

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Appellant ,

v.

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST;
LINDA LAMOTHE; AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Respondents .

Supreme Court No.: 73039

District Court Case No.: A-16-747800-C

Electronically Filed

Jan 24 2018 02:09 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

APPEAL

FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY
THE HONORABLE _TIMOTHY WILLIAMS, JUDGE
DISTRICT COURT CASE NO. A-16-747800-C

APPELLANT'S APPENDIX

VOLUME 1

RICHARD E. HASKIN, ESQ.

Nevada Bar No. 11592

GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT LLP

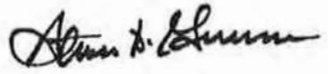
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CLERK OF THE COURT

1 **COMP**
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7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 MARJORIE B. BOULDEN, TRUSTEE OF)
10 THE MARJORIE B. BOULDEN TRUST,)
11 LINDA LAMOTHE AND JACQUES)
12 LAMOTHE, TRUSTEES OF THE)
13 JACQUES & LINDA LAMOTHE)
14 LIVING TRUST)

13 Plaintiff,)

14 v.)

15 TRUDI LEE LYTLE, JOHN ALLEN)
16 LYTLE, THE LYTLE TRUST, DOES I)
17 through X; and ROE CORPORATIONS)
18 I through X,)

18 Defendants.)

Case No. A-16-747800-C
Dept. No. XVI

19 **COMPLAINT**

20 COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs.
21 Boulden"), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe
22 Living Trust ("Mr. and Mrs. Lamothe"), by and through their attorneys Foley & Oakes, PC, as
23 and for a Complaint against Trudi Lee Lytle, John Lytle, the Lytle Living Trust (collectively the
24 "Lyttles"), DOES I through X; and ROE CORPORATIONS I through X and allege as follows:

25
26 1. Mrs. Boulden is the owner of the residential property known as parcel number
27 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Boulden
28 Property")

**FOLEY
&
OAKES**

1 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
2 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
3 NV 89117 the ("Lamothe Property").

4 3. Mr. and Mrs. Lytle are residents of Clark County.

5 4. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
7 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
8 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
9 the Defendants designated herein as DOE I through V individuals and/or ROE V through X
10 Corporations is responsible in some manner for the events and happenings herein referred to, or
11 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
12 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
13 through X Corporations when the same have been ascertained by Plaintiff, together with
14 appropriate charges and allegations and to join such Defendants in this action.
15

16 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
17 Defendants, and each of them, including those fictitiously named DOE or ROE, were the agents
18 or sureties of the other and in doing the things alleged herein, were acting within the course and
19 scope of such agency and with the consent and permission of the other co-defendants and/or are
20 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
21 for each other's actions as set forth in this Complaint. For ease of reference, the named
22 Defendants may be referred to collectively in the singular as "Defendant," and reference to one
23 shall constitute reference to the others as well.
24

25 6. The Boulden Property and the Lamothe Property are located in the Rosemere
26 Court subdivision and are subject to the CC&R's recorded January 4, 1994.
27

1 7. The Rosemere Court subdivision, as subject to the CC&Rs, is a Limited Purpose
2 Association (the "Rosemere LPA") under NRS 116.1201 and NAC 116.090.

3 8. The Rosemere LPA has been judicially declared to be a Limited Purpose
4 Association.

5 9. Pursuant to NRS 116.1201, NRS 116's application to the Rosemere LPA is
6 limited.

7 10. Pursuant to NRS 116.1201, NRS 116.3117, which provides that a judgment
8 against a homeowners' association, when recorded, is a lien against all real property owned by
9 the owners of the homeowners' association, is not applicable to the Rosemere LPA.
10

11 11. On or about July 29, 2016 the Lytles arguably obtained a Judgment in their favor
12 against Rosemere LPA in the amount of \$361,238.59 (the "Judgment").

13 12. On August 16, 2016, the Lytles recorded with the Clark County Recorder's office
14 an abstract of the Judgement against the Rosemere LPA (the "First Abstract of Judgment"),
15 specifically listing the parcel numbers of the Boulden Property and the Lamothe Property as
16 properties to which the Judgment was to attach. A copy of the First Abstract of Judgment is
17 attached hereto as Exhibit "A".
18

19 13. On September 2, 2016, the Lytles recorded with the Clark County Recorder's
20 office another abstract of the Judgement against the Rosemere LPA, specifically listing the
21 parcel number of the Lamothe Property as the property to which the Judgment was to attach (the
22 "Second Abstract of Judgment"). A copy of the Second Abstract of Judgment is attached hereto
23 as Exhibit "B". (The First Abstract of Judgment and the Second Abstract of Judgment are
24 hereinafter collectively referred to as the "Abstracts of Judgment")
25

26 14. When the Lytles recorded the Abstracts of Judgement, the Lytles specifically
27 included the parcel numbers of the Boulden Property and the Lamothe Property even though
28

1 Plaintiffs were not parties to the lawsuit from which the Judgment arose and certainly were not
2 judgment creditors under the Judgment.

3 15. The Plaintiffs have no legal duty to pay the Judgment and have advised the Lytles
4 of this fact.

5 16. The Lytles knew or should have known that the Plaintiffs did not have a legal
6 duty to pay on the Judgment.

7 17. The Abstracts of Judgment were wrongfully recorded against the Boulden
8 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
9 Judgment were wrongfully recorded.

10 18. A Purchase and Sale Agreement to purchase the Boulden Property was executed
11 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

12 19. The buyer under the PSA terminated Escrow because of the recorded First
13 Abstract of Judgment.

14
15 **FIRST CAUSE OF ACTION**
16 **(Slander of Title, Mrs. Boulden)**

17 20. Plaintiffs repeat and re-allege each and every allegation set forth above.

18 21. The Lytles' recording of the First Abstract of Judgment was a false and malicious
19 communication that has disparaged Mrs. Boulden's title to the Boulden Property.

20 22. As a proximate result of the Lytles' actions, Mrs. Boulden has been damaged due
21 to a third-party buyer cancelling escrow due to the existence of the recorded First Abstract of
22 Judgment.

23 23. As a proximate result of the Lytles' actions, the vendibility of the Boulden
24 Property is impaired.

25 24. As a proximate result of Lytles' actions Mrs. Boulden is entitled to special
26 damages in an amount in excess of \$10,000.00.

1 25. As a proximate result of Lytles' actions Mrs. Boulden is entitled to punitive
2 damages in an amount in excess of \$10,000.00.

3 26. As a proximate result of Lytles' actions, Mrs. Boulden has been required to retain
4 the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of
5 attorney's fees and costs.

6
7 **SECOND CAUSE OF ACTION**
8 **(Injunction, All Plaintiffs)**

9 27. Plaintiffs repeat and re-allege each and every allegation set forth above.

10 28. Plaintiffs do not owe any money whatsoever to the Lytles.

11 29. Plaintiffs do not have an adequate remedy at law because they cannot sell their
12 property with the Abstracts of Judgment recorded against their property.

13 30. Plaintiffs will suffer irreparable harm if they are not able to sell their property due
14 to the recording of the Abstracts of Judgment.

15 31. Plaintiffs are likely to prevail on their claims against the Lytles.

16 32. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
17 expunging the liens in the form of the recorded Abstracts of Judgment.

18 33. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
19 prosecute this action, and are entitled to an award of attorney's fees and costs.

20
21 **THIRD CAUSE OF ACTION**
22 **(Quiet Title, All Plaintiffs)**

23 34. Plaintiffs repeat and re-allege each and every allegation set forth above.

24 35. The Lytles, by their claims and actions, have asserted certain rights to lien the
25 Boulden Property and the Lamothe Property.

26 36. The Lytles are without any legal basis whatsoever to lien the Boulden Property
27 and the Lamothe Property.

1 37. The Lytles are without any legal basis whatsoever to claim any interest in the
2 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.

3 38. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
4 the Lamothe Property have been improperly and illegally clouded.

5 39. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
6 quieting title in their names and expunging the Abstracts of Judgment.

7 40. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
8 to prosecute this action, and are entitled to an award of attorney's fees and costs.
9

10 **FOURTH CAUSE OF ACTION**
11 **(Declaratory Relief)**

12 41. Plaintiffs repeat and re-allege each and every allegation set forth above.

13 42. A dispute and actual controversy exists between the parties relative to their
14 interpretation of the rights and duties of the Plaintiffs regarding the Judgment, the recorded
15 Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

16 43. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
17 Judgment against the Rosemere LPA is not a judgment against the Plaintiffs, separately or
18 individually, and that the Judgment and the Abstracts of Judgment were improperly and
19 unlawfully recorded against the Boulden Property and the Lamothe Property.
20

21 44. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
22 prosecute this action, and are entitled to an award of attorney's fees and costs.

23 **WHEREFORE**, Plaintiffs pray for judgment against the Lytles as follows:

24 A. That pending a hearing on the Preliminary Injunction and notice of the same, as
25 required by law, a Temporary Restraining Order issue with such notice as is required by law,
26 restraining and enjoining the Lytles, and each of them, their agents, servants, employees,
27 attorneys, successors, and assigns and all persons in active participation or consort with them
28

1 from selling, attempting to sell, or disposing of the Boulden Property and the Lamothe Property.
2 Further, the Temporary Restraining Order should strike the Abstracts of Judgment;

3 B. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
4 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
5 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
6 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
7 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
8 that after such hearing as may be required by law, said preliminary injunction be made
9 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
10

11 C. For judgment against the Lytles for general, special and punitive damages in
12 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

13 D. For an Order quieting title of the Boulden Property and the Lamothe Property in
14 favor of the Plaintiffs and against the Lytles;

15 E. For a declaration that the Lytles, and each of them, have no right, title or interest
16 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
17 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;
18

19 F. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
20 herein; and

21 G. For such other and further relief as this Court may deem proper in the premises.

22 DATED this 8th day of December 2016.

23 Respectfully Submitted,

24 FOLEY & OAKES, PC

25 /s/Daniel T. Foley

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13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 **MARJORIE B. BOULDEN, TRUSTEE OF)**
16 **THE MARJORIE B. BOULDEN TRUST,)**
17 **LINDA LAMOTHE AND JACQUES)**
18 **LAMOTHE, TRUSTEES OF THE)**
19 **JACQUES & LINDA LAMOTHE)**
20 **LIVING TRUST)**

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Case No.
Dept. No.

v.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X; and ROE CORPORATIONS
I through X,

Defendants.

INITIAL APPEARANCE FEE DISCLOSURE

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:

The Marjorie B. Boulden Trust	\$270.00
The Jacques & Linda Lamothe Living Trust	\$30.00
TOTAL REMITTED	\$300.00

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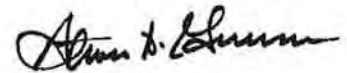
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&
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DATED this 8th day of December 2016.

FOLEY & OAKES, PC

/s/Daniel T. Foley
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12 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
13 & THE LYTLE TRUST

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 MARJORIE B. BOULDEN, TRUSTEE OF THE
17 MARJORIE B. BOULDENR TRUST, LINDA
18 LAMOTHE AND JACQUES LAMOTHE,
19 TRUSTEES OF THE JACQUES & LINDA
20 LAMOTHE LIVING TRUST

21 Plaintiff,

22 v.

23 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
24 THE LYTLE TRUST, DOES I through X,
25 inclusive, and ROE CORPORATIONS I through
26 X,

27 Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**DEFENDANTS TRUDI LEE LYTLE AND
JOHN ALLEN LYTLE, TRUSTEES OF
THE LYTLE TRUST'S ANSWER TO
PLAINTIFFS' COMPLAINT**

28 COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of
THE LYTLE TRUST (the "Lytle"), by and through their counsel of record, Richard E. Haskin,
Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &
WITTBRODT, LLP, and hereby answers Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDENR TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST's (collectively
"Plaintiffs") Complaint as follows:

1. As to Paragraphs 1-3 of the Complaint, Defendants admit the allegations set forth in
said Paragraphs.

1 2. As to Paragraphs 4-5 of the Complaint, Defendants are without knowledge or
2 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
3 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
4 same on that basis.

5 3. As to Paragraph 6 of the Complaint, Defendants admit the allegations set forth in said
6 Paragraph.

7 4. As to Paragraph 7 of the Complaint, Defendants admit that Rosemere Estates
8 Property Owners Association, a Nevada non-profit corporation ("Rosemere"), is a Limited Purpose
9 Association governed by Chapter 116 of the Nevada Revised Statutes. As to the remaining
10 allegations, said Paragraph also contains legal conclusions rather than facts that need admitted or
11 denied. Defendants deny the same on that basis, as well as the content of such allegation should
12 such a denial be necessary.

13 5. As to Paragraphs 8-10 of the Complaint, Defendants admit that Rosemere was
14 involved in prior litigation and that litigation may have certain binding effect on this litigation. As to
15 the remaining allegations, said Paragraphs also contain legal conclusions rather than facts that need
16 admitted or denied. Defendants deny the same on that basis, as well as the content of such
17 allegation.

18 6. As to Paragraphs 11-13 of the Complaint, Defendants admit that they obtained a
19 Judgment against Rosemere in the amount of \$361,238.59, plus post-judgment interest. Defendants
20 admit the remaining allegations set forth in said Paragraphs.

21 7. As to Paragraph 14 of the Complaint, Defendants admit that the Bouldens and the
22 Lamothes were not parties to the aforementioned lawsuit. However, Defendants deny the allegation
23 that the property of the Bouldens and Lamothes described in the Complaint is not subject to the
24 judgment described in the Complaint. As to the remaining allegations, said Paragraph also contains
25 legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on
26 that basis, as well as the content of such allegation should such a denial be necessary.

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1 8. As to Paragraphs 15-17 of the Complaint, Defendants deny the allegations contained
2 therein. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need to be
3 admitted or denied. Defendants deny the same on that basis.

4 9. As to Paragraphs 18-19 of the Complaint, Defendants are without knowledge or
5 information sufficient to admit or deny the allegations contained therein.

6 **FIRST CAUSE OF ACTION**

7 **(Slander of Title, Mrs. Boulden)**

8 10. Defendants repeat herein by this reference Paragraphs 1 through 9, inclusive, with the
9 same force and effect as if said Paragraphs were set forth herein in full.

10 11. As to Paragraph 21 of the Complaint, Defendants deny the allegations contained
11 therein. Furthermore, said Paragraph also contains legal conclusions rather than facts that need to be
12 admitted or denied. Defendants deny the same on that basis.

13 12. As to Paragraphs 22-26 of the Complaint, Defendants are without knowledge or
14 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
15 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
16 same on that basis.

17 **SECOND CAUSE OF ACTION**

18 **(Injunction, All Plaintiffs)**

19 13. Defendants repeat herein by this reference Paragraphs 1 through 12, inclusive, with
20 the same force and effect as if said Paragraphs were set forth herein in full.

21 14. Defendants deny the allegations in Paragraph 28 of the Complaint.

22 15. As to Paragraphs 29-33 of the Complaint, Defendants are without knowledge or
23 information sufficient to admit or deny the allegations contained therein. Said Paragraphs also
24 contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the
25 same on that basis.

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THIRD CAUSE OF ACTION**(Quiet Title, All Plaintiffs)**

16. Defendants repeat herein by this reference Paragraphs 1 through 15, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

17. As to Paragraph 35 of the Complaint, Defendants admit the allegations contained therein.

18. As to Paragraphs 36-37 of the Complaint, Defendants deny the allegations contained therein. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need admitted or denied. Defendants deny the same on that basis.

19. As to Paragraphs 38-40 of the Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein. Said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

FOURTH CAUSE OF ACTION**(Declaratory Relief, All Plaintiffs)**

20. Defendants repeat herein by this reference Paragraphs 1 through 19, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

21. As to Paragraphs 42-44 of the Complaint, Defendants deny that the judgment referenced in the Complaint is against "Rosemere LPA," rather it is against "Rosemere Estate Property Owners Association." As to the remaining allegations in Paragraphs 42-44 of the Complaint, Defendants are without knowledge or information sufficient to admit or deny the allegations contained therein. Said Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied. Defendants deny the same on that basis.

AFFIRMATIVE DEFENSES

For their further and separate affirmative defenses to the Complaint filed by Plaintiffs and the claims asserted therein, and without assuming the burden of proof on any matters for which that burden rests with Plaintiffs, Defendants allege as follows:

///

1 FIRST AFFIRMATIVE DEFENSE

2 The Complaint fails to state a claim upon which relief can be granted.

3 SECOND AFFIRMATIVE DEFENSE

4 If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was
5 directly and proximately caused and contributed to by the breach of contract, conduct, acts,
6 omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of
7 Plaintiffs or persons or entities under Plaintiffs' control, and thereby completely or partially bars
8 Plaintiffs' recovery herein.

9 THIRD AFFIRMATIVE DEFENSE

10 Defendants are not legally responsible for the acts and/or omissions claimed herein.

11 FOURTH AFFIRMATIVE DEFENSE

12 Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged
13 damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

14 FIFTH AFFIRMATIVE DEFENSE

15 The injuries and damages of which Plaintiffs complain were proximately caused by, or
16 contributed to, by the acts of other persons and/or other entities, whether now named or otherwise,
17 and that said acts were an intervening and superseding cause of the injuries and damages, if any, of
18 which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or
19 entitled Defendants to contribution from such parties.

20 SIXTH AFFIRMATIVE DEFENSE

21 Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.

22 SEVENTH AFFIRMATIVE DEFENSE

23 Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The
24 damages alleged by Plaintiffs were caused by, and arose out of, risks which Plaintiffs directly
25 assumed.

26 EIGHTH AFFIRMATIVE DEFENSE

27 Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims
28 against these Defendants at issue herein.

1 NINTH AFFIRMATIVE DEFENSE

2 Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages
3 alleged in the Complaint.

4 TENTH AFFIRMATIVE DEFENSE

5 In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be
6 entitled to offsets and credits against any purported damages, if any, allegedly sustained by
7 Plaintiffs.

8 ELEVENTH AFFIRMATIVE DEFENSE

9 Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some
10 or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of
11 Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any
12 time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is
13 never waived.

14 TWELFTH AFFIRMATIVE DEFENSE

15 Defendants incorporate by reference those affirmative defenses enumerated in NRCPP 8 as
16 fully set forth herein. In the event further investigation or discovery reveals the applicability of any
17 such defenses, Defendants reserve the right to seek leave of the court to amend its answer to
18 specifically assert the same. Such defenses are herein incorporated by reference for the specific
19 purpose of not waiving the same.

20 THIRTEENTH AFFIRMATIVE DEFENSE

21 Pursuant to NRCPP 11, as amended, all possible affirmative defenses may not have been
22 stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
23 the filing of Defendants' Answer to the Complaint, and therefore, Defendants specifically reserve
24 the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so
25 warrants, up to and including through the time of trial in this matter.

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1 WHEREFORE, Defendants pray for relief as follows:

- 2 1. That the Complaint be dismissed and that Plaintiffs take nothing by way of its
3 Complaint;
4 2. For costs and disbursements in connection with this action;
5 3. For reasonable attorney's fees, and
6 For such other and further relief that this Court deems just and proper.
7

8 DATED: February 8, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

9
10
11 By _____

Richard E. Haskin, Esq.
Nevada State Bar # 11592

Timothy P. Elson, Esq.
Nevada State Bar # 11559

1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144

Attorneys for Defendants

12 TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
13 LYTLE TRUST
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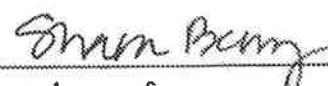
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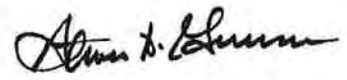
The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on February 8, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' COMPLAINT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Daniel T. Foley, ESQ.
FOLEY & OAKS, PC
626 S. 8th Street
Las Vegas, Nevada 89101

Attorney for Plaintiffs

Tel: (702) 384-2070
Fax: (702) 384-2128
Email: dan@folevoakes.com


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP



CLERK OF THE COURT

1 **MPSJ**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 S 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 Attorneys for Plaintiffs

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 MARJORIE B. BOULDEN, TRUSTEE OF)
10 THE MARJORIE B. BOULDEN TRUST,)
11 LINDA LAMOTHE AND JACQUES)
12 LAMOTHE, TRUSTEES OF THE)
13 JACQUES & LINDA LAMOTHE)
14 LIVING TRUST)

15 Plaintiff,)

Case No. A-16-747800-C
Dept. No. XVI

16 v.)

17 TRUDI LEE LYTLER, JOHN ALLEN)
18 LYTLER, THE LYTLER TRUST, DOES I)
19 through X; and ROE CORPORATIONS)
20 I through X,)

21 Defendants.)

22 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

23 TO: ALL INTERESTED PARTIES; and

24 TO: THEIR ATTORNEYS OF RECORD HEREIN:

25 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Defendants' Motion for

26 Partial Summary Judgment will be heard by the above captioned court in Department 16 of the

27 Regional Justice Center the 28 day of MARCH, 2017 at the hour of 9:00A

28 m.

29 **FOLEY**
30 **&**
31 **OAKES**

1 DATED this 24th day of February 2017

2
3 Respectfully Submitted,

4 FOLEY & OAKES, PC
5 /s/Daniel T. Foley
6 Daniel T. Foley, Esq.
7 Nevada Bar No. 1078
8 626 So. 8th Street
9 Las Vegas, Nevada 89101
10 Attorney for Plaintiffs

11 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

12 COMES NOW Plaintiffs, by and through their attorneys, Foley & Oakes, PC, and hereby
13 move this Court for Partial Summary Judgment against Defendants Trudi Lee Lytle and John
14 Lytle, the Trustees of the Lytle Living Trust (collectively the "Lytles"). Plaintiffs move this
15 Court to enter judgment in Plaintiffs' favor on all four causes of action leaving only an
16 evidentiary hearing regarding damages and attorneys' fees on Marjorie Boulden's slander of title
17 cause of action numbered 1. Plaintiffs hereby seek a Judgment Granting Declaratory Relief
18 determining that the Lytles have clouded title on both pieces of property, that the Lytles have
19 slandered Ms. Boulden's title, and injunctive relief expunging and striking the two Abstracts of
20 Judgment recorded against the Plaintiffs' property, restraining and enjoining the Lytles from
21 selling or attempting to sell the Plaintiffs' property via foreclosure sale, and restraining and
22 enjoining the Lytles from taking any action in the future against the Plaintiffs or their properties
23 based upon the litigation the Lytles commenced against third-party Rosemere Property Owner's
24 Association.
25
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27

1 The Plaintiffs move this Court pursuant to NRCP Rules 56 and the pleadings and papers
2 on file herein, together with the Memorandum of Points and Authorities set forth below.

3 DATED this 24th day of February 2017

4 Respectfully Submitted,

5 FOLEY & OAKES, PC

6 /s/Daniel T. Foley

7 Daniel T. Foley, Esq.

8 Nevada Bar No. 1078

9 626 S 8th St.

Las Vegas, Nevada 89101

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**
12 **STATEMENT OF FACTS**

13
14 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
15 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
16 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

17 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques
18 Lamothe Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential
19 property known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
20 NV 89117 (the "Lamothe Property").

21 3. The Boulden Property and the Lamothe Property are located in the Rosemere
22 Court subdivision and are subject to the CC&Rs recorded January 4, 1994. A true and correct
23 copy of the CC&Rs is attached hereto as Exhibit "1".

24 4. In 2009, the Lytles sued the Rosemere Estates Property Owners Association in the
25 Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA Litigation").
26

1 5. Mrs. Boulden and Mr. and Mrs. Lamothe were never parties to the Rosemere LPA
2 Litigation. A copy of the Lytles Complaint filed in the Rosemere LPA Litigation is attached
3 hereto as Exhibit "2".

4 6. The Lytles alleged, among other things, that the owners of the residences within
5 the Rosemere Court Subdivision had improperly amended the CC&Rs and attempted to convert
6 the simple 9 residence Rosemere Court Subdivision into a full-fledged home owners'
7 association. Exhibit "2".

8 7. The Lytles obtained a Summary Judgment from the District Court in the
9 Rosemere LPA Litigation, determining and declaring that the Rosemere LPA was not a full-
10 fledged home owners' association under NRS 116, but instead was a limited-purpose association
11 as defined by NRS 116.1201(6). See paragraph 19 on page 9 of the Order Granting Summary
12 Judgment a true and correct copy of which is attached hereto as Exhibit "3".

13 8. The Summary Judgment was appealed to, and upheld by, the Nevada Supreme
14 Court.

15 9. Upon remand, the Lytles filed a Motion for Attorneys' Fees and Costs and against
16 the Rosemere LPA, and a Judgment was entered in the Lytles' favor against the Rosemere LPA
17 for \$361,238.59 (the "Attorneys' Fees Judgment"). A true and copy of the Attorneys' Fees
18 Judgment is attached hereto as Exhibit "4".

19 10. After obtaining the Attorneys' Fees Judgment, on August 16, 2016, the Lytles
20 recorded with the Clark County Recorder's office their First Abstract of Judgement referencing
21 the Attorneys' Fees Judgment against the Rosemere LPA. A true and correct copy of the First
22 Abstract of Judgment is attached hereto as Exhibit "5".
23
24
25
26
27

1 11. In the First Abstract of Judgment, the Lytles specifically listed the parcel numbers
2 of the Boulden Property and the Lamothe Property as properties to which the First Abstract of
3 Judgment and Attorneys' Fees Judgment was to attach. Exhibit "5".

4 12. On September 2, 2016, the Lytles recorded with the Clark County Recorder's
5 office their Second Abstract Judgement against the Rosemere LPA. This time the Lytles
6 specifically listed the parcel number of the Lamothe Property as the property to which the
7 Judgment was to attach. A copy of the Second Abstract of Judgment is attached hereto as
8 Exhibit "6".
9

10 13. On or about November 7, 2016, Mrs. Boulden entered into a purchase and sale
11 agreement for the Boulden Property with a third party buyer (the "PSA #1"). See the
12 Declaration of Marjorie Boulden attached hereto as Exhibit "7".

13 14. The buyer under the PSA #1 terminated Escrow on November 15, 2016 because
14 of the recorded First Abstract of Judgment. Exhibit "7"

15 15. A second purchase and sale agreement to purchase the Boulden Property was
16 executed on December 1, 2016 by a different third party buyer (the "PSA #2"). Exhibit "7".
17

18 16. Plaintiffs' suit in this case contains four causes of action, Slander of Title, Quiet
19 Title, Declaratory Relief and Injunctive Relief.

20 17. All of the facts set forth above are undisputed.

21 18. The Lytles previously filed with this Court a Request for the Court to take judicial
22 notice of Exhibits 1 – 6 herein, to which Plaintiffs' counsel stipulated in open court on January
23 17, 2017.
24

25 **II.**
26 **LEGAL ARGUMENT**

27 **A. PURSUANT TO N.R.C.P. 56, SUMMARY JUDGMENT IS APPROPRIATE**
28 **WHEN THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT**

1 N.R.C.P. 56 provides, in pertinent part, as follows:

2 (a) For claimant. A party seeking to recover upon a claim, counterclaim or
3 crossclaim or to obtain a declaratory judgment may, at any time after the expiration of 20
4 days from the commencement of the action or after service of a motion for summary
5 judgment by the adverse party, move with or without supporting Affidavits for a summary
6 judgment in the party's favor upon all or any part thereof . . . (c) Motions and proceedings
7 thereon. The motion shall be served at least 10 days before the time fixed for the hearing. . .
8 . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to
9 interrogatories, and admissions on file, together with the affidavits, if any, show that there is
10 no genuine issue as to any material fact and that the moving party is entitled to a judgment
11 as a matter of law . . .

12 It is well established under N.R.C.P. 56 that when there remains no material issue of fact to
13 be resolved and when it appears that the moving party is entitled to a judgment as a matter of law,
14 Summary Judgment must be granted. Sawyer v. Sugarless Shops, 106 Nev. 265, 792 P.2d 14
15 (1990); Hildahl v. Barnard, 106 Nev. 314, 792 P.2d 33 (1990); Leven v. Wheatherstone
16 Condominium Corp, 106 Nev. 307, 791 P.2d 450 (1990); and Wiltsie v. Baby Grand Corp., 105
17 Nev. 291, 774 P.2d 432 (1989).

18 In the case at bar, all of the material facts and documents are undisputed. In fact
19 at the hearing before this Court on January 19, 2017, counsel for both parties agreed that all
20 material facts were agreed upon. Further, the Lytles' counsel submitted a Request for the Court
21 to take Judicial Notice of Exhibits 1 – 6 herein and Plaintiffs' counsel stipulated to the same.

22 **B. THE SUMMARY JUDGMENT ORDER OBTAINED, AND DRAFTED, BY**
23 **THE LYTLES' COUNSEL SPECIFICALLY DECLARED THAT THE**
24 **ROSEMERE SUBDIVISION IS A LIMITED PURPOSE ASSOCIATION**
25 **NOT GOVERNED BY NRS 116**

26 In the Rosemere PSA Litigation, the Lytles specifically sought and obtained declaratory
27 relief to determine that the Rosemere PSA was a limited-purpose association and was not a full-
28 fledged home owners association governed by NRS 116. See page 9, paragraph 19 of Exhibit
29 "3".

1 In the Summary Judgment Order, prepared by the Lytles' counsel, the District Court held
2 that the Rosemere LPA "is a limited purpose association under NRS116.1201, is not a Chapter
3 116 'unit-owners' association,' and is relegated to only those specific duties and powers set forth
4 in Paragraph 21 of the Original CC&Rs and NRS 116.1201." Exhibit "3" page 9, paragraph 19.

5 The specific duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS
6 116.1201, do not in any way relate to or reference a right or ability on the part of a property
7 owner within the Rosemere Estates Property Owners Association to record the Attorneys' Fee
8 Judgment against the Plaintiffs' property. NRS 116.3117 does specifically provide for this broad
9 attachment ability; however, NRS116 and NRS116.3117 do not apply to Rosemere Estates
10 Property Owners Association pursuant to the specific language of NRS 116.1201.

11 The specific powers and duties of the Original CC&Rs and NRS 116.1201 are addressed
12 more specifically below.

13
14 **C. THE PLAINTIFFS ARE NOT PARTIES TO THE ROSEMERE LPA**
15 **LITIGATION AND ARE NOT PARTIES, CREDITORS, OR OBLIGORS UNDER**
16 **THE ATTORNEYS' FEES JUDGMENT**

17 As set forth above, the Plaintiffs were never parties in the Rosemere LPA Litigation.
18 This fact is not in dispute. See Exhibit "2".

19 Also as set forth above, the Attorneys' Fees Judgment was issued in favor of the Lytles
20 against only the Rosemere LPA. See Exhibit "5". There is no dispute that the Attorneys' Fee
21 Judgment was not rendered against the Plaintiffs.

22 Finally, the Abstracts of Judgment recorded by the Lytles do not in any way name or
23 refer to the Plaintiffs. Exhibits "5" and "6". The Lytles and their counsel simply attached cover
24 pages to the Abstracts of Judgment that included the Plaintiffs parcel numbers.

25
26 **D. THE CC&RS DO NOT CREATE ANY JOINT LIABILITY FOR THE**
27 **PROPERTIES THAT ARE ENCUMBERED THEREBY, BUT INSTEAD THE**
CC&RS MANDATE EXACTLY THE OPPOSITE

1 The CC&Rs of the Rosemere Subdivision specifically provide that in the event that any
2 disputes arise between residents relating the CC&Rs that each resident has the right to initiate
3 and prosecute their disputes **against each other**, not against the association. Paragraph 24 of the
4 CC&R's provides:

5 Except as otherwise provided herein, Subdivider or any owner or owners of any
6 of the lots **shall have the right to enforce any or all of the provisions of the**
7 **covenants, conditions and restrictions upon any other owner or owners.** In
8 order to enforce said provision or provisions, any appropriate judicial proceeding
9 in law or in equity may be initiated and **prosecuted by any such lot owner or**
10 **owners against any other owner or owners.** (emphasis added) Exhibit "1"

11 The CC&Rs did not create an association that could enforce CC&Rs, represent home
12 owners in actions to enforce CC&Rs, or make determinations regarding disputes. The CC&Rs
13 instead specifically direct the owners to create a simple committee whose limited responsibilities
14 relate only to landscaping, the perimeter wall, the entrance gate, and the private drive. See
15 paragraph 21 of Exhibit "3". Nowhere in the CC&Rs is there any provision that even remotely
16 hints that a judgment against one person or party may somehow be attached to non- parties'
17 properties.

18 The Lytles argue that because all 9 lots are subject to the CC&Rs that somehow any
19 judgment against one party is enforceable against all property owners. This argument by the
20 Lytles is a mere hopeful declaration made without any support. The Lytles point to language in
21 the CC&RS that specifically provides that the CC&Rs are for the benefit of all 9 lots. It is true
22 that the CC&Rs are applicable to each of the 9 lots; however, this is the most basic concept of all
23 CC&Rs and one cannot possibly stretch "for the benefit of" to mean that non-parties to litigation
24 are at risk if one property owner obtains a judgment against another. The Lytles' argument is
25 nonsensical and without support. The subject language is a simple recital that states the obvious,
26 i.e. the CC&Rs are for the benefit of the properties in the subdivision.
27

1 The Lytles have also pointed to language in the CC&Rs that simply states that breaches
2 of the CC&R's shall not defeat mortgages or deeds of trusts recorded against any properties.
3 The Lytles' argument that this simple and necessary language that allows buyers of property to
4 obtain loans to finance the purchases of their homes somehow allows a party who obtains a
5 judgment against another to enforce that judgement against non-parties to the suit is an equally
6 absurd interpretation and completely without support
7

8 **E. NRS 116.3117 HAS NO APPLICATION WHATSOEVER TO THE ROSEMERE**
9 **LPA AND CANNOT BE USED TO ATTACH THE ATTORNEYS' FEES**
10 **JUDGMENT TO THE PLAINTIFFS' PROPERTY**

11 The only possible basis or support for the Lytles' position that the Attorneys' Fee
12 Judgment can attach to the Plaintiffs' properties is NRS 116.3117. However, the Order Granting
13 Summary Judgment, Exhibit "3" and NRS 116.1201(2)(a) specifically made NRS 116.3117
14 inapplicable to the Rosemere LPA, the Lytles, and the Plaintiffs.

15 NRS 116.3117 provides that in the case of a judgment against a full-fledged home
16 owners' association, to which NRS 116 is applicable, any judgment recorded against an NRS
17 116 home owners' association attaches to all of the property owned by its members within the
18 association. Again, the Lytles specifically sought and obtained the summary judgment declaring
19 that the Rosemere LPA is NOT subject to NRS 116 or NRS 116.3117.

20 The Order obtained by the Lytles Granting Summary Judgment specifically provides:

21 The Association is a limited purpose association under NRS 116.1201, is not a
22 Chapter 16 "unit-owners association", and is relegated to only those specific
23 duties and powers set forth in paragraph 21 of the Original CC&Rs and NRS
24 116.1201. (Emphasis added) Page 9, Paragraph 19 of Exhibit 3

25 NRS 116.1201(2) specifically provides that Chapter 116 does not apply to limited-
26 purpose associations, with the exception of various types of agricultural and other associations
27 that even the Lytles do not claim have any application here. Accordingly, if Chapter 116 does

1 not apply to the Rosemere LPA as judicially determined in the Rosemere LPA Litigation, then
2 NRS 116.3117 has no application whatsoever regarding the Rosemere Homeowners'
3 Association.

4 There are no "specific powers" set forth in 116.1201, referenced in the Paragraph 19 of
5 the Summary Judgment Order that in any way relate to or intimate that judgments obtained
6 against the Rosemere LPA could attach to all of the properties.
7

8 **F. THE ABSTRACTS OF JUDGMENT ARE CLOUDS ON THE TITLES OF**
9 **PLAINTIFFS' PROPERTY AND MUST BE ORDERED EXPUNGED**

10 By recording the Abstracts of Judgment and including the Plaintiffs' parcel numbers on
11 the cover sheets, the Lytles have recorded liens against the Plaintiffs' property and therefore
12 have clouded the titles to Plaintiffs' property. In re Contrevo, 123 Nev. 20, 153 P.3d 652 (2007).
13 The Plaintiffs are unable to sell their properties due to the recordings and Mrs. Boulden has
14 already lost one sale.
15

16 Based on the undisputed facts set forth above, this Court should, pursuant to NRS 40.010,
17 declare the Lytles' recording of the Abstracts of Judgment against the Plaintiffs' property to be
18 improper clouds on the titles and Order the Abstracts of stricken and expunged from the records
19 of the Clark County Recorders' Office in order to remove the clouds on the titles to the
20 Plaintiffs' Properties.
21

22 **G. THE ABSTRACTS OF JUDGMENT CONSTITUTE A SLANDER OF MS.**
23 **BOULDEN'S TITLE**

24 Slander of title involves false and malicious communications, disparaging to one's title in
25 land, and causing special damage. Executive Mgmt. V. Ticor Title Ins. Co. 114 Nev. 823, 963 P2d
26 465 (1998); Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987). The Lytles knew at
27 all relevant points in time that the Plaintiffs were not parties to the underlying case and the Lytles

1 knew that the defendant they sued in the underlying case was judicially declared to be a limited
2 purpose association. Accordingly, the Lytles falsely and maliciously recorded the Abstracts of
3 Judgment and thereby disparaged the Plaintiffs' property. In the case of Ms. Boulden, a sale of her
4 property has been lost and another sale for \$10,000 less is in danger of being lost. Ms. Boulden has
5 suffered special damages as a result of the loss of her sale.
6

7 In addition to Ordering the Abstracts of Judgment stricken and expunged from the records
8 of the Clark County Recorders' Office, this Court should find and Order that the Lytles slandered
9 Ms. Boulden's property and award to her special damages in the form lost interest from her first
10 proposed sale along with an award of attorneys' fees and costs.
11

12 **H. THE PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF**

13 The Nevada Supreme Court has ruled that the potential for loss of real property generally
14 results in irreparable injury. *Dixon v. Thatcher*, 103 Nev. 414, 742 P.2d 1029 (1987). See also,
15 Nevada Escrow Service, Inc. V. Crockett, 91 Nev. 201, 533 P.2d 201 (1975). Where the
16 threatened damage is the loss of real property, the Nevada Supreme Court has held that an
17 injunction is appropriate. *Thirteen S. Ltd. v. Summit Vill., Inc.*, 109 Nev. 1218, 1220, 866 P.2d
18 257, 259 (1993); *Pickett v. Comanche Constr., Inc.*, 108Nev. 422, 426, 836 P.2d 42, 44 (1992).
19 Clearly, the Plaintiffs are being irreparably harmed by the fact that the titles to their properties
20 are clouded and in Ms. Boulden's case her title has been slandered.
21

22 Plaintiffs respectfully request that this Court issue an injunction expunging and striking
23 the two Abstracts of Judgment recorded against the Plaintiffs' property and restraining and
24 enjoining the Lytles from taking any action in the future against the Plaintiffs or their properties
25 based upon the Rosemere LPA Litigation or the Judgment for Attorneys' Fees.
26
27

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Dated this 24th day of February 2017

FOLEY & OAKES, PC

Daniel T. Foley, Esq.
Nevada Bar No. 1078
626 So. 8th Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an
3 employee of Foley & Oakes, PC, and that on the 24th day of February, 2017, I served the
4 following document(s):

5 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

6 I served the above-named document(s) by the following means to the person s as listed
7 below: [x] By Electronic Transmission through the Wiznet System:

8
9 Richard E. Haskin, Esq.
10 GIBBS, GIDEN, LOCHER, TURNER,
11 SENET & WHITTBRODT, LLP
12 1140 N. Town Center Drive, Suite 300
13 Las Vegas, NV 89144

14 I declare under the penalty of perjury that the foregoing is true and correct.

15 /s/ Maren Foley
16 An employee of FOLEY & OAKES
17
18
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27

EXHIBIT 1

EXHIBIT 1



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of Jan, 1994 by Bayhman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 52 of Plate, Page 38, Clark County Records, Nevada.

WITNESSETH, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

NOW THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any lien established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be created or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No air conditioning or heating units shall be visible on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.

5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.

6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.

7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.

8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar style architecture, and shall have a tile roof, face from the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,800 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.

9. Driveways for lots 1 and 7 must enter the cul-de-sac and join the entrance street.

10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.

11. Basements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.

12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.

13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.

14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for surface drainage in the event it is necessary to change the natural or established flow of water drainage over the lot, and the purpose thereof, natural drainage is surface as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass V.A. and FFA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

17. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

18. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

19. No commercial tools, equipment, commercial vehicles, structures or other commercial apparatuses shall be stored at any time on any lot.

20. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

21. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

22. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tensaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 8 lot owners.

c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lots within the subdivision shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

23. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

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23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

IN WITNESS WHEREOF, said Owner/Subdivider Daughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

Date: 1/4/94
Owner/Subdivider/Trustee

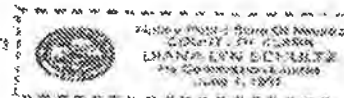
Stephen F. Turner

Date: 1-4-94
Owner/Subdivider/Trustee

Richard J. Daughman

On this 4th day of January, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Daughman



(this area for official seal)

Diana Lynn Schulte
Notary Public in and for said County and State

When Recorded Mail To:
Daughman & Turner, Inc.
1210 Benson Street
Las Vegas, NV 89102

4 of 4

CLARK COUNTY, NEVADA
JOAN L. BARNETT, RECORDER
RECORDED AT REQUEST OF:
DAUGHMAN & TURNER INC.
01-05-94 14:32 DPR
BOOK: 940106 PAGE: 01001
FEE: 10.00 REC: .00

EXHIBIT 2

EXHIBIT 2

ORIGINAL

FILED

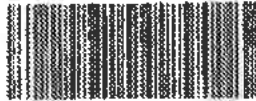
COMP
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
MICHAEL J. LEMCOOL, ESQ.
Nevada Bar No. 07061
3556 E. Russell Road, 2nd Floor
Las Vegas, NV 89120
Telephone: (702) 341-5200
Facsimile: (702) 341-5300

JUN 26 4 23 PM '03

Ed. [Signature]
CLERK OF THE COURT

Attorneys for Plaintiff, John Allen Lytle & Trudi Lee Lytle, as Trustees of the Lytle Trust

A-09-593497-D
205801



DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE & TRUDI LEE
LYTLE, AS TRUSTEES
OF THE LYTLE TRUST,

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, and DOES 1
through 10, inclusive

Defendants.

Case No.: A09593497e

Dept. No.: XI

COMPLAINT FOR TRIAL DE
NOVO PURSUANT TO NRS 38.330;
DECLARATORY RELIEF; AND
FOR A PERMANENT
INJUNCTION

ARBITRATION EXEMPT
(Appeal from Arbitration; Declaratory
Relief Requested)

COMES NOW Plaintiff, the LYTLE TRUST, by and through its Trustees, John Allen Lytle and Trudi Lee Lytle, herein by and through their attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, by Michael J. Lemcool, Esq., and for its Complaint against ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (hereinafter, the "Association"), and DOES 1 through 10, inclusive, states unto this Court as follows:

1. That Plaintiff, the Lytle Trust, is the current owner of real property located in Clark County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada.

Said property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996. A true copy of said

-1-

COMPLAINT FOR TRIAL DE NOVO PURSUANT TO NRS 38.330

\\LVC0755\000\Readings\Complaint-062609.vpd

RECEIVED

JUN 26 2003

CLERK OF THE COURT

AA000037

1 deed is attached hereto, and incorporated herein, as Exhibit "1".

2 2. That Defendant, the Association, at all times herein mentioned is comprised of
3 nine (9) owners of single family lots all as more particularly described in the recorded
4 Declaration of Covenants, Conditions and Restrictions ("CC&Rs") for the Association as
5 recorded in the official records of the Clark County Nevada Recorder's office. Plaintiff is
6 informed and believes, and based thereon alleges, that the original CC&Rs were recorded on
7 January 4, 1994, before title to any lot within the Association was conveyed by deed, and are
8 referenced in the deeds to all 9 properties located within the Association. A true copy of said
9 recorded CC&Rs is attached hereto, and incorporated herein, as Exhibit "2". A true copy of said
10 recorded map for Rosemere Court is attached hereto, and incorporated herein, as Exhibit "3".

11 3. The true names and capacities of Defendants sued herein as DOES 1-10,
12 inclusive, and each of them, are presently unknown to Plaintiff, and, therefore, they are sued
13 herein under fictitious names, and when the true names are discovered, Plaintiff will seek leave
14 to amend this Complaint and proceedings herein to substitute the true names of said Defendants.
15 Plaintiff is informed and believes and based thereon alleges that each of the Defendants
16 designated herein as a DOE is negligent or responsible in some manner for the events herein
17 referred to and negligently, carelessly, recklessly and in a manner that was grossly negligent and
18 willful and wanton, caused damages proximately thereby to the Plaintiff as herein alleged.

19 4. That Plaintiff is, and at all times herein mentioned was, and continues to be, the
20 record owner of the property located at 1930 Rosemere Court, Las Vegas, Nevada, which is
21 located within the boundaries of the Association.

22 5. That since the Association is comprised of only 9 units, the Association is
23 classified as a small planned community pursuant to NRS 116.1203, and is exempt from many of
24 the provisions of NRS Chapter 116.

25 6. By the terms of the CC&Rs, and as a result of the mutuality of restrictive
26 covenants running with the land for each of the 9 property owners, approval by 100% of the unit
27 owner is required to amend the terms of the CC&Rs.

28 7. That on or about July 2, 2007, an Amended and Restated CC&Rs were proposed

1 to the members of the Association. The proposed amended CC&Rs increased the complexity,
2 and size of the document, from 4 pages to 36 pages, and contained numerous additional
3 restrictions upon the members.

4 8. That the proposed amended CC&Rs were not agreed to by all owners, in fact less
5 than 67% thereof, with at least 3 owners specifically objecting to the proposed changes. A true
6 copy of the consent signature page is attached hereto as Exhibit "4".

7 9. That despite the failure to obtain the required unanimous approval for changing
8 the CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder
9 for Clark County, Nevada, the Amended and Restated CC&Rs. A true copy of the Certificate of
10 Officers used for recording said amended CC&Rs is attached hereto, and incorporated herein, as
11 Exhibit "5".

12 10. That the Association has threatened to apply the amended CC&Rs and their
13 restrictions against Plaintiff and its property, all to the detriment of Plaintiff.

14 11. That on or about September 26, 2008, Plaintiff brought a claim against the
15 Association regarding the interpretation, application and enforcement of the Association's
16 amended CC&Rs with the Nevada Real Estate Division ("NRED") as required by NRS 38.310.

17 12. That said dispute was arbitrated upon written stipulation of facts, documents, and
18 briefs of the parties, with the non-binding decision by the Arbitrator issued on or about May 4,
19 and June 1, 2009, and the Completion Certificate, required for filing this action, issued by the
20 NRED on June 4, 2009. A true copy of the Completion Certificate issued June 4, 2009 is
21 attached hereto, and incorporated herein, as Exhibit "6".

22 13. That said decision was erroneous in that, *inter alia*, it is contrary to Nevada law
23 regarding covenants recorded against and running with the land, contrary to the terms of the
24 originally recorded CC&Rs and, relied upon the authority to amend an Association's bylaws,
25 pursuant to NRS 116.3102, as granting the Association the inherent authority to amend the
26 CC&Rs upon a majority vote.

27 14. That there exists a controversy between Plaintiff and Defendant regarding the
28 interpretation, application and enforcement of the Association's CC&Rs and the Association's

1 implementation of the amended CC&Rs, requiring a determination by this Court and entry of
2 declaratory relief.

3 15. That prior to bringing the NRED claim, Plaintiff complained in good faith that the
4 original governing CC&Rs did not allow for the adoption and recording of the amended CC&Rs
5 upon less than 100% approval by the members.

6 16. That in retaliation for Plaintiff's good faith complaints, and in an effort to chill
7 Plaintiff's rights to bring the NRED action, the Board of Directors held a special member's
8 meeting on September 15, 2008, wherein an agenda item was to consider a civil action against
9 Plaintiff relating to actions brought by Plaintiff against the Association.

10 17. That said retaliation conducted by the Board of Directors is prohibited by NRS
11 116.31183.

12 18. That Plaintiff has suffered general damages including, but not limited to, damages
13 for breach of the CC&Rs as a result of the actions by the Association and its Board of Directors
14 in an amount in excess of Ten Thousand Dollars, the exact amount to be established at trial.

15 19. That Plaintiff has suffered special damages including, but not limited to, damages
16 for breach of the CC&Rs, for the costs involved for the generation of construction plans,
17 including architectural, engineering, and design, in an amount in excess of Ten Thousand
18 Dollars, the exact amount to be established at trial.

19 20. That the original CC&Rs provide for the award of reasonable attorney fees and
20 costs to a prevailing party.

21 WHEREFORE, Plaintiff prays that this Court:

22 A. Enter a Declaratory Judgment in favor of Plaintiff and against the Association
23 finding and declaring that amended CC&Rs were not properly adopted by the members of the
24 Association and are of no force and effect;

25 B. Enter a Permanent Injunction prohibiting the Association from amending the
26 Association's CC&Rs without the approval of all property owners;

27 C. Award Plaintiff general and special damages in an amount in excess of Ten
28 Thousand Dollars, the exact amount to be established at trial.

1 D. Award Plaintiff its attorney fees and costs for these entire proceedings in
2 accordance with the CC&Rs and/or any applicable law; and,

3 E. Award Plaintiff such further or other relief as this Court finds is just and proper in
4 the premises for a complete administration of justice.

5
6 Dated this 26th day of June, 2009.

7
8 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

9
10
11 By: 

12 MICHAEL L. LEMCOOL, ESQ.
13 Nevada Bar No. 07061
14 3556 E. Russell Road, 2nd Floor
15 Las Vegas, NV 89120
16 (702) 341-5200

17
18 *Attorneys for Plaintiff, John Allen Lytle & Trudi Lee*
19 *Lytle, as Trustees of the Lytle Trust*
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Legal Text Co. 1-800-322-3022


Recycled  Stock # EX-3-B

EXHIBIT 1

AA000042

961115.02507

APR 183-03-313-069

APR 128.05

GRANT, BARGAIN, SALE DEEDTHIS INDENTURE WITNESSETH: That Justin A. Englert, an unmarried woman

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby Grant, Bargain,
Sell and Convey to J. Allen Lytle and Trudi L. Lytle, husband and wife
as joint tenants

all that real property situated in the _____ County of Clark
State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof

- SUBJECT TO: 1. Taxes for the fiscal year 1996-97.
2. Covenants, conditions, restrictions, rights,
rights of way and easements now in record.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining

Witness my hand and seal this _____ day of November, 1996

STATE OF NEVADA } SS.
COUNTY OF Clark

Justin A. Englert
JUSTIN A. ENGLERT

on November 6, 1996
before me, a Notary Public, personally appeared

Justin A. Englert

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is
subscribed to this instrument and acknowledged that he
(she or they) executed it.

Signature [Signature]
(Notary Public)

(Notary Seal)



J. MOORE
Notary Public - Nevada
Clark County
My exp. exp. Oct. 1, 1998

RECORD NO:
96-10-2126 C78

MAIL VAN STATIONERS TO Lytle 4705 Aladdin Lane
Las Vegas, NV 89102-0601

000016

AA000043

EXHIBIT "A"
LEGAL DESCRIPTION

961115.02307

LOT NINE (9) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE
IN BOOK 59, OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY
RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH AND RESERVING THEREFROM AN EASEMENT FOR INGRESS AND
EGRESS AND PUBLIC UTILITY EASEMENT AS SHOWN ON SAID MAP OF
ROSEMERE COURT.

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY
11-15-96 16:24 DB1 2
BOOK 961115 OFFICIAL RECORDS
PAGE 12307
FEE: 0.00 RPT: 128.00

000017

AA000044

94010401241

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of April, 1976 by Haughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 59 of Plans, Page 58, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land,

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.
5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.
6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecoration, modifications or additions, interior and exterior, shall fully comply with all restrictions.
7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.
8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,500 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.
9. Driveways for Lots 1 and 9 must enter the cul-de-sac and run the entrance street.
10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.
11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.
12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.
13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.
14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose hereof, "natural" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of houses on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tenny and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and its related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

9 4 0 | 0 4 0 | 2 4 1

23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

Date: 1/4/94 Stephen F. Turner
Owner/Subdivider/Trustee Stephen F. Turner

Date: 1-4-94 Richard J. Baughman
Owner/Subdivider/Trustee Richard J. Baughman

On this 4th day of January, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Baughman



Diana Lyn Schulte
Notary Public in and for said County and State

(this area for official seal)

When Recorded Mail To:
Baughman & Turner, Inc.
1316 Hinson Street
Las Vegas, NV 89102

4 of 4

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER, INC.
81-84-94 14388 P01
OFFICIAL RECORDS
BOOK 848104 PAGE 01241
FEE: 10.00 10/11

AA000049

2.12.18

ROSEMERE COURT

A SUBDIVISION
WITHIN A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF
SECTION 1, TOWNSHIP 21 SOUTH, RANGE 40 EAST, MOBILE CO.,
ALABAMA

CITY ENGINEER'S CERTIFICATE

I, the undersigned, City Engineer of the City of Mobile, Alabama, do hereby certify that the above described property is located within the City of Mobile, Alabama, and that the same is subject to the provisions of the City of Mobile, Alabama, Ordinance No. 10,000, relating to the regulation of the use of land within the City of Mobile, Alabama.

WITNESSED my hand and the seal of the City of Mobile, Alabama, this 12th day of February, 1918.

JOHN J. BRYAN, City Engineer



OWNER'S CERTIFICATE OF RESIDENCE
I, the undersigned, do hereby certify that I am the owner of the above described property, and that I am a resident of the City of Mobile, Alabama, and that I am qualified to vote in the City of Mobile, Alabama, and that I am qualified to hold office in the City of Mobile, Alabama.

JOHN J. BRYAN, City Engineer

ACKNOWLEDGMENT

Notary Public for Alabama

My commission expires on the 12th day of February, 1918.

Notary Public for Alabama

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PLAT MAP

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JOHN J. BRYAN, City Engineer



JOHN J. BRYAN, City Engineer

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Notary Public for Alabama

My commission expires on the 12th day of February, 1918.

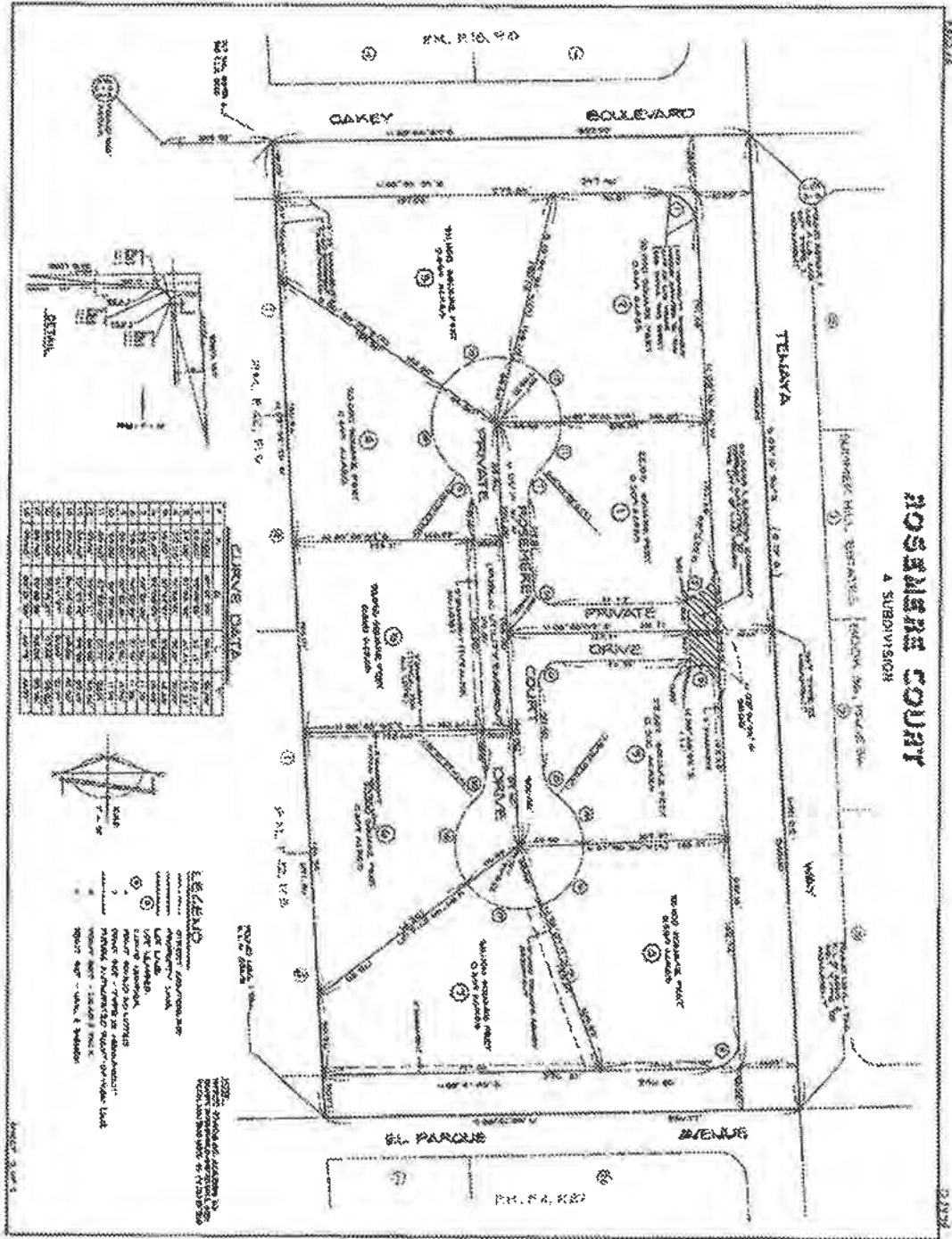
Notary Public for Alabama

My commission expires on the 12th day of February, 1918.

APPROVED BY THE CITY ENGINEER
JOHN J. BRYAN, City Engineer
This certificate is valid for the purpose of recording the same in the public records of the County of Mobile, Alabama, and for the purpose of conveying the same to the purchaser thereof.

Book 57 Page 57

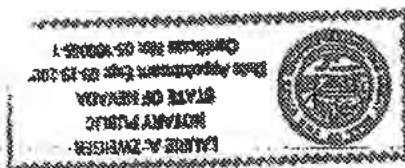
ROSEMARE COURT A SUBDIVISION



IN WITNESS WHEREOF, the owners of record of lots 1 thru 9 of the Property, have affixed their signatures to the Rosemere Estates Property Owners Association AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATIONS OR EASEMENTS:

1. 1560 Rosemere Ct. Ray/Evelyn Sandoval date: 7-2-07
 2. 1830 Rosemere Ct. Jacques/Linda Lamothe date: _____
 3. 1831 Rosemere Ct. Jerry/Lou Hsieh date: 7-2-07
 4. 1861 Rosemere Ct. Sherman/Karen Kearl date: 7-2-07
 5. 1901 Rosemere Ct. Gerry/Judy Zolnist date: 7-2-07
 6. 1931 Rosemere Ct. Chris/Karen Korras date: 7-2-07
 7. 1961 Rosemere Ct. Orville/Johannie McCumber date: 7-2-07
 8. 1968 Rosemere Ct. Carl Canter/Marge Boulden date: _____
 9. 1930 Rosemere Ct. Allen/Trudi Lytle date: _____
- State of Nevada, County of Clark

On this 2nd of July, 2007, personally appeared before me, a Notary Public in and for the County of Clark, State of Nevada, duly Commissioned and sworn, the owners of lots 1 thru 9 as indicated, personally known (or proved) to me to be the persons whose names are subscribed to the above instrument, and who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.



33



Legal Table Co 1-800-222-3022

Recycled  Stock # FX-S-B

EXHIBIT 5
AA00055

CERTIFICATE OF OFFICERS

We, the undersigned, hereby certify as follows:

1. We are the duly elected and acting President and Secretary for ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation.

2. The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rosemere Estates, duly adopted by the members of the Association on July 2, 2007.

3. Members representing more than sixty-seven percent (67%) of the voting power of the Members of the Association voted in favor of the First Amendment.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of this 2nd day of July, 2007.

June

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION

By: [Signature]

Its: President

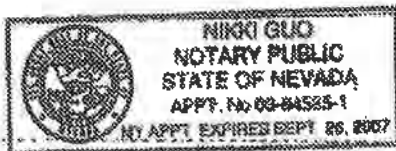
By: [Signature]

Its: Secretary

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

On this 2 day of June, 2007, before me the undersigned Notary Public, in and for said County and State, personally appeared Sherry Zborot, Sherman Keat, known or proved to me to be the President of Rosemere Estates Property Owners Association, who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein provided.

[Signature]
NOTARY PUBLIC



Legal Tans Co. 1-800-322-3022


Recycled  Stock # R-EX-5 B

EXHIBIT 6

AA000057



JIM DIBSON
Governor

LINDSAY WATTE
Ombudsman

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

DIANNE CORNWALL
Director

GAIL J. ANDERSON
Administrator

OFFICE OF THE OMBUDSMAN FOR OWNERS IN
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
CICombudsman@red.state.nv.us
<http://www.red.state.nv.us>
COMPLETION CERTIFICATE


June 4, 2009

Thomas D. Harper, Esq.
606 South Ninth Street
Las Vegas, Nevada 89101

Jason D. Smith, Esq.
400 South Fourth Street 300
Las Vegas, Nevada 89101

Alternative Dispute Resolution (ADR) Control # 09-33 Non-Binding Arbitration
Claimant(s): Lytle Trust, John Allen Lytle & Trude Lee Lytle, Trustees c/o Thomas D. Harper, Esq.
Respondent(s): Rosemere Estates Property Owners' Association c/o Jason D. Smith, Esq.

This notarized document will serve as a certificate for the Claimant(s) certifying they have completed the Alternative Dispute Resolution process as required by NRS 38.



Gordon Milden
Administrative Assistant III

cc: Ara H. Shinnian, Esq., Arbitrator

STATE OF NEVADA
COUNTY OF CLARK

On June 4, 2009, Gordon Milden, who is personally known to me or proven to me to be the person whose name is subscribed to this instrument, appeared before me acknowledging that he executed same.




Victoria G. Broadbent
Notary Public, State of Nevada

MY COMMISSION EXPIRES: 6/1/10

2501 E. Sahara Avenue, Suite 202 • Las Vegas, Nevada 89104-4137
(702) 486-4480 • Fax (702) 486-4520 • Toll Free 1-877-829-9907

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

OGSI
Richard E. Haskin, Esq.
Nevada State Bar # 11592
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
7430 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE
as Trustees of the Lytle Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
as Trustees of the Lytle Trust,

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. A-09-593497-C
Dept.: XII

**ORDER GRANTING PLAINTIFFS JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S MOTION FOR SUMMARY
JUDGMENT**

PLEASE TAKE NOTICE that on April 1, 2013, the Court heard Plaintiff JOHN ALLEN LYTLE and TRUDI LYTLE, as TRUSTEES OF THE LYTLE TRUST's ("Plaintiff"), Motion for Summary Judgment, and ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's (the "Association") Motion for Summary Judgment. After considering the motions, oppositions and replies thereto, the declarations, affidavits, and evidence submitted therewith, and hearing oral argument thereon, the Court grants Plaintiff JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, as TRUSTEES OF THE LYTLE TRUST's Motion for Summary Judgment. The Court further denies ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's Motion for Summary Judgment.

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RECEIVED

Pursuant to NRCP 56(e), the Court's findings with respect to the undisputed material facts and legal determinations on which the court granted summary judgment are set forth herein and as follows:

I. FINDINGS OF UNDISPUTED MATERIAL FACTS

1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemore Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs.")

2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws annexed, an amendment provision, and no homeowners association, as defined by Chapter 116.

3. The Original CC&Rs create a "property owners' committee" with very limited maintenance duties over specific common area items (exterior walls and planters, entrance way and planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the Original CC&Rs.

4. The Original CC&Rs then grant each homeowner, and not any homeowners' association, the power to enforce the Original CC&Rs against one another.

5. Among other things, there are no rental or pet restrictions or construction deadline in the Original CC&Rs.

6. The Developer then sold the nine (9) undeveloped lots between May 1994 and July 1995.

7. The first of the lots was conveyed by the Developer under the Original CC&Rs on May 19, 1994.

8. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lytle's"), purchased a Rosemore Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995.

9. The Lytles later transferred Plaintiff's Property to Plaintiff.

///

1 10. The Lyles purchased the property with the sole purpose of building a custom home
2 thereon.

3 11. The primary reasons that the Lyles selected the property were the limited restrictions
4 contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally
5 defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

6 12. Further, the Lyles could not meet any restrictive deadline on construction, so
7 Plaintiff purposefully selected in a community with no construction deadline.

8 13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff
9 had developed preliminary plans that were approved by the Developer.

10 14. Sometime after Plaintiff purchased its property, a group of property owners formed
11 the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of
12 maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

13 15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of
14 Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners'
15 committee and named it "Rosemere Estates Property Owners Association."

16 16. The property owners recognized that the Association did not have powers granted to
17 it other than those granted by the Original CC&Rs. For example, the Association had no power to
18 assess, fine, issue rules and regulations, or undertake other actions commonly reserved for
19 homeowners' associations.

20 17. In 1997, some of the property owners prepared and distributed a proposed set of
21 amended CC&Rs, which proposed to empower the Association and drastically increase the scope of
22 the Original CC&Rs.

23 18. The property owners determined that unanimous consent was required to amend the
24 Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs
25 were not adopted.

26 ///

27 ///

28 ///

19. At a February 23, 2004 Association meeting, two Board members presented a set of proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations, prohibitions against "unsightly articles," and other use restrictions and obligations.

20. The proposed amended CC&Rs were not unanimously approved at the February 23, 2004 meeting and, therefore, not adopted.

21. Without warning, consultation or advisement to the Rosemere property owners, on or about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by the Board.

22. This third set of proposed amended CC&Rs increased the complexity, scope, and size of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the property owners.

23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the property owners with a binder that contained the following: (1) new Articles of Incorporation, dated June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a letter from the Board to the Association members; (3) a Corporate Charter referencing the February 23, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents" referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on January 4, 1994, which Declaration provides for a method to make amendments to the Declaration and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24. The binders containing all of the foregoing documents were presented to each homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed

to conform to NRS Chapter 116 "without complying with the procedural requirements generally applicable to the adoption of an amendment..." and (5) all of the changes made were under NRS 116.2117.

25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs and changed the very nature of property ownership within Rosemere Estates. The Amended CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the powers, rights, and duties of the Association, a section entitled "Restrictions on Use, Alienation, and Occupancy," pet restrictions, parking restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered discretion, and a new and expansive definition of "nuisance."

26. The Amended CC&Rs also contained a morality clause, providing as follows:

No use that is reasonably deemed immoral, improper, offensive, or unlawful by the Board of Directors may be made of the Property or any portion thereof.

27. The Amended CC&Rs also contained a pet restriction that permits any animal found off a leash to immediately be turned over to animal control, and any animal causing a "nuisance," a vague and undefined term, to be permanently removed from Rosemere Estates upon three days written notice and hearing before the Board.

28. Finally, the proposed Amended CC&Rs contained a construction timeline that would require Plaintiff to complete the construction of the custom home on the lot within a mere 60 days of receipt of approval from the proposed Design Review Committee—something never envisioned in the Original CC&Rs and impossible to adhere to.

29. Plaintiff's property is the only Property subject to this restriction as Plaintiff's Property was the only undeveloped lot at the time of amendment.

30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined \$50.00 per day for failure to comply with this impossible deadline.

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31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within the Board's discretion, (2) based on Design Review Guidelines that have never been published, and (3) not subject "to any objective standards of reasonableness."

32. After the Board presented the proposed Amended CC&Rs to the owners, together with the written misrepresentations set forth above, the Board did not provide the owners with a reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice. Rather, the Board insisted that the amendment was "a done deal."

33. Despite the misrepresentations introducing the governing documents, the vast expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that the amendment was a "done deal," the Board asked the property owners to sign documents acknowledging their approval, with a notary retained by the Board present to verify signatures.

34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007 meeting. In fact, only five of the property owners approved, with three property owners who refused to sign the amendment. A fourth home-owner submitted a disputed proxy that was not counted by the Board.

35. Despite the failure to obtain the required unanimous approval for amending the Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the office of the Recorder for Clark County, Nevada.

19 **II. LEGAL DETERMINATIONS**

20 **A. Summary Judgment Standard**

21 1. Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP Rule 56(c).

22 2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Word v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting NRCP 56(c).)

3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 739, 121 P.3d at 1039 (internal citation omitted).

B. Plaintiff Is Entitled To Summary Judgment In Its Favor

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

Organization of unit-owners' association.

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq*

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9. There is a strong public policy in protecting property owners in common-interest communities against any alteration of the burdens of character of the community. Rest. 3d, Property - Servitudes, § 6.10, Comments.¹

10. A buyer is said to have "record notice" of the recorded covenants, conditions and restrictions on the property, thus the mandate that the homeowners' association be formed prior to conveyance of the first unit in the community, together with the requirement that the CC&Rs be recorded. NRS 116.3101.

11. Here, no Chapter 116 unit-owners' association was formed because no association was organized prior to the date the first unit was conveyed. The Association was not formed until February 25, 1997, more than three years after Rosemere Estates was formed and the Original CC&Rs were recorded.

12. Further, the Association did not have any powers beyond those of the "property owners committee" designated in the Original CC&Rs—simply to care for the landscaping and other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

13. The Original CC&Rs provide for the creation of a "property owners' committee," which is a "limited purpose association," as defined by the 1994 version of NRS 116.1201, then in effect. That provision provided that Chapter 116 did not apply to "Associations created for the limited purpose of maintaining . . . [t]he landscape of the common elements of a common interest community. . . ."

14. In 1997, Rosemere Estates' owners formed the Association for the express and limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the limited common area expenses assigned to the Owners Committee, and (3) purchasing liability insurance. The intent was never to form a unit-owners' association within the meaning of Chapter 116.

///

¹ "Property owners in common-interest communities are protected against amendments that unfairly change the allocation of burdens in the community or change the character of the community." Rest. Law 3d, Property - Servitudes, § 6.10, Comments.

15. A limited purpose association cannot enforce "any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community." NRS 116.1201(2)(a)(5). There is no question that Rosemere Estates was not "created for a rural agricultural residential common-interest community," hence the Association cannot enforce "any restrictions concerning the use of units by the units' owners...."

16. In reviewing the language of the Original CC&Rs, the Court must strictly construe the covenants thereto and any "doubt will be resolved in favor of the unrestricted use of the property...." *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); see also, e.g., *South Shore Homes Ass'n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordelon v. Homeowners Ass'n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*, 159 S.E.2d 515, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

17. In keeping with this well-settled and general principle, the Court construes the Original CC&Rs pursuant to the plain meaning of the language therein. Nowhere is there reference in the Original CC&Rs to a "unit-owners' association" or "homeowners association." Rather, the Developer created a 116.1201 *limited purpose association* termed a "property owners' committee," and the Developer provided that committee with limited, rather than comprehensive, duties and powers.

18. Consistent with the absence of a governing body, e.g. unit-owners' association, delegated with the duty to enforce the Original CC&Rs, the Developer provided each homeowner the right to independently enforce the Original CC&Rs against one another.

19. The Association is a limited purpose association under NRS 116.1201, is not a Chapter 116 "unit-owners' association," and is relegated to only those specific duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS 116.1201.

///

///

///

2002: 4-5

1 Except to the extent expressly permitted or required by other provisions of this
2 chapter, no amendment may change the boundaries of any unit, change the allocated
3 interests of a unit or change the uses to which any unit is restricted, in the absence of
4 unanimous consent of only those units' owners whose units are affected and the
5 consent of a majority of the owners of the remaining units.

6 (Emphasis added.)

7 24. For the reasons set forth above, the Association's counter-motion for summary
8 judgment is without merit.

9 **III. JUDGMENT**

10 IT IS HEREBY ADJUDGED AND DECREED:

11 **A. Declaration**

12 25. Pursuant to the foregoing, this Court declares and orders that the Amended CC&Rs
13 were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended
14 CC&Rs have no force and effect. This Order, may be recorded in the Office of the Clark County
15 Recorder's Office by any party and, once recorded, shall be sufficient notice of same.

16 **B. Injunctive Relief**

17 26. The Association is permanently enjoined from recording and enforcing the Amended
18 CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number
19 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court
20 days after the date of Notice of Entry of this Order.

21 **C. Plaintiff's Monetary Damages**

22 27. Plaintiff's monetary damages are subject to a prove-up hearing, and Plaintiff is to
23 submit a separate motion regarding the same.

24 **D. The Association's Motion For Summary Judgment**

25 28. The Association's Motion for Summary Judgment is denied.

26 **E. Costs**

27 29. Plaintiff is deemed the prevailing party in this action. Plaintiff is directed to prepare,
28 file and serve a Memorandum of Costs.

///

1 F. Attorneys' Fees

2 30. Plaintiff is deemed the prevailing party in this action. Any motion for attorney fees
3 will be addressed separately by the Court.

4
5 Dated this 21 day of July, 2013.

6
7 
8 MICHELLE LEAVITT, DISTRICT COURT JUDGE

9 Prepared and submitted by:


10 
11
12 Richard E. Haskin, Esq.
13 Gibbs, Giden, Locher, Turner, Senei & Wittbrodt LLP
14 7450 Arroyo Crossing Parkway, Suite 270
15 Las Vegas, Nevada 89113
16 Attorney for Plaintiff
17 JOHN ALLEN LYTLE and TRUDI LEE LYTLE
18 as Trustees of the Lytle Trust
19
20
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EXHIBIT 4

EXHIBIT 4

Alvin J. Schuman

CLERK OF THE COURT

1 **ORDER**

2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592
4 Bryan M. Gragg, Esq.
5 Nevada State Bar # 13134
6 **GIBBS GIDEN LOCHER TURNER**
7 **SENET & WITTBRODT LLP**
8 7450 Arroyo Crossing Parkway, Suite 270
9 Las Vegas, Nevada 89115-4059
10 (702) 836-9800

11 Attorneys for Plaintiff
12 **JOHN ALLEN LYTLE and**
13 **TRUDI LEE LYTLE**

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 **JOHN ALLEN LYTLE and TRUDI LEE LYTLE,**
17 **as Trustees of the Lytle Trust,**

18 **Plaintiffs,**

19 **v.**

20 **ROSEMERE ESTATES PROPERTY OWNERS'**
21 **ASSOCIATION; and DOES 1 through 19,**
22 **inclusive,**

23 **Defendants.**

CASE NO. A-09-593497-C
Dept.: XII

**ORDER ON PLAINTIFFS JOHN ALLEN
LYTLE AND TRUDI LEE LYTLE'S
MOTION FOR ATTORNEYS' FEES**

24 On May 2, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for
25 Attorneys' Fees came on regularly for hearing, the Honorable Michelle Leavitt presiding. Plaintiffs
26 appeared through counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt,
27 LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association
28 ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance
at the hearing.

29 Having considered the moving papers, the affidavits and declarations filed concurrently
30 therewith, and the exhibits attached thereto, the Court finds that as the prevailing party, Plaintiffs are
31 entitled to an award of attorney fees under the Original CC&Rs, the Amended CC&Rs and NRS
32 § 116.4117.

The plain terms of the Original CC&Rs authorize an award of fees in favor of Plaintiffs. As the Original CC&Rs provide, in pertinent part:

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the Lots shall have the right to enforce any or all of the provisions of the covenants, conditions, and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any lot owners or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

See Original CC&Rs, §§ 24, 25. Plaintiffs prevailed in enforcing the Original CC&Rs (by obtaining a declaration from this Court that that the Amended CC&Rs are invalid and that Defendant did not have the powers it claimed to have) and prevailed in restraining the violation of the Original CC&Rs (by obtaining injunctive relief prohibiting Defendant from enforcing the Amended CC&Rs and requiring public notice of their revocation). Accordingly, Plaintiffs are entitled to an award of attorney fees, pursuant to the terms of the Original CC&Rs.

Further, the Amended CC&Rs also contain a mandatory fee shifting provision entitling Plaintiffs to an award of attorney fees. As provided in the Amended CC&Rs, Section 16.1(a):

16.1(a) In the event the Association, or any Owner shall commence litigation or arbitration to enforce any of the covenants, conditions, restrictions or reservations contained in the Governing Documents, the prevailing party in such litigation or arbitration shall be entitled to costs of suit and such attorney's fees as the Court or arbitrator may adjudge reasonable and proper.

See Amended CC&Rs, § 16.1(a).

A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held unenforceable. *Muckleshoot v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406, 938 P.2d 1154, 1162.

Finally, Plaintiff are also entitled to an award of attorney fees pursuant to NRS 116.4117. NRS 116.4117 provides as follows:

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

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

The term "damages" in the phrase "suffering actual damages" refers to *damages* in the general sense of specifically provable injury, loss, or harm rather than the specific sense of economic damages. Whether quantifiable as a monetary loss or not, Plaintiffs suffered an injury, loss or harm as a result of the Association's actions. Accordingly, under the statute they had the right to bring a civil action for damages or other appropriate relief and, having, prevailed thereon may be awarded their reasonable attorney fees as the prevailing party.

Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Bronzell v Golden Gate Nat'l Bank* (1969) 85 Nev. 348, 349, 455 P.2d 31, 33. The Court considered all of the factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered and applied:

1. The qualities of the advocate, *i.e.* his ability, training and experience;
2. The character of the work done, its difficulty, intricacy, importance, time and skill required;
3. The work actually performed by the attorney;
4. The result, *i.e.* whether the attorney was successful in achieving a result of the client.

The Court applied each of the foregoing *Bronzell* factors to the work performed by Plaintiffs' attorneys, as set forth in the various affidavits and declarations presented to this Court with the moving papers. The Court finds that Plaintiffs are entitled to an award of \$297,072.66 in attorneys' fees as the prevailing party in this action, having achieved the revocation of the Amended CC&Rs and removing the cloud on title to their property.

//


//

GIBBS GIDEN LOCHER TURNER SENET & WILTBRODT

Therefore, the Court orders as follows:

IT IS ORDERED that Plaintiffs' Motion for Attorneys' Fees is granted, and Plaintiffs are awarded \$297,072.66 in attorneys' fees.

IT IS SO ORDERED this 25 day of May, 2016.


HONORABLE MICHELLE LEAVITT
District Court Judge, Dept. XII
P.L.

DATED: May 19, 2016

GIBBS GIDEN LOCHER TURNER
SENET & WILTBRODT LLP

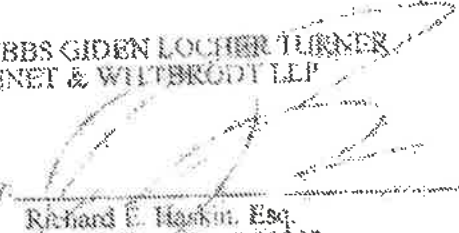
By: 
Richard E. Haskin, Esq.
Nevada State Bar # 11592
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

EXHIBIT 5

EXHIBIT 5

RECORDING REQUESTED BY

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

Richard E. Haskin, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
7450 Arroyo Crossing Pkwy., Ste. 270
Las Vegas, Nevada 89113

THIS SPACE FOR RECORDER'S USE

Inet #: 20160818-0001196

Fees: \$19.00

N/C Fee: \$0.00

08/18/2016 11:51:34 AM

Receipt #: 2548915

Requestor:

NATIONWIDE LEGAL

Recorded By: AMI Page: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN No.: 163-03-313-001
APN No.: 163-03-313-002
APN No.: 163-03-313-003
APN No.: 163-03-313-004
APN No.: 163-03-313-005
APN No.: 163-03-313-006
APN No.: 163-03-313-007
APN No.: 163-03-313-008

ABSTRACT OF JUDGMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Govt. Code 27361.6)
(Additional recording fee applies)

17697571

Description: Clark, NV Document-Year, Date, DocID 2016, #18, 1196 Page: 1 of 3
Order: Judgment Comment:

AA000078


CLERK OF THE COURT

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Eason, Esq.
Nevada State Bar # 11550
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(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN ALLEN LYTLE and TRUDI LEE LYTLE, CASE NO. A-09-593497-C
as Trustees of the Lytle Trust, Dept.: XII

Plaintiff

ABSTRACT OF JUDGMENT

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
inclusive,

Defendants.

In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION ("Defendant").

On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the amount of \$297,072.68 in favor of Plaintiff and against Defendant.

On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages Following Prove-Up Hearing against Defendant in the amount of \$63,566.93.

Finally, on July 22, 2016, the District Court entered an Order Awarding Plaintiffs' Costs against Defendant in the amount of \$599.00.

///

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GIBBS GIDEN LOCHER TURNER SENET & WITTHRODT LLP

Pursuant to the foregoing, the total amount of the Judgment, plus attorneys' fees and costs is \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually until the Judgment is satisfied.

I certify that the foregoing is a correct abstract of the judgment rendered in the above action in my Court.

DATED: 8/15/16


DISTRICT COURT JUDGE
P.C.

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

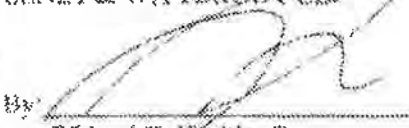
By: 
Richard E. Maskin, Esq.
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Timothy P. Elson, Esq.
Nevada State Bar # 11559
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Las Vegas, Nevada 89113-4059
Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE
LYTLE

EXHIBIT 6

EXHIBIT 6

RECORDING REQUESTED BY
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

Richard E. Haskin, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
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Las Vegas, Nevada 89113

(7)

Int'l #: 20160902-0002684

Fees: \$19.00

N/C Fee: \$0.00

09/02/2016 04:13:36 PM

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APN No.: 163-03-313-002


ABSTRACT OF JUDGMENT

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(Additional recording fee applies)

11/15/16

AA000082


CLERK OF THE COURT

Richard E. Haskin, Esq.
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Timothy P. Elson, Esq.
Nevada State Bar # 11559
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SENET & WITTENBROT LLP**
7850 Arroyo Crossing Parkway, Suite 220
Las Vegas, Nevada 89115-4059
(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDY LEE LYTLE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN ALLEN LYTLE and TRUDY LEE LYTLE,
as Trustees of the Lytle Trust,

CASE NO. A-09-593497-C
Dept. XII

Plaintiff,

ABSTRACT OF JUDGMENT

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES I through 10,
inclusive,

Defendants.

In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDY LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION ("Defendant").

On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the amount of \$297,072.66 in favor of Plaintiff and against Defendant.

On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages following Prove-Up Hearing against Defendant in the amount of \$63,563.93.

Finally, on July 22, 2016, the District Court entered an Order Awarding Plaintiffs' Costs against Defendant in the amount of \$509.06.

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CIBBS GIBBS LOCHER TURNER SENET & WITTENBROT LLP

1

1 Pursuant to the foregoing, the total amount of the judgment, plus attorneys' fees and costs is
 2 \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually
 3 until the judgment is satisfied.

4 I certify that the foregoing is a correct abstract of the judgment rendered in the above action
 5 in my Court.

6
 7 DATED: 8/15/16

[Signature]
 DISTRICT COURT JUDGE
 22

11 Respectfully requested by:

12 GIBBS GIBBS LOCHER TURNER
 13 SENEY & WITBROOK LLP

14
 15 By: *[Signature]*
 16 Richard E. Mashin, Esq.
 Nevada State Bar # 11592
 17 Timothy P. Elson, Esq.
 Nevada State Bar # 11559
 7450 Arroyo Crossing Parkway, Suite 270
 Las Vegas, Nevada 89113-4059
 18 Attorneys for Plaintiff
 JOHN ALLEN LITTLE and TRUDI LEE
 19 LITTLE
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DECLARATION OF MARJORIE B. BOULDEN

I, Marjorie B. Boulden, declare under penalty of perjury that the foregoing is true and correct.

1. I own the residence located at 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Residence").

2. On November 7, 2016, I entered into a purchase and sale agreement for the Residence with a third party buyer (the "PSA #1").

3. The buyer in the PSA #1 terminated the escrow November 15, 2016 because of the Abstract of Judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence.

4. On December 1, 2016, I entered into another purchase and sale agreement for the Residence with a different third party buyer (the "PSA #2").

5. The PSA #2 is scheduled to close escrow on January 20, 2017. The buyer in the PSA #2 has been informed of the \$361,238.59 judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence, and that buyer will not agree to pay an additional \$361,238.59 to acquire the Residence. In turn, I cannot agree to pay \$361,238.59 from the sale proceeds of the Residence to the Lytles.

6. The Lytles have effectively slandered and clouded the title to the Residence.

DATED this 16 day of January 2017


MARJORIE B. BOULDEN

EXHIBIT 7

EXHIBIT 7

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EXHIBIT A

EXHIBIT A

COUNTER OFFER

NO. 3

ATTENTION: Alan W. Coka COMPANY: Realty Group Professional
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☐ Seller ☒ Buyer Robert & Yvonne Dismar
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1926 Regency Ct Las Vegas
 dated: November 28th, 2015 is not accepted in its present form, but the following Counter Offer
 is hereby submitted:

1. Buyer may perform any and all inspections.
2. Home is being sold as is.
3. Seller will make no repairs or modifications as a result of any inspections.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached _____ page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1, 2, 3.

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 3 ☐ AM ☒ PM on (month) December
(day) 1st (year) 2016. Unless this Counter Offer is accepted by execution below
and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall
lapse and be of no further force and effect.

Date: 11/30/2016

၄။ အကျဉ်းချုပ်

Kingston & Windsor, Ontario

<input type="checkbox"/> Buyer	<input checked="" type="checkbox"/> Seller	<input type="checkbox"/> Trustee	<input type="checkbox"/> Signature
--------------------------------	--	----------------------------------	------------------------------------

Time:

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

accepts the Counter Offer:

accepts the terms of this Counter Offer subject to the attached Counter Offer No. _____; or

rejects the Counter Offer.

Date: 12-1-16

X Buyer ☐ Seller Robert Z. Dlugosz Signature

Time: 10:30am

☒ Buyer ☐ Seller Ivonne A. Dierker Signature

Counter Offer Rev. 5/11/2

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This form prescribed by Department of Justice : January 1964 and was revised : 7/27/2016-1845 (1)

instrumentation.

AA000089



COUNTER OFFER

NO. 2

ATTENTION: Kenneth Yonnan COMPANY: Luxury Homes of Las Vegas
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Marjorie B. Boulden Trust
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 1960 ROSEMARY CT LAS VEGAS
dated: November 28th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Seller agrees to extend the expiration date of Counter Offer 1 to coincide with the date of this counter offer #2.
2. Sales price to be \$550,000.00.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No.

EXPIRATION: ☐ Buyer ☒ Seller must respond by: 5 ☐ AM ☒ PM on (month) November, (day) 30th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☒ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/28/2016 ☒ Buyer ☐ Seller Robert A. Pisman Signature

Time: 8 P.M. ☒ Buyer ☐ Seller Yvonne A. Pisman Signature

The undersigned ☐ Buyer ☒ Seller hereby:
☒ accepts the Counter Offer;
☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. 3; or
☐ rejects the Counter Offer.

Date: 11/30/2016 ☐ Buyer ☒ Seller Marjorie B. Boulden, Trustee Signature

Time: ☐ Buyer ☐ Seller Signature

Counter Offer Rev. 5/12

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RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 11/27/16

Robert Z. Disman Yvonne A. Disman ("Buyer"), hereby offers to purchase
1960 ROSEBERRY CT LAS VEGAS, NV 89117, A.P.N. # 183-03-313-008 for the purchase price of \$ 850,000.00
City or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada.
Zip 89117, A.P.N. # 183-03-313-008 for the purchase price of \$ 850,000.00
(Five Hundred Fifty Thousand dollars) ("Purchase Price") on the terms and conditions
contained herein. BUYER does ~~OR~~ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

\$ 15,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is presented with this offer ~~OR~~ ☒ Mixed to Escrow. Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, ~~OR~~ ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada - punishable by up to four years in prison and a \$5,000 fine - to write a check for which there are insufficient funds. NRS 183.130(2)(d).)

\$ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) . The additional deposit ☐ will ~~OR~~ ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$ 400,000.00 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN: ☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____

\$ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN: ☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) _____
Interest: ☐ Fixed rate, _____ years ~~OR~~ ☐ Adjustable Rate, _____ years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.

\$ 95,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COS").

\$ 850,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, proration, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard financial credit report and review of debt to income ratios. If Buyer fails to complete any of those conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendums or counteroffer.

Buyer's Name: Robert Z. Disman Yvonne A. Disman

BUYER(S) INITIALS:

Property Address: 1960 ROSEBERRY CT

SELLER(S) INITIALS:

Rev. 8/5/16

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Page 1 of 10

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Instructions: ...

the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before: 01/20/17 (Date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

6. TITLE INSURANCE: This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

7. BUYER'S DUE DILIGENCE: Buyer's obligation is not conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative. Sections 7(A) through (C) shall apply; otherwise they do not. Buyer shall have 15 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

A. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unsatisfactory, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

Buyer's Initials RB Seller's Initials MB

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Dismar Travonne A. Dismar

Property Address: 1560 ROSEBERRY CT

Rec. 0326

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BUYER(S) INITIALS: RB

SELLER(S) INITIALS: MB

D. INSPECTIONS: Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections. If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.*

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contamination Inspection	Buyer	Well Inspection (Quantity)	N/A
Harm Inspection	Buyer	Mechanical Inspection	Buyer	Well Inspection (Quality)	N/A
Toxic/Pest Inspection	Buyer	Pack/Spa Inspection	Buyer	Wood-Burning Device/Chimney Inspection	N/A
Roof Inspection	Buyer	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	N/A	Septic Pumping	N/A	Structural Inspection	Buyer
Survey (type)	Waived	Other:		Other:	

2. **CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

F. BUYER'S REQUEST FOR REPAIRS: It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal, items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of a *Cognizance* and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

8. **FEEs, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

A. TITLE, ESCROW & APPRAISAL FEES:

A. TITLE, ESTATE & AFFIDAVIT FEES:					
Type	Paid By	Type	Paid By	Type	Paid By
Estate Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

B. PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recording of the deed. Security deposits, advance rents or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed acceptable. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

Each party acknowledges that neither has read, understood, nor agreed to each and every provision of this page unless a particular paragraph is otherwise modified by endorsement or otherwise.

Robert E. Nilsson Guyana A. Nilsson

PROPERTY ADDRESS: 3550 ROSSDALE ST

44. 45. 46.

English Country Las Vegas Association of Realtors

[illegible]

50 4 25f 30

exception removed or to correct such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute \$ zero dollars to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including -OR- ☒ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives -OR- ☒ requires a Home Protection Plan with To be chosen by buyer prior to COE. ☒ Seller -OR- ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$ 789.00. Buyer will order the Home Protection Plan. Neither Seller nor Broker make any representation as to the extent of coverage or deductibles of such plans.

9. TRANSFER OF TITLE: Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- * Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- * If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- * Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

A. CIC RELATED EXPENSES: (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Due	Paid By	Due	Paid By	Due	Paid By
CIC Demand	Seller	CIC Capital Contribution	Buyer	CIC Transfer Fees	Seller
Other:					

11. DISCLOSURES: Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) is the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paints Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.115)
- ☐ Other: (list) _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Dismen Yvonne R. Dismen

Property Address: 1980 ROBINSON CT

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indinet: 1.1.1

Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in Interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 128A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. **BROKER'S COMPENSATION/FEE:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who become by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ~~will~~ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counterparts and said Agreement and all counterparts have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensee working under a

Each party acknowledges that he/she has read, understood, and agrees in each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Bissman Kyrons A. Bissman

BUYER(S) INITIALS: [Signature]

Property Address: 1260 ROSEBERRY CT

SELLER(S) INITIALS: [Signature]

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1/1/2016 7:00

1 developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a
2 written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional.
3 "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property.
4 "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents
5 associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar
6 day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common
7 Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contributions" means a one-
8 time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means
9 the administrative services fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of
10 recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material
11 obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by
12 facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price
13 less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will
14 handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association
15 of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance
16 with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District.
17 "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as
18 Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance.
19 "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in
20 effect on the date specified. "PTF" means Preliminary Title Report. "Property" means the real property and any personal
21 property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means
22 Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property.
23 "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is
24 the United States Code. "VA" is the Veterans Administration.

25 24. SIGNATURES, DELIVERY, AND NOTICES:

26 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each
27 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be
28 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

29 B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this
30 Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the
31 Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read
32 receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be
33 delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to
34 Escrow in the same manner.

35 25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party
36 electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost
37 to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

38 26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement
39 shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This
40 Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and
41 intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties
42 agree that the county and state in which the Property is located is the appropriate forum for any action relating to this
43 Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of
44 any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing
45 party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by
46 such prevailing party.

47 THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review
48 the terms of this Agreement.

49 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is
50 otherwise modified by addendum or counteroffer.

51 Buyer's Name: Robert E. Sisman Yvonne E. Sisman
52 Property Address: 1960 BOWEN BLVD
53

54 BUYER(S) INITIALS: [Signature]
55 SELLER(S) INITIALS: [Signature]

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Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: Kenneth Loosen
Company Name: Luxury Homes of Las Vegas
Broker's License Number: B.0035735
Phone: 702-216-6663
Fax: 702-216-6664

Agent's Name: Kenneth Lowman
Agent's License Number: B-6633723
Office Address: 7834 W Sahara Ave # 100
City, State, Zip: Las Vegas NV 89117-2541
Email: klowman@luxuryphomeslv.com

SELLER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

DOES NOT have an interest in a principal to the transaction. -OR-

DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) —OR— ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ☒ is not OR ☐ is a foreign person therefore subjecting this transaction to FCPA
withholding. SELLER(S) INITIALS:

_____. **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☒ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

____ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

Seller's Signature _____ Seller's Printed Name _____ Date _____ Time _____

Seller's Signature _____ Seller's Printed Name _____ Date _____ Time _____ ☐ AM ☐ PM

I, the undersigned, being the owner of the above described property, do hereby certify that the same is the property of the United States of America, and is not subject to any lien or claim of any person other than the United States of America.

1. **Project Name:** Development of a New Product **Project Manager:** John Doe
 2. **Project Start Date:** 2023-01-01 **Project End Date:** 2023-06-30

ENVIRONMENT

SELECTION INDEX

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instrument, see

EXHIBIT B

EXHIBIT B

**ADDENDUM NO. 1
TO PURCHASE AGREEMENT**



In reference to the Purchase Agreement executed by Buckow Living Trust
Carl & Angeline Buckow as Buyer(s) and Marjorie B Boulden, Trustee
as Seller(s), dated 11/07/16
covering the real property at 1960 ROSEMEYER CT LAS VEGAS NV 89117

, the ☒ Buyer ☐ Seller hereby proposes that the Purchase Agreement be amended as follows:

1. Buyers hereby cancels this escrow as of this date 11/15/2016. This date is within their due diligence period. All Earnest monies to be refunded in entirety to Buyer's immediately.

☐ **ADDITIONAL PAGE(S) ATTACHED.** This Addendum is not complete without the additional terms on the attached _____ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

Carl Buckow 11/15/2016
☒ Buyer ☐ Seller Carl Buckow, Buckow Living Trust Date

Angeline Buckow 2:20pm
☒ Buyer ☐ Seller Angeline Buckow, Buckow Living Trust Time

Acceptance:
Marjorie Boulden, Trustee 11/16/2016
☐ Buyer ☒ Seller Marjorie B Boulden, Trustee Date

☐ Buyer ☐ Seller Time

Prepared by: Louise Baylata 702-250-5735
Agent's Printed Name Phone

Addendum to Purchase Agreement 9/17

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LouisaBaylata@gmail.com

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COUNTER OFFER

NO. 3

ATTENTION: Lorrea Davlatia COMPANY: RGHS NV Properties
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by ☐ Seller ☒ Buyer Barkov Living Trust
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1560 Rosemeade Ct Las Vegas
dated: November 7th, 2016 is not accepted in its present form, but the following Counter Offer
is hereby submitted:

1. Home shall be sold AS-IS. Buyer may order a home inspection for
informational purposes. Seller shall make no repairs or credits as a
result of any such inspection.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional
additional terms on the attached page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms
agreed to in Counter Offer(s) No. 1-3.

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 5:00 ☐ AM ☒ PM on (month) November,
(day) 8th, (year) 2016. Unless this Counter Offer is accepted by execution below
and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall
lapse and be of no further force and effect.

Date: 11/7/2016

Authentication

Marjorie E Boulton, Trustee

Marjorie E Boulton, Trustee

☐ Buyer ☒ Seller Marjorie E Boulton, Trustee Signature

Time:

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

X accepts the Counter Offer;

 accepts the terms of this Counter Offer subject to the attached Counter Offer No ; or

 rejects the Counter Offer.

Date: 11/8/2016

☒ Buyer ☐ Seller Paul Barker Signature

Time: 1:00 PM

☒ Buyer ☐ Seller Angeline Barker Signature

Counter Offer Rev. 5/12

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COUNTER OFFER

NO. 2

ATTENTION: Nanneth Lowman COMPANY: Luxury Homes of Las Vegas
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Marjorie B. Boudin, Trustee
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 1960 ROSEBUSH CT LAS VEGAS
dated: November 6th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Sales Price to \$560,000.
2. Earnest Money to be \$10,000.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1.

EXPIRATION: ☐ Buyer ☒ Seller must respond by: 5 ☐ AM ☒ PM on (month) November,
(day) 5th, (year) 2016. Unless this Counter Offer is accepted by execution below
and delivered to the ☒ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall
lapse and be of no further force and effect.

Date: 11/07/2016

Carl Burkow
☒ Buyer ☐ Seller Carl Burkow, Burkow Living Trust Signature

Time: 1:30 PM

Angelina Burkow
☒ Buyer ☐ Seller Angelina Burkow, Burkow Living Trust Signature

The undersigned ☐ Buyer ☒ Seller hereby:

 accepts the Counter Offer;
☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. 3; or
 rejects the Counter Offer.

Date: 11/7/2016

Marjorie B. Boudin, Trustee
☐ Buyer ☒ Seller Marjorie B. Boudin, Trustee Signature

Time:

☐ Buyer ☐ Seller Signature

Counter Offer Rev. 5/12

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COUNTER OFFER

NO. 1

ATTENTION: Lorren Bayliss COMPANY: BIRD WY Properties
(Agent) (Name)

The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Burrow Living Trust
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1950 Rosemary Ct Las Vegas
dated: November 6th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Sales price shall be \$600,000.
2. Earnest money deposit shall be \$25,000.
3. Title and escrow shall be Chicago Title - Katha Stevens.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1.

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 4:00 ☐ AM ☒ PM on (month) November,
(day) 7th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/06/2016

Authentication

Marjorie B Boulden, Trustee

☐ Buyer ☒ Seller Marjorie B Boulden, Trustee Signature

Time: 12:33 PM

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

accepts the Counter Offer;

☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. 2; or
rejects the Counter Offer.

Date: 11/7/2016

☒ Buyer ☐ Seller Carl Burkov Signature

Time: 1:30 PM

☒ Buyer ☐ Seller Angeline Burkov Signature

Counter Offer Rev. 5/12

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RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 11/06/16

Burkow Living Trust, Carl & Angelina Burkow ("Buyer"), hereby offers to purchase 1980 ROSEMERE CT, LAS VEGAS, NV 89117, A.P.N. # 163-03-313-008 for the purchase price of \$ 555,000.00 (Five Hundred Fifty Thousand dollars) ("Purchase Price") on the terms and conditions contained herein. BUYER ~~does~~ -OR- does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

\$ 5,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer -OR- ☒ upon accepted offer. Upon Acceptance, Earnest Money is to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or business days if wired to: ☒ Escrow Holder; ☐ Buyer's Broker's Trust Account; -OR- ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada -punishable by up to four years in prison and a \$5,000 fine- to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) . The additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$ n/a C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN: ☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) .

\$ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):

☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) . Interest: ☐ Fixed rate, years -OR- ☐ Adjustable Rate, years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$ n/a E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.

\$ 555,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

\$ 555,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB AB

Property Address: 1980 ROSEMERE CT

SELLER(S) INITIALS:

Rev. 05/16

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This form prepared by Ms. Lorraine D. Bayliss : 888S Nevada Properties : 702-250-8735 : LorraineBayliss@gmail.com

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applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than n/a calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. If this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than n/a calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. If this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.

D. CASH PURCHASE: Within 4 business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

3. SALE OF OTHER PROPERTY: This Agreement ☒ is not -OR- ☐ is contingent upon the sale (and closing) of another property which address is _____
Said Property ☐ is ☐ is not currently listed -OR- ☐ is presently in escrow with _____
Escrow Number: _____ Proposed Closing Date: _____

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

4. FIXTURES AND PERSONAL PROPERTY: The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: _____

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Jaimie Gioiosa title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Equity Title ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angeline Burkow

BUYER(S) INITIALS: CB

Property Address: 1960 ROSEMEAD CT

SELLER(S) INITIALS: /

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LorenaBayliss@gmail.com

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the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before:
12/30/15 (date). If the designated date falls on a weekend or holiday, COE shall be the next business day

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

6. TITLE INSURANCE: This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

7. BUYER'S DUE DILIGENCE: Buyer's obligation is X is not conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative. Sections 7 (A) through (E) shall apply; otherwise they do not. Buyer shall have 15 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

A. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development, noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

Buyer's Initials _____ Seller's Initials _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Bookow Living Trust Carl & Angelina Bookow

BUYER(S) INITIALS: CB / AB

Property Address: 1980 ROSEBERRY CT

SELLER(S) INITIALS: _____

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This form presented by Mr. Lawrence D. Bayliss | NMLS Nevada Properties | 702-250-5735 |
larry@larryd.com

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D. INSPECTIONS: Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections. If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

| Type | Paid By | Type | Paid By | Type | Paid By |
|-------------------------|---------|-------------------------------|---------|--|---------|
| Energy Audit | Waived | Fungal Contaminant Inspection | Waived | Well Inspection (Quantity) | N/A |
| Hone Inspection | Buyer | Mechanical Inspection | Buyer | Well Inspection (Quality) | N/A |
| Termite/Pest Inspection | Waived | Pool/Spa Inspection | Buyer | Wood-Burning Device/Chimney Inspection | N/A |
| Roof Inspection | Buyer | Soils Inspection | Waived | Septic Inspection | N/A |
| Septic Lid Removal | N/A | Septic Pumping | N/A | Structural Inspection | Buyer |
| Survey (Type): | N/A | Other | | Other: | |

E. CERTIFICATIONS: In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

F. BUYER'S REQUEST FOR REPAIRS: It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

G. FEES, AND PRORATIONS (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

A. TITLE, ESCROW & APPRAISAL FEES:

| Type | Paid By | Type | Paid By | Type | Paid By |
|----------------------------|---------|-----------------------|---------|----------------------|---------|
| Escrow Fees | 50/50 | Lender's Title Policy | N/A | Owner's Title Policy | Seller |
| Real Property Transfer Tax | Seller | Appraisal | Waived | Other: | |

B. PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplements or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB

Property Address: 1960 ROSEBUD CT

SELLER(S) INITIALS: /

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exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute \$ 0 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including ☐ OR ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives ☐ OR ☒ requires a Home Protection Plan with TUD ☐ Seller ☐ OR ☒ Buyer will pay for the Home Protection Plan as a price not to exceed \$ 588.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

9. TRANSFER OF TITLE: Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- * Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- * If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- * Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

A. CIC RELATED EXPENSES: (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A)

| Type | Paid By | Type | Paid By | Type | Paid By |
|--------------|---------|--------------------------|---------|-------------------|---------|
| CIC Demand | N/A | CIC Capital Contribution | N/A | CIC Transfer Fees | N/A |
| Other: _____ | | | | | |

11. DISCLOSURES: Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Murrow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB AB

Property Address: 1360 ROSEBUD CT

SELLER(S) INITIALS: /

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lorrainebayliss@gmail.com

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12. **FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES:** All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. **WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 5 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.

14. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ~~COE~~ OR ☐ . In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

15. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid if legal title or possession has transferred, risk of loss shall shift to Buyer.

16. **ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. **CANCELLATION OF AGREEMENT:** In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

18. **DEFAULT:**

A. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initiating below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: CB / [Signature] SELLER(S) INITIALS: _____

B. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. **IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB / [Signature]

Property Address: 1960 ROSEBERRY CT

SELLER(S) INITIALS: _____

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Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. **BROKER'S COMPENSATION/FEES:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will ~~OR~~ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensee working under a

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burrow Living Trust Carl & Angeline Burrow

BUYER(S) INITIALS CB / AB

Property Address: 1950 ROSEME CT

SELLER(S) INITIALS

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Lorree@raylatis@gmail.com

Instructions

AA000113

1 developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a
2 written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional.
3 "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property.
4 "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents
5 associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar
6 day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common
7 Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-
8 time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means
9 the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of
10 recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material
11 obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by
12 facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price
13 less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will
14 handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association
15 of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance
16 with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District.
17 "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as
18 Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance.
19 "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in
20 effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal
21 property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means
22 Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property.
23 "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is
24 the United States Code. "VA" is the Veterans Administration.

25
26 **24. SIGNATURES, DELIVERY, AND NOTICES:**

27
28 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each
29 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be
30 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

31
32 B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this
33 Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the
34 Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read
35 receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be
36 delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to
37 Escrow in the same manner.

38
39 **25. IRC 1031 EXCHANGE:** Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party
40 electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost
41 to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

42
43 **26. OTHER ESSENTIAL TERMS:** Time is of the essence. No change, modification or amendment of this Agreement
44 shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This
45 Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and
46 intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties
47 agree that the county and state in which the Property is located is the appropriate forum for any action relating to this
48 Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of
49 any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing
50 party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by
51 such prevailing party.

52
53
54 **THIS IS A LEGALLY BINDING CONTRACT.** All parties are advised to seek independent legal and tax advice to review
55 the terms of this Agreement.

56
57 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is
otherwise modified by addendum or counteroffer.

Buyer's Name Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB, AB

Property Address 1360 ROSEBERRY CT

SELLER(S) INITIALS: _____

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Lorreen@hayatidis@gmail.com

ins@onehomes

AA000114

THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS® (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

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27. ADDENDUM(S) ATTACHED: _____

28. ADDITIONAL TERMS:

1. To verify if any written documentation exists between the homeowners concerning the costs and maintenance of the cul-de-sac, if not, is there any other explanation how these matters are handled.

Buyer's Acknowledgement of Offer

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: Forrest Barben
Company Name: BHHS Nevada Properties
Broker's License Number: _____
Phone: 702-250-5735
Fax: 702-317-3274

Agent's Name: Lorree O Bayliss
Agent's License Number: 8.081468.LBC
Office Address: 8850 W Sunset Rd Ste 200
City, State, Zip: Las Vegas NV 89148
Email: LorreeBayliss@gmail.com

BUYER LICENSEE DISCLOSURE OF INTEREST. Pursuant to NRS 645.232(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ DOES NOT have an interest in a principal to the transaction. -OR-

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) -OR- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship) _____

Seller must respond by: 5:00 ☐ AM ☒ PM on (month) November, (day) 9, (year) 2015. Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

| | | | | |
|------------------------|------------------------|----------------|--------------|--|
| <u>Carl Burkow</u> | Burkow Living Trust | <u>11/6/15</u> | <u>10:15</u> | <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM |
| Buyer's Signature | Buyer's Printed Name | Date | Time | |
| <u>Angeline Burkow</u> | Carl & Angeline Burkow | <u>11/6/15</u> | <u>10:15</u> | <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM |
| Buyer's Signature | Buyer's Printed Name | Date | Time | |

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angeline Burkow BUYER(S) INITIALS: CB AB
Property Address: 1960 ROSEMERE CT SELLER(S) INITIALS: _____

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LorreeBayliss@gmail.com

AA000115

Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

| | |
|--|--|
| Seller's Broker: <u>Kenneth Lowman</u> | Agent's Name: <u>Kenneth Lowman</u> |
| Company Name: <u>Luxury Homes of Las Vegas</u> | Agent's License Number: <u>R.0035725</u> |
| Broker's License Number: _____ | Office Address: <u>7854 N Sahara Ave # 100</u> |
| Phone: <u>702-215-4663</u> | City, State, Zip: <u>Las Vegas NV 89112-1546</u> |
| Fax: <u>702-215-4564</u> | Email: <u>klowman@luxuryhomeslv.com</u> |

SELLER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

____ DOES NOT have an interest in a principal to the transaction. --OR--

____ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) --OR-- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity); (specify relationship)

FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she _____ is not --OR-- _____ is a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: _____

____ ACCEPTANCE: Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

____ COUNTER OFFER: Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

____ REJECTION: In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

| | | |
|-----------------------------|--------------------------------|---|
| _____
Seller's Signature | _____
Seller's Printed Name | Date _____ Time _____ <input type="checkbox"/> AM / <input type="checkbox"/> PM |
| _____
Seller's Signature | _____
Seller's Printed Name | Date _____ Time _____ <input type="checkbox"/> AM / <input type="checkbox"/> PM |

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkaw
Property Address: 1960 ROSEMEAD CT

BUYER(S) INITIALS: CB, AB
SELLER(S) INITIALS: _____

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LorrieDBoylston@gmail.com

Indicate initials

AA000116

Tax Report

| Clark County Property | | | |
|-----------------------------|---|----------------|------------------|
| Parcel #: | 163-03-313-008 | Address: | 1960 ROSEMERE CT |
| YN-RG-SE: | 21 - 60.0 - 3 | PropCity: | LAS VEGAS |
| Tot Value: | \$213,806 | Tax Dist: | LAS VEGAS CITY |
| QED ID: | NZ 5994 21-60.0-3 | Land Use: | 1100010001/SPR |
| | | Census Tract: | 2916 |
| Assessor Description | | | |
| File Page: | PS 0055-0058 | Subdivision: | /ROSEMERE COURT |
| Assr Lot: | 8 | Block: | |
| Assr Apt: | | Parcel: | 562 |
| Assr Desc: | ROSEMERE COURT FLAT BOOK 59 PAGE 58 LOT 8 | Phase: | |
| | | Bldg: | |
| | | Track: | |
| | | Unit: | |
| | | Outlet: | |
| Owner & Doc Information | | | |
| Owner Name: | BOULDER MARJORIE S TRUST | ETAL | DOC DATE |
| 2nd Owner: | BOULDER MARJORIE S TRS | N | 07/31/1996 |
| Address(S): | 1960 ROSEMERE Court - | DOC NUMBER | 1996073101459 |
| City: | LAS VEGAS | 05/19/1994 | 1904051901300 |
| State: | NV | | |
| Zip Code: | 89117 | | |
| Prev Owner: | CANTOR CARL | | |
| Own Phone: | | | |
| Land & Building Information | | | |
| Land Value: | \$47,256 | Irregular: | |
| Front/Dpth: | | Undrg Util: | |
| Acres: | 0.46 | Str Paved: | |
| Lot SqFt: | 20,038 | View: | |
| Topography: | | Act Yr Blt: | 1995 |
| Schools: | | Eff Yr Blt: | 1995 |
| Shopping: | | Cost Class: | Good |
| Impr Value: | \$166,356 | Carpet: | 60 % |
| Type Style: | 1 STORY | Ceramic Tl: | 40 % |
| Architect: | | Vinyl Tile: | |
| Ext Wall: | Frm Stucco | Hardwood: | |
| Roof Matl: | Conc Tile | Centr Vac: | Y |
| Flooring: | Conc | Bl Refrig: | Y |
| Heat System: | Force Air | Bl Micro: | N |
| Air Cond: | Cent Cool | Trash Chpt: | N |
| Centl Air: | | Range Ovr: | |
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DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- Each party for whom the licensee is acting as an agent in the real estate transaction, and
- Each unrepresented party to the real estate transaction, if any.

| | |
|--|--|
| Licensee: The licensee in the real estate transaction is <u>Lorrea D Bayliss</u> | |
| whose license number is <u>S 0051466 LLC</u> . The licensee is acting for (client's name(s)) <u>Burkow Living Trust</u> | |
| <u>Carl & Angelina Burkow</u> who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant. | |
| Broker: The broker is <u>Forrest Barbes</u> whose | |
| company is <u>RRR Nevada Properties</u> | |

Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

- Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
- Exercise reasonable skill and care with respect to all parties to the real estate transaction.
- Disclose to each party to the real estate transaction as soon as practicable:
 - Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - Each source from which licensee will receive compensation.
- Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

- Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
- Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
- Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
- Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
- Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
- Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
- Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.
Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties:

The Licensee

MAY ☐ OR MAY NOT ☐

in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.

Seller/Landlord: _____ Date: _____ Time: _____

Seller/Landlord: _____ Date: _____ Time: _____

OR
Buyer/Tenant: Carl Burkow Date: _____ Time: _____

Buyer/Tenant: Angelina Burkow Date: _____ Time: _____

Approved Nevada Real Estate Division
Replaces all previous versions

ANGELINA
BURKOW

525
Revised 7/1/2014

| GLVAR | Single Family Residential | | | Ownership | | | 11/06/2016 10:18 AM | | |
|--|---|---|---------------------------|------------------|-------------------|---------------------------------|---------------------|---------------|---------------------|
| ML# | 1634413 | Offc | LHJV | PubID | 010458 | Status | A-ER | Area | SP2 |
| Address | 1960 /ROSEMERE /Court | | | Unit | | StatusUpdate | | | |
| Building # | | Bldg/Mant | | Model | | | | Condo/Inv | Zip |
| County | CLARK | Parcel# | 163-02-313-008 | Zoning | SINGLE | | | Studio | YrBult |
| Comty | NONE | Subdy | ROSEMERE COURT | | | | | CR/Town | Las Vegas |
| Assoc/Comm Feat Desc | CC&RS, Gated | | | | | | | | State NV |
| | | | | | | | | | Gated Yes |
| | | | | | | | | | AgeRestrict N |
| Elem K-2 DERF | Elem 3-5 DERF | yrRound | N | Junior | JOHN | Highest | BNZA | Subdiv# | CensTrct |
| | | | | | | | | | 2916 NctrsMap 53-A2 |
| PROPERTY INFORMATION | | | | | | | | | |
| Bldg Desc | 1STORY | Prop Desc | | #Baths | | FR | 3/4 | HS | Tot |
| Type | DETACHED | Conv | | | | | | | |
| Roof | PITCHED, TILE | Unit Desc | | #Bedrms | 5 | #Den/Oth | 0 | #Lot | 0 |
| Garage | 3/ATTACHD, AUTODR, ENTRYHS | | | Converted Garage | N | Prkng Desc | | | |
| ApprxLivArea | 4,130 | #Acres +/- | 0.460 | Lot SqRt | 20.036 | Lot Desc | 14701AC | | Carports |
| ApprxAdditvArea | | | | | | ApprxIntallvArea | 4,130 | | |
| Manuf | | Length | | Width | | ConvertedProp | | MH-YrBlt | |
| PvSpa | Yes/INGRD, OUTDOOR | Pool | | PvPool | Y/INGRND, POOLSPA | | | Pool Size +/- | 30X60 |
| Dir | West on Sahara to Tenaya, Right on Tenaya, Left at Rosemere (gate), Left on Rosemere | | | | | | | | |
| Public | Large single story in quiet, privately gated community with a cozy gated courtyard entry and electronically gated | | | | | | | | |
| Remarks | area for the 3 car garages. The interior boasts a large living room, dining room and family room with a fireplace, spacious kitchen with granite counters, enormous island, nook, pantry and put sink, the master bedroom has a fireplace, jetted tub, separate shower and French doors to the spacious backyard with | | | | | | | | |
| Ag/Ag | sparkling swimming pool, spa, built-in BBQ and lush, well established landscaping! With 5 bedrooms, 4 1/2 | | | | | | | | |
| Remarks | bathrooms, this home is ideal for family living. | | | | | | | | |
| Master Bed Room | 21x18 | CEILIT, SEPRAT, WICLOS | | Master Bath | | DOLSKN, MAKEUP, SEPSHW, TUBJECT | | | |
| 2nd Bedroom | 17x15 | DNSTRS, WICLOS | | 3rd Bedroom | 13x12 | DNSTRS, MIRROR, WBATH | | | |
| 3rd Bedroom | 16x15 | DNSTRS, WICLOS, WBATH | | 4th Bedroom | 13x17 | DNSTRS, WICLOS, WBATH | | | |
| Dining Room | 13x11 | FORDIN | | Family Room | 22x20 | DNSTRS, SEPPAM | | | |
| Kitchen | | BKBRK, NOOK, GRNCYP, ISLAND, RECESS, PANTRY, TILE | | Living Room | 15x14 | ENTROY, FORMAL | | | |
| MBR Down? | | Bed On | Y | Ba On | Y | Ba On Desc | F | | |
| Construct | | | | | | Furnished Desc | | | |
| Refrg | Y | Dishw | Y | Washer Inc | N | Dryer Inc | N | Dryer/Grd | E |
| OtherApplcs | NONE | | | | | | | Location | 1STFLR, ROOM |
| Interior | BLINDS, CEILFN | | | | | Over Desc | CONTOPG, DBLOWNE | | |
| Firepl | 2/GAS, TOWOAY | | | | | Flooring | CARPET, CERAMIC | | |
| Firepl Loc | FAMILY, MBRBA, MASTER | | | | | Fence | BF/BLOCK | | |
| House Face | East | House Views | | | | | | Equest | NONE |
| Exterior | BITOSSQ, COURTYD, CVPATIO, PATIO, PRIVYRD | | | | | | | | |
| Landscap | SUBDRIP, LAWNPR, FRNSPR, MATURE, LAWNRR, BERSPR, SHRUBS | | | | | | | Miscel | HPP |
| Heat Sys | 2PLUSHNITS, CENTRAL | H/Huel | GAS | | | | | Water | PUBLIC |
| Cool Sys | 2UNITSPLUS, CENTRAL | CLFuel | ELEC | Grd Mounted | Y | | | Sewer | PUBLIC |
| Utility Info | CABAVL, SATDISH, UNDERGRND | Energy | DUALPNE | | | | | Sol Elec | None |
| VOW/FINANCIAL/LISTING OFFICE INFORMATION | | | | | | | | | |
| Assoc Fee | N | Assoc Fee 2 | | Internet | Y | Public Address | Y | AVM | Y |
| Assoc Fee 1 | | | | Assoc Ph | | Master Plan Fee | \$0 | | |
| Assoc Fee Includes | | | | Assessmt | N | Assessment Amt | | | |
| Earn Dep | \$30,000 | Ann Tax | \$5,186 | SI0/LID? | N | SI0/LID | | | |
| Finance Consid | CASH, CONV | Court App | N | SI0/LID | N | SI0/LID | | | |
| Lockbox | E | Lockbox Location | front | SI0/LID? | N | SI0/LID | | | |
| L/Agent | Kenneth Lowman | L/Ph | 702-216-4663 | SI0/LID? | N | SI0/LID | | | |
| Office | Luxury Homes of Las Vegas | | | SI0/LID? | N | SI0/LID | | | |
| Off Adr | 7854 W Sahara Ave # 100, Las Vegas 89117-1944 | | | SI0/LID? | N | SI0/LID | | | |
| Act Fax # | 702-974-4934 | Email | klowman@luxuryhomeslv.com | SI0/LID? | N | SI0/LID | | | |
| Contact | Kenneth Lowman | ContPh | 702-281-3337 | SI0/LID? | N | SI0/LID | | | |
| Resident | Call Listing | ResPh | 702-216-4663 | SI0/LID? | N | SI0/LID | | | |
| Showing | KEYANY | GateCode | #0629 | SI0/LID? | N | SI0/LID | | | |
| ContDesc | CombolE | GateCode2 | | SI0/LID? | N | SI0/LID | | | |
| Back to Showing | | | | | | | | | |

Energy-Efficient/GSFPs Information:

Green Building Certification No

Presented by: Office Name

SMH Nevada Properties

Assoc. Prof. Dr. D. Bayraktar

OLVAR DEEMS INFORMATION RELIABLE BUT NOT GUARANTEED. IT IS A VIOLATION TO PROVIDE DETAIL PRINTOUTS TO A CUSTOMER/CLIENT.


CLERK OF THE COURT

1 **SAO**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 S 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Plaintiffs*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 MARJORIE B. BOULDEN, TRUSTEE OF)
10 THE MARJORIE B. BOULDEN TRUST,)
11 LINDA LAMOTHE AND JACQUES)
12 LAMOTHE, TRUSTEES OF THE)
13 JACQUES & LINDA LAMOTHE)
14 LIVING TRUST)

13 Plaintiff,)

Case No. A-16-747800-C
Dept. No. XVI

14 v.)

15 TRUDI LEE LYTLE, JOHN ALLEN)
16 LYTLE, THE LYTLE TRUST, DOES I)
17 through X; and ROE CORPORATIONS)
18 I through X,)


Defendants.)

19 **STIPULATION AND ORDER FOR LEAVE FOR PLAINTIFFS TO FILE AMENDED**
20 **COMPLAINT**

21 IT IS HEREBY STIPULATED AND AGREED by and between counsel for all parties
22 herein, that the Court may grant leave to Plaintiffs file an Amended Complaint to assert that
23 Defendants John Allen Lytle and Trudi Lee Lytle are Trustees of the Lytle Trust. The Filing of an
24 Amended Complaint will alleviate the need for a hearing Defendants Motion to Dismiss scheduled
25 for March 14, 2017.
26

1 Dated: March 1, 2017

2 FOLEY & OAKES, PC

3 
4 Daniel T. Foley, Esq.
5 626 So. 8th Street
6 Las Vegas, NV 89101
7 *Attorneys for Plaintiffs*

8 
9 GIBBS, GIDEN, LOCHER, TURNER,
10 SENEY & WHITT BRODT, LLP

11 Richard E. Haskin, Esq.
12 1140 N. Town Center Drive, Suite 300
13 Las Vegas, NV 89144
14 *Attorneys for Defendants*

15 **ORDER**

16 It is so ORDERED.

17 DATED this 7th day of March 2017.

18 
19 DISTRICT COURT JUDGE
20
21
22
23
24
25
26
27


CLERK OF THE COURT

1 **ACOM**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
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11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MARJORIE B. BOULDEN, TRUSTEE OF)
14 THE MARJORIE B. BOULDEN TRUST,)
15 LINDA LAMOTHE AND JACQUES)
16 LAMOTHE, TRUSTEES OF THE)
17 JACQUES & LINDA LAMOTHE)
18 LIVING TRUST)

19 Plaintiff,)

Case No. A-16-747800-C
Dept. No. XVI

20 v.)

21 TRUDI LEE LYTLE AND JOHN ALLEN)
22 LYTLE, AS TRUSTEES OF THE LYTLE)
23 TRUST, DOES I through X; and ROE)
24 CORPORATIONS I through X,)
25 Defendants.)

26 **AMENDED COMPLAINT**

27 COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs.
28 Boulden"), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe
Living Trust ("Mr. and Mrs. Lamothe"), by and through their attorneys Foley & Oakes, PC, as
and for a Complaint against Trudi Lee Lytle, and John Lytle, as Trustees of the Lytle Trust
(collectively the "Lyttles"), DOES I through X; and ROE CORPORATIONS I through X and
allege as follows:

1 1. Mrs. Boulden is the owner of the residential property known as parcel number
2 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Boulden
3 Property")

4 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
5 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
6 NV 89117 the ("Lamothe Property").
7

8 3. Mr. and Mrs. Lytle are residents of Clark County, and are co-trustees of the Lytle
9 Trust.

10 4. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
12 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
13 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
14 the Defendants designated herein as DOE I through V individuals and/or ROE V through X
15 Corporations is responsible in some manner for the events and happenings herein referred to, or
16 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
17 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
18 through X Corporations when the same have been ascertained by Plaintiff, together with
19 appropriate charges and allegations and to join such Defendants in this action.
20

21 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
22 Defendants, and each of them, including those fictitiously named DOE or ROE, were the agents
23 or sureties of the other and in doing the things alleged herein, were acting within the course and
24 scope of such agency and with the consent and permission of the other co-defendants and/or are
25 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
26 for each other's actions as set forth in this Complaint. For ease of reference, the named
27
28

1 Defendants may be referred to collectively in the singular as "Defendant," and reference to one
2 shall constitute reference to the others as well.

3 6. The Boulden Property and the Lamothe Property are located in the Rosemere
4 Court subdivision and are subject to the CC&R's recorded January 4, 1994.

5 7. The Rosemere Court subdivision, as subject to the CC&Rs, is a Limited Purpose
6 Association (the "Rosemere LPA") under NRS 116.1201 and NAC 116.090.

7 8. The Rosemere LPA has been judicially declared to be a Limited Purpose
8 Association.

9 9. Pursuant to NRS 116.1201, NRS 116's application to the Rosemere LPA is
10 limited.

11 10. Pursuant to NRS 116.1201, NRS 116.3117, which provides that a judgment
12 against a homeowners' association, when recorded, is a lien against all real property owned by
13 the owners of the homeowners' association, is not applicable to the Rosemere LPA.

14 11. On or about July 29, 2016 the Lytles arguably obtained a Judgment in their favor
15 against Rosemere LPA in the amount of \$361,238.59 (the "Judgment").

16 12. On August 16, 2016, the Lytles recorded with the Clark County Recorder's office
17 an abstract of the Judgement against the Rosemere LPA (the "First Abstract of Judgment"),
18 specifically listing the parcel numbers of the Boulden Property and the Lamothe Property as
19 properties to which the Judgment was to attach. A copy of the First Abstract of Judgment is
20 attached hereto as Exhibit "A".

21 13. On September 2, 2016, the Lytles recorded with the Clark County Recorder's
22 office another abstract of the Judgement against the Rosemere LPA, specifically listing the
23 parcel number of the Lamothe Property as the property to which the Judgment was to attach (the
24 "Second Abstract of Judgment"). A copy of the Second Abstract of Judgment is attached hereto
25
26
27
28

1 as Exhibit "B". (The First Abstract of Judgment and the Second Abstract of Judgment are
2 hereinafter collectively referred to as the "Abstracts of Judgment")

3 14. When the Lytles recorded the Abstracts of Judgment, the Lytles specifically
4 included the parcel numbers of the Boulden Property and the Lamothe Property even though
5 Plaintiffs were not parties to the lawsuit from which the Judgment arose and certainly were not
6 judgment creditors under the Judgment.

7
8 15. The Plaintiffs have no legal duty to pay the Judgment and have advised the Lytles
9 of this fact.

10 16. The Lytles knew or should have known that the Plaintiffs did not have a legal
11 duty to pay on the Judgment.

12 17. The Abstracts of Judgment were wrongfully recorded against the Boulden
13 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
14 Judgment were wrongfully recorded.

15 18. A Purchase and Sale Agreement to purchase the Boulden Property was executed
16 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

17
18 19. The buyer under the PSA terminated Escrow because of the recorded First
19 Abstract of Judgment.

20 **FIRST CAUSE OF ACTION**
21 **(Slander of Title, Mrs. Boulden)**

22 20. Plaintiffs repeat and re-allege each and every allegation set forth above.

23 21. The Lytles' recording of the First Abstract of Judgment was a false and malicious
24 communication that has disparaged Mrs. Boulden's title to the Boulden Property.

25 22. As a proximate result of the Lytles' actions, Mrs. Boulden has been damaged due
26 to a third-party buyer cancelling escrow due to the existence of the recorded First Abstract of
27 Judgment.

1 23. As a proximate result of the Lytles' actions, the vendibility of the Boulden
2 Property is impaired.

3 24. As a proximate result of Lytles' actions Mrs. Boulden is entitled to special
4 damages in an amount in excess of \$10,000.00.

5 25. As a proximate result of Lytles' actions Mrs. Boulden is entitled to punitive
6 damages in an amount in excess of \$10,000.00.

7 26. As a proximate result of Lytles' actions, Mrs. Boulden has been required to retain
8 the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of
9 attorney's fees and costs.
10

11 **SECOND CAUSE OF ACTION**
12 **(Injunction, All Plaintiffs)**

13 27. Plaintiffs repeat and re-allege each and every allegation set forth above.

14 28. Plaintiffs do not owe any money whatsoever to the Lytles.

15 29. Plaintiffs do not have an adequate remedy at law because they cannot sell their
16 property with the Abstracts of Judgment recorded against their property.

17 30. Plaintiffs will suffer irreparable harm if they are not able to sell their property due
18 to the recording of the Abstracts of Judgment.

19 31. Plaintiffs are likely to prevail on their claims against the Lytles.

20 32. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
21 expunging the liens in the form of the recorded Abstracts of Judgment.
22

23 33. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
24 prosecute this action, and are entitled to an award of attorney's fees and costs.

25 **THIRD CAUSE OF ACTION**
26 **(Quiet Title, All Plaintiffs)**

27 34. Plaintiffs repeat and re-allege each and every allegation set forth above.
28

1 35. The Lytles, by their claims and actions, have asserted certain rights to lien the
2 Boulden Property and the Lamothe Property.

3 36. The Lytles are without any legal basis whatsoever to lien the Boulden Property
4 and the Lamothe Property.

5 37. The Lytles are without any legal basis whatsoever to claim any interest in the
6 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.

7 38. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
8 the Lamothe Property have been improperly and illegally clouded.

9 39. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
10 quieting title in their names and expunging the Abstracts of Judgment.

11 40. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
12 to prosecute this action, and are entitled to an award of attorney's fees and costs.

13
14 **FOURTH CAUSE OF ACTION**
15 **(Declaratory Relief)**

16 41. Plaintiffs repeat and re-allege each and every allegation set forth above.

17 42. A dispute and actual controversy exists between the parties relative to their
18 interpretation of the rights and duties of the Plaintiffs regarding the Judgment, the recorded
19 Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

20 43. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
21 Judgment against the Rosemere LPA is not a judgment against the Plaintiffs, separately or
22 individually, and that the Judgment and the Abstracts of Judgment were improperly and
23 unlawfully recorded against the Boulden Property and the Lamothe Property.

24 44. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
25 prosecute this action, and are entitled to an award of attorney's fees and costs.

26 **WHEREFORE**, Plaintiffs pray for judgment against the Lytles as follows:
27

1 A. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
2 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
3 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
4 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
5 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
6 that after such hearing as may be required by law, said preliminary injunction be made
7 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
8

9 B. For judgment against the Lytles for general, special and punitive damages in
10 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

11 C. For an Order quieting title of the Boulden Property and the Lamothe Property in
12 favor of the Plaintiffs and against the Lytles;

13 D. For a declaration that the Lytles, and each of them, have no right, title or interest
14 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
15 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;
16

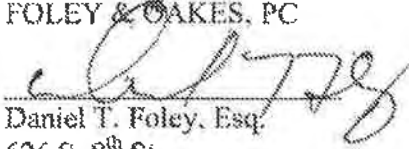
17 E. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
18 herein; and

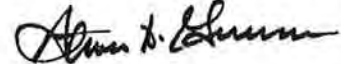
19 F. For such other and further relief as this Court may deem proper in the premises.

20 DATED this 10th day of March 2017.

21 Respectfully Submitted,

22 FOLEY & OAKES, PC

23 
24 Daniel T. Foley, Esq.
25 626 S. 8th St.
26 Las Vegas, Nevada 89101
27 Attorneys for Plaintiffs



CLERK OF THE COURT

1 **SAO**
Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
Timothy P. Elson, Esq.
3 Nevada State Bar # 11559
GIBBS GIDEN LOCHER TURNER
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6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST
8

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11
12 **MARJORIE B. BOULDEN, TRUSTEE OF THE**
MARJORIE B. BOULDEN TRUST, LINDA
13 **LAMOTHE AND JACQUES LAMOTHE,**
14 **TRUSTEES OF THE JACQUES & LINDA**
LAMOTHE LIVING TRUST

15 Plaintiff,

16 v.

17 **TRUDI LEE LYTLE, JOHN ALLEN LYTLE,**
THE LYTLE TRUST, DOES I through X,
18 **inclusive, and ROE CORPORATIONS I through**
X,

19 Defendants.
20

Case No.: A-16-747800-C
Dept.: XVI

STIPULATION AND ORDER TO
CONTINUE HEARING DATE RE
MOTION FOR PARTIAL SUMMARY
JUDGMENT

21 Plaintiffs **MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN**
22 **TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES &**
23 **LINDA LAMOTHE LIVING TRUST, and Defendants, TRUDI LEE LYTLE, JOHN ALLEN**
24 **LYTLE, THE LYTLE TRUST, by and through their respective counsel, hereby stipulate and agree**
25 **as follows:**

26 ///

27 ///

28 ///

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP



A. That the Motion for Partial Summary Judgment hearing scheduled for March 28, 2017, at 9:00 a.m., be continued to April 13, 2017, at 9:00 a.m.

IT IS SO STIPULATED:

FOLEY & OAKES, PC

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

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Attorneys for Plaintiffs *MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ET AL.*

Attorneys for Defendants *TRUDI LEE LYTLE, JOHN ALLEN LYTLE & THE LYTLE TRUST*

ORDER

IT IS SO ORDERED, this ____ day of ____, 2017.

See ZB


DISTRICT COURT JUDGE


1 A. That the Motion for Partial Summary Judgment hearing scheduled for March 28,
2 2017, at 9:00 a.m., be continued to April 13, 2017, at 9:00 a.m.

3 IT IS SO STIPULATED:

4 FOLEY & OAKES, PC

GIBBS GIDEN LOCHER TURNER
5 SENET & WITTBRODT LLP

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16 Attorneys for Plaintiffs MARJORIE
17 BOULDEN, TRUSTEE OF THE
18 MARJORIE B. BOULDEN TRUST, ET AL.

Attorneys for Defendants TRUDI LEE
19 LYTTLE, JOHN ALLEN LYTTLE & THE
20 LYTTLE TRUST

21 ORDER

22 IT IS SO ORDERED, this 23rd day of March, 2017.

23 
24 DISTRICT COURT JUDGE
25 

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on March 23, 2017, she served a copy of the foregoing STIPULATION AND ORDER TO CONTINUE HEARING DATE RE MOTION FOR PARTIAL SUMMARY JUDGMENT by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
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An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP


CLERK OF THE COURT

OPPC

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Nevada State Bar # 11592

Timothy P. Elson, Esq.
Nevada State Bar # 11559

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Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST

Plaintiff,

v.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X,

Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**DEFENDANTS TRUDI LEE LYTLE,
JOHN ALLEN LYTLE, THE LYTLE
TRUST OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: March 28, 2017

Hearing Time: 9:00 a.m.

COMES NOW Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, and THE LYTLE TRUST (the "Lyttles"), by and through their counsel of record, Richard E. Haskin, Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby files the Lyttles' Opposition to Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST; and LINDA LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST's (collectively "Plaintiffs") Motion for Summary Judgment and Countermotion for Summary Judgment.

I. INTRODUCTION

The amount included in the Abstract of Judgment at issue includes a judgment, costs and attorneys' fees awarded to the Lytles in a lengthy and costly litigation between the Rosemere Estates Property Owners' Association (the "Association") and the Lytles wherein the Lytles defended themselves (and their property) against foreclosure while successfully seeking the Court's declaration that amended governing documents were unlawfully adopted and recorded against all properties within the Association. The Lytles, retirees of the Clark County School District and Southwest Gas Corporation, were forced into this litigation by virtue of the Board's unconscionable actions and the homeowners' acquiescence of the Board's actions and subsequent funding of the litigation.

Ultimately, however, the law permits the recording of the Abstracts of Judgment on each property within the Association, as fully briefed herein. The Lytles simply ask this Court to apply the law to the instant case.

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1 **II. BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS**

2 The essential facts in this case are undisputed. Thus summary judgment is appropriate.

3 **A. Rosemere Estates**

4 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider
5 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las
6 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,
7 Conditions, and Restrictions ("Original CC&Rs"). Original CC&Rs, Request for Judicial Notice
8 ("RJN"), Exhibit A. The Lytles purchased their property, Lot 163-03-313-009 (the "Lytle
9 Property") on November 6, 1996, from the original buyer who first purchased it from the Developer
10 on August 25, 1995.

11 Of note to the instant controversy, the Original CC&Rs, in the first paragraph, defines
12 Rosemere Estates as "Lots 1 through 9 of Rosemere Court, a subdivision..." Original CC&Rs, RJN,
13 Exhibit A. The document adds that "it is the desire and intention of the Subdivider to sell the land
14 described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under
15 a general plan or scheme of improvement for the benefit of all of the land described above and the
16 future owners of the lots comprising said land." *Id.* Thus, the Association includes each and every
17 lot.

18 Sometime after the Lytles purchased their property, a group of homeowners formed the
19 Association. In 1997, Plaintiffs Linda Lamothe and Marge Boulden, acting on behalf of all owners,
20 filed Non-Profit Articles of Incorporation (the "Articles") pursuant to Nevada Revised Statutes
21 ("NRS") 82, which formalized the property owners' committee and named it "Rosemere Estates
22 Property Owners Association." Articles of Incorporation, RJN, Exhibit B.

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1 **B. The Underlying Litigation**

2 In 2007, the Lytles filed an NRS 38.310 mandated non-binding arbitration before the Nevada
3 Real Estate Division ("NRED"), naming the Association as respondent. The underlying dispute
4 arose out of the Amended Covenants, Conditions, and Restrictions (the "Amended CC&Rs") which
5 were unlawfully recorded on July 3, 2007, and improperly enforced by the Association against the
6 Lytles, and the Lytle Property. The Lytles sought to un-cloud title to their property by the
7 revocation of the Amended CC&Rs.

8 After the arbitrator found in favor of the Association, the Lytles filed for a trial de novo in
9 this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in
10 Department XII. After the matter was initially dismissed, the Lytles appealed to the Supreme Court,
11 prevailed, and the matter was then remanded back to the District Court.

12 The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles
13 summary judgment on July 29, 2013. Order Re Summary Judgment, RJN, Exhibit C.

14 The matter was once again appealed, and the Nevada Supreme Court affirmed the District
15 Court's Order granting the Lytles summary judgment. The Supreme Court remanded the case to the
16 District Court for redetermination of costs, attorneys' fees and damages on October 19, 2015.
17 Supreme Court Order, RJN, Exhibit D.

18 On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the
19 Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs and the Amended CC&Rs.
20 Order Awarding Attorneys' Fees, RJN, Exhibit E.

21 On June 17, 2016, the Court awarded the Lytles damages, after a prove-up hearing, in the
22 amount of \$63,566.93. Order Awarding Damages, RJN, Exhibit F. These damages included
23 amounts expended by the Lytles in the design, engineering, and other costs associated with the
24 construction of their home for Rosemere Estates, all of which were now stale and useless.

25 Finally, on July 22, 2016, the Court awarded the Lytles costs in the amount of \$599.00.
26 Order Awarding Costs, RJN, Exhibit G.

27 ///

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1 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property
2 within the Association pursuant to the law set forth herein. Abstracts of Judgment, RJN, Exhibit H.

3 C. The Financial Burden of the Litigation Against the Association

4 While Boulden and Lamothe wish to paint themselves as the victims in this case, quite the
5 opposite is true. Allen Lytle, now retired from Southwest Gas, and Trudi Lytle, a retired school
6 teacher, were forced to bear a tremendous financial and emotional burden in fighting the Association
7 for over seven (7) years. The fight was necessitated by the Association's unwillingness to revoke
8 the illegally recorded Amended CC&Rs as well as the Association's unconscionable threats and
9 actions to foreclose against the Lytle Property when the Lytles dared not to pay a special assessment
10 to fund litigation against them.

11 The Lytles' legal fight was necessary because, as the District Court found in the underlying
12 litigation

- 13 • the Amended CC&Rs created unreasonable restrictions on construction that made it
14 impossible for the Lytles to build their home. Order Re Summary Judgment,
15 Findings of Fact ("FOF") Nos. 28-30, RJN, Exhibit C.
- 16 • the Board for the Association took unlawful steps to amend the CC&Rs, which
17 included the failure to obtain unanimous consent of the homeowners. Order Re
18 Summary Judgment, Conclusions of Law, Nos. 22, 23, RJN, Exhibit C.
- 19 • the promotion and purported adoption of the Amended CC&Rs was procedurally
20 unconscionable in as much as the Board forced the Amended CC&Rs to a vote with
21 no advance notice or discussion. Order Re Summary Judgment, FOF, Nos. 23, 24,
22 32, 33, RJN, Exhibit C.

23 Meanwhile, Lamothe and Boulden contributed heartily to the legal fund against the Lytles
24 (by way of payment of special assessments). Lamothe and Boulden also testified on the
25 Association's behalf and were represented by the Association's counsel at deposition in the
26 underlying litigation against the Lytles.

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1 Interestingly, Lamothe and Boulden both refused, initially, to approve the Amended CC&Rs,
 2 declining to sign in favor on the day of the adoption meeting. Lamothe sought legal counsel with the
 3 Lytles to file suit against the Association but ultimately refused to join the fight for fear of
 4 retribution. Years later, during deposition, Lamothe and Boulden, now testifying on the
 5 Association's behalf, recanted their objection to the Amended CC&Rs and testified that they
 6 approved of the Amended CC&Rs after further thought. Declaration of Richard E. Haskin ("Haskin
 7 Decl."), ¶ 3, Lamothe Deposition Transcript, Exhibit J; *see also* Letter from Marge Boulden dated
 8 August 9, 2007, a true and correct copy of which is attached hereto as Exhibit K (Boulden stating
 9 "we would like to make it clear that we fully support our Association and its leadership. We do not
 10 support the demands made by . . . the Lytles.") (emphasis in original).¹

11 The Lytles now seek to recover the funds they lost as a result of the Association's actions,
 12 which amounts were awarded by this District Court. Lamothe and Boulden contributed to the
 13 burdens against the Lytles by persistently funding the litigation when called upon to do so and then
 14 testifying on the Association's behalf to support an unlawfully recorded document. The Court
 15 should not be confused in this case as to who the real victims are.

16 III. LEGAL ARGUMENT

17 As set forth below, the Lytles rightfully recorded the abstracts of judgments, including those
 18 against Lamothe and Boulden, pursuant to the Original CC&Rs and/or the Amended CC&Rs.² A
 19 lien against the Association is *automatically* a lien against each lot ("Lots 1 through 9") within the
 20 Association

21 ///

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26 _____
 27 ¹ The Lytles further understand that Boulden is an absentee owner and has not resided in the house
 for several years. This is not the Boulden's personal residence as Plaintiffs allege.

28 ² Plaintiffs do not appear to dispute that such a recording would be appropriate pursuant to the
 Amended CC&Rs.

1 A. Summary Judgment Standard

2 Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions,
3 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
4 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a
5 matter of law. NRCP Rule 56(c). "Summary Judgment is appropriate and shall be rendered
6 forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any
7 material fact [remains] and that the moving party is entitled to judgment as a matter of law." *Wood*
8 *v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(quoting NRCP 56(c)). In *Wood*, the
9 Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary
10 judgment jurisprudence, *Id.* at 1037, and adopted the summary judgment standard which had been
11 articulated by the United States Supreme Court in its 1986 Trilogy: *Celotex Corp. v. Catrett*, 477
12 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electrical*
13 *Industrial Company v. Zenith Radio Corporation*, 475 U.S. 574 (1986). The application of the
14 standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts
15 demonstrating existence of a genuine issue for trial." *Wood*, 121 p.3d at 1031. This obligation
16 extends to every element of every claim made, and where there is a failure as to any element of a
17 claim, summary judgment is proper. *Barmettler v. Reno Air, Inc.*, 114 Nevada 441, 447, 956, P2d.
18 1382, 1386 (1998).

19 The Nevada Supreme Court held that "Rule 56 should not be regarded as a "disfavored
20 procedural shortcut" but instead as an integral important procedure which is designed "to secure just,
21 speedy and inexpensive determination in every action." *Wood*, 121, p.3d at 1030 (quoting *Celotex*,
22 477 U.S. at 327). In *Liberty Lobby*, the U.S. Supreme Court noted that:

23 "Only disputes over facts that might affect the outcome
24 of the suit under governing law will properly preclude
25 the entry of summary judgment. Factual disputes that
 are irrelevant or unnecessary will not be counted.

26 *Id.* (quoting *Liberty Lobby*, 477 U.S. at 247-48).

27 ///

28 ///

B. Summary Judgment Should Be Granted In Favor Of The Lytles Because They Rightfully Recorded Their Abstracts of Judgment Against Lamothe and Boulden's Properties Pursuant To The Original CC&Rs Because The Association Includes Each Lot/Unit Therein

The Lytles were awarded all monetary amounts under the judgment pursuant to the Original CC&Rs.³ Order Awarding Attorneys' Fees, RJN, Exhibit E at 2:1-15. The clear and unambiguous language of the Original CC&Rs permits liens against Plaintiffs' properties, as well as the court's prior order pertaining to the operation of the Association under the Original CC&Rs.

1. The Original CC&Rs Defines The Association As Including Each Lot Therein

Pursuant to the Original CC&Rs, a lien or judgment against the Association established under the Original CC&Rs attaches to each lot within the Association. As a result, the individual property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

The Original CC&Rs provide as follows:

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

RJN, Exhibit A at 1, ¶2 (referring to the "Lots 1 through 9 of Rosemere Court" in the definition above, thereby including Plaintiffs lots, which Plaintiffs do not dispute).

A breach or violation of these CC&R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC&R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

Id. at 1, ¶4 (emphasis added).

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³ It is also important to note that this judgment is not on appeal or appealable, *i.e.*, it is valid and enforceable without any risk of reversal.

1 The Original CC&Rs were recorded against each of the nine (9) lots within the Association,
 2 and each owner, or prospective owner, including Plaintiffs, purchased property with record and
 3 actual notice of the foregoing rights and remedies.⁴ Under the Original CC&Rs, there are no
 4 common or individual elements, only the Association's property, defined as "Lots 1 through 9 of
 5 Rosemere Court." The Association is comprised of all of this property, *i.e.*, Lots 1 through 9. The
 6 fact that those lots were later subdivided and sold to individual owners does not change the fact that
 7 the Association includes all lots therein.

8 The second provision cited above specifically attaches liens established under the Original
 9 CC&Rs "to said lots or Property." Here, it also is not disputed that the Lytles' lien or judgment is
 10 established under the Original CC&Rs. The attorneys' fee award specifically finds that the Lytles'
 11 lien or judgment is established under the Original CC&Rs. RJN, Exhibit E at 2:1-15. If liens under
 12 the CC&Rs did not attach to the lots, there would be absolutely no need to include this provision.
 13 There would be no need for the CC&Rs to state that such a lien could not extinguish the first deed of
 14 trust or any other mortgage. Again, the Association has no property to even secure any loan as the
 15 only property that exists is Lots 1 through 9, which includes Plaintiffs' lots. Nowhere in the Original
 16 CC&Rs is any definition for property owned by the Association or subject to the Original CC&Rs
 17 other than the initial definition, *i.e.*, Lots 1 through 9. To find against the Lytles, *i.e.*, that a lien
 18 against the Association does not attach to Lots 1 through 9, would render these provisions
 19 meaningless. *Phillips*, 94 Nev. at 282, 597 P.2d at 176.

20 Nothing under this provision distinguishes the Lytles' lien or judgment pursuant to the
 21 attorneys' fees provision from any other provision or lien or judgment in the Original CC&Rs. The
 22 Original CC&Rs simply state "any liens established hereunder." This necessarily includes the
 23 Lytles' liens.

24 ///

25 ⁴ While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz*
 26 *v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive
 27 covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass'n*,
 28 2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing
 contracts apply to the CC&Rs). "A court should not interpret a contract so as to make meaningless
 its provisions." *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).

2. General Common Interest Community Principles Define The Association As Including Each Lot Or Unit Therein, Regardless Of Ownership

The language of the Original CC&Rs, as set forth above, tracks NRS Chapter 116, the Common Interest Ownership Act. NRS 116.021 defines a "common interest community" as all "real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration." NRS 116.093 defines a "unit" as the "physical portion of the common-interest community designated for separate ownership or occupancy..." Thus, the association, or common interest community, includes each and every unit in the community, including those owned by third parties.

The Nevada Supreme Court has concluded as much in granting standing to homeowners associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that "provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest community includes individual units..." *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the Court concluded that a homeowners association has standing to file representative actions on behalf of its members for construction defects of units.

Further, NRS 116.3117, merely clarifies that a judgment may be recorded against each and every unit. This is not a special rule of any sort, rather it is merely a restatement of the obvious – a judgment against the common-interest community can be recorded against all property within that community, including the units that are defined as being included in the community. These definitions are echoed in the Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

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C. Summary Judgment Should Be Denied As To Plaintiffs And Granted In Favor Of The Lytles Because They Rightfully Recorded The Abstracts of Judgment Against Lamothe and Boulden Pursuant To NRS 116.3117

The Lytles were also awarded judgment pursuant to the Amended CC&Rs. Order Awarding Attorneys' Fees, RJN, Exhibit E, at 2:15-25. The Court should note the context of the underlying litigation, specifically that when the Lytles filed suit and the Association responded, the Amended CC&Rs were the Court validated enforceable governing documents at issue. Therefore, and properly so, the Court awarded attorneys' fees and costs to the Lytles, the prevailing party, pursuant to the provisions of the Amended CC&Rs. In doing so, the Court refused to allow the Association to use the Amended CC&Rs as a sword to defeat the Lytles, but then as a shield when they were proclaimed invalid.

Applying the foregoing context, the Amended CC&Rs essentially adopt Chapter 116 of the Nevada Revised Statutes. Amended CC&Rs, RJN, Exhibit I at Article I. The Amended CC&Rs define the association pursuant to the Uniform Common-Interest Ownership Act. *Id.* at 1.1. The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116). The Association alleged that Plaintiffs were part of a unit-owners association and subject to the provisions of Chapter 116.⁵

NRS 116.3117 provides the express mechanism of foreclosure against Plaintiffs via a lien or judgment against the Association. It states as follows:

1. In a condominium or planned community:

(a) Except as otherwise provided in paragraph (b), a judgment for money against the association, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the other real property of the association and all of the units in the common-interest community at the time the judgment was entered. No other property of a unit's owner is subject to the claims of creditors of the association.

⁵ Furthermore, the Association is a small planned community subject to, among other provisions, NRS 116.3117. *See* NRS 116.1203(3) ("[T]he provisions of NRS 116.3101 to 116.350, inclusive, and the definitions set forth in NRS 116.005 to 116.095, inclusive, to the extent that such definitions are necessary in construing any of those provisions, apply to a residential planned community containing more than 6 units.")

1 NRS 116.3117. Moreover, to the extent there can be any doubt as to the operation of NRS
 2 116.3117, the comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) –
 3 – the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear
 4 from the plain language of the statute: “the Act makes the judgment lien a direct lien against each
 5 individual unit” See UCIOA § 3-117, cmt. 2. See also, e.g., *Ensberg v. Nelson*, 320 P.3d 97,
 6 102 (Wash. Ct. App. 2013) (“[B]y statute, a condominium association is a lien in favor of the
 7 judgment lienholder against all of the units in the condominium.”); *Summit House Condominium v.*
 8 *Com.*, 523 A.2d 333, 336 (Pa. 1987) (“[A] judgment against the Council would have constituted a
 9 lien against each individual condominium unit owner.”); *Interlaken Service Corp. v. Interlaken*
 10 *Condominium Ass’n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) (“[A]ny money judgment obtained by
 11 [the plaintiff as against the association] would result in a lien against each of the condominium
 12 units.”). Consequently, the Lytles properly recorded their judgment lien against the Plaintiffs’
 13 property.⁶

14 The lien and judgments were created under the Amended CC&Rs, and the Lytles have the
 15 right to collect under the lien and judgment pursuant to the Amended CC&Rs. Exhibit E at 2:15-25
 16 (citing *Mackintosh v. California Federal Sav. & Loan Ass’n*, 113 Nev. 393, 405-06, 935 P.2d 1154,
 17 1162 (1997)). Plaintiffs cite no case law that contradict the Lytles’ right or ability to collect under
 18 the Amended CC&Rs given that the judgment was obtained pursuant to the Amended CC&Rs.

19 ///

20 ⁶ It is worth noting that, while the Plaintiffs strenuously argue that NRS 116.3117 should not apply,
 21 NRS 116.3117 operates to *limit* the extent of the individual unit-owners’ liability for a judgment
 22 against an association where, as here, the association is not incorporated. See UCIOA § 3-117, cmt.
 23 1 (“[I]f the association is organized as an unincorporated association, under the law of most states
 24 each unit owner would have joint and several liability on the judgment. This Act strikes a balance
 25 between the two extremes.”); see also Nevada Secretary of State Entity Detail for Rosemere Estates
 26 Property Owners Association (accessed Mar. 21, 2017), RJN, Exhibit J. In particular, although NRS
 27 116.3117 provides that a judgment against the Association may be recorded as a lien against all units
 28 in the association, NRS 116.3117 further provides that the judgment creditor has no claim to any
 other property of the unit-owners. If this Court concludes NRS 116.3117 does not apply, then
 Plaintiffs may face joint and several liability for the judgment without limitation as to what property
 the Lytles could pursue under the law governing unincorporated associations. See, e.g., *Pandolfo v.*
Bank of Benson, 273 F. 48, 50 (9th Cir. 1921) (“The members of an unincorporated association are
 liable in their collective capacity for tort . . .”).

1 **IV. CONCLUSION**

2 The Lytles rightfully recorded their abstracts of judgment against Lamothe and Boulden
3 pursuant to both the Original CC&Rs or the Amended CC&Rs. A lien against the Association is
4 automatically and by definition a lien against Lots 1 through 9 therein. For the reasons set forth
5 herein, summary judgment should be denied as to Plaintiffs and granted in favor in the Lytles.

6 DATED: March 24, 2017

Respectfully Submitted,

8 GIBBS GIDEN LOCHER TURNER
9 SENET & WITTBRODT LLP10 By: 

11 Richard E. Haskin, Esq.

Nevada State Bar # 11592

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15 TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
16 LYTLE TRUST
17
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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on March 24, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP


CLERK OF THE COURT

1 **DEC**
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13 & THE LYTLE TRUST

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 MARJORIE B. BOULDEN, TRUSTEE OF THE
17 MARJORIE B. BOULDENR TRUST, LINDA
18 LAMOTHE AND JACQUES LAMOTHE,
19 TRUSTEES OF THE JACQUES & LINDA
20 LAMOTHE LIVING TRUST

21 Plaintiff.

22 v.

23 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
24 THE LYTLE TRUST, DOES I through X,
25 inclusive, and ROE CORPORATIONS I through
26 X,

27 Defendants.

Case No.: A-16-747800-C
Dept.: XVI

**DECLARATION OF RICHARD E.
HASKIN IN SUPPORT OF DEFENDANTS
TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

28 , Richard E. Haskin, Esq., hereby declare and testify under penalty of the laws of the State of
Nevada as follows:

1. I am a Partner with the law firm of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt
LLP ("GGLTSW"), and we are the attorneys of record for Plaintiffs John Allen Lytle and Trudi Lee
Lytle (the "Lyttles"), as Trustees of the Lytle Trust ("Plaintiff"), in the above-captioned matter.

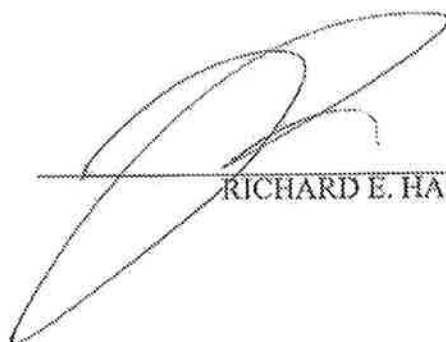
2. I have personal knowledge of the facts contained herein and am competent to testify
thereto. If called to testify, I would testify consistent with this Declaration.

///

1 3. On November 26, 2012, I took the deposition of Linda Lamothe at my offices.
2 Attached as Exhibit K and incorporated herein by reference are excerpts of that deposition transcript.
3

4 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
5 true and correct.

6 Executed this 24th day of March, 2017.
7

8 
9 _____
10 RICHARD E. HASKIN
11
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28

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on March 24, 2017, she served a copy of the foregoing **DECLARATION OF RICHARD E. HASKIN IN SUPPORT OF DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
FOLEY & OAKS
626 S. 8th Street
Las Vegas, Nevada 89101


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT “K”

1 IN THE DISTRICT COURT

2 CLARK COUNTY, NEVADA

3
4 JOHN ALLEN LYTLE and)

5 TRUDI LEE LYTLE, as)

6 Trustees of the Lytle)

7 Trust,)

8 Plaintiffs,) Case No. A-09-593497-C

9 vs.)

10 ROSEMERE ESTATES)

11 PROPERTY OWNERS')

12 ASSOCIATION; and DOES 1)

13 through 10, inclusive,)

14 Defendants.)

15
16
17 DEPOSITION OF LINDA LAMOTHE

18 Las Vegas, Nevada

19 Monday, November 26, 2012

20 Volume 1

21 Reported by:

22 CHRISTY I. PHELPS

23 CCR No. 683

24 Job No. 1546289

25 PAGES 1 - 36

Page 1

Sarnoff, A VERITEXT COMPANY
877-955-3855

AA000151

1 Q I mean, just so we know, I'm only asking for your
2 impression. I certainly don't want you to guess as to
3 what other people felt.

4 A A vote was put up and others voted that it was
5 fine.

6 Q Okay. You voted against it, correct?

7 A I did. I wanted time to read it.

8 Q The next bullet point: "Upon dispute presented
9 to the board, the board should have immediately started
10 the process of discover with the Nevada State Real
11 Estate Division to rule and document the legitimacy of
12 these actions taken by the board."

13 First question, what dispute? You say "upon
14 dispute presented to the board."

15 A Well, the Lytles opposed the presentation. I
16 opposed it. I believe Marge opposed it. And I felt
17 that the board, upon our complaints, needed to represent
18 to me where the laws had changed, we needed to do this
19 and be changing all the CC and R's.

20 So, I guess, since we don't meet more than once a
21 year, they said they felt the time was right, the laws
22 had changed and they were on a time crunch to comply. I
23 don't know.

24 Q Is it fair to say, though, based on the last few
25 bullet points we read, that the July 2, 2007 meeting,

1 that those questions weren't answered for you?

2 A Not for me.

3 Q Okay. And that you weren't satisfied with the
4 process, correct?

5 A Correct.

6 Q You also used here the phrase, regarding
7 reporting it to NRED, "to rule and document the
8 legitimacy of these actions."

9 Is it fair to say that you felt the actions to be
10 illegitimate at that time?

11 A I just wanted the CC and R's to be valid and I
12 wanted the time to cultivate -- I didn't oppose changing
13 the CC and R's. I opposed maybe the stringency of some
14 of the rules they had set down as a template.

15 And I was not willing to put my stamp on some of
16 the rules that I didn't agree with, or at least have
17 time to review it, and that's what I thought needed to
18 be fine tuned.

19 Q Okay. Turning to the second page of your letter,
20 it's the second to last paragraph, you state: "It has
21 become quite obvious through numerous verbal attacks
22 upon the Lytles for many of the homeowners and all the
23 board members during homeowners' meetings, and
24 non-homeowners' meetings, the tone of disdain and
25 vindictiveness that have preempted common sense and

Page 27

1 rational thinking."

2 What verbal attacks are you referring to?

3 A You know, mostly trying to set aside the Lytles'
4 concerns that, you know, we needed to go through the
5 process and make sure that the rules were right. And
6 that was my complaint, too.

7 And there were many people that I felt were a
8 little dismissive of our complaints because we had all
9 gotten along. And prior to this, seemed to. And I just
10 felt that they were very dismissive to our concerns.

11 Q Okay.

12 A And, you know, rude. There are some people that
13 are a little forceful in their opinions. But, you know,
14 I give as much as I get, as do the Lytles, as did Marge.
15 And, you know, it was a lively, heated discussion. And
16 I felt they were rude and mean from time to time.

17 Q And these verbal attacks occurred both during
18 meetings and during non-homeowner meetings as well,
19 correct?

20 A You have conversations in the street, you know,
21 before and after this conversations. It's just
22 unnecessary, petty. I don't know, energy.

23 Q Can you identify for me who was verbally
24 attacking the Lytles?

25 A I can't recall any specifics, other than, you