this 8th day of Jan., 2014.

Susan L. Johnson
DISTRICT COURT JUDGE

1
2 AFFIDAVIT OF AARON C. YEN ESQ.

3
4 STATE OF NEVADA)
5 COUNTY OF CLARK) ss:

6
7 AARON C. YEN, ESQ., being first duly sworn, deposes and states that:

- 8 1. I am an attorney duly licensed to practice law before all courts of Nevada and am a
9 Partner with the law firm of Angius & Terry LLP, attorneys of record for Plaintiff
10 HIGH NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION.
11 2. I am personally familiar with this case and can testify based on personal knowledge of
12 the facts of this case.
13 3. This affidavit is made pursuant to EDCR 2.26 and NRCP 6(d), and in support of
14 Plaintiff's Motion for Reconsideration.
15 4. Good cause exists for the Plaintiff's Motion for Reconsideration to be heard on
16 shorted time because Trial in this matter is currently set for April 21, 2014. The
17 deposition of Plaintiff's expert Tim Valine is scheduled to commence on January 14,
18 15 and 16, 2014. Defendants experts are scheduled to commence thereafter. Given
19 the impending Trial and the commencement of expert depositions, the prompt
20 resolution of Plaintiff's Motion for Reconsideration will ensure that the ends of justice
21 and judicial efficiency are met by allowing all parties, including the Special Master, to
22 plan and prepare for further discovery and trial.
23 5. Good cause also exists because the granting of an Order Shortening Time will operate
24 to minimize, rather than creating, prejudice to the affected parties. In particular, the
25 prompt resolution of Plaintiff's Motion for Reconsideration will allow the maximum
26 amount of remaining time to be devoted to additional discovery certain defendants
27 may claim is needed in the preparation of their defense.

28 ///

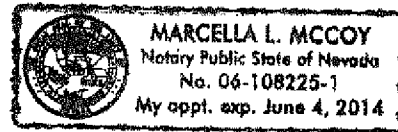
///

1
2 6. This application is made in good faith and not for the purposes of delay.

3 Further, Affiant sayeth not.

4
5 
6 AARON C. YEN, ESQ.

7 **SUBSCRIBED and SWORN to**
8 before me this 7th day of January, 2014.



11 **NOTARY PUBLIC** in and for said County and State
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff, by clear application of the law, has standing to pursue a representative action
4 on behalf of its members for all 342 units where a defect affects two or more units. That is
5 the definitive pronouncement of the Nevada Supreme Court in *Beazer Homes Holding Corp.*
6 *v. The Eight Judicial District Court*, 291 P.3d 128 (2012). *Beazer* cogently observed that
7 “[f]ailure to meet any additional procedural requirements, including NRCp 23’s class action
8 requirements, cannot strip a common-interest community association of its standing to
9 proceed on behalf of its members under NRS 116.3102(1)(d).” *Id.* at 134. Prior to the
10 Nevada Supreme Court’s clear direction in *Beazer*, the state of the law as to association
11 standing was muddled and ambiguous, as shown by the confusion caused by *First Light II*.
12 Indeed, prior to *First Light II*, there existed strong disagreements as to whether associations
13 even had standing to pursue representative actions on behalf of its members beyond common
14 areas.

15 It was during these uncertain times that HIGH NOON adopted the “belt and
16 suspenders” and “cover-your-bases” approach by obtaining assignments of claims, as a
17 prophylactic measure, in the event that the Nevada Supreme Court issued an adverse ruling on
18 the standing issue. However, at no point did HIGH NOON ever abandon, waive, or surrender
19 its standing claims pursuant to NRS 116.3102(1)(d). HIGH NOON is sympathetic to the
20 plight of the District Courts who are burdened by the weight of hundreds of cases, pending
21 trial dates, and sometimes apparently ambiguous directives from the Nevada Supreme Court.
22 HIGH NOON believes that it is within this frenetic state of affairs that this Honorable Court
23 simply misunderstood the scope, direction and coverage of HIGH NOON’s claims.

24 In sum, HIGH NOON never relented in asserting that it was pursuing a representative
25 action on behalf of all 342 units at the Project, and its “belt and suspenders” prophylactic
26 measure in securing 194 assignments was intended as a “safety net” for standing – it was
27 never intended to, represented as, or argued to be the limits of Plaintiff’s action. There is
28 nothing in the record to the contrary.

Finally, notwithstanding the disingenuous claims of some defendants, the defense has
known all along that Plaintiff intended to pursue damages for defects in all 342 units. For

1 instance, in the hearing transcript for Plaintiff's motion for declaratory relief re: standing,
2 dated November 10, 2010¹, Mr. Terry clearly set forth that position in no uncertain terms². In
3 a subsequent motion to determine the alternative procedure for NRS 116.3102(1)(d) claims,
4 dated April 19, 2013, HIGH NOON clearly reiterated its claims for defects found in two or
5 more units pursuant to NRS 116.3102(1)(d)³. The title of that motion expressly references
6 "All Members' Interests".

7 **II. LEGAL ARGUMENTS**

8 **A. Reconsideration of the Standing Issue is Appropriate Where** 9 **Circumstances, Facts and Issues Justify a Revisiting a Prior** 10 **Pronouncement that is Clearly an Error**

11 The Court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91
12 Nev. 401, 536 P.2d 1026 (1975) ("[A] court may, for sufficient cause shown, amend, correct,
13 resettle, modify or vacate, as the case may be, an order previously made and entered . . .").
14 Indeed, EDCR 2.24(b) specifically authorizes reconsideration of prior orders upon the filing
15 of an appropriate motion. Rehearing is appropriate where substantially different evidence is
16 subsequently introduced or the decision is clearly erroneous. See *Masonry & Tile Contractors*
17 *v. Jolley, Urga, & Wirth*, 113 Nev. 737, 941 P.2d 486 (1997). Finally, this Court "remains
18 free to reconsider and issue a written judgment different from its oral pronouncement." *Rust*
19 *v. Clark City School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987).

20 Here, Plaintiff respectfully requests this Honorable Court exercise its inherent
21 authority to reconsider its prior belief that this action is limited to 194 units where
22 assignments have been issued. The assignments were a prophylactic measure but subsequent
23 rulings by the Nevada Supreme Court has shown that assignments of claims by homeowners
24

25 ¹ Recorder's Transcript of Hearing Re: Plaintiff's Motion for Declaratory Relief Re: Standing Pursuant to
26 Assignment and Pursuant to NRS 116.3102(1)(d), dated November 10, 2010, attached as Exhibit 1.

27 ² *Id.* at 3:14-6:14.

28 ³ Plaintiff's Motion for Determination that the Superior Alternative Procedure to Proceed with Claims Pursuant
to NRS 116.3102(1)(d) is as a Representative Action for All members' Interests With Regard to the Building
Envelope Issues, and as a Representative Action of the Assignee's Interests with Regard to the Firewall and
Structural Issues, dated April 19, 2013, attached as Exhibit 2.

1 does not affect, one way or the other, the application of NRS 116.3102(1)(d)⁴. Therefore, if
2 assignments do not confer standing, it may not restrict it either. Moreover, during oral
3 argument on December 12, 2013, this Honorable Court specifically and repeatedly invited
4 Plaintiff to move for reconsideration on the issue of standing for all 342 units⁵.

5 As noted earlier, this Honorable Court's extremely heavy case load likely contributed
6 to the confusion as to the number of units at issue in this action – a situation that defendants
7 enthusiastically exploited in subsequent motions to strike. However, NRS 116.3102(1)(d) and
8 its interpreting decisions categorically grants standing to HIGH NOON to pursue claims for
9 construction defects found in two or more of all 342 units and any limitation of this action to
10 194 units is clearly erroneous. Finally, this Honorable Court has yet to issue a written
11 judgment from the December 12, 2013 oral argument on defendants' motion to strike and thus
12 further retains the right to modify its ruling to reflect HIGH NOON's right to pursue claims
13 for all 342 units.

14
15 **B. High Noon's Prior Motions Regarding Standing Never Waived Standing**
16 **to Pursue Claims for 194 Units Nor Represented that the Association**
17 **Would Restrict the Action to Only 194 Units, and the Association's**
18 **Actions Must be Viewed Within the Context of Good Faith Efforts to**
19 **Comply with Evolving Nevada Law on this the Standing Issue**

20 This Motion for Reconsideration must be analyzed within the historical context of not
21 only the facts specific to this action, but the evolving state of Nevada law on common-interest
22 association standing issues. The "pre-First Light II" era was characterized by the erroneous
23 position of the defense bar that common-interest associations had no standing to sue for
24 defects existing beyond "common areas" of a common-interest development. It was during
25 this era that Chapter 40 plaintiffs, especially associations, would as a matter of practice,
26 obtain assignments of rights from individual members as a "belt and suspenders" approach
27 while the standing issues were decided in the District Courts and eventually the Nevada
28 Supreme Court. The practice of regularly obtaining assignments was to ensure that common-

⁴ Nevada Supreme Court Order Granting Petition for Writ of Mandamus or Prohibition dated January 25, 2013, attached as Exhibit 3.

⁵ Recorder's Transcript Motions in Limine, dated December 12, 2013, at 43:10-44:8, attached as Exhibit 4.

1 interest associations had a "fall-back" position in case the law evolved against standing for
2 associations.

3 However, on September 3, 2009, the Nevada Supreme Court filed its opinion in *First*
4 *Light II* which clarified for the first time that common-interest associations, under NRS
5 116.3102(1)(d), had standing to assert constructional defect claims in a representative
6 capacity on behalf of individual units. The language of that opinion led some legal observers
7 to conclude that a strict application of NRCP 23 was required as well. It was during this
8 "First Light II" era that HIGH NOON continued to pursue its "belt and suspenders" strategy
9 by obtaining assignments from individual members as the case law continued to evolve.

10 Indeed, in its reply brief on its Motion for Declaratory Relief Re: Standing Pursuant to
11 Assignment and Pursuant to NRS 116.3102(1)(d), dated November 3, 2010⁶, HIGH NOON
12 cogently summarized its position on the matter: "With regard to all buildings in the
13 development, Association asserts standing pursuant to NRS 116.3102(1)(d) to pursue claims
14 for all defects in the building envelope (roofs, decks, windows, doors, stucco), the fire
15 resistive system, and the structural system . . . because those defects by their "building wide"
16 nature affect two or more unit owners, and affect the common interest community."⁷
17 Therefore, HIGH NOON continued to assert that it had standing under NRS 116.3102(1)(d) in
18 a representative capacity for issues affecting two or more units.

19 After the Nevada Supreme Court's decision in *Beazer* was filed on December 27,
20 2012, HIGH NOON once again asserted its claim that it had standing for all of its members
21 pursuant to NRS 116.3102(1)(d) in a motion entitled Plaintiff's Motion for Determination that
22 the Superior Alternative Procedure to Proceed with Claims Pursuant to NRS 116.3102(1)(d) is
23 as a Representative Action for All Members' Interests with Regard to the Building Envelope
24 Issues, and as a Representative Action of the Assignee's Interests with Regard to the Firewall
25

26
27 ⁶ Plaintiff's Reply to Opposition to Motion for Declaratory Relief re: Standing Pursuant to NRS 116.3102 (1)(d),
28 dated November 3, 2010, attached as Exhibit 5.

⁷ *Id.* at 5:21-5:22.

1 and Structural Issues, dated April 19, 2013⁸. In Section III(A) of the Motion, HIGH NOON
2 categorically asserts that it has standing pursuant to NRS 116.3102(1)(d) to pursue a
3 representative action on behalf of all homeowners at the Project, where defects affect two or
4 more units. Indeed, HIGH NOON stated by way of example, “[w]ater intrusion into the
5 envelope anywhere on the building affects all homeowners of the building. Each of the
6 alleged building envelope claims, by their very nature concern two or more homeowners.”⁹

7 In sum, HIGH NOON’s reference to 194 assignees was simply a “belt and suspenders”
8 approach to asserting standing for constructional defects for all homeowners and units at the
9 Project. Although the Nevada Supreme Court subsequently ruled that assignments cannot, in
10 and of themselves, confer class action status pursuant to NRCP 23, it did not and could not,
11 limit HIGH NOON’s standing under NRS 116.3102(1)(d). Metaphorically, even though the
12 Nevada Supreme Court ruled out the “suspenders” aspect of HIGH NOON’s standing, the
13 “belt” does not fall away and thus all 342 units are in play in this action where it is shown that
14 constructional defects are found at two or more units.

15
16 **C. The Nevada Supreme Court in the *Beazer* Decision Established that**
17 **Irrespective of Class Certification, Associations Possess Statutorily**
18 **Granted Standing Under NRS 116.3102(1)(d) to Pursue Claims Existing in**
19 **Individual Member Units**

20 HIGH NOON believes it has identified the source of this Honorable Court’s
21 confusion: the Nevada Supreme Court Order Granting Petition for Writ of Mandamus or
22 Prohibition dated January 25, 2013 (hereinafter referred to as “NSC Order”). Although
23 Plaintiff never abandoned its NRS 116.3102(1)(d) standing claims as to all 342 units, it sought
24 a writ of mandamus challenging this Honorable Court’s denial of class action certification as
25 to the 194 units where assignments were obtained. The gist of Plaintiff’s claim was that the
26 assignments for 194 units created a self-defined class and therefore the Association had

27 ⁸ Plaintiff’s Motion for Determination that the Superior Alternative Procedure to Proceed with Claims Pursuant
28 to NRS 116.3102(1)(d) is as a Representative Action for All Members’ Interests with Regard to the Building
Envelope Issues, and as a Representative Action of the Assignee’s Interests with Regard to the Firewall and
Structural Issues, dated April 19, 2013, attached as Exhibit 2.

⁹ *Id.* at 10:21-10:24.

1 standing to pursue *all defects associated with those units in a class action format*, using
2 generalized proof and extrapolation. The Nevada Supreme Court rejected that contention and
3 denied the writ.

4 The critical consideration is that HIGH NOON's writ focused on 194 "assigned" units
5 for purposes of class certification, but no party has challenged that HIGH NOON retains its
6 standing to pursue claims for all 342 units where NRS 116.3102(1)(d) standing is applicable.
7 Indeed, Plaintiff understands that another matter on this Honorable Court's docket involved
8 similar circumstances. In the matter of *Dorrell Square Homeowner's Association v. D.R.*
9 *Horton, Inc.*, the plaintiff association requested that this Honorable Court reconsider its prior
10 order that failure to satisfy NRCP 23 meant the association could not represent its members
11 for defects existing within individual units. This Honorable Court reconsidered and withdrew
12 that order. In response, D.R. Horton sought a writ to perform an NRCP 23 analysis and
13 reinstate the reconsidered order. The Nevada Supreme Court declined to order reinstatement
14 of the order of standing because it was inconsistent with the holding of *Beazer* which clearly
15 held that failure to satisfy NRCP 23 prerequisites does not strip a homeowner association of
16 its standing rights under NRS 116.3102(1)(d).

17 Here, notwithstanding the Nevada Supreme Court's rejection of HIGH NOON's "self-
18 defined" class action contentions as to 194 units, nothing in that rejection modified or limited
19 the clear mandates of the *Beazer* decision. HIGH NOON's pursuit of construction defect
20 claims found in two or more of the 342 units at the Project is in addition to the categories of
21 defects where this Honorable Court has deemed that class treatment and generalized proof is
22 appropriate. Pursuant to the rationale and holding of *Beazer*, the question is not *whether*
23 HIGH NOON may proceed to trial as to construction defects found in two or more of all 342
24 units, it is *how* it will proceed to trial and the manner of proof required. In sum, the Nevada
25 Supreme Court in *Beazer* settled the standing issue in favor of standing for common-interest
26 community associations and therefore HIGH NOON is entitled to pursue claims for defects in
27 all 342 units in the Project pursuant to NRS 116.3102(1)(d).

28 This Honorable Court has already resolved the manner and method of proof for the
defects that are not entitled to class treatment or generalized proof pursuant to its November

1 12, 2013 Order, and thus the resolution of this specific confusion will expediently allow the
2 case to move forward to trial. Indeed, in that Order, this Honorable Court endorsed the basis
3 of Plaintiff's Motion for Reconsideration with the following observations:

4
5 "In fact, Plaintiff and its homeowner-members are not necessarily
6 required to have every single unit inspected or destructively tested to
7 determine whether a particular constructional defect exists in order for
8 the Association to send a notice of construction defects under NRS
9 40.645, or ultimately, to bring an action on behalf of all homeowners in
10 its representative capacity. . . . [¶]

11 With the aforementioned said, Plaintiff HIGH NOON AT
12 ARLINGTON RANCH HOMEOWNERS ASSOCIATION may institute
13 and/or maintain litigation on behalf of two or more individual owners
14 suffering from the same construction defects. *See* NRS 116.3102(1)(d)."

15 *Id.* at 5, 8. This Honorable Court's reference to "all homeowners in a representative capacity"
16 recognized the application of *Beazer* and NRS 116.3102(1)(d). Finally, the Order expressly
17 stated that "**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** Plaintiff HIGH
18 NOON AT ARLINGTON RANCH HOMEOWNERS ASSOCIATION may bring and
19 maintain claims on behalf of two or more homeowners who actually suffer constructional
20 defects that may not have been experienced or encountered by their neighbors pursuant to
21 NRS 116.3102(1)(d)." *Id.* at 9. This Honorable Court correctly omitted any limitation to 194
22 units in that statement, and thus it is a recognition of HIGH NOON's right to pursue claims
23 for all 342 units where the construction defect has been found in two or more units – defect
24 claims that are in addition to those authorized for class treatment under NRCP 23.

25 **D. Defendants Will Suffer No Prejudice.**

26 The Court's ruling on this motion will not prejudice defendants. This motion does not
27 seek to expand the number or nature of the defects that must be addressed by the defense. It
28 simply seeks to expand the number of units that are in the litigation. There have been no
settlement discussions to date, and defendants have made no settlement offers. Therefore, the
only change for the defendants would be a simple mathematical one. Moreover, plaintiff has
already deposited and served its cost of repair based both 194 units and 342 units.

1 **III. CONCLUSION**

2 For the reasons stated above, Plaintiff respectfully requests this Honorable Court to
3 reconsider its prior order related to the right of HIGH NOON to pursue claims on behalf of all
4 of its members and all 342 units located at the Project.

5
6 Dated: January 7, 2014

ANGIUS & TERRY LLP

7
8
9 By: 

Paul P. Terry, Jr., SBN 7192

Rachel Saturn, SBN 8653

Aaron C. Yen, SBN 11744

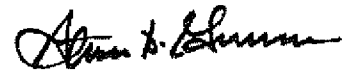
ANGIUS & TERRY LLP

1120 N. Town Center Drive, Suite 260

Las Vegas, NV 89144

Attorneys for Plaintiff

EXHIBIT 1



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH
HOMEOWNERS ASSOCIATION,

Plaintiff,

vs.

D R HORTON, INC.,

Defendant.

CASE NO. A-542616

DEPT. XXII

BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE
NOVEMBER 10, 2010

**RECORDER'S TRANSCRIPT OF HEARING RE:
PLAINTIFF'S MOTION FOR DECLARATORY RELIEF RE: STANDING
PURSUANT TO ASSIGNMENT AND PURSUANT TO NRS 116.3102(1)(d)**

APPEARANCES:

For the Plaintiff:

PAUL P. TERRY, ESQ.

For the Defendant:

JOEL D. ODOU, ESQ.
THOMAS E. TROJAN, ESQ.
DAVID JENNINGS, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

RECEIVED

DEC 15 2010

CLERK OF THE COURT

1 WEDNESDAY, NOVEMBER 10, 2010 AT 9:44:35 A.M.

2
3 THE COURT: Okay. Let's go ahead and start with High Noon at Arlington
4 Ranch Homeowners Association versus D R Horton, case number 07-A-542616.

5 MR. TERRY: Good morning, Your Honor. Paul Terry appearing on behalf of
6 the Plaintiffs.

7 MR. ODOU: Good morning, Your Honor. We we're sitting in the cheap seats.
8 Joel Odou and Tom Trojan on behalf of D R Horton, and David Jennings from D R
9 Horton is with us.

10 MR. JENNINGS: Good morning.

11 THE COURT: Okay. And, counsel, I have gone through your paperwork, I
12 understand the issues. And have you all had a chance to review my decision in --
13 oh gosh, it was the Henderson one -- the Mountain --

14 MR. TERRY: View of Black --

15 THE COURT: -- well, Black Mountain --

16 MR. TERRY: -- View of Black Mountain.

17 THE COURT: View of Black Mountain case.

18 MR. TERRY: I'm very familiar with it, Your Honor.

19 MR. ODOU: We've reviewed it.

20 THE COURT: Okay. All right. With that said, I am prepared to hear
21 argument.

22 MR. TERRY: Well, Your Honor, since I know that you read the papers I'll be
23 brief and then respond to any issues that happen to rise.

24 THE COURT: I do have a question. You indicated that the Homeowners
25 Association wants to -- they've been assigned certain claims I guess by certain

1 homeowners --

2 MR. TERRY: Correct.

3 THE COURT: -- but don't they have different issues dealing with respect to
4 defects in their units? I mean, I can understand your position with respect to
5 possibly a joinder action, but I don't know that -- I mean, have you satisfied the class
6 allegations with respect to the assignments with respect to units?

7 MR. TERRY: I'm not aware of any nor did I see any in any of the papers of a
8 requirement of satisfying class action allegations where there is in fact an
9 assignment.

10 THE COURT: Well, I know but we'd have to treat it as a joinder as opposed
11 to a class. Would you agree?

12 MR. TERRY: Absolutely.

13 THE COURT: Okay.

14 MR. TERRY: No question about it, it would be --

15 THE COURT: all right.

16 MR. TERRY: -- it would be a joinder case; we would have to treat it as such.
17 That is correct.

18 THE COURT: Okay. I'm listening.

19 MR. TERRY: All right. So, what -- the gist of our motion is that there are
20 three separate and distinct basis for a jurisdiction that the Association is asserting.
21 The first as the Court already noted, is that with respect to an assignment the
22 Association steps into the shoes of those individual homeowners and therefore has
23 the right for standing purposes -- which is what we're here for today, for standing
24 purposes to assert any claims whether they're inside or outside of those units
25 because they step into the shoes of the homeowner so they can make the same

1 claim that the homeowner would make. So that applies to right now approximately
2 199 of the 342 units.

3 The Association has authority to represent what we believe are claims
4 similar to what would exist under 31.02(1) (d), but really kind of a separate and
5 independent basis and that because the Association has the rights of at least one
6 homeowner and 107 of the buildings then it has the right to bring any claims that
7 would impact that owner and for the same reasons frankly as exists in -- under 3102
8 and your decision in View of Black Mountain. Because the Association steps into
9 the shoes of the homeowner the homeowner would have under traditional principles
10 of proximate cause, nothing fancy, would have a right to bring the claim with respect
11 to any defect in their building which impacted or affected their unit whether or not it
12 was physically located within their unit. And that -- again, that's a -- that's a simple
13 proximate cause analysis. So that would -- to take sort of a -- one example, if
14 there's a broken countertop in a neighboring unit clearly that doesn't affect another
15 units -- it doesn't affect the other units. However, if there's a structural defect some
16 place in the building or there's a defect in the fire resistive systems somewhere else
17 in the building that does affect all the units in the building and therefore under,
18 again, basic principles of proximate cause that individual owner would have a right
19 to bring the claim whether or not it physically existed within the confines of their unit
20 or existed some place else in the building because it affects their unit under
21 proximate cause.

22 So the second basis for the Association's standing which would apply to
23 the 107 buildings in which the Association has at least one unit owner who has
24 assigned the claim would apply to the building envelope, it would apply to the
25 structural system, and would apply to the fire resistive system but would not apply to

1 any of the individual defects that were within the neighboring units because they
2 didn't affect that unit and therefore proximate cause wouldn't allow them to bring that
3 claim. So that's the second basis. Then we have a third basis for jurisdiction -- a
4 little bit of belts and suspenders here, a third basis and that's the one that's the
5 subject of this Court's ruling in the View of Black Mountain and that's that under
6 116.3102.1(d) the Association has standing to bring claims that affect common
7 property in other words property that's shared with other owners in the same
8 building; in this case in View of Black Mountain they were duplexes, in this case it's
9 even clearer because they're triplexes. And again contrary to the assertion in D R
10 Horton's opposing papers, these are not separate and distinct buildings that are
11 stuck together. It's even more I think compelling than in view of Black Mountain
12 because in fact the units are stacked. And we've put in the affidavit of Tom Sanders
13 who's the architect we've retained when the assertion was made in the opposing
14 papers. In fact they were complete, separate and distinct buildings that were -- units
15 that were stuck together. That's in fact architecturally incorrect they're not and
16 which is why we had Mr. Sanders submit an affidavit to the Court.

17 The one difference really between the assertions that we're making in
18 this case and the findings of this Court in View Black Mountain is that we have
19 included in the Association's standing -- or in our request for declaration of standing
20 the structural systems and the fire resistive systems. And that is based on the -- on
21 the notion that even though they are inside the building they're not inside the units,
22 those are the dividing lines between the units. And again for the same reason as
23 under proximate causation, if there's a defect in the firewall or what we found
24 missing firewalls in one unit and it's in the same building it necessarily affects every
25 other unit in the building. The same thing is true with respect to structural defects. If

1 there's a structural defect somewhere in the building it affects everybody in that
2 building (1). And (2) you have a very practical problem which is that if there's a
3 structural defect in one part of the building and my unit is in another part of the
4 building how do I get access to get in there and do those repairs? So, as a practical
5 matter the Association is in the best position to do that and in fact that's why we
6 assert 3102.1(d) those claims are suitable for handling by the Association. Of
7 course if there's any defect that's within a unit that doesn't affect the other units then
8 clearly the Association doesn't have standing under either proximate causation or
9 under 3102(d).

10 So where we differ, or if you will, expand upon this Court's ruling in
11 View of Black Mountain is that we've included the structural systems and the fire
12 resistive systems because we believe they directly impact all the units in the
13 building. So, that's the basis for the Association's request for a declaration of
14 standing.

15 THE COURT: Thank you. Mr. Odou?

16 MR. ODOU: Good morning, Your Honor. I have a prop. If you'll bear with me
17 I'd like to prop it up. We're gonna do a little Wheel of Fortune, and Mr. Trojan is
18 gonna help me out although we only have one letter to turn.

19 THE COURT: You might win with just one letter.

20 MR. ODOU: Or at least be able to guess it.

21 MR. TERRY: Unless this is a -- one of the exhibits, I haven't seen this before
22 so --

23 MR. ODOU: It was one of the exhibits.

24 THE COURT: Do you want to look at it real quick before I see it?

25 MR. TERRY: Well --

1 THE COURT: Why don't you show it to counsel.

2 MR. ODOU: It was attached to our pleadings.

3 MR. TERRY: All right. Then I have no objection.

4 THE COURT: Okay.

5 MR. ODOU: Thank you, sir.

6 You know, Your Honor, this case has had a very long and tortured
7 history beginning in 2007 with a complaint rather than a Chapter 40 notice, that has
8 lead to D R Horton fighting for its rights to see the units. D R Horton has been
9 fighting for those rights now for three years just to get Chapter 40 started. What I've
10 placed before you is a blow up of an exhibit attached to our pleadings which is the
11 189 units we've never seen. We've been fighting for three years to find out what the
12 claims are in those units.

13 So, just taking a step back for a moment and discussing -- where we
14 began our discussion today or where the Court's began its discussion today about
15 Black Mountain. This case is significantly different from Black Mountain. This case
16 is significantly identical to two cases this Court's already decided, Dorrell Square
17 and Court at Aliante both involving the same cc and r's, both involving virtually the
18 identical same claims. We heard a minute ago counsel for the Plaintiff say if it
19 doesn't affect two or more units and we're not making a claim for it. That's not true
20 at all, Your Honor, in looking at their defect list which is attached to their moving
21 papers they have sliding glass door claims. In their sliding glass door claims they
22 say ninety-one percent of the units are affected. You don't need to go into an
23 adjoining unit to fix a sliding glass door, that doesn't affect the common interest.
24 Moreover, the person who is in the best position to know of their sliding glass door
25 to leak is all of those people with a red dot. Any one of those people could have

1 picked up the phone and called D R Horton and said my sliding glass door leaked.
2 That didn't happen here. Instead a Plaintiff attorney went out, signed up those
3 people and said, hey, you want to sue D R Horton? They did. Then we said, okay,
4 show us where the sliding glass door leaks. Oh no, that's too burdensome, we can't
5 do that for you, we're not going to let you into those 189 units.

6 Your Honor, if you look at the claims for the windows they say one
7 hundred percent of the windows leak. Again, 189 units we've never been into. They
8 say, well, that doesn't matter because we've got assignments. Of the assignments
9 that they have -- they have 193 by the way not 199 or -- whatever they had, it's 193
10 we counted. Of those assignments 72 of those homeowner never let us in to see
11 what was going on in their unit. Of those assignments one of those homeowners
12 called up D R Horton just a few weeks ago and said, hey, I've got a problem with an
13 electrical defect can you come fix it? The homeowners don't know what those
14 assignments say. Why do the homeowners not know what those assignments say?
15 Because they're very deceptive. If you look at the exact language of the assignment
16 it says they're assigning all claims. Well, that sounds fine but then they say --

17 THE COURT: What page are we on?

18 MR. ODOU: This is the big stack of exhibits from the Plaintiff. They have
19 attached 199 or 196 --

20 THE COURT: Okay.

21 MR. ODOU: -- assignments.

22 THE COURT: And they all say --

23 MR. ODOU: They're all --

24 THE COURT: -- about the same --

25 MR. ODOU: -- the same thing. If you take any one of those they're all the

1 same. Look at paragraph G. "It is understood nothing in this assignment shall
2 construe to obligate the Association in any way to undertake or pay for any
3 particular repair to any individual unit". So then you recover the money supposedly
4 for these units that no one is allowed to see but they're not obligated to fix them.
5 They told the homeowners that. Well, what else did they tell the homeowners?
6 Well, they told the homeowners, hey, sign this piece of paper because only those
7 homeowners who sign this piece of paper can share in the recovery. Well, if you go
8 to a homeowner and say, hey, you want to share in the recovery, sign this little piece
9 of paper. Absolutely they're gonna sign.

10 So, D R Horton challenges the validity of those assignments just as a
11 very threshold issue, we challenge what was been assigned. We also note that if
12 this is an assignment and this is a joinder case now we again as we've had in this
13 entire case have the cart before the horse, where's Chapter 40 been for these
14 assignments? Where have these homeowners been about providing us notice?
15 What window in your home leaks? What sliding glass door in your home leaks?
16 What other issues do you have in your home that you want us to fix? We don't have
17 that. What we have is a defect list on an extrapolated basis that says one hundred
18 percent of the windows leak and we're not gonna let you see those units. That's
19 what's happened in this case in the last three years.

20 We've brought two motions before this Court on motions to compel to
21 get into these units. One of those motions was rendered moot because we had the
22 summary judgment, another one of those motions was also rendered moot because
23 of that, and the third motion that we filed on this issue -- I mean, I know we're
24 beating a dead horse here, was to just get access to do the common areas which
25 we've fought for. Then they tell the homeowners in their assignment, ahh well, D R

1 Horton doesn't want to do repairs. Really? We've been fighting for three years to
2 just get out there to look at the units. These assignments are very, very deceptive,
3 these assignments don't actually reflect what's happened which is the Homeowners
4 Association has kept us away.

5 And another thing about these assignments, no where in them do they
6 tell the homeowners gee, if you don't prevail in this case what happens. Or better
7 yet, gee, did you know that Nancy Quon and company racked up a million dollars on
8 this case already? You're joining this case but you owe Nancy Quon a 40 percent
9 contingency fee or \$350 and hour whichever is greater for her work on this case,
10 you owe Nancy Quon expert fees and costs. And they say, oh well, you know,
11 these expert fees and costs were incurred before these people assigned. Oh really?
12 You're now using these same expert reports to justify moving forward in this case.
13 There's a quantum meruit argument at a minimum that Nancy Quon and company
14 can make a claim on this case. Why is all this relevant? Well, the same attorneys
15 who are representing the Association against Nancy Quon are now representing the
16 Homeowners Association in this case. There's a clear conflict of interest that they
17 don't then tell their homeowners who are joining this case oh by the way, we're
18 representing your Homeowners Association and it's your Homeowners Association,
19 our client's best interest, that you join this case. It's not necessarily in your best
20 interest; you just bought yourself a million dollars in debt. It's absolutely ridiculous
21 this case has been so backwards for so long and we've been fighting for our right to
22 just even see the units let alone do repairs.

23 Turning to the very issues between Black Mountain, Arlington, Allante
24 and Dorrell Square, all of those issues were raised on appeal before the Nevada
25 Supreme Court. Those issues were fully briefed. The Nevada Supreme Court didn't

1 carve out an exception in First Light II and said, okay, we're gonna take anything on
2 the exterior and maybe you have standing for that but you don't have to do a Rule
3 23 analysis you just go forward. Anything on the interior then you do a Rule 23
4 analysis. That's not what the Supreme Court did. When the Supreme remanded
5 this case in this Court it said. "In accordance with the analysis set forth in the D R
6 Horton/First Light II, we direct the District Court to review the claims asserted by
7 High Noon to determine whether or not those claims conform to class action
8 principles". That's what we are supposed to be doing, that's what we're supposed to
9 have done a year ago in this case. Instead for the last year the Plaintiffs have been
10 dragging their feet, going door to door handing people a piece of paper and say,
11 hey, you want to share in the recovery sign right here. And that's what's gotten us
12 here today.

13 This case has a trial date, D R Horton hasn't even answered or filed a
14 third party complaint because we have no way of knowing (1) who the Plaintiffs are
15 (2) what the claims are and (3) who are the subcontractors implicated. We keep
16 sending the subcontractors a notice and they're telling us, well, what are we
17 supposed to do with it? We can't go do repairs; no one will let us out there to do
18 repairs.

19 The cart has been before the horse too long. What D R Horton is
20 asking this Court to do is to start at the beginning and look at Chapter 40. Before a
21 claimant commences a claim or amends a complaint to add a claim for
22 constructional defect there are certain requirements that they have to conform to, is
23 to provide us a notice, okay? The notice that we've got is an extrapolated notice, it
24 doesn't tell me where the defects are in each one of those red dots that won't let me
25 see them. We need an accurate notice to tell us where the defects are. That's step

1 one. Step two, they either need to let us into those units or dismiss those units from
2 the case.

3 Now this Court didn't have an opportunity to address that because the
4 prior motion became moot when this thing went up on appeal, so the Court has an
5 opportunity to address that now. They're not letting us into the units, they can't
6 make a claim. It's no different than a personal injury case where the Plaintiff doesn't
7 want to provide their medical records and they don't want to tell you what part of
8 their body is injured. It's the exact same thing. We say just trust us, just pay us.
9 That doesn't work in Chapter 40 and it shouldn't work here.

10 Lastly, the whole issue about, you know, let's take Black Mountain and
11 segregate it out from Dorrell Square and Courts at Aliante, it doesn't make any
12 sense it's the exact same cc and r's, it's the exact same claims. The Plaintiff's
13 experts are virtually the same, they can't take what they've given us which says one
14 hundred percent of the windows leak we're not gonna let you see it oh, and by the
15 way, this is a class action case now and shift the burden of proof to the Defendants
16 to now prove they're innocent. That's exactly what they're asking this Court to do.
17 They're saying find this case as a class action and we'll deal with it later. Well, find
18 the Defendants guilty and we'll deal with it later, they can prove they're innocent,
19 that's not the way Chapter 40 works, that's not the way the law works and that's not
20 the way this case should work.

21 THE COURT: Mr. Terry?

22 MR. TERRY: Yes, Your Honor. A couple of things. (1) This is not a motion
23 requesting this Court to declare the adequacy of the Chapter 40 notice or whether or
24 not the Chapter 40 notice -- Chapter 40 process has been concluded. This Court
25 issued a stay, that stay remains in effect. This is a motion for a declaration of

1 standing. And I would point out to the Court as the Court is probably aware D R
2 Horton argued extensively in prior cases that a resolution of the standing issue
3 should be achieved prior to the conclusion of the Chapter 40 process.

4 So, we're here asking for a declaration of standing and it's a little odd
5 that in other cases D R Horton has stood up and said, well, we want to resolve the
6 standing before we move forward with Chapter 40 but now it seems like they're
7 saying we want to resolve Chapter 40 before we move forward with standing.
8 Really that's not before the Court. What's before the Court it's fairly simple and
9 straight forward and that is what does the Association have standing for? And we've
10 asked for a declaration of that. Any issues with respect to the Chapter 40 notice and
11 whether or not they've seen enough units or not enough units, those are issues to
12 be resolved, you know, on a different day with a different motion presumably in front
13 of a special master as the Supreme Court directed in First Light I the standards for
14 what's an adequate Chapter 40 notice. All of those issues were addressed in First
15 Light I and I think the conclusion of the Court was we're gonna defer to the special
16 master to get them access. And so, if they need access to more units in order make
17 a decision that's really a question for another day.

18 The only issue before the Court today is what is the standing of the
19 Association. The only really substantive argument that I heard was that somehow
20 the assignments are invalid. Now, First Light II actually addressed an issue with
21 respect to validity of the Association standing and at page 701 it made clear a
22 builder has the right to challenge the adequacy of the Association's standing. A
23 builder does not have authority to challenge the internal method by which the
24 Association achieved its standing. That's only for individual owners of the
25 Association to raise. Now, if you really want to I'd be happy to address these

1 different issues because I think they're all red herrings.

2 THE COURT: Well, let me ask you this. I am concerned -- I mean, I've got a
3 trial date in July and what I'm hearing from the defense is that we haven't even
4 completed the Chapter 40 process yet. I mean, has that been accomplished in your
5 view?

6 MR. TERRY: In my view yes. Yes. There's a pending issue which frankly I
7 don't think has been resolved by the courts yet and that is that does a builder or a
8 subcontractor for that matter have a right to inspect every single unit in a common
9 interest development when there's been notice for the purpose of frankly, from our
10 view, conducting discovery or do they have a right to a sufficient number of those
11 units that they can form an opinion as to whether or not defects exist and therefore
12 whether or not they're going to propose some kind of a repair?

13 THE COURT: Well, under Chapter 40 if the developer elects can't they see
14 every unit?

15 MR. TERRY: In a common interest development I don't think that's correct,
16 no.

17 THE COURT: Because I don't know that -- it's my understanding that they
18 did. That -- that's what -- the concern that I have. I mean, if -- this is what my
19 thinking is. If I were inclined to say, yeah, the Homeowners Association has
20 standing with respect to the envelope, the building envelope, they can represent
21 homeowners on a joinder basis with respect to assignments whether they're good or
22 not good depending on whose view you're looking at. I am concerned about if they
23 want to look at every unit with respect to the interior or with respect to the structural
24 as you're trying to say, I think they've got a right to do that. I mean, and looking at --

25 MR. TERRY: But, Your Honor, if I may?

1 THE COURT: Yes. Please.

2 MR. TERRY: That's not really the issue before the Court today. And I'd be
3 happy to brief that carefully and we can -- and get a ruling from the Court and we
4 can proceed on that basis but that's not what's before this Court right now, all that's
5 before this Court right now is the issue of standing.

6 THE COURT: Well, I'm just concerned that this is an '07 case and we don't
7 even have Chapter 40 completed yet. And I know that these issues are not briefed,
8 but I am concerned about that.

9 MR. TERRY: I understand.

10 THE COURT: I mean, I don't know that I agree with you, Mr. Terry, that if --
11 they are only allowed to see so many of these units. That if they want to see every
12 unit they're entitled to see every unit for which you're making a claim, whether it's
13 the homeowners making a claim or whether the HOA is making the claim on their
14 behalf. That's a concern that I have. I'm concerned about whether or not we're
15 going to be disturbing this trial date and this is an '07 case.

16 Okay. I'm gonna let Mr. Terry finish, but your response, Mr. Odou?

17 MR. ODOU: Your Honor, the standing issue is incredibly critical. The
18 standing issue and the reason why we haven't seen these units is because the
19 Association isn't the proper vehicle to pursue this claim. The Association made a
20 claim for the whole place; they couldn't get us into those 189 units. That's where the
21 standing issue shines brightly. It's not a red herring at all. That's where Chapter 40
22 shines brightly. That's not a red herring either. That's why the Association is not the
23 proper Plaintiff if there are going to be claims for those 189 red dots out there.
24 That's where the class action analysis needs to happen in this case and that's
25 where the class action analysis fails in this case.

1 THE COURT: Well, I don't think we're at a class action, I think we're at a
2 joinder situation is what I'm understanding with respect to the alleged defects within
3 the interiors of the units.

4 MR. ODOU: But they've asked for it for both. They've asked for a class
5 action standing to pursue all of those windows that we've not been allowed to see.
6 That's part of Bruce Mayfield's coined building envelope yet we're not allowed to see
7 those. And then if we save this for a later date what's gonna happen is the
8 Association is going to go gee, we're sorry, but these people didn't sign assignments
9 therefore we can't compel them to let you in but we're still gonna take the
10 information and do an extrapolation and stick you with that extrapolation at trial and
11 say, well, we inspected a hundred windows and ninety-nine of them leaked. Well,
12 yeah, you may have but you only got into ten units or twenty units because the other
13 unit owners said no way and the Court may say, well, in that case we'll just not let
14 them recover for those other units. Well, now we've got an extreme problem
15 because now we've got the problem of all these homeowners who think, okay, the
16 Association is taking care of this. Wait, they're not taking care of this? Well, they're
17 going to repair it. Well, they're saying they're not going to repair it. That's why this
18 case is so upside down, that's why this motion should be denied. Standing should
19 be denied for the Homeowners Association. It's their burden to come forward and
20 show that they can adequately represent all of the homeowners on the building
21 envelope. They can't, the proof is right there in nice red dots everywhere. That's
22 why the motion should be denied.

23 As far as the trial and the -- we've been crowing about that problem for
24 a while now which is we don't know who the plaintiffs are, we don't know what the
25 claims are, we sure as heck can't figure out who the third party defendants are.

1 There's no way this case can go to trial next year.

2 THE COURT: These sliding glass windows are they on the balcony or --

3 MR. ODOU: The sliding glass doors are -- these are triplexes, so it's the first
4 floor sliding glass doors. They can't affect anybody else's unit. If you've got a leak
5 in your sliding glass door it's leaking into your unit.

6 THE COURT: Okay. So that only affects the first floor not the second or
7 third?

8 MR. ODU: In many cases.

9 THE COURT: Okay. Well if --

10 MR. ODOU: And it's the same with a lot of the other claims too. If -- the
11 window claims, they don't leak from one window -- one unit into another. If they do
12 they should put that evidence before the Court. There's no evidence of that. Yeah,
13 they're not stacked on top of each other these are triplexes. So, one unit owner
14 owns a first floor and a second floor. These are triplexes.

15 THE COURT: Okay. Now with respect to the assignment of the interior, if
16 you're not allowed to get into certain units -- let's say that I were to grant the HOA's
17 standing with respect to these assignments with respect to the interiors but you're
18 not able to get into let's say fifty percent of the units --

19 MR. ODOU: That's what it's been.

20 THE COURT: -- because -- whatever it is, then wouldn't it be right for you to
21 file a motion to dismiss with respect to that fifty percent because if they don't get
22 cooperation then you -- I mean, in my view I'm looking at Chapter -- Chapter 40, I
23 don't know that I agree with Mr. Terry that you only get to get into certain amount of
24 units. If you want to go into all of them, I think you can go into all of them. And if
25 there's no cooperation with respect to the fifty percent -- and I'm just throwing that

1 out there I don't know what the percentage is, then you got a motion to dismiss.
2 They can represent them with respect to those homeowners.

3 MR. ODOU: We did exactly that in May of 2008, we brought before this Court
4 that exact motion and not only --

5 THE COURT: And I denied it?

6 MR. ODOU: -- was it -- no, it was moot at that point because summary
7 judgment had been granted but we brought that exact same motion. Moreover, that
8 really highlights the problem that they did to us back in 2008. They'd scheduled an
9 inspection of Mr. Smith's unit at 8:00 a.m. and inspected Mr. Jones unit at 5:00 p.m.
10 And, oh by the way, stick around all day because we may be able to let you into
11 some other units. They stuck it to us for thirty days out there at an exorbitant cost
12 making our experts wait around day after day after day. That's all documented in
13 our May, 2008 motion and it's one of the other reasons why this case has been so
14 upside down for so long. It just highlights the fact that this Association is not the
15 proper vehicle to be pursuing a representative claim in this case and it really
16 underscores the fact that if a homeowner has an issue under Chapter 40 and what
17 our legislature intended was for that homeowner to pick up the phone and call the
18 developer. If the developer is unresponsive to ahead and file suit, but you don't file
19 suit first and then figure it all out now three years later going on four.

20 This case has been upside down since the beginning then on top of that
21 there's a million dollars in claims from these experts and other prior attorneys and
22 none of these homeowners have any idea that they're getting into.

23 THE COURT: Well, that's a different issue I think then what we're talking
24 about here. I mean, that gets into the validity of the assignments and so forth than --

25 MR. ODOU: If they're gonna do a joinder action and they want to put their

1 malpractice carrier on a risk for the fact they didn't advise these people of that, that's
2 right, I don't have standing to crow about that. I do have standing to crow about the
3 fact that none of these assignments ever issued a Chapter 40 notice, I do have
4 standing to crow about the fact that 72 -- 71 of those assignments of those 193
5 refused to let me -- or let my clients rather and my client's subcontractors who are
6 monitoring into their home.

7 THE COURT: Okay. Mr. Terry?

8 MR. TERRY: Yes. Oh boy, that's a lot of stuff -- a proverbial bucket thrown at
9 the wall.

10 Again, I think the issues that are before this Court are pretty simple,
11 does the Association have standing? We can -- at some point later on we can get
12 down to, okay, if their -- if a portion of the case is based on joinder and they didn't
13 get into a unit can they move to dismiss? And the answer is probably. I haven't
14 really looked carefully at the law and how extrapolation might work or not work. But
15 ultimately there is other ways of dealing with that, it doesn't really have anything to
16 do with this -- the fundamental standing issue which is that if a homeowner is given
17 standing to somebody else whether it's the Association or Joe Smith, you know,
18 around town it really doesn't really make any difference, the law -- and we cited it in
19 our brief, the law in Nevada is very clear you're allowed to assign a cause of action
20 to somebody else.

21 Now, one of the issues that sort of sits around here and I think it's
22 something of a red herring, and that's the issue of the -- for the procedural model
23 that Quon, Bruce, Christensen used to use and that was because they had some
24 notion that if they didn't file a law suit then a Chapter 40 notice might not protect
25 their client's rights. Their standard practice was to file a law suit and then

1 immediately move for a stay and then go through the Chapter 40 process. And so
2 when this Court talks about this being a 2007 case although technically that's
3 correct, I think it's a bit of a misnomer because it just really had to do with how
4 procedurally Quon, Bruce, Christensen handled their cases. It's not typical I think
5 for really any of the other construction defect firms in town to be operating that way.

6 So, really what's going on as we're within the Chapter 40 process or the
7 standard Chapter 40 process and we're at that particular point where you say okay
8 we're asking for a declaration of standing, and that's really all that's going on here
9 and it may be that a trial date has to be moved because of the fact we've been up
10 and down to the Supreme Court and there's some unique aspects to these cases.

11 THE COURT: Well, you know, and I'm concerned too because unless the
12 stay -- and I don't recall it saying that -- basically it says we're staying the Rule 41(e)
13 tolling as well. I have to get you a trial date within five years of the filing. Of course
14 there is the tolling of course whenever things went up to the Supreme Court which I
15 probably need you to figure all that stuff out too, but I will tell you I do entertain as
16 you well know motions to dismiss when Chapter 40 has not been adhered to. So, I
17 get concerned about these things. And now I've gotta get you a trial date before
18 2012. You know, if -- of course I've got you a trial date right now in July and I'm
19 concerned now because I'm hearing Chapter 40 still has not been taken care of.

20 Let me ask you this, Mr. Terry, if I were inclined to grant your motion
21 with respect to the assignment of those -- of the interiors are you gonna be able to
22 coordinate so that we're not having a situation where the developer goes out at 8:00
23 o'clock then he has to wait for the next unit at 5:00 and so forth, I mean -- because I
24 think that the Chapter 40 process has gotta be adhered to.

25 MR. TERRY: I -- first off, Your Honor, again, I wasn't there --

1 THE COURT: I know.

2 MR. TERRY: -- when these events allegedly occurred.

3 THE COURT: You're the new kid on the block. I know.

4 MR. TERRY: And I would suggest with all due respect for everybody in the
5 courtroom that just because a builder makes an allegation doesn't mean that the
6 other side agrees with it or that the mere fact the builder made the allegation makes
7 it correct regardless of how many times you repeat it.

8 So, the real question is will we cooperate with D R Horton irrespective
9 of what may have happened between Quon, Bruce and D R Horton, I mean, I don't
10 know, I wasn't there. I don't think we have a reputation in the community for trying
11 to keep builders out of units. In fact, if they want -- we'll get them in there. Of the
12 assigned claims it sounds like they've already been into more than half of them. As
13 I understood he says there's 187 they haven't seen but of the assigned claims it's
14 only 72 they haven't seen. So, they've already -- they've seen like almost 2/3 of the
15 assigned claims already so it sounds like we only have like 72 or so that we need to
16 get them into with respect to the assignments. So, that doesn't really seem like
17 that's, you know, too great of burden.

18 And then, you know, then it really is incumbent upon us to come back to
19 this Court and say okay we want a lifting of the stay. To the extent that there's
20 issues with respect to gaining access, I think the Supreme Court, you know,
21 indicated that the very accomplished special masters that we have available to us
22 throughout the state are very good at issuing orders and providing directives to
23 counsel as to what they need to do in order to satisfy compliance with Chapter 40.
24 And again, I think we have a very good track record of doing that and we will do
25 what we can to get them, you know, everything we can to get them in. And to the

1 extent that we can't then they clearly have a right to make a motion to have those
2 claims dismissed and we'll deal with that issue when and if it arises.

3 THE COURT: Okay. This is what I'm going to do. I want to look at the issues
4 with respect to the building envelope. I think I need to look at this issue a little bit
5 more. With respect to the joinder action, I am going to allow the Homeowners
6 Association to represent the homeowners that have assigned their claims, however,
7 you're going to have to coordinate with the developer to get this Chapter 40 stuff
8 taken care of with respect to the 72 or the half or whatever the number of units. And
9 if you've got some uncooperative homeowners, you know, then it gets down to then
10 are you going to be able to show, you know, prove your claim whether you're
11 representing the homeowner or the HOA, and I would expect a motion to dismiss by
12 the developer with respect to the uncooperative homeowners. You've gotta be able
13 to bet a chance to look through those units if you exercise that right to do so.

14 So, I am gonna go ahead and grant the motion with respect to the
15 joinder. And that is a joinder action, it is not a class and -- you know, until we
16 determine whether or not it should be a class. I don't know if we've got that but
17 that's not the basis of your motion. With respect to the structural -- you're talking
18 about the interior walls like the firewalls and things -- I've gotta look at that a little bit
19 more.

20 MR. TERRY: I understand.

21 THE COURT: And I am gonna look at the building envelope thing a little bit
22 more so I'm taking that part under advisement.

23 MR. ODOU: Can I ask a couple of questions, Your Honor?

24 THE COURT: Sure.

25 MR. ODOU: Just real briefly. I assume the Court will look at the motion for

1 re-hearing that was filed in the companion cases because this is the building
2 envelope --

3 THE COURT: Are you talking about the Dorrell Square and --

4 MR. ODOU: The building envelope issue --

5 THE COURT: -- I think --

6 MR. ODOU: -- was raised and it was Dorrell Square's motion for re-hearing.
7 All the cases were grouped together and sent up to the Supreme Court and those
8 issues were grouped together, sent up, the Court issued its ruling. The plaintiff's
9 petitioned in Dorrell Square for a re-hearing arguing this very issue, the Supreme
10 Court declined to hear that. Now, I know obviously read into that whatever you want
11 but it's still --

12 THE COURT: Yeah, because -- it's been a while

13 MR. ODOU: -- it's an issue.

14 THE COURT: -- since I did the decisions on Dorrell Square and Courts at
15 Aliante, but those are the only two that I had done actually evidentiary hearings on
16 the adequacy of the extrapolated notice. And so what was cool about those two
17 cases is that, I mean, all the defects were hashed out in those seven hour hearings
18 or whatever they were, and from what I -- I went back and reviewed it and it wasn't
19 just a building envelope case, it was -- they were looking at everything and I just
20 went through the class action analysis. Of course the building envelope idea was
21 not brought up in those cases so I saw that those were a little bit different, but I will
22 be looking at the motions for re-hearing on those. But, I want to look at this one
23 because it looks like these are very closely related --

24 MR. ODOU: And then --

25 THE COURT: -- in terms of issues.

1 MR. ODOU: They are, Your Honor. And then the second problem that we're
2 gonna have is the notice that we originally got, the Chapter 40 notice from the
3 Homeowners Association, it's not unit specific. There's no way for me to go into any
4 of those units where they wouldn't let us in before and find out, okay, which one did
5 you claim leaks. What they did is in their notice they said we inspected twenty units
6 or whatever the numbers are. I don't -- well, I did have --

7 THE COURT: Well, they should be doing at least twenty percent I would
8 think.

9 MR. ODOU: But my point is for us to now comply with Chapter 40 on a
10 joinder action, just taking the joinder part of the case separately, we -- D R Horton
11 believes that those homeowners have an obligation to do a proper Chapter 40
12 notice. Now, we could --

13 THE COURT: Well, wait a minute --

14 MR. ODOU: -- be back before you on that --

15 THE COURT: -- are they using the extrapolated notice? Then it gets down to
16 whether or not that notice -- that extrapolated notice is adequate.

17 MR. ODOU: Exactly.

18 THE COURT: Are you --

19 MR. ODOU: So --

20 THE COURT: -- telling me we need a hearing on that?

21 MR. ODOU: We are going to. If we need to file a motion on that we certainly
22 can, but the problem is gonna be that when you tell me, okay, my windows leak and
23 you're joining this case I have a right and my client has a right to know, okay, which
24 windows so we're not a wild goose chase, what are the claims that you're joining?
25 What are the claims that you are making, you Mister Homeowner or you Miss

1 Homeowner are making against D R Horton and against the subcontractors? It's
2 critical for the reason -- for the inspection, it's also critical for us to know that so we
3 can put the correct subcontractors on notice.

4 When this case arose three years ago we put everybody on notice.
5 They weren't happy to get that notice but that's the facts of life. Now it's a joinder
6 action on behalf of these people who have signed assignments. That's fine but what
7 am I -- who am I putting on notice for those things? Do I put on notice everybody
8 again including the guy who was lucky enough to drive by the place? It just -- we
9 have a Chapter 40 notice that's not going to work in the joinder part of the case is
10 what I'm saying. So, I believe that the Court should instruct the homeowners that
11 are joining the case to give a clear and adequate description as required by Chapter
12 40 what their claims are and then we can go forward.

13 THE COURT: Well, I think first of all we have to look at the extrapolated
14 notice which was originally given on whether or not that is adequate because they
15 can use an extrapolated --

16 MR. ODOU: Sure.

17 THE COURT: -- notice. So, are you telling me we need to schedule a
18 hearing on the --

19 MR. ODOU: We --

20 THE COURT: -- adequacy?

21 MR. ODOU: -- absolutely will because the exact language of Chapter 40 says
22 that you're supposed to describe the nature and extent of the defects within the
23 home. This notice does not describe the nature and extent of the defects in any of
24 these joinder homes.

25 THE COURT: When --

1 MR. ODOU: If you inspect Mrs. Jones unit and say there's a defect in Mrs.
2 Jones unit that doesn't help us at all with Mrs. Smith's unit as to what defects if any
3 she has. And there's where -- if it's a joinder action that's fine but it's gotta be a
4 joinder action that complies with Chapter 40. Mrs. Smith has to comply with Chapter
5 40; she has to give us a list of her claims whatever --

6 THE COURT: But --

7 MR. ODOU: -- they are.

8 THE COURT: -- she can rely upon an extrapolated notice though. For
9 example if -- let's say twenty percent of the units were reviewed and in one hundred
10 percent of the cases or let's say eighty percent of the cases there was something
11 wrong with, oh gosh, I -- let's just say that there was something wrong with the
12 fixtures in the downstairs bathroom, well -- well, that gives enough notice in my view
13 to the developer that you know what if it's in eighty percent of the cases you know
14 that in eighty percent of the unit that maybe you might want to look there. That's up
15 to you if you want to, if you don't want to that's up to you too. But, I mean, you've
16 seen my orders with respect to the extrapolated notices I think on both --

17 MR. ODOU: We have, Your Honor, but what our point is is NRS 46.452(c)
18 requires the claimant to describe in reasonable detail the cause of the defects if
19 known, the nature and extent that is known of the damage or injury resulting from
20 the defects and the location of the defect within each residence. We're saying --

21 THE COURT: And they can rely upon an extrapolated notice.

22 MR. ODOU: It doesn't help us to tell the subcontractor where to go look. It
23 doesn't comply with the statute in D R Horton's view.

24 THE COURT: Okay. You're revisiting stuff we dealt with years ago, counsel.
25 And I --

1 MR. ODOU: I'm really trying not to.

2 THE COURT: But if you're challenging the notice then what we can do is I
3 can go ahead and set a day aside like on a Friday for us to discuss the adequacy of
4 the extrapolated notice, we can do that. When would you be ready to do this?

5 MR. ODOU: Pretty much in two weeks with the exception of Thanksgiving.
6 Three weeks.

7 THE COURT: Okay. Mr. Terry?

8 MR. ODOU: First week in December maybe.

9 THE COURT: I'm looking at --

10 MR. TERRY: Well, I mean, to the -- I'm just trying to think. To the extent that
11 we're -- I mean, I have all the expert reports, I already have all the matrices showing
12 exactly where the testing took place, etcetera. So, in that respect is this Court
13 anticipating a full blown evidentiary hearing where I'm putting --

14 THE COURT: I did before. I mean, because they're challenging the
15 sufficiency of the hearing -- I mean, of the notices and where they -- you know, and
16 so forth. I will tell you --

17 MR. ODOU: Can we make a recommendation on that so we don't --

18 THE COURT: Pardon me?

19 MR. ODOU: Could I make a recommendation on that?

20 THE COURT: Sure.

21 MR. ODOU: Perhaps we could brief the issue, discuss amongst ourselves
22 whether an evidentiary hearing is required --

23 THE COURT: That's perfect.

24 MR. ODOU: -- and then try and narrow the issues to whatever they are.

25 MR. TERRY: Yeah, I would --

1 THE COURT: That'd be fine.

2 MR. TERRY: -- I would say probably a submission by affidavit and maybe
3 one witness on each side, you know --

4 THE COURT: That would be fine. Just to give you an FYI, it looks like if
5 you're looking for a Friday afternoon -- now I do have trial so those are going to be
6 intermixed and my secretary will probably kill me, but I do have the 10th and the 17th
7 of December it looks like available and then I've got just about every Friday it looks
8 like in January --

9 MR. TERRY: I could --

10 THE COURT: -- except for the 7th.

11 MR. ODOU: Counsel, would you prefer to brief those?

12 MR. TERRY: I could do December 17th, I couldn't do the 10th.

13 THE COURT: Okay. Why don't you get together and tell us what would be
14 good for you and we will do our best to accommodate you. I mean, but I think --

15 MR. ODOU: Yeah, we can meet on that.

16 THE COURT: -- we better get this adequacy of this notice taken care of and
17 get this and get this Chapter 40 stuff taken care of like asap because I don't like to
18 disturb trial dates. And I'm a little concerned because I'm looking at the numbers of
19 cases that the cd judges have to get set for trial and we've got a ton that were filed
20 in 2008. Not as quite as many as 2007 but we -- I think we had 113 filed in 2007; in
21 2009 we had 110. We've got to get all these things set for trial. And then we've got
22 the 2010 that we've got to get set for trial and we're dicking around with the 2007
23 and we're going to be abutting a five year rule problem. I've got concerns about
24 that. So --

25 MR. TERRY: Your Honor, what we'll also do is we'll submit a brief on the five

1 year statute and hopefully it can be a joint brief but if not -- that sort of lays out
2 what's happening in this case so we --

3 THE COURT: If you --

4 MR. TERRY: -- at least have that information.

5 THE COURT: If you both agree even to -- if there's an issue there and you
6 both agree to extend it that's an issue. Although I don't like old cases but it is what
7 is, but we've got to get it done right.

8 MR. ODOU: Yeah. We can't speak on behalf of the subcontractors is gonna
9 be the problem. We could certainly accommodate the Plaintiffs and come to some
10 understanding, but then the question is the subcontractors and the insurance
11 carriers.

12 Just so I understand and just so we're all clear then, what we're gonna
13 propose is that we will get with Plaintiff's counsel and come up with a briefing
14 schedule as to the adequacy of the notice. And since we're the one's challenging
15 the notice I'm presuming we would be the moving party, they will then oppose, we'll
16 reply and then we will try and work with the Plaintiff's counsel as to whether or not
17 an actual evidentiary hearing is going to happen.

18 THE COURT: And then figure out when you want to do it.

19 MR. ODOU: And then when we -- okay.

20 THE COURT: And let's see if we can't do it on a Friday.

21 MR. TERRY: Well, why don't -- why don't we reserve the 17th now just so that
22 --

23 THE COURT: The 17th of December?

24 MR. TERRY: Yeah.

25 THE COURT: We can do that.

1 MR. ODOU: That's fine.

2 THE COURT: Is that good for you?

3 MR. ODOU: Yeah.

4 THE COURT: December 17th.

5 THE COURT CLERK: Is that at 8:30, Your Honor.

6 MR. ODOU: And then Your Honor is going to --

7 THE COURT: When do you want to -- what time in the morning? I usually
8 start court at 8:30.

9 MR. ODOU: Fine.

10 THE COURT: 8:30?

11 MR. TERRY: 8:30 is fine with me.

12 THE COURT: Okay.

13 MR. ODOU: And then Your Honor is going to take under submission the
14 standing issue for the Association to pursue the common area claims or what
15 common claims and then there'll be a ruling on that --

16 THE COURT: And I'm gonna warn you right now -- and I think I can speak on
17 behalf of the all cd judges; we're starting to get buried with a lot of these motions.
18 And it's not just the cd cases that we've got; we've got under advisements in other
19 cases as well. So, I mean, I'm starting to fall behind and I know I'm not the only
20 judge.

21 MR. ODOU: Now, we have one that's been pending for about eight or nine
22 months now which kind of --

23 THE COURT: In front of Judge --

24 MR. ODOU: -- the reason why I raise --

25 THE COURT: -- Earl?

1 MR. ODOU: Yeah. The reason why I raise it only is because of with our trial
2 date -- eight or nine months from now we're in trial trying to figure out who's --
3 actually we wouldn't be in trial because we haven't answered. So, I think our trial
4 date needs to be moved. I know we're here for sweeps next week but I just wanted
5 to alert the Court that we need to have that discussion.

6 THE COURT: Okay. I'll discuss it with you next week.

7 MR. ODOU: Thank you, Your Honor.

8 MR. TERRY: Thank you, Your Honor.

9 MR. JENNINGS: Your Honor, Dave Jennings on behalf of D R Horton, bar
10 number 6694.

11 There's just one issue I wanted to address briefly. I know you're going
12 to take under advisement the building envelope issue and I wanted to -- I know Joel
13 has touched on this already, but all the defects that are alleged -- that are included
14 in the building envelope list of defects, those defects were all alleged in the
15 underlying cases in First Light, Courts at Aliante, this one here, those all went up to
16 the Supreme Court. Now, they did not segregate the interior defects versus the
17 building envelope defects. I understand that, but all of those defects went up to the
18 Supreme Court and the Plaintiff's argued a number of times both in the original
19 briefing and on the motion for re-hearing that NRS 116.3102 did not require -- or
20 does not require the HOA to go through a Rule 23 and Shuette analysis to
21 determine whether or not they're allowed to represent them in a class action or
22 representative capacity. And in both cases, both in the main briefing and the oral
23 argument and in the motion for re-hearing the Supreme Court rejected the argument
24 that the Plaintiffs put forth regarding 116.3102. And I've read the Black Mountain
25 case, the ruling on that, and my understanding of that ruling -- and if I'm incorrect

1 issues.

2 MR. TERRY: Okay.

3 MR. ODOU: The Plaintiffs will prepare that order and run it past us.

4 MR. TERRY: Of course.

5 MR. ODOU: In the meantime --

6 THE COURT: Perfect.

7 MR. ODOU: -- I'll ship off a letter to them with the briefing -- proposed briefing
8 schedule. We could even incorporate that if we want.

9 THE COURT: Perfect.

10 MR. TERRY: Great. Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. ODOU: Thank you, Your Honor.

13 [Proceedings concluded at 10:35:50 a.m.]

14 * * * * *

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video recording in the above-entitled case to the best of my ability.


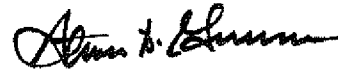
23 
24 NORMA RAMIREZ
25 Court Recorder
District Court Dept. XXII
702 671-0572

EXHIBIT 2



CLERK OF THE COURT

MOT
Paul P. Terry, Jr. (Nev. Bar 7192)
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DISTRICT COURT
CLARK COUNTY, NEVADA

HIGH NOON AT ARLINGTON RANCH
HOMEOWNERS ASSOCIATION, a Nevada
non-profit corporation, for itself and for all
others similarly situated,

Plaintiff

v.

D.R. HORTON, INC. a Delaware Corporation
DOE INDIVIDUALS, 1-100, ROE
BUSINESSES or GOVERNMENTAL
ENTITIES 1-100 inclusive

Defendants.

And Related Cross-Actions

Case No. 07A542616
Dept. XXII

**PLAINTIFF'S MOTION FOR
DETERMINATION THAT THE
SUPERIOR ALTERNATIVE
PROCEDURE TO PROCEED WITH
CLAIMS PURSUANT TO NRS
116.3102(1)(d) IS AS A
REPRESENTATIVE ACTION FOR ALL
MEMBERS' INTERESTS WITH
REGARD TO THE BUILDING
ENVELOPE ISSUES, AND AS A
REPRESENTATIVE ACTION OF THE
ASSIGNEE'S INTERESTS WITH
REGARD TO THE FIREWALL AND
STRUCTURAL ISSUES**

Date:
Time:

1 **PLAINTIFF'S MOTION FOR DETERMINATION THAT THE SUPERIOR**
2 **ALTERNATIVE PROCEDURE TO PROCEED WITH CLAIMS PURSUANT TO NRS**
3 **116.3102(1)(d) IS AS A REPRESENTATIVE ACTION FOR ALL MEMBERS'**
4 **INTERESTS WITH REGARD TO THE BUILDING ENVELOPE ISSUES, AND AS A**
5 **REPRESENTATIVE ACTION OF THE ASSIGNEE'S INTERESTS WITH REGARD**
6 **TO THE FIREWALL AND STRUCTURAL ISSUES**

7 COMES NOW Plaintiff, High Noon at Arlington Ranch Homeowners Association
8 ("Association") by and through its attorneys, Angius & Terry LLP, respectfully seek a
9 determination that the superior means to proceed with the Association's construction defect
10 litigation, pursuant to NRS 116.3102(1)(d), is as a representative action for members'
11 interests with regard to the building envelope issues, and as a representative action
12 concerning the 194 assignees' interests with regard to the firewall and structural issues.

13 This Motion is made and based upon the attached Memorandum of Points and
14 Authorities, together with all papers and pleadings on file herein, which are hereby
15 incorporated by this reference, as well as any oral arguments that may be heard at the time of
16 the hearing of this matter.

17 Dated: April 19, 2013

ANGIUS & TERRY LLP

18
19
20 By: 

Paul P. Terry, Jr., SBN 7192
John J. Stander, SBN 9198
Melissa Bybee, SBN 8390
1120 N. Town Center Dr., # 260
Las Vegas, Nevada 89144
Attorneys for Plaintiff

1 NOTICE OF MOTION

2 TO: All Interested Parties and,
3 TO: Their Respective Attorneys of Record
4

5 PLEASE TAKE NOTICE that PLAINTIFF'S MOTION FOR DETERMINATION
6 THAT THE SUPERIOR ALTERNATIVE PROCEDURE TO PROCEED WITH CLAIMS
7 PURSUANT TO NRS 116.3102(1)(d) IS AS A REPRESENTATIVE ACTION FOR ALL
8 MEMBERS' INTERESTS WITH REGARD TO THE BUILDING ENVELOPE ISSUES,
9 AND AS A REPRESENTATIVE ACTION OF THE ASSIGNEE'S INTERESTS WITH
10 REGARD TO THE FIREWALL AND STRUCTURAL ISSUES will be heard in Department
11 XXII of the above entitled Court on the 21 day of MAY, 2013 at
12 8:30 ~~a.m./p.m.~~ or soon thereafter as counsel may be heard.

13 Dated: April 19, 2013

14 ANGIUS & TERRY LLP

15 By: 

16 Paul P. Terry, Jr., SBN 7192

17 John J. Stander, SBN 9198

18 Melissa Bybee, SBN 8390

19 Angius & Terry, LLP

20 1120 Town Center Dr., # 260

21 Las Vegas, Nevada 89144

22 Attorneys for Plaintiff
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case has been on an appellate roller-coaster up to the Nevada Supreme Court and
4 back several times on a journey to achieve clarification regarding the standing of the Plaintiff
5 homeowners association, High Noon at Arlington Ranch Homeowners Association (hereafter
6 “Association”), to assert claims for various defective components in the development. After
7 much confusion, we now have a measure of clarity from the latest direction provided by the
8 Nevada Supreme Court. The Nevada Supreme Court has now made clear that that purely
9 representative actions brought by homeowners associations on behalf of two or more
10 members for issues that affect the common interest development *are permitted pursuant to*
11 *NRS 116.3102(1)(d)*. Moreover, and notwithstanding the language to the contrary in its
12 earlier decision, *D.R. Horton, Inc. v. Eighth Judicial District Court*, 215 P.3d 697, 699 (Nev.
13 2009) (hereafter “*First Light II*”), the Association’s representational action under NRS
14 116.3102(1)(d) *is not precluded by failure to meet NRCP 23's class action prerequisites*.
15
16

17 Rather than dismiss the representational action for failure to meet the criteria of NRCP
18 23, the Nevada Supreme Court clarified:

19 We clarify that, while purely representative actions brought by
20 homeowners' associations are not necessarily precluded by failure to meet
21 NRCP 23's class action prerequisites, the district court is required, if
22 requested by the parties, to thoroughly analyze and document its findings
23 to support alternatives to class action for the case to proceed, such as
24 joinder, consolidation, or some other manner.

25 *Beazer Homes Holding Corp. v. Eighth Judicial District (View of Black Mountain*
26 *Homeowners' Association, Inc.)*, 291 P.3d 128, 231 (2012) (hereafter “*View of Black*
27 *Mountain*). The NRCP Rule 23 analysis is a tool the District Court must use to help
28

1 determine what the best alternative procedure to utilize, such as joinder, consolidation or
2 some other manner. Ibid.

3 Here, plaintiff Association does not seek class certification under NRCP Rule 23.
4 Rather plaintiff moves the Court to determine the best *alternative* means of proceeding with
5 the representative claims.
6

7 Plaintiff suggests that the best manner of proceeding is for the Court to allow the
8 Association to proceed to represent the members' interests with regard to the defects in the
9 "building envelope." With regard to the firewall and structural issues, the Association can
10 proceed to represent the interests of the assignees, and assert claims with regard to the 107
11 buildings in which there are assigned claims. Any member who does not wish to participate
12 can have the option to "opt out" of the proceedings, and the claims of that particular
13 homeowner will not be asserted.
14

15 This approach is superior in that it complies with the rulings of the Nevada Supreme
16 Court in this case, and its decision in *View Of Black Mountain*. Also, it obviates the concern
17 of involving in the litigation members who do not want to be involved—if they do not wish to
18 be involved, they can opt out of the proceedings.
19

20 **II. STATEMENT OF FACTS**

21 **A. Procedural History**

22 On June 7, 2007, Association filed a Complaint against D.R. Horton alleging
23 constructional defects in the common areas and in the residential buildings. D.R. Horton
24 brought a motion for partial summary judgment, based upon the argument that the Association
25 lacked standing to pursue claims with regard to the buildings which are owned and maintained
26 by the homeowners. On July 9, 2008, the Court entered an order granting D.R. Horton's
27 Motion for Partial Summary Judgment, stating that the Association is precluded from
28

1 pursuing claims related to the individual units. On November 20, 2008, Association filed a
2 Petition for Writ of Prohibition or Mandamus in the Nevada Supreme Court.

3 On September 3, 2009, the Nevada Supreme Court issued an Order Granting Petition,
4 stating that in accordance with the analysis set forth in the companion case *First Light II*, the
5 District Court was to review the claims asserted by the Association to determine, based upon
6 the guidelines set forth in that opinion, whether Association may file suit in a representative
7 capacity for constructional defects affecting the individual units.

9 Plaintiff then brought a Motion for Declaratory Relief Re: Standing Pursuant To
10 Assignment and Pursuant to NRS 116.3102(1)(d) which was filed September 30, 2010, and
11 heard on November 10, 2010. The District Court issued an order dated February 10, 2011
12 granting plaintiff's motion in part and denying it in part.¹ Both Association and D.R. Horton
13 brought writs regarding portions of that order.

15 On January 25, 2013, the Nevada Supreme Court issued a ruling granting the petition
16 for writ brought by D.R. Horton,² and a separate ruling denying the petition for writ brought
17 by Association.³

18 ///

19 ///

20 ///

22
23 ¹ A copy of the Court's Order regarding Plaintiffs' Motion for Declaratory Relief Re:
24 Standing Pursuant To Assignment and Pursuant to NRS 116.3102(1)(d) is attached hereto as
Exhibit 1.

25 ² A copy of the Nevada Supreme Court's Order granting the petition of D.R. Horton, dated
26 1/25/2013 is attached hereto as Exhibit 2 (hereafter "Order Granting Petition.")

27 ³ A copy of the Nevada Supreme Court's Order denying the petition of Association, dated
28 1/25/2013 is attached hereto as Exhibit 3 (hereafter "Order Denying Petition.")

1 **B. General Facts**

2 This matter concerns a planned townhome development⁴ known as High Noon at
3 Arlington Ranch (hereafter "Association"). Plaintiff Association is a Nevada non-profit
4 corporation with an elected Board of Directors which governs the development and the
5 Association is comprised of 114 buildings with three units per building, for a total of 342
6 units. The development construction type is wood framed walls, with concrete tile roofing,
7 and a one-coat stucco system. Association was developed, constructed and sold by D.R.
8 Horton in or about 2005.
9

10 **C. Assignments**

11 To date, Association is the assignee pursuant to executed Assignment of Claims, of the
12 claims of 194 unit owners (out of a total of the 342 units).⁵ The assigned units are located in
13 107 of the 114 buildings.
14

15 **D. Inspection And Testing**

16 Association, through its retained experts, has conducted extensive testing and
17 investigation of the buildings. The building envelopes and firewall systems were inspected by
18

19 ⁴ Association refers to the development as a "townhome development." However, with the
20 stacked configuration of the multiple residences within the buildings, one would expect the
21 units at High Noon at Arlington to be condominiums. They are not classic "condominiums"
22 because D.R. Horton drafted the CC&Rs in such a way as to virtually strip the Association of
23 all of the maintenance and ownership responsibilities over the common areas of the buildings
24 that a condominium association would normally have. Where a condominium association
25 would have maintenance responsibilities over, for example, the building envelope—here D.R.
26 Horton has assigned that responsibility to the unit owners. This was done solely in an effort
27 to strip the Association of standing to pursue such issues should constructional defects arise.

28 ⁵ The assignments are attached hereto as Exhibit 4. A spreadsheet of assigned units is
 attached hereto as Exhibit 5. A map of the buildings containing assigned units is attached as
 Exhibit 6.

1 RH Adcock & Associates.⁶ The structural elements were inspected by Marcon Forensics,
2 Inc.⁷

3 **1. Building Envelope**

4 **a. Roofs**

5 Association's expert, RH Adcock and Associates has visually and destructively
6 inspected 51 of the 114 building roofs—which is 44.7 percent of the roofs. Defects in tile and
7 roof component installation were identified at 100% of the roofs inspected. While the exact
8 configuration of defects varied somewhat from roof to roof, the extent and location of the
9 defective components vary from roof to roof, the same patterns of defective conditions were
10 observed throughout the development. Each of the roofs is defective, and the repair
11 recommendation for each of the roofs is the same.⁸

12 **b. Decks and Balconies**

13 Mr. Adcock and his inspectors visually inspected 52 private balconies, and
14 destructively tested seven. The defects found at the privacy balconies were uniform—the
15 same defects were identified at 100% of the decks inspected.⁹ Those defects include use of
16 inappropriate sheet metal nails, incomplete and inadequate sheet metal flashing laps; lack of
17
18
19
20
21
22

23 ⁶ The CV of the architectural expert is attached hereto as Exhibit 7. Their report is attached
24 hereto as Exhibit 8.

25 ⁷ The CV of the structural engineer is attached hereto as Exhibit 9. Their report and matrix of
26 locations is attached here as Exhibit 10.

27 ⁸ *Ibid.*

28 ⁹ See Adcock Report, Exhibit 8, pp. 63-73.

1 sealant at same; and inadequate sloping of the deck surfaces.¹⁰ The repair recommendation
2 for each balcony is the same.¹¹

3
4 **c. One Coat Stucco System**

5 Mr. Adcock and his inspectors visually inspected 65 of the 114 building exteriors to
6 date. The same defects were observed at 100% of the buildings inspected. These defects
7 include excessive cracking; penetrations not sealed; missing backing at horizontal surfaces;
8 improper sheathing at such surfaces; defects in the waterproof membrane at horizontal
9 surfaces; and foam plant-ons notched to accommodate shutters. Again, each of buildings did
10 not exhibit each of these defects—but all of the buildings exhibited some or all of these
11 defects, and the repair recommendation is the same in each building.¹²

12
13 **d. Doors**

14 R.H. Adcock visually inspected 57 sliding glass doors, and invasively tested 11 of
15 them.¹³ They visually inspected 32 main entry doors, and destructively tested nine. They
16 visually inspected 28 French doors, and destructively tested five. Again, R.H. Adcock found
17 defects at each of the doors inspected, including water intrusion at the doors, defects in the
18 door frame sealing and at head flashing. Not every door exhibited every defect, but each door
19 inspected was defectively installed with regard to one or more of the defective conditions
20 observed.¹⁴ The repair recommendation is the same for each of the defective doors.¹⁵

21
22 ¹⁰ *Ibid.*

23 ¹¹ *Ibid.*

24 ¹² See Adcock Report, Exhibit 8, pp. 74-85.

25
26 ¹³ Sliding glass doors only exist in unit types 102 and 103. French Doors exist in unit types
27 101 and at some unit types 102 and 103.

28 ¹⁴ See Adcock Report, Exhibit 8, pp. 86-96.

1 **e. Windows**

2 R.H. Adcock visually inspected 719 weather exposed windows at 91 units, and
3 invasively tested 25 windows. Every window inspected was found defective. The main
4 defects identified include: Leaking window during spray tests, EPS not sealed at frame,
5 missing or incomplete sealant behind nail fin, flashing improperly installed, shear panels at
6 windows short of window fin,, improper penetrations through nail fin, and alarm contacts
7 drilled at sill of windows.¹⁶ Although every window did not exhibit every defect identified,
8 every window observed was defective in one or multiple ways. The repair recommendation is
9 the same for each window.¹⁷

11 **2. Fire Resistive Construction**

12 Defects were found in both the unit to unit fire separation walls, and the garage to unit
13 fire separation walls. Adcock destructively tested 13 fire walls. Defects in the firewalls were
14 identified at 100% of the locations inspected.¹⁸

16 **3. Structural**

17 Structural engineer Felix Martin of Marcon Forensics, inspected the structural systems
18 of the building, and discovered serious structural deficiencies at each of the locations
19 inspected. For example, they identified insufficient nailing at the shear wall, insufficient
20 width of shear wall, nailing at foundation hold down strap missing, floor to floor hold down
21

22
23
24 ¹⁵ *Ibid.*

25 ¹⁶ See Adcock Report, Exhibit 8, pp. 134-160.

26 ¹⁷ *Ibid.*

27 ¹⁸ See Adcock Report, Exhibit 8, pp. 107-121.
28

1 strap and sill nailing misses rim joist at exterior walls.¹⁹ Each of the locations inspected
2 revealed structural insufficiencies and defects. These defects by their very definition, affect
3 the entirety of the buildings in which they exist, and therefore by definition affect two or more
4 homeowners.

5 **III. ARGUMENT**

6 **A. As Confirmed By Recent Rulings Of The Nevada Supreme Court, 7 Association Does Have Standing Pursuant to NRS 116.3102(1)(d) to Bring A 8 Representative Action**

9 **1. Notwithstanding the Outcome of a NRCP Rule 23 Analysis, Association 10 Does Have Standing To Assert Claims On Behalf of its Members**

11 After much confusion in the District Courts arising from the *First Light II* decision,
12 the Nevada Supreme Court clarified its ruling in *Beazer Homes, Inc. v. District Court (View of*
13 *Black Mountain HOA)*, 291 P.3d 128 (2012) (hereafter "*View of Black Mountain*".) In that
14 decision, the Supreme Court clarifies that NRS 116.3102(1)(d) does in fact confer standing to
15 the Association to assert claims on behalf of its members for matters affecting the common-
16 interest community.

17
18 **We clarify that, while purely representative actions brought by**
19 **homeowners' associations are not necessarily precluded by failure to**
20 **meet NRCP 23's class action prerequisites, the district court is required, if**
21 **requested by the parties, to thoroughly analyze and document its findings to**
22 **support alternatives to class action for the case to proceed, such as joinder,**
23 **consolidation, or some other manner.**

24 *View of Black Mountain, supra*, 291 P.3d at 131 (emphasis added.)

25 The Supreme Court further clarifies that this is true even if the Association cannot
26 satisfy the requirements of NRCP Rule 23.

27 Accordingly, so long as a common-interest community association is acting
28 on behalf of two or more units' owners, it can represent its members in

¹⁹ See Marcon Forensics Report and Matrix, attached as Exhibit 10.

1 actions concerning the community. This statute affords the common-interest
2 community association not only the right to come into court, but also the
3 right to obtain relief solely on behalf of its members. [Citations.] **Failure to**
4 **meet any additional procedural requirements, including NRCP 23's**
5 **class action requirements, cannot strip a common-interest community**
6 **association of its standing to proceed on behalf of its members under**
7 **NRS 116.3102(1)(d).** [Citations].

8 *View of Black Mountain, supra*, 291 P.3d at 134 (emphasis added.)

9 **2. Clarified Role of NRCP Rule 23 Analysis In Determining** 10 **Representational Standing**

11 In *View of Black Mountain*, the Nevada Supreme Court clarifies its holding in *First*
12 *Light II*, requiring that a NRCP Rule 23 analysis be performed in connection with NRS
13 116.3102(1)(d) standing analysis. The Supreme Court clarifies that, notwithstanding
14 language to the contrary in *First Light II*, representative standing under NRS 116.3102(1)(d)
15 *is not dependent upon satisfaction of the NRCP Rule 23 criteria*. Rather, the Court states, the
16 Rule 23 analysis must be performed not to determine whether there is standing (there is) but
17 rather to assist the District Court in determining the best method of proceeding with the
18 representative case. The *View of Black Mountain* Court stated:

19 We now clarify that, notwithstanding any suggestions in *First Light II* to the
20 contrary, failure of a common-interest community association to strictly
21 satisfy the *NRCP 23* factors does not automatically result in a failure of the
22 representative action.

23 Nevertheless, analyzing the factors when requested to do so is necessary for
24 a variety of reasons, and the analysis will help guide both the court and the
25 parties in developing a meaningful and efficient case management plan. **In**
26 **analyzing the factors, district courts are not determining whether the**
27 **action can proceed; rather, they are determining how the action should**
28 **proceed, i.e., whether it is treated like a class action, a joinder action,**
29 **consolidated actions, or in some other manner.**

30 *View of Black Mountain, supra*, 291 P.3d at p. 135 (emphasis added.) The Court goes on to
31 clarify further the roll of the NRCP Rule 23 analysis in this context:

1 If the association meets all of *NRCP 23's* requirements, it may then proceed
2 with the litigation in a class action format. If not, the district court must
3 determine an alternative for the action to proceed such as a joinder action,
consolidated action, or in some other manner.

4 *View of Black Mountain, supra*, 291 P.3d at p. 136.

5 Here, it is important to note that Association is not moving for certification of a class.
6 Therefore, in this case an NRCP Rule 23 analysis is necessary—but not to determine whether
7 or not a class action can be certified, but rather, as set forth in *View of Black Mountain*, to
8 assist the court in determining the best alternative method in which to proceed.
9

10 **3. Since The Defects Here Affect Two Or More Units Owners On Matters**
11 **Affecting The Common-Interest Community, The Association Does Have**
12 **Representational Standing Under NRS 116.3102(1)(d) to Pursue Those**
13 **Claims**

14 Here, there is no doubt but that the constructional defects at the High Noon at
15 Arlington Ranch development affect two or more units owners on matters affecting the
16 common-interest community.

17 The building envelope, for purposes of this motion, is defined as the roof system,
18 stucco system, and exterior openings (windows and doors). The building envelope is a
19 monolithic structure, and can only be repaired as a whole. It would be absolutely ridiculous
20 for one homeowner on his or her own to undertake a repair of their one third of the roof, or
21 their one third of the stucco or envelope openings. Water intrusion into the envelope
22 anywhere on the building affects all of the homeowners of the building. Each of the alleged
23 building envelope claims, by their very nature concern two or more homeowners.
24

25 Similarly, both the firewall and the structural systems in the buildings, by the very
26 nature of the component, involve two or more members of the community. The firewall
27 exists between two units, and a defect in the firewall compromises the fire resistive capacity
28

1 of the entire building. Similarly, where there is a defect in the structural integrity of the
2 buildings, that defect necessarily affects every owner in that building and affects the common
3 interest community.

4
5 **4. The Holding in *View of Black Mountain* is Consistent With The Nevada**
6 **Supreme Court's Orders Granting And Denying The Respective Writ**
7 **Petitions Brought In This Case**

8 Both Association and D.R. Horton brought writ petitions to the Nevada Supreme
9 Court, challenging portions of the District Court's order on Association's motion for
10 declaration re standing. The Nevada Supreme Court granted D.R. Horton's writ petition, and
11 denied the writ petition brought by Association.

12 Obviously, the Supreme Court's Orders regarding the Writ Petitions in this matter are
13 consistent with its decision in *View of Black Mountain*. The Supreme Court confirmed in its
14 Order Granting Petition in this matter, that:

15 "[F]ailure of a common-interest community association to strictly satisfy the
16 NRCP 23 factors does not automatically result in a failure of the
17 representative action."

18 In this order²⁰, the Supreme Court confirmed that an Association cannot proceed as a
19 representative in a class action without satisfying the criteria of NRCP Rule 23.

20 Accordingly, even if an HOA has standing under NRS 116.3102(1)(d) to
21 institute a representative action on behalf of two or more of its members, the
22 HOA still must satisfy the requirements of NRCP 23 **if it wishes to bring**
23 **its representative action as a class-action suit.**²¹

24 The Nevada Supreme Court granted the writ petition of D.R. Horton, because it found that the
25 District Court impermissibly did not conduct an NRCP Rule 23 analysis regarding the

26
27 ²⁰ Order Granting Petition, Exhibit 2, at p. 3 [Quoting *View of Black Mountain*.]

28 ²¹ Order Granting Petition, Exhibit 2, at p. 3 (Emphasis added.)

1 building envelope issues.²² This also is consistent with its ruling in *View of Black Mountain*.
2 In that case, and as set forth above, the Nevada Supreme Court clarified that an NRCP Rule
3 23 analysis must be performed, not to determine if the association has representational
4 standing, but to determine what is the most appropriate means to proceed with;
5 representational action, class action, joinder, consolidation, or some other method. *View of*
6 *Black Mountain, supra*, 291 P.3d at 135, 136.
7

8
9 **B. Rather Than as a Class, the Best Alternative Means To Proceed is: 1) With**
10 **Regard to the Building Envelope Issues, as a Representative Action on Behalf**
11 **of All Homeowners; and 2) With Regard to the Firewall and Structural**
12 **Issues, as a Representative Action on Behalf of All Assignees**

13
14 **1. A Representative Action of All Homeowners Is The Superior Means to**
15 **Proceed With Regard to the Building Envelope Claims**

16 As set forth above, and as confirmed by the *View of Black Mountain* Court, the
17 Association does have standing to proceed with its members claims under NRS
18 116.3102(1)(d). The court is to determine the best means for this representative action to
19 proceed. Association suggests that the best means of proceeding with these claims is for the
20 Association to assert the claims of all of its members in a representative action with regard to
21 all claims involving the building envelopes (roofs, stucco, windows, doors and
22 decks/balconies.)

23 As detailed in the NRCP Rule 23 analysis below, there is an overwhelming
24 commonality of defects in all of the buildings at the High Noon at Arlington Ranch
25 development, with regard to the building envelope defects. The defects all necessarily affect
26 multiple unit owners, and a repair of the defects will similarly involve multiple units. For
27 example, it is impossible to effectively fix the roof of one unit in a multi-unit building without

28 ²² *Ibid.* at p. 5.

1 affecting the other units—the units all share one roof. If any owner of a unit does not want to
2 be involved, that owner will be given the opportunity to opt out, and the pro rata proportion of
3 the building envelope claims in that building will not be pursued.

4
5 **2. A Representative Action of All Assignees Is the Superior Means to**
6 **Proceed With Regard to the Fire Resistive and Structural Claims**

7 With regard to claims in the interior components of the buildings—the fire resistive
8 and the structural claims—the Association suggests that the superior means to proceed is as a
9 representational action in which the Association stands in the shoes and represents the claims
10 of the 194 homeowners who assigned their claims to the Association.

11 By virtue of the assignments, as well as NRS 116.3102(1)(d), Association has standing
12 to pursue the firewall and structural claims arising in all of the buildings in which even one
13 assignee owns a unit.²³ This is so because defects arising from and relating to those buildings
14 **will necessarily impact the rights of the assigning homeowners.** The assigning
15 homeowners have standing to redress those defects which affect their units—and those rights
16 have been given to Association by virtue of the assignments.

17
18 It is an elemental principal of law that a problem caused on one person's property
19 which adversely affects a second person's property, gives rise of a claim by the second person
20 to redress the problem. For example, if a negligently started fire in Mr. Smith's home spreads
21 and proximately causes damage to Mr. Jones' home, Mr. Jones would have redress against the
22 negligent actor for the fire damage caused. This is the basic legal principle of proximate
23 causation. See e.g., *Bower v. Harrah's Laughlin, Inc.* 215 P.3d 709, 724 (Nev. 2009) (A
24 negligence claim will stand if the negligence was both foreseeable and the actual cause of
25 plaintiff's harm). See also, *Arguello v. Sunset Station, Inc.*, 252 P.3d 206, 208 (2011). NRCF
26

27
28 ²³ The 194 assignees own units in 107 of the 114 buildings.

1 17(a) provides that "[e]very action shall be prosecuted in the name of the real party in
2 interest." A real party in interest "is one who possesses the right to enforce the claim and has
3 a significant interest in the litigation." *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498
4 (1983). A homeowner of a unit in a building that contains defects in the firewall or structural
5 components of that building is damaged by the defect. That owner therefore is the real party
6 in interest, and has standing to assert a claim regarding that defective condition. That owner
7 can then, as was done here, assign those claims.
8

9 Negligent construction within the portion of a common component owned by one
10 homeowner (whether it is in the building envelope, firewalls, or structural elements) will both
11 foreseeably and necessarily adversely affect the rights of each homeowner in that building.
12 Each of the homeowners in that building is damaged, and each homeowner in the building is
13 the real party in interest to make a claim for that defect. Each homeowner therefore has
14 standing to redress constructional defects throughout his or her building which affect the
15 entire building. Thus where a homeowner assigned his or her claims to Association,
16 Association is the real party in interest, and has standing to assert claims for such defects
17 throughout the entire building.
18

19 If any owner of a unit contained in a building with an assignment does not want to be
20 involved, that owner will be given the opportunity to opt out, and the pro rata proportion of
21 the firewall and structural claims in that building will not be pursued by the Association.
22

23 **3. Rule 23 Analysis For the Sole Purpose of Determining the Preferred** 24 **Alternative Means to Proceed**

25 The Nevada Supreme Court has directed this Court to perform a thorough NRCP Rule
26 23 analysis regarding the "building envelope claims."²⁴ This is consistent with the Supreme
27

28 ²⁴ See Order Granting Petition, Exhibit 2, at p. 5.

1 Court's directive in *View of Black Mountain*, that a NRCP Rule 23 analysis must be
2 performed to aid the court in determining the best alternative method of proceeding with
3 regard to the NRS 116.3102(1)(d) representational claims. *View of Black Mountain, supra*,
4 291 P.3d at 135.

5 Pursuant to NRCP 23(a), a class (here representative action) is appropriate when:

- 6 (1) The class is so numerous that joinder of all members is impractical;
7
8 (2) There are questions of law or fact common to the class;
9
10 (3) The claims or defenses of the representative parties are typical of
11 the claims or defenses of the class; and
12
13 (4) The representative parties will fairly and adequately protect the
14 interests of the class.

15 NRCP 23(a).

16 In addition to these four requirements, a litigant must also satisfy at least one of the
17 categories of NRCP 23(b) which generally evaluates "whether maintaining a class action is
18 logistically possible and superior to other actions." *Meyer v. District Court*, 110 Nev. 1357,
19 1363, 885 P.2d 622, 626 (1994). Specifically, NRCP 23(b) provides:

20 An action may be maintained as a class action if the prerequisites of
21 subdivision (a) are satisfied, and in addition:

22 (1) The prosecution of separate actions by or against individual
23 members of the class would create a risk of

24 (A) Inconsistent or varying adjudications with respect to individual
25 members of the class which would establish incompatible standards of
26 conduct for the party opposing the class, or

27 (B) adjudications with respect to individual members of the class
28 which would as a practical matter be dispositive of the interests of the
other members not parties to the adjudications or substantially impair
or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds
generally applicable to the class, thereby making appropriate final

1 injunctive relief or corresponding declaratory relief with respect to the
2 class as a whole; or

3 (3) The court finds that the questions of law or fact common to the
4 members of the class predominate over any questions affecting only
5 individual members, and that a class action is superior to other
6 available methods for the fair and efficient adjudication of the
7 controversy. The matters pertinent to the findings include: (A) the
8 interest of members of the class in individually controlling the
9 prosecution or defense of separate actions; (B) the extent and nature of
any litigation concerning the controversy already commenced by or
against members of the class; (C) the desirability or undesirability of
concentrating the litigation of the claims in the particular forum; (D)
the difficulties likely to be encountered in the management of a class
action.

10 NRCP 23(b).

11 For purposes of this motion, Plaintiffs will focus on the third requirement of NRCP
12 23(b) by showing that common questions predominate over individual questions and that
13 therefore a representative action is the superior method of adjudication.

14 **a. The Class is so Numerous that Joinder is Impracticable.**

15 In *View of Black Mountain, supra*, the Supreme Court gave us guidance as to how this
16 prong of the NRCP Rule 23 analysis is applicable to NRS 116.3102(1)(d) representational
17 claims. The Court stated:

18 Thus, for example, in examining the numerosity requirement, which
19 questions whether "the members of a proposed class [are] so numerous
20 that separate joinder of each member is impracticable," *Shuette*, 121
21 Nev. at 846, 124 P.3d at 537, the court need only determine that the
22 common-interest community association's representative action claim
23 pertains to at least two units' owners; if so, the representative action is
24 permissible and cannot be defeated on the ground that the represented
25 members are insufficiently numerous. See NRS 116.3102(1)(d).
Nevertheless, evaluating the number of individual homeowners' units
involved can help determine whether the case will proceed more like a
class action, joinder action, or in some other fashion and how
discovery, recovery, and claim preclusion issues should be addressed.

26 *View of Black Mountain, supra*, at 135.

27 The putative "class" of assignors at High Noon at Arlington Ranch is sufficiently
28 numerous to make actual joinder of all the assignors impracticable. Impracticability factors

1 such as judicial economy, geographic dispersion of class members, financial resources of
2 class members and ability of class members to bring individual suits should be taken into
3 consideration when analyzing the numerosity requirement. *Shuette v. Beazer Homes*
4 *Holdings Corp.*, 121 Nev. 837, 847, 124 P.3d 530, 537 (2005).

5 There are 342 units in High Noon at Arlington Ranch, and there are 194 assignors.
6 Certainly litigating over 300, or even 194 of the same claims individually would not be
7 judicially economical, especially when dealing with similar breach of warranty and
8 negligence claims.

9 While an individual homeowner may ultimately recover his or her reasonable expert
10 and investigation costs under NRS 40.655, it is still financially burdensome to the homeowner
11 given the fact that he or she would have to advance these costs before a verdict. This may in
12 fact make homeowners hesitant to bring their action forward. Thus, even though the unit
13 owners may be close in geographical location the high costs associated with bringing an
14 individual or joinder construction defect action make it impractical.

15 Therefore, allowing the Association to step into the shoes of the assignors and proceed
16 with the assigned claims is the preferable method.

17 **b. The Instant Action Involves Common Questions of Law and Fact.**

18 The Supreme Court also gave guidance regarding application of this criterion in the *View*
19 *of Black Mountain* decision. The Court stated:

20 The commonality requirement, which examines the factual and legal
21 similarities between claims and defenses, *Shuette*, 121 Nev. at 846,
22 124 P.3d at 537, and the *NRCP 23(b)(3)* predominance requirement,
23 which questions whether common questions predominate over
24 individualized questions, will affect whether the member "class" is
25 divided into subclasses and, if so, how. They also affect the resolution
26 of generalized proof and other evidentiary questions and influence
27 how trial will proceed. In *First Light II*, we noted that "the district
28 court may classify and distinguish claims that are suitable for class
action certification from those requiring individualized proof." 125
Nev. at 459, 215 P.3d at 704. By evaluating the commonality and
predominance requirements, the court can best organize the
proceedings for the particular circumstances of the case.

1 *View of Black Mountain, supra*, at 135.

2 The "Commonality" prong of Rule 23 can be satisfied by a single common question of
3 law or fact. *Shuette, supra*, 121 Nev. at 848; *Meyer v. District Court*, 110 Nev. 1357, 1363,
4 885 P.2d 622, 626 (1994). "Commonality does not require that all questions of law and fact
5 must be identical, but that an issue of law or fact exists that inheres in the complaints of all the
6 class members." *Id.* Here questions of law and fact are common throughout the
7 development.

8 Here, every resident of High Noon at Arlington Ranch is affected by the constructional
9 defects both in their own units and in the other units in their buildings. Common issues
10 include whether D.R. Horton negligently constructed the unit owners' residences and whether
11 D.R. Horton breached any express and implied warranties in light of defects in the
12 construction of Plaintiffs' residences. As such, Association has satisfied the commonality
13 element.

14 **c. The Claims and Defenses of the Association are Typical of the**
15 **Class**

16 Here also, the *View of Black Mountain* Court provides guidance:

17 Reviewing any concerns with typicality and adequacy, which seek to
18 ensure that the class members are fairly and adequately represented by
19 the plaintiffs, will affect issues regarding notice to the association
20 members and influence how claim preclusion issues should be
21 addressed. [Citation.] As the California court noted, a common-
22 interest community association "is typically the embodiment of a
community of interest." *Id.* Although the typicality of the claims
pertaining to at least two of the units will generally meet the adequacy
requirement, issues regarding the overall adequacy of representation
must be determined by the district court. [Citation.]

23 *View of Black Mountain, supra*, at 136.

24 In this matter, Association is the assignee of over one half of the unit owners at the
25 development. Therefore, its claims are literally the same as the homeowners. Also, with
26 regard to the units and buildings for which the Association does not have an assignment, the
27 claims of its assignors (which the Association is exercising) are similar to and very typical of
28 the claims of the other unit owners.

1 Association's claims and applicable defenses are typical of the other owners.
2 Typicality is satisfied when "each class member's claim arises from the same course of events
3 and each class member makes similar legal arguments to prove the defendant's liability."
4 *Shuette*, 121 Nev. at 848-49, (citing *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993)).
5 This does not require all class member claims to be identical. *Id.* at 849. Thus, "certification
6 will not be prevented by mere factual variations among class members' underlying individual
7 claims." *Id.*

8 The Court in *Deal v. 999 Lakeshore Association*, *supra*, 94 Nev. 301, recognized that
9 where the roofs leaked in every one of the buildings, and that that all of the unit owners were
10 assessed for repairs to the roof area, each of the homeowners suffered damage, and their
11 claims were typical of the other homeowners. See *Deal v. 999 Lakeshore Association*, *supra*,
12 at 306.

13 Here, the owners who have assigned their claims to the Association have suffered
14 injury from the same course of events as those who have not. Their claims rest on the same
15 legal arguments of breach of express and implied warranties as well as negligence to prove
16 D.R. Horton's liability. Each High Noon at Arlington Ranch homeowner from the putative
17 "class" would advance these same common construction defect legal arguments if they were
18 to individually pursue relief for their construction defects. Therefore, the claims and defenses
19 of the Association are typical of the entire High Noon at Arlington Ranch membership.

20
21 **d. The Association Will Fairly and Adequately Protect the Interests of
the Membership**

22 The Association will fairly and adequately protect the interests of the membership. To
23 satisfy this prong, generally the class representatives (here the Association) and members
24 must "possess the same interest and suffer the same injury" as the other class members in
25 order to avoid any potential conflicts of interest. *Shuette*, *supra*, 121 Nev. at 849.

26 Here, the Association and its assignors have suffered the same injury in that their
27 homes were built in the same defective manner as the rest of the unit owners. Moreover, the
28

1 Association, its assignors and the other homeowners all possess the same interest in proving
2 the defects and otherwise seeking compensation to remedy the condition of the building
3 components. Accordingly, the Association will fairly and adequately protect the interests of
4 the unit owners of High Noon at Arlington Ranch.

5 Additionally, the quality of the Association counsel must be taken into consideration.
6 *In re Dalkon Shield IUD Products Liability Litig.*, 693 F.2d 847 (9th Cir. 1982). The law firm
7 of Angius & Terry LLP is more than qualified in representing the class. The firm has handled
8 numerous class action lawsuits dealing with construction defects. A-V rated attorney Paul P.
9 Terry, Jr. has several years of litigation experience in handling complex matters relating to
10 construction defects. As such, the membership will be adequately represented by Angius &
11 Terry LLP.

12 **e. Common Questions of Law and Fact Predominate Over Individual**
13 **Questions and a Class Action is the Superior Method of**
14 **Adjudication**

15 In addition to satisfying the numerosity, commonality, typicality, and adequacy of
16 representation elements of NRCP 23(a), Plaintiff must also fulfill at least one of the
17 requirements outlined under NRCP 23(b)(3)—that common questions predominate over
18 individual questions, and that the class action is a superior method of adjudication of the
19 claims. Here, those prongs are met.

20 **1. Common Questions Predominate Over Individual Questions**

21 The predominance prong “tests whether proposed classes are sufficiently cohesive to
22 warrant adjudication by representation.” *Amchem Products, Inc. v. Windsor*, 521 U.S. 591,
23 625 (1997). The rule “does not require uniformity of claims across the entire class” and
24 “presupposes that individual issues will exist.” *Payne v. Goodyear Tire & Rubber Co.*, 216
25 F.R.D. 21, 26 (D. Mass. 2003). “There is no rigid test of predominance; rather, it simply
26 requires a finding that a sufficient constellation of issues binds class members together.” *Id.*
27 (quoting *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 296 (1st Cir. 2000)). “A
28 single, central issue as to the defendants’ conduct vis a vis class members can satisfy the

1 predominance requirement even when other elements of the claim require individualized
2 proof.” *Id.*

3 Here, adequate notice under Chapter 40 was given as to the condition of the entire
4 project to the entire prospective “class”. The claims and defenses are common to every
5 building. Moreover, the Association’s claims are similar to claims made in condominium
6 cases where the Association maintains the envelope, and therefore class representation is not
7 required.

8 Indeed, if during discovery it is determined that cost of repair or replacement damages
9 greatly vary, the “class” can easily be broken down into “subclasses” according to plan type,
10 phases or other variables contributing to the variance in damages. Of course, the same
11 subclass breakdown could be used in case any variance in causation issues arises during
12 discovery. Therefore, individual questions can be minimized through the use of subclasses,
13 thereby making the common questions predominant.

14 This approach was endorsed by the Court in *First Light II*. As the Court stated:

15 And if necessary, NRCP 23(c)(4) allows the district court to certify a
16 class action with respect to certain issues or subclasses. To that end,
17 the district court may classify and distinguish claims that are suitable
18 for class action certification from those requiring individualized proof.

19 *First Light II, supra* at p. 704.

20 **a. A Representative Action is the Superior Method of Adjudication**

21 Plaintiffs also satisfy the superiority element of NRCP 23(b)(3). The purpose of a
22 class action is to prevent the same issues from “being litigated over and over[,] thus
23 avoid[ing] duplicative proceedings and inconsistent results.” *Shuette, supra*, 121 Nev. at 852
24 (citing *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 701 (N.D.Ga. 2001)). “It also helps
25 class members obtain relief when they might be unable or unwilling to individually litigate an
26 action for financial reasons or for fear of repercussion.” *Id.* In general, “class action is only
27 superior when management difficulties and any negative impacts on all parties’ interests ‘are
28 outweighed by the benefits of class wide resolution of common of common issues.’” *Id.*

1 (quoting *Peltier Enterprises, Inc. v. Hilton*, 51 S.W.3d 616, 624 (Tex.App.2000)). Here, the
2 common issue of the defective buildings in High Noon at Arlington Ranch, the sheer volume
3 of potential class members, and the high costs in expert and legal fees, easily tip the balancing
4 scale in favor of class-wide resolution.

5 The decisions in *Blumenthal v. Medina Supply Company*, 139 Ohio App.3d 283, 743
6 N.E.2d 923 and *Payne v. Goodyear Tire and Rubber Co.*, 216 F.R.D. 21 (D. Mass. 2003)
7 offer some insight on the superiority of the class action in the instant case. In *Blumenthal*, a
8 group of Ohio homeowners sued the concrete manufacturer of their concrete driveways
9 because there was too much water in the design mix thereby causing the concrete to become
10 weak and crack and crumble. *Blumenthal, supra*, 139 Ohio App.3d 283, 743 N.E.2d 923.
11 The trial court initially certified a class that included thousands of Ohio homeowners, but then
12 decertified the class on the predominance and superiority prongs because of a high
13 concentration of individual issues that could have contributed to the concrete's failure;
14 specifically, curing procedures, concrete placement, the handling by various contractors and
15 actions by the homeowners post installation. *Id.* However, the Ohio appellate court deemed
16 the decertification improper and ruled, in relevant part:

17 The difficulties and complexities affecting the claims of individual
18 class members do not outweigh the efficiency and economy of a
19 common adjudication in this case. It must be remembered that the
20 class affects approximately one thousand property owners throughout
21 northern Ohio who were supplied concrete by Medina. The individual
22 financial claims of these property owners in the class are, given the
23 size and cost of a typical residential driveway, relatively small in
24 dollar terms, less than \$10,000 each. The individual claim, when
25 viewed against the typical legal and expert witness fees customarily
26 employed to litigate such a claim, necessarily militates against the
27 bringing of individual small damage claims in favor of resolving these
28 claims in a more efficient and economical legal vehicle for all parties,
namely, a class action, wherein the claims can be aggregated and the
common theories advanced for recovery. . . . [to avoid] the geometric
explosion of expenses and costs that these multiple cases would
necessarily generate.

Id. at 296-97

1 Thus, the court emphasized the high class volume and the high litigation costs as major
2 factors in evaluating the superiority prong and holding that certification was proper. *Id.*

3 The *Payne v. Goodyear* court noted the same factors in holding that a class action was
4 the superior method of adjudicating the issue of an alleged defective rubber hose used in
5 radiant floor heating systems affecting around 2,000 homes. See *Payne, supra*, 216 F.R.D. 21
6 (D. Mass. 2003). Specifically, the court ruled, in pertinent part:

7 [A] class action would best serve the underlying purposes of Rule
8 23(b) by assuring aggrieved consumers their day in court. "The core
9 purpose of Rule 23(b)(3) is to vindicate the claims of consumers and
10 other groups of people whose individual claims would be too small to
11 warrant litigation." While the claims of many class members are not
12 insubstantial -- perhaps tens or even hundreds of thousands of dollars --
the litigation costs, including extensive scientific expert analysis, of
pursuing individual claims against Goodyear would be likely, in many
cases, to be prohibitive."

13 *Id.* at 29.

14 Like *Blumenthal* and *Payne*, and perhaps even more so, the putative class in the instant
15 case is far too numerous to efficiently proceed any other way than a class action. Again, the
16 putative class encompasses at least 340 homes. It simply would create an undue burden on
17 the court system to hear over 340 individual claims regarding the same issues of whether or
18 not the same building components are defective.

19 Also like *Blumenthal* and *Payne*, and perhaps even more so, the expected high
20 litigation costs would likely deter individual homeowners from bringing forward their claims.
21 Construction investigations as well as expert testimony, can be extremely expensive and
22 would likely be a prohibitive financial burden on a single homeowner. While NRS 40.655
23 allows a homeowner to ultimately recover these investigation and expert costs from the
24 builder and/or subcontractors, the reality remains that the homeowner would need to advance
25 all of these costs years before recovery. Allowing the instant action to proceed as a class will
26 minimize these expenses to the class since investigations will be limited to a representative
27 sample of homes and the associated costs will be shared by all class members. Any attorneys'

1 fees and associated costs would also be shared by the class as opposed to each individual class
2 member paying for their own attorneys' fees and costs through individual actions regarding
3 the same issues.

4 Accordingly, the common issues of the defective of the envelope and other issues at
5 over 340 homes, and the anticipated high litigation costs associated with the claims, makes a
6 representative action the superior method of adjudication in the case at hand.

7
8 **C. Proceeding As a "Joinder" of the Assignment Claims is the
9 Preferable Way to Proceed**

10 **1. Association Has Assignments From 194 Of The Homeowners,
11 Owning some or all of 107 of the 110 Buildings**

12 The Association has received the assignments of claims from 194 of the homeowners
in High Noon.²⁵ The assignments state:

13 HOMEOWNER hereby assigns to THE Association all of the claims
14 and causes of action that HOMEOWNER possesses against D.R.
15 Horton, Inc., and any and all of the designers, contractors,
16 subcontractors and material suppliers that participated in any way in
17 the design, construction or supply of materials for construction of the
18 townhome project and/or HOMEOWNER'S unit, for defective
19 construction. Such assigned claims and causes of action expressly
20 include, but are not limited to, all claims and causes of action that arise
21 out of (1) The contract for sale of the subject property from D.R.
22 Horton, Inc., (2) Any express or implied warranties; (3) Any and all
23 common law claims, including but not limited to claims in negligence,
24 fraud and equitable claims; (4) Any and all claims relating to or arising
25 out of NRS Chapter 40, et seq.; and (5) Any and all claims relating to
26 or arising out of Chapter 116, et seq.

27 By virtue of the assignments, the Association "steps into the shoes" of the assignor
28 homeowners, and is able to pursue any claim that the homeowner would have been able to
pursue. *In re Silver State Helicopters, LLC*, 403 B.R. 849, 864 -865 (Bkrcty.D.Nev.,2009).

"The assignability of rights generally depends on local law. *See, e.g.*
Danning v. Mintz, 367 F.2d 304, 308 (9th Cir.1966). Like any other
valid agreements, assignments are enforceable under Nevada law. *See,*

²⁵ See Assignments, attached as Exhibit 4.

1 e.g. *Wood v. Chicago Title Agency of Las Vegas, Inc.*, 109 Nev. 70,
2 847 P.2d 738 (Nev.1993). An assignment of a right is a manifestation
3 of the assignor's intention to transfer it by virtue of which the
4 assignor's right to performance by the obligor is extinguished in whole
5 or in part and the assignee acquires a right to such performance. See
6 Restatement (Second) of Contracts, § 317 (1981). An assignee
7 typically "steps into the shoes" of an assignor. See *In re Boyajian*, 367
8 B.R. 138, 145 (9th Cir. BAP 2007)."

9 *In re Silver State Helicopters, LLC* 403 B.R. 849, 864 -865 (Bkrcty.D.Nev.,2009).

10 In its orders in this matter, the Nevada Supreme Court did not address the question as to
11 the validity of the assignments. The Supreme Court noted, in a footnote to the Order Denying
12 Petition, that the assignments could not be used as a means to get around the requirement of that
13 an NRCP Rule 23 analysis be conducted. Specifically, the Supreme Court stated in a footnote
14 at the end of the order:²⁶

15 High Noon also argues that it has standing to pursue all constructional
16 defect claims relating to each of the 194 units for which it obtained an
17 assignment of claims from its owner that is independent from the
18 standing granted to it by NRS Chapter 116. However, we agree with
19 the district court that the fact that High Noon obtained the right to
20 bring claims on behalf of unit-owners by assignment instead of
21 through NRS 116.3102(1)(d) did not eliminate High Noon's duty to
22 fulfill the requirements of NRCP 23 as set forth [*First Light II*].

23 The other reason to proceed with the Association asserting the claims of the assignors is
24 because the assignors have consented to that representation. There is no concern as to whether
25 notice to affected "class members" is made, or whether they have an opportunity to opt in or opt
26 out. Here, the 194 assignors have already "opted in"—they have consented through the
27 assignment to the Association proceeding with their claims. If any of the other owners do not
28 wish to be involved, they will be given an opportunity to opt out.

²⁶ Order Denying Petition attached as Exhibit 3, at p. 9, fn. 2.

1 **IV. CONCLUSION**

2 For the forgoing reasons, and consistent with the directives of the Nevada Supreme
3 Court, the best method of proceeding with the NRS 116.3102(1)(d) representative claims in
4 this matter is for the Association to proceed in representing the interests of its members with
5 regard to the building envelope issues, and "step into the shoes" of the homeowners who have
6 assigned their claims to the Association with regard to the fire resistive and structural issues.
7

8
9 Dated: April 19, 2013

ANGIUS & TERRY LLP

10
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