

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

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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 3**

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## **TABLE OF CONTENTS**

1. Motion for Reconsideration or, in the Alternative, Motion to Alter or Amend Judgment (AA000380 – AA000418)
2. Opposition to Motion for Reconsideration (AA000419 – AA000527)
3. Reply to Opposition to Motion for Reconsideration or, in the Alternative, Motion to Alter or Amend Judgment (AA000528 – AA000540)
4. Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law (AA000541 – AA000547)
5. Notice of Entry of Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law (AA000548 – AA000556)

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& 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, AND THE LYTLE  
TRUST'S MOTION FOR  
RECONSIDERATION OR, IN THE  
ALTERNATIVE, MOTION TO ALTER OR  
AMEND JUDGMENT**

[EDCR 2.24(b); NRCP 60(b)(1);  
NRCP 59(e)]

Pursuant to EDCR 2.24(b), NRCP 60(b), and/or NRCP 59(e) Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, and THE LYTLE TRUST (the "Lytles") move this court for an order reconsidering and modifying its Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment (the "Order") to deny the Plaintiffs' motion with respect to Marjorie Boulden's claim for slander of title. The Lytles base this motion on the

following memorandum of points and authorities, the exhibits thereto, and any oral argument this Court may entertain.

DATED: May 15, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

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Attorneys for Defendants TRUDI LEE LYTLE, JOHN ALLEN  
LYTLE, & THE LYTLE TRUST

**NOTICE OF MOTION**

TAKE NOTICE that the Lytles will bring the foregoing Motion for Reconsideration or, in the Alternative, Motion to Alter or Amend Judgment before the above-captioned Court on the 15 day of JUNE, 2017 at 9:00A.

DATED: May 15, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

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Attorneys for Defendants TRUDI LEE LYTLE, JOHN ALLEN  
LYTLE, & THE LYTLE TRUST

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

After many years of litigation, the Lytles finally prevailed in their dispute with the Rosemere Estates Property Owners' Association (the "Association"). As a result, the Lytles were awarded judgment against the Association for their attorneys' fees and costs. In connection with their efforts to enforce the judgment, with the advice and assistance of counsel, the Lytles recorded abstracts of judgment against the units of the Association. The Plaintiffs then commenced the instant action challenging the validity and legal effect of the abstracts of judgment. In ruling on the parties' competing motions for partial summary judgment, this Court concluded as a matter of law that the Lytles could not claim a lien against the Plaintiffs' respective properties in connection with the judgment. Based on this conclusion, the Court entered summary judgment in the Plaintiffs' favor on all claims, including Marjorie Boulden's claim for slander of title. However, the Court's legal conclusion that the Lytles' did not have a right to record the abstracts of judgment against the property does not, on its own, support a determination that the Lytles committed slander of title. Malice is an essential element of the claim, and there is no evidence in the record showing the Lytles acted maliciously. Accordingly, the Lytles respectfully request that the Court amend the Order to deny the Plaintiffs' Motion for Partial Summary Judgment with respect to Boulden's claim for slander of title.

### II. ARGUMENT

#### A. Legal Standards

EDCR 2.24(b) permits a party, upon leave of the court, to seek reconsideration of a prior motion after being served with notice of the order on that motion. A district court is empowered to reconsider a motion any time before entry of final judgment when it finds that a prior ruling was clearly erroneous. *See Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *Insurance Co. of the West v. Gibson Title Co., Inc.*, 122 Nev. 455, 466, 134 P.3d 698, 705 (2006) (Maupin, J. concurring). Whether to grant reconsideration is within the sound discretion of the district court. *See Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

1 Similarly, under NRCP 60(b), the court may relieve a party from a final judgment, order, or  
 2 proceeding based on, among other things, mistake, inadvertence, surprise, or excusable neglect. *See*  
 3 NRCP 60(b)(1).

4 In addition, to the extent that the Order is an appealable order or final judgment, NRCP 59(e)  
 5 also allows for a motion to alter or amend.

6 B. Boulden is not entitled to summary judgment on her claim for slander of title, as  
 7 there is no evidence of malice.

8 To prevail on her claim for slander of title, Marjorie Boulden ("Boulden") must establish that  
 9 the Lytles *falsely and maliciously* recorded the abstract of judgment against Boulden's property, and  
 10 in so doing disparaged Boulden's title to the property and caused special damages. *See Higgins v.*  
 11 *Higgins*, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987). "In order to prove malice it must be shown  
 12 that the defendant knew that the statement was false or acted in reckless disregard of its truth or  
 13 falsity. Where a defendant has reasonable grounds for belief in his claim, he has not acted with  
 14 malice. Additionally, evidence of a defendant's reliance on the advice of counsel tends to negate  
 15 evidence of malice." *See Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335 (1983)  
 16 (internal citations omitted).

17 In *Rowland*, *supra*, an appeal was taken from a judgment in favor of homeowner plaintiffs in  
 18 an action against a developer for slander of title. *See generally Rowland*, 99 Nev. 308. The Nevada  
 19 Supreme Court found that the trial court properly concluded that there was a cloud on title from the  
 20 developer in that a lien included moneys not owed by the plaintiffs to the developer, so this  
 21 constituted a "false statement." *Id.* at 313. However, the Nevada Supreme Court concluded that  
 22 there was no evidence to support the element of malice in a slander of title claim. *Id.*

23 Citing a wealth of authority, the *Rowland* court found that "[i]n order to prove malice it must  
 24 be shown that the defendant knew that the statement was false or acted in reckless disregard of its  
 25 truth or falsity. [citations omitted] Where a defendant has reasonable grounds for belief in his claim,  
 26 he has not acted with malice. [citations omitted] Additionally, evidence of a defendant's reliance on  
 27 the advice of counsel tends to negate evidence of malice." *Rowland*, 99 Nev. at 313.

28 //

1 In the present case, there is no evidence that the Lytles acted with malice, or with reckless  
2 disregard for the veracity of their claim. There are no affidavits or facts admitted as evidence,  
3 contested or uncontested, to even support this claim. Indeed, this Court should examine the  
4 "Statement of Facts" within Plaintiffs' Motion for Partial Summary Judgment, beginning on page 3  
5 of that Motion. There is not a single fact relative to the Lytles' conduct in recording the Abstracts of  
6 Judgment. Indeed, there are no affidavits in support of the Motion for Partial Summary Judgment,  
7 not one. Rather, Plaintiffs attach several court filings and recorded documents including governing  
8 documents, judgments and record abstracts of judgments that merely substantiate that the abstracts at  
9 issue were, indeed, recorded by the Lytles. However, what is lacking any evidence is the Lytles'  
10 intent, or mal-intent as it need be.

11 The Order itself is evidence enough that there are no findings to support any form of malice,  
12 oppression or fraud. There is not a single finding in this regard.

13 This case is strikingly similar to *Rowland*. Here, this Court concluded as a matter of law that  
14 the Lytles improperly recorded the abstract of judgment against Boulden's property, *i.e.* the alleged  
15 false statement. However, this Court did not make any finding that the Lytles acted maliciously, and  
16 no evidence was presented on summary judgment that would support such a conclusion. *See*  
17 *generally* Order; Pl.'s Mot. for Partial Summ. J. (Feb. 24, 2017). Indeed, there was no evidence  
18 before this Court to support such a finding.

19 To the contrary, as set forth in the Lytles' extensive briefs and argument before the Court, the  
20 Lytles believed (and continue to believe) they had legal grounds for recording the abstracts of  
21 judgment against the units in the Association. Moreover, the Lytles recorded the abstracts with the  
22 advice and assistance of counsel. In short, the evidence shows that the Lytles acted in good faith,  
23 and absent proof of malice, Boulden's claim for slander of title must fail. *See Rowland*, 99 Nev. at  
24 313, 662 P.2d 1332.

25 ///

26 ///

27 ///

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1 As set forth in Judge Leavitt's Order Granting the Lytles' Motion for Summary Judgment  
 2 (Exhibit 1), judgment was granted in favor of the Lytles and against the Association. The Lytles  
 3 then set forth their good faith basis for recording the abstracts at issue against the properties. See  
 4 Opposition to Motion for Summary Judgment, Exhibit 2. While the Court disagreed with the  
 5 rationale, the legal basis is sound.

6 C. The Lytles seek clarification of this Court's Order with respect to the Court's  
 7 injunction against "recording and enforcing" the Judgment against Plaintiffs'  
 8 real property in Rosemere Estates

9 In its Order Granting Partial Summary Judgment, the Court stated as follows:

10 "IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED  
 11 that Defendants are permanently enjoined from recording and enforcing  
 12 the Final Judgment from the Rosemere LPA Litigation or any abstracts  
 13 related thereto against the Boulden or Lamothe Property."

14 This provision has since become a controversy amongst the parties. As this Court may be  
 15 aware, the Lytles filed a Notice of Appeal of the Court's Order (after concession by Plaintiffs that  
 16 they are foregoing seeking damages in this litigation). The Lytles also, to that end, filed and  
 17 recorded a Notice of Lis Pendens in order to provide notice of the pendency of the action. Plaintiffs  
 18 have alleged that such Notice of Lis Pendens violates the cited provision of this Court's Order. The  
 19 Lytles deny such a claim.

20 "The doctrine of lis pendens provides constructive notice to the world that a dispute  
 21 involving real property is ongoing." *Weddell v. H2O, Inc.*, 271 P.3d 743, 751 (citing NRS  
 22 14.010(3)). Once the appeal was filed, as it was, Plaintiffs are under an obligation to disclose this  
 23 lawsuit to any potential purchasers of the properties regardless of the lis pendens. While this Court  
 24 certainly disagrees with the Lytles' legal position in this case, the action against the property subject  
 25 to this litigation passes with the title. In other words, any subsequent purchaser of the properties will  
 26 be necessary parties to this action (and the appeal).

27 ///

28 ///



1           Once more, a lis pendens is not a lien against property. Rather, it is simply a notice of the  
2 pendency of an action – nothing more. Hence, there is no violation of the Court's order.

3 **III. CONCLUSION**

4           For the foregoing reasons, the Lytles respectfully request that the Court grant the Motion and  
5 amend the Order to deny Plaintiffs' Motion for Partial Summary Judgment as to Boulden's claim for  
6 slander of title.

7  
8 DATED: May 15, 2017

Respectfully Submitted,

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

9  
10  
11 By: 

Richard E. Haskin, Esq.  
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Timothy Elson, Esq.  
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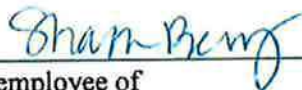
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Las Vegas, Nevada 89144-0596  
Attorneys for Defendants

TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE  
LYTLE TRUST

**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on May 15, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, AND THE LYTLE TRUST'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION TO ALTER OR AMEND JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.  
FOLEY & OAKS  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101

  
An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP

# **EXHIBIT “1”**

AA000388



CLERK OF THE COURT

1 **ORD**

Richard E. Haskin, Esq.

2 Nevada State Bar # 11592

3 **GIBBS GIDEN LOCHER TURNER**

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5 Attorneys for Plaintiffs and Counterdefendants

6 JOHN ALLEN LYTLE and TRUDI LYTLE

7  
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10  
11 JOHN ALLEN LYTLE and TRUDI LYTLE, as  
Trustees of the Lytle Trust,

12 Plaintiffs,

13 v.

14 ROSEMERE ESTATES PROPERTY OWNERS  
ASSOCIATION, a Nevada non-profit corporation;  
15 and DOES I through X, inclusive,

16 Defendants.

17  
18 ROSEMERE ESTATES PROPERTY OWNERS  
ASSOCIATION, a Nevada non-profit corporation;  
19 and DOES I through X, inclusive,

20 Counterclaimants,

21 v.

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

23 Counterdefendants.

24  
25  
26 ///

27 ///

28 ///

CASE NO. A-10-631355-C  
Dept.: XXXII

**ORDER GRANTING PLAINTIFF JOHN  
ALLEN LYTLE AND TRUDI LEE  
LYTLE'S, AS TRUSTEES OF THE LYTLE  
TRUST, MOTION FOR SUMMARY  
JUDGMENT**

NOV 16 2016

PLEASE TAKE NOTICE that on November 8, 2016, the Court heard Plaintiffs JOHN ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust (hereinafter "Plaintiff" or the "Lyttles") MOTION FOR SUMMARY JUDGMENT in the above-captioned matter, filed on September 14, 2016. After considering the First Amended Complaint, deemed filed by Order of this Court on June 1, 2016, the Motion for Summary Judgment, the Declaration of Trudi Lytle, and evidence submitted therewith, and hearing oral argument, and no opposition having been filed by Defendant and Counterclaimant ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION ("Defendant"), the Court grants Plaintiffs' Motion for Summary Judgment.

**I. FINDINGS OF FACT**

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 Rosemere 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, no 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 Developer then sold the nine (9) undeveloped lots between May 1994 and July 1996.

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

6. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lyttles"), purchased a Rosemere 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.

7. The Lyttles later transferred Plaintiff's Property to Plaintiff.

1           8. In another action by Plaintiff against the Association before this Court, the Court  
2 found, as a matter of law, as follows:

3           a. The Association is a limited purpose association under NRS 116.1201 and not  
4 a unit-owners' association, as that term is defined by Chapter 116. In making this finding,  
5 the District Court specifically found: (1) "the Association did not have any powers beyond  
6 those of the "property owners committee" designated in the Original CC&Rs—simply to care  
7 for the landscaping and other common elements of Rosemere Estates as set forth in  
8 Paragraph 21 of the Original CC&Rs;" (2) that the Association was "created for the limited  
9 purpose of maintaining. . . "[t]he landscape of the common elements of a common interest  
10 community. . .," and (3) the Association "cannot enforce "any restrictions concerning the use  
11 of units by the units' owners . . ."

12           b. The Amended CC&Rs were not properly adopted or recorded, that the  
13 Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect.

14           9. The Court's Judgment was affirmed by the Nevada Supreme Court, Docket No.  
15 63942.

16           10. On September 15, 2008, at an Executive Board meeting of the Association, on a 5-3  
17 vote, the membership voted to approve an Executive Board proposal that, first, each member of the  
18 Association should be assessed \$10,000.00 "in conjunction with [Plaintiff's] actions" in bringing the  
19 NRED litigation and in pursuing litigation against Plaintiff for unarticulated and nebulous reasons,  
20 and, second, that "the Association should bring foreclosure proceedings against any lots with  
21 outstanding assessments due the Association."

22           11. On July 20, 2009, the Association, through a collection agency, NAS, caused to be  
23 recorded a Notice of Delinquent Assessment Lien in the Clark County Recorder's Office in the  
24 amount of \$12,500.00 (stated as including late fees, collection fees and interest in the amount of  
25 \$2,379.00) against Plaintiff's property within Rosemere Estates. The July 20, 2009 lien shall be  
26 referred to herein as the "First Lien."

27 ///

28 ///



1           12. Plaintiff immediately objected to validity of the First Lien and assessments to the  
2 Association and the collection agency because the validity of the Amended CC&Rs was the subject  
3 of litigation and the fact that Plaintiff had bonded around the lien. Further, the assessment, at least in  
4 substantial part, is for legal fees that Plaintiff would have to pay to sue itself. This lien remains  
5 recorded against Plaintiff's Property.

6           13. Plaintiff never received notice of the assessment or notice of an intent to lien as  
7 required by NRS 116.31162(1)(a), which requires a notice of the delinquent assessment stating the  
8 amount of the assessment and additional costs. This must be mailed by the Association, or its agent,  
9 to Plaintiff prior to recording any lien. And this was not done.

10           14. On or about November 19, 2009, the Association (through its collection agency)  
11 notified Plaintiff that the payoff amount had increased to \$21,045.00. Lytle Decl., ¶ 26. Plaintiff  
12 objected at every instance to the First Lien. *Id.* at ¶ 27.

13           15. After a Nevada Real Estate Division ("NRED") arbitration of the validity of the  
14 Amended CC&RS, the arbitrator wrongfully ruled in favor of the Association and awarded the  
15 Association \$45,000.00 in legal fees and \$7,255.19 in costs. Plaintiff immediately filed a trial de  
16 novo in District Court, the NRED 1 case, and posted a supersedeas bond with the Clerk in the  
17 amount of \$52,255.19, covering the foregoing fees and costs.

18           16. On November 18, 2009, the Association, through its attorney Gerry G. Zobrist, the  
19 son of Board President Gerry Zobrist, recorded a Judgment dismissing the NRED 1 case against  
20 Plaintiff's Property, which also included a \$52,255.19 attorney fee and cost award, against Plaintiffs'  
21 Property. The recorded Judgment shall be referred to herein as the "Second Lien."

22           17. The Association recorded the Second Lien ten (10) days after Plaintiff posted a bond  
23 to cover the \$52,255.19 monetary judgment which the Association deemed good and sufficient.

24           18. The purpose for recording the Second Lien (Judgment) was simply to slander title to  
25 Plaintiff's Property. The NRED 1 dismissal and monetary award was overturned by the Nevada  
26 Supreme Court on September 29, 2011 in Docket No. 54886.

27           19. The Second Lien was released on November 14, 2012.

28       ///

20. On or about November 19, 2009, the Association (through its collection agency) notified Plaintiff that the payoff amount on the First Lien had increased to \$21,045.00 and that the Association was going to foreclose on the property. The increase in the lien amount included a \$1,000.00 late fee, when only \$10.00 was permissible pursuant to the Amended CC&Rs. Also, the Association demanded a special assessment interest amount of \$900.00 at 12% interest per annum, when the allowable interest rate is 3.25% per NRS 99.040(1) on this date.

21. On or about March 16, 2010, Plaintiff filed a second arbitration action with NRED against the Association disputing the validity of the assessment and related penalties, interest and collection fees.

22. While the arbitration matter was pending and five (5) days after the Complaint was filed in this action, the Association recorded yet another lien against Plaintiff's property on March 22, 2010, in the amount of \$136,583.00, without any justification for doing so. The March 22, 2010 lien shall be referred to as the "Third Lien."

23. The Third Lien was released by the Association on September 27, 2010, only after Plaintiff discovered it had been recorded.

24. The Third Lien includes the amounts from the First and Second Liens, which already were recorded against Plaintiff's Property.

25. The three liens, which were all recorded at the same time, totaled \$209,883.19. The only amount that had been adjudicated was \$52,255.19, and there was a bond posted in that amount which was deemed, by the Association, as good and sufficient.

26. For the reasons set forth in this Order, the Association did not have a right to have any of these liens recorded against Plaintiff's Property.

## II. CONCLUSIONS OF LAW

### A. Summary Judgment Standard

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).

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." Wood v. Safeway, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(quoting NRCP 56(c)).

3. In Wood, the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary judgment jurisprudence, Id. at 1037, and adopted the summary judgment standard which had been articulated by the United States Supreme Court in its 1986 Trilogy: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Electrical Industrial Company v. Zenith Radio Corporation, 475 U.S. 574 (1986). The application of the standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts demonstrating existence of a genuine issue for trial." Wood, 121 p.3d at 1031. This obligation extends to every element of every claim made, and where there is a failure as to any element of a claim, summary judgment is proper. Barnettler v. Reno Air, Inc., 114 Nevada 441, 447, 956, P2d. 1382, 1386 (1998). In this case, the Association failed to oppose the Motion for Summary Judgment and failed to appear for the hearing thereon, which was a general failing to present any facts demonstrating the existence of a genuine issue for trial.

4. 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, p.3d at 1030 (quoting Celotex, 477 U.S. at 327). In Liberty Lobby, the U.S. Supreme Court noted that:

"Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Id. (quoting Liberty Lobby, 477 U.S. at 247-48)

#### B. Summary Judgment Is Proper As To Plaintiff's Declaratory Relief Cause of Action

5. 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.

6. The Lytles' Seventh Cause of Action seeks Declaratory Relief and assumes, therein, that the Amended CC&Rs are void *ab initio*, as they indeed are.<sup>1</sup> See First Amended Complaint ("FAC"), ¶¶ 32 – 39. Specifically, the Lytles seek this Court to declare that the Liens based on the assessments at issue are invalid because they were based on the Amended CC&Rs, which were void *ab initio* – meaning that there was never any right prescribed by the Amended CC&Rs as they were void from their inception and recording.

7. *Void ab initio* means that the documents are of no force and effect., i.e. it does not legally exist. Washoe Medical Center v. Second Judicial Dist. Court of State of Nev., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006); see also Black's Law Dictionary, 2d ed.. The phrase *ab initio* comes from Latin and has the literal translation "from the start" or "from the beginning." If a court declares something void *ab initio*, it typically means that the court's ruling applies from the very beginning, from when the act occurred. In other words, the court declares the documents, in this case, the Amended CC&Rs, invalid from the very inception.

8. Here, this Court has declared the Amended CC&Rs void *ab initio*, meaning that they never had any force and effect. The liens in questions are all based on assessments that were levied pursuant to the Amended CC&Rs. As a result, the assessments and resulting liens are invalid and must be similarly declared void *ab initio*.

#### C. Summary Judgment Is Granted As To The Quiet Title Cause Of Action

9. A plaintiff may bring a quiet title cause of action and must allege (1) the plaintiff has an interest in real property, and (2) the defendant claims an interest adverse to that of plaintiff.

Twain Harte Homeowners Assn. v. Patterson, 239 Cal.Rptr. 316 (1987), South Shore Land Co. v. Petersen, 38 Cal.Rptr. 392 (1964), Thornton v. Stevenson, 8 Cal.Rptr. 603 (1960).

10. The Plaintiff's Fourth Cause of Action is for Quiet Title and alleges that the liens described herein "were recorded without any right and for invalid reasons as set forth herein, and the lien presently recorded against the property impairs and clouds Plaintiff's title to Plaintiff's Property."

<sup>1</sup> Plaintiff believes that a determination as to the Seventh Cause of Action first, which alleges that the liens are void *ab initio* and must be revoked because the District Court already has determined that the Amended CC&Rs are void *ab initio* is the appropriate starting point for the Court's determination of this matter.

11. "A cloud on title is described as any outstanding instrument, record, claim, or encumbrance which is actually invalid or inoperative but which may nevertheless impair the title to property." 53 Cal. Jur. 3d Quieting Title § 15. "Actions to determine the continuing validity of a restrictive covenant are normally brought either as an action for a declaratory judgment or an action to quiet title.

12. Where the action is one to quiet title, it is necessary to show that the plaintiff holds title to the property in question and that there is 'cloud' upon the title, or, in other words, that a hostile claim is outstanding. 27 Causes of Action 203, §§ 5, 25 (2012), see also Cortese v United States, 782 F.2d 845 (9th Cir Cal 1986); Garnick v Serewitch, 39 NJ Super 486, 121 A.2d 423 (1956); 65 Am. Jur. 2d, Quieting Title and Determination of Adverse Claims §§ 9-17; C.J.S., Quieting Title §§ 58-66.

13. As set forth above in this Order, the Amended CC&Rs and the liens based thereon are all void *ab initio*. The recording of the Amended CC&Rs and the liens all were a cloud on title, and summary judgment granting Plaintiff's Quiet Title cause of action is warranted and granted.

**D. Summary Judgment Is Granted As To The Injunctive Relief Cause Of Action**

14. Plaintiff's Fifth Cause of Action alleges that "Plaintiff is entitled to a preliminary and permanent mandatory injunction ordering the Association not to foreclose on the first lien recorded on Plaintiff's Property on July 20, 2009, pending final resolution of the within litigation."

15. As set forth above, all liens, including the first lien, are void *ab initio* and are illegitimate. Therefore, no foreclosure action may be pursued to enforce the liens, and summary judgment is proper as to Fifth Cause of Action for injunctive relief.

**E. Summary Judgment Is Granted As To The Slander Of Title Cause Of Action**

16. "Slander of title involves false and malicious communications that disparage a person's title in land and cause special damages." Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987).

17. An award of expenses, including attorneys' fees, incurred in removing a cloud on title is proper. Summa Corp. v. Greenspun, 98 Nev. 528, 532, 655 P.2d 513, 515 (1982).

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1           18. "Malice" has been defined as "knowledge that it [a statement] was false or with  
2 reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254,  
3 279-80 (1964). Reckless disregard means that the publisher of the statement acted with a "high  
4 degree of awareness of ... [the] probable falsity" of the statement or had serious doubts as to the  
5 publication's truth." *Id.* at 280.

6           19. Plaintiff's Third Cause of Action alleges slander of title against the Association as a  
7 result of the Association's recording the First and Second Liens.

8           20. The Association knew or should have known that it had no right to issue assessments  
9 against Plaintiff and knew or should have known that the bond posted by Plaintiff adequately  
10 covered the Association's lien on Plaintiff's Property and therefore the Association acted  
11 maliciously or in reckless disregard of the falsity of the lien by recording the lien on the Property and  
12 refusing to remove the same up through the present date.

13           21. Further, the recordation by the Association of the Third Lien constitutes slander of  
14 title to Plaintiff's Property as the Association and its Board members knew or should have known  
15 that they had no legal right to record the lien as the amount of lien had not been adjudicated by any  
16 court, arbitrator or arbiter and therefore the Association and/or its Board members acted with malice  
17 and/or with reckless disregard of the falsity of the lien.

18           22. This Court already found that the Association had no lawful right to record and  
19 enforce the Amended CC&Rs. As such, the Amended CC&Rs were declared void *ab initio*.  
20 Similarly, the First and Second Liens, and all other liens recorded against Plaintiff's Property are  
21 void *ab initio* because they were born from the Amended CC&Rs. Thus, the falsity of the liens is  
22 clearly established.

23           23. In addition to being false, the Association's actions were malicious because the  
24 Association recorded the liens with reckless disregard for the integrity of those liens.

25           24. The July 2007 amendment meeting and the actions that preceded that meeting to  
26 perpetrate the fraud of the Amended CC&Rs and post-meeting actions in recording the Amended  
27 CC&Rs were fraudulent. The Association's Board, at that time, pushed the Amended CC&Rs  
28 through an improperly noticed meeting wherein homeowners were provided with written



1 misrepresentations, insufficient time to consider and debate the proposed amendment, and then,  
 2 despite all of these problems, the Association's Board still recorded the Amended CC&RS without  
 3 the required unanimous consent. The process was reckless and malicious and aimed at the Lyles,  
 4 who were the only undeveloped lot at the time, from building their dream home.

5 25. Once the Amended CC&Rs were improperly recorded, the Association, again acting  
 6 in disregard for Plaintiff's rights, recorded liens against Plaintiff's Property and swiftly moved to  
 7 foreclose against the First Lien.

8 26. As a result of the Association's actions, as set forth herein and as established by the  
 9 record in Case No. A-09-593497-C, the Association's actions were malicious.

10 27. Therefore, summary judgment as to Plaintiff's Third Cause of Action for Slander of  
 11 Title is appropriate.

12 **F. The Liens Are Invalid Because The Association Did Not Adopt An Annual Budget**

13 28. The Association's Board failed to adopt an annual budget in violation of NRS §  
 14 116.3115. Assessments may not be imposed if they are not done so based on an annual budget  
 15 prepared by the Board. NRS 116.3115, see also Bylaws, Sections 8.1 and 8.2.

16 29. The Association failed to adopt a budget in either 2009 or 2010, as required under  
 17 Article 10, Section 10.4 of the Amended CC&Rs and Article VIII, Section 8.1 and 8.2 of the  
 18 Bylaws.

19 30. As set forth in NRS 116.3115 and in the Association's own amended governing  
 20 documents (since revoked but in place at the time of the assessments in question), an annual budget  
 21 is required in order to impose assessments.

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**G. The Liens Are Invalid Because The Association Failed To Provide Requisite Notice  
And A Hearing Prior To Levying The Assessments And Recording The Liens  
Against The Property**

31. NRS 116.31162(1)(2) provides as follows:

1. Except as otherwise provided in subsection 5, 6 or 7, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

32. Plaintiff never received any required statutory notice from the Association or anyone acting on its behalf of the delinquent assessment and other sums allegedly due that served as the basis for the First Lien.

33. Thus, the First Lien, even if the basis for that lien were valid, which they are not, is procedurally defective.

**H. The Association's Collection Agency Was Never Properly Authorized**

34. NRS 116.31086 requires the Association to obtain three (3) bids before hiring a collection agent, in this case NAS.

35. No bids were collected, and no meeting took place during which NAS was appointed as the Association's collection agent.

36. Yet, despite not being lawfully engaged and authorized, NAS recorded the First Lien on the Lytle Property and pursued collection and foreclosure. This was improper.

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**I. Plaintiff Suffered Damages**

37. NRS 116.1183 provides as follows:

1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

[Emphasis added].

38. Plaintiff presented adequate evidence that it suffered damages as a result of the Board's retaliatory actions.

39. Plaintiff planned to build a dream home in the community, and the actions taken by the Board were intentionally and directly targeted at Allen and Trudi Lytle in order to prevent them from ever moving into the community.

40. Once more, Plaintiff underwent financial hardship in posting the various bonds in order to appeal this action (and other actions).

41. This matter commenced with the unlawful amendment in July 2007 and did not conclude until the Supreme Court affirmed the District Court's ruling that the Association's conduct was, indeed, unlawful and in violation of the Lytles' rights as homeowners.

42. Finally, the Association suspended the Plaintiff's voting rights, the right to run for the Board, blocked Plaintiff's attendance at meetings, and suspended membership privileges, all without complying with Article 12, Section 1.2(d) of the Amended CC&Rs and NRS 116.31041(2).

///

43. The Association's retaliatory actions cost the Lytles their dream home. These actions further entitle Plaintiff to attorneys' fees incurred in this action, the underlying arbitration, and appeal in this action.

**J. Plaintiff Is Entitled To Punitive Damages**

44. A wronged plaintiff may recover punitive damages in an action for slander of title. Summa Corp. v. Greenspun, 98 Nev. 528, 655 P.2d 513 (1982).

45. Once more, the plaintiff need not show that the land was adversely affected. Id. at 531. Actual damages in the form of costs to remove the cloud on title, such as attorneys' fees, is sufficient. Id.

46. The Association, through its Board, recorded three (3) improper and unlawful liens against Plaintiff's Property. Once more, each lien incorporated the prior lien amount, reaching a total of \$209,883.19, when the only amount that had been adjudicated was \$52,255.19, when there was a bond posted in that amount which was deemed, by the Association, as good and sufficient.

47. The Court finds that the Association did not have a right to have any of these liens recorded against Plaintiff's Property.

48. The totality of the liens made it impossible for Plaintiff to sell the Property, even though a good and sufficient bond had been deposited.

49. The Association's actions were taken in order to prevent the Lytles from building their dream home in the community.

50. Pursuant to the foregoing, Plaintiff is entitled to punitive damages in an amount to be determined after a prove-up hearing on damages.

**K. Plaintiff Is Entitled To An Award Of Damages Equal To Its Costs And Attorneys'**

**Fees Incurred In Removing The Cloud On Title**

51. A plaintiff can recover its costs and attorneys' fees as damages in an action for slander of title. See generally Summa Corp., 98 Nev. 528, 655 P.2d 513.

52. Plaintiff is directed to submit a memorandum of costs and application for attorneys' fees.

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1           L. Summary Judgment Is Granted Against The Associations' Counterclaim

2           53.     The Association's Counterclaim merely seeks to enforce actions taken against the  
3     Lyttles via the Amended CC&Rs, which are *void ab initio* as set forth herein. For the reasons set  
4     forth herein and the legal authority cited, all fines, assessments and liens are *void ab initio* and  
5     should be declared as such.

6           **III. JUDGMENT**

7           **IT IS HEREBY ADJUDGED AND DECREED:**

8           1.     All liens recorded by the Association against Plaintiff's Property are invalid and have  
9     no force and effect. This Order may be recorded in the Office of the Clark County Recorder's  
10    Office by any party, and, once recorded, shall be sufficient notice of the same.

11          2.     The Association is hereby ordered to release any and all liens recorded against the  
12    Property within sixty (60) days of the date of service of this Order on the Association, including (a)  
13    the Notice of Delinquent Assessment Lien, Book/Instr. No. 20090720-001631, and (b) the  
14    Judgment, Book/Instr. No. 200911180005345.

15          3.     The Association's Counterclaim is dismissed.

16          4.     Plaintiff is the prevailing party in this action. Plaintiff is directed to prepare, file and  
17    serve a Memorandum of Costs.

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1           5.     Plaintiff is deemed the prevailing party in this action. Any motion for attorneys' fees  
2 will be addressed separately by the Court.


3  
4 IT IS SO ORDERED this 14 day of November, 2016.

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6   
7 HONORABLE ROB BARE  
District Court Judge, Dept. XXXII

8 ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

9  
10 DATED: November 10, 2016

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

11  
12 By  #12490  
13 Richard E. Haskin, Esq.  
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17 Attorneys for Plaintiffs and Counterdefendants  
18 JOHN ALLEN LYTLE and TRUDI LYTLE  
19  
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28



# **EXHIBIT “2”**

AA000404



CLERK OF THE COURT

**OPPC**

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Nevada State Bar # 11592  
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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 "Lytles"), 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 Lytles' 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.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST ("Boulden") and LINDA LAMOTHE AND JACQUES LAMOTHE, TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST's ("Lamothe") bring the instant lawsuit and Motion for Summary Judgment in an effort to erase Defendant TRUDI LEE LYTLE and JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST (the "Lytles") lawfully recorded Abstracts of Judgment. Boulden and Lamothe portray themselves as unwitting victims, now anchored by a judgment lien obtained by the Lytles. The reality of this case, however, betrays Plaintiffs' self-victimization.

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 Boulken, 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.

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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).<sup>1</sup>

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.<sup>2</sup> A  
 19 lien against the Association is *automatically* a lien against each lot ("Lots 1 through 9") within the  
 20 Association

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 27 <sup>1</sup> 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 <sup>2</sup> 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. *Barmetiler 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  
26                               are irrelevant or unnecessary will not be counted.

27           *Id.* (quoting *Liberty Lobby*, 477 U.S. at 247-48).

28           ///

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**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.<sup>3</sup> 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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<sup>3</sup> 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.<sup>4</sup> 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 <sup>4</sup> 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.<sup>5</sup>

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.

<sup>5</sup> Furthermore, the Association is a small planned community subject to, among other provisions, NRS 116.3117. *See* NRS 116.1203(3) ("The 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.<sup>6</sup>

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 <sup>6</sup> 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**

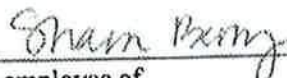
2 The Lytles rightfully recorded their abstracts of judgment against Lamothe and Boulden  
3 pursuant to both the Original CC&Rs or the Amended CC&Rs. A lien against the Association is  
4 automatically and by definition a lien against Lots 1 through 9 therein. For the reasons set forth  
5 herein, summary judgment should be denied as to Plaintiffs and granted in favor in the Lytles.

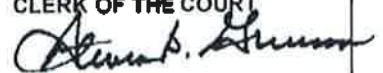
6  
7 **DATED: March 24, 2017****Respectfully Submitted,**8 **GIBBS GIDEN LOCHER TURNER  
9 SENET & WITTBRODT LLP**10 **By:** 11 **Richard E. Maskin, Esq.**12 **Nevada State Bar # 11592**13 **Timothy Elson, Esq.**14 **Nevada State Bar # 11559**15 **1140 N. Town Center Drive, Suite 300**16 **Las Vegas, Nevada 89144-0596**17 **Attorneys for Defendants**18 **TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE  
19 LYTLE TRUST**

**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. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101

  
An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP



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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 LYTLE, JOHN ALLEN )  
18 LYTLE, THE LYTLE TRUST, DOES I )  
19 through X; and ROE CORPORATIONS )  
20 I through X, )

21 Defendants. )

22 **OPPOSITION TO MOTION FOR RECONSIDERATION**

23 COMES NOW Plaintiffs, by and through their attorneys, Foley & Oakes, PC, and  
24 Oppose Defendants Trudi Lee Lytle and John Lytle, the Trustees of the Lytle Living Trust's  
25 (collectively the "Lyttles") Motion for Reconsideration.  
26

27 ///

28 ///

///

///

**FOLEY**  
**&**  
**OAKES**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. OVERVIEW**

3 The Lytles and all three of their different attorneys who represented them in the  
4 underlying case, failed to file suit directly against the Plaintiffs herein as prescribed by the  
5 CC&Rs. The Lytles, with the assistance of all three law firms, pursued only the "Association"  
6 and obtained a judgment against only the "Association".  
7

8 In June 2016, after obtaining the Attorneys Fees Judgment, the Lytles and their counsel  
9 realized that the Attorneys' Fees Judgment they had obtained would be difficult, if not  
10 impossible, to collect on, since the "Association" was really only a "Committee" as per the  
11 CC&Rs and its resources were limited to gate repair and shrubbery maintenance.

12 The Lytles and their counsel, in an effort to collect on this worthless judgment, then  
13 devised a plan to collect the Attorneys' Fee Judgment from non-parties to the underlying case  
14 that were not listed as parties on the Attorneys' Fee Judgment. The plot devised by the Lytles  
15 and their attorney was to record Abstracts of Judgment with the Clark County Recorder and  
16 simply list the Plaintiffs' parcel numbers on the recordings.  
17

18 This plot was conceived and carried out maliciously and with full knowledge that the  
19 Attorneys' Fee Judgment had no application whatsoever to the Plaintiffs or their property.

20 **II. STATEMENT OF FACTS**

21 These are all undisputed facts.

22 1. In 2007, the Lytles filed an NRS 38.310 action with the Nevada Real Estate  
23 Division ("NRED") against the Rosemere Estates Property Owners Association.

24 2. The NRED action arose out of action by a number of the property owners within  
25 the Rosemere Court Subdivision seeking to amend the CC&R's of the Rosemere Court  
26 Subdivision.  
27

1           3.       Despite the specific language in the CC&Rs that prevent a homeowner from suing  
2 or seeking protection from the Rosemere Court Subdivision or its CC&Rs and instead provided  
3 each homeowner with the right to independently enforce the CCR's against one another, the  
4 Lytles chose not to assert claims against the individual homeowners, including the Plaintiffs  
5 herein.

6           4.       The NRED ruled against the Lytles.

7           5.       Thereafter in 2009, the Lytles sued the Rosemere Estates Property Owners  
8 Association in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere  
9 Litigation").  
10

11          6.       Again, the Lytles chose not to sue the Plaintiffs or the other homeowners  
12 individually.

13          7.       Mrs. Boulden and Mr. and Mrs. Lamothe were never parties to the Rosemere  
14 Litigation. A copy of the Lytles Complaint filed in the Rosemere Litigation is attached hereto as  
15 Exhibit "1".  
16

17          8.       The Lytles alleged, among other things, that the owners of the residences within  
18 the Rosemere Court Subdivision had improperly amended the CC&Rs and attempted to convert  
19 the simple 9 residence Rosemere Court Subdivision into a full-fledged home owners'  
20 association. Exhibit "1".

21          9.       The Lytles obtained a Summary Judgment from the District Court against  
22 Rosemere Estates Property Owners Association, determining and declaring that the Rosemere  
23 Estates Property Owners Association and/or the "Committee" established in the CC&Rs was not  
24 a full-fledged home owners' association under NRS 116. See paragraph 19 on page 9 of the  
25 Order Granting Summary Judgment a true and correct copy of which is attached hereto as  
26 Exhibit "2".  
27



1           10.     The Lytles filed a Motion for Attorneys' Fees and Costs and against the Rosemere  
2 Estates Property Owners Association and a Judgment was entered in the Lytles' favor against the  
3 Rosemere Estates Property Owners Association for \$361,238.59 (the "Attorneys' Fees  
4 Judgment").

5           11.     After obtaining the Attorneys' Fees Judgment, on August 16, 2016, the Lytles  
6 recorded three (3) different Abstracts of Judgment against the Plaintiffs' properties.

7           12.     On April 27, 2017, this Court's Order Granting Plaintiffs' Motion for Partial  
8 Summary Judgment was entered. A copy of this Court's Order Granting Summary Judgment is  
9 attached hereto as Exhibit "3".  
10

11           13.     In this Court's Order, the Court made findings and judicially declared, among  
12 other things, that the Lytles' Three Abstracts of Judgment recorded against the Boulden Property  
13 and the Lamothe Property were improperly recorded and constituted clouds on the Boulden  
14 Property and the Lamothe Property. Exhibit "3".  
15

16           14.     In this Court's Order, the Court made findings and judicially declared, among  
17 other things, that the Lytles' had "slandered" Mrs. Boulden's title to her property. Exhibit "3".

18           15.     The Lytles readily admit that the Attorneys' Fees Judgment is not against the  
19 Plaintiffs.

20           16.     The Lytles readily admit that they could have, but never did, file suit against the  
21 Plaintiffs.

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1 supported by the CC&Rs, NRS 116, or any concepts of equity, that somehow 30 minutes of a  
2 scrambling futile effort constitutes good faith.

3 Nothing could be further from the truth. This case is not complicated as evidence by the  
4 fact that Summary Judgment was granted four months after the Complaint was filed without any  
5 discovery being taken.

6 The Lytles and their counsel certainly put up a fight and lodged multiple arguments;  
7 however, the arguments were baseless. This Court repeatedly begged counsel for explanations  
8 of his indefensible arguments and counsel was completely unable to meritoriously respond.

9 The Lytles' counsel argued initially that the "Association" was a full blown association  
10 when the CC&R's were amended and therefor NRS 116 fully applied. However, this Court,  
11 after a moderate effort, finally got counsel to admit that he knew full well that the Original  
12 CC&Rs were never properly amended and the underlying court declared the Amended CC&RS  
13 to be void *ab initio*. See pages 5 – 12 of the transcript of the hearing before this Court held April  
14 13, 2017 attached hereto as Exhibit "4".

15 The Lytles' counsel then argued that the mortgage savings clause in the CC&Rs somehow  
16 established the ability for the Lytles to record the Judgment against non-parties. Again,  
17 counsel's argument could not withstand questioning by the Court and counsel agreed that the  
18 subject clause did not establish any right for his clients but instead was just a mortgage savings  
19 clause. See pages 12 – 13 of Exhibit "4".

20 The Lytles' counsel then quarreled with the Court but finally admitted that the "losing party"  
21 attorneys' fee provision in the CC&Rs did not support the Lytles' claim as the Plaintiffs were not  
22 "parties" nevertheless "losing parties" in the underlying case. See pages 15, and 30 - 33 of  
23 Exhibit "4".  
24  
25  
26  
27

1 The Lytles' counsel finally argued at length the ridiculous claim that because the  
2 "Association" owned all of the property in the subdivision, that the Judgment could be recorded  
3 against all of the property. It took the Court several minutes to completely discredit the  
4 arguments and to finally get the Lytles' counsel to admit that his initial statement that the  
5 "Association" owned all of the property was false and forced. A recitation of that  
6 painful/shameful effort by counsel is set forth below quoting directly from pages 19 - 25 of  
7 Exhibit "4".  
8

9 MR. HASKIN: I have a judgment against all property owned by the  
10 association. A unit is owned by the association pursuant to both the recitals  
11 in the - original CC&Rs say that.

12 THE COURT: Show me where a unit is owned by the association in here.

13 MR. HASKIN: The original CC&R's state that this association includes Lots 1  
14 through 9 of Rosemere Court. There are nine lots in this community.

15 THE COURT: But the unit - but they don't own it.  
16 ...

17 THE COURT: Where does it say that the association owns the properties fee  
18 simple?  
19 ...

20 THE COURT: Just tell me where to look. What page?

21 MR. HASKIN: It's the recitals, page 1.  
22 ...

23 THE COURT: But wait, wait, wait, wait. --- that sets forth who the declarant is.  
24 ...

25 THE COURT: Tell me where it says. Because at the end of the day whatever  
26 ownership rights any association would have - and I've read enough CC&Rs. For  
27 example they'll tell you what the HOA owns. They'll set forth the common areas  
that are owned and controlled and maintained by the HOA. Very common in the  
CC&Rs, you know.

And they'll - they'll discuss specifically what the burdens are as far as the  
unit owners are concerned. But go ahead and tell me where does it say that the  
HOA in this - under these declarations of covenant, conditions, and restriction  
own the property.

MR. HASKIN: Well, that --- that by virtue - I guess, we're in disagreement  
there, your Honor.

1 THE COURT: No, no. I'm asking.  
2 MR. HASKIN: And I'm answering.  
3 THE COURT: I'm listening.  
4 MR. HASKIN: Because –  
5 THE COURT: Just point to a provision I can look at, and maybe I'll agree with  
6 you.  
7 MR. HASKIN: Okay. Well, I pointed that one, but I'm reading in conjunction  
8 with NRS116.021.  
9 THE COURT: So we agree that there's no provision under the CC&Rs that sets  
10 forth ownership by the HOA of the units?  
11 MR. Haskin: No. I don't agree with that, your Honor.  
12 THE COURT: Then – where is it then?  
13 ...  
14 THE COURT: So for the record, it's your position that the simple introductory  
15 language as it relates to the declaration and the subdivision of the property stands  
16 for the proposition that the HOA owns the property.  
17 ...  
18 THE COURT: Okay. Let me look at that with you.  
19 ...  
20 THE COURT: but I notice you didn't say that the association owned lots 1  
21 through 9.  
22 ...  
23 THE COURT: Okay. So you agree it's not in the CC&Rs.  
24 MR. HASKIN: Well, if you read it – your Honor, I've read a lot of CC&R's too.  
25 I don't know any CC&Rs that say, We own your house. They don't.  
26 THE COURT: No, no. They say specifically what's owned by the HOA and  
27 they'll say specifically what owned by the unit owners. Like in condominiums,  
for an example, they'll have the interior walls that are owned by the unit owners.  
I mean, let's not be quibble here. And let's not be facetious. I know what they  
say.  
...  
MR. HASKIN: It's obvious that a home owners association doesn't own your  
house.

Six pages of facetious quibbling from Mr. Haskin going from “a unit is owned by the  
association” to “It's obvious that a home owners association doesn't own you house” is not a

1 good faith meritorious argument that allowed the Lytles and their counsel to cloud the Plaintiffs'  
2 titles without repercussions.

3 Again, false and forced arguments that are ultimately withdrawn do not make a case  
4 complex or meritorious. Rather proffering arguments that do not withstand basic questioning is  
5 intentionally misleading. Absent a good faith right to cloud the title, the clouding was malicious  
6 and done in reckless disregard of the truth and this Court has more than enough evidence to so  
7 find. *Rowland v Lepire*, 99 Nev. 308, 662 P.2d 1332 (1983)  
8

9 **IV. CONCLUSION**

10 Plaintiffs respectfully request that this Court make a specific finding of malice or reckless  
11 disregard of the truth against the Lytles and/or their counsel.  
12

13 Dated this 1<sup>st</sup> day of June 2017

14 Respectfully Submitted,

15 FOLEY & OAKES, PC

16 /s/Daniel T. Foley

17 Daniel T. Foley, Esq.  
18 Nevada Bar No. 1078  
19 626 So. 8<sup>th</sup> Street  
20 Las Vegas, Nevada 89101  
21 *Attorney for Plaintiffs*  
22  
23  
24  
25  
26  
27



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 1<sup>st</sup> day of June, 2017, I served the following  
4 document(s):

5 **OPPOSITION TO MOTION FOR RECONSIDERATION**

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 Odyssey eFileNV system:

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

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

14 /s/ Maren Foley  
15 An employee of FOLEY & OAKES  
16  
17  
18  
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20  
21  
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# EXHIBIT 1

# EXHIBIT 1

ORIGINAL

FILED

JUN 26 4 23 PM '09

*Ed Lytle*  
CLERK OF THE COURT

1 **COMP**  
2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**  
3 **MICHAEL J. LEMCOOL, ESQ.**  
4 Nevada Bar No. 07061  
5 3556 E. Russell Road, 2<sup>nd</sup> Floor  
6 Las Vegas, NV 89120  
7 Telephone: (702) 341-5200  
8 Facsimile: (702) 341-5300

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

10 **A-09-593497-C**  
11 **205801**



DISTRICT COURT

CLARK COUNTY, NEVADA

12 **JOHN ALLEN LYTLE & TRUDI LEE**  
13 **LYTLE, AS TRUSTEES**  
14 **OF THE LYTLE TRUST,**

15 **Plaintiff,**

16 **vs.**

17 **ROSEMERE ESTATES PROPERTY**  
18 **OWNERS ASSOCIATION, and DOES 1**  
19 **through 10, inclusive**

20 **Defendants.**

Case No.: *A09593497*

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)**

21 COMES NOW Plaintiff, the LYTLE TRUST, by and through its Trustees, John Allen  
22 Lytle and Trudi Lee Lytle, herein by and through their attorneys, WOLF, RIFKIN, SHAPIRO,  
23 SCHULMAN & RABKIN, LLP, by Michael J. Lemcool, Esq., and for its Complaint against  
24 ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (hereinafter, the  
25 "Association"), and DOES 1 through 10, inclusive, states unto this Court as follows:  
26  
27 1. That Plaintiff, the Lytle Trust, is the current owner of real property located in  
28 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**

I:\LV0755\020\Pleadings\Complaint-062609.wpd

RECEIVED

JUN 26 2009

CLERK OF THE COURT

AA000430

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 26<sup>th</sup> day of June, 2009.

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

9  
10  
11 By: 

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

17 *Attorneys for Plaintiff, John Allen Lytle & Trudi Lee*  
18 *Lytle, as Trustees of the Lytle Trust*  
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7 2

Legal Tabs Co. 1-800-322-9022

Recycled  Stock # EX-5-B

**EXHIBIT 1**

AA000435

APR 128.05

961115.02307  
APN 163-03-313-009

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Justin A. Englert, an unmarried man

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 on this 6th day of November, 1996

STATE OF NEVADA )  
COUNTY OF Clark ) SS.

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 the foregoing and acknowledged that he  
(she or they) executed it.

Signature \_\_\_\_\_  
(Notary Public)

(Notarial Seal)



2 MOON  
Notary Public - Nevada  
Clark County  
My exp. exp. Oct. 1, 1999

RECORD NO:

96-19-3326 CTS

MAIL TAX STATEMENTS TO: Lytle 4705 Aladdin Lane  
Las Vegas, NV 89162-0601

000816

AA000436

EXHIBIT "A"

LEGAL DESCRIPTION

961115.02307

LOT NINE (9) OF ROSEBERRY 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  
ROSEBERRY COURT.

CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF:  
NEVADA TITLE COMPANY

11-15-96 16:24 DB1

BOOK: 961115 OFFICIAL RECORDS  
FEE: 8.00 INST: 02307

RPT: 128.65

000017

AA000437

Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EX-5-B

**EXHIBIT 2**

AA000438



94010501241

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

This Declaration of Covenants, Conditions and Restrictions made this 4<sup>th</sup> Day of Jan, 1974 by Baughman & 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 39 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 Ordinance.

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, 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 into the cul-de-sac and contain not less than 3,000 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 not 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 appearances 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 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.

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, Tenaya 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 Estate 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 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 3 3 | 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.

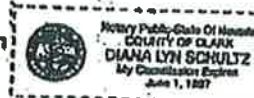
IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereto affixed their signatures.

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



(this area for official seal)

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

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

CLARK COUNTY, NEVADA  
JOAN L. SWIFT, RECORDER  
RECORDED AT REQUEST OF:  
BAUGHMAN & TURNER, INC.  
01-04-94 14188 PDR  
OFFICIAL RECORDS  
BOOK 448104 PAGE 01241  
FEE: 10.00 RPTE:

AA000442

Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EX-5-B

**EXHIBIT 3**

AA000443

D 31216

11/72

# ROSEMERE COURT

A SUBDIVISION

WITH A PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION 1, TOWNSHIP 21 SOUTH, RANGE 20 EAST, NAD 83, W.

## CITY ENGINEER'S CERTIFICATE

I hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

*[Signature]*  
CITY ENGINEER

## SUBDIVIDER'S CERTIFICATE

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

*[Signature]*  
SUBDIVIDER

## LEGAL DESCRIPTION:

That certain lot or lots of land, situated in the City of Rosemead, California, and being more particularly described as follows: [Description of land]

## OWNER'S CERTIFICATE & DECLARATION

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

*[Signature]*  
OWNER

## ADJUDICATOR'S CERTIFICATE

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

*[Signature]*  
ADJUDICATOR

## BASES OF BEHAVIOR:



SUBDIVISION MAP

## CLARK COUNTY HEALTH DISTRICT

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

## DIVISION OF WATER RESOURCES

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

## UTILITY APPROVALS

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

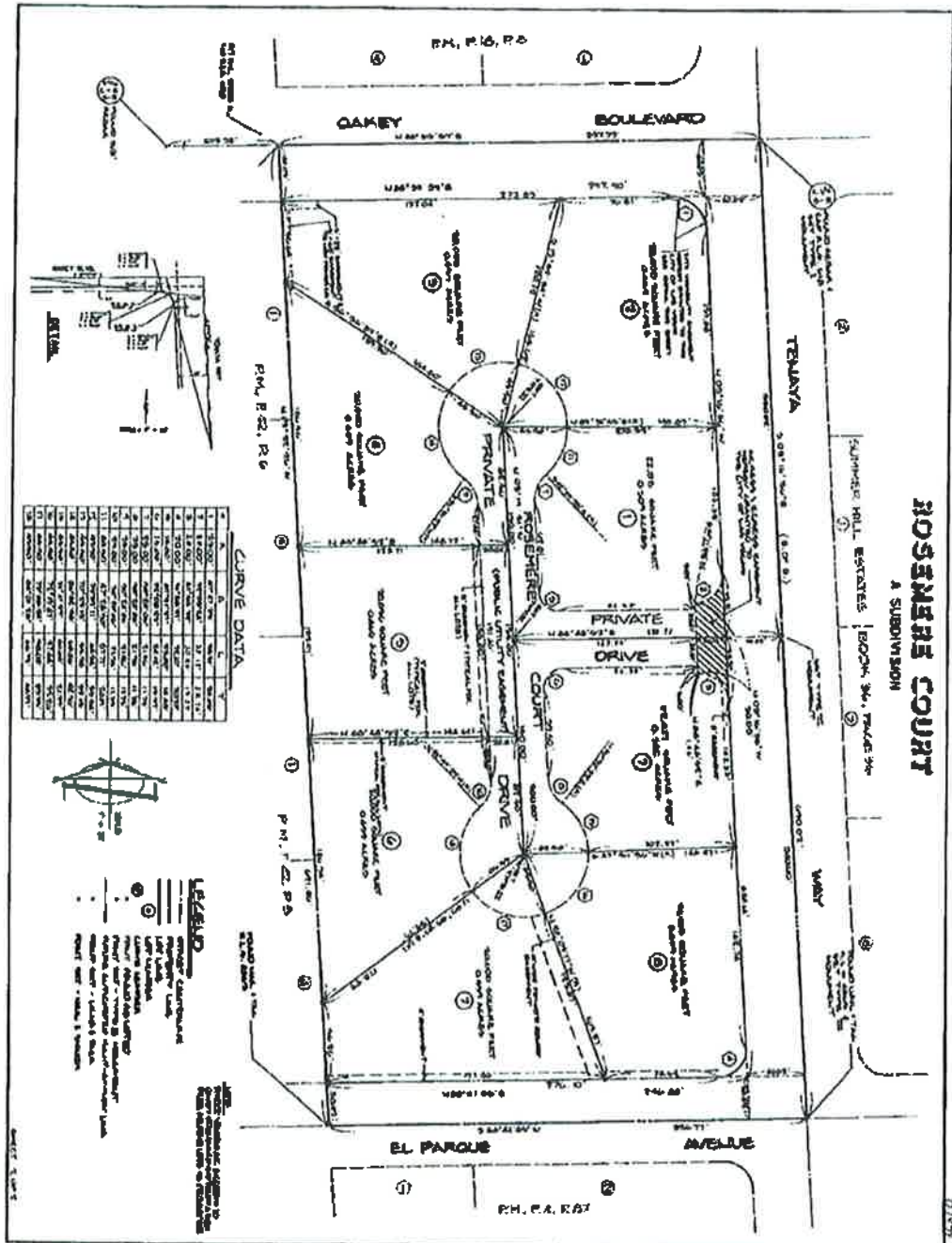
## APPROVAL:

I, the undersigned, being duly qualified, do hereby certify that the plan of the subdivision of the land shown on the attached map is in accordance with the provisions of the City of Rosemead, California, and that the same has been approved by the City Engineer.

*[Signature]*  
APPROVAL

APPROVED BY THE CITY ENGINEER  
CITY OF ROSEMERE, CALIFORNIA  
11/72

# ROSEBERRY COURT A SUBDIVISION





Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EX-S-B

**EXHIBIT 4**

AA000446

IN WITNESS HEREOF, 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. 1860 Rosemere Ct. Ray/Evelyn Sandoval date: 7-2-07

2. 1830 Rosemere Ct. Jacques/Linda Lamothe date: \_\_\_\_\_

3. 1831 Rosemere Ct. Jerry/Lou Hachn date: 7-2-07

4. 1861 Rosemere Ct. Sherman/Karen Kears date: 7-2-07

5. 1901 Rosemere Ct. Gerry/Judy Zolyst date: 7-2-07

6. 1931 Rosemere Ct. Chris/Karen Korras date: 7-2-07

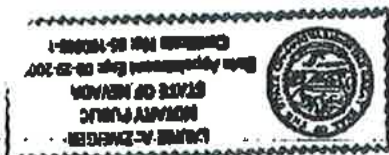
7. 1961 Rosemere Ct. Orville/Johnnie McCumber date: 7-2-07

8. 1960 Rosemere Ct. Carl Cantor/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

Notary Public



AA000447

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**EXHIBIT** 05448

**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 Gerry Zolnist, Sherman Keart, 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 Tabs Co. 1-800-322-3022

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**EXHIBIT 6**

AA000450



JIM BIBBONS  
Governor

LINDSAY WAITE  
Ombudsman

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION

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

DIANNE CORNWALL  
Director

GAIL J. ANDERSON  
Administrator

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.

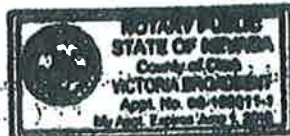
This notarized document will serve as a certificate for the Claimant(s) certifying they have completed the Alternative Dispute Resolution process as required by NRS 38.

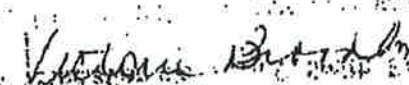
  
Gordon Milden  
Administrative Assistant III

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 2

# EXHIBIT 2



CLERK OF THE COURT

1 **OGSJ**  
2 Richard E. Haskin, Esq.  
3 Nevada State Bar # 11592  
4 **GIBBS GIDEN LOCHER TURNER**  
5 **SENET & WITTBRODT LLP**  
6 7450 Arroyo Crossing Parkway, Suite 270  
7 Las Vegas, Nevada 89113-4059  
8 (702) 836-9800

9 Attorneys for Plaintiff  
10 **JOHN ALLEN LYTLE and**  
11 **TRUDI LEE LYTLE**  
12 as Trustees of the Lytle Trust

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

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

17 Plaintiffs,

18 v.

19 **ROSEMERE ESTATES PROPERTY OWNERS'**  
20 **ASSOCIATION; and DOES 1 through 10,**  
21 inclusive,

22 Defendants.

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

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

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

///

///

ALL 23 2013

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

4 **I. FINDINGS OF UNDISPUTED MATERIAL FACTS**

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

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

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

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

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

19 6. The Developer then sold the nine (9) undeveloped lots between May 1994 and July  
20 1996.

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

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

27 9. The Lyttles later transferred Plaintiff's Property to Plaintiff.

28 ///

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

3           11. The primary reasons that the Lytles 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 Lytles 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 ///

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

5           20. The proposed amended CC&Rs were not unanimously approved at the February 23,  
6 2004 meeting and, therefore, not adopted.

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

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

13           23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the  
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated  
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a  
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February  
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"  
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated  
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the  
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on  
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration  
22 and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions  
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

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

1 to conform to NRS Chapter 116 "without complying with the procedural requirements generally  
2 applicable to the adoption of an amendment..." and (5) all of the changes made were under NRS  
3 116.2117.

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

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

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

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

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

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

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined  
26 \$50.00 per day for failure to comply with this impossible deadline.

27 ///

28 ///



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

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

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

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

16           35. Despite the failure to obtain the required unanimous approval for amending the  
17 Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the  
18 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,  
22 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
23 show that there is no genuine issue as to any material fact and that the moving party is entitled to  
24 judgment as a matter of law. NRCP Rule 56(c).

25           2. "Summary Judgment is appropriate and shall be rendered forthwith when the  
26 pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact  
27 [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*,  
28 121 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 730, 121 P.3d at 1030 (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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1           9. There is a strong public policy in protecting property owners in common-interest  
2 communities against any alteration of the burdens of character of the community. Rest. 3d,  
3 Property – Servitudes, § 6.10, Comments.<sup>1</sup>

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

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

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

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

20           14. In 1997, Rosemere Estates’ owners formed the Association for the express and  
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original  
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the  
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability  
24 insurance. The intent was never to form a unit-owners’ association within the meaning of Chapter  
25 116.

26       ///

27  
28 <sup>1</sup> “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.

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

7           16. In reviewing the language of the Original CC&Rs, the Court must strictly construe  
8 the covenants thereto and any "doubt will be resolved in favor of the unrestricted use of the  
9 property...." *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); *see also, e.g., South*  
10 *Shore Homes Ass'n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst*  
11 *Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordleon v.*  
12 *Homeowners Ass'n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*,  
13 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

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

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

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

26 ///

27 ///

28 ///

1           **D.     The CC&Rs Can Only Be Amended By Unanimous Consent of All Property**  
 2           **Owners**

3           20.   Because Rosemere Estates is a limited purpose association under NRS 116.1201,  
 4           NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not  
 5           apply here.

6           21.   The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates  
 7           property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land.  
 8           Accordingly, under long-standing and well-established common law, the Original CC&Rs are  
 9           binding, and not subject to amendment, absent a new conveyance properly executed by all  
 10          Rosemere property owners and in conformance with all of the other legal requirements for a valid  
 11          transfer of an interest in real property. In short, there can be no valid amendment of the Original  
 12          CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

13          22.   There has never been unanimous consent to amend the Original CC&Rs and there has  
 14          never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically,  
 15          unanimous consent was not received in 2007, when the invalid Amended CC&Rs were wrongfully  
 16          recorded by the Association.

17          23.   Even if the provisions related to amendment within Chapter 116 were to apply, the  
 18          Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required  
 19          unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments  
 20          that require unanimous unit owner approval (as opposed to majority or supermajority approval). In  
 21          particular, a "change of use" always requires unanimous approval.

22          NRS 116.2117 provides, in pertinent part:

23               1. . . .the declaration, including any plats, may be amended only by vote or agreement of  
 24               units' owners of units to which at least a majority of the votes in the association are  
 25               allocated, unless the declaration specifies a different percentage for all amendments or for  
 26               specified subjects of amendment. If the declaration requires the approval of another  
                   person as a condition of its effectiveness, the amendment is not valid without that  
                   approval.

                  \* \* \*

27       ///

28       ///

1           4. 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.

///



**GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT**

#### **F. Attorneys' Fees**

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

Dated this 14 day of July, 2013.

MICHELLE LEAVITT, DISTRICT COURT JUDGE

Prepared and submitted by:

Richard E. Haskin, Esq.  
Gibbs, Giden, Locher, Turner, Senet & Wittbrodt LLP  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113  
Attorney for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE  
as Trustees of the Lytle Trust

# EXHIBIT 3

# EXHIBIT 3



CLERK OF THE COURT

1 **FFCL**  
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3 Nevada Bar No. 1078  
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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 LYTLE AND JOHN ALLEN )**  
18 **LYTLE, AS TRUSTEES OF THE LYTLE )**  
19 **TRUST, DOES I through X; and ROE )**  
20 **CORPORATIONS I through X, )**  
21 Defendants. )

Date of Hearing: April 13, 2017  
Time of Hearing: 9:00 a.m.

22 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING**  
23 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

24 Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for  
25 Summary Judgment having come on for hearing before this Court on the 13<sup>th</sup> day of April 2017,  
26 Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley,  
27 Esq. and Defendants John Allen Lytle and Trudi Lec Lytle, as Trustees of the Lytle Trust,  
28 appearing with their counsel, Richard Haskin, Esq. The Court having reviewed the Plaintiffs'  
Motion, the Defendants' Opposition and Counter-Motion and the Plaintiffs' Reply and all

**FOLEY**  
**&**  
**OAKES**

1 documents attached thereto or otherwise filed in this case, and good cause appearing therefore,  
2 makes these Findings of Fact and Conclusions of Law.

3 To the extent any Findings of Fact also contain Conclusions of Law said Conclusions of  
4 Law should be considered as such. To the extent that any Conclusions of Law also contain  
5 Findings of Fact said Findings of Fact should be considered as such.

6  
7 **FINDINGS OF FACT**

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

11 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe  
12 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property  
13 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV  
14 89117 (the "Lamothe Property").

15 3. The Boulden Property and the Lamothe Property are located in the Rosemere  
16 Court subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original  
17 CC&Rs").

18 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust  
19 (collectively the "Defendants") which owns that certain residential property known as parcel  
20 number 163-03-313-009 (the "Lytle Property").

21 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association  
22 (the Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere  
23 LPA Litigation").

24 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.  
25  
26  
27

1           7.     None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that  
2 term is found in Section 25 of the Original CC&Rs.

3           8.     The Defendants obtained a Summary Judgment for Declaratory Relief from the  
4 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 5           a.     The Association is a limited purpose association under NRS 116.1201, is  
6 not a Chapter 116 "unit-owners' association," and is relegated to only  
7 those specific duties and powers set forth in Paragraph 21 of the Original  
8 CC&Rs and NRS 116.1201.
- 9           b.     The Association did not have any powers beyond those of the "property  
10 owners committee" designation in the Original CC&Rs – simply to care  
11 for the landscaping and other common elements of Rosemere Estates as  
12 set forth in Paragraph 21 of the Original CC&Rs.
- 13           c.     Consistent with the absence of a governing body, the Developer provided  
14 each homeowner the right to independently enforce the Original CC&Rs  
15 against one another.
- 16           d.     The Amended and Restated CC&Rs recorded with the Clark County  
17 Recorder's Office as Instrument #20070703-0001934 (the "Amended  
18 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

19           9.     Pursuant to NRS 116.1201(2) most of NRS Chapter 116 does not apply to the  
20 Association because it is a limited purpose association that is not a rural agricultural residential  
21 community.

22           10.    After obtaining Summary Judgment in the Rosemere LPA Litigation, the  
23 Defendants filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a  
24 prove-up hearing on damages. After hearing all matters, a Final Judgment was entered in the  
25 Defendants' favor against the Association for \$361,238.59, which includes damages, attorneys'  
26 fees and costs (the "Final Judgment").

27           11.    After obtaining the Final Judgment, the Defendants, on August 16, 2016, recorded  
28 with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment

1 against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract of  
2 Judgment").

3 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the  
4 Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment  
5 and Final Judgment was to attach.

6 13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's  
7 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded  
8 as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract  
9 of Judgment listed the parcel number of the Lamothe Property only as the property to which the  
10 Final Judgment was to attach.

11 14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's  
12 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded  
13 as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of  
14 Judgment listed the parcel number of the Boulden Property only as the property to which the  
15 Final Judgment was to attach.

### 16 CONCLUSIONS OF LAW

17 1. The Association is a "limited purpose association" as referenced in NRS  
18 116.1201(2).

19 2. As a limited purpose association, NRS 116.3117 is not applicable to the  
20 Association.

21 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially  
22 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and  
23 have no force and effect and were declared void ab initio.

24 4. The Plaintiffs were not parties to the Rosemere LPA Litigation.



5. The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per Section 25 of the Original CC&Rs.

6. The Final Judgment in favor of the Defendants is not against, and is not an obligation of, the Plaintiffs.

7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

8. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

## ORDER

Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing therefore,

**IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for Partial Summary Judgment is **GRANTED**.

1       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that  
2 Defendants' Motion for Summary Judgment is DENIED.

3       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
4 Defendants improperly clouded the title to the Boulden Property.

5       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
6 Defendants improperly clouded the title to the Lamothe Property.

7       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
8 Defendants slandered the title to the Boulden Property.

9       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First  
10 Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County  
11 Recorder's Office is hereby expunged and stricken from the records of the Clark County  
12 Recorder's Office.

13       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
14 Second Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County  
15 Recorder's Office is hereby expunged and stricken from the records of the Clark County  
16 Recorder's Office.

17       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third  
18 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County  
19 Recorder's Office is hereby expunged and stricken from the records of the Clark County  
20 Recorder's Office.

21       **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
22 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the  
23 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the  
24 Lamothe Property.

**IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

DATED this 25<sup>th</sup> day of April 2017

[Signature]  
DISTRICT COURT JUDGE

Submitted by:  
FOLEY & OAKES, PC

**Daniel T. Foley, Esq.**  
626 S. 8<sup>th</sup> St.  
Las Vegas, Nevada 89101  
Attorney for Plaintiffs

**Approved as to form:**

**Richard E. Haskin, Esq.**  
**Gibbs Giden Locker Turner Senet & Wittbrodt LLP**  
 1140 N. Town Center Dr., Ste. 300  
 Las Vegas, Nevada 89144  
 Attorney for Defendants

**IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

DISTRICT COURT JUDGE

**Daniel T. Coley, Esq.**  
626 S. 8<sup>th</sup> St.  
Las Vegas, Nevada 89101  
**Attorney for Plaintiffs**

**Richard E. Maskin, Esq.**  
**Gibbs Olden Locker Turner Senet & Wittbrodt LLP**  
 1140 N. Town Center Dr., Ste. 300  
 Las Vegas, Nevada 89144  
 Attorney for Defendants

**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**

**Inst #: 20160818-0001198**

**Fee: \$19.00**

**N/C Fee: \$0.00**

**08/18/2016 11:51:34 AM**

**Receipt #: 2848915**

**Requestor:**

**NATIONWIDE LEGAL**

**Recorded By: ANI Pgs: 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**

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**ABSTRACT OF JUDGMENT**

**THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION**

**(Govt. Code 27381.6)**

**(Additional recording fee applies)**

1769757.1

**Description: Clark, NV Document-Year.Date.DocID 2016.818.1198 Page: 1 of 3**

**Order: Judgment Comment:**

**AA000474**

  
CLERK OF THE COURT

1 Richard B. Haskin, Esq.  
Nevada State Bar # 11592  
2 Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
3 **GIBBS GIDEN LOCHER TURNER**  
**SENET & WITTBRODT LLP**  
4 7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
5 (702) 836-9800

6 Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
7 TRUDI LEE LYTLE

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

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

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

12 Plaintiff,

**ABSTRACT OF JUDGMENT**

13 v.

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

16 Defendanta.

17  
18 In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was  
19 entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the  
20 Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS'  
21 ASSOCIATION ("Defendant").

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

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

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

28 ///

1763303.1

**RECEIVED**  
AUG 12 2016  
**DEPT. 12**



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  
RL

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By:   
Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE  
LYTLE

# EXHIBIT 4

# EXHIBIT 4

1 CASE NO. A747800

2 DOCKET U

3 DEPT. 16

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9 MARJORIE B. BOULDEN TRUST, )

10 Plaintiff, )

11 vs. )

12 LYTLE TRUST, )

13 Defendant. )

14

REPORTER'S TRANSCRIPT

15

OF

16 MOTION FOR PARTIAL SUMMARY JUDGMENT; DEFENDANTS TRUDI  
17 LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST OPPOSITION  
18 TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR  
19 SUMMARY JUDGMENT

20

21 BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

22

DISTRICT COURT JUDGE

23

24

DATED THURSDAY, APRIL 13, 2017

25

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

## 1 APPEARANCES:

2

3

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8

## 9 FOR THE DEFENDANT:

10

11

GIBBS, GIDEN, LOCHER, TURNER & SENET, LLP  
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1 LAS VEGAS, NEVADA; THURSDAY, APRIL 13, 2017

2 9:07 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5  
6 THE COURT: Okay. We're going to move on to  
7 the contested calendar. Next up page 12. Marjorie B.  
8 Boulden Trust versus the Lytle Trust.

9 MR. HASKIN: Yes.

09:07:08 10 THE COURT: All right. Good morning.

11 MR. FOLEY: Good morning, your Honor.

12 THE COURT: Let's go ahead and note our  
13 appearances for the record.

14 MR. FOLEY: Dan Foley on behalf of the  
09:07:20 15 plaintiffs.

16 MR. HASKIN: Good morning, your Honor.  
17 Richard Haskin on behalf of the Lytle Trust.

18 THE COURT: Okay. It's my understanding this  
19 is the motion for partial summary judgment. And we had  
09:07:32 20 a countermotion; is that correct?

21 MR. FOLEY: Yes, your Honor.

22 MR. HASKIN: Correct, your Honor.

23 THE COURT: Okay. Mr. Foley, sir.

24 MR. FOLEY: Yes, your Honor. We were here a  
09:07:38 25 couple of months ago on a TRO. And I'm -- I remember

09:07:41 1 the Court familiarized itself pretty well with the  
2 case.

3 We don't have any disputed facts.

4 THE COURT: Okay.

09:07:52 5 MR. FOLEY: And basically, what the issue is  
6 here is that judgments have been recorded against my  
7 clients' property in a judgment that was obtained in a  
8 case that my clients weren't parties to.

9 They didn't hire an attorney to represent  
09:08:06 10 them. And the judgment is against the homeowners  
11 association.

12 The theory --

13 THE COURT: And it's -- I mean, I wondered was  
14 there a homeowners association; right? I mean ...

09:08:18 15 MR. FOLEY: And it's a good question because  
16 it really isn't. There's a committee.

17 THE COURT: Right.

18 MR. FOLEY: And so a lot of the -- what the  
19 problem that has arisen here really goes back to this  
09:08:29 20 underlying case and how it was pled.

21 THE COURT: Right.

22 MR. FOLEY: And the parties in that case  
23 pursued the case extensively even up to the Supreme  
24 Court and back, but just with this committee.

09:08:42 25 So the Lytles have recorded this judgment



09:08:51 1 presumably under NRS 116.3117, which allows a judgment  
2 against a homeowners association to attach to the real  
3 property of the members of the association.

4           However, what the Lytles have done, and what  
09:09:08 5 the entire support really for our case is, is based on  
6 the summary judgment that the Lytles obtained in the  
7 underlying case. Which specific, sought declaratory  
8 relief from the Court and were granted declaratory  
9 relief, which provided, you know, a number of things  
09:09:28 10 including the fact that this is not a homeowners  
11 association that's governed by NRS 116.

12           THE COURT: Right.

13           MR. FOLEY: It's a limited purpose  
14 association. That is what the Lytles sought. That is  
09:09:45 15 what they obtained. Now, they want to come back and  
16 say exactly the opposite. And just -- I think my reply  
17 brief, your Honor, really summarizes it perhaps best  
18 and cites to all of the different substantive  
19 provisions in the summary judgment that provide most  
09:10:07 20 significantly -- provide everything most significantly.

21           The CC&Rs that were drafted specifically  
22 provide that homeowners don't have a right to either --  
23 to sue either -- to sue the association nor do they  
24 have a right to rely on the association and what is a  
09:10:26 25 committee to enforce the CC&Rs.

09:10:28 1 In fact, the CC&Rs specifically state if one  
2 homeowner thinks another homeowner has violated it,  
3 then it's an individual cause of action that they have  
4 against that homeowner. So my clients could have been  
09:10:43 5 sued. They were not.

6 As your Honor pointed out, the summary  
7 judgment motion -- summary judgment order specifically  
8 is right. This is not an owners' association. It says  
9 that this is simply a committee with extremely limited  
09:10:59 10 powers which include, you know, some landscaping and  
11 some issues with the front gate and some perimeter  
12 walls. And that's it.

13 And we've cited the Court to NRS 116.1201  
14 which provides that with respect to a limited purpose  
09:11:19 15 association, which the Lytles obtained declaratory  
16 relief saying that's what this is, that the rest of the  
17 116 is inapplicable.

18 THE COURT: I understand.

19 MR. FOLEY: So based on that, your Honor, we'd  
09:11:29 20 ask for summary judgment ordering the abstracts of  
21 judgment that have been recorded to be expunged. The  
22 only reason it's not a motion for full summary judgment  
23 is we need to come back in and present to the Court  
24 evidence of what our damages are for clouding the title  
09:11:47 25 and slandering the title.

09:11:49 1           Otherwise, if your Honor has any questions,  
2 I'd be happy to address them.

3           THE COURT: I don't.

4           MR. FOLEY: Thank you, your Honor.

09:11:54 5           MR. HASKIN: Good morning, your Honor.

6 Addressing first some of the points that were raised in  
7 the oral argument, I think that we have to -- and I  
8 don't want to go back over all the history, but the  
9 history is that the Lytles sued the association because  
09:12:11 10 the association passed amended CC&Rs that, for right or  
11 wrong, at one point in time there was a full-blown  
12 homeowners association pursuant to the amended CC&Rs,  
13 which were recorded by the board of directors.

14           THE COURT: But, I mean, was it truly a  
09:12:25 15 full-blown association? Because it's my understanding  
16 that they never got unanimous agreement by the  
17 association -- I'm sorry by the homeowners that would  
18 agree to changing the existing CC&Rs, adopting a  
19 declaration, and agreeing to becoming a Chapter 116  
09:12:49 20 homeowners association.

21           And the reason why I say that, I took a look.  
22 And I read all the exhibits for the record. And I went  
23 back, and I looked at the -- I think it's Exhibit 4.  
24 I'm sorry. Let me get the correct number. It was the  
09:13:03 25 exhibit where the, I guess, two parties refused to sign

09:13:11 1 off on the amendment to the declarations of covenants  
2 conditions, and restrictions back in 2007. And, I  
3 guess, one would be the owner of the property at 1830  
4 Rosemere Court and, I guess, at 1960 Rosemere Court.

09:13:30 5 So I'm looking at that. And it was -- there  
6 was an attempt to have a Chapter 116 homeowners  
7 association. But it appears to me that attempt was  
8 never realized.

9 MR. HASKIN: Your Honor, first of all, your  
09:13:54 10 recognition of the facts is good. It's perfect.

11 THE COURT: Right.

12 MR. HASKIN: I wish you were the judge in our  
13 first action. It would have ended a lot sooner. But  
14 the fact is in 2007 they rammed these amended CC&Rs  
09:14:06 15 down the throat of every single homeowner in the  
16 association.

17 THE COURT: I understand that. I do.

18 MR. HASKIN: But, your Honor, it goes a little  
19 further than that. It's one thing to say, you're  
09:14:16 20 right, your Honor. They were not a homeowners  
21 association. They weren't. And it took several years  
22 up to 2012 for this Court to recognize the fact that  
23 they weren't a homeowners association, and that action  
24 was brought by the Lytles.

09:14:28 25 But between 2007 and 2012, whether anybody

09:14:32 1 liked it or not, this was a full-blown homeowners  
2 association enacted as such --

3 THE COURT: Well --

4 MR. HASKIN: -- in every possible way.

09:14:38 5 THE COURT: Wait a second here. But if it was  
6 a full-blown homeowners association, then the trial  
7 court in the companion matter would have entered  
8 declaratory relief, set forth the fact that it was a  
9 full-blown homeowners association. And they would have  
09:14:53 10 been affirmed on that issue on the appeal before the  
11 Nevada Supreme Court; right?

12 Because let's face it, they can act -- just  
13 because you act like you're a homeowners association  
14 pursuant to the statute, doesn't mean you're one;

09:15:06 15 right?

16 MR. HASKIN: Correct, your Honor. Except in  
17 this circumstance there is a sword and shield argument  
18 to be made. And the fact is they did act like a  
19 full-blown homeowners association. And just by way of  
09:15:17 20 example --

21 THE COURT: I'll give you a question. If I go  
22 out and act like a corporation, does that mean I'm a  
23 corporation? Right? I mean, really. I can go out and  
24 say, Look. I can go down and get a charter. Don't  
09:15:29 25 register with the Secretary of State. I can have

09:15:31 1 letterhead saying Timothy Williams, PC, Professional  
2 Corporation. But unless I go through the steps  
3 mandated as a matter of law, I'm not a professional  
4 corporation, right? I can hold myself out as one. And  
09:15:45 5 as a result, I don't get the benefits of being a  
6 professional corporation.

7 MR. HASKIN: But in this case they did, and  
8 that's the distinguishing characteristic.

9 THE COURT: How do they do --

09:15:54 10 MR. HASKIN: Because they filed a counter suit  
11 as -- and Mr. Foley was correct. He raised the point.  
12 The limited purpose association is not allowed to bring  
13 an action against a homeowner. Under NAC 116.090,  
14 that's, in fact, one of the definitions of a limited  
09:16:09 15 purpose association. However, in this case not once,  
16 but twice this homeowners association between 2007 and  
17 2012 maintained an action against the Lytles. And I  
18 agree with your Honor. If --

19 THE COURT: But if they -- I mean, I could sue  
09:16:23 20 on behalf of -- I could file a lawsuit -- I'm just  
21 using this as a hypothetical -- that Timothy C.  
22 Williams Professional Corporation, right, but unless  
23 it's registered with the Secretary of State of the  
24 State of Nevada and all of the appropriate legislative  
09:16:37 25 mandates that followed, would that be a proper lawsuit,



09:16:41 1 right?

2 MR. HASKIN: It would be an improper lawsuit.

3 THE COURT: Exactly.

4 MR. HASKIN: But, your Honor, when it was --

09:16:46 5 but it was finally dismissed and adjudicated in favor  
6 the other party. You would not be able to proclaim all  
7 of the benefits but none of the burdens that came with  
8 you pretending to be a corporation. And that's exactly  
9 what is happening here. But I want --

09:17:02 10 THE COURT: No. I would get no benefits. I  
11 would be probably personally responsible if they  
12 pierced the corporation veil and all those wonderful  
13 things because I wouldn't have any protection.

14 MR. HASKIN: But, your Honor, let's take your  
09:17:12 15 hypothetical. Let's pretend pursuant to the corporate  
16 charter, whether it's 82 Or 83, whatever it may be,  
17 that pursuant to that corporate charter there as an  
18 attorney fee provision inside the statute, and the  
19 statute provided for attorney's fees, and you sued as  
09:17:26 20 the corporation, would you have the benefits of the  
on?

22 THE COURT: No. Do we have that here?

23 MR. HASKIN: We did in this case.

24 THE COURT: Was --

09:17:33 25 MR. HASKIN: Michelle Leavitt, who was the

09:17:33 1 judge in this case in our attorney fee award, ordered  
2 that they are not a full-blown homeowners association;  
3 however, they sued pursuant to there. Therefore, the  
4 statute that applies attorney's fees to full-blown  
09:17:44 5 homeowners associations under 116 and pursuant to the  
6 amended CC&Rs, which were declared revoked, they don't  
7 get to use that as a sword and a shield.

8 THE COURT: But, I mean --

9 MR. HASKIN: And that's exactly the case we  
09:17:57 10 had here.

11 THE COURT: But you can't have it -- you can't  
12 be -- you can't have it both ways.

13 MR. HASKIN: I agree.

14 THE COURT: Really and truly. Because, I  
09:18:03 15 mean, I looked at one of the provisions you relied upon  
16 in the declaration of covenants, conditions, and  
17 restrictions. And it's my understanding you  
18 specifically -- and that's on -- that's Exhibit 2 to  
19 the motion for partial summary judgment, page 1. And  
09:18:20 20 it would be paragraph -- I guess, the first paragraph  
21 before paragraph 1.

22 And I read that specifically when it talked  
23 about the breach or violation of the CC&Rs or any  
24 reentry by reason of such breach or any lien  
09:18:37 25 established hereinunder shall not defeat or render

09:18:43 1 invalid or modify in any way the lien of any mortgage  
2 or deed of trust made in good faith, and so on.

3 I read that. That's simply a mortgage savings  
4 clause pursuant to the CC&Rs. That's what that is.

09:18:55 5 MR. HASKIN: You're right, your Honor. And  
6 that's -- it was just cited for the belief -- it was  
7 cited for the mere fact that the original CC&Rs  
8 contemplated that liens could be placed. It is a  
9 mortgage savings clause. No doubt.

09:19:06 10 THE COURT: That's all it is, right?

11 MR. HASKIN: But it says in case other liens  
12 are placed. Because the plaintiffs in this case have  
13 an argument that there's no contemplation a lien can  
14 ever be placed on the property.

09:19:15 15 THE COURT: You know what's fascinating about  
16 this, I thought about this in light of the *SFR* case,  
17 potentially this mortgage savings clause would be  
18 effective.

19 MR. HASKIN: I saw the same thing. It's  
09:19:25 20 actually not fully drafted.

21 THE COURT: I mean, but that would be  
22 effective because it's not controlled by Chapter 116.

23 MR. HASKIN: Correct. Well, your Honor --

24 THE COURT: Right?

09:19:33 25 MR. HASKIN: -- I disagree with that.

09:19:35 1 THE COURT: No. But SFR said you can't have  
2 everything contrary to Chapter 116. But this is not a  
3 Chapter 116 HOA.

4 MR. HASKIN: But it's still a Chapter 116 LPA.

09:19:44 5 THE COURT: Yeah.

6 MR. HASKIN: And I think we have to go there  
7 next, your Honor. Because with respect to the other  
8 argument we're making, we're really making a common  
9 sense argument that applies to all homeowners  
09:19:54 10 associations, whether it's a limited purpose  
11 association or not.

12 A homeowners association consists of the units  
13 within the homeowners association, whether that's an  
14 LPA or a full-blown unit owners association under  
09:20:06 15 Chapter 116. And LPA is a Chapter 116 created device.

16 THE COURT: I got a question for you. When it  
17 comes to the enforcement to the assessment of the  
18 attorney's fees pursuant to the controlling declaration  
19 of covenants, conditions, and restrictions, which  
09:20:30 20 appear to be executed back in January of 1994, what  
21 provision -- and that's controlling in this case;  
22 that's the declaration -- what provision of the  
23 homeowners association would be the basis for the  
24 assessment of attorney's fees and costs against the  
09:20:52 25 Boulden Trust, Lamothe --

09:20:56 1 MR. HASKIN: Sure.

2 THE COURT: -- and their trust?

3 MR. HASKIN: Okay. Your Honor, and I'll go  
4 there next. This is Exhibit E to the request for  
09:21:03 5 judicial notice that we filed. The attorney's fees  
6 were awarded to -- pursuant to three separate  
7 provisions. First was pursuant to the original CC&Rs.  
8 This is Judge Leavitt's order, which was challenged on  
9 appeal and it was affirmed by the Supreme Court. And  
09:21:16 10 what they said was that attorney's fees under  
11 paragraph 25 apply.

12 THE COURT: Wait, wait. But listen to me.  
13 Yes, attorney's fees were assessed, but I'm talking  
14 about specifically assessing attorney's fees to, No. 1,  
09:21:28 15 a nonparty to the lawsuit. Because I looked at the  
16 complaint, and the plaintiffs in this case were never a  
17 party to the lawsuit, right?

18 MR. HASKIN: But --

19 THE COURT: They were never -- I mean, were  
09:21:39 20 they named as a plaintiff and/or a defendant in the  
21 lawsuit?

22 MR. HASKIN: Your Honor, can I address that  
23 point?

24 THE COURT: Absolutely.

09:21:45 25 MR. HASKIN: While we're on that? Okay.

09:21:45 1 That's a misnomer. Under the D.R. Horton case versus  
2 Eighth Judicial Court, the homeowners -- the unit  
3 owners were not parties to that lawsuit ever, at any  
4 point in time. And under the D.R. Horton case, the  
09:21:58 5 Supreme Court of Nevada said that the units -- the  
6 units within an association are part of the association  
7 and subject to an order against the association.  
8 THE COURT: But wait a second.  
9 MR. HASKIN: That's what we have here.  
09:22:10 10 THE COURT: I got a question for you. And I'm  
11 quite sure I know the answer to this. But in the  
12 D.R. Horton case, I would anticipate that the claim was  
13 for common areas; right?  
14 MR. HASKIN: It was for common, and it was for  
09:22:21 15 units. That's not --  
16 THE COURT: No, no, no, no.  
17 MR. HASKIN: It's for both, your Honor.  
18 THE COURT: If you take a look at the Nevada  
19 Supreme Court as far as unit owners, the HOA is very  
09:22:29 20 limited in being able to file a claim on behalf of unit  
21 owners.  
22 MR. HASKIN: Well, your Honor -- okay. Let's  
23 go back a second.  
24 THE COURT: I'm not being real clear.  
09:22:38 25 MR. HASKIN: No. I understand. And I'm



09:22:39 1 trying to answer real clear.

2 THE COURT: We do construction defect in this  
3 department.

4 MR. HASKIN: I understand. But then that's  
09:22:43 5 where the D.R. Horton case is. That's why you have to  
6 do --

7 THE COURT: I know that. That's why I'm  
8 bringing it up because it's my recollection the  
9 D.R. Horton -- it's a different scenario. Say,  
09:22:51 10 hypothetically, in this case the attorney's fees were  
11 awarded specifically regarding -- or there was an issue  
12 as it related to the gate, and the wall, and all those  
13 things that were specifically set forth in the CC&Rs  
14 that would be the specific obligations of the property  
09:23:11 15 owners committee -- right? -- that's contained in the  
16 CC&Rs. I mean, I read that. I mean, I read all the  
17 documents. I always do.

18 So I'm trying to figure out what -- because I  
19 think this is important to point out. There's a  
09:23:24 20 difference between awarding attorney's fees first and  
21 foremost versus assessment of attorney's fees against  
22 nonparties to the action.

23 MR. HASKIN: Completely different. But let's  
24 go with back and use the hypothetical. And let's just  
09:23:37 25 assume. And we'll go backwards on this that this was a

09:23:40 1 full-blown homeowners association. So we can all agree  
2 that 116.3117 applies. We can also agree that  
3 attorney's fees are included within a judgment. Okay,  
4 116.3117 contemplates that a unit owner is not going to  
09:23:56 5 be a party to a judgment. That's what 116.3117 does.  
6 It knows that a homeowner is not going to be a party to  
7 a judgment. And what it says is: If you get a  
8 judgment against the association, you can record that  
9 judgment against each and every unit within the  
09:24:12 10 association even though they weren't individually named  
11 as parties. That's what 3117 says. It contemplates  
12 that exact scenario.

13 THE COURT: But this is not one of those types  
14 of associations, right?

09:24:25 15 MR. HASKIN: True. But it's a limit --

16 THE COURT: Okay. I mean --

17 MR. HASKIN: The bulk -- your Honor, you got  
18 to let me finish.

19 (Court Reporter interrupts)  
09:24:28 20

21 THE COURT: It's like a little bit pregnant.  
22 It's not one of those associations.

23 MR. HASKIN: I was answering your  
24 hypothetical. We keep going backwards.

09:24:37 25 Why does 3117 say that? It says that because

09:24:41 1 within the definitions provided under 3116, a unit is  
2 contained in the association. 3117 merely states the  
3 obvious. If I have a judgment against the association,  
4 I have a judgment against all property within the  
09:24:57 5 association. Whether it's an LPA or a unit owners  
6 association, it doesn't matter. I have a judgment  
7 against all property owned by the association. A unit  
8 is owned by the association pursuant to both the  
9 recitals in -- the original CC&Rs say that.

09:25:13 10 THE COURT: Show me where a unit is owned by  
11 the association in here.

12 MR. HASKIN: The original CC&Rs state that  
13 this association includes Lots 1 through 9 of Rosemere  
14 Court. There are nine lots in this community.

09:25:26 15 THE COURT: But the unit -- but they don't own  
16 it.

17 MR. HASKIN: The association --

18 THE COURT: I mean, when I see -- the only  
19 time you really see any issues, and even they then  
09:25:36 20 don't own it, the units. I mean, we're not talking  
21 about a co-op, right? We're talking about a --

22 MR. HASKIN: Correct.

23 THE COURT: We're talking about -- here,  
24 specifically, this is a limited purpose association.  
09:25:47 25 Where does it say that the association owns the

09:25:52 1 properties fee simple?

2 MR. HASKIN: Okay, your Honor. The two  
3 provisions are the original CC&Rs.

4 THE COURT: I have them right here. Just tell  
09:25:59 5 me where to look. What page?

6 MR. HASKIN: It's the recitals, page 1.

7 THE COURT: Okay.

8 MR. HASKIN: It states: If the Baughman,  
9 Turner Pension Trust, hereinafter referred to as the  
09:26:11 10 subdivider, owner in fee simple of the land situated in  
11 the City of Las Vegas, State of Nevada describes as  
12 follows: Lots --

13 THE COURT: Which paragraph?

14 MR. HASKIN: I'm sorry. It's the recitals,  
09:26:20 15 your Honor. The very first paragraph in the indent  
16 right underneath it on page 1 of the original CC&Rs.

17 THE COURT: Is that the declarations,  
18 covenants, and restrictions?

19 MR. HASKIN: Yes, your Honor.

09:26:28 20 THE COURT: Okay. All right. I got you.

21 MR. HASKIN: Okay. So the association is  
22 defined as including lots 1 through 9. That's  
23 consistent with Chapter 116. 116.021, and these are  
24 just definitions. This isn't a unit owners  
09:26:43 25 association. This is LPA. This is definitions.

09:26:45 1 THE COURT: All that's defining is who the  
2 declarant is, right?

3 MR. HASKIN: Well, yeah. But it also defines  
4 what the association is.

09:26:50 5 THE COURT: But wait, wait, wait, wait.  
6 Doesn't that declare who -- that sets forth who the  
7 declarant is. I'm reading here. It says the  
8 declaration and covenants, conditions, and restrictions  
9 made on the 4th day of January, 1994, by the Baughman  
09:27:05 10 and Turner Trust, hereinunder referred to as  
11 subdivider, owner in fee simple of the land situated in  
12 Las Vegas, County of Clark, State of Nevada described  
13 as follows. And they're the declarants, and they  
14 described the lots. And so they're the ones  
09:27:22 15 subdividing the property.

16 MR. HASKIN: And this is going to be all  
17 included within this subdivision.

18 THE COURT: Right, but that --

19 MR. HASKIN: Right.

09:27:28 20 THE COURT: But then they sell them off --

21 MR. HASKIN: Well, your Honor --

22 THE COURT: -- each lot.

23 MR. HASKIN: -- if I continue.

24 THE COURT: Show me.

09:27:32 25 MR. HASKIN: I don't believe that's true. If

09:27:33 1 I can continue. You have to read it in conjunction  
2 with Chapter 116 in the provisions --  
3 THE COURT: Tell me --  
4 MR. HASKIN: -- that do apply to LPS.  
09:27:40 5 THE COURT: Tell me where it says. Because at  
6 the end of the day whatever ownership rights any  
7 association would have -- and I've read enough CC&Rs.  
8 For example, they'll tell you what the HOA owns.  
9 They'll set forth the common areas that are owned and  
09:27:54 10 controlled and maintained by the HOA. Very common in  
11 CC&Rs, you know.  
12 And they'll -- they'll discuss specifically  
13 what the burdens are as far as the unit owners are  
14 concerned. But go ahead and tell me where does it say  
09:28:09 15 that the HOA in this -- under these declarations of  
16 covenants, conditions, and restrictions own the  
17 property.  
18 MR. HASKIN: Well, that -- that by virtue -- I  
19 guess, we're in disagreement there, your Honor.  
09:28:20 20 THE COURT: No, no. I'm asking.  
21 MR. HASKIN: And I'm answering.  
22 THE COURT: I'm listening.  
23 MR. HASKIN: Because --  
24 THE COURT: Just point to a provision I can  
09:28:25 25 look at, and maybe I'll agree with you.



09:28:27 1 MR. HASKIN: Okay. Well, I pointed that one,  
2 but I'm reading in conjunction with NRS 116.021.

3 THE COURT: So we agree that there's no  
4 provision under the CC&Rs that sets forth ownership by  
09:28:35 5 the HOA of the units?

6 MR. HASKIN: No. I don't agree with that,  
7 your Honor.

8 THE COURT: Then -- where is it then?

9 MR. HASKIN: Right here, your Honor. It  
09:28:43 10 describes the declaration of CC&Rs.

11 THE COURT: Okay.

12 MR. HASKIN: Applies to these lots 1 through  
13 9.

14 THE COURT: Okay. So --

09:28:48 15 MR. HASKIN: This is the association.

16 THE COURT: So for the record, it's your  
17 position that the simple introductory language as it  
18 relates to the declaration and the subdivision of the  
19 property stands for the proposition that the HOA owns  
09:29:00 20 the property.

21 MR. HASKIN: It says that the HOA consists of  
22 this property. And then if you go down to paragraph 21  
23 that establishes this property owners --

24 THE COURT: Okay. Let me look at that with  
09:29:10 25 you.

09:29:10 1 MR. HASKIN: Sure.

2 THE COURT: All right. I'm with you.

3 MR. HASKIN: Okay. A property owners

4 committee shall be established by all owners of lots

09:29:17 5 within the subdivision. What's the subdivision? Lots

6 1 through 9. And it talks about the power of the unit

7 owners association, which is what the Lytles fought to

8 enforce all along.

9 Okay. So it's my reading of this that the

09:29:32 10 association consists of lots 1 through 9 of Rosemere

11 Court, and the owners committee, which is created, is

12 created to enforce the provisions of these original

13 CC&Rs with respect to those subdivisions.

14 THE COURT: But I notice you didn't say that

09:29:44 15 the association owned lots 1 through 9.

16 MR. HASKIN: Well, then I go to Chapter 116,

17 your Honor.

18 THE COURT: Okay. So you agree it's not in

19 the CC&Rs.

09:29:50 20 MR. HASKIN: Well, if you read it -- your

21 Honor, I've read a lot of CC&Rs, too. I don't know any

22 CC&Rs that say, We own your house. They don't.

23 THE COURT: No, no. They say specifically

24 what's owned by the HOA and they'll say specifically

09:30:04 25 what's owned by the unit owners. Like in condominiums,

09:30:07 1 for an example, they'll have the interior walls that  
2 are owned by the unit owners. I mean, let's not  
3 quibble here. And let's not be facetious. I know what  
4 they say.

09:30:15 5 MR. HASKIN: No. And I'm not being facetious,  
6 your Honor. I -- it's -- I think we're getting hung up  
7 on the word "ownership". Because it's not whether it's  
8 ownership or not because it's obvious that a homeowners  
9 association doesn't own your house. However, your  
09:30:28 10 house is part of the association, and that's what  
11 subjects it to, frankly, the judgments under 3117.

12 THE COURT: All right.

13 MR. HASKIN: And, again, it's just a reading  
14 of, in my view, of the definitions. And if we go to  
09:30:42 15 NRS 116.021, common-interest community is all real  
16 estate described in the declaration with respect to  
17 which a person, by virtue of one's ownership of a unit,  
18 is obligated to pay for.

19 Okay. So common-interest community includes  
09:30:58 20 all the real estate -- all of the real estate described  
21 in the declaration.

22 So if I go back to the declaration, we're  
23 talking about lots 1 through 9. That's the  
24 association. It includes all of the real estate  
09:31:10 25 described in the declaration. That's lots 1 through 9.

09:31:21 1 THE COURT: So are you taking a position that  
2 the CC&Rs that have been prepared in this case meet the  
3 requirement of a common-interest community under  
4 NRS 116.021?

09:31:33 5 MR. HASKIN: No. As an LPA, a limited purpose  
6 association under Chapter 116.

7 THE COURT: Okay.

8 MR. HASKIN: I think there's this -- Chapter  
9 116 creates a unit owners association. It also does  
09:31:45 10 create a limited purpose association. It also creates  
11 a small planned community. There are several different  
12 aspects to 116.

13 It's -- and going further, your Honor. Under  
14 116.093, unit is defined as the physical portion of the  
09:32:03 15 common-interest community designated for separate  
16 ownership or occupancy. Again, it defines a unit as a  
17 physical portion of the common-interest community.

18 Your Honor, it's not my contention that by  
19 looking at one document you could fully define this  
09:32:19 20 case. It's my contention you have to read the original  
21 CC&Rs in conjunction with the definitions under 116.  
22 And also even if you -- even if you say 116.3117 does  
23 not apply, it's our belief that 3117 is merely a  
24 recitation of the obvious, that a unit owner -- that a  
09:32:44 25 unit is contained within the association. I have a

09:32:45 1 judgment against the association. I can record the  
2 judgment against all real estate described in the  
3 declaration.

4 THE COURT: What application --

09:32:53 5 MR. HASKIN: And that's lots 1 through 9.

6 THE COURT: What application does, let me see  
7 here, does NRS 11.1201 (sic) have in this case?

8 MR. HASKIN: 11.1201? Is that the limited  
9 purpose association statute, your Honor?

09:33:14 10 THE COURT: Yes.

11 MR. HASKIN: I'm pulling it up right now, your  
12 Honor.

13 THE COURT: Because if you look at 11.1201,  
14 paragraph 2 it says, This chapter does not apply to a  
09:33:34 15 limited purpose association.

16 MR. FOLEY: You've been saying 11. It's 116.

17 THE COURT: I'm sorry, 116.

18 MR. HASKIN: Yeah.

19 THE COURT: 116.1201. I was just -- I don't  
09:33:45 20 know why I said 11, but it's 116.

21 MR. FOLEY: Just thought you jumped to a  
22 statute of limitations.

23 THE COURT: No.

24 MR. HASKIN: That's a whole different problem.

09:33:53 25 THE COURT: Yeah. But, no. I mean, I'm

09:33:54 1 looking here. It says, it's talking specifically about  
2 the applicability regulations. And it's my  
3 understanding when it comes to issues as to statutory  
4 construction, you can look at the title to determine  
09:34:09 5 the intent of the statute.

6 And so it says here it doesn't apply to a  
7 limited purpose association. So what do I do with  
8 that? Why should I apply the specific provision you  
9 want me to apply in this case?

09:34:24 10 MR. HASKIN: Well, your Honor, I think there's  
11 no disagreement by the parties that 3117, which is a  
12 judgment provision, does not apply. I think that's --  
13 that's -- you know, our argument is that it applies by  
14 virtue of the sword and shield doctrine. And we've  
09:34:38 15 already discussed that, your Honor, so I won't  
16 elaborate any further.

17 But with respect to the unit owners  
18 association, I'm merely reading the original CC&Rs,  
19 your Honor, in conjunction with the definitions set  
09:34:50 20 forth in 116. I'm not going to argue that we're not a  
21 limited purpose association. We are. And a limited  
22 purpose association is subject to very few provisions  
23 of Chapter 116. But it is still a Chapter 116-created  
24 entity. It exists by virtue of 116. It just simply  
09:35:07 25 limits the provisions such as budgets, and board



09:35:14 1 voting, and those sorts of things. But it's still a  
2 Chapter 116 entity.

3 And again, your Honor, I think my argument --

4 THE COURT: So what provisions, if any, should  
09:35:22 5 I apply to support your position if the statute stands  
6 for the proposition that Chapter 116 of the provisions  
7 don't apply to a limited purpose association?

8 MR. HASKIN: I think the definitions, your  
9 Honor, in conjunction with the original CC&Rs that  
09:35:41 10 define what the -- what the association consists of. I  
11 think if you read those two provisions in conjunction  
12 with one another, you have -- you have an association  
13 that consists of the lots. It consists of all of the  
14 property within the association.

09:35:57 15 The benefit here, your Honor, for Chapter  
16 116.3117 and why 3117 was created was ordinarily you  
17 would have joint and several liability against  
18 homeowners. 3117 creates a several liability rather  
19 than joint and several liability. In other words, the  
09:36:16 20 provision was meant to benefit homeowners. It  
21 wasn't -- it was meant to, Hey, ordinarily, you would  
22 be subject to joint and several liability, but because  
23 you're in a unit owners association, we're going to  
24 create this statutory mechanism by which it's only  
09:36:30 25 going to be several liability. So if you have nine

09:36:32 1 lots, you're subject to 1/9th of the judgment.

2           It limits the -- it limits the liability of  
3 each and every unit owner. But it doesn't change the  
4 fact, your Honor, that our reading under the original  
09:36:45 5 CC&Rs in conjunction with the definition section of  
6 Chapter 116 is that the unit -- that the  
7 common-interest community -- this is a limited purpose  
8 common-interest community. Still a common-interest  
9 community. There's no argument a limited purpose  
09:37:01 10 association isn't a common-interest community. It is.  
11 It's just not a unit owners committee by definition.

12           THE COURT: I got another question for you.

13           MR. HASKIN: Sure.

14           THE COURT: I took -- I read Chapter -- I'm  
09:37:11 15 sorry, paragraph 25 to the CC&Rs as it relates to  
16 attorney's fees. What impact does this have in a case?  
17 Because the provision pursuant to the CC&Rs sets forth  
18 as follows:

19           Attorney's fees: In any legal or equitable  
09:37:29 20 proceeding for the enforcement of or to  
21 restrain the violations of the declaration of  
22 covenants, conditions, and restrictions, or any  
23 provisions thereof, the losing party or parties  
24 shall pay by such amount as may be affixed by  
09:37:51 25 the Court in such proceedings.

09:37:53 1           And the reason why I bring that up, it talks  
2 about -- it talks about two things. No. 1, any legal  
3 or equitable proceeding for enforcement of the -- for  
4 violations or restraint of the CC&Rs. It appeared to  
09:38:13 5 me the prior case didn't involve specifically  
6 enforcement of these CC&Rs, but a new proposed CC&Rs  
7 which didn't meet the mandate under Chapter 116.  
8 Number one.

9           No. 2, the CC&Rs that controlled and have  
09:38:36 10 always controlled this case, specifically talks about  
11 the assessment of attorney's fees pursuant to the CC&Rs  
12 as to losing party or parties.

13           And so in order to enforce the CC&Rs as it  
14 relates to attorney's fees in this case, I guess, two  
09:38:55 15 things have to be addressed:

16           No. 1, were the Bouldens and Lamothes parties?

17           And No. 2, were they losing parties pursuant  
18 to the CC&Rs?

19           What do I do with that?

09:39:10 20           MR. HASKIN: Well, your Honor --

21           THE COURT: Do I just ignore it? Or what?

22           MR. HASKIN: Are we talking about the original  
23 action, your Honor? I apologize.

24           THE COURT: I'm not talking about -- I'm  
09:39:17 25 reading the CC&Rs that would be on the -- pursuant to

09:39:21 1 the limited purpose association that apparently is  
2 still in force and affect after years of litigation.  
3 And that would be the basis for the attorney's fees  
4 being awarded in any case as to any member of the  
09:39:38 5 limited purpose association.

6 And it appears to me that the CC&Rs are  
7 particular as to upon what circumstances attorney's  
8 fees and costs can be awarded. And it has to be,  
9 No. 1, you have to be -- it says here, have to be a  
09:39:58 10 losing party, basically. That's what it says.

11 So this provision -- can't we say -- is this  
12 true this provision wouldn't be the basis for the award  
13 of attorney's fees against the Bouldens and the  
14 Lamothes because they weren't losing parties to any  
09:40:17 15 litigation; right? Or should I just ignore that?

16 MR. HASKIN: Your Honor, the -- I'm a little  
17 perplexed how to address it. Maybe your Honor could  
18 clarify. But the prior Court's ruling in this case did  
19 enforce the attorney's fees provision pursuant to,  
09:40:38 20 again, three provisions. That the provision Chapter  
21 116, the attorney's fees provision pursuant to Chapter  
22 116, and the amended CC&Rs.

23 THE COURT: Well, I'll clarify it for you. I  
24 understand that. But the award of attorney's fees, I  
09:40:53 25 mean, I'm looking at it from this perspective, the

09:40:57 1 plaintiffs in this case weren't named parties in the  
2 underlying litigation; right?

3 MR. HASKIN: They weren't named parties in the  
4 underlying litigation.

09:41:07 5 THE COURT: Okay.

6 MR. HASKIN: Correct. The argument in the  
7 other action, your Honor -- I forget what department  
8 now it is, but it was before Michelle Leavitt. The  
9 argument in that action, your Honor, was that,  
09:41:19 10 essentially, the association served as a group of all  
11 of the homeowners in that action in order to promote  
12 the rights of all the homeowners against the Lytles in  
13 that case.

14 THE COURT: Okay. Anything else, sir?

09:41:35 15 MR. HASKIN: Nothing else, your Honor.

16 THE COURT: Mr. Foley, sir.

17 MR. FOLEY: Yeah. Just get back to, your  
18 Honor, the fact that there is a lot of res judicata in  
19 this case based on the summary judgment and the  
09:41:49 20 declaratory relief that they obtained. And I would  
21 reference the Court to, on this issue of the CC&Rs, to  
22 on page 11 of the summary judgment. It says Judgment  
23 pursuant to the foregoing, this Court declares and  
24 orders that the amended CC&Rs are invalid and the  
09:42:03 25 amended CC&Rs have no force and effect.

09:42:06 1 THE COURT: Okay.

2 MR. FOLEY: This issue has come up about this  
3 being a Chapter 116 limited purpose association. There  
4 is no such thing. Just because the word limited  
09:42:19 5 purpose association is found there in 1201, and it says  
6 that this chapter doesn't apply, that doesn't create a  
7 vehicle. And, in fact, on page 8 of the findings, the  
8 Court --

9 THE COURT: I've seen that. It was --  
09:42:33 10 actually starts on page 7 with the Section C. Right  
11 there in the order. I read it.

12 MR. FOLEY: Yeah.

13 THE COURT: And it goes through it. And it  
14 stands for the proposition that Rosemere is a limited  
09:42:45 15 purpose association under NRS 116.1201 and not a unit  
16 owners association with the meaning of NRS Chapters  
17 116. It's right there in the order.

18 MR. FOLEY: Yeah. Well, and number -- and  
19 number 11 on page 8 says here, no Chapter 116 unit  
09:43:02 20 owners association was formed because no association  
21 was organized prior to the date of the first -- that  
22 the first unit was conveyed.

23 THE COURT: I see that.

24 MR. FOLEY: And throughout paragraph 13,  
09:43:19 25 paragraph 14, again, 14 states the intent was never to

09:43:25 1 form a unit owners association within the meaning of  
2 Chapter 116.

3 And paragraph 17 on page 9 says -- nowhere is  
4 there reference in the original CC&Rs to a unit owners  
09:43:38 5 association or a homeowners association. So it's not  
6 even a reference to it. Again, as your Honor pointed  
7 out, it was just this committee.

8 And then, you know, on page 9, paragraph 19 it  
9 states that the association is a limited purpose  
09:43:54 10 association. Under 116.1201 is not a Chapter 116 unit  
11 owners association. Is relegated to only those  
12 specific duties and powers set forth in paragraph 21 of  
13 the original CC&Rs and NRS 116.1201, which talks about  
14 the agricultural purpose.

09:44:16 15 So all of these arguments that are being made  
16 are really being made against and contrary to the  
17 declaratory judgment that they obtained. I understand  
18 they found themselves in a bit of a pickle here that  
19 they prevailed, and they prevailed mightily in the  
09:44:35 20 underlying case. But that doesn't allow them to now  
21 convert this award of attorney's fees into a judgment  
22 against nonparties to the litigation, the only support  
23 for which would be under 116.3117.

24 And they can't -- having prevailed, they can't  
09:44:56 25 just walk away from it and now completely ignore and



09:45:00 1 argue contrary to the declaratory judgment regarding  
2 this particular association.

3 THE COURT: Now, I got one question for you,  
4 Mr. Foley.

09:45:09 5 And, counsel, you can, of course, address  
6 this.

7 Because I'm looking at the findings of facts  
8 and conclusions of law. I've read those as it related  
9 to the motion for summary judgment. And then I looked  
09:45:25 10 at the order on attorney's fees and costs that were  
11 awarded to the plaintiffs in the underlying action.

12 And I'm reading this, and I'm trying to figure  
13 out. And then I look at the abstract of adjustment.  
14 And I'm trying to figure out what would be the basis,  
09:45:40 15 if any, to file a lien on the Boulden and Lamothes'  
16 properties. Because I don't know if I see it.

17 MR. FOLEY: The only basis would be 3117 under  
18 NRS 116.

19 THE COURT: Because there's nothing  
09:45:56 20 specifically in Judge Leavitt's order and/or as far  
21 as -- when I say order, now I'm talking about the order  
22 on plaintiff John Allen Lytle and Trudi Lee, I guess,  
23 Lytle's motion for attorney's fees. And then looking  
24 at the abstract of judgment.

09:46:12 25 MR. FOLEY: Right.

09:46:13 1 THE COURT: It's my impression in just looking  
2 at those documents in and of itself, I don't see  
3 anything that specifically sets forth the basis for  
4 liening the properties of the plaintiffs in this case.

09:46:25 5 MR. FOLEY: No. There's nothing.

6 THE COURT: I just want to make sure. The  
7 reason I'm asking the question, I just want to make  
8 sure I'm not overlooking something.

9 MR. FOLEY: No. They just unilaterally, when  
09:46:34 10 they recorded the abstract of judgment, typed in all of  
11 these parcel numbers so that it attached. That wasn't  
12 done by the Court. There's nothing in the order that  
13 would in any way support an argument from the order  
14 itself that this judgment would somehow apply to  
09:46:51 15 nonparties to the litigation. Nothing.

16 The only thing they can ever get to on that, I  
17 think, again, is 3117. And we've beaten that up pretty  
18 good that it just absolutely has no application to this  
19 association.

09:47:07 20 THE COURT: Sir, is there anything I need to  
21 look at as far as the order and/or abstract of judgment  
22 issue?

23 MR. HASKIN: Your Honor, no. Not -- well,  
24 yes. Yes and no. I mean, the order -- all the orders  
09:47:18 25 in this case grant the Lytles a judgment against the

09:47:21 1 association. And, your Honor, I --

2 THE COURT: I understand.

3 MR. HASKIN: I've been here long enough. I  
4 fully understand which way you're heading. But our  
09:47:27 5 contention, again, just for the record, is fairly  
6 clear, I believe. And not to beat it to death, but,  
7 again, it's the original CC&Rs themselves that define  
8 lots 1 through 9 as the subdivision together in  
9 conjunction with Chapter 116's definitions that state  
09:47:45 10 that the association -- a common-interest community --  
11 it doesn't say a unit owners association. It doesn't  
12 say a limited purpose association. It says a  
13 common-interest community, of which there's no question  
14 this is one, includes all real estate, including units,  
09:48:01 15 within that association. This is -- there are no facts  
16 in dispute. These are two units.

17 So what gave the Lytles the power, we contend,  
18 to record the abstracts of judgment? These are units.  
19 They're included within the association. We have a  
09:48:18 20 judgment against the association. A judgment could be  
21 recorded against all property within the association.

22 THE COURT: I understand. Okay. Gentlemen,  
23 this is what I'm going to do: Regarding the motion for  
24 partial summary judgment, I'm going to grant that. And  
09:48:40 25 I think we have a fairly, fairly good record, you know.

09:48:48 1 Because we've had a lot of discussion as far as this  
2 issue is concerned.

3 No. 1, the basis of my decision is focusing  
4 primarily on: No. 1, that the association at issue is  
09:49:06 5 a limited purpose association and, as a result,  
6 pursuant to NRS 116.1201 that deals with the  
7 applicability of the statute and regulations sets forth  
8 in paragraph No. 2, this chapter does not apply to  
9 limited purpose associations.

09:49:29 10 Secondly, the plaintiffs in this case weren't  
11 parties to the underlying litigation. They weren't.  
12 They were never named. It was a limited purpose  
13 association.

14 I guess, also it's important. I think,  
09:49:46 15 Mr. Foley, what I want you to do is, you know, look at  
16 the record we've made. And because I think the  
17 application of the CC&Rs are very, very important.  
18 Because even if you look at the attorney's fees  
19 provision under paragraph 25, any assessment of  
09:50:07 20 attorney's fees pursuant to the controlling limited  
21 purpose CC&Rs specifically regard any legal and/or  
22 equitable proceedings for the enforcement of or  
23 restrain violations of the CC&Rs or declarations,  
24 covenants, conditions, and restrictions that were put  
09:50:33 25 in effect back from 1994. But more importantly, there

09:50:36 1 has to be a party that lost. And so the plaintiffs in  
2 this case weren't a party, and they didn't lose. And  
3 so that's my decision.

4 Plus -- when you -- I read everything.

09:50:49 5 And so, you know, just prepare a proposed  
6 findings of fact conclusions of law. And make sure  
7 counsel gets an opportunity to review that. And then  
8 if you can't agree, submit your own. All right.

9 MR. FOLEY: Thank you, your Honor.

09:51:00 10 MR. HASKIN: Thank you, your Honor.

11 THE COURT: Okay. Gentlemen, enjoy your day.

12 MR. HASKIN: You too.

13

14 (Proceedings were concluded.)

09:51:04 15

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09:51:04 1                               REPORTER'S CERTIFICATE

2   STATE OF NEVADA)

3                               :SS

4   COUNTY OF CLARK)

5                               I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO

09:51:04 6   HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE

7   PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE

8   TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID

9   STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT

09:51:04 10   AND UNDER MY DIRECTION AND SUPERVISION AND THE

11   FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND

12   ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE

13   PROCEEDINGS HAD.

14                               IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED

15   MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF

09:51:04 16   NEVADA.

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18   PEGGY ISOM, RMR, CCR 541

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<p><b>MR. FOLEY: [23]</b> 3/10 3/13 3/20 3/23 4/4 4/14 4/17 4/21 5/12 6/18 7/3 27/15 27/20 33/16 34/1 34/11 34/17 34/23 36/16 36/24 37/4 37/8 40/8 <b>MR. HASKIN: [91]</b> <b>THE COURT: [110]</b></p>	<p><b>2</b> <b>2007 [4]</b> 8/2 8/14 8/25 10/16 <b>2012 [3]</b> 8/22 8/25 10/17 <b>2017 [2]</b> 1/22 3/1 <b>2070 [1]</b> 2/5 <b>21 [2]</b> 23/22 35/12 <b>2128 [1]</b> 2/5 <b>25 [3]</b> 15/11 30/15 39/19 <b>270 [1]</b> 2/12</p>	<p><b>3</b> <b>3116 [1]</b> 19/1 <b>3117 [10]</b> 18/11 18/25 19/2 25/11 26/23 28/11 29/16 29/18 36/17 37/17 <b>384-2070 [1]</b> 2/5 <b>384-2128 [1]</b> 2/5</p>	<p><b>4</b> <b>4th [1]</b> 21/9</p>	<p><b>5</b> <b>541 [2]</b> 1/25 41/17</p>	<p><b>6</b> <b>626 [1]</b> 2/4</p>	<p><b>7</b> <b>702 [4]</b> 2/5 2/5 2/13 2/14 <b>7450 [1]</b> 2/12</p>	<p><b>8</b> <b>82 [1]</b> 11/16 <b>83 [1]</b> 11/16 <b>836-9800 [1]</b> 2/13 <b>836-9802 [1]</b> 2/14 <b>89101 [1]</b> 2/4 <b>89113 [1]</b> 2/13 <b>8th [1]</b> 2/4</p>	<p><b>9</b> <b>9800 [1]</b> 2/13 <b>9802 [1]</b> 2/14 <b>9:07 [1]</b> 3/2 <b>9th [1]</b> 30/1 : <b>:SS [1]</b> 41/2</p>	<p><b>A</b> <b>A.M [1]</b> 3/2 <b>A747800 [1]</b> 1/1 <b>ABILITY [1]</b> 41/11</p>	<p><b>able [2]</b> 11/6 16/20 <b>about [18]</b> 12/23 13/15 13/16 15/14 19/21 19/21 19/23 24/6 25/23 28/1 31/2 31/2 31/10 31/22 31/24 34/2 35/13 36/21 <b>absolutely [2]</b> 15/24 37/18 <b>abstract [4]</b> 36/13 36/24 37/10 37/21 <b>abstracts [2]</b> 6/20 38/18 <b>ACCURATE [1]</b> 41/11 <b>act [4]</b> 9/12 9/13 9/18 9/22 <b>action [11]</b> 6/3 8/13 8/23 10/13 10/17 17/22 31/23 33/7 33/9 33/11 36/11 <b>actually [2]</b> 13/20 34/10 <b>address [4]</b> 7/2 15/22 32/17 36/5 <b>addressed [1]</b> 31/15 <b>Addressing [1]</b> 7/6 <b>adjudicated [1]</b> 11/5 <b>adjustment [1]</b> 36/13 <b>adopting [1]</b> 7/18 <b>affect [1]</b> 32/2 <b>affirmed [2]</b> 9/10 15/9 <b>affixed [1]</b> 30/24 <b>after [1]</b> 32/2 <b>again [9]</b> 25/13 26/16 29/3 32/20 34/25 35/6 37/17 38/5 38/7 <b>against [24]</b> 4/6 4/10 5/2 6/4 10/13 10/17 14/24 16/7 17/21 18/8 18/9 19/3 19/4 19/7 27/1 27/2 29/17 32/13 33/12 35/16 35/22 37/25 38/20 38/21 <b>ago [1]</b> 3/25 <b>agree [10]</b> 7/18 10/18 12/13 18/1 18/2 22/25 23/3 23/6 24/18 40/8 <b>agreeing [1]</b> 7/19</p>	<p><b>agreement [1]</b> 7/16 <b>agricultural [1]</b> 35/14 <b>ahead [2]</b> 3/12 22/14 <b>ah [37]</b> 3/10 5/18 7/8 7/22 8/9 10/24 11/6 11/12 13/10 14/9 17/12 17/16 18/1 19/4 19/7 20/20 21/1 21/16 24/2 24/4 24/8 25/12 25/15 25/20 25/20 25/24 27/2 29/13 33/10 33/12 35/15 37/10 37/24 38/14 38/21 40/8 41/5 <b>ALLEN [2]</b> 1/16 36/22 <b>allow [1]</b> 35/20 <b>allowed [1]</b> 10/12 <b>allows [1]</b> 5/1 <b>along [1]</b> 24/8 <b>already [1]</b> 28/15 <b>also [6]</b> 18/2 21/3 26/9 26/10 26/22 39/14 <b>always [2]</b> 17/17 31/10 <b>amended [7]</b> 7/10 7/12 8/14 12/6 32/22 33/24 33/25 <b>amendment [1]</b> 8/1 <b>amount [1]</b> 30/24 <b>and/or [4]</b> 15/20 36/20 37/21 39/21 <b>another [3]</b> 6/2 29/12 30/12 <b>answer [2]</b> 16/11 17/1 <b>answering [2]</b> 18/23 22/21 <b>anticipate [1]</b> 16/12 <b>any [23]</b> 4/3 7/1 11/13 12/23 12/24 13/1 13/1 16/3 19/19 22/6 24/21 28/16 29/4 30/19 30/22 31/2 32/4 32/4 32/14 36/15 37/13 39/19 39/21 <b>anybody [1]</b> 8/25 <b>anything [3]</b> 33/14 37/3 37/20</p>	<p><b>apologize [1]</b> 31/23 <b>apparently [1]</b> 32/1 <b>appeal [2]</b> 9/10 15/9 <b>appear [1]</b> 14/20 <b>appearances [2]</b> 2/1 3/13 <b>appeared [1]</b> 31/4 <b>appears [2]</b> 8/7 32/6 <b>applicability [2]</b> 28/2 39/7 <b>application [4]</b> 27/4 27/6 37/18 39/17 <b>applies [5]</b> 12/4 14/9 18/2 23/12 28/13 <b>apply [13]</b> 15/11 22/4 26/23 27/14 28/6 28/8 28/9 28/12 29/5 29/7 34/6 37/14 39/8 <b>appropriate [1]</b> 10/24 <b>APRIL [2]</b> 1/22 3/1 <b>are [24]</b> 6/24 12/2 13/12 16/6 18/3 19/14 20/3 20/23 22/9 22/13 22/13 25/2 26/1 26/11 28/21 31/22 32/6 33/24 35/15 35/16 38/15 38/16 38/18 39/17 <b>areas [2]</b> 16/13 22/9 <b>argue [2]</b> 28/20 36/1 <b>argument [11]</b> 7/7 9/17 13/13 14/8 14/9 28/13 29/3 30/9 33/6 33/9 37/13 <b>arguments [1]</b> 35/15 <b>arisen [1]</b> 4/19 <b>ARROYO [1]</b> 2/12 <b>as [46]</b> <b>ask [1]</b> 6/20 <b>asking [2]</b> 22/20 37/7 <b>aspects [1]</b> 26/12 <b>assessed [1]</b> 15/13 <b>assessing [1]</b> 15/14</p>
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(1) MR. FOLEY: - assessing

(1) MR. FOLEY: - assessing



<b>A</b>	36/17 37/3 39/3 <b>Baughman [2]</b> 20/8 21/9 <b>be [40]</b> 6/21 7/2 8/3 9/18 10/25 11/2 11/6 11/8 11/11 11/16 12/12 12/20 13/8 13/14 13/17 13/21 14/20 14/23 17/14 18/5 18/6 21/16 24/4 25/3 29/22 29/25 30/24 31/15 31/25 32/3 32/8 32/8 32/9 32/9 32/12 35/23 36/14 36/17 38/20 40/1 <b>beat [1]</b> 38/6 <b>beaten [1]</b> 37/17 <b>because [31]</b> 4/15 7/9 7/15 9/12 9/13 10/10 11/13 12/14 13/12 13/22 14/7 15/15 17/8 17/18 18/25 22/5 22/23 25/7 25/8 27/13 29/22 30/17 32/14 34/4 34/20 36/7 36/16 36/19 39/1 39/16 39/18 <b>becoming [1]</b> 7/19 <b>been [7]</b> 4/6 6/4 6/21 9/10 26/2 27/16 38/3 <b>before [5]</b> 1/19 9/10 12/21 33/8 41/6 <b>BEFORE-ENTITLED</b> [1] 41/6 <b>behalf [4]</b> 3/14 3/17 10/20 16/20 <b>being [8]</b> 10/5 16/20 16/24 25/5 32/4 34/3 35/15 35/16 <b>belief [2]</b> 13/6 26/23 <b>believe [2]</b> 21/25 38/6 <b>benefit [2]</b> 29/15 29/20 <b>benefits [4]</b> 10/5 11/7 11/10 11/20 <b>best [2]</b> 5/17 41/11 <b>between [3]</b> 8/25 10/16 17/20 <b>bit [2]</b> 18/21 35/18 <b>blown [10]</b> 7/11 7/15 9/1 9/6 9/9	9/19 12/2 12/4 14/14 18/1 <b>board [2]</b> 7/13 28/25 <b>both [3]</b> 12/12 16/17 19/8 <b>BOULDEN [4]</b> 1/9 3/8 14/25 36/15 <b>Bouldens [2]</b> 31/16 32/13 <b>breach [2]</b> 12/23 12/24 <b>brief [1]</b> 5/17 <b>bring [2]</b> 10/12 31/1 <b>bringing [1]</b> 17/8 <b>brought [1]</b> 8/24 <b>budgets [1]</b> 28/25 <b>bulk [1]</b> 18/17 <b>burdens [2]</b> 11/7 22/13 <b>but [58]</b>	<b>challenged [1]</b> 15/8 <b>change [1]</b> 30/3 <b>changing [1]</b> 7/18 <b>chapter [31]</b> 7/19 8/6 13/22 14/2 14/3 14/4 14/15 14/15 20/23 22/2 24/16 26/6 26/8 27/14 28/23 28/23 29/2 29/6 29/15 30/6 30/14 31/7 32/20 32/21 34/3 34/6 34/19 35/2 35/10 38/9 39/8 <b>Chapters [1]</b> 34/16 <b>characteristic [1]</b> 10/8 <b>charter [3]</b> 9/24 11/16 11/17 <b>circumstance [1]</b> 9/17 <b>circumstances [1]</b> 32/7 <b>cited [3]</b> 6/13 13/6 13/7 <b>cites [1]</b> 5/18 <b>City [1]</b> 20/11 <b>claim [2]</b> 16/12 16/20 <b>clarify [2]</b> 32/18 32/23 <b>CLARK [4]</b> 1/7 21/12 41/3 41/14 <b>clause [3]</b> 13/4 13/9 13/17 <b>clear [3]</b> 16/24 17/1 38/6 <b>clients [2]</b> 4/8 6/4 <b>clients' [1]</b> 4/7 <b>clouding [1]</b> 6/24 <b>co [1]</b> 19/21 <b>co-op [1]</b> 19/21 <b>come [3]</b> 5/15 6/23 34/2 <b>comes [2]</b> 14/17 28/3 <b>committee [9]</b> 4/16 4/24 5/25 6/9 17/15 24/4 24/11 30/11 35/7 <b>common [16]</b> 14/8 16/13 16/14 22/9 22/10 25/15 25/19 26/3 26/15 26/17 30/7 30/8 30/8 30/10 38/10 38/13 <b>common-interest</b> [11] 25/15 25/19	26/3 26/15 26/17 30/7 30/8 30/8 30/10 38/10 38/13 <b>community [13]</b> 19/14 25/15 25/19 26/3 26/11 26/15 26/17 30/7 30/8 30/9 30/10 38/10 38/13 <b>companion [1]</b> 9/7 <b>complaint [1]</b> 15/16 <b>completely [2]</b> 17/23 35/25 <b>concerned [2]</b> 22/14 39/2 <b>concluded [1]</b> 40/14 <b>conclusions [2]</b> 36/8 40/6 <b>conditions [7]</b> 8/2 12/16 14/19 21/8 22/16 30/22 39/24 <b>condominiums [1]</b> 24/25 <b>conjunction [8]</b> 22/1 23/2 26/21 28/19 29/9 29/11 30/5 38/9 <b>consistent [1]</b> 20/23 <b>consists [6]</b> 14/12 23/21 24/10 29/10 29/13 29/13 <b>CONSTITUTES [1]</b> 41/10 <b>construction [2]</b> 17/2 28/4 <b>contained [3]</b> 17/15 19/2 26/25 <b>contemplated [1]</b> 13/8 <b>contemplates [2]</b> 18/4 18/11 <b>contemplation [1]</b> 13/13 <b>contend [1]</b> 38/17 <b>contention [3]</b> 26/18 26/20 38/5 <b>contested [1]</b> 3/7 <b>continue [2]</b> 21/23 22/1 <b>contrary [3]</b> 14/2 35/16 36/1 <b>controlled [4]</b> 13/22 22/10 31/9 31/10 <b>controlling [3]</b>
<b>B</b>	<b>back [13]</b> 4/19 4/24 5/15 6/23 7/8 7/23 8/2 14/20 16/23 17/24 25/22 33/17 39/25 <b>backwards [2]</b> 17/25 18/24 <b>based [3]</b> 5/5 6/19 33/19 <b>basically [2]</b> 4/5 32/10 <b>basis [7]</b> 14/23 32/3 32/12 36/14	<b>calendar [1]</b> 3/7 <b>came [1]</b> 11/7 <b>can [17]</b> 9/12 9/23 9/24 9/25 10/4 13/13 15/22 18/1 18/2 18/8 22/1 22/24 27/1 28/4 32/8 36/5 37/16 <b>can't [8]</b> 12/11 12/11 12/12 14/1 32/11 35/24 35/24 40/8 <b>case [41]</b> 1/1 4/2 4/8 4/20 4/22 4/23 5/5 5/7 10/7 10/15 11/23 12/1 12/9 13/11 13/12 13/16 14/21 15/16 16/1 16/4 16/12 17/5 17/10 26/2 26/20 27/7 28/9 30/16 31/5 31/10 31/14 32/4 32/18 33/1 33/13 33/19 35/20 37/4 37/25 39/10 40/2 <b>cause [1]</b> 6/3 <b>CC [52]</b> <b>CCR [2]</b> 1/25 41/17 <b>CERTIFICATE [1]</b> 41/1 <b>CERTIFIED [1]</b> 41/4 <b>CERTIFY [1]</b> 41/5	<b>challenged [1]</b> 15/8 <b>change [1]</b> 30/3 <b>changing [1]</b> 7/18 <b>chapter [31]</b> 7/19 8/6 13/22 14/2 14/3 14/4 14/15 14/15 20/23 22/2 24/16 26/6 26/8 27/14 28/23 28/23 29/2 29/6 29/15 30/6 30/14 31/7 32/20 32/21 34/3 34/6 34/19 35/2 35/10 38/9 39/8 <b>Chapters [1]</b> 34/16 <b>characteristic [1]</b> 10/8 <b>charter [3]</b> 9/24 11/16 11/17 <b>circumstance [1]</b> 9/17 <b>circumstances [1]</b> 32/7 <b>cited [3]</b> 6/13 13/6 13/7 <b>cites [1]</b> 5/18 <b>City [1]</b> 20/11 <b>claim [2]</b> 16/12 16/20 <b>clarify [2]</b> 32/18 32/23 <b>CLARK [4]</b> 1/7 21/12 41/3 41/14 <b>clause [3]</b> 13/4 13/9 13/17 <b>clear [3]</b> 16/24 17/1 38/6 <b>clients [2]</b> 4/8 6/4 <b>clients' [1]</b> 4/7 <b>clouding [1]</b> 6/24 <b>co [1]</b> 19/21 <b>co-op [1]</b> 19/21 <b>come [3]</b> 5/15 6/23 34/2 <b>comes [2]</b> 14/17 28/3 <b>committee [9]</b> 4/16 4/24 5/25 6/9 17/15 24/4 24/11 30/11 35/7 <b>common [16]</b> 14/8 16/13 16/14 22/9 22/10 25/15 25/19 26/3 26/15 26/17 30/7 30/8 30/8 30/10 38/10 38/13 <b>common-interest</b> [11] 25/15 25/19	26/3 26/15 26/17 30/7 30/8 30/8 30/10 38/10 38/13 <b>community [13]</b> 19/14 25/15 25/19 26/3 26/11 26/15 26/17 30/7 30/8 30/9 30/10 38/10 38/13 <b>companion [1]</b> 9/7 <b>complaint [1]</b> 15/16 <b>completely [2]</b> 17/23 35/25 <b>concerned [2]</b> 22/14 39/2 <b>concluded [1]</b> 40/14 <b>conclusions [2]</b> 36/8 40/6 <b>conditions [7]</b> 8/2 12/16 14/19 21/8 22/16 30/22 39/24 <b>condominiums [1]</b> 24/25 <b>conjunction [8]</b> 22/1 23/2 26/21 28/19 29/9 29/11 30/5 38/9 <b>consistent [1]</b> 20/23 <b>consists [6]</b> 14/12 23/21 24/10 29/10 29/13 29/13 <b>CONSTITUTES [1]</b> 41/10 <b>construction [2]</b> 17/2 28/4 <b>contained [3]</b> 17/15 19/2 26/25 <b>contemplated [1]</b> 13/8 <b>contemplates [2]</b> 18/4 18/11 <b>contemplation [1]</b> 13/13 <b>contend [1]</b> 38/17 <b>contention [3]</b> 26/18 26/20 38/5 <b>contested [1]</b> 3/7 <b>continue [2]</b> 21/23 22/1 <b>contrary [3]</b> 14/2 35/16 36/1 <b>controlled [4]</b> 13/22 22/10 31/9 31/10 <b>controlling [3]</b>

(2) assessment - controlling

(2) assessment - controlling

<p><b>C</b></p> <p><b>controlling...</b> [3] 14/18 14/21 39/20</p> <p><b>convert</b> [1] 35/21</p> <p><b>conveyed</b> [1] 34/22</p> <p><b>corporate</b> [2] 11/15 11/17</p> <p><b>corporation</b> [10] 9/22 9/23 10/2 10/4 10/6 10/22 11/8 11/12 11/20 11/21</p> <p><b>correct</b> [8] 3/20 3/22 7/24 9/16 10/11 13/23 19/22 33/6</p> <p><b>costs</b> [3] 14/24 32/8 36/10</p> <p><b>could</b> [7] 6/4 10/19 10/20 13/8 26/19 32/17 38/20</p> <p><b>counsel</b> [2] 36/5 40/7</p> <p><b>counter</b> [1] 10/10</p> <p><b>countermotion</b> [2] 1/16 3/20</p> <p><b>COUNTY</b> [4] 1/7 21/12 41/3 41/14</p> <p><b>couple</b> [1] 3/25</p> <p><b>course</b> [1] 36/5</p> <p><b>court</b> [24] 1/6 1/20 4/1 4/24 5/8 6/13 6/23 8/4 8/4 8/22 9/7 9/11 15/9 16/2 16/5 16/19 18/19 19/14 24/11 30/25 33/21 33/23 34/8 37/12</p> <p><b>Court's</b> [1] 32/18</p> <p><b>covenants</b> [8] 8/1 12/16 14/19 20/18 21/8 22/16 30/22 39/24</p> <p><b>create</b> [3] 26/10 29/24 34/6</p> <p><b>created</b> [5] 14/15 24/11 24/12 28/23 29/16</p> <p><b>creates</b> [3] 26/9 26/10 29/18</p> <p><b>CROSSING</b> [1] 2/12</p> <p><b>D</b></p> <p><b>D.R.</b> [5] 16/1 16/4 16/12 17/5 17/9</p> <p><b>D.R. Horton</b> [5]</p>	<p>16/1 16/4 16/12 17/5 17/9</p> <p><b>damages</b> [1] 6/24</p> <p><b>DAN</b> [2] 2/6 3/14</p> <p><b>DANIEL</b> [1] 2/3</p> <p><b>date</b> [1] 34/21</p> <p><b>DATED</b> [1] 1/22</p> <p><b>day</b> [3] 21/9 22/6 40/11</p> <p><b>deals</b> [1] 39/6</p> <p><b>death</b> [1] 38/6</p> <p><b>decision</b> [2] 39/3 40/3</p> <p><b>declarant</b> [2] 21/2 21/7</p> <p><b>declarants</b> [1] 21/13</p> <p><b>declaration</b> [13] 7/19 12/16 14/18 14/22 21/8 23/10 23/18 25/16 25/21 25/22 25/25 27/3 30/21</p> <p><b>declarations</b> [4] 8/1 20/17 22/15 39/23</p> <p><b>declaratory</b> [7] 5/7 5/8 6/15 9/8 33/20 35/17 36/1</p> <p><b>declare</b> [1] 21/6</p> <p><b>declared</b> [1] 12/6</p> <p><b>declares</b> [1] 33/23</p> <p><b>deed</b> [1] 13/2</p> <p><b>defeat</b> [1] 12/25</p> <p><b>defect</b> [1] 17/2</p> <p><b>defendant</b> [3] 1/13 2/9 15/20</p> <p><b>DEFENDANTS</b> [1] 1/15</p> <p><b>define</b> [3] 26/19 29/10 38/7</p> <p><b>defined</b> [2] 20/22 26/14</p> <p><b>defines</b> [2] 21/3 26/16</p> <p><b>defining</b> [1] 21/1</p> <p><b>definition</b> [2] 30/5 30/11</p> <p><b>definitions</b> [9] 10/14 19/1 20/24 20/25 25/14 26/21 28/19 29/8 38/9</p> <p><b>department</b> [2] 17/3 33/7</p> <p><b>DEPT</b> [1] 1/3</p> <p><b>described</b> [6] 21/12 21/14 25/16 25/20 25/25 27/2</p>	<p><b>describes</b> [2] 20/11 23/10</p> <p><b>designated</b> [1] 26/15</p> <p><b>determine</b> [1] 28/4</p> <p><b>device</b> [1] 14/15</p> <p><b>did</b> [4] 9/18 10/7 11/23 32/18</p> <p><b>didn't</b> [5] 4/9 24/14 31/5 31/7 40/2</p> <p><b>difference</b> [1] 17/20</p> <p><b>different</b> [5] 5/18 17/9 17/23 26/11 27/24</p> <p><b>DIRECTION</b> [1] 41/9</p> <p><b>directors</b> [1] 7/13</p> <p><b>disagree</b> [1] 13/25</p> <p><b>disagreement</b> [2] 22/19 28/11</p> <p><b>discuss</b> [1] 22/12</p> <p><b>discussed</b> [1] 28/15</p> <p><b>discussion</b> [1] 39/1</p> <p><b>dismissed</b> [1] 11/5</p> <p><b>dispute</b> [1] 38/16</p> <p><b>disputed</b> [1] 4/3</p> <p><b>distinguishing</b> [1] 10/8</p> <p><b>DISTRICT</b> [2] 1/6 1/20</p> <p><b>do</b> [17] 5/23 8/17 10/9 10/9 11/22 17/2 17/6 17/17 22/4 28/7 28/7 31/19 31/19 31/21 38/23 39/15 41/4</p> <p><b>DOCKET</b> [1] 1/2</p> <p><b>doctrine</b> [1] 28/14</p> <p><b>document</b> [1] 26/19</p> <p><b>documents</b> [2] 17/17 37/2</p> <p><b>does</b> [13] 9/22 18/5 18/25 19/25 22/14 26/9 26/22 27/6 27/7 27/14 28/12 30/16 39/8</p> <p><b>doesn't</b> [11] 9/14 19/6 21/6 25/9 28/6 30/3 34/6 34/6 35/20 38/11 38/11 <b>don't</b> [17] 4/3 5/22 7/3 7/8 9/24 10/5 12/6 19/15 19/20</p>	<p>21/25 23/6 24/21 24/22 27/19 29/7 36/16 37/2</p> <p><b>done</b> [2] 5/4 37/12</p> <p><b>doubt</b> [1] 13/9</p> <p><b>down</b> [4] 8/15 9/24 23/22 41/5</p> <p><b>drafted</b> [2] 5/21 13/20</p> <p><b>duties</b> [1] 35/12</p> <p><b>E</b></p> <p><b>each</b> [3] 18/9 21/22 30/3</p> <p><b>effect</b> [2] 33/25 39/25</p> <p><b>effective</b> [2] 13/18 13/22</p> <p><b>Eighth</b> [1] 16/2</p> <p><b>either</b> [2] 5/22 5/23</p> <p><b>elaborate</b> [1] 28/16</p> <p><b>else</b> [2] 33/14 33/15</p> <p><b>enacted</b> [1] 9/2</p> <p><b>end</b> [1] 22/6</p> <p><b>ended</b> [1] 8/13</p> <p><b>enforce</b> [5] 5/25 24/8 24/12 31/13 32/19</p> <p><b>enforcement</b> [5] 14/17 30/20 31/3 31/6 39/22</p> <p><b>enjoy</b> [1] 40/11</p> <p><b>enough</b> [2] 22/7 38/3</p> <p><b>entered</b> [1] 9/7</p> <p><b>entire</b> [1] 5/5</p> <p><b>ENTITLED</b> [1] 41/6</p> <p><b>entity</b> [2] 28/24 29/2</p> <p><b>equitable</b> [3] 30/19 31/3 39/22</p> <p><b>ESQ</b> [2] 2/3 2/11</p> <p><b>essentially</b> [1] 33/10</p> <p><b>established</b> [2] 12/25 24/4</p> <p><b>establishes</b> [1] 23/23</p> <p><b>estate</b> [6] 25/16 25/20 25/20 25/24 27/2 38/14</p> <p><b>even</b> [7] 4/23 18/10 19/19 26/22 26/22 35/6 39/18</p> <p><b>ever</b> [3] 13/14 16/3</p>	<p>37/16</p> <p><b>every</b> [4] 8/15 9/4 18/9 30/3</p> <p><b>everything</b> [3] 5/20 14/2 40/4</p> <p><b>evidence</b> [1] 6/24</p> <p><b>exact</b> [1] 18/12</p> <p><b>exactly</b> [4] 5/16 11/3 11/8 12/9</p> <p><b>example</b> [3] 9/20 22/8 25/1</p> <p><b>Except</b> [1] 9/16</p> <p><b>executed</b> [1] 14/20</p> <p><b>exhibit</b> [4] 7/23 7/25 12/18 15/4</p> <p><b>Exhibit 2</b> [1] 12/18</p> <p><b>Exhibit 4</b> [1] 7/23</p> <p><b>exhibits</b> [1] 7/22</p> <p><b>existing</b> [1] 7/18</p> <p><b>exists</b> [1] 28/24</p> <p><b>expunged</b> [1] 6/21 4/23</p> <p><b>extensively</b> [1] 4/23</p> <p><b>extremely</b> [1] 6/9</p> <p><b>F</b></p> <p><b>face</b> [1] 9/12</p> <p><b>facetious</b> [2] 25/3 25/5</p> <p><b>fact</b> [12] 5/10 5/1 8/14 8/22 9/8 9/18 10/14 13/7 30/4 33/18 34/7 40/6</p> <p><b>facts</b> [4] 4/3 8/10 36/7 38/15</p> <p><b>fairly</b> [3] 38/5 38/25 38/25</p> <p><b>falkh</b> [1] 13/2</p> <p><b>familiarized</b> [1] 4/1</p> <p><b>far</b> [5] 16/19 22/13 36/20 37/21 39/1</p> <p><b>fascinating</b> [1] 13/15</p> <p><b>favor</b> [1] 11/5</p> <p><b>Fax</b> [1] 2/14</p> <p><b>fee</b> [5] 11/18 12/1 20/1 20/10 21/11</p> <p><b>fees</b> [1] 11/19 12/4 14/16 14/24 15/5 15/10 15/13 15/14 17/10 17/20 17/21 18/3 30/16 30/19 31/11 31/14 32/3 32/8 32/13 32/19 32/21 32/24 35/21 36/10 36/23 39/18 39/20</p>
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(3) controlling... - fees

(3) controlling... - fees

<b>F</b> few [1] 28/22 figure [3] 17/18 36/12 36/14 file [3] 10/20 16/20 36/15 filed [2] 10/10 15/5 finally [1] 11/5 findings [3] 34/7 36/7 40/6 finish [1] 18/18 first [9] 7/6 8/9 8/13 12/20 15/7 17/20 20/15 34/21 34/22 focusing [1] 39/3 FOLEY [8] 2/3 2/3 3/14 3/23 10/11 33/16 36/4 39/15 FOLEYOAKES.COM [1] 2/6 followed [1] 10/25 follows [3] 20/12 21/13 30/18 force [2] 32/2 33/25 foregoing [2] 33/23 41/10 foremost [1] 17/21 forget [1] 33/7 form [1] 35/1 formed [1] 34/20 forth [10] 9/8 17/13 21/6 22/9 23/4 28/20 30/17 35/12 37/3 39/7 fought [1] 24/7 found [2] 34/5 35/18 frankly [1] 25/11 front [1] 6/11 full [12] 6/22 7/11 7/15 9/1 9/6 9/9 9/19 12/2 12/4 14/14 18/1 41/10 full-blown [10] 7/11 7/15 9/1 9/6 9/9 9/19 12/2 12/4 14/14 18/1 fully [3] 13/20 26/19 38/4 further [3] 8/19 26/13 28/16	<b>Gentlemen [2]</b> 38/22 40/11 <b>get [8]</b> 7/24 9/24 10/5 11/10 12/7 18/7 33/17 37/16 <b>gets [1]</b> 40/7 <b>getting [1]</b> 25/6 <b>GIBBS [1]</b> 2/11 <b>GIBBSGIDEN.COM</b> [1] 2/14 <b>GIDEN [1]</b> 2/11 <b>give [1]</b> 9/21 <b>go [16]</b> 3/12 7/8 9/21 9/23 9/24 10/2 14/6 15/3 16/23 17/24 17/25 22/14 23/22 24/16 25/14 25/22 <b>goes [3]</b> 4/19 8/18 34/13 <b>going [11]</b> 3/6 18/4 18/6 18/24 21/16 26/13 28/20 29/23 29/25 38/23 38/24 <b>good [9]</b> 3/10 3/11 3/16 4/15 7/5 8/10 13/2 37/18 38/25 <b>got [7]</b> 7/16 14/16 16/10 18/17 20/20 30/12 36/3 <b>governed [1]</b> 5/11 <b>grant [2]</b> 37/25 38/24 <b>granted [1]</b> 5/8 <b>group [1]</b> 33/10 <b>guess [8]</b> 7/25 8/3 8/4 12/20 22/19 31/14 36/22 39/14	19/23 20/4 21/7 23/9 25/3 27/7 28/1 28/6 29/15 32/9 34/19 35/18 38/3 <b>HEREBY [1]</b> 41/5 <b>hereinafter [1]</b> 20/9 <b>hereinunder [2]</b> 12/25 21/10 <b>HEREUNTO [1]</b> 41/13 <b>Hey [1]</b> 29/21 <b>hire [1]</b> 4/9 <b>history [2]</b> 7/8 7/9 <b>HOA [9]</b> 14/3 16/19 22/8 22/10 22/15 23/5 23/19 23/21 24/24 <b>hold [1]</b> 10/4 <b>homeowner [6]</b> 6/2 6/2 6/4 8/15 10/13 18/6 <b>homeowners [31]</b> 4/10 4/14 5/2 5/10 5/22 7/12 7/17 7/20 8/6 8/20 8/23 9/1 9/6 9/9 9/13 9/19 10/16 12/2 12/5 14/9 14/12 14/13 14/23 16/2 18/1 25/8 29/18 29/20 33/11 33/12 35/5 <b>Honor [60]</b> <b>HONORABLE [1]</b> 1/19 <b>Horton [5]</b> 16/1 16/4 16/12 17/5 17/9 <b>house [3]</b> 24/22 25/9 25/10 <b>how [3]</b> 4/20 10/9 32/17 <b>however [4]</b> 5/4 10/15 12/3 25/9 <b>hung [1]</b> 25/6 <b>hypothetical [4]</b> 10/21 11/15 17/24 18/24 <b>hypothetically [1]</b> 17/10	16/24 16/25 17/7 17/18 20/14 21/7 22/20 22/21 22/22 23/2 24/2 25/5 27/11 27/17 27/25 28/18 28/20 30/14 31/24 31/24 32/16 32/25 36/7 36/12 36/12 36/14 36/21 37/7 37/8 38/23 38/24 <b>I've [5]</b> 22/7 24/21 34/9 36/8 38/3 <b>if [28]</b> 6/1 7/1 9/5 9/21 10/18 10/19 11/11 16/18 18/7 19/3 20/8 21/23 21/25 23/22 24/20 25/14 25/22 26/22 26/22 27/13 29/4 29/5 29/11 29/25 36/15 36/16 39/18 40/8 <b>ignore [3]</b> 31/21 32/15 35/25 <b>impact [1]</b> 30/16 <b>important [3]</b> 17/19 39/14 39/17 <b>importantly [1]</b> 39/25 <b>impression [1]</b> 37/1 <b>improper [1]</b> 11/2 <b>in [118]</b> <b>inapplicable [1]</b> 6/17 <b>include [1]</b> 6/10 <b>included [3]</b> 18/3 21/17 38/19 <b>includes [4]</b> 19/13 25/19 25/24 38/14 <b>including [3]</b> 5/10 20/22 38/14 <b>indent [1]</b> 20/15 <b>INDICATED [1]</b> 41/7 <b>individual [1]</b> 6/3 <b>individually [1]</b> 18/10 <b>inside [1]</b> 11/18 <b>intent [2]</b> 28/5 34/25 <b>interest [11]</b> 25/15 25/19 26/3 26/15 26/17 30/7 30/8 30/8 30/10 38/10 38/13 <b>interior [1]</b> 25/1	<b>interrupts [1]</b> 18/19 <b>into [2]</b> 35/21 41/8 <b>Introductory [1]</b> 23/17 <b>Invalid [2]</b> 13/1 33/24 <b>involve [1]</b> 31/5 <b>Is [91]</b> <b>Isn't [3]</b> 4/16 20/2 30/10 <b>ISOM [3]</b> 1/25 41/4 41/17 <b>issue [8]</b> 4/5 9/10 17/11 33/21 34/2 37/22 39/2 39/4 <b>Issues [3]</b> 6/11 19/19 28/3 <b>it [114]</b> <b>it's [50]</b> <b>itself [3]</b> 4/1 37/2 37/14
<b>G</b> gate [2] 6/11 17/12 gave [1] 38/17	<b>H</b> had [5] 3/19 12/10 39/1 41/6 41/12 <b>happening [1]</b> 11/9 <b>happy [1]</b> 7/2 <b>has [7]</b> 4/19 6/2 7/1 32/8 34/2 37/18 40/1 <b>HASKIN [2]</b> 2/11 3/17 <b>have [49]</b> <b>having [1]</b> 35/24 <b>He [1]</b> 10/11 <b>heading [1]</b> 38/4 <b>here [22]</b> 3/24 4/6 4/19 9/5 11/9 11/22 12/10 16/9 19/11	<b>I</b> <b>I'd [1]</b> 7/2 <b>I'll [4]</b> 9/21 15/3 22/25 32/23 <b>I'm [40]</b> 3/25 7/17 7/24 8/5 9/22 10/3 10/20 15/13 16/10	<b>January [2]</b> 14/20 21/9 <b>JOHN [2]</b> 1/16 36/22 <b>joint [3]</b> 29/17 29/19 29/22 <b>judge [6]</b> 1/19 1/20 8/12 12/1 15/8 36/20 <b>Judge Leavitt's [2]</b> 15/8 36/20 <b>judgment [44]</b> <b>judgments [2]</b> 4/6 25/11 <b>judicata [1]</b> 33/18 <b>judicial [2]</b> 15/5 16/2 <b>jumped [1]</b> 27/21 <b>just [28]</b> 4/24 5/16 9/12 9/19 10/20 13/6 17/24 20/4 20/24 22/24 25/13 27/19 27/21 28/24 30/11 31/21 32/15 33/17 34/4 35/7 35/25 37/1 37/6 37/7 37/9 37/18 38/5 40/5	<b>J</b> <b>keep [1]</b> 18/24 <b>know [15]</b> 5/9 6/10 13/15 16/11 17/7 22/11 24/21

(4) few - know

(4) few - know



<b>K</b>	<b>limit [1]</b> 18/15 <b>limitations [1]</b> 27/22 <b>limited [29]</b> 5/13 6/9 6/14 10/12 10/14 14/10 16/20 19/24 26/5 26/10 27/8 27/15 28/7 28/21 28/21 29/7 30/7 30/9 32/1 32/5 34/3 34/4 34/14 35/9 38/12 39/5 39/9 39/12 39/20 <b>limits [3]</b> 28/25 30/2 30/2 <b>listen [1]</b> 15/12 <b>listening [1]</b> 22/22 <b>litigation [7]</b> 32/2 32/15 33/2 33/4 35/22 37/15 39/11 <b>little [3]</b> 8/18 18/21 32/16 <b>LLP [1]</b> 2/11 <b>LOCHER [1]</b> 2/11 <b>long [1]</b> 38/3 <b>look [12]</b> 7/21 9/24 16/18 20/5 22/25 23/24 27/13 28/4 36/13 37/21 39/15 39/18 <b>looked [4]</b> 7/23 12/15 15/15 36/9 <b>looking [7]</b> 8/5 26/19 28/1 32/25 36/7 36/23 37/1 <b>lose [1]</b> 40/2 <b>losing [5]</b> 30/23 31/12 31/17 32/10 32/14 <b>lost [1]</b> 40/1 <b>lot [6]</b> 4/18 8/13 21/22 24/21 33/18 39/1 <b>lots [16]</b> 19/13 19/14 20/12 20/22 21/14 23/12 24/4 24/5 24/10 24/15 25/23 25/25 27/5 29/13 30/1 38/8 <b>LPA [6]</b> 14/4 14/14 14/15 19/5 20/25 26/5 <b>LPS [1]</b> 22/4 <b>LYTLE [7]</b> 1/12 1/16 1/16 1/16 3/8 3/17 36/22 <b>Lytle's [1]</b> 36/23 <b>Lyties [12]</b> 4/25	5/4 5/6 5/14 6/15 7/9 8/24 10/17 24/7 33/12 37/25 38/17 <b>M</b> <b>made [6]</b> 9/18 13/2 21/9 35/15 35/16 39/16 <b>maintained [2]</b> 10/17 22/10 <b>make [3]</b> 37/6 37/7 40/6 <b>making [2]</b> 14/8 14/8 <b>mandate [1]</b> 31/7 <b>mandated [1]</b> 10/3 <b>mandates [1]</b> 10/25 <b>MARJORIE [2]</b> 1/9 3/7 <b>matter [4]</b> 9/7 10/3 19/6 41/6 <b>may [2]</b> 11/16 30/24 <b>maybe [2]</b> 22/25 32/17 <b>me [15]</b> 7/24 8/7 15/12 18/18 19/10 20/5 21/24 22/3 22/5 22/14 23/24 27/6 28/9 31/5 32/6 <b>mean [20]</b> 4/13 4/14 7/14 9/14 9/22 9/23 10/19 12/8 12/15 13/21 15/19 17/16 17/16 18/16 19/18 19/20 25/2 27/25 32/25 37/24 <b>meaning [2]</b> 34/16 35/1 <b>meant [2]</b> 29/20 29/21 <b>mechanism [1]</b> 29/24 <b>meet [2]</b> 26/2 31/7 <b>member [1]</b> 32/4 <b>members [1]</b> 5/3 <b>mere [1]</b> 13/7 <b>merely [3]</b> 19/2 26/23 28/18 <b>Michelle [2]</b> 11/25 33/8 <b>mightily [1]</b> 35/19 <b>misnomer [1]</b> 16/1 <b>modify [1]</b> 13/1 <b>months [1]</b> 3/25 <b>more [1]</b> 39/25 <b>morning [4]</b> 3/10	3/11 3/16 7/5 <b>mortgage [4]</b> 13/1 13/3 13/9 13/17 <b>most [2]</b> 5/19 5/20 <b>motion [9]</b> 1/15 1/16 3/19 6/7 6/22 12/19 36/9 36/23 38/23 <b>move [1]</b> 3/6 <b>Mr [1]</b> 33/16 <b>Mr. [4]</b> 3/23 10/11 36/4 39/15 <b>Mr. Foley [4]</b> 3/23 10/11 36/4 39/15 <b>my [21]</b> 3/18 4/6 4/8 5/16 6/4 7/15 12/17 17/8 24/9 25/14 26/18 26/20 28/2 29/3 37/1 39/3 40/3 41/9 41/11 41/14 41/14 <b>myself [1]</b> 10/4 <b>N</b> <b>NAC [1]</b> 10/13 <b>NAME [1]</b> 41/14 <b>named [5]</b> 15/20 18/10 33/1 33/3 39/12 <b>need [2]</b> 6/23 37/20 <b>NEVADA [10]</b> 1/7 3/1 9/11 10/24 16/5 16/18 20/11 21/12 41/2 41/15 <b>never [6]</b> 7/16 8/8 15/16 15/19 34/25 39/12 <b>new [1]</b> 31/6 <b>next [3]</b> 3/7 14/7 15/4 <b>nine [2]</b> 19/14 29/25 <b>no [40]</b> 1/1 11/10 11/10 11/22 13/9 13/13 14/1 16/16 16/16 16/16 16/16 16/25 22/20 22/20 23/3 23/6 24/23 24/23 25/5 26/5 27/23 27/25 28/11 30/9 31/9 31/16 31/17 33/25 34/4 34/19 34/20 37/5 37/9 37/18 37/23 37/24 38/13 38/15 39/3 39/8 <b>No. [4]</b> 15/14 31/2	32/9 39/4 <b>No. 1 [4]</b> 15/14 31/2 32/9 39/4 <b>none [1]</b> 11/7 <b>nonparties [3]</b> 17/22 35/22 37/15 <b>nonparty [1]</b> 15/15 <b>nor [1]</b> 5/23 <b>not [45]</b> <b>note [1]</b> 3/12 <b>NOTES [1]</b> 41/8 <b>nothing [5]</b> 33/15 36/19 37/5 37/12 37/15 <b>notice [2]</b> 15/5 24/14 <b>now [7]</b> 5/15 27/11 33/8 35/20 35/25 36/3 36/21 <b>nowhere [1]</b> 35/3 <b>NRS [12]</b> 5/1 5/11 6/13 23/2 25/15 26/4 27/7 34/15 34/16 35/13 36/18 39/6 <b>NRS 11.1201 [1]</b> 27/7 <b>NRS 116 [2]</b> 5/11 36/18 <b>NRS 116.021 [3]</b> 23/2 25/15 26/4 <b>NRS 116.1201 [4]</b> 6/13 34/15 35/13 39/6 <b>NRS 116.3117 [1]</b> 5/1 <b>NRS Chapters [1]</b> 34/16 <b>number [5]</b> 5/9 7/24 31/8 34/18 34/19 <b>numbers [1]</b> 37/11 <b>NV [3]</b> 1/25 2/4 2/13 <b>O</b> <b>OAKES [1]</b> 2/3 <b>obligated [1]</b> 25/18 <b>obligations [1]</b> 17/14 <b>obtained [6]</b> 4/7 5/6 5/15 6/15 33/20 35/17 <b>obvious [3]</b> 19/3 25/8 26/24 <b>occupancy [1]</b> 26/16
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(5) know... - occupancy

(5) know... - occupancy

<p><b>O</b></p> <p>off [2] 8/1 21/20</p> <p>OFFICE [1] 41/14</p> <p>okay [27] 3/6 3/18 3/23 4/4 15/3 15/25 16/22 18/3 18/16 20/2 20/7 20/20 20/21 23/1 23/11 23/14 23/24 24/3 24/9 24/18 25/19 26/7 33/5 33/14 34/1 38/22 40/11</p> <p>on [35] 3/6 3/14 3/17 3/25 5/5 5/24 6/19 8/1 9/10 9/10 10/20 12/18 13/2 13/14 15/8 15/25 16/20 17/25 20/16 21/9 25/7 31/25 33/19 33/21 33/22 34/7 34/10 34/19 35/3 35/8 36/10 36/15 36/22 37/16 39/4</p> <p>once [1] 10/15</p> <p>one [16] 6/1 7/11 8/3 8/19 9/14 10/4 10/14 12/15 18/13 18/22 23/1 26/19 29/12 31/8 36/3 38/14</p> <p>one's [1] 25/17</p> <p>ones [1] 21/14</p> <p>only [7] 6/22 19/18 29/24 35/11 35/22 36/17 37/16</p> <p>op [1] 19/21</p> <p>opportunity [1] 40/7</p> <p>opposite [1] 5/16</p> <p>OPPOSITION [1] 1/16</p> <p>or [31] 7/10 9/1 11/16 12/23 12/23 12/24 12/25 13/1 13/2 14/11 14/14 15/20 17/11 19/5 25/8 26/16 30/19 30/20 30/22 30/23 31/3 31/4 31/12 31/21 32/15 35/5 36/20 37/21 39/21 39/22 39/23</p> <p>oral [1] 7/7</p> <p>order [15] 6/7 15/8 16/7 31/13 33/11 34/11 34/17 36/10</p>	<p>36/20 36/21 36/21 37/12 37/13 37/21 37/24</p> <p>ordered [1] 12/1</p> <p>ordering [1] 6/20</p> <p>orders [2] 33/24 37/24</p> <p>ordinarily [2] 29/16 29/21</p> <p>organized [1] 34/21</p> <p>original [15] 13/7 15/7 19/9 19/12 20/3 20/16 24/12 26/20 28/18 29/9 30/4 31/22 35/4 35/13 38/7</p> <p>other [5] 11/6 13/11 14/7 29/19 33/7</p> <p>Otherwise [1] 7/1</p> <p>our [9] 3/12 5/5 6/24 8/12 12/1 26/23 28/13 30/4 38/4</p> <p>out [9] 6/6 9/22 9/23 10/4 17/18 17/19 35/7 36/13 36/14</p> <p>over [1] 7/8</p> <p>overlooking [1] 37/8</p> <p>own [6] 19/15 19/20 22/16 24/22 25/9 40/8</p> <p>owned [8] 19/7 19/8 19/10 22/9 24/15 24/24 24/25 25/2</p> <p>owner [6] 8/3 18/4 20/10 21/11 26/24 30/3</p> <p>owners [25] 14/14 16/3 16/19 16/21 17/15 19/5 20/24 22/13 23/23 24/3 24/4 24/7 24/11 24/25 25/2 26/9 28/17 29/23 30/11 34/16 34/20 35/1 35/4 35/11 38/11</p> <p>owners' [1] 6/8</p> <p>ownership [6] 22/6 23/4 25/7 25/8 25/17 26/16</p> <p>owns [3] 19/25 22/8 23/19</p>	<p><b>P</b></p> <p>page [11] 3/7 12/19 20/5 20/6 20/16 33/22 34/7 34/10 34/19 35/3 35/8</p> <p>page 1 [3] 12/19 20/6 20/16</p> <p>page 11 [1] 33/22</p> <p>page 12 [1] 3/7</p> <p>page 7 [1] 34/10</p> <p>page 8 [2] 34/7 34/19</p> <p>page 9 [1] 35/8</p> <p>paragraph [16] 12/20 12/20 12/21 15/11 20/13 20/15 23/22 27/14 30/15 34/24 34/25 35/3 35/8 35/12 39/8 39/19</p> <p>paragraph 1 [1] 12/21</p> <p>paragraph 13 [1] 34/24</p> <p>paragraph 14 [1] 34/25</p> <p>paragraph 17 [1] 35/3</p> <p>paragraph 19 [1] 35/8</p> <p>paragraph 2 [1] 27/14</p> <p>paragraph 21 [1] 35/12</p> <p>paragraph 25 [2] 15/11 39/19</p> <p>parcel [1] 37/11</p> <p>PARKWAY [1] 2/12</p> <p>part [2] 16/6 25/10</p> <p>partial [4] 1/15 3/19 12/19 38/24</p> <p>particular [2] 32/7 36/2</p> <p>parties [14] 4/8 4/22 7/25 16/3 18/11 28/11 30/23 31/12 31/16 31/17 32/14 33/1 33/3 39/11</p> <p>party [9] 11/6 15/17 18/5 18/6 30/23 31/12 32/10 40/1 40/2</p> <p>passed [1] 7/10</p> <p>pay [2] 25/18 30/24</p>	<p>PC [2] 2/3 10/1</p> <p>PEGGY [3] 1/25 41/4 41/17</p> <p>Pension [1] 20/9</p> <p>perfect [1] 8/10</p> <p>perhaps [1] 5/17</p> <p>perimeter [1] 6/11</p> <p>perplexed [1] 32/17</p> <p>person [1] 25/17</p> <p>personally [1] 11/11</p> <p>perspective [1] 32/25</p> <p>physical [2] 26/14 26/17</p> <p>pickle [1] 35/18</p> <p>pierced [1] 11/12</p> <p>PLACE [1] 41/7</p> <p>placed [3] 13/8 13/12 13/14</p> <p>plaintiff [3] 1/10 15/20 36/22</p> <p>plaintiffs [8] 3/15 13/12 15/16 33/1 36/11 37/4 39/10 40/1</p> <p>planned [1] 25/11</p> <p>pled [1] 4/20</p> <p>Plus [1] 40/4</p> <p>point [6] 7/11 10/11 15/23 16/4 17/19 22/24</p> <p>pointed [3] 6/6 23/1 35/6</p> <p>points [1] 7/6</p> <p>portion [2] 26/14 26/17</p> <p>position [3] 23/17 26/1 29/5</p> <p>possible [1] 9/4</p> <p>potentially [1] 13/17</p> <p>power [2] 24/6 38/17</p> <p>powers [2] 6/10 35/12</p> <p>pregnant [1] 18/21</p> <p>prepare [1] 40/5</p> <p>prepared [1] 26/2</p> <p>present [1] 6/23</p> <p>presumably [1] 5/1</p> <p>pretend [1] 11/15</p> <p>pretending [1] 11/8</p> <p>pretty [2] 4/1 37/17</p>	<p>prevailed [3] 35/19 35/19 35/24</p> <p>primarily [1] 39/4</p> <p>prior [3] 31/5 32/18 34/21</p> <p>probably [1] 11/11</p> <p>problem [2] 4/19 27/24</p> <p>proceeding [2] 30/20 31/3</p> <p>proceedings [5] 30/25 39/22 40/14 41/6 41/12</p> <p>proclaim [1] 11/6</p> <p>professional [4] 10/1 10/3 10/6 10/22</p> <p>promote [1] 33/11</p> <p>proper [1] 10/25</p> <p>properties [3] 20/1 36/16 37/4</p> <p>property [16] 4/7 5/3 8/3 13/14 17/14 19/4 19/7 21/15 22/17 23/19 23/20 23/22 23/23 24/3 29/14 38/21</p> <p>proposed [2] 31/6 40/5</p> <p>proposition [3] 23/19 29/6 34/14</p> <p>protection [1] 11/13</p> <p>provide [3] 5/19 5/20 5/22</p> <p>provided [3] 5/9 11/19 19/1</p> <p>provides [1] 6/14</p> <p>provision [15] 11/18 14/21 14/22 22/24 23/4 28/8 28/12 29/20 30/17 32/11 32/12 32/19 32/20 32/21 39/19</p> <p>provisions [13] 5/19 12/15 15/7 20/3 22/2 24/12 28/22 28/25 29/4 29/6 29/11 30/23 32/20</p> <p>pulling [1] 27/11</p> <p>purpose [28] 5/13 6/14 10/12 10/15 14/10 19/24 26/5 26/10 27/9 27/15 28/7 28/21 28/22 29/7 30/7 30/9 32/1 32/5 34/3 34/5</p>
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(6) off - purpose

(6) off - purpose

<b>P</b>	8/10	restraint [1] 31/4	35/3 38/12	23/14 23/16 24/9
purpose... [8]	recognize [1] 8/22	restrictions [8] 8/2	scenario [2] 17/9	24/18 25/19 25/22
34/15 35/9 35/14	recollection [1]	12/17 14/19 20/18	18/12	26/1 28/6 28/7
38/12 39/5 39/9	17/8	21/8 22/16 30/22	second [3] 9/5	28/15 29/4 29/25
39/12 39/21	record [10] 3/13	39/24	16/8 16/23	31/13 32/11 35/5
pursuant [19] 7/12	7/22 18/8 23/16	result [2] 10/5	Secondly [1] 39/10	35/15 37/11 38/17
9/14 11/17 12/3	27/1 38/5 38/18	39/5	Secretary [2] 9/25	40/1 40/3 40/5
12/5 13/4 14/18	38/25 39/16 41/11	review [1] 40/7	10/23	some [4] 6/10 6/11
15/6 15/7 19/8	recorded [6] 4/6	revoked [1] 12/6	section [2] 30/5	6/11 7/6
30/17 31/11 31/17	4/25 6/21 7/13	RHASKIN [1] 2/14	34/10	somehow [1]
31/25 32/19 32/21	37/10 38/21	RICHARD [2] 2/11	see [6] 19/18 19/19	37/14
33/23 39/6 39/20	reentry [1] 12/24	3/17	27/6 34/23 36/16	something [1]
pursued [1] 4/23	reference [3]	right [41] 3/10	37/2	37/8
pursuit [1] 11/15	33/21 35/4 35/6	4/14 4/17 4/21 5/12	seen [1] 34/9	sooner [1] 8/13
put [1] 39/24	referred [2] 20/9	5/22 5/24 6/8 7/10	sell [1] 21/20	sorry [5] 7/17 7/24
	21/10	8/11 8/20 9/11 9/15	SENET [1] 2/11	20/14 27/17 30/15
	refused [1] 7/25	9/23 10/4 10/22	sense [1] 14/9	sorts [1] 29/1
<b>Q</b>	regard [1] 39/21	11/1 13/5 13/10	separate [2] 15/6	sought [2] 5/7
question [8] 4/15	regarding [3]	13/24 15/17 16/13	26/15	5/14
9/21 14/16 16/10	17/11 36/1 38/23	17/15 18/14 19/21	served [1] 33/10	specific [4] 5/7
30/12 36/3 37/7	register [1] 9/25	20/4 20/16 20/20	set [5] 9/8 17/13	17/14 28/8 35/12
38/13	registered [1]	21/2 21/18 21/19	22/9 28/19 35/12	specifically [18]
questions [1] 7/1	10/23	23/9 24/2 25/12	sets [5] 21/6 23/4	5/21 6/1 6/7 12/18
quibble [1] 25/3	regulations [2]	27/11 32/15 33/2	30/17 37/3 39/7	12/22 15/14 17/11
quite [1] 16/11	28/2 39/7	34/10 34/17 36/25	several [7] 8/21	17/13 19/24 22/12
	related [2] 17/12	40/8	26/11 29/17 29/18	24/23 24/24 28/1
<b>R</b>	36/8	rights [2] 22/6	29/19 29/22 29/25	31/5 31/10 36/20
raised [2] 7/6	relates [3] 23/18	33/12	SFR [2] 13/16 14/1	37/3 39/21
10/11	30/15 31/14	RMR [2] 1/25	shall [3] 12/25	stands [3] 23/19
rammed [1] 8/14	relegated [1]	41/17	24/4 30/24	29/5 34/14
rather [1] 29/18	35/11	Rosemere [5] 8/4	shield [3] 9/17	starts [1] 34/10
read [15] 7/22	relied [1] 12/15	8/4 19/13 24/10	12/7 28/14	state [10] 6/1 9/25
12/22 13/3 17/16	relief [5] 5/8 5/9	34/14	SHORTHAND [1]	10/23 10/24 19/12
17/16 22/1 22/7	6/16 9/8 33/20	Rs [52]	41/4	20/11 21/12 38/9
24/20 24/21 26/20	rely [1] 5/24	ruling [1] 32/18	should [3] 28/8	41/2 41/14
29/11 30/14 34/11	remember [1]		29/4 32/15	states [4] 19/2
36/8 40/4	3/25	<b>S</b>	Show [2] 19/10	20/8 34/25 35/9
reading [8] 21/7	render [1] 12/25	said [5] 14/1 15/10	21/24	statute [9] 9/14
23/2 24/9 25/13	reply [1] 5/16	16/5 27/20 41/7	slc [1] 27/7	11/18 11/19 12/4
28/18 30/4 31/25	REPORTED [1]	same [1] 13/19	sign [1] 7/25	27/9 27/22 28/5
36/12	1/25	savings [3] 13/3	significantly [2]	29/5 39/7
real [9] 5/2 16/24	Reporter [2] 18/19	13/9 13/17	5/20 5/20	statutory [2] 28/3
17/1 25/15 25/20	41/4	saw [1] 13/19	simple [4] 20/1	29/24
25/20 25/24 27/2	REPORTER'S [2]	say [19] 5/16 7/21	20/10 21/11 23/17	STENOTYPE [2]
38/14	1/14 41/1	8/19 9/24 17/9	simply [3] 6/9 13/3	41/5 41/8
realized [1] 8/8	represent [1] 4/9	18/25 19/9 19/25	28/24	steps [1] 10/2
reality [9] 4/16	request [1] 15/4	22/14 24/14 24/22	single [1] 8/15	still [5] 14/4 28/23
4/19 5/5 5/17 9/23	requirement [1]	24/23 24/24 25/4	sir [4] 3/23 33/14	29/1 30/8 32/2
12/14 14/8 19/19	26/3	26/22 32/11 36/21	33/16 37/20	STREET [1] 2/4
35/16	res [1] 33/18	38/11 38/12	situated [2] 20/10	subdivider [2]
reason [5] 6/22	respect [5] 6/14	saying [3] 6/16	21/11	20/10 21/11
7/21 12/24 31/1	14/7 24/13 25/16	10/1 27/16	slandering [1]	subdividing [1]
37/7	28/17	says [18] 6/8	6/25	21/15
recitals [3] 19/9	responsible [1]	13/11 18/7 18/11	small [1] 26/11	subdivision [5]
20/6 20/14	11/11	18/25 21/7 22/5	so [33] 2/4 4/18	21/17 23/18 24/5
recitation [1]	rest [1] 6/16	23/21 27/14 28/1	4/25 6/4 6/19 8/5	24/5 38/8
26/24	restrain [2] 30/21	28/6 32/9 32/10	13/2 17/18 18/1	subdivisions [1]
recognition [1]	39/23	33/22 34/5 34/19	20/21 21/14 23/3	24/13

(7) purpose... - subdivisions

(7) purpose... - subdivisions



<p><b>S</b></p> <p><b>subject</b> [4] 16/7 28/22 29/22 30/1</p> <p><b>subjects</b> [1] 25/11</p> <p><b>submit</b> [1] 40/8</p> <p><b>SUBSCRIBED</b> [1] 41/13</p> <p><b>substantive</b> [1] 5/18</p> <p><b>such</b> [6] 9/2 12/24 28/25 30/24 30/25 34/4</p> <p><b>sue</b> [3] 5/23 5/23 10/19</p> <p><b>sued</b> [4] 6/5 7/9 11/19 12/3</p> <p><b>suit</b> [1] 10/10</p> <p><b>SUITE</b> [1] 2/12</p> <p><b>summarizes</b> [1] 5/17</p> <p><b>summary</b> [15] 1/15 1/16 1/17 3/19 5/6 5/19 6/6 6/7 6/20 6/22 12/19 33/19 33/22 36/9 38/24</p> <p><b>SUPERVISION</b> [1] 41/9</p> <p><b>support</b> [4] 5/5 29/5 35/22 37/13</p> <p><b>Supreme</b> [5] 4/23 9/11 15/9 16/5 16/19</p> <p><b>sure</b> [7] 15/1 16/11 24/1 30/13 37/6 37/8 40/6</p> <p><b>sword</b> [3] 9/17 12/7 28/14</p>	<p><b>that's</b> [37] 5/11 6/12 6/16 10/8 10/14 11/8 12/9 12/18 12/18 13/3 13/4 13/6 13/10 14/13 14/21 14/22 16/1 16/9 16/15 17/4 17/5 17/7 17/15 18/5 18/11 20/22 21/1 21/25 25/10 25/23 25/25 27/5 27/24 28/12 28/13 32/10 40/3</p> <p><b>their</b> [1] 15/2</p> <p><b>them</b> [5] 4/10 7/2 20/4 21/20 35/20</p> <p><b>themselves</b> [2] 35/18 38/7</p> <p><b>then</b> [14] 6/3 9/6 17/4 19/19 21/20 23/8 23/8 23/22 24/16 35/8 36/9 36/13 36/23 40/7</p> <p><b>theory</b> [1] 4/12</p> <p><b>there</b> [21] 4/14 7/11 8/5 9/17 11/17 12/3 14/6 15/4 17/11 19/14 22/19 26/11 33/18 34/3 34/5 34/11 34/17 35/4 37/20 38/15 39/25</p> <p><b>there's</b> [11] 4/16 13/13 17/19 23/3 26/8 28/10 30/9 36/19 37/5 37/12 38/13</p> <p><b>THEREAFTER</b> [1] 41/7</p> <p><b>Therefore</b> [1] 12/3</p> <p><b>thereof</b> [1] 30/23</p> <p><b>these</b> [10] 8/14 20/23 22/15 23/12 24/12 31/6 35/15 37/11 38/16 38/18</p> <p><b>they</b> [49]</p> <p><b>they'll</b> [6] 22/8 22/9 22/12 22/12 24/24 25/1</p> <p><b>they're</b> [3] 21/13 21/14 38/19</p> <p><b>thing</b> [4] 8/19 13/19 34/4 37/16</p> <p><b>things</b> [6] 5/9 11/13 17/13 29/1 31/2 31/15</p> <p><b>think</b> [16] 5/16 7/7 7/23 14/6 17/19</p>	<p>25/6 26/8 28/10 28/12 29/3 29/8 29/11 37/17 38/25 39/14 39/16</p> <p><b>thinks</b> [1] 6/2</p> <p><b>this</b> [85]</p> <p><b>those</b> [10] 11/12 17/12 18/13 18/22 24/13 29/1 29/11 35/11 36/8 37/2</p> <p><b>though</b> [1] 18/10</p> <p><b>thought</b> [2] 13/16 27/21</p> <p><b>three</b> [2] 15/6 32/20</p> <p><b>throat</b> [1] 8/15</p> <p><b>through</b> [12] 10/2 19/13 20/22 23/12 24/6 24/10 24/15 25/23 25/25 27/5 34/13 38/8</p> <p><b>throughout</b> [1] 34/24</p> <p><b>THURSDAY</b> [2] 1/22 3/1</p> <p><b>time</b> [4] 7/11 16/4 19/19 41/7</p> <p><b>TIMOTHY</b> [3] 1/19 10/1 10/21</p> <p><b>title</b> [3] 6/24 6/25 28/4</p> <p><b>together</b> [1] 38/8</p> <p><b>too</b> [2] 24/21 40/12</p> <p><b>took</b> [4] 7/21 8/21 30/14 41/5</p> <p><b>TRANSCRIBED</b> [1] 41/8</p> <p><b>TRANSCRIPT</b> [2] 1/14 41/10</p> <p><b>trial</b> [1] 9/6</p> <p><b>TRO</b> [1] 3/25</p> <p><b>TRUDI</b> [2] 1/15 36/22</p> <p><b>true</b> [4] 18/15 21/25 32/12 41/10</p> <p><b>truly</b> [2] 7/14 12/14</p> <p><b>trust</b> [11] 1/9 1/12 1/16 3/8 3/8 3/17 13/2 14/25 15/2 20/9 21/10</p> <p><b>trying</b> [4] 17/1 17/18 36/12 36/14</p> <p><b>TURNER</b> [3] 2/11 20/9 21/10</p> <p><b>twice</b> [1] 10/16</p> <p><b>two</b> [6] 7/25 20/2 29/11 31/2 31/14</p>	<p>38/16</p> <p><b>typed</b> [1] 37/10</p> <p><b>types</b> [1] 18/13</p> <p><b>TYPEWRITING</b> [1] 41/8</p> <p><b>U</b></p> <p><b>unanimous</b> [1] 7/16</p> <p><b>under</b> [23] 5/1 10/13 12/5 14/14 15/10 16/1 16/4 19/1 22/15 23/4 25/11 26/3 26/6 26/13 26/21 30/4 31/7 34/15 35/10 35/23 36/17 39/19 41/9</p> <p><b>underlying</b> [7] 4/20 5/7 33/2 33/4 35/20 36/11 39/11</p> <p><b>underneath</b> [1] 20/16</p> <p><b>understand</b> [9] 6/18 8/17 16/25 17/4 32/24 35/17 38/2 38/4 38/22</p> <p><b>understanding</b> [4] 3/18 7/15 12/17 28/3</p> <p><b>unilaterally</b> [1] 37/9</p> <p><b>unit</b> [34] 14/14 16/2 16/19 16/20 18/4 18/9 19/1 19/5 19/7 19/10 19/15 20/24 22/13 24/6 24/25 25/2 25/17 26/9 26/14 26/16 26/24 26/25 28/17 29/23 30/3 30/6 30/11 34/15 34/19 34/22 35/1 35/4 35/10 38/11</p> <p><b>units</b> [9] 14/12 16/5 16/6 16/15 19/20 23/5 38/14 38/16 38/18</p> <p><b>unless</b> [2] 10/2 10/22</p> <p><b>up</b> [9] 3/7 4/23 8/22 17/8 25/6 27/11 31/1 34/2 37/17</p> <p><b>upon</b> [2] 12/15 32/7</p> <p><b>use</b> [2] 12/7 17/24</p> <p><b>using</b> [1] 10/21</p>	<p><b>V</b></p> <p><b>VEGAS</b> [5] 2/4 2/13 3/1 20/11 21/12</p> <p><b>vehicle</b> [1] 34/7</p> <p><b>veil</b> [1] 11/12</p> <p><b>versus</b> [3] 3/8 16/1 17/21</p> <p><b>very</b> [6] 16/19 20/15 22/10 28/22 39/17 39/17</p> <p><b>view</b> [1] 25/14</p> <p><b>violated</b> [1] 6/2</p> <p><b>violation</b> [1] 12/23</p> <p><b>violations</b> [3] 30/21 31/4 39/23</p> <p><b>virtue</b> [4] 22/18 25/17 28/14 28/24</p> <p><b>voting</b> [1] 29/1</p>
<p><b>T</b></p> <p><b>take</b> [2] 11/14 16/18</p> <p><b>taking</b> [1] 26/1</p> <p><b>talked</b> [1] 12/22</p> <p><b>talking</b> [9] 15/13 19/20 19/21 19/23 25/23 28/1 31/22 31/24 36/21</p> <p><b>talks</b> [5] 24/6 31/1 31/2 31/10 35/13</p> <p><b>tell</b> [5] 20/4 22/3 22/5 22/8 22/14</p> <p><b>than</b> [2] 8/19 29/19</p> <p><b>Thank</b> [3] 7/4 40/9 40/10</p> <p><b>that</b> [168]</p>	<p><b>that's</b> [37] 5/11 6/12 6/16 10/8 10/14 11/8 12/9 12/18 12/18 13/3 13/4 13/6 13/10 14/13 14/21 14/22 16/1 16/9 16/15 17/4 17/5 17/7 17/15 18/5 18/11 20/22 21/1 21/25 25/10 25/23 25/25 27/5 27/24 28/12 28/13 32/10 40/3</p> <p><b>their</b> [1] 15/2</p> <p><b>them</b> [5] 4/10 7/2 20/4 21/20 35/20</p> <p><b>themselves</b> [2] 35/18 38/7</p> <p><b>then</b> [14] 6/3 9/6 17/4 19/19 21/20 23/8 23/8 23/22 24/16 35/8 36/9 36/13 36/23 40/7</p> <p><b>theory</b> [1] 4/12</p> <p><b>there</b> [21] 4/14 7/11 8/5 9/17 11/17 12/3 14/6 15/4 17/11 19/14 22/19 26/11 33/18 34/3 34/5 34/11 34/17 35/4 37/20 38/15 39/25</p> <p><b>there's</b> [11] 4/16 13/13 17/19 23/3 26/8 28/10 30/9 36/19 37/5 37/12 38/13</p> <p><b>THEREAFTER</b> [1] 41/7</p> <p><b>Therefore</b> [1] 12/3</p> <p><b>thereof</b> [1] 30/23</p> <p><b>these</b> [10] 8/14 20/23 22/15 23/12 24/12 31/6 35/15 37/11 38/16 38/18</p> <p><b>they</b> [49]</p> <p><b>they'll</b> [6] 22/8 22/9 22/12 22/12 24/24 25/1</p> <p><b>they're</b> [3] 21/13 21/14 38/19</p> <p><b>thing</b> [4] 8/19 13/19 34/4 37/16</p> <p><b>things</b> [6] 5/9 11/13 17/13 29/1 31/2 31/15</p> <p><b>think</b> [16] 5/16 7/7 7/23 14/6 17/19</p>	<p>25/6 26/8 28/10 28/12 29/3 29/8 29/11 37/17 38/25 39/14 39/16</p> <p><b>thinks</b> [1] 6/2</p> <p><b>this</b> [85]</p> <p><b>those</b> [10] 11/12 17/12 18/13 18/22 24/13 29/1 29/11 35/11 36/8 37/2</p> <p><b>though</b> [1] 18/10</p> <p><b>thought</b> [2] 13/16 27/21</p> <p><b>three</b> [2] 15/6 32/20</p> <p><b>throat</b> [1] 8/15</p> <p><b>through</b> [12] 10/2 19/13 20/22 23/12 24/6 24/10 24/15 25/23 25/25 27/5 34/13 38/8</p> <p><b>throughout</b> [1] 34/24</p> <p><b>THURSDAY</b> [2] 1/22 3/1</p> <p><b>time</b> [4] 7/11 16/4 19/19 41/7</p> <p><b>TIMOTHY</b> [3] 1/19 10/1 10/21</p> <p><b>title</b> [3] 6/24 6/25 28/4</p> <p><b>together</b> [1] 38/8</p> <p><b>too</b> [2] 24/21 40/12</p> <p><b>took</b> [4] 7/21 8/21 30/14 41/5</p> <p><b>TRANSCRIBED</b> [1] 41/8</p> <p><b>TRANSCRIPT</b> [2] 1/14 41/10</p> <p><b>trial</b> [1] 9/6</p> <p><b>TRO</b> [1] 3/25</p> <p><b>TRUDI</b> [2] 1/15 36/22</p> <p><b>true</b> [4] 18/15 21/25 32/12 41/10</p> <p><b>truly</b> [2] 7/14 12/14</p> <p><b>trust</b> [11] 1/9 1/12 1/16 3/8 3/8 3/17 13/2 14/25 15/2 20/9 21/10</p> <p><b>trying</b> [4] 17/1 17/18 36/12 36/14</p> <p><b>TURNER</b> [3] 2/11 20/9 21/10</p> <p><b>twice</b> [1] 10/16</p> <p><b>two</b> [6] 7/25 20/2 29/11 31/2 31/14</p>	<p>38/16</p> <p><b>typed</b> [1] 37/10</p> <p><b>types</b> [1] 18/13</p> <p><b>TYPEWRITING</b> [1] 41/8</p> <p><b>U</b></p> <p><b>unanimous</b> [1] 7/16</p> <p><b>under</b> [23] 5/1 10/13 12/5 14/14 15/10 16/1 16/4 19/1 22/15 23/4 25/11 26/3 26/6 26/13 26/21 30/4 31/7 34/15 35/10 35/23 36/17 39/19 41/9</p> <p><b>underlying</b> [7] 4/20 5/7 33/2 33/4 35/20 36/11 39/11</p> <p><b>underneath</b> [1] 20/16</p> <p><b>understand</b> [9] 6/18 8/17 16/25 17/4 32/24 35/17 38/2 38/4 38/22</p> <p><b>understanding</b> [4] 3/18 7/15 12/17 28/3</p> <p><b>unilaterally</b> [1] 37/9</p> <p><b>unit</b> [34] 14/14 16/2 16/19 16/20 18/4 18/9 19/1 19/5 19/7 19/10 19/15 20/24 22/13 24/6 24/25 25/2 25/17 26/9 26/14 26/16 26/24 26/25 28/17 29/23 30/3 30/6 30/11 34/15 34/19 34/22 35/1 35/4 35/10 38/11</p> <p><b>units</b> [9] 14/12 16/5 16/6 16/15 19/20 23/5 38/14 38/16 38/18</p> <p><b>unless</b> [2] 10/2 10/22</p> <p><b>up</b> [9] 3/7 4/23 8/22 17/8 25/6 27/11 31/1 34/2 37/17</p> <p><b>upon</b> [2] 12/15 32/7</p> <p><b>use</b> [2] 12/7 17/24</p> <p><b>using</b> [1] 10/21</p>	<p><b>V</b></p> <p><b>VEGAS</b> [5] 2/4 2/13 3/1 20/11 21/12</p> <p><b>vehicle</b> [1] 34/7</p> <p><b>veil</b> [1] 11/12</p> <p><b>versus</b> [3] 3/8 16/1 17/21</p> <p><b>very</b> [6] 16/19 20/15 22/10 28/22 39/17 39/17</p> <p><b>view</b> [1] 25/14</p> <p><b>violated</b> [1] 6/2</p> <p><b>violation</b> [1] 12/23</p> <p><b>violations</b> [3] 30/21 31/4 39/23</p> <p><b>virtue</b> [4] 22/18 25/17 28/14 28/24</p> <p><b>voting</b> [1] 29/1</p>

(8) subject - well

(8) subject - well



<b>W</b>	41/13			
<b>well... [4]</b> 31/20	<b>won't [1]</b> 28/15			
32/23 34/18 37/23	<b>wondered [1]</b> 4/13			
<b>went [1]</b> 7/22	<b>wonderful [1]</b>			
<b>were [24]</b> 3/24 5/8	11/12			
5/21 6/5 7/6 7/13	<b>word [2]</b> 25/7 34/4			
8/12 8/20 12/6 15/6	<b>words [1]</b> 29/19			
15/13 15/16 15/19	<b>would [28]</b> 7/17			
15/19 16/3 17/10	8/3 8/13 9/7 9/9			
17/13 31/16 31/17	10/25 11/2 11/6			
36/10 39/12 39/24	11/10 11/11 11/20			
40/14 41/8	12/20 13/17 13/21			
<b>weren't [10]</b> 4/8	14/23 16/12 17/14			
8/21 8/23 18/10	22/7 29/17 29/21			
32/14 33/1 33/3	31/25 32/3 33/20			
39/10 39/11 40/2	35/23 36/14 36/17			
<b>what [42]</b>	37/13 37/14			
<b>what's [4]</b> 13/15	<b>wouldn't [2]</b> 11/13			
24/5 24/24 24/25	32/12			
<b>whatever [2]</b>	<b>wrong [1]</b> 7/11			
11/16 22/6	<b>Y</b>			
<b>when [8]</b> 11/4	<b>yeah [7]</b> 14/5 21/3			
12/22 14/16 19/18	27/18 27/25 33/17			
28/3 36/21 37/9	34/12 34/18			
40/4	<b>years [2]</b> 8/21 32/2			
<b>where [8]</b> 7/25	<b>yes [8]</b> 3/9 3/21			
17/5 19/10 19/25	3/24 15/13 20/19			
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<b>whether [6]</b> 8/25	29/23 30/1 38/4			
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<b>WITNESS [1]</b>				

(9) well... - your

(9) well... - your



**MRCN**  
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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, AND THE LYTLE  
TRUST'S REPLY TO OPPOSITION TO  
MOTION FOR RECONSIDERATION OR,  
IN THE ALTERNATIVE, MOTION TO  
ALTER OR AMEND JUDGMENT**

Hearing Date: June 29, 2017  
Hearing Time: 9:00 a.m.

Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, and THE LYTLE TRUST (the  
"Lytles") submit the following Reply to Plaintiffs' Opposition to the Motion for Reconsideration.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

There is no question that this Court did not consider, and no evidence was presented, that the Lytle Trust committed slander of title. No evidence was presented either at the hearing of this matter or prior thereto in any pleading to evidence the essential elements of malice. Accordingly, the Lytle Trust respectfully requests that the Court amend the Order to deny the Plaintiffs' Motion for Partial Summary Judgment with respect to Plaintiffs' claims for slander of title.

A bullet point examination of the facts (and evidence) provide that the Lytle Trust had a reasonable, and certainly no malicious or harassing, basis for recording the abstracts of judgment at issue in this matter:

1. On July 3, 2007, Rosemere Property Owners' Association (the "Association") recorded the Amended CC&Rs on the Lytle Trust's property.
2. The Lytle Trust, as required by NRS 38.310, then filed an arbitration demand to remove the Amended CC&Rs and quiet title to its property.
3. On May 4, 2009, the arbitrator in that matter ruled against the Lytle Trust, and declared the Amended CC&Rs valid and enforceable.
4. On June 26, 2009, the Lytle Trust filed an action for trial de novo in District Court, seeking again to quiet title and declare the Amended CC&Rs invalid.
5. The Lytle Trust filed this action against the Association, not the individual owners, per Article 16.1 of the Amended CC&Rs, which provided:

**16.1 Enforcement:** The Association and any Owner shall have the right to enforce by any proceedings at law or in equity, each covenant, condition, restriction and reservation now or hereafter imposed by the provisions of the Governing Documents. **Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of the Governing Documents.** Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation contained herein shall not be deemed a waiver or the right to do so thereafter. [Emphasis added.]

6. On July 30, 2013, Judge Leavitt ruled in the Lytle Trust's favor and declared the Amended CC&Rs void and declared the Lytle Trust as the prevailing party.

1 7. The Association appealed Judge Leavitt's Order.

2 8. On November 20, 2015, the Supreme Court affirmed Judge Leavitt's Order.

3 9. Thereafter, Judge Leavitt awarded the Lytle Trust damages, costs and attorneys' fees  
4 in the sum of \$361,238.59, pursuant to Original CC&Rs, the Amended CC&Rs, and  
5 statute. See Order Re Attorneys' Fees, Exhibit 1.

6 10. The Lytle Trust recorded its abstracts of judgment pursuant to the Amended CC&Rs  
7 as well as those provisions within NRS Chapter 116 that apply to limited purpose  
8 associations.

9 **II. ARGUMENT**

10 **A. The Amended CC&Rs Provided The Lytle Trust With A Basis To Record The**  
11 **Abstracts Of Judgment**

12 Judge Leavitt, in her award of attorneys' fees, properly found that the Lytle Trust could look  
13 to the Amended CC&Rs as basis for such an award, even though the document had been declared  
14 void ab initio. Indeed, this matter was thoroughly briefed before Judge Leavitt.

15 The Nevada Supreme Court in *Mackintosh v. Cal. Fed. Sav. & Loan Ass'n.*, 13 Nev. 393,  
16 405-406, 935 P.2d 1154, 1162, and citing a Florida Supreme Court case, *Katz v. Van Der Noord*, 546  
17 So. 2d 1047, 1049 (Fla. 1989), states as follows:

18 "We hold that when parties enter into a contract and litigation later ensues over that  
19 contract, attorney's fees may be recovered under a prevailing-party attorney's fee  
20 provision contained therein even though the contract is rescinded or held to be  
21 unenforceable. The legal fictions which accompany a judgment of rescission do not  
change the fact that a contract did exist. It would be unjust to preclude the prevailing  
party to the dispute over the contract which led to its rescission from recovering the  
very attorney's fees which were contemplated by that contract."

22 The Lytle Trust, in filing the underlying lawsuit, followed the mandates of Section 16.1 of  
23 the Amended CC&Rs (cited above), and the Association fought steadfastly to maintain the sanctity  
24 of that document. Hence, the Court found that the Lytle Trust was due its attorneys' fees under the  
25 Amended CC&Rs. See Order Re: Attorneys' Fees, Exhibit 1.

26 The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. See Opposition to  
27 Motion for Summary Judgment, Amended CC&Rs, RJN, Exhibit I at Article I. The Amended  
28 CC&Rs define the association pursuant to the Uniform Common-Interest Ownership Act. *Id.* at 1.1.

1 The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.*  
 2 at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116).

3 NRS 116.3117, in turn, provides the express mechanism of foreclosure against Plaintiffs via  
 4 a lien or judgment against the Association. It states as follows:

5 1. In a condominium or planned community:

6 (a) Except as otherwise provided in paragraph (b), a judgment for money against the  
 7 association, if a copy of the docket or an abstract or copy of the judgment is recorded,  
 8 is not a lien on the common elements, but is a lien in favor of the judgment lienholder  
 9 against all of the other real property of the association and all of the units in the  
 10 common-interest community at the time the judgment was entered. No other property  
 11 of a unit's owner is subject to the claims of creditors of the association.

12 NRS 116.3117.

13 The lien and judgments were created under the Amended CC&Rs, and the Lytle Trust had  
 14 the right to collect under the lien and judgment pursuant to the Amended CC&Rs, in the same  
 15 manner that the Lytle Trust was awarded that very same judgment. Hence, the totality of Chapter  
 16 116 was and remains available as an avenue for collection.

17 Further, the Amended CC&Rs utilize their own definitions that would make the Plaintiffs'  
 18 property subject to abstracts of judgment. Section 1.30 provides the definition of "Lot," which, by  
 19 definition, includes all real property in the Association, including individual lots, residences, and any  
 20 improvements constructed thereon. *See* Opposition to Motion for Summary Judgment, Amended  
 21 CC&Rs, RJN, Exhibit I at Section 1.30. Section 1.38 of the Amended CC&Rs defines "Property" as  
 22 including all property within the Association. *Id.* at 1.38.

23 As set forth in *MacKintosh*, "the legal fictions which accompany a judgment of recession do  
 24 not change the fact that a contract did exist." In this case, the Amended CC&Rs existed and were in  
 25 full force and effect from July 2007 through 2013. Lamothe and Boulden supported the Amended  
 26 CC&Rs and supported the Association's nearly \$500,000.00 defense of the Amended CC&Rs  
 27 against the Lytle Trust's meritorious challenge by contributing over \$90,000.00 to the cause. It was  
 28 not until 2013 when the Association ceased as a full blown unit owners' association and was  
 declared a limited purpose association. During the time when the Amended CC&Rs were recorded,



1 the Association was a unit owners' association, and the Lytle Trust was subject to the entirety of The  
 2 Uniform Common Interest Development Act (NRS Chapter 116) and the Amended CC&Rs. The  
 3 Lytle Trust was then awarded a judgment, with fees and costs, pursuant to the Amended CC&Rs and  
 4 should also be able to collect the judgment pursuant to the Amended CC&Rs. Had the Lytle Trust  
 5 not prevailed, the Amended CC&Rs would still be in place and the Association would still be a full  
 6 blown unit owners' association.

7 **B. Those Provisions Of Chapter 116 Applicable To Limited Purpose Associations**  
 8 **Provided The Lytle Trust With A Reasonable Basis To Record The Abstracts Of**  
 9 **Judgment**

10 While we do not wish to burden this Court with a re-litigation of the issues, the Lytle Trust  
 11 steadfastly maintains that the language of Chapter 116 applicable to limited purpose associations (as  
 12 well as all other types of common interest communities) provides basis for the recording of the  
 13 abstracts of judgment. Within the definition section of Chapter 116, NRS 116.021 defines a  
 14 "common interest community" as all "real estate described in a declaration with respect to which a  
 15 person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate  
 16 taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to,  
 17 common elements, other units or other real estate described in that declaration."

18 *A limited purpose association is a type of common interest community, thus its inclusion*  
 19 *within Chapter 116.*

20 Further, NRS 116.093 defines a "unit" as the "physical portion of the common-interest  
 21 community designated for separate ownership or occupancy..." Rosemere Estates, like every other  
 22 common interest community, has units – in this case nine (9) units. The association, or common  
 23 interest community, includes each and every unit in the community, including those owned by third  
 24 parties, such as Plaintiffs.

25 Based on the foregoing, the Lytle Trust certainly had reasonable grounds for recording the  
 26 abstracts of judgment, and indeed, the Lytle Trust has never wavered from its dedication to this  
 27 reasoning.

28 ///



1           **C.     There Is No Evidence Of Malice In This Case.**

2           As set forth above and with all respect to this Court, the Lytle Trust had reasonable grounds  
3 to record the abstracts of judgments. Plaintiffs wish to convince this Court that a finding of cloud of  
4 title is akin to slander of title, and this is simply not true. There is a much higher level of culpability,  
5 specifically a finding that the Lytle Trust acted maliciously.

6           To prevail on her claim for slander of title, Plaintiffs must establish that the Lytle Trust  
7 *falsely and maliciously* recorded the abstract of judgments. *See Higgins v. Higgins*, 103 Nev. 443,  
8 445, 744 P.2d 530, 531 (1987), *see also Rowland v. Lepire*, 99 Nev. 308, 313, 662 P.2d 1332, 1335  
9 (1983) (internal citations omitted).

10          The *Rowland* case, discussed in detail in the Lytle Trust's moving papers, is directly on point  
11 for this Court's analysis. Therein, the Nevada Supreme Court reversed a District Court's ruling  
12 finding slander of title where there was no evidence to support the element of malice in a slander of  
13 title claim, even though cloud of title was present. *Rowland*, 99 Nev. at 313. The *Rowland* court  
14 found that the defendant must act with reckless disregard as to truth or falsity of a claim and must  
15 have no reasonable basis to make such claim. *Id.*

16          Here, there is no evidence that the Lytle Trust acted with malice. There are no affidavits or  
17 facts admitted as evidence, contested or uncontested, to even support this claim. Not a single fact  
18 was provided to this Court to even analyze whether malice was really an issue at all in this case. In  
19 fact, the issue was never presented at the hearing or before. It simply was never an issue in this case.

20          The Order itself is evidence enough that there are no findings to support any form of malice,  
21 oppression or fraud. There is not a single finding in this regard.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Lytle Trust respectfully requests that the Court grant the  
3 Motion and amend the Order to deny Plaintiffs' Motion for Partial Summary Judgment as to  
4 Plaintiffs claim for slander of title.

5 DATED: June 23, 2017

Respectfully Submitted,

6 GIBBS GIDEN LOCHER TURNER  
7 SENET & WITTBRODT LLP

8  
9 By: \_\_\_\_\_

10 Richard E. Haskin, Esq.  
11 Nevada State Bar # 11592  
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14 1140 N. Town Center Drive, Suite 300  
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16 Attorneys for Defendants  
17 TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE  
18 LYTLE TRUST  
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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 June 23, 2017, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, AND THE LYTLE TRUST'S REPLY TO OPPOSITION TO MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, MOTION TO ALTER OR AMEND JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.  
FOLEY & OAKS  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101

  
An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP

# **EXHIBIT “1”**

  
CLERK OF THE COURT

**ORDER**

Richard E. Haskin, Esq.  
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Bryan M. Gragg, Esq.  
Nevada State Bar # 13134  
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Attorneys for Plaintiff  
**JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE**

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

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

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

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

3 24. Except as otherwise provided herein, Subdivider or any owner or  
4 owners of any of the lots shall have the right to enforce any or all of the  
5 provisions of the covenants, conditions, and restrictions upon any other  
6 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.

7 25. Attorney's Fees: In any legal or equitable proceeding for the  
8 enforcement of or to restrain the violation of the Declaration of Covenants,  
9 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.

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

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

18 16.1(a) In the event the Association, or any Owner shall commence  
19 litigation or arbitration to enforce any of the covenants, conditions,  
20 restrictions or reservations contained in the Governing Documents, the  
21 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.

22 See Amended CC&Rs, § 16.1(a).

23 A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held  
24 unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406,  
25 935 P.2d 1154, 1162.

26 ///

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

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

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

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

17 Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Brunzell v.*  
 18 *Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349, 455 P.2d 31, 33. The Court considered all of the  
 19 factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered  
 20 and applied:

- 21 1. The qualities of the advocate, *i.e.* his ability, training and experience;
- 22 2. The character of the work done, it's difficulty, intricacy, importance, time and  
 23 skill required,;
- 24 3. The work actually performed by the attorneys;
- 25 4. The result, *i.e.* whether the attorney was successful in achieving a result of the  
 26 client.

27 The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs'  
 28 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 & WITTEBRODT

1 Therefore, the Court orders as follows:

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

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

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*Steven D. Grierson*

**ORDR**

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

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

**ORDER GRANTING MOTION TO  
ALTER OR AMEND FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

*Hearing: June 29, 2017*

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for  
Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs  
Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and  
Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their  
counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of  
Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25,  
2017.  
///

1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to  
 2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe  
 3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee  
 4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the  
 6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause  
 7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR  
 8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,  
 9 granting Plaintiffs' Motion for Partial Summary Judgment.

#### 10 **FINDINGS OF FACT**

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

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

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court  
 19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively  
 21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-  
 22 009 (the "Lytle Property").

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

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

27 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that  
 28 term is found in Section 25 of the Original CC&Rs.

1           8.     The Defendants obtained a Summary Judgment for Declaratory Relief from the  
2 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 3           a.    The Association is a limited purpose association under NRS 116.1201, is not  
4                a Chapter 116 "unit-owners' association," and is relegated to only those  
5                specific duties and powers set forth in Paragraph 21 of the Original CC&Rs  
6                and NRS 116.1201.  
7           b.    The Association did not have any powers beyond those of the "property  
8                owners committee" designation in the Original CC&Rs – simply to care for  
9                the landscaping and other common elements of Rosemere Estates as set forth  
10              in Paragraph 21 of the Original CC&Rs.  
11           c.    Consistent with the absence of a governing body, the Developer provided  
12                each homeowner the right to independently enforce the Original CC&Rs  
13                against one another.  
14           d.    The Amended and Restated CC&Rs recorded with the Clark County  
15                Recorder's Office as Instrument #20070703-0001934 (the "Amended  
16                CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

17           9.     Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the  
18 Association because it is a limited purpose association that is not a rural agricultural residential  
19 community.  
20

21           10.    After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants  
22 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up  
23 hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants'  
24 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs  
(the "Final Judgment").

25           11.    After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016,  
26 recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final  
27 Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract  
28 of Judgment").

          12.    In the First Abstract of Judgment, the Defendants listed the parcel numbers of the  
Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment  
and Final Judgment was to attach.

///

14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of Judgment listed the parcel number of the Boulden Property only as the property to which the Judgment was to attach.

12        1.     The Association is a "limited purpose association" as referenced in NRS 116.1201(2).

13           2.     As a limited purpose association, NRS 116.3117 is not applicable to the Association.

13           2.     As a limited purpose association, NRS 116.3117 is not applicable to the Association.

14           3.       As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially  
15 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have  
16 no force and effect and were declared void ab initio.

17      4.      The Plaintiffs were not parties to the Rosemere LPA Litigation.

18           5.       The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per  
19       Section 25 of the Original CC&Rs.

20           6.       The Final Judgment in favor of the Defendants is not against, and is not an obligation  
21 of the Plaintiffs.

22           7.     The Final Judgment against the Association is not an obligation or debt owed by the  
23     Plaintiffs.

24           8.       The First Abstract of Judgment recorded as Instrument #20160818-0001198 was  
25       improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe  
26       Property.

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10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was improperly recorded against the Boulden Property and constitutes a cloud against the Boulden Property.

12. The Court does not make any findings that the Defendants slandered title to Plaintiffs' properties, and this issue is left to trier of fact.

Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing therefore,

**IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for Partial Summary Judgment is **GRANTED** as to Plaintiffs' claims and causes of action for quiet title and declaratory relief, the Second and Third Causes of Action in Plaintiffs' First Amended Complaint.

**IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that Defendants' Motion for Summary Judgment is **DENIED**.

**IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Defendants improperly clouded the title to the Boulden Property.

**IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Defendants improperly clouded the title to the Lamothe Property.

**IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

///

1           **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second  
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's  
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4           **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third  
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's  
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
2 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the  
3 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the  
4 Lamothe Property.

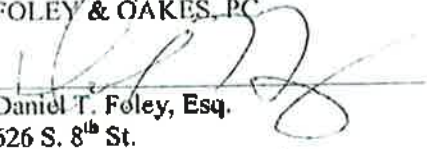
5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or  
7 their properties based upon the Rosemere LPA Litigation.

8 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
9 Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of  
10 Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within  
11 ten (10) days after the date of Notice of Entry of this Order.

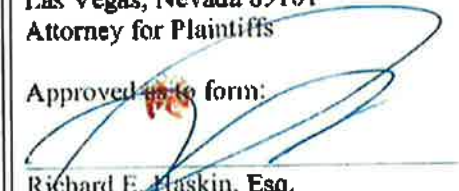
12  
13 DATED this 19<sup>th</sup> day of July 2017

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16 DISTRICT COURT JUDGE  
17 

18 Submitted by:  
19 FOLEY & OAKES, PC

20   
21 Daniel T. Foley, Esq.  
22 626 S. 8<sup>th</sup> St.  
23 Las Vegas, Nevada 89101  
24 Attorney for Plaintiffs

25 Approved as to form:

26   
27 Richard E. Haskin, Esq.  
28 Gibbs Giden Locker Turner Senet & Wittbrodt LLP  
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Las Vegas, Nevada 89144  
Attorney for Defendants

*Steven D. Grierson*

1 **NEOJ**

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

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

6 **GIBBS GIDEN LOCHER TURNER**

7 **SENET & WITTBRODT LLP**

8 1140 N. Town Center Drive, Suite 300  
9 Las Vegas, Nevada 89144-0596  
10 (702) 836-9800

11 Attorneys for Defendants

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. BOULDEN 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

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION TO ALTER OR  
AMEND FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

28 NOTICE IS HEREBY GIVEN that on the 25th day of July, 2017, an ORDER GRANTING  
MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW was  
entered in the above-entitled matter, a copy of which is attached hereto.

DATED: July 25, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: /s/ Richard E. Haskin

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144  
Attorneys for Defendants  
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE  
LYTLE TRUST

**CERTIFICATE OF MAILING**

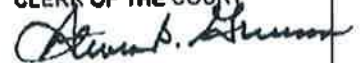
The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on July 25, 2017, she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.  
FOLEY & OAKS  
626 S. 8<sup>th</sup> Street  
Las Vegas, Nevada 89101

Attorneys for Plaintiffs **MARJORIE BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST, ETAL.**

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An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP



**ORDR**

Richard E. Haskin, Esq.  
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

**ORDER GRANTING MOTION TO  
ALTER OR AMEND FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

*Hearing: June 29, 2017*

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for  
Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs  
Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and  
Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their  
counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of  
Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25,  
2017.

///



1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to  
2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe  
3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee  
4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the  
6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause  
7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR  
8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,  
9 granting Plaintiffs' Motion for Partial Summary Judgment.

#### 10 FINDINGS OF FACT

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

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

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court  
19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively  
21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-  
22 009 (the "Lytle Property").

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

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

27 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that  
28 term is found in Section 25 of the Original CC&Rs.

8. The Defendants obtained a Summary Judgment for Declaratory Relief from the District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- a. 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.
- b. The Association did not have any powers beyond those of the "property owners committee" designation 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.
- c. Consistent with the absence of a governing body, the Developer provided each homeowner the right to independently enforce the Original CC&Rs against one another.
- d. The Amended and Restated CC&Rs recorded with the Clark County Recorder's Office as Instrument #20070703-0001934 (the "Amended CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the Association because it is a limited purpose association that is not a rural agricultural residential community.

10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants' favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs (the "Final Judgment").

11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016, recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract of Judgment").

12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment and Final Judgment was to attach.

///

14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgment referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of Judgment listed the parcel number of the Boulden Property only as the property to which the Judgment was to attach.

12      1.      The Association is a "limited purpose association" as referenced in NRS 116.1201(2).

13      2.      As a limited purpose association, NRS 116.3117 is not applicable to the Association.

13      2.      As a limited purpose association, NRS 116.3117 is not applicable to the Association.

14           3.       As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially  
15       declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have  
16       no force and effect and were declared void ab initio.

17           4.     **The Plaintiffs were not parties to the Rosemere LPA Litigation.**

18           5.       The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per  
19       Section 25 of the Original CC&Rs.

20           6.       The Final Judgment in favor of the Defendants is not against, and is not an obligation  
21       of, the Plaintiffs.

22           7.       The Final Judgment against the Association is not an obligation or debt owed by the  
23   Plaintiffs.

24           8.     The First Abstract of Judgment recorded as Instrument #20160818-0001198 was  
25     improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe  
26     Property.

27 || ||

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1           **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second  
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's  
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4           **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third  
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's  
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
2 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the  
3 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the  
4 Lamothe Property.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
6 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or  
7 their properties based upon the Rosemere LPA Litigation.

8 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the  
9 Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of  
10 Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within  
11 ten (10) days after the date of Notice of Entry of this Order.

12  
13 DATED this 17<sup>th</sup> day of July 2017

14  
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16   
DISTRICT COURT JUDGE  
17 

18 Submitted by:  
19 FOLEY & OAKES, PC

20 Daniel T. Foley, Esq.  
21 626 S. 8<sup>th</sup> St.  
22 Las Vegas, Nevada 89101  
23 Attorney for Plaintiffs

24 Approved as to form:

25 Richard E. Haskin, Esq.  
26 Gibbs Giden Locker Turner Senet & Wittbrodt LLP  
27 1140 N. Town Center Dr., Ste. 300  
28 Las Vegas, Nevada 89144  
29 Attorney for Defendants