TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that an Order was entered and filed on the 20th day of August, 2015, a copy of which is attached hereto.

DATED: August 21, 2015

PAYNE & FEARS LLP

By *_/s/ Sarah J. Odia_*

GREGORY H. KING, NV Bar No. 7777
SARAH J. ODIA, NV Bar No. 11053
7251 W. Lake Mead Blvd., Suite 525
Las Vegas, Nevada 89128
Tel. (702) 851-0300

Attorneys for Defendant U.S. HOME CORPORATION

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

Ballesteros, et al. v. Greystone Nevada, LLC, et al.
Clark County District Court Case No. A-15-714219-D

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2015, I deposited a true and correct copy of the above and foregoing, **NOTICE OF ENTRY OF ORDER** in the United States mail, postage prepaid, at Las Vegas, NV, to the last known address as follows:

Duane E. Shinnick, Esq.
Melissa Bybee, Esq.
Bradley S. Rosenberg, Esq.
Shinnick, Ryan & Ransavage, P.C.
4001 Meadows Lane
Las Vegas, NV 89107
Tel/Fax: (702) 631-8014/(702) 631-8024
Attorneys for Plaintiffs

/s/ Nancy Babas
Nancy Babas
An Employee of PAYNE & FEARS LLP

4850-5922-6914.1

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., STE 525
LAS VEGAS, NV 89128
(702) 851-0300

FFCO
Gregory H. King, Bar No. 7777
ghk@paynefears.com
Sarah J. Odia, Bar No. 11053
sjo@paynefears.com
PAYNE & FEARS LLP
7251 W. Lake Mead Blvd., Suite 525
Las Vegas, Nevada 89128
Telephone: (702) 851-0300
Facsimile: (702) 851-0315

Attorneys for Defendant
U.S. HOME CORPORATION

DISTRICT COURT

CLARK COUNTY, NEVADA

THE MICHAEL BALLESTEROS TRUST; RODRIGO ASANION, individually; FEDERICO AGUAYO, individually; FELIPE ENRIQUEZ, individually; JIMMY FOSTER JR., individually; THE GARCIA FAMILY TRUST; ARNULFO ORTEGA-GOMEZ and ELVIRA GOMEZ-ORTEGA, individually; JOHN J. and IRMA A. OLSON, individually; OMAR PONCE, individually; BRANDON WEAVER, individually; JON YATES, individually; MINTESNOT WOLDETSADIK, individually; and ROES 1 through 500, inclusive,

Plaintiffs,

v.

U.S. HOME CORPORATION, a Delaware Corporation; CAMPBELL CONCRETE OF NEVADA, INC. a Nevada Corporation; VALENTE CONCRETE, LLC. a Nevada Limited-Liability Company; RED ROSE, INC., a Nevada Corporation; REPUBLIC ELECTRIC, INC., a Nevada Corporation; and DOES 1 through 500, inclusive,

Defendants.

Case No. A-15-714219-D
Dept. No. XXXI

FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter, concerning DEFENDANT U.S. HOME CORPORATION'S ("DEFENDANT" or "US HOME") Motion to Compel Arbitration filed on April 30, 2015, came

on for hearing on the 3rd day of June 2015 at the hour of 9:00 a.m. before Department XXXI of the Eighth Judicial District Court, in and for Clark County, Nevada with the honorable JUDGE JOANNA S. KISHNER presiding. PLAINTIFFS appeared by and through their attorney, DUANE E. SHINNICK, ESQ. of the law firm, SHINNICK, RYAN & RANSAVAGE, P.C.; and DEFENDANT U.S. HOME CORPORATION appeared by and through its attorney, GREGORY KING, ESQ. of the law firm, PAYNE & FEARS LLP. All other appearances noted in the record. Having reviewed the papers and pleadings on file herein, and heard the oral arguments of the attorneys, the Court makes the following Findings of Fact, and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. PLAINTIFFS THE MICHAEL BALLESTEROS TRUST; RODRIGO ASANION; FEDERICO AGUAYO; FELIPE ENRIQUEZ; JIMMY FOSTER JR.; THE GARCIA FAMILY TRUST; ARNULFO ORTEGA-GOMEZ and ELVIRA GOMEZ-ORTEGA; JOHN J. and IRMA A. OLSON; OMAR PONCE; BRANDON WEAVER; JON YATES; and MINTESNOT WOLDETSADIK ("PLAINTIFFS") are alleged to be owners of individual residences within the "Azure Manor/Rancho de Paz" development located in Las Vegas, Nevada.

2. The "Azure Manor/Rancho de Paz" community was developed and/or built by DEFENDANT and sold to PLAINTIFFS, or PLAINTIFFS' predecessors, from approximately 2004 to 2005.

3. On February 20, 2015, twelve (12) of the PLAINTIFF homeowner groups[1] filed their Complaint against DEFENDANT as a result of an alleged multitude of constructional defects located within the single family residences and common area elements[2] located within the Azure Manor/Rancho de Paz community. The matter was assigned to Department XXXI.

4. On April 30, 2015, DEFENDANT moved this Court to compel all twelve (12) of the PLAINTIFF homeowner groups to seek redress of their construction defect disputes via arbitration (the "Motion") based upon arbitration provisions within the Covenants, Conditions and Restrictions ("CC&Rs") of the Azure Manor/Rancho de Paz community where their homes are

[1] A "homeowner group" encompasses those owners who jointly own the residence.

[2] See PLAINTIFFS' Construction Defect Complaint filed on February 20, 2015, Paragraphs 3, 21, 22, 23, and 24.

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

located. DEFENDANT further seeks to specifically compel arbitration for construction defects for PLAINTIFFS John and Irma Olson, and Michael Ballesteros, as trustee of the Michael Ballesteros Trust, based upon the arbitration provisions provided within Paragraph 18 of their purchase and sales agreements ("PSAs") entered into with DEFENDANT US HOME.

5. DEFENDANT argues that all PLAINTIFFS are bound by the CC&Rs, and the arbitration provisions contained therein. DEFENDANT further contends that the Federal Arbitration Act ("FAA"), Title 9 U.S.C. §§1 et seq. mandates enforcement of the arbitration provisions, and any state laws providing the contrary are preempted by the FAA. DEFENDANT asserts that the arbitration provisions are neither procedurally nor substantively unconscionable, therefore such provisions must be enforced. PLAINTIFFS opposed the Motion stating that there are no valid agreements to arbitrate, that the FAA does not apply, that the arbitration provisions are procedurally and substantively unconscionable, the arbitration provisions are contrary to Nevada law, and that compelling arbitration would not be judicially efficient. There would have to be twelve (12) separate arbitrations (assuming that agreements to arbitrate were proven as to all PLAINTIFFS).

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

CONCLUSIONS OF LAW

6. In analyzing the matter, this Court first notes that in order to compel arbitration, DEFENDANT US HOME must show that there is a valid and enforceable agreement between the parties to arbitrate. See Mitri, et al. v. Arnel Management Company, et al., 157 Cal.App.4th 1164, 69 Cal.Rptr.3d 223 (Cal.App. 2007). Here, PLAINTIFFS do not dispute the existence of the arbitration provisions at issue, or that the claims fall within the scope of the arbitration provisions, but rather contend that the arbitration provisions are unenforceable in light of the NRS Chapter 40 protections of homeowner rights, and the fact that the provisions are unconscionable.

7. The United States Congress enacted the Federal Arbitration Act ("FAA") in 1925 in response to widespread judicial hostility to arbitration agreements. See AT&T Mobility, LLC v. Concepcion, ___U.S.___, 131 S.Ct. 1740, 1745, 179 L.Ed.2d 742 (2011), citing Hall Street Associates, LLC v. Mattel, Inc., 552 U.S. 576, 581, 128 S.Ct. 1396, 170 L.Ed.2d 254 (2008).

Title 9 U.S.C. § 2, the "primary substantive provision of the Act,"[3] provides in relevant part as follows:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract

8. The United States Supreme Court has described Title 9 U.S.C. § 2 as reflecting both a "liberal federal policy favoring arbitration,"[4] and the "fundamental principal that arbitration is a matter of contract."[5] Keeping in line with these principles, the high court has held judges must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms. AT&T Mobility, LLC, 131 S.Ct. at 1745-46.

9. The Court notes that the FAA specifically sets forth in part, "a contract evidencing a transaction *involving commerce* to settle by arbitration a controversy...shall be valid, irrevocable, and enforceable,..." Title 9 U.S.C. §2 (Emphasis added). As other state and federal courts have found, in order to activate the application of the FAA, the commerce involved in the contract ***must*** be interstate or foreign. See Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 454, 730 S.E.2d 312, 315-16 (2012), citing 2 S.C. Jur. Arbitration § 6 (Supp. 2012) ("Interstate commerce is a necessary basis for application of the federal act, and a contract not so predicated must be governed by state law. To activate application of the federal act, the commerce involved in the contract must be interstate or foreign.").

10. The United States Supreme Court has held that the phrase "involving commerce" is the same as "affecting commerce," which has been broadly interpreted to mean Congress intended to use its powers to regulate interstate commerce to its full extent. See Blanton v. Stathos, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct.App. 2002), citing Allied-Bruce Terminex Cos. v. Dobson, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed. 753 (1995). "Congress' Commerce Clause power 'may be exercised in individual cases without showing any specific effect upon

[3] Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24, 103 U.S. 927, 74 L.Ed.2d 765 (1983).

[4] Moses H. Cone Memorial Hospital, 460 U.S. at 24.

[5] Rent-A-Center, West Inc. v. Jackson, 561 U.S. 63, __, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403 (2010).

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

interstate commerce' if in the aggregate the economic activity in question would represent 'a general practice...subject to federal control.'" Citizens Bank v. Alafabco, Inc., 539 U.S. 53, 56-57, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003), quoting Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236, 68 S.Ct. 996, 92 L.Ed.2d 1328 (1948). "Despite this expansive interpretation of the FAA, the FAA does not reflect a congressional intent to occupy the *entire* field of arbitration." Zabinski v. Bright Acres Associates, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001), citing Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989) (Emphasis added).

11. Both state and federal jurisdictions addressing the issue have held the sale of residential real estate is inherently intrastate, whereby the FAA does not apply. See Saneii v. Robards, 289 F.Supp.2d 855, 858 (W.D.Ky. 2003); SI V, LLC v. FMC Corporation, 223 F.Supp.2d. 1059, 1062 (N.D.Cal. 2002), citing Cecala v. Moore, 982 F.Supp. 609,612 (N.D.Ill. 1997); Bradley, 298 S.C. at 456, 730 S.E.2d at 317; see also Garrison v. Palmas Del Mar Homeowners Association, Inc., 538 F.Supp.2d 468, 473 (D.P.R. 2008). These courts reason that contracts strictly for the sale of residential real estate focus entirely on the commodity, which is the land firmly planted in one particular state. The citizenship of the immediate parties, the buyer and seller, or their movements to and from that state are incidental to the real estate transaction. That is, those movements are not part of the transaction itself.

12. In the present case, this Court concludes that the FAA does not apply to the arbitration agreements because the construction defect claims at issue relate to real property contained entirely within the state of Nevada, and therefore do not affect interstate commerce. Furthermore, no federal law is implicated by the construction defect claims. For these reasons, logic suggests such transactions are not among those considered as involving interstate commerce.

13. Although the Court finds the FAA to be inapplicable here[6], arbitration may still be compelled pursuant to Nevada law. In Nevada, strong public policy favors arbitration, and such clauses generally are enforceable. Gonski v. Second Judicial Dist. Ct., 126 Nev. ___, 245 P.3d

[6] Even if the FAA were found to apply, "[g]enerally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening. . .[the FAA]". Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 682, 116 S.Ct. 1652, 1653 (1996).

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

1164, 1168 (2010), citing D.R. Horton, Inc. v. Green, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). The Supreme Court of Nevada has held that there is a "presumption of arbitrability" where there is an agreement to arbitrate. Phillips v. Parker, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990). Even though the party seeking to enforce an arbitration clause bears the burden or proving the clause's valid existence, any party opposing the arbitration may establish a defense to enforcement. Gonski, 245 P.3d at 1169, citing D.R. Horton, 120 Nev. at 553, 96 P.3d at 1162.

14. The arbitration clause may be invalidated if it is found by this Court to be unconscionable. Cf Picardi v. Eighth Judicial Dist. Ct., 127 Nev. ___, 251 P.2d 723, 726 (2011), effectively overruled by AT&T Mobility, LLC v. Concepcion, __ U.S. __, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011), quoting Rivero v. Rivero, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009) ("'Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy."). In order to find the arbitration provisions to arbitrate unconscionable, the Court must determine whether the arbitration provisions are both procedurally and substantively unconscionable. D.R. Horton, 120 Nev. at 553, quoting Burch v. Second Judicial Dist. Ct., 118 Nev. 438, 442, 49 P.3d 647, ___ (2002). That is, a finding of unconscionability requires the "procedural" element focusing on "oppression" or "surprise" due to unequal bargaining power, and the "substantive" factor on "overly harsh" or "one-sided" results. Armendariz v. Foundation Health Psychcare Service, Inc., 24 Cal.4th 83, 114, 99 Cal.Rptr.2d 745, __, 6 P.3d 669, 690 (Cal. 2000).

15. An arbitration agreement is "procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract." D.R. Horton, 120 Nev. at 554. "Procedural unconscionability" often involves the "use of fine print or complicated, incomplete or misleading language that fails to inform a reasonable person of the contractual language's consequences." D.R. Horton, 120 Nev. at 556. The defendant does not have a duty to explain in detail each and every right the plaintiff would be waiving by agreeing to arbitration for the provision to be enforceable. However, an

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

arbitration clause; at the least, must be conspicuous and clearly place him or her on notice that he/she is waiving important rights under Nevada law. D.R. Horton, 120 Nev. at 556-57.

16. In the present matter, the Court finds that the arbitration clause set forth in the CC&Rs is procedurally unconscionable. The arbitration provision is located on page 76 of 86 of the CC&Rs, and is in the same sized font as the rest of the CC&Rs. The arbitration provisions are inconspicuously placed within the voluminous document, and there is nothing to draw attention to the average home buyer of the important rights being waived. The text of the arbitration provisions is not bolded or capitalized, is in the same font as the other provisions of the CC&Rs, and does not stand out to draw attention to the fact that significant rights are being waived.

17. Furthermore, the CC&Rs abrogate Nevada's Chapter 40 and are against public policy in requiring different timelines and/or additional procedures to bring construction defect claims. The Nevada Supreme Court has held that arbitration provisions in homes sales contracts (and presumably in CC&Rs) that abrogate a homeowner's NRS Chapter 40 rights are not enforceable as they are unconscionable and violate the public policy behind NRS Chapter 40. See Gonski v. Second Judicial Dist. Ct., 126 Nev. ___, 245 P.3d 1164 (2010). Here, the arbitration hearing is to be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. This timeline and procedure is not mandated under NRS Chapter 40.

18. The arbitration provisions in Paragraph 18 of the PSAs are also procedurally unconscionable because they do not draw attention to the arbitration provisions. To the contrary, the text of the arbitration clauses is not capitalized or bolded to bring attention to such provisions. There is no explicit "construction defect" term mentioned indicating that such claims must be arbitrated. The arbitration clauses, like many others within the PSAs, are inconspicuous on page 2 of 4. There is nothing to highlight the importance of the arbitration provisions. Furthermore, the arbitration provisions are confusing because they state that claims should be arbitrated, not by or in a court of law. However, shortly thereafter the provisions state that "in the event the Homeowner's Warranty provided by Seller does not provide for binding arbitration, a claim under, or covered by, the warranty will be administered as provided in the warranty prior to submission to binding arbitration." It is therefore uncertain whether Plaintiffs must first proceed through a

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

Homeowner's Warranty process prior to seeking arbitration for any claims. Even had Plaintiffs been aware that there were arbitration provisions and read them, it would be difficult to understand this confusing and apparently contradictory provision.

19. The arbitration provisions do not clearly state that the purchaser is waiving his right to a jury trial, nor does it mention any impact on the purchaser's rights under NRS Chapter 40. The Court finds that the arbitration provisions lack clarity. While a DEFENDANT does not have the duty to explain in detail each and every right the prospective home buyer would be waiving by agreeing to Paragraph 18, the arbitration provisions must be conspicuous and clearly place the purchaser on notice that he or she is waiving substantial rights under Nevada law. As previously indicated, PLAINTIFFS were not given an opportunity to negotiate the terms of the arbitration provisions, and/or that they would be given up certain important rights, including Chapter 40 rights. For these reasons, this Court concludes that Paragraph 18 of the PSAs is "procedurally unconscionable".

20. The next issue is whether the arbitration clauses in the CC&Rs and PSAs are "substantively unconscionable". "Substantive unconscionability" focuses on the "one-sidedness of the contract terms." D.R. Horton, 120 Nev. at 554. In D.R. Horton, 120 Nev. at 554, the Nevada Supreme Court relied upon the substantive unconscionability analysis employed by the Ninth Circuit Court of Appeals in Ting v. AT&T, 319 F.2d 1126, 1149 (9th Cir. 2003). In that case, the Ninth Circuit Court of Appeals required an arbitration agreement have a "modicum of bilaterality." Ting, 319 F.2d at 1149, quoting Armendariz, 99 Cal.Rptr.2d 745, 6 P.3d at 692.

21. Section 17.16 of the CC&Rs state that "costs of the arbitration shall be borne equally by the parties." The Nevada Supreme Court in the D.R. Horton case found substantively unconscionability when there was a requirement that each party pay equally for the costs of arbitration. D.R. Horton, 120 Nev. at 1165.

22. Further, the arbitration provisions contained in the CC&Rs would not be binding on any subcontractors. As the subcontractors would not be required to arbitrate, there would be inconsistent results – those reached in arbitration versus the court, along with a duplication of

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

efforts, and no saving of costs. As written, the CC&Rs would give US HOME the sole right to bring subcontractor parties in the separately arbitrated matters or to consolidate proceedings.

23. In Paragraph 18, page 3, of the PSA, the "Seller shall have the option to include its subcontractors and suppliers as parties in the mediation and arbitration". There is no bilaterality in the sole option of DEFENDANT to include subcontractors and suppliers in mediation and arbitration. This provision is impermissibly one-sided as it divests PLAINTIFFS of the similar right to include subcontractors and suppliers that it would ordinarily be given under NRS Chapter 40 in litigation. Further, Paragraph 18 of the PSAs requires the parties to equally share the costs of the arbitration, and implicitly to bear their own attorneys' fees. Such provisions contradict the policies underlying NRS 40.600 et seq. which provide the claimant is entitled to reimbursement of his or her attorney's fees if a constructional defect is proven, and the contractor or builder elected not to inspect and repair. See NRS 40.655. This is in abrogation of a claimant's right under NRS Chapter 40, which alone is enough for a finding of substantive unconscionability. See Gonski v. Second Judicial Dist. Ct., 126 Nev. ___, 245 P.3d 1164, 1173 (2010). In addition, under Nevada law, the prevailing party is entitled to reimbursement of costs. See NRS Chapter 18. In this Court's view, such provisions, essentially stripping the home buyer of his entitlements, indicate "impermissible one-sidedness". Furthermore, the PLAINTIFFS were not given the opportunity to negotiate the terms of such provisions, therefore they were contracts to "take it or leave it", which are impermissibly adhesive. All in all, this Court concludes that the arbitration provisions in the CC&Rs and in Paragraph 18 of the PSAs are "substantively unconscionable" consistent with the findings in D.R. Horton, Gonski, and Burch cases.

24. As the arbitration provisions in both the CC&Rs and PSAs are both procedurally and substantively unconscionable, the Court finds that the arbitration provisions are unenforceable.

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PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

Accordingly, and based upon the aforementioned Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that DEFENDANT U.S. HOME CORPORATION'S Motion to Compel Arbitration filed April 30, 2015 is denied.

DATED this 18 day of May 2015.

HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

Respectfully submitted by:

Gregory H. King, Esq.
Sarah J. Odia, Esq.
PAYNE & FEARS LLP
7251 W. Lake Mead Blvd., Suite 525
Las Vegas, NV 89128

Attorneys for DEFENDANT
U.S. HOME CORPORATION

4837-5337-6549.1

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0320

on for hearing on the 3rd day of June 2015 at the hour of 9:00 a.m. before Department XXXI of the Eighth Judicial District Court, in and for Clark County, Nevada with the honorable JUDGE JOANNA S. KISHNER presiding. PLAINTIFFS appeared by and through their attorney, DUANE E. SHINNICK, ESQ. of the law firm, SHINNICK, RYAN & RANSAVAGE, P.C.; and DEFENDANT U.S. HOME CORPORATION appeared by and through its attorney, GREGORY KING, ESQ. of the law firm, PAYNE & FEARS LLP. All other appearances noted in the record. Having reviewed the papers and pleadings on file herein, and heard the oral arguments of the attorneys, the Court makes the following Findings of Fact, and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. PLAINTIFFS THE MICHAEL BALLESTEROS TRUST; RODRIGO ASANION; FEDERICO AGUAYO; FELIPE ENRIQUEZ; JIMMY FOSTER JR.; THE GARCIA FAMILY TRUST; ARNULFO ORTEGA-GOMEZ and ELVIRA GOMEZ-ORTEGA; JOHN J. and IRMA A. OLSON; OMAR PONCE; BRANDON WEAVER; JON YATES; and MINTESNOT WOLDETSADIK ("PLAINTIFFS") are alleged to be owners of individual residences within the "Azure Manor/Rancho de Paz" development located in Las Vegas, Nevada.

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4. On April 30, 2015, DEFENDANT moved this Court to compel all twelve (12) of the PLAINTIFF homeowner groups to seek redress of their construction defect disputes via arbitration (the "Motion") based upon arbitration provisions within the Covenants, Conditions and Restrictions ("CC&Rs") of the Azure Manor/Rancho de Paz community where their homes are

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7251 W. LAKE MEAD BLVD., SUITE 525
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5. DEFENDANT argues that all PLAINTIFFS are bound by the CC&Rs, and the arbitration provisions contained therein. DEFENDANT further contends that the Federal Arbitration Act ("FAA"), Title 9 U.S.C. §§1 et seq. mandates enforcement of the arbitration provisions, and any state laws providing the contrary are preempted by the FAA. DEFENDANT asserts that the arbitration provisions are neither procedurally nor substantively unconscionable, therefore such provisions must be enforced. PLAINTIFFS opposed the Motion stating that there are no valid agreements to arbitrate, that the FAA does not apply, that the arbitration provisions are procedurally and substantively unconscionable, the arbitration provisions are contrary to Nevada law, and that compelling arbitration would not be judicially efficient. There would have to be twelve (12) separate arbitrations (assuming that agreements to arbitrate were proven as to all PLAINTIFFS).

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

CONCLUSIONS OF LAW

6. In analyzing the matter, this Court first notes that in order to compel arbitration, DEFENDANT US HOME must show that there is a valid and enforceable agreement between the parties to arbitrate. See Mitri, et al. v. Arnel Management Company, et al., 157 Cal.App.4th 1164, 69 Cal.Rptr.3d 223 (Cal.App. 2007). Here, PLAINTIFFS do not dispute the existence of the arbitration provisions at issue, or that the claims fall within the scope of the arbitration provisions, but rather contend that the arbitration provisions are unenforceable in light of the NRS Chapter 40 protections of homeowner rights, and the fact that the provisions are unconscionable.

7. The United States Congress enacted the Federal Arbitration Act ("FAA") in 1925 in response to widespread judicial hostility to arbitration agreements. See AT&T Mobility, LLC v. Concepcion, __U.S.__, 131 S.Ct. 1740, 1745, 179 L.Ed.2d 742 (2011), citing Hall Street Associates, LLC v. Mattel, Inc., 552 U.S. 576, 581, 128 S.Ct. 1396, 170 L.Ed.2d 254 (2008).

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8. The United States Supreme Court has described Title 9 U.S.C. § 2 as reflecting both a "liberal federal policy favoring arbitration,"[4] and the "fundamental principal that arbitration is a matter of contract."[5] Keeping in line with these principles, the high court has held judges must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms. AT&T Mobility, LLC, 131 S.Ct. at 1745-46.

9. The Court notes that the FAA specifically sets forth in part, "a contract evidencing a transaction *involving commerce* to settle by arbitration a controversy...shall be valid, irrevocable, and enforceable,..." Title 9 U.S.C. §2 (Emphasis added). As other state and federal courts have found, in order to activate the application of the FAA, the commerce involved in the contract *must* be interstate or foreign. See Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 454, 730 S.E.2d 312, 315-16 (2012), citing 2 S.C. Jur. Arbitration § 6 (Supp. 2012) ("Interstate commerce is a necessary basis for application of the federal act, and a contract not so predicated must be governed by state law. To activate application of the federal act, the commerce involved in the contract must be interstate or foreign.").

10. The United States Supreme Court has held that the phrase "involving commerce" is the same as "affecting commerce," which has been broadly interpreted to mean Congress intended to use its powers to regulate interstate commerce to its full extent. See Blanton v. Stathos, 351 S.C. 534, 540, 570 S.E.2d 565, 568 (Ct.App. 2002), citing Allied-Bruce Terminex Cos. v. Dobson, 513 U.S. 265, 115 S.Ct. 834, 130 L.Ed. 753 (1995). "Congress' Commerce Clause power 'may be exercised in individual cases without showing any specific effect upon

[3] Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24, 103 U.S. 927, 74 L.Ed.2d 765 (1983).

[4] Moses H. Cone Memorial Hospital, 460 U.S. at 24.

[5] Rent-A-Center, West Inc. v. Jackson, 561 U.S. 63, __, 130 S.Ct. 2772, 2776, 177 L.Ed.2d 403 (2010).

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7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

interstate commerce' if in the aggregate the economic activity in question would represent 'a general practice...subject to federal control.'" Citizens Bank v. Alafabco, Inc., 539 U.S. 53, 56-57, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003), quoting Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236, 68 S.Ct. 996, 92 L.Ed.2d 1328 (1948). "Despite this expansive interpretation of the FAA, the FAA does not reflect a congressional intent to occupy the *entire* field of arbitration." Zabinski v. Bright Acres Associates, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001), citing Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989) (Emphasis added).

11. Both state and federal jurisdictions addressing the issue have held the sale of residential real estate is inherently intrastate, whereby the FAA does not apply. See Saneii v. Robards, 289 F.Supp.2d 855, 858 (W.D.Ky. 2003); SI V, LLC v. FMC Corporation, 223 F.Supp.2d. 1059, 1062 (N.D.Cal. 2002), citing Cecala v. Moore, 982 F.Supp. 609,612 (N.D.Ill. 1997); Bradley, 298 S.C. at 456, 730 S.E.2d at 317; see also Garrison v. Palmas Del Mar Homeowners Association, Inc., 538 F.Supp.2d 468, 473 (D.P.R. 2008). These courts reason that contracts strictly for the sale of residential real estate focus entirely on the commodity, which is the land firmly planted in one particular state. The citizenship of the immediate parties, the buyer and seller, or their movements to and from that state are incidental to the real estate transaction. That is, those movements are not part of the transaction itself.

12. In the present case, this Court concludes that the FAA does not apply to the arbitration agreements because the construction defect claims at issue relate to real property contained entirely within the state of Nevada, and therefore do not affect interstate commerce. Furthermore, no federal law is implicated by the construction defect claims. For these reasons, logic suggests such transactions are not among those considered as involving interstate commerce.

13. Although the Court finds the FAA to be inapplicable here[6], arbitration may still be compelled pursuant to Nevada law. In Nevada, strong public policy favors arbitration, and such clauses generally are enforceable. Gonski v. Second Judicial Dist. Ct., 126 Nev. ___, 245 P.3d

[6] Even if the FAA were found to apply, "[g]enerally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening. . .[the FAA]". Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 682, 116 S.Ct. 1652, 1653 (1996).

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1164, 1168 (2010), citing D.R. Horton, Inc. v. Green, 120 Nev. 549, 553, 96 P.3d 1159, 1162 (2004). The Supreme Court of Nevada has held that there is a "presumption of arbitrability" where there is an agreement to arbitrate. Phillips v. Parker, 106 Nev. 415, 417, 794 P.2d 716, 718 (1990). Even though the party seeking to enforce an arbitration clause bears the burden or proving the clause's valid existence, any party opposing the arbitration may establish a defense to enforcement. Gonski, 245 P.3d at 1169, citing D.R. Horton, 120 Nev. at 553, 96 P.3d at 1162.

14. The arbitration clause may be invalidated if it is found by this Court to be unconscionable. Cf Picardi v. Eighth Judicial Dist. Ct., 127 Nev. ___, 251 P.2d 723, 726 (2011), effectively overruled by AT&T Mobility, LLC v. Concepcion, __ U.S. __, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011), quoting Rivero v. Rivero, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009) ("'Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy."). In order to find the arbitration provisions to arbitrate unconscionable, the Court must determine whether the arbitration provisions are both procedurally and substantively unconscionable. D.R. Horton, 120 Nev. at 553, quoting Burch v. Second Judicial Dist. Ct., 118 Nev. 438, 442, 49 P.3d 647, ___ (2002). That is, a finding of unconscionability requires the "procedural" element focusing on "oppression" or "surprise" due to unequal bargaining power, and the "substantive" factor on "overly harsh" or "one-sided" results. Armendariz v. Foundation Health Psychcare Service, Inc., 24 Cal.4th 83, 114, 99 Cal.Rptr.2d 745, __, 6 P.3d 669, 690 (Cal. 2000).

15. An arbitration agreement is "procedurally unconscionable when a party lacks a meaningful opportunity to agree to the clause terms either because of unequal bargaining power, as in an adhesion contract, or because the clause and its effects are not readily ascertainable upon a review of the contract." D.R. Horton, 120 Nev. at 554. "Procedural unconscionability" often involves the "use of fine print or complicated, incomplete or misleading language that fails to inform a reasonable person of the contractual language's consequences." D.R. Horton, 120 Nev. at 556. The defendant does not have a duty to explain in detail each and every right the plaintiff would be waiving by agreeing to arbitration for the provision to be enforceable. However, an

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arbitration clause, at the least, must be conspicuous and clearly place him or her on notice that he/she is waiving important rights under Nevada law. D.R. Horton, 120 Nev. at 556-57.

16. In the present matter, the Court finds that the arbitration clause set forth in the CC&Rs is procedurally unconscionable. The arbitration provision is located on page 76 of 86 of the CC&Rs, and is in the same sized font as the rest of the CC&Rs. The arbitration provisions are inconspicuously placed within the voluminous document, and there is nothing to draw attention to the average home buyer of the important rights being waived. The text of the arbitration provisions is not bolded or capitalized, is in the same font as the other provisions of the CC&Rs, and does not stand out to draw attention to the fact that significant rights are being waived.

17. Furthermore, the CC&Rs abrogate Nevada's Chapter 40 and are against public policy in requiring different timelines and/or additional procedures to bring construction defect claims. The Nevada Supreme Court has held that arbitration provisions in homes sales contracts (and presumably in CC&Rs) that abrogate a homeowner's NRS Chapter 40 rights are not enforceable as they are unconscionable and violate the public policy behind NRS Chapter 40. See Gonski v. Second Judicial Dist. Ct., 126 Nev. ___, 245 P.3d 1164 (2010). Here, the arbitration hearing is to be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. This timeline and procedure is not mandated under NRS Chapter 40.

18. The arbitration provisions in Paragraph 18 of the PSAs are also procedurally unconscionable because they do not draw attention to the arbitration provisions. To the contrary, the text of the arbitration clauses is not capitalized or bolded to bring attention to such provisions. There is no explicit "construction defect" term mentioned indicating that such claims must be arbitrated. The arbitration clauses, like many others within the PSAs, are inconspicuous on page 2 of 4. There is nothing to highlight the importance of the arbitration provisions. Furthermore, the arbitration provisions are confusing because they state that claims should be arbitrated, not by or in a court of law. However, shortly thereafter the provisions state that "in the event the Homeowner's Warranty provided by Seller does not provide for binding arbitration, a claim under, or covered by, the warranty will be administered as provided in the warranty prior to submission to binding arbitration." It is therefore uncertain whether Plaintiffs must first proceed through a

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(702) 851-0300

Homeowner's Warranty process prior to seeking arbitration for any claims. Even had Plaintiffs been aware that there were arbitration provisions and read them, it would be difficult to understand this confusing and apparently contradictory provision.

19. The arbitration provisions do not clearly state that the purchaser is waiving his right to a jury trial, nor does it mention any impact on the purchaser's rights under NRS Chapter 40. The Court finds that the arbitration provisions lack clarity. While a DEFENDANT does not have the duty to explain in detail each and every right the prospective home buyer would be waiving by agreeing to Paragraph 18, the arbitration provisions must be conspicuous and clearly place the purchaser on notice that he or she is waiving substantial rights under Nevada law. As previously indicated, PLAINTIFFS were not given an opportunity to negotiate the terms of the arbitration provisions, and/or that they would be given up certain important rights, including Chapter 40 rights. For these reasons, this Court concludes that Paragraph 18 of the PSAs is "procedurally unconscionable".

20. The next issue is whether the arbitration clauses in the CC&Rs and PSAs are "substantively unconscionable". "Substantive unconscionability" focuses on the "one-sidedness of the contract terms." D.R. Horton, 120 Nev. at 554. In D.R. Horton, 120 Nev. at 554, the Nevada Supreme Court relied upon the substantive unconscionability analysis employed by the Ninth Circuit Court of Appeals in Ting v. AT&T, 319 F.2d 1126, 1149 (9th Cir. 2003). In that case, the Ninth Circuit Court of Appeals required an arbitration agreement have a "modicum of bilaterality." Ting, 319 F.2d at 1149, quoting Armendariz, 99 Cal.Rptr.2d 745, 6 P.3d at 692.

21. Section 17.16 of the CC&Rs state that "costs of the arbitration shall be borne equally by the parties." The Nevada Supreme Court in the D.R. Horton case found substantively unconscionability when there was a requirement that each party pay equally for the costs of arbitration. D.R. Horton, 120 Nev. at 1165.

22. Further, the arbitration provisions contained in the CC&Rs would not be binding on any subcontractors. As the subcontractors would not be required to arbitrate, there would be inconsistent results – those reached in arbitration versus the court, along with a duplication of

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

efforts, and no saving of costs. As written, the CC&Rs would give US HOME the sole right to bring subcontractor parties in the separately arbitrated matters or to consolidate proceedings.

23. In Paragraph 18, page 3, of the PSA, the "Seller shall have the option to include its subcontractors and suppliers as parties in the mediation and arbitration". There is no bilaterality in the sole option of DEFENDANT to include subcontractors and suppliers in mediation and arbitration. This provision is impermissibly one-sided as it divests PLAINTIFFS of the similar right to include subcontractors and suppliers that it would ordinarily be given under NRS Chapter 40 in litigation. Further, Paragraph 18 of the PSAs requires the parties to equally share the costs of the arbitration, and implicitly to bear their own attorneys' fees. Such provisions contradict the policies underlying NRS 40.600 et seq. which provide the claimant is entitled to reimbursement of his or her attorney's fees if a constructional defect is proven, and the contractor or builder elected not to inspect and repair. See NRS 40.655. This is in abrogation of a claimant's right under NRS Chapter 40, which alone is enough for a finding of substantive unconscionability. See Gonski v. Second Judicial Dist. Ct., 126 Nev. ___, 245 P.3d 1164, 1173 (2010). In addition, under Nevada law, the prevailing party is entitled to reimbursement of costs. See NRS Chapter 18. In this Court's view, such provisions, essentially stripping the home buyer of his entitlements, indicate "impermissible one-sidedness". Furthermore, the PLAINTIFFS were not given the opportunity to negotiate the terms of such provisions, therefore they were contracts to "take it or leave it", which are impermissibly adhesive. All in all, this Court concludes that the arbitration provisions in the CC&Rs and in Paragraph 18 of the PSAs are "substantively unconscionable" consistent with the findings in D.R. Horton, Gonski, and Burch cases.

24. As the arbitration provisions in both the CC&Rs and PSAs are both procedurally and substantively unconscionable, the Court finds that the arbitration provisions are unenforceable.

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PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W. LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

Accordingly, and based upon the aforementioned Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that DEFENDANT U.S. HOME CORPORATION'S Motion to Compel Arbitration filed April 30, 2015 is denied.

DATED this 18 day of May 2015.

HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

Respectfully submitted by:

Gregory H. King, Esq.
Sarah J. Odia, Esq.
PAYNE & FEARS LLP
7251 W. Lake Mead Blvd., Suite 525
Las Vegas, NV 89128

Attorneys for DEFENDANT
U.S. HOME CORPORATION

4837-5337-6549.1

PAYNE & FEARS LLP
ATTORNEYS AT LAW
7251 W LAKE MEAD BLVD., SUITE 525
LAS VEGAS, NEVADA 89128
(702) 851-0300

COMPC
Duane E. Shinnick, Esq.
Bar No. 7176
Melissa Bybee, Esq.
Bar No. 8390
Bradley S. Rosenberg, Esq.
Bar No. 8737
SHINNICK, RYAN & RANSAVAGE P.C.
4001 Meadows Lane
Las Vegas, NV 89107
Tel. (702) 631-8014
Fax (702) 631-8024
dshinnick@ssllplaw.com
mbybee@ssllplaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

THE MICHAEL BALLESTEROS TRUST; RODRIGO ASANION, individually; FEDERICO AGUAYO, individually; FELIPE ENRIQUEZ, individually; JIMMY FOSTER JR., individually; THE GARCIA FAMILY TRUST; ARNULFO ORTEGA-GOMEZ and ELVIRA GOMEZ-ORTEGA, individually; JOHN J. and IRMA A. OLSON, individually; OMAR PONCE, individually; BRANDON WEAVER, individually; JON YATES, individually; MINTESNOT WOLDETSADIK, individually; and ROES 1 through 500, inclusive, Plaintiffs, v. U.S. HOME CORPORATION, a Delaware Corporation; CAMPBELL CONCRETE OF NEVADA, INC. a Nevada Corporation; VALENTE CONCRETE, LLC. a Nevada Limited-Liability Company; RED ROSE, INC., a Nevada Corporation; REPUBLIC ELECTRIC, INC., a Nevada Corporation; and DOES 1 through 500, inclusive, Defendants.	CASE NO. A-15-714219-D DEPT. NO. XXXI **ARBITRATION EXEMPTION CLAIMED:** involves an amount in issue in excess of $50,000 exclusive of interest and costs **CONSTRUCTION DEFECT COMPLAINT**

COMPLAINT FOR DAMAGES

Comes Now Plaintiffs,

PLAINTIFF	ADDRESS
THE MICHAEL BALLESTEROS TRUST	6137 Darnley Street North Las Vegas, NV 89081
RODRIGO ASANION	6094 Darnley Street North Las Vegas, NV 89081
FEDERICO AGUAYO	6153 Darnley Street North Las Vegas, NV 89081
FELIPE ENRIQUEZ	6133 Darnley Street North Las Vegas, NV 89081
JIMMY FOSTER JR.	2832 Tilten Kilt Ave. North Las Vegas, NV 89081
THE GARCIA FAMILY TRUST	2829 Bridleton Ave. North Las Vegas, NV 89081
ARNULFO ORTEGA-GOMEZ ELVIRA GOMEZ-ORTEGA	2939 Tilten Kilt Ave. North Las Vegas, NV 89081
JOHN J. OLSON IRMA A. OLSON	2921 Kildare Cove Court North Las Vegas, NV 89081
OMAR PONCE	6133 Sydney Bay Court North Las Vegas, NV 89081
BRANDON WEAVER	6154 Darnley Street North Las Vegas, NV 89081
JON YATES	6078 Darnley Street North Las Vegas, NV 89081
MINTESNOT WOLDETSADIK	2840 Tilten Kilt Ave. North Las Vegas, NV 89081

all individually (hereinafter "Plaintiffs"), by and through their attorneys, Duane E. Shinnick, Esq. Bradley S. Rosenberg, Esq. and Melissa Bybee, Esq. of the law firm Shinnick, Ryan & Ransavage P.C., and for causes of action against Defendants, and each of them, allege and complain as follows:

GENERAL ALLEGATIONS

1. Plaintiffs are owners of individual residences within the housing development known as RANCHO DE PAZ in North Las Vegas, Nevada, in the subdivisions of CENTENNIAL AZURE UNIT 3 and CENTENNIAL AZURE-UNIT 4 as recorded with the Clark County Recorder in Plat Book 116, page 75 and Plat Book 119, page 77.

2. Pursuant to NRS 40.600 through 40.695 inclusive, Plaintiffs seek recovery for damages suffered by each unit owner as to their separate interests as delineated by law.

2a. Pursuant to NRS 40.645 Plaintiffs have in good faith attempted to serve written notice on all defendants by certified mail at the addresses listed on the Nevada State Contractors Board records, or at their last known addresses. Plaintiffs have substantially complied with the notice and pre-filing requirements of NRS 40.645.

3. The property and buildings thereupon will hereinafter sometimes be referred to as the "subject property."

4. NOT USED.

5. The Defendants are identified as follows: Plaintiffs allege that Defendant U.S. HOME CORPORATION, a Delaware Corporation, is authorized to do business in the State of Nevada and has conducted and/or now does conduct business within the County of Clark, State of Nevada, including but not limited to development, construction, improvement, conversion and/or sale of the subject property.

5a. Plaintiffs allege that Defendant CAMPBELL CONCRETE OF NEVADA, INC., a Nevada Corporation, is authorized to do business in the State of Nevada and has conducted and/or now does conduct business within the County of Clark, State of Nevada, including but not limited to development, construction, improvement, conversion and/or sale of the subject property.

5b. Plaintiffs allege that Defendant VALENTE CONCRETE, LLC, a Nevada Limited-Liability Company, is authorized to do business in the State of Nevada and has conducted and/or now does conduct business within the County of Clark, State of Nevada, including but not limited to development, construction, improvement, conversion and/or sale of the subject property.

5c. Plaintiffs allege that Defendant RED ROSE, INC., a Nevada Corporation, is authorized to do business in the State of Nevada and has conducted and/or now does conduct business within the County of Clark, State of Nevada, including but not limited to development, construction, improvement, conversion and/or sale of the subject property.

5d. Plaintiffs allege that Defendant REPUBLIC ELECTRIC, INC., a Nevada Corporation, is authorized to do business in the State of Nevada and has conducted and/or now does conduct business within the County of Clark, State of Nevada, including but not limited to development, construction, improvement, conversion and/or sale of the subject property.

6. Plaintiffs allege that at all times herein mentioned, Defendants, and each of them, were the agents, servants and employees of each other and were acting in the course and scope of their agency or employment in doing the acts herein alleged.

7. Plaintiffs do not know the true names and capacities of defendants sued herein as Does 1 to 500, including, and therefore sue these defendants by such fictitious names. Plaintiffs are informed and believe, and thereon allege, that each of the said fictitiously named defendants are responsible in some manner for the defective and negligent engineering, architecture, construction, supply of improper materials, and inspection of the subject property single family homes, or in some other actionable manner were an integral part of the chain of development, construction and marketing of the subject property single family homes, and that Plaintiffs damages as herein alleged were proximately caused by their conduct. Plaintiffs pray for leave to amend this Complaint when the true names and capacities of such defendants are ascertained.

8. Defendants Does 1 through 500, inclusive, whether individual, corporate, associate or otherwise are fictitious names of defendants whose true names and capacities, at this time, are unknown to Plaintiffs. Plaintiffs are informed and believe and thereupon allege that at all times

herein mentioned each of the defendants sued herein as Does 1 through 500 was the agent, servant and employee of his or her co-defendants, and in doing the things hereinafter mentioned was acting in the scope of his or her authority as such agent, servant and employee, and with the permission and consent of his or her co-defendants; and that each of said fictitiously named defendants, whether an agent, corporation, association, or otherwise, is in some way liable or responsible to the Plaintiffs on the facts hereinafter alleged, and caused injuries and damages proximately thereby as hereinafter alleged. At such time as defendants' true names become known to Plaintiffs, Plaintiffs will ask leave of this Court to amend this Complaint to insert said true names and capacities.

9. Plaintiffs have discovered defects and damages within the periods of the applicable statutes of limitations that the subject property has and is experiencing defective conditions, in particular, there are damages stemming from, among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor workmanship.

It was the result of the representations by Defendants that they would repair the defects and their conduct in so performing some works of repair, as well their proposals for correcting the defects that induced Plaintiffs to withhold conducting their own independent investigation and/or filing suit against said Defendants. By virtue of the fact that Defendants were the developers, contractors and sellers of the subject property and aware of the particular nature of the project, including its design, composition, and component parts, and when said Defendants represented that Defendants would repair the defects and, in fact, some works of repair were commenced, Plaintiffs were justified in relying on said representations and conduct by said Defendants in permitting them to investigate and repair the defects. As a result of Defendants' conduct, Plaintiffs' obligation to commence an action against Defendants for the defects and/or damages set forth above was tolled pursuant to NRS 11.190.

On numerous occasions Defendants represented to Plaintiffs that the defective systems and materials were not inadequate, and that repairs had been successfully performed thereby inducing reasonable reliance thereupon by Plaintiffs that conditions were not in need of repairs, therefore, Defendants are estopped from asserting any potentially applicable statutes of limitations. Damage has also occurred at various times in the past, including progressive damage.

10. Within the last year, Plaintiffs have discovered that the subject property has and is experiencing additional defective conditions, in particular, there are damages stemming from, among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor workmanship which would extend the statute of limitations an additional two (2) years pursuant to NRS 11.203(2).

FIRST CAUSE OF ACTION

(Breach of Contract and Breach of Express Warranties as Against All Defendants and Does 1 through 500)

11. Plaintiffs reallege and incorporate by reference paragraphs 1 through 10 of the Complaint as though fully set forth herein.

12. On or about various dates commencing in 2005, and continuing thereafter in the City of North Las Vegas, County of Clark, State of Nevada, the Plaintiffs and each of them or their predecessors in interest, entered into contracts in writing with Defendants for the purchase from said Defendants of one or more of the units in the subject property.

13. At the time of negotiations of said contracts, but before said contracts were executed between the Plaintiffs and/or their predecessors in interest and said Defendants, as an inducement to the Plaintiffs and/or their predecessors in interest to purchase said units, and as a part of the basis of

the bargain of the parties that culminated in the making of the contracts, said Defendants expressly warranted to Plaintiffs and/or their predecessors in interest that said units were constructed in conformity with the applicable building codes and the specific codes and regulations of Clark County, the approved plans and specifications, and that said structures were and are sound and safe, and would remain so.

14. The Plaintiffs purchased said homes in reliance on the express warranties, affirmations of fact, and promises made by Defendants. Plaintiffs, and each of them, have duly performed all the conditions and covenants of said contracts on their part to be performed.

15. Certain Plaintiffs and/or homeowners of the subject property, notified Defendants of said breach of contract and breach of warranties, and said Defendants have refused, and continue to refuse, to remedy these defects.

16. As a direct and proximate result of the breach of the express warranties (written and oral) by Defendants, and each of them, as herein above alleged, Plaintiffs suffered damages stemming from, among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor workmanship.

17. Plaintiffs have suffered damages in an amount not fully known, but believed to be within the jurisdiction of this Court in that they have been and will hereafter be required to perform works of repair, restoration, and construction to portions of the structures to prevent further damage and to restore the structures to their proper condition. Plaintiffs will establish the precise amount of such damages at trial, according to proof.

18. Plaintiffs are entitled to all damages set forth at NRS 40.655.

SECOND CAUSE OF ACTION

(Breach of Implied Warranties-Third Party Beneficiary

as against Does 1 through 500)

19. Plaintiffs reallege and incorporate by reference paragraphs 1 through 18 of the Complaint as though fully set forth herein.

20. Plaintiffs are informed and believe and on that basis allege that Defendants and Doe defendants other than U.S. HOME CORPORATION; CAMPBELL CONCRETE OF NEVADA, INC; VALENTE CONCRETE, LLC; RED ROSE, INC.; REPUBLIC ELECTRIC, INC entered into contracts with these entities to perform certain services or work with regard to the design, construction and inspection of construction of the residences at the subject property. Plaintiffs and/or their predecessors in interest were third party beneficiaries of each and every such contract.

21. Further, said Doe defendants by entering into said contracts with U.S. HOME CORPORATION and/or CAMPBELL CONCRETE OF NEVADA, INC and/or VALENTE CONCRETE, LLC and/or RED ROSE, INC. and/or REPUBLIC ELECTRIC, INC and/or Plaintiffs and/or their predecessors in interest, impliedly warranted that said homes would be of good and merchantable quality and would be at least a quality as would be fit for the ordinary purpose for which such homes were to be used and would be habitable. Further, said Doe defendants impliedly warranted the quality of construction of the homes and common areas as provided in NRS 116.4114.

22. The Plaintiffs purchased their homes in reliance on the implied warranties and promises made by Doe defendants, and each of them. Plaintiffs have duly performed all of the covenants and conditions of said contracts on their part to be performed.

23. Certain Plaintiffs and/or Homeowners at the subject property have notified Doe defendants of said breach of implied warranties and said Doe defendants have refused and continue to refuse to remedy these defects.

24. As a direct and proximate result of the breach of the implied warranties by Doe defendants and each of them as herein above alleged, Plaintiffs suffered damages stemming from, among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor workmanship. Numerous additional defective conditions exist as more particularly described in Plaintiffs' expert reports. Plaintiffs are presently unaware of the precise amount of damages, but will establish the same at trial according to proof, and in accordance with NRS 40.655.

THIRD CAUSE OF ACTION

(Negligence and Negligence per se

As to All Defendants, and Does 1 through 500)

25. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24 of the Complaint as though fully set forth herein.

26. Plaintiffs allege that Defendants, and each of them, knew or should have known that if the subject structure and subject premises were not properly or adequately designed, engineered, marketed, supervised and/or constructed, that the owners and users would be substantially damaged thereby, and that the subject structures would be defective and not of merchantable quality.

27. Plaintiffs allege that the Defendants, and each of them, named herein were under a duty to exercise ordinary care to avoid reasonably foreseeable injury to users and purchasers of the subject premises and structures, and knew or should have foreseen with reasonable certainty that purchasers and/or users would suffer the monetary damages set forth herein, if said Defendants, and each of

them, failed to perform their duty to cause the subject premises and subject structures to be designed, engineered and completed in a proper and workmanlike manner and fashion.

28. Said Defendants, and each of them, breached their duty owed to Plaintiffs, failed and neglected to perform the work, labor and services properly or adequately in that each said Defendants so negligently, carelessly, recklessly and in an unworkmanlike manner designed, constructed and inspected the subject property and performed the aforesaid work, labor and/or services, such that the subject premises and subject structures as described herein were designed, engineered and/or constructed improperly, negligently, carelessly and/or in an unworkmanlike manner, thereby breaching the duty owed to Plaintiffs. Further, Defendants' sellers knew or should have known that the premises were constructed in an unworkmanlike manner.

29. Defendants' negligence alleged above includes the failure to meet the applicable building codes and ordinances which were in effect. Plaintiffs' members and their predecessors in interest were members of the class of persons which the building codes and ordinances were designed to protect. Such violations are negligence per se on the part of Defendants, and each of them.

30. As a direct and proximate result of the foregoing negligence and negligence per se, carelessness and unworkmanlike conduct, actions and/or omissions by said Defendants, and each of them, Plaintiffs have suffered damages in an amount in excess of $10,000.00. Plaintiffs are presently unaware of the precise amount of damages needed in order to correct the defective conditions of the subject property and subject structures, but will establish the same at trial according to proof.

31. Plaintiffs are also entitled to the damages set forth at NRS 40.655.

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FOURTH CAUSE OF ACTION

(Breach of Implied Warranty of Habitability as to All Defendants and Does 1 through 500)

32. Plaintiffs reallege and incorporate by reference paragraphs 1 through 31 of the Complaint, as though fully set forth herein.

33. All Defendants each impliedly warranted that said homes would be of good and merchantable quality, would be habitable, and would be completed in a workmanlike manner. Further, said Defendants impliedly warranted the quality of construction of the homes and common areas as provided in NRS 116.4114.

34. The Plaintiffs purchased their homes in reliance on the implied warranties and promises made by Defendants, and each of them. Plaintiffs have duly performed all of the covenants and conditions of said contracts on their part to be performed.

35. Certain Plaintiffs and/or Homeowners at the subject property have notified Defendants of said breach of implied warranties and said Defendants have refused and continue to refuse to remedy these defects.

36. As a direct and proximate result of the breach of the implied warranties by Defendants and each of them as herein above alleged, Plaintiffs suffered damages stemming from, among other items, defectively built roofs, leaking windows, dirt coming through windows, drywall cracking, stucco cracking, stucco staining, water and insect intrusion through foundation slabs, and other poor workmanship. Plaintiffs are presently unaware of the precise amount of damages, but will establish the same at trial according to proof.

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WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For general and special damages in excess of $10,000.00 including but not limited to, costs of repair, loss of market value, loss of use, loss of investment and out-of-pocket expenses to be determined at time of trial;
2. For damages in an amount according to proof;
3. For reasonable attorneys fees and costs according to proof.
4. For prejudgment and post-judgment interest on all sums awarded, according to proof at the maximum legal rate;
5. For all damages pursuant to NRS 40.600 through 40.695; in particular 40.650 and 40.655;
6. For costs of suit incurred;
7. For such other and further relief as the Court may deem just and proper.

DATED this 20th day of February, 2015

By ***/s/ Bradley S. Rosenberg***

Duane E. Shinnick, Esq.
Bar No. 7176
Melissa Bybee, Esq.
Bar No. 8390
Bradley S. Rosenberg, Esq.
Bar No. 8737
SHINNICK, RYAN & RANSAVAGE P.C.
4001 Meadows Lane
Las Vegas, NV 89107

Attorneys for Plaintiffs

IAFD
Duane E. Shinnick, Esq.
Bar No. 7176
Melissa Bybee, Esq.
Bar No. 8390
Bradley S. Rosenberg, Esq.
Bar No. 8737
SHINNICK, RYAN & RANSAVAGE P.C.
4001 Meadows Lane
Las Vegas, NV 89107
Tel. (702) 631-8014
Fax (702) 631-8024
dshinnick@ssllplaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

THE MICHAEL BALLESTEROS TRUST; RODRIGO ASANION, individually; FEDERICO AGUAYO, individually; FELIPE ENRIQUEZ, individually; JIMMY FOSTER JR., individually; THE GARCIA FAMILY TRUST; ARNULFO ORTEGA-GOMEZ and ELVIRA GOMEZ-ORTEGA, individually; JOHN J. and IRMA A. OLSON, individually; OMAR PONCE, individually; BRANDON WEAVER, individually; JON YATES, individually; MINTESNOT WOLDETSADIK, individually; and ROES 1 through 500, inclusive, Plaintiffs, v. U.S. HOME CORPORATION, a Delaware Corporation; CAMPBELL CONCRETE OF NEVADA, INC. a Nevada Corporation; VALENTE CONCRETE, LLC. a Nevada Limited-Liability Company; RED ROSE, INC., a Nevada Corporation; REPUBLIC ELECTRIC, INC., a Nevada Corporation; and DOES 1 through 500, inclusive, Defendants.	CASE NO. DEPT. NO. **INITIAL APPEARANCE FEE DISCLOSURE FOR CONSTRUCTION DEFECT COMPLAINT**

INITIAL APPEARANCE FEE DISCLOSURE

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19) FOR CONSTRUCTION DEFECT COMPLAINT

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

PLAINTIFF	FEE
THE MICHAEL BALLESTEROS TRUST	$520.00
RODRIGO ASANION	$30.00
FEDERICO AGUAYO	$30.00
FELIPE ENRIQUEZ	$30.00
JIMMY FOSTER JR.	$30.00
THE GARCIA FAMILY TRUST	$30.00
ARNULFO ORTEGA-GOMEZ ELVIRA GOMEZ-ORTEGA	$30.00 $30.00
JOHN J. OLSON IRMA A. OLSON	$30.00 $30.00
OMAR PONCE	$30.00
BRANDON WEAVER	$30.00
JON YATES	$30.00
MINTESNOT WOLDETSADIK	$30.00
TOTAL REMITTED:	**$910.00**

Dated this 20th day of February, 2015

SHINNICK, RYAN & RANSAVAGE P.C.

By ***/s/ Bradley S. Rosenberg***
Duane E. Shinnick, Esq.
Bar No. 7176
Melissa Bybee, Esq.
Bar No. 8390
Bradley S. Rosenberg, Esq.
Bar No. 8737
4001 Meadows Lane
Las Vegas, NV 89107

Attorneys for Plaintiffs

IN THE SUPREME COURT OF THE STATE OF NEVADA

U.S. HOME CORPORATION, a Delaware corporation,

Appellant,

vs.

THE MICHAEL BALLESTEROS TRUST; RODRIGO ASANION, individually; FEDERICO AGUAYO, individually; FELIPE ENRIQUEZ, individually; JIMMY FOSTER, JR., individually; THE GARCIA FAMILY TRUST; ARNULFO ORTEGOGOMEZ, individually; ELVIRA GOMEZORTEGA, individually; JOHN J. OLSON, individually; IRMA A. OLSON, individually; OMAR PONCE, individually; BRANDON WEAVER, individually; JON YATES, individually; and MINTESNOT WOLDETSADIK, individually,

Respondents.

No. 68810

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information