

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

ARTEMIS EXPLORATION COMPANY, A  
NEVADA CORPORATION; HAROLD  
WYATT; AND MARY WYATT,  
Appellants,  
vs.  
RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,  
Respondent

No. 75323

Electronically Filed  
Mar 30 2018 12:22 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

### GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

### WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Fourth Department 2  
County Elko Judge Alvin R. Kacin  
District Ct. Case No. CV-C-12-175

**2. Attorney filing this docketing statement:**

Attorney Travis W. Gerber & Zachary A. Gerber Telephone (775) 777-4357  
Firm Gerber Law Offices, LLP  
Address 491 4th Street  
Elko, NV 89801

Client(s) Artemis Exploration Company, Harold Wyatt, and Mary Wyatt

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Gayle A. Kern Telephone (775) 324-5930  
Firm Kern & Associates, Ltd.  
Address 5421 Kietzke Lane, Suite 200  
Reno, NV 89511

Client(s) Ruby Lake Estates Homeowner's Association

Attorney Karen M. Ayarbe Telephone (775) 324-5930  
Firm Kern & Associates, Ltd.  
Address 5421 Kietzke Lane, Suite 200  
Reno, NV 89511

Client(s) Ruby Lake Estates Homeowner's Association

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial                    | <input checked="" type="checkbox"/> Dismissal:                                  |
| <input type="checkbox"/> Judgment after jury verdict                   | <input type="checkbox"/> Lack of jurisdiction                                   |
| <input checked="" type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                               |
| <input checked="" type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                                   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief             | <input checked="" type="checkbox"/> Other (specify): <u>Voluntary Dismissal</u> |
| <input type="checkbox"/> Grant/Denial of injunction                    | <input type="checkbox"/> Divorce Decree:  |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification         |
| <input type="checkbox"/> Review of agency determination                | <input type="checkbox"/> Other disposition (specify): _____                     |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody  
☐ Venue  
☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Artemis Exploration Company, A Nevada Corporation, Appellant, vs. Ruby Lake Estates Homeowner's Association, Respondent.  
Supreme Court No. 63338

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Case Name: Artemis Exploration Company, a Nevada Corporation, Plaintiff, vs. Ruby Lake Estates Homeowner's Association, et. al., Defendants.

Number: Case No. CV-C-12-175

Court: Department 2, Fourth Judicial District Court, Elko County, Nevada

Date of Disposition: Final Judgment, February 26, 2018.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

See attachment.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

See attached.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: See attached.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is a matter that is presumptively retained by the Supreme Court pursuant to NRAP 17 (a)(14) because it is a “[m]atter raising as a principal issue a question of statewide public importance . . . .” The Supreme Court’s decision will determine whether a subdivision with no common elements is a common-interest community merely because it has a recorded declaration, and whether a unit-owner’s association can be validly formed after the conveyance of the first lot within the subdivision.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** Feb 26, 2018

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** Mar 1, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Mar 6, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
The action was commenced in the District Court, the District Court entered a Final Judgment that resolved all claims, and the appeal is brought from the Final Judgment.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

See attached.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All Parties other than Artemis Exploration Company, Ruby Lake Estates Homeowner's Association, Harold Wyatt, and Mary Wyatt had a default entered against them because they failed to respond to the Second Amended Complaint.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

See attached.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Artemis Exploration Company, Wyatts  
Name of appellant

Zachary A. Gerber  
Name of counsel of record

March 29, 2018  
Date

Zachary A. Gerber  
Signature of counsel of record

Elko, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 30<sup>th</sup> day of March, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Kern & Associates, Ltd.  
5421 Kietzke Lane, Suite 200  
Reno, NV 89511

Dated this 30<sup>th</sup> day of March, 2018.

Madison Wallock  
Signature

## **8. Nature of action. (Continued)**

This case includes a single cause of action for declaratory judgment to determine whether Ruby Lake Estates subdivision is a common-interest community pursuant to NRS 116.021, whether RLEHOA is a valid unit-owners' association pursuant to NRS 116.3101, and whether Ruby Lake Estates Homeowner's Association has authority to levy mandatory assessments against lot owners.

Artemis Exploration Company ("Artemis") and Harold and Mary Wyatt ("Wyatts") are lot owners in Ruby Lake Estates, a rural subdivision of 51 lots that was subdivided in 1989. The recorded Declaration, Restrictions and Covenants of Ruby Lake Estates subdivision does not contain any covenant or provision for the organization of a homeowner's association or for the payment of dues or any common expenses. Ruby Lake Estates Homeowner's Association ("RLEHOA") was organized by a group of lot owners in Ruby Lake Estates in 2006, 17 years after the conveyance of the first lots. RLEHOA began assessing mandatory dues and compelling payment under threat of liens.

The matter was submitted for non-binding arbitration through the Nevada Real Estate Division pursuant to NRS 38.300 - NRS 38.360. An Arbitration Award was granted in RLEHOA's favor on February 7, 2012. Artemis filed the instant case for judicial review on March 2, 2012, pursuant to NRS 38.330(5), seeking a declaratory judgment establishing that RLEHOA is not a valid unit-owners' association and that RLEHOA is not authorized by the Declaration, Restrictions and Covenants of Ruby Lake Estates to assess or compel the payment of dues. RLEHOA filed counterclaims and a cross claim. The District Court subsequently ordered the joinder of all property owners within Ruby Lake Estates, including the Wyatts. All property owners were defaulted except for Artemis and the Wyatts, and the parties subsequently stipulated to dismiss RLEHOA's counterclaims and cross claim, which were dismissed by order entered on February 26, 2018.

Artemis and RLEHOA submitted Motions for Summary Judgment in the District Court action. The District Court denied Artemis's Motion for Summary Judgment and entered its Order Granting Defendant's Motion for Summary Judgment on February 14, 2013, in favor of RLEHOA.

In its Order Granting Defendant's Motion for Summary Judgment, the District Court concluded that Ruby Lake Estates is a common-interest community because "1) the CC&R's are 'real estate' within the meaning of NRS 116.081; and 2) the CC&Rs constitute contractual interests for which Ruby Lake Estates lot owners were obligated to pay at the time of the HOA's incorporation." The District Court also concluded that Ruby Lake Estates Homeowner's Association is a valid homeowner's association because it was not bound by NRS 116.3101(1), which requires that "[a] unit-owner's association must be organized no later than the date the first unit in the common-interest community is conveyed." NRS 116.3101 (1).

On February 26, 2018, the District Court entered its Final Judgment, from which this appeal is taken.

#### **9. Issues on appeal. (Continued)**

(1) Whether the district court erred by holding that Ruby Lake Estates is a "common-interest community" under the definition of NRS 116.021 when the declaration of Ruby Lake Estates did not obligate lot owners "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 116.021.

(2) Whether the district court erred by holding that Ruby Lake Estates Homeowner's Association is a valid homeowner's association and is not bound by NRS 116.3101(1) when the association was organized 17 years after the subdivision was created and after lots were conveyed without notice of any imposition of an association or dues.

(3) Whether the district court erred by failing to apply NRS 116.021, as amended, to this case when the 2009 legislative amendment to NRS 116.021 was intended to clarify, not change, the statute and when the district court disregarded the legislative history showing that the amendment was enacted to avoid the over-broad definition of "common-interest community" that the district court adopted.

## 12. Other issues. (Continued)

If so, explain:

This case is a substantial case of first impression and public policy because this is the first case brought on appeal to the Nevada Supreme Court regarding the application and interpretation of NRS 116.021 as amended in 2009 by the Nevada legislature. The interpretation of NRS 116.021 has been the source of controversy. In 2006, the Legislative Counsel Bureau issued a legal opinion interpreting NRS 116.021 to mean that a subdivision with CC&Rs, alone, does not constitute a "common-interest community." On August 11, 2008, an unofficial Nevada Attorney General Opinion was issued, wherein a Deputy Attorney General opined that CC&Rs—in and of themselves—constitute "real estate" or "common elements" and cause all subdivisions with CC&Rs to be regarded as a "common-interest community" even when the subdivision did not contain any common elements or property and when the declaration of the subdivision did not notice or require the payment of any shared or common expenses. The result of the Attorney General Opinion created a new obligation for unit owners to pay shared expenses that were not declared in the declaration. In the following legislative session, in 2009, the Nevada legislature rejected the Attorney General Opinion's over-broad definition of "common-interest community" and amended NRS 116.021 to expressly "clarify" that any common elements or expenses must be "described in the declaration." Despite the clarifying amendment, the Fourth Judicial District Court for the County of Elko followed the unofficial 2008 Attorney General Opinion by ruling that a "common-interest community" is created solely by recording a Declaration, which Declaration is considered to be "real estate" pursuant to NRS Chapter 116. This is an issue of first impression for the Nevada Supreme Court. En banc consideration is necessary to maintain uniformity of this court's decisions regarding the definition of "common-interest community," and to ensure that Nevada property owners "can only be bound by what [they have] notice of . . ." *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268, 849 P.2d 310, 312 (1993) (quoting *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 77 Ill.Dec. 68, 459 N.E.2d 1164 (1984)).

**22(a) Parties: (Continued)**

Artemis Exploration Company, a Nevada Corporation, Plaintiff; Ruby Lake Estates Homeowner's Association, Stephen West; Dominic Dibona; Evelyn Dibona; Michael Brennan and Marnie Brennan; Richard Beckerdite; Bill Noble and Cheryl Noble; Aaron Motes; Bill Harmon and Teri Harmon; Leroy Perks and Nora Perks; Juan La Chica and Victoria La Chica; Brad Keife; Seven K Properties; Mike Cecchi and Kris Cecchi; Wayne Cirone and Ila Cirone; Connie Stafford; Aaron Yohey; Paul Lucas; Dave Miller; James Taylor; Mike Mason and Shelly Mason; Jimmy Sargent and Ellen Sargent; Jack Healy and Yvette Healy; Bo Harmon; Michael Gowan; Phil Frank and Dorothy Frank; Joe Hernandez and Paula Hernandez; Dennis McIntyre and Valeri McIntyre; Robert Heckman and Nathan Heckman; James Vander Meer; Harold Wyatt and Mary Wyatt; Robert Clark; Beth Teitlebaum; Daniel Spilsbury and Delaine Spilsbury; Terry Hubert and Bonnie Hubert; Russell Rogers and Susan Rogers; Rocky Roa; Beverly Patterson; Dennis Cunningham; Riley Manzonie; David Norwood; David Johnson; and Does I-X, Defendants.

**23. Claims (Continued)**

Artemis Exploration Company's claims:

Declaratory Judgment: adjudicated by Summary Judgment on February 14, 2013

Damages: voluntarily dismissed on February 14, 2013

Fraud: voluntarily dismissed on February 14, 2013

Ruby Lake Estates Homeowner's Association counter-claims:

Breach of Contract and Breach of Statutory Duties: voluntarily dismissed on February 26, 2018

Negligence: voluntarily dismissed on February 26, 2018

Violations: voluntarily dismissed on February 26, 2018

Confirmation of Award of Attorneys Fees and Costs: voluntarily dismissed on February 26, 2018

Damages - Attorneys Fees: voluntarily dismissed on February 26, 2018

Declaratory Relief: voluntarily dismissed on February 26, 2018

Preliminary and Permanent Injunction: voluntarily dismissed on February 26, 2018

Ruby Lake Estates Homeowner's Association cross claim:

Declaratory Relief: voluntarily dismissed on February 26, 2018

**23. Claims (Continued)**

Artemis Exploration Company's claims:

Declaratory Judgment: adjudicated by Summary Judgment on February 14, 2013

Damages: voluntarily dismissed on February 14, 2013

Fraud: voluntarily dismissed on February 14, 2013

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Ruby Lake Estates Homeowner's Association cross claim:

Declaratory Relief: voluntarily dismissed on February 26, 2018

## INDEX TO QUESTION 27

<u>Exhibit</u>	<u>Description</u>
----------------	--------------------

The latest-filed complaint, counterclaims, cross-claims, and third-party claims:

- |   |  |
|---|--|
| 1 | Second Amended Complaint   |
| 2 | Answer to Second Amended Complaint, Counterclaim and Cross-Claim                 |
| 3 | Answer to Second Amended Counterclaim  |
| 4 | Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim |

Order of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below:

- |   |   |
|---|---|
| 5 | Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment |
| 6 | Final Judgment  |

Any other order challenged on appeal:

- |   |  |
|---|--|
| 7 | Order Denying Plaintiff's Motion for Summary Judgment  |
| 8 | Order Granting Defendant's Motion for Summary Judgment |

Notices of entry for each attached order:

- |   |  |
|---|--|
| 9 | Notice of Entry of Order/Judgment for Exhibits 6, 7, and 8 |
|---|--|

**EXHIBIT 1**

**EXHIBIT 1**

1 CASE NO. CV-C-12-175

2 DEPT. 2

3 Affirmation: This document does  
4 not contain the social security  
5 number of any person.

FILED  
2016 APR 14 PM 4:00

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY 

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8  
9 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

10 Plaintiff,  
11 vs.

12 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION, STEPHEN WEST;  
13 DOMINIC DIBONA; EVELYN DIBONA;  
MICHAEL BRENNAN AND MARNIE  
BRENNAN; RICHARD BECKERDITE;  
14 BILL NOBLE AND CHERYL NOBLE;  
AARON MOTES; BILL HARMON AND  
15 TERI HARMON; LEROY PERKS AND  
NORA PERKS; JUAN LA CHICA AND  
16 VICTORIA LA CHICA; BRAD KEIFE;  
SEVEN K PROPERTIES; MIKE CECCHI  
17 AND KRIS CECCHI; WAYNE CIRONE  
AND ILA CIRONE; CONNIE STAFFORD;  
18 AARON YOHEY; PAUL LUCAS; DAVE  
MILLER; JAMES TAYLOR; MIKE MASON  
19 AND SHELLY MASON; JIMMY SARGENT  
AND ELLEN SARGENT; JACK HEALY AND  
20 YVETTE HEALY; BO HARMON; MICHAEL  
GOWAN AND MARY ANN GOWAN;  
21 PHIL FRANK AND DOROTHY FRANK;  
JOE HERNANDEZ AND PAULA HERNANDEZ;  
22 DENNIS MCINTYRE AND VALERI MCINTYRE;  
ROBERT HECKMAN AND NATHAN HECKMAN;  
23 JAMES VANDER MEER; HAROLD WYATT AND  
MARY WYATT; ROBERT CLARK; BETH TEITELBAUM;  
24 DANIEL SPILSBURY AND DELAINE SPILSBURY;  
TERRY HUBERT AND BONNIE HUBERT; RUSSELL  
25 ROGERS AND SUSAN ROGERS AND ROCKY ROA,  
BEVERLY PATTERSON; DENNIS CUNNINGHAM;  
26 RILEY MANZONIE; DAVID NORWOOD, AND DOES I-X,

27 Defendants.  
28

**SECOND AMENDED COMPLAINT**

GERBER LAW OFFICES, LLP

491 4<sup>th</sup> Street  
Elko, Nevada 89801  
Ph. (775) 738-9758

1 RUBY LAKE ESTATES HOMEOWNER'S  
2 ASSOCIATION,

3 Counterclaimant,

4 vs.

5 ARTEMIS EXPLORATION COMPANY,  
6 a Nevada Corporation,

7 Counterdefendant.

8 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

9 Cross-Claimant,

10 vs.

11 STEPHEN WEST; DOMINIC DIBONA;  
12 EVELYN DIBONA; MICHAEL BRENNAN  
13 AND MARNIE BRENNAN; RICHARD BECKERDITE;  
14 BILL NOBLE AND CHERYL NOBLE; AARON MOTES;  
15 BILL HARMON AND TERI HARMON; LEROY PERKS  
16 AND NORA PERKS; JUAN LA CHICA AND VICTORIA  
17 LA CHICA; BRAD KEIFE; SEVEN K PROPERTIES;  
18 MIKE CECCHI AND KRIS CECCHI; WAYNE CIRONE  
19 AND ILA CIRONE; CONNIE STAFFORD; AARON YOHEY;  
20 PAUL LUCAS; DAVE MILLER; JAMES TAYLOR; MIKE  
21 MASON AND SHELLY MASON; JIMMY SARGENT AND  
22 ELLEN SARGENT; JACK HEALY AND YVETTE HEALY;  
23 BO HARMON; MICHAEL GOWAN AND MARY ANN  
24 GOWAN; PHIL FRANK AND DOROTHY FRANK; JOE  
25 HERNANDEZ AND PAULA HERNANDEZ; DENNIS  
26 MCINTYRE AND VALERI MCINTYRE; ROBERT  
27 HECKMAN AND NATHAN HECKMAN; JAMES VANDER  
28 MEER; HAROLD WYATT AND MARY WYATT; ROBERT  
CLARK; BETH TITTLEBAUM; DANIEL SPILSBURY AND  
DELAINE SPILSBURY; TERRY HUBERT AND BONNIE  
HUBERT; RUSSELL ROGERS AND SUSAN ROGERS AND  
ROCKY ROA, BEVERLY PATTERSON;  
DENNIS CUNNINGHAM; RILEY MANZONIE;  
DAVID NORWOOD, and DOES I-X,

Cross-Defendants.

Plaintiff, ARTEMIS EXPLORATION COMPANY, for its causes of action against Defendant,  
RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, alleges and complains as follows:

**JURISDICTION**

1. Plaintiff, Artemis Exploration Company, is a Nevada corporation with its principle place  
of business in Elko County, Nevada.

GERBER LAW OFFICES, LLP

491 4<sup>th</sup> Street  
Elko, Nevada 89801  
Ph (775) 732-0752

2. Artemis Exploration Company purchased Lot 6, Block G, of the Ruby Lake Estates and recorded its Deed in the office of the Recorder of Elko County, State of Nevada, in Book 860, Page 625, on June 21, 1994.

3. Artemis Exploration Company purchased Lot 2, Block H, of the Ruby Lake Estates and recorded its Deed in the office of the Recorder of Elko County, State of Nevada, as Document No. 623994, on March 9, 2010.

7 4. Defendant, Ruby Lake Estates Homeowners Association, registered itself as a domestic  
8 non-profit cooperative association in the State of Nevada on or about January 18, 2006, and purports  
9 to represent property owners of the Ruby Lake Estates subdivision located in Elko County, Nevada.

10 5. The other named Defendants are property owners of the Ruby Lake Estates subdivision  
11 located in Elko County, Nevada.

12 6. Venue is proper in this Court as the claims relate to real property located in the County of  
13 Elko, State of Nevada.

14 | **COMMON FACTS**

15 7. Plaintiff restates and incorporates paragraphs 1 through 5 above as if fully stated herein.

8. The parcel map that created the Ruby Lake Estates subdivision was recorded in the office of the Recorder of Elko County, State of Nevada, on September 15, 1989, as File No. 281674 and 281674 A. See copies attached hereto as Exhibit A.

9. The Declaration of Reservations, Conditions and Restrictions for the Ruby Lake Estates was recorded on October 25, 1989, in the Office of the Recorder of Elko County in Book 703, Page 287. See copy attached hereto as Exhibit B.

22 10. The Declaration of Reservations, Conditions and Restrictions does not create or authorize  
23 the creation of a homeowners association.

11. The Declaration of Reservations, Conditions and Restrictions provides for an Architectural Review Committee for the "general purpose of maintaining an aesthetically pleasing development of a residential or vacation community in the aforesaid subdivision in conformity with these conditions."

1       12. The purpose of the Architectural Review Committee is to review architectural plans and  
2 to accept or reject plans, or to give a conditional acceptance thereof, and to determine whether or not  
3 the reservations, restrictions, covenants, and conditions, are being complied with.

4       13. The Declaration of Reservations, Conditions and Restrictions do not authorize or  
5 empower the Architectural Review Committee to levy dues or other assessments.

6       14. The Declaration of Reservations, Conditions and Restrictions did not authorize the  
7 creation of a homeowner's association to compel the payment of dues or other assessments to  
8 maintain roads or provide any other services.

9       15. In 2005, Defendant, Ruby Lake Estates Homeowner's Association and its officers,  
10 purported to represent the Architectural Review Committee under authority of the Declaration of  
11 Reservations, Conditions and Restrictions, and sought to transform the Architectural Review  
12 Committee into a homeowner's association and to levy and collect dues from the property owners of  
13 Ruby Lake Estates.

14       16. After the Architectural Review Committee claimed to comprise a homeowner's  
15 association, Beth Essington, President of Artemis Exploration Company, began inquiring into the  
16 authority and legitimacy of such a body to compel the payment of dues.

17       17. In response to her letter of inquiry concerning the association's legitimacy, Leroy Perks,  
18 President of the Ruby Lake Estates Homeowner's Association, replied in a letter dated December 9,  
19 2009, explaining, "We added to the architectural committee to lighten the load of the volunteers,  
20 which we researched and is legal. This is now our executive committee." See letter from Lee Perks  
21 dated December 9, 2009, attached hereto as Exhibit C.

22       18. Ruby Lake Estates Homeowner's Association is a volunteer association and is not  
23 authorized under the Declaration, Restrictions and Covenants to collect dues or assessments, or to  
24 otherwise compel property owners within the Ruby Lake Estates to participate in the activities of the  
25 Ruby Lake Estates Homeowners Association

26       19. Artemis Exploration Company demanded that the Ruby Lake Estates Homeowner's  
27 Association cease sending invoices and collection letters to compel the payment of dues.  
28

1       20. Ruby Lake Estates Homeowner's Association continues to send delinquent account  
2 statements to Artemis Exploration Company, and other property owners similarly situated, threatening  
3 collections and legal action. See Invoice from Ruby Lake Estates Homeowner's Association dated  
4 December 16, 2010, attached hereto as Exhibit D.

5       21. On or about January 3, 2011, Ruby Lake Estates Homeowner's Association engaged  
6 Angius & Terry Collections, LLC, a collection agency, to send a notice to Artemis Exploration  
7 Company threatening that a "Delinquent Assessment Lien" would be placed on the property of  
8 Artemis Exploration Company if the purported dues and assessments were not paid. See Notice of  
9 Intent to Record a Notice of Delinquent Assessment Lien dated January 4, 2011, attached hereto as  
10 Exhibit E.

11       22. Other property owners of the Ruby Lake Estates have been sent similar notices and threats  
12 of collection, liens, and legal action.

13                                   **FIRST CLAIM FOR RELIEF**  
14                                   **(Declaratory Judgment)**

15       23. Plaintiff restate and re-allege each prior allegation as if set forth fully herein.

16       24. Plaintiff seeks a declaratory judgment to establish that the Ruby Lake Estates subdivision  
17 is not a common-interest community as defined by Chapter 116 of the Nevada Revised Statutes.

18       25. Pursuant to NRS 116.021(1), "Common-interest community" means real estate described  
19 in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is  
20 obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement  
21 of, or services or other expenses related to, common elements, other units or other real estate  
22 described in that declaration."

23       26. Ruby Lake Estates subdivision does not have any common elements nor are any common  
24 elements described in the Declaration, Restrictions and Covenants of Ruby Lake Estates subdivision.

25       27. The Declaration, Restrictions and Covenants of Ruby Lake Estates does not obligate the  
26 property owners of Ruby Lake Estates subdivision "to pay for a share of real estate taxes, insurance  
27 premiums, maintenance or improvement of, or services or other expenses related to, common  
28 elements, other units or other real estate." NRS 116.021(1).

1 28. Plaintiff seeks a declaratory judgment to establish that Defendant, Ruby Lake Estates  
2 Homeowner's Association, is not authorized under the Declaration, Restrictions and Covenants to  
3 collect dues or assessments, or otherwise compel property owners within the Ruby Lake Estates to  
4 participate in the activities of the so-called Ruby Lake Estates Homeowner's Association.

5 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth below.

6 **PRAYER FOR RELIEF**

7 Plaintiffs, therefore, respectfully request that judgment be entered in Plaintiff's favor and  
8 against Defendants as follows:

9 1. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association  
10 is not authorized under the Ruby Lake Estates Declaration, Restrictions and Covenants to compel the  
11 payment of dues or assessments, or to otherwise compel property owners within the Ruby Lake  
12 Estates to participate in the activities of the so-called Ruby Lake Estates Homeowner's Association;

13 2. For Plaintiff's reasonable attorney fees and costs of suit; and

14 3. For such other and further relief as the Court may deem just and proper.

15 DATED this 14<sup>th</sup> day of April, 2016.

16 **GERBER LAW OFFICES, LLP**

17  
18 BY:

  
19 TRAVIS W. GERBER, ESQ.  
State Bar No. 8083  
20 ZACHARY A. GERBER, ESQ.  
State Bar No. 13128  
21 491 4<sup>th</sup> Street  
Elko, Nevada 89801  
22 (775) 738-9258  
ATTORNEYS FOR PLAINTIFF  
23 ARTEMIS EXPLORATION  
COMPANY  
24  
25  
26  
27  
28

**GERBER LAW OFFICES, LLP**

491 4<sup>th</sup> Street  
Elko, Nevada 89801  
Ph 775-738-9258

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Gayle A. Kern  
Kern & Associates, Ltd  
5421 Kietzke Lane, suite 200  
Reno, Nevada 89511

Madison Johnson  
MADISON JOHNSON

# EXHIBIT A

# RUBY LAKE ESTATES ELKO COUNTY, NEVADA

**NOTARIAL CERTIFICATE**  
I, the undersigned, a Notary Public for the State of Nevada, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, Nevada.

*Notary Public* *June 23, 1989*  
*Notary Public* *June 23, 1989*

**STATE OF NEVADA**  
COUNTY OF ELKO  
I, *Notary Public*  
*Notary Public*  
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*Notary Public* *June 23, 1989*  
*Notary Public* *June 23, 1989*

**FILED DATA**  
FILE NO. *281674*  
DATE OF THE INSTRUMENT *SEP 15*  
DATE *1988*  
*Notary Public*  
*Notary Public*

**OFFICIAL PLAT OF**  
**RUBY LAKE ESTATES**  
FOR  
STEPHEN B. & MARIE E. WRIGHT  
SECTION 3610, TOWN-ROSE, RANGE  
ELKO COUNTY, NEVADA

**89036**  
SHEET 1 OF 3

**DISPATCH NUMBER**

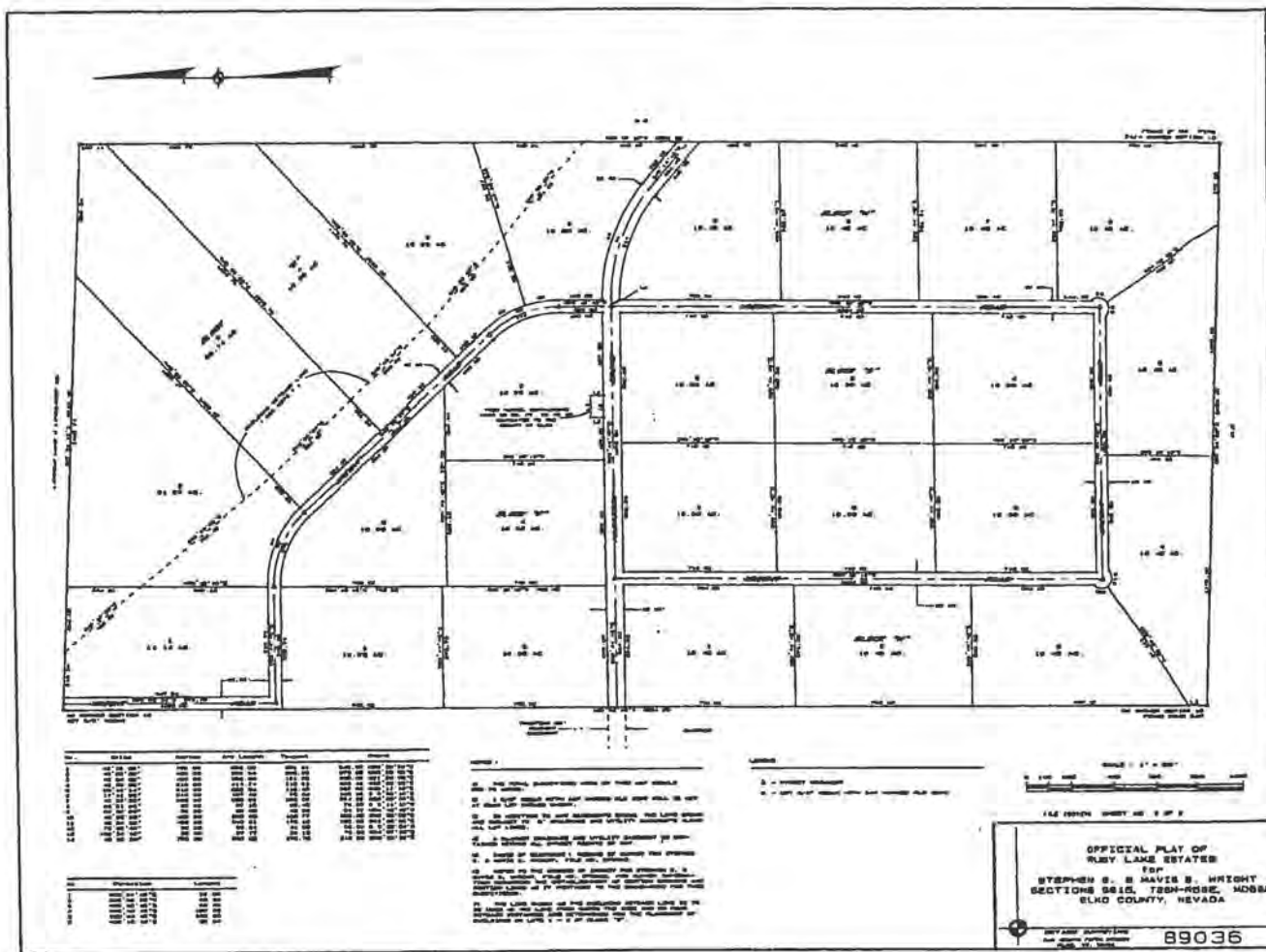


DRAWING NUMBER  
Sheet 3 of 3

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER



Section	Quarter Section	Section	Quarter Section
36	36.1	41	41.1
37	37.1	42	42.1
38	38.1	43	43.1
39	39.1	44	44.1
40	40.1	45	45.1
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42	42.1	47	47.1
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93	93.1	98	98.1
94	94.1	99	99.1
95	95.1	100	100.1

SCALE: 1" = 100'

THE SEVEN SHEET NO. 3 OF 3

OFFICIAL PLAT OF  
RUBY LAKE ESTATES  
FOR  
STEPHEN S. B. HAVES & SONS, TRUSTEES,  
SECTION 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100,  
ELKO COUNTY, NEVADA

89036

SHEET 3 OF 3

# EXHIBIT B

**RUBY LAKE ESTATES**  
**DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS**

This Declaration of Restrictions, made effective this 6 day of Sept, 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

WHEREAS, DECLARANT is the owner of a parcel of real property situate in the County of Elko, State of Nevada, more particularly described as follows:

WHEREAS, DECLARANT intends to sell, convey, or dispose of, all or a portion of said real property, from time to time, and desires to protect said property by subjecting the same to reservations, covenants, conditions and restrictions as herein set forth, pursuant to a general plan specified herein, binding the future owners of any interest in said property thereto,

NOW, THEREFORE, it is hereby declared that all of the parcels of the above-described real property are hereby fixed with the protective conditions, restrictions, covenants and reservations herein set forth, and the same shall apply to and upon each and every lot, parcel, or division of said property howsoever the same may be held or titled, all to the mutual benefit of the parcels of said real property and of each owner or user thereof, and said covenants, restrictions, conditions and reservations shall run with the land and inure to and pass with the land and apply to and bind respective successors in interest thereto and shall be uniformly imposed and impressed upon each and every lot, parcel, or portion of said land as a mutually enforceable equitable servitude in favor of each and every other parcel included within said land and shall inure to the owners and users thereof and to the DECLARANT herein.

**ARTICLE I**  
**GENERAL PURPOSE OF**  
**RESERVATIONS AND RESTRICTIONS**

The real property affected hereby is subjected to the imposition of the covenants, conditions, restrictions and reservations specified herein to provide for the development and maintenance of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of preserving a high quality of use and appearance and maintaining the value of each and every lot and parcel of said property. All divisions of said real property are hereafter referred to as "lots".

## ARTICLE II

### ARCHITECTURAL REVIEW COMMITTEE

There shall be an Architectural Review Committee which shall consist of Stephen G. Wright, or his nominee, until such time as 30% of the lots are transferred, at which time DECLARANT shall appoint a committee consisting of DECLARANT and not less than two other owners of lots for the general purpose of providing for the maintenance of a high standard of architectural design, color and landscaping harmony and to preserve and enhance aesthetic qualities and high standards of construction in the development and maintenance of the subdivision.

The DECLARANT shall have the power to fill any vacancies in the Architectural Review Committee, as they may occur from time to time, and may appoint his own successor or temporary nominee.

The Committee shall determine whether or not the reservations, restrictions, covenants, and conditions, are being complied with and may promulgate and adopt reasonable rules and regulations in order to carry out its purpose. The Committee shall, in all respects, except when, in its sound discretion, good planning would otherwise dictate, be controlled by the conditions set forth herein.

The Committee shall be guided by the general purpose of maintaining an aesthetically pleasing development of a residential or vacation community in the aforesaid subdivision in conformity with these conditions.

## ARTICLE III

### CONDITIONS

The following conditions are imposed upon and apply to each and every lot contained within the aforesaid real property:

A. Commercial lot: One lot shall be designated as a Commercial lot and shall be intended for all reasonable commercial uses consistent with a convenience store, gasoline sales, laundromat, etc., which shall be:

B. Prohibition against re-division: None of the lots contained within the Subdivision as finally authorized by the County of Elko shall be redivided in any manner whatsoever.

C. Single dwellings: All of the lots shall contain a single dwelling in conformity with these conditions, with the exception of temporarily parked recreational vehicles belonging to owners of lots or guests of lot owners. No such temporary guest vehicle may remain on any lot, except for purposes of storage, for longer than six weeks.

D. Building authorization: No construction of any name or nature, including alteration of a structure already built, or original construction, or fence construction, shall be commenced until and unless the plans therefore, including designation of floor areas, external design, structural

details, materials list, elevations, and ground location and plot plan, as may apply, have been first delivered to and approved in writing by the Architectural Review Committee. All construction shall be in conformance with the requirements of the Uniform Building Code, Uniform Plumbing Code, National Electrical Code, and Uniform Fire Code as currently published. All premanufactured, modular or other housing which is not built or constructed on-site must be approved by the Nevada Division of Manufactured Housing or such other Nevada agency or division having jurisdiction over the same. All mobile or modular housing shall be first approved by the Architectural Review Committee and age and external condition shall be factors in the Committee's decision as to whether or not the same may be placed upon any lot. The proposed plans shall be submitted in duplicate to the Architectural Review Committee at the address specified below, or as may be changed from time to time, which amended address will be recorded with the Elko County Recorder.

Steve and Mavis Wright  
Ruby Valley, NV 89833

The Committee shall then either accept or reject the plan, or give a conditional acceptance thereof, indicating the conditions, in writing, within thirty (30) days of submission. Any approved plan shall be adhered to by the lot owner. The Committee shall retain one set of plans.

*E. Setbacks:* No structure shall be erected, altered, placed or permitted to remain on any building plot in this subdivision nearer than 50 feet to the front lot line, nor nearer than 20 feet to any side street line, nor nearer than 20 feet to any side lot line, and no nearer than 30 feet to any rear line of said plot.

*F. Materials and Components:* All residential dwellings constructed on the lots shall be subject to the following material restrictions:

(1) Exterior material shall be either block or brick veneer or horizontal or vertical siding and no unfinished plywood siding shall be used and no roof may be constructed of plywood or shake shingles;

(2) Manufactured housing with painted metal exteriors, provided the same are in reasonably good condition and appearance, shall be acceptable subject to the Committee's review.

*G. Advertising:* Except as the same pertains to the Commercial lot provided herein, no advertising sign, billboard, or other advertising media or structure of any name or nature shall be erected on or allowed within the boundary of any lot, save and except temporary signs for political candidates and neat and attractive notices offering the property for sale or indicating the contractor's name.

H. Animals and pets: No livestock of any name or nature will be permitted within the subdivision save and except domestic animals such as dogs, cats, or other household pets and up to four head of livestock (except during hunting and fishing season, at which time there may be more than two horses which may not be kept longer than a 45-day period), which animals may only be kept provided that they are not bred or maintained for any commercial purposes and any kennels or fences constructed for the same must be constructed of substantial materials which will prevent escape of such animals from the lot of their owner. All dogs must be kept on their owners' lot except when attended.

I. Temporary buildings: Excent as provided above, temporary buildings of any name or nature shall not be erected or placed upon any lot to be used for human habitation, including but not limited to tents, shacks, or metal buildings.

J. Occupancy of residential dwellings: No residential dwelling shall be occupied or used for the purpose for which it is built as a residence until the same shall have been substantially completed and a certificate of occupancy has been issued by the Architectural Review Committee.

K. Use of premises: No person or entity shall make any use of any premises on any lot except as a single family residential or vacation dwelling and in conformity with these conditions and in compliance with all County ordinances, if any. No commercial enterprises shall be conducted within or upon any lot in the subdivision.

L. Garbage and refuse: No garbage, trash, refuse, junk, weeds or other obnoxious or offensive items or materials shall be permitted to accumulate on any of the lots and the owner of each lot shall cause all such materials and items to be disposed of by and in accordance with accepted sanitary and safety practices.

M. Nuisances: No obnoxious or offensive activity shall be carried on upon any lot nor shall anything be done upon any lot which shall be or may become an annoyance or a nuisance to the general neighborhood, including but not limited to fireworks displays, storage of disabled vehicles, machinery or machinery parts, boxes, bags, trash, dead animals or empty or filled containers. All trash must be taken to a County or City dump. No vehicles may be stored on any streets and no unightly objects or items may be open to public view.

N. Due Diligence in Construction: Upon commencement of construction of any structure upon any lot, the owner thereof shall prosecute said construction in a continual and diligent manner and any structure left partially constructed for a period in excess of two years shall constitute a violation of these restrictions and may be abated as a nuisance.

O. Maintenance of Lot Grade: No construction shall materially alter any existing lot grade.

P. Compliance with Codes, etc. Any lot owner shall comply with all codes, rules and regulations applicable to their lot enforceable by the County of Elko, including but not limited to the clearance of all brush, flammable vegetation and debris within a minimum of 50 feet from all buildings.

## ARTICLE IV VARIANCES

The Architectural Review Committee shall be empowered to grant limited variances to the owner of a lot on a lot-by-lot basis in the case of good cause shown but always considering the general purpose of these conditions. A request for a variance shall be made in writing and state with specificity the nature and extent of the variance requested and the reason for the request. No variance may be granted which, in the opinion of the Architectural Review Committee, causes a material change to the high standards of development and maintenance of the subdivision.

The Architectural review committee shall act upon the request within thirty (30) days and shall give its decision in writing, with said decision being final and unappealable. In the event no action is taken on the request, the request shall be deemed to be denied.

## ARTICLE V VIOLATION AND ENFORCEMENT

In the event of any existing violation of any of the conditions set forth herein, any owner of any lot, DECLARANT, or any representative of the Architectural Review Committee, may bring an action at law or in equity for an injunction, action for damages, or for any additional remedy available under Nevada law and all such remedies shall be cumulative and not limited by election and shall not affect the right of another to avail himself or itself of any available remedy for such violation. The prevailing party shall be entitled to recover its court costs and attorney's fees. Any injunction sought to abate a nuisance under these conditions and restrictions shall not required a bond as security.

4-

The failure or election of any person having standing to bring any action for violation of any condition herein shall not constitute a waiver of such condition for any purpose and each and every condition hereunder shall continue in full force and effect notwithstanding the length of time of any violation, the person or entity committing the violation, or any change in the nature and character of the violation, and each day such violation continues, shall constitute a new violation of such condition so violated.

DECLARANT:

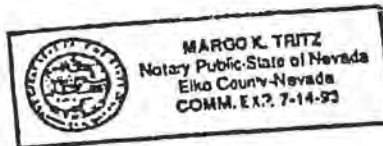
Stephen G. Wright  
STEPHEN G. WRIGHT

Mavis S. Wright  
MAVIS S. WRIGHT

STATE OF Nevada )  
COUNTY OF Elko ) ss.

On Sept. 10, 1989, personally appeared before me, a Notary Public,  
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the  
above instrument.

Margo K. Fritz  
NOTARY PUBLIC



INDEXED :

FEE 10<sup>00</sup> FILE # 283750  
FILED FOR RECORD  
AT REQUEST OF  
Marnell + Hansen  
89 OCT 25 AIO 43

RECORDED BY 703 287  
JERRY D. REYNOLDS  
ELKO CO. RECORDER

# EXHIBIT C

# ***RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION***

765 EAST GREG ST #103  
SPARKS, NEVADA 89431  
(remit to)

687 6th Street, Suite 1  
Elko, Nevada 89801  
(correspondence)

December 9, 2009

Elizabeth Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

Dear Mrs. Essington,

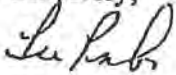
I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

- 1) The HOA was formed by the developer Steve Wright when he subdivided the properties originally. The formation of a committee was required in the original documents. Your property deed lists the CC&R's so you signed originally for this and agreed to a committee. This is your original signature and agreement. State law is very clear about this.
- 2) Steve Wright had the authority to appoint a committee to manage the CC&R's. Steve Wright had a meeting which I was appointed president, Mike Cecchi, VP, Dennis McIntyre sec/tres, Bill Harmon and Bill Noble, directors.
- 3) Once this happened I began researching the requirements of handling the committee and money required to operate. Federal law required that we obtain a Federal Id number to operate. (Steve Wright could operate under his existing). To do this we had to have a fictitious name and non profit status. This led to having an official name and registration.
- 4) To continue through our research we found out we are required per NRS 116 that insurance and council are required. We have done that.
- 5) We added to the architectural committee to lighten the load of the volunteers, which we researched and is legal. This is now our Executive committee.
- 6) There is no implied obligation or absence of legal documentation; it is there clearly in your deed.

Under the developers requirements Steve Wright did turn over the committee to the homeowners. He had the right to appoint. Steve Wright did not need any particular lot owner's permission to do this, it was strictly his choice. Now we are following the NRS

statues and administration code though the direction of our council Bob Wines. I hope this helps you understand your obligations.

Sincerely,



Lee Perks  
President RLEHA

Cc: RLEHA Board members  
Robert Wines, Esq.

# EXHIBIT D

Ruby Lake Estates

687 6th Street Ste 1  
Elko, NV 89801

# Invoice

Date	Invoice #
12/16/2010	321

Bill To
ROCKY ROA HC 60 BOX 755 RUBY VALLEY, NV 89833

Payment remit to:  
Ruby Lake Estates C/O L. A Perks  
765 East Greg Street, Suite 103  
Sparks, Nevada 89431

P.O. No.	Terms	Project
	1/1/2011	

Quantity	Description	Rate	Amount
1	2011 YEARLY ASSESSMENT	226.99	226.99
<b>Payment Due By:</b>  <b>January 31, 2011</b>			
PLEASE REMIT TO: 765 E. GREG ST #103 SPARKS, NEVADA 89431			<b>Total</b> \$226

# EXHIBIT E

**ANGIUS  
& TERRY  
COLLECTIONS  
LLC**

A Division of ANGIUS & TERRY LLP  
ATTORNEYS

January 4, 2011

Artemis Exploration Company  
HC 60 Box 755  
Ruby Valley, NV 89833

VIA CERTIFIED AND FIRST CLASS MAIL

Re: Ruby Lake Estates / 2010-3298  
Artemis Exploration Company  
3817 Indian Springs Drive  
Ruby Valley, NV 89833

Dear Homeowner(s):

Angius & Terry Collections, LLC ("ATC") represents Ruby Lake Estates ("Association"), and has been directed to act on your delinquent account with respect to the above-referenced property ("Property"). This is our **NOTICE OF INTENT TO RECORD A NOTICE OF DELINQUENT ASSESSMENT LIEN ("Demand")**.

As of the date of this Demand, there is a total of \$662.92 owing and unpaid to the Association. Please ensure that all amounts due to the Association, plus all additional amounts which become due and payable to the Association including recoverable fees and costs be paid, in full, and physically received in our office on or before 5:00 P.M. on 2/4/2011. Payment should be made payable to Angius & Terry Collections, LLC. Call our office, at least 48 hours prior to your deadline date, at (702) 255-1124 or (877) 781-8885 to obtain the correct payment amount as the total amount owed is subject to change. Please note, that should a reinstatement amount be provided by our office prior to our receiving notification of a change in the Association's assessments, you will be responsible for the account balance that reflects the change in the Association's assessment. Should you elect to ignore this Demand, a Notice of Delinquent Assessment Lien will be prepared and forwarded to the County Recorder's office and additional collections fees and costs will be added to your account.

If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above. You should direct all communications relating to this demand to the above-referenced office.

Please note all payments must be in the form of a cashier's check or money order. Personal check's and cash will not be accepted.

This is a serious matter and your immediate attention is imperative. Should you have any questions, please contact our office at (702) 255-1124 or (877) 781-8885.

Sincerely,

  
Carolyn Swanson  
Angius & Terry Collections, LLC

cc: Ruby Lake Estates  
Enclosures: Fair Debt Collection Practices Act Notice

Angius & Terry Collections, LLC is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304

tel 877.781.8885 fax 877.781.8886

ATCollections.com

**EXHIBIT 2**

**EXHIBIT 2**

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

FILED

2016 APR 14 PM 4:32

ELKO CO DISTRICT CLERK

3  
4 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5  
6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiff,

10 vs.

ANSWER TO SECOND AMENDED  
COMPLAINT; COUNTERCLAIM  
AND CROSS-CLAIM

11 RUBY LAKE ESTATES HOMEOWNER'S  
12 ASSOCIATION, STEPHEN WEST;  
13 DOMINIC DIBONA; EVELYN  
14 DIBONA; MICHAEL BRENNAN AND  
15 MARNIE BRENNAN; RICHARD  
16 BECKERDITE; BILL NOBLE AND  
17 CHERYL NOBLE; AARON MOTES; BILL  
18 HARMON AND TERI HARMON; LEROY  
19 PERKS AND NORA PERKS; JUAN LA  
20 CHICA AND VICTORIA LA CHICA; BRAD  
21 KEIFE; SEVEN K PROPERTIES; MIKE  
22 CECCHI AND KRIS CECCHI; WAYNE  
23 CIRONE AND ILA CIRONE; CONNIE  
24 STAFFORD; AARON YOHEY; PAUL  
25 LUCAS; DAVE MILLER; JAMES TAYLOR;  
26 MIKE MASON AND SHELLY MASON;  
27 JIMMY SARGENT AND ELLEN  
28 SARGENT; JACK HEALY AND YVETTE  
HEALEY; BO HARMON; MICHAEL  
GOWAN AND MARY ANN GOWAN; PHIL  
FRANK AND DOROTHY FRANK; JOE  
HERNANDEZ AND PAULA HERNANDEZ;  
DENNIS MCINTYRE AND VALERI  
MCINTYRE; ROBERT HECKMAN  
AND NATHAN HECKMAN; JAMES  
VANDER MEER; HAROLD WYATT AND  
MARY WYATT; ROBERT CLARK; BETH  
TEITLEBAUM; DANIEL SPILSBURY AND  
DELAINE SPILSBURY; TERRY HUBERT  
AND BONNIE HUBERT; RUSSELL  
ROGERS AND SUSAN ROGERS; ROCKY  
ROA; BEVERLY PATTERSON; DENNIS

1 CUNNINGHAM; RILEY MANZONIE;  
2 DAVID NORWOOD; and DOES I-X,  
3 Defendants.

4  
5 RUBY LAKE ESTATES HOMEOWNER'S  
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Counterdefendant.

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

16 STEPHEN WEST; DOMINIC DIBONA;  
17 EVELYN DIBONA; MICHAEL BRENNAN  
18 AND MARNIE BRENNAN; RICHARD  
19 BECKERDITE; BILL NOBLE AND  
20 CHERYL NOBLE; AARON MOTES; BILL  
21 HARMON AND TERI HARMON; LEROY  
22 PERKS AND NORA PERKS; JUAN LA  
23 CHICA AND VICTORIA LA CHICA; BRAD  
24 KEIFE; SEVEN K PROPERTIES; MIKE  
25 CECCHI AND KRIS CECCHI; WAYNE  
26 CIRONE AND ILA CIRONE; CONNIE  
27 STAFFORD; AARON YOHEY; PAUL  
28 LUCAS; DAVE MILLER; JAMES TAYLOR;  
MIKE MASON AND SHELLY MASON;  
JIMMY SARGENT AND ELLEN  
SARGENT; JACK HEALY AND YVETTE  
HEALEY; BO HARMON; MICHAEL  
GOWAN AND MARY ANN GOWAN; PHIL  
FRANK AND DOROTHY FRANK; JOE  
HERNANDEZ AND PAULA HERNANDEZ;  
DENNIS MCINTYRE AND VALERI  
MCINTYRE; ROBERT HECKMAN AND  
NATHAN HECKMAN; JAMES VANDER  
MEER; HAROLD WYATT AND MARY

1 WYATT; ROBERT CLARK; BETH  
2 TEITLEBAUM; DANIEL SPILSBURY AND  
3 DELAINE SPILSBURY; TERRY HUBERT  
4 AND BONNIE HUBERT; RUSSELL  
5 ROGERS AND SUSAN ROGERS; ROCKY  
6 ROA; BEVERLY PATTERSON; DENNIS  
7 CUNNINGHAM, RILEY MANZONIE;  
8 DAVID NORWOOD; and DOES I-X,

9 Cross-Defendants.

10 Defendant Ruby Lake Estates Homeowner's Association ("Ruby Lake"), by and through its  
11 attorneys, Kern & Associates, Ltd. answers the Plaintiff's Complaint, and counterclaims and cross-  
12 claims as follows:

### 13 JURISDICTION

14 1. Answering paragraph 1 of Plaintiff's Complaint, Ruby Lake, on information and  
15 belief admits the allegations contained in paragraph 1.

16 2. Answering paragraph 2 of Plaintiff's Complaint, Ruby Lake has no information who  
17 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there  
18 is a deed recorded on June 21, 1994.

19 3. Answering paragraph 3 of Plaintiff's Complaint, Ruby Lake has no information who  
20 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there  
21 is a deed recorded on March 9, 2010.

22 4. Answering paragraph 4 of Plaintiff's Complaint, Ruby Lake admits that it is a  
23 nonprofit corporation incorporated and validly existing under the laws of the State of Nevada. Ruby  
24 Lake asserts Nevada law does not provide for a corporation to "register" and based thereon denies  
25 the same.

26 5. Answering paragraph 5 of Plaintiff's Complaint, Ruby Lake admits the allegations in  
27 paragraph 5.  
28

1 ///

2 6. Answering paragraph 6 of Plaintiff's Complaint, Ruby Lake admits the allegations in  
3 paragraph 6.  
4

5 **COMMON FACTS**

6 7. Answering paragraph 7 of Plaintiff's Complaint, Ruby Lake incorporates by  
7 reference each and every answer contained in paragraphs 1 through 6 stated above.

8 8. Answering paragraph 8 of Plaintiff's Complaint, Ruby Lake asserts that the  
9 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
10 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
11 allegations are denied.  
12

13 9. Answering paragraph 9 of Plaintiff's Complaint, Ruby Lake asserts that the  
14 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
15 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
16 allegations are denied.  
17

18 10. Answering paragraph 10 of Plaintiff's Complaint, Ruby Lake denies each and every  
19 allegation contained in paragraph 10.

20 11. Answering paragraph 11 of Plaintiff's Complaint, Ruby Lake asserts the Declaration  
21 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary  
22 allegations.  
23

24 12. Answering paragraph 12 of Plaintiff's Complaint, Ruby Lake asserts the Declaration  
25 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary  
26 allegations.  
27

28 13. Answering paragraph 13 of Plaintiff's Complaint, Ruby Lake denies each and every  
allegation contained in paragraph 13.

1           14.     Answering paragraph 14 of Plaintiff's Complaint, Ruby Lake denies each and every  
2 allegation contained in paragraph 14.

3           15.     Answering paragraph 15 of Plaintiff's Complaint, Ruby Lake denies each and every  
4 allegation contained in paragraph 15. Ruby Lake admits that in accordance with Nevada law and  
5 the governing documents of Ruby Lake, assessments were properly made and collected to pay for  
6 the common expenses of the common-interest community.

7           16.     Answering paragraph 16 of Plaintiff's Complaint, Ruby Lake denies the allegations  
8 regarding action by the Architectural Review Committee. Ruby Lake admits Beth Essington had  
9 communications. Ruby Lake denies each and every remaining allegation contained in paragraph 16.

10          17.     Answering paragraph 17 of Plaintiff's Complaint, Ruby Lake asserts that the  
11 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
12 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
13 allegations are denied.

14          18.     Answering paragraph 18 of Plaintiff's Complaint, Ruby Lake denies each and every  
15 allegation contained in paragraph 18.

16          19.     Answering paragraph 19 of Plaintiff's Complaint, Ruby Lake asserts Artemis  
17 Exploration Company wrongfully refused to pay lawful assessments. Ruby Lake denies each and  
18 every remaining allegation contained in paragraph 19.

19          20.     Answering paragraph 20 of Plaintiff's Complaint, Ruby Lake asserts that the  
20 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
21 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
22 allegations are denied.

23          21.     Answering paragraph 21 of Plaintiff's Complaint, Ruby Lake asserts that the  
24 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
25  
26  
27  
28

1 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
2 allegations are denied.

3 22. Answering paragraph 22 of Plaintiff's Complaint, Ruby Lake asserts that the  
4 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
5 an answer is required any contrary allegations are denied. As to any and all remaining allegations  
6 regarding other property owners of Ruby Lake, such allegations are vague, ambiguous, overbroad,  
7 not reasonably limited as to scope and time, and/or potentially pertain to confidential information  
8 and, as such, no answer is required and/or those allegations are denied.  
9  
10

### 11 **FIRST CLAIM FOR RELIEF**

#### 12 **(Declaratory Judgment)**

13 23. Answering paragraph 23 of Plaintiff's Complaint, Ruby Lake incorporates by  
14 reference each and every answer contained in paragraphs 1 through 22 stated above.

15 24. Answering paragraph 24 of Plaintiff's Complaint, Ruby Lake is without knowledge  
16 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24,  
17 and based thereon denies the same.  
18

19 25. Answering paragraph 25 of Plaintiff's Complaint, Ruby Lake asserts that the statute  
20 speaks for itself.

21 26. Answering paragraph 26 of Plaintiff's Complaint, Ruby Lake denies each and every  
22 allegation contained in paragraph 26.  
23

24 27. Answering paragraph 27 of Plaintiff's Complaint, Ruby Lake denies each and every  
25 allegation contained in paragraph 27.

26 28. Answering paragraph 28 of Plaintiff's Complaint, Ruby Lake is without knowledge  
27 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28,  
28 and based thereon denies the same.

1 AS FOR SEPARATE AND AFFIRMATIVE DEFENSES, RUBY LAKE ALLEGES AND  
2 AVERS AS FOLLOWS:

3  
4 **FIRST AFFIRMATIVE DEFENSE**

5 Plaintiff's Complaint fails to state a claim upon which relief may be validly granted against  
6 Ruby Lake.

7  
8 **SECOND AFFIRMATIVE DEFENSE**

9 At all times herein mentioned, Ruby Lake performed its duties in good faith and in a manner  
10 in which any ordinarily prudent homeowners association would use.

11  
12 **THIRD AFFIRMATIVE DEFENSE**

13 Plaintiff is estopped from asserting any claims against Ruby Lake.

14  
15 **FOURTH AFFIRMATIVE DEFENSE**

16 Ruby Lake acted in good faith.

17  
18 **FIFTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims are barred by the doctrine of collateral estoppel.

20  
21 **SIXTH AFFIRMATIVE DEFENSE**

22 Plaintiff's claims are barred by its own bad faith and unlawful conduct.

23  
24 **SEVENTH AFFIRMATIVE DEFENSE**

25 Ruby Lake acted in accordance with statutory authority and is privileged and protected by  
26 applicable Nevada law, the governing documents of Ruby Lake and Chapter 116 of the Nevada  
27 Revised Statutes.

28  
29 **EIGHTH AFFIRMATIVE DEFENSE**

30 Ruby Lake has been required to retain Kern & Associates, Ltd. to represent it in this matter  
31 and is entitled to attorney's fees and costs.

32  
33 **NINTH AFFIRMATIVE DEFENSE**

1 Plaintiff failed to arbitrate all of the issues raised in its complaint and such issues are  
2 therefore barred pursuant to the provisions of NRS 38.300 to 38.260, inclusive.

3  
4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's Complaint must be summarily dismissed for failure to comply with NRS  
6 38.330(5).

7  
8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's Complaint is barred by the applicable statute of limitations.

10  
11 **TWELFTH AFFIRMATIVE DEFENSE**

12 Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time of  
13 the filing of Ruby Lake's answer, all possible affirmative defenses may not have been alleged  
14 inasmuch as insufficient facts and other relevant information is unknown at this time. Ruby Lake  
15 reserves the right to amend this answer to allege additional affirmative defenses if subsequent  
16 investigation warrants the same.

17 **WHEREFORE**, Ruby Lake prays as follows

- 18 1. That Plaintiff takes nothing by reason of its Complaint;  
19 2. That the Complaint be dismissed;  
20 3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a  
21 reasonable attorneys' fee, for costs of suit; and  
22 4. For such other and further relief as may be just and proper in the premises.

23  
24 **COUNTERCLAIM AND CROSS-CLAIM**

25 As and for its counterclaims against Artemis Exploration Company ("Artemis"), and cross-  
26 claim against all Cross-Defendants, Ruby Lake alleges as follows:

27  
28 **GENERAL ALLEGATIONS**

1 1. Ruby Lake is organized as a non-profit corporation and operating as a common-  
2 interest community association and existing by virtue of the laws of the State of Nevada.

3  
4 2. Artemis is a Nevada corporation ("Artemis" or "Claimant"), whose President,  
5 Secretary, Treasurer and sole director is Elizabeth E. Essington.

6 3. Mrs. Essington's husband is George "Mel" Essington.

7 4. Cross Defendants are property owners within Ruby Lake.

8 5. For over sixteen years (1994-2010), Mr. and Mrs. Essington implicitly and expressly  
9 represented that Mr. Essington had the capacity and authority to act on behalf of Artemis.  
10

11 6. There are recorded certain Reservations, Conditions and Restrictions for Ruby Lake  
12 Estates ("CC&Rs"). The CC&Rs were recorded on October 25, 1989, in the Office of the Elko  
13 County Recorder in Book 703, Page 287.

14 7. Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot  
15 2, Block H of Ruby Lake Estates on March 9, 2010, and that both Lot 6 and Lot 2 ("Lots") are  
16 subject to the terms, conditions and restrictions set forth in the CC&Rs.  
17

18 8. Articles of Incorporation for RLEHOA were filed with the Nevada Secretary of State  
19 on January 16, 2006.

20 9. Prior to the filing of the Articles of Incorporation, the ARC served as the governing  
21 body of the Association.  
22

23 10. Newsletters and written communications were regularly sent to the members of the  
24 Association, including Mr. and Mrs. Essington, and meetings were held by the Board of Directors.

25 11. Assessments were levied in order to pay for the maintenance of the community roads  
26 and other common elements.  
27  
28

1 12. Mr. and Mrs. Essington, representing they were the owners of Lot 6 of Block G  
2 individually, regularly paid the assessments, as levied by the ARC and Board of Directors from  
3 time to time.  
4

5 13. An overview of the history and establishment of the Association was provided to its  
6 members in a letter from Lee Perks, President of RLEHOA, on June 28, 2010 ("June 28, 2010  
7 Letter").  
8

9 14. The June 28, 2010 Letter makes clear that Elizabeth and Mel Essington were the  
10 owners who demanded in 2005 that an Association be formed and an Association Board elected.  
11

12 15. In 2005, Mel Essington prepared Articles of Incorporation for filing with the Nevada  
13 Secretary of State listing himself and Elizabeth Essington as the incorporators and officers of the  
14 Association.  
15

16 16. The Articles of Incorporation were filed by Lee Perks on January 16, 2006, and the  
17 Association adopted its By-Laws on August 12, 2006.  
18

19 17. Mel Essington seconded the adoption of the Bylaws and was an active participant in  
20 the business affairs of the Association.  
21

22 18. Both prior to the filing of the Articles, as well as for more than five years thereafter,  
23 Mel Essington served on the Board of Directors.  
24

25 19. Mel Essington represented his authority to act and all members of the Association  
26 relied on such representation.  
27

28 20. Artemis is fully bound by his representations and actions. During his tenure on the  
Board as Artemis' representative, Mr. Essington wrote letters to the members of RLEHOA urging  
them to "revitalize the Ruby Lakes Estates property owners association", as well as confirming the  
existence of the HOA, the applicability of NRS Chapter 116, and the ability and responsibility of

1 the RLEHOA to levy and collect assessments. See RLE 021A-021D; RLE 0044- 048; RLE 053;  
2 RLE 077-080; RLE 083.

3  
4 21. Both before and during his tenure on the Board of Directors, Mel Essington was  
5 aware of the various common elements of the Association, including the roads, signs and perimeter  
6 fencing, which the Association was, and is, required to maintain.

7 22. In his August 22, 2005 letter to all owners of lots within Ruby Lake, Mr. Essington  
8 states in part:

9  
10 Each of us purchased lots in the subdivision with the knowledge,  
11 understanding, and acceptance of the Covenants, Conditions, and Restriction's  
12 (CCR's) [sic] that attended our property deeds. The CCR's [sic] were designed to  
13 work for the good of the owners, assure the aesthetic qualities of the subdivision,  
14 protect the value of our investments, and the beauty of Ruby Valley. The  
15 association also has the capability of providing services for the subdivision that  
16 might otherwise elude the individual owners. Those services include: assisting in  
17 acquiring telephone service, periodic road maintenance, coordinating with County  
18 officials on planning issues,... and getting regular snow removal on the CCC  
19 road, organizing an annual meeting and BBQ, and publishing an annual news  
20 letter. The effectiveness of the CCR's [sic] and the association is the  
21 responsibility of the owners as expressed through the association; ...

22 Mr. Leroy Perks and others recognized and accepted the responsibility  
23 past [sic] on by Mr. Wright several years ago when they organized the association  
24 and worked towards achieving progress toward its stated goals. . . I am proposing  
25 to organize an election of association officers that will be motivated and dedicated  
26 to making and keeping the association the effective representational and oversight  
27 organization it was intended to be..."

28 23. An election was thereafter held and directors of the Association were elected by the  
members.

24 24. Mr. Essington, on behalf of Artemis, continued to acknowledge the existence of the  
25 Association, the applicability of NRS Chapter 116, and the ability of the Association to levy and  
26 collect assessments for maintenance of the common elements. In a letter addressed to "Mr. Lee  
27 Perks, President, Ruby Lake Homeowners Association," dated January 14, 2007, Mr. Essington  
28 wrote:

1 .... As head of the homeowners association you need to work to protect  
2 the value of the investments of all of the individual owners and be able to look  
3 beyond your own more restricted outlook. ... I assume you are aware Nevada has  
4 found it necessary to create a commission to oversee the operation of the many  
5 HOA's [sic] in the state. I would also assume you are aware that NRS 116,  
6 Section 10, 8(f) now requires that the HOA records including financial records be  
7 located within sixty miles of the physical location of the community for  
8 inspection purposes. I presume that Mr. Wines will fulfill that function for the  
9 Association.

10 25. In an e-mail communication dated September 12, 2008, Artemis again acknowledges  
11 the need for assessments as well as the applicability of NAC 116 [sic]:  
12

13 Again NAC 116 [sic] stresses the obligation for uniformly enforcing the  
14 provisions of the governing documents of the Association. We're way behind on  
15 compliance in this area and need to discuss how we are going to achieve  
16 compliance. The document states the board needs to formerly [sic] establish the  
17 Association's fiscal year on page 35. This is mere housekeeping but needs to be  
18 done.

19 26. Mr. Essington then followed up with an e-mail communication to his fellow board  
20 members covering a letter, which he wrote. Mr. Essington wanted his letter sent to all members of  
21 RLEHOA. In this letter, Mr. Essington again acknowledges the Association and the applicability of  
22 NRS Chapter 116, as well as the common elements of the Association, and the Association's duty  
23 and responsibility to maintain the same. Finally, Mr. Essington clearly acknowledges the  
24 Association's right and obligation to levy and collect assessments:  
25

26 The Ruby Lakes Estates is a common-interest ownership community as defined  
27 by State statute. The Community has been established by proper recording of the  
28 CCR's [sic] with the county and the Homeowners Association (HOA) through  
filing with the Secretary of State. Within the State of Nevada the community and  
the HOA are governed primarily by Chapter 116 of the Nevada Revised Statutes.  
The statutes, among many other things, establish guidelines, regulations, and  
requirements for the operation and management of the HOA. They also establish  
both the rights and obligations of the individual owners. ...

Under section 3107 [NRS 116.3107] of the statutes, 'the association is responsible  
for maintenance, repair and replacement of the common elements, and each unit's  
owner is responsible for maintenance, repair and replacement of his unit'. The  
common elements in the Ruby Lakes Estates include two small land parcels and  
several access roads. The two land parcels are comprised of the lot on the north

1 end of Kiln road and the parcel containing the well, pump, and water truck fill  
2 point on the CCC road near its intersection with the Overland road.

3 Under the statutes both the HOA and each individual unit owner share  
4 responsibility and liability for the common elements. It is the expressed  
5 responsibility of the HOA executive board to insure sufficient maintenance of the  
6 common elements in this instance the community roads. Our roads are open to the  
7 public and carry responsibility and liability. Accepted surface road maintenance  
8 standards include shoulder and drainage features as well as the road surface.  
9 Because community roads have not received any maintenance for 8 years the  
10 shoulders have become weed and brush infested, and some sections lack adequate  
11 drainage. Obviously, it is past time to reestablish minimal road maintenance  
12 requirements. The HOA's budget does not currently permit meeting a contractor's  
13 fee to perform such maintenance. Hence, a temporary annual fee increase is  
14 necessary to raise those funds. It is anticipated that once the maintenance work is  
15 completed the fees may be reduced to their former level.

16 27. Mrs. Essington thereafter paid the increased assessment as levied by the Board  
17 members, including Mr. Essington ratifying the authority of Mr. Essington as representative of  
18 Artemis.

19 28. On June 20, 2010, Mr. Essington wrote a letter to his fellow homeowners in which  
20 he again acknowledged the existence and powers of the RLEHOA, including the power to levy  
21 assessments:

22 ... Membership in an HOA conveys considerable latitude, discretion, and  
23 authority over your deed and individual property rights to its officers and board.  
24 That level of authority has a similar affect within the HOA as law in society.  
25 Indeed elected HOA officials are considered under State Statute to be the same as  
26 elected State officials. The HOA officers and Board can at their sole discretion  
27 establish and set annual dues, fees, fines, rules including their enforcement, enter  
28 into financial obligations, and made errors in judgment subject to financial  
penalties that affect all of the landowners equally. ...

29 29. Mr. Essington was active in the Association from the time Lot 6 of Block G was  
30 purchased by Artemis in 1994 and served on the RLEHOA Board of Directors from August of  
2007, when he was initially elected until 2011.

31 30. During the time that Mr. Essington was on the Board, he was also a member of the  
32 ARC.

1       31. On behalf of Artemis, Mr. Essington regularly voiced his opinions regarding the  
2 enforcement and interpretation of the CC&Rs; he voted to approve the Reserve Study and regularly  
3 voted to approve all budgets, levy assessments, and increase assessments from time to time.  
4

5       32. In 2009 a dispute arose between the Essingtons and the ARC regarding the  
6 construction within the Ruby Lake Estates subdivision of a large building used to house machinery  
7 and other equipment.

8       33. The ARC and Board took the position that such a structure was permitted and the  
9 Essingtons disputed this position.  
10

11       34. In response to the approval of the large building, Mr. and Mrs. Essington then began  
12 to assert that the RLEHOA was not validly formed and had no authority to levy or collect  
13 assessments.

14       35. Artemis ceased paying its assessments, all of which had been approved by Mr.  
15 Essington as a Board member.  
16

17       36. Invoices generated in the ordinary course of business for the Association were sent  
18 to the Essingtons.

19       37. On or about December 18, 2009, Mrs. Essington filed an Intervention Affidavit with  
20 the Office of the Ombudsman, Department of Business and Industry, Real Estate Division, seeking  
21 a determination that RLEHOA was an invalid community association.  
22

23       38. On July 1, 2010, the Ombudsman's Office completed its review and issued its  
24 opinion, finding "that this Association is required to comply with the laws pertaining to  
25 homeowners associations, specifically, NRS 116 and related laws and regulations."  
26

27       39. Artemis continued to fail to pay its assessments and the Board of Directors took  
28 appropriate action to collect the delinquent assessments.

1 40. In April of 2010, for the first time, Artemis asserted that Mr. Essington was not an  
2 officer, director, shareholder, or other authorized representative of Artemis.

3 41. The position taken in April of 2010 was directly contrary to the position taken by  
4 Artemis for nearly a decade.

5 42. Artemis was asked to pay its delinquent assessments and Mr. Essington was asked to  
6 provide proof that he was an officer, director or other authorized representative of Artemis.

7 43. Mr. Essington subsequently resigned from the Board of Directors per letter dated  
8 January 6, 2011.

9  
10  
11 **FIRST CLAIM FOR RELIEF**  
12 **(Breach of Contract and Breach of Statutory Duties – Against Artemis)**

13 44. Ruby Lake incorporates paragraphs 1 through 43 as if set forth in full herein.

14 45. Artemis wrongfully and in violation of Chapter 116 and the governing documents of  
15 Ruby Lake caused Ruby Lake to incur expenses that it would not have incurred but for Artemis'  
16 wrongful and unlawful conduct.

17 46. Artemis incurred damages in excess of \$10,000.00.

18 47. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
19 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby  
20 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

21  
22 **SECOND CLAIM FOR RELIEF**  
23 **(Negligence – Against Artemis)**

24 48. Ruby Lake incorporates paragraphs 1 through 47 as if set forth in full herein.

25 49. Artemis owed a duty to exercise due care in its actions in connection with Ruby  
26 Lake.

27 50. Artemis was negligent in its actions with Ruby Lake.  
28

1 51. As a proximate cause of Artemis' negligence, Ruby Lake incurred damages in  
2 excess of \$10,000.00.

3 52. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
4 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby  
5 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.  
6

7 **THIRD CLAIM FOR RELIEF**  
8 **(Violations – Against Artemis)**

9 53. Ruby Lake incorporates paragraphs 1 through 52 as if set forth in full herein.

10 54. Artemis' actions were, and continue to be, violations of the governing documents.

11 55. Artemis should pay all damages sustained.

12 56. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
13 attorney's fees and costs in accordance with NRS 18.010, the governing documents of Ruby Lake,  
14 Chapters 116 and 38 of the Nevada Revised Statutes.  
15

16 **FOURTH CLAIM FOR RELIEF**  
17 **(Confirmation of Award of Attorneys Fees and Costs – Against Artemis)**

18 57. Ruby Lake incorporates by reference the allegations of paragraphs 1 through 56 as  
19 though fully set forth herein.

20 58. An Award was entered in favor of Ruby Lake on the substantive portion of the  
21 arbitration proceeding NRED Claim 11-82, a copy of which is attached as Exhibit "1".  
22

23 59. An Award for attorney's fees in the amount of \$22,092.00 and costs in the amount of  
24 \$4,718.67 was in favor of Ruby Lake in the non-binding arbitration proceeding NRED Claim 11-  
25 82, a copy of which is attached as Exhibit "1".

26 60. The Award entered should be confirmed and adopted.  
27  
28 ///

///

**FIFTH CLAIM FOR RELIEF**  
**(Damages - Attorneys Fees – Against Artemis)**

61. Ruby Lake incorporates paragraphs 1 through 60 as if set forth in full herein.

62. Counter-Defendant's actions resulted in Ruby Lake incurring attorney's fees as damages.

63. Pursuant to NRS 38.330(7), Ruby Lake should be awarded all attorney's fees and costs incurred in the defense and prosecution of this action as well as all of those attorney's fees and costs incurred in the arbitration proceeding NRED Claim 11-82.

64. Artemis should pay all damages sustained.

65. Ruby Lake was required to retain Kern & Associates, Ltd., and is entitled to attorney's fees and costs in accordance with Sandy Valley Associates v. Sky Ranch Estates Owners Association, 117 Nev. Adv. Rep. 78, 35 P.3d 964 (2001); NRS 18.010, the Governing Documents of Ruby Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

66. All attorney's fees and costs were and will be incurred as a direct and proximate result of the Counter-Defendant's violations of the Governing Documents of Ruby Lake.

**SIXTH CLAIM FOR RELIEF**  
**(Declaratory Relief - Chapter 30 of the Nevada Revised Statutes – Against Artemis and Cross-Defendants)**

67. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 66 of its Counterclaim as though fully set forth herein.

68. A real controversy exists between the parties hereto concerning whether it is a lawfully formed and validly existing non-profit common interest community association in good standing, organized for the purposes of administering and enforcing the CC&Rs and exercising all powers of a community association granted under the provisions of Nevada law, including Chapters

1 81 and 116 of the Nevada Revised Statutes. An order should be entered resolving this controversy  
2 in favor of Ruby Lake.

3  
4 **SEVENTH CLAIM FOR RELIEF**  
**(Preliminary and Permanent Injunction – Against Artemis)**

5 69. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 68 of its  
6 Counterclaim as though fully set forth herein.

7  
8 70. Counter-Defendant's behavior in the past shows that it will continue to interfere with  
9 business of Ruby Lake.

10 71. Counter-Defendant's behavior poses a serious, substantial and irreparable harm to  
11 the lawful actions of Ruby Lake.

12 72. Ruby Lake has no adequate remedy at law or otherwise for the harm or damage done  
13 and threatened to be done.

14  
15 73. The only remedy that will allow Ruby Lake to maintain peace and quiet and comply  
16 with the statutory and recorded obligations of a common-interest community is a restraining order  
17 from this Court.

18  
19 74. Ruby Lake will suffer irreparable harm unless Counter-Defendant is ordered by this  
20 Court to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake  
21 and its members.

22 75. On a final hearing, a permanent injunction enjoining and ordering the Counter-  
23 Defendants to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby  
24 Lake and its members.

25  
26 76. On a final hearing, a permanent injunction enjoining and ordering the Counter-  
27 Defendants to refrain from taking any action to interfere with Ruby Lake and its lawful  
28 requirements under the law as a common-interest community.

1 WHEREFORE, Ruby Lake prays for judgment against Artemis Exploration Company, as  
2 follows;

3 1. That Ruby Lake recover special and general damages in an amount in excess of  
4 \$10,000.00;

5  
6 2. That Ruby Lake is a lawfully formed and validly existing non-profit common-  
7 interest community association in good standing, organized for the purposes of administering and  
8 enforcing the CC&Rs and exercising all powers of a community association granted under the  
9 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

10  
11 3. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain  
12 from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members;

13 4. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain  
14 from taking any action to interfere with Ruby Lake and its lawful requirements under the law as a  
15 common-interest community;

16  
17 5. For a judgment confirming the Awards entered by the Arbitrator in the arbitration  
18 proceeding NRED Claim 11-82 in favor of Ruby Lake;

19 6. That Ruby Lake be awarded its costs;

20 7. That Ruby Lake be awarded its attorney's fees;

21 8. Such other and further relief as the Court deems just and proper in the premises.

22  
23 WHEREFORE, Ruby Lake prays for judgment against Cross-Defendants, and each of them,  
24 as follows:

25 1. That Ruby Lake is a lawfully formed and validly existing non-profit common-  
26 interest community association in good standing, organized for the purposes of administering and  
27 enforcing the CC&Rs and exercising all powers of a community association granted under the  
28 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

2. Such other and further relief as the Court deems just and proper in the premises.

## AFFIRMATION

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 4<sup>th</sup> day of April, 2016

KERN & ASSOCIATES, LTD.

Karen M. Bayle

GAYLE A. KERN, ESQ.

NEVADA BAR #1620

KAREN M. AYARBE, ESQ.

NEVADA BAR #3358

5421 Kietzke Lane, Suite 200

RENO, NEVADA 89511

Telephone: 775-324-5930

Fax: 775-324-6173

Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)

Attorneys for Ruby Lake Estates Homeowner's Association

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &  
3 Associates, Ltd., and that on this day I served the foregoing document described as follows:  
4

5 ***ANSWER TO SECOND AMENDED COMPLAINT;  
6 COUNTERCLAIM AND CROSS-CLAIM***

7 on the parties set forth below, at the addresses listed below by:

8 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope place for collection  
9 and mailing in the United States Mail, at Reno, Nevada, first class mail, postage  
10 paid, following ordinary business practices, addressed to:

11 \_\_\_\_\_ Via facsimile transmission

12 \_\_\_\_\_ Via e-mail

13 \_\_\_\_\_ Personal delivery, upon:

14 X \_\_\_\_\_ United Parcel Service, Next Day Air, addressed to:

15  
16 Travis Gerber, Esq.  
17 Gerber Law Offices, LLP  
18 491 4<sup>th</sup> Street  
Elko, NV 89801

19 DATED this 5<sup>th</sup> day of April, 2016.

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**EXHIBIT 3**

**EXHIBIT 3**

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

3 Affirmation: This document does  
4 not contain the social security  
5 number of any person.

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

Plaintiff,

10 vs.

11 RUBY LAKE ESTATES HOMEOWNER'S  
12 ASSOCIATION, STEPHEN WEST; DOMINIC  
13 DIBONA; EVELYN DIBONA; MICHAEL  
14 BRENNAN AND MARNIE BRENNAN; RICHARD  
15 BECKERDITE; BILL NOBLE AND CHERYL NOBLE;  
16 AARON MOTE; BILL HARMON AND TERI HARMON;  
17 LEROY PERKS AND NORA PERKS; JUAN LA CHICA  
18 AND VICTORIA LA CHICA; BRAD KEIFE; SEVEN K  
19 PROPERTIES; MIKE CECCHI AND KRIS CECCHI;  
20 WAYNE CIRONE AND ILA CIRONE; CONNIE  
21 STAFFORD; AARON YOHEY; PAUL LUCAS;  
22 DAVE MILLER; JAMES TAYLOR; MIKE MASON  
23 AND SHELLY MASON; JIMMY SARGENT AND  
24 ELLEN SARGENT; JACK HEALY AND YVETTE  
HEALY; BO HARMON; MICHAEL GOWAN AND  
MARY ANN GOWAN; PHIL FRANK AND DOROTHY  
FRANK; JOE HERNANDEZ AND PAULA HERNANDEZ;  
DENNIS MCINTYRE AND VALERI MCINTYRE;  
ROBERT HECKMAN AND NATHAN HECKMAN;  
JAMES VANDER MEER; HAROLD WYATT AND  
MARY WYATT; ROBERT CLARK; BETH TEITLEBAUM;  
DANIEL SPILSBURY AND DELAINE SPILSBURY;  
TERRY HUBERT AND BONNIE HUBERT; RUSSELL  
ROGERS AND SUSAN ROGERS; ROCKY ROA;  
BEVERLY PATTERSON; DENNIS CUNNINGHAM;  
RILEY MANZONIE; DAVID NORWOOD; and DOES I-X,

Defendants.

26 RUBY LAKE ESTATES HOMEOWNER'S  
27 ASSOCIATION,

Counterclaimant,

**ANSWER TO SECOND  
AMENDED COUNTERCLAIM**

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vs.

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Counterdefendant.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

Cross-Claimant,

vs.

STEPHEN WEST; DOMINIC DIBONA;  
EVELYN DIBONA; MICHAEL BRENNAN  
AND MARNIE BRENNAN; RICHARD BECKERDITE;  
BILL NOBLE AND CHERYL NOBLE; AARON  
MOTES; BILL HARMON AND TERI HARMON;  
LEROY PERKS AND NORA PERKS; JUAN LA  
CHICA AND VICTORIA LA CHICA; BRAD KEIFE;  
SEVEN K PROPERTIES; MIKE CECCHI AND KRIS  
CECCHI; WAYNE CIRONE AND ILA CIRONE;  
CONNIE STAFFORD; AARON YOHEY; PAUL LUCAS;  
DAVE MILLER; JAMES TAYLOR; MIKE MASON AND  
SHELLY MASON; JIMMY SARGENT AND ELLEN  
SARGENT; JACK HEALY AND YVETTE HEALY;  
BO HARMON; MICHAEL GOWAN AND MARY ANN  
GOWAN; PHIL FRANK AND DOROTHY FRANK; JOE  
HERNANDEZ AND PAULA HERNANDEZ; DENNIS  
MCINTYRE AND VALERI MCINTYRE; ROBERT  
HECKMAN AND NATHAN HECKMAN; JAMES  
VANDER MEER; HAROLD WYATT AND MARY  
WYATT; ROBERT CLARK; BETH TEITLEBAUM;  
DANIEL SPILSBURY AND DELAINE SPILSBURY;  
TERRY HUBERT AND BONNIE HUBERT;  
RUSSELL ROGERS AND SUSAN ROGERS;  
ROCKY ROA; BEVERLY PATTERSON; DENNIS  
CUNNINGHAM; RILEY MANZONIE; DAVID  
NORWOOD; and DOES I-X,

Cross-Defendants.

Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY (hereinafter  
"ARTEMIS"), hereby files its Answer to the Second Amended Counterclaim filed herein by  
Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, dated April 14, 2016:

1. ARTEMIS admits that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION  
registered itself as a domestic non-profit cooperative association in the State of Nevada on or about

1 January 18, 2006, but denies that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION is  
2 a common-interest community association under the laws of the State of Nevada.

3 2. ARTEMIS admits that allegations contained in Paragraph 2 of the Counterclaim.

4 3. ARTEMIS admits that allegations contained in Paragraph 3 of the Counterclaim.

5 4. ARTEMIS admits the allegations contained in Paragraph 4 of the Counterclaim.

6 5. ARTEMIS denies the allegations contained in Paragraph 5 of the Counterclaim.

7 6. ARTEMIS admits that allegations contained in Paragraph 6 of the Counterclaim.

8 7. ARTEMIS admits that allegations contained in Paragraph 7 of the Counterclaim.

9 8. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles of  
10 Incorporation for RLEHOA were filed with the Nevada Secretary of State on January 18, 2006, and  
11 denies the remaining allegations contained in Paragraph 8 of the Counterclaim.

12 9. ARTEMIS denies the allegations contained in Paragraph 9 of the Counterclaim.

13 10. ARTEMIS admits that newsletters and written communications have been sent to property  
14 owners located within Ruby Lake Estates subdivision, including to Mr. and Mrs. Essington, and that  
15 meetings were held by the Board of Directors of the RUBY LAKE ESTATES HOMEOWNER'S  
16 ASSOCIATION, but denies the remaining allegations contained in Paragraph 10 of the Counterclaim.

17 11. ARTEMIS admits that the RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION  
18 has attempted to levy assessments against the property owners within the Ruby Lake Estates  
19 subdivision, but denies the remaining allegations contained in Paragraph 11 including a denial that  
20 there are any common elements within the subdivision or that RUBY LAKE ESTATES  
21 HOMEOWNER'S ASSOCIATION has any authority to make assessments.

22 12. ARTEMIS admits that it and Mel Essington initially paid some invoices sent by RUBY  
23 LAKE ESTATES HOMEOWNER'S ASSOCIATION, but denies the remaining allegations contained  
24 in Paragraph 12 of the Counterclaim.

25 13. ARTEMIS admits that Lee Perks, President of RUBY LAKE ESTATES  
26 HOMEOWNER'S ASSOCIATION, authored a letter dated June 28, 2010, but denies the remaining  
27 allegations contained in Paragraph 13 of the Counterclaim.

28

1       14. ARTEMIS admits that Elizabeth and Mel Essington may have been initially in favor of  
2 the creation of an association before they learned that Ruby Lake Estates does not qualify as a  
3 common-interest community, but denies the remaining allegations contained in Paragraph 14 of the  
4 Counterclaim.

5       15. ARTEMIS admits that a form for Articles of Incorporation was filled out listing Mel and  
6 Elizabeth Essington as incorporators and officers, but denies that said form was filed and denies the  
7 remaining allegations contained in Paragraph 15 of the Counterclaim.

8       16. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles of  
9 Incorporation for RLEHOA were filed with the Nevada Secretary of State by Lee Perks on January  
10 18, 2006. ARTEMIS is without sufficient information to form a belief as to the truth of the remaining  
11 allegations contained in Paragraph 16 of the Counterclaim.

12       17. ARTEMIS admits that Mel Essington initially participated in the activities of the Ruby  
13 Lake Estates Homeowner's Association as a board member, but lacks information sufficient to form  
14 a belief as to the truth of the remaining allegations contained in Paragraph 17.

15       18. ARTEMIS admits that Mel Essington served as a board member, but denies the remaining  
16 allegations contained in Paragraph 18.

17       19. ARTEMIS denies the allegations contained in Paragraph 19.

18       20. ARTEMIS admits that Mel Essington wrote letters to the lot owners of Ruby Lake Estates  
19 and that said letters speak for themselves. ARTEMIS denies the remaining allegations contained in  
20 Paragraph 20.

21       21. ARTEMIS denies the allegations contained in Paragraph 21.

22       22. ARTEMIS admits the allegations contained in Paragraph 22.

23       23. ARTEMIS admits that Ruby Lake Estates Homeowner's Association is a voluntary  
24 association that elected a board of directors, but denies any other inference or allegations contained  
25 in Paragraph 23.

26       24. ARTEMIS admits that Mel Essington authored a letter to Lee Perks dated January 14,  
27 2007, and that said letter speaks for itself. ARTEMIS denies the remaining allegations contained in  
28 Paragraph 24.

- 1        25. ARTEMIS denies the allegations contained in Paragraph 25.
- 2        26. ARTEMIS admits that Mel Essington sent correspondence which correspondence speaks  
3 for itself. ARTEMIS denies the remaining allegations contained in Paragraph 26.
- 4        27. ARTEMIS admits that Mel Essington paid assessments as levied by Ruby Lake Estates  
5 Homeowner's Association, but denies the remaining allegations contained in Paragraph 27.
- 6        28. ARTEMIS admits that Mel Essington sent correspondence to other lot owners within  
7 Ruby Lake Estates which correspondence speaks for itself. ARTEMIS denies the remaining  
8 allegations contained in Paragraph 28.
- 9        29. ARTEMIS admits that Mel Essington served as a board member of Ruby Lake Estates  
10 Homeowner's Association beginning in or around August of 2007, but denies the remaining  
11 allegations contained in Paragraph 29.
- 12        30. ARTEMIS denies the allegations contained in Paragraph 30.
- 13        31. ARTEMIS admits that Mel Essington initially participated in the activities of the Ruby  
14 Lake Estates Homeowner's Association as a board member, but lacks information sufficient to form  
15 a belief as to the truth of the remaining allegations contained in Paragraph 31.
- 16        32. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size of  
17 the structure, but denies the remaining allegations contained in Paragraph 32.
- 18        33. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size of  
19 the structure and that the structure was approved by the board of Ruby Lake Estates Homeowner's  
20 Association, but denies the remaining allegations contained in Paragraph 33.
- 21        34. ARTEMIS denies the allegations contained in Paragraph 34.
- 22        35. ARTEMIS admits that it ceased paying assessments, but denies the remaining allegations  
23 contained in Paragraph 35.
- 24        36. ARTEMIS admits that invoices were sent to ARTEMIS by Ruby Lake Estates  
25 Homeowner's Association, but denies the remaining allegations contained in Paragraph 36.
- 26        37. ARTEMIS admits the allegations contained in Paragraph 37.
- 27        38. ARTEMIS admits the Ombudsman's Office issued an opinion dated July 1, 2012, in  
28 which it declined to take any action. The Ombudsman stated in its letter, "... we are not, as you

1 requested, going to declare that the Ruby Lake Estates Homeowners Association is invalid." The  
2 Ombudsman did not declare the Association valid, but concluded, "... in our view this Association  
3 is required to comply with the law pertaining to homeowners associations, specifically, NRS 116 and  
4 related laws and regulations."

5 39. ARTEMIS admits that it stopped paying assessments when it discovered that the  
6 homeowner's association was not valid, but denies the remaining allegations contained in Paragraph  
7 39.

8 40. ARTEMIS denies the allegations contained in Paragraph 40.

9 41. ARTEMIS denies the allegations contained in Paragraph 41.

10 42. ARTEMIS denies the allegations contained in Paragraph 42.

11 43. ARTEMIS admits that Mr. Essington sent a letter of resignation to Ruby Lake Estates  
12 Homeowner's Association dated January 6, 2011.

13 44. Paragraph 44 does not require any response.

14 45. ARTEMIS denies the allegations contained in Paragraph 45.

15 46. ARTEMIS denies the allegations contained in Paragraph 46.

16 47. ARTEMIS denies the allegations contained in Paragraph 47.

17 48. Paragraph 48 does not require any response.

18 49. ARTEMIS denies the allegations contained in Paragraph 49.

19 50. ARTEMIS denies the allegations contained in Paragraph 50.

20 51. ARTEMIS denies the allegations contained in Paragraph 51.

21 52. ARTEMIS denies the allegations contained in Paragraph 52.

22 53. Paragraph 53 does not require any response.

23 54. ARTEMIS denies the allegations contained in Paragraph 54.

24 55. ARTEMIS denies the allegations contained in Paragraph 55.

25 56. ARTEMIS denies the allegations contained in Paragraph 56.

26 57. Paragraph 57 does not require any response.

27 58. ARTEMIS admits the allegations contained in Paragraph 58, but disputes the findings of  
28 said decision.

1 59. ARTEMIS admits the allegations contained in Paragraph 59, but disputes the findings  
2 of said decision.

3 60. ARTEMIS denies the allegations contained in Paragraph 60.

4 61. Paragraph 61 does not require any response.

5 62. ARTEMIS denies the allegations contained in Paragraph 62.

6 63. ARTEMIS denies the allegations contained in Paragraph 63.

7 64. ARTEMIS denies the allegations contained in Paragraph 64.

8 65. ARTEMIS denies the allegations contained in Paragraph 65.

9 66. ARTEMIS denies the allegations contained in Paragraph 66.

10 67. Paragraph 67 does not require any response.

11 68. ARTEMIS admits that a real controversy exists regarding the validity of Ruby Lake  
12 Estates Homeowner's Association as a common-interest community under NRS 116, and denies the  
13 remaining allegations contained in Paragraph 68.

14 69. Paragraph 69 does not require any response.

15 70. ARTEMIS denies the allegations contained in Paragraph 70.

16 71. ARTEMIS denies the allegations contained in Paragraph 71.

17 72. ARTEMIS denies the allegations contained in Paragraph 72.

18 73. ARTEMIS denies the allegations contained in Paragraph 73.

19 74. ARTEMIS denies the allegations contained in Paragraph 74.

20 75. ARTEMIS denies the allegations contained in Paragraph 75.

21 76. ARTEMIS denies the allegations contained in Paragraph 76.

22 **AFFIRMATIVE DEFENSES**

23 ARTEMIS hereby presents its affirmative defenses in the above-entitled action as follows:

24 **FIRST AFFIRMATIVE DEFENSE**

25 The Counterclaims fail to state a claim upon which relief can be granted.

26 **SECOND AFFIRMATIVE DEFENSE**

27 An award, including an award for attorneys' fees and costs, from a non-binding arbitration  
28 cannot be confirmed.

1                                    THIRD AFFIRMATIVE DEFENSE

2            The Counterclaims are barred because Counterclaimant is not a valid unit-owners' association  
3 that was "organized" prior to the conveyance of the "first unit in the common-interest community"  
4 pursuant to NRS 116.3101.

5                                    FOURTH AFFIRMATIVE DEFENSE

6            The Counterclaims are barred because Counterclaimant is not a valid unit-owners' association  
7 that is located in a "common-interest community" pursuant to NRS 116.021.

8                                    FIFTH AFFIRMATIVE DEFENSE

9            The Counterclaims are barred under the doctrines of estoppel, laches, and/or unclean hands.

10                                  SIXTH AFFIRMATIVE DEFENSE

11           Counterclaimant failed to join a third party.

12                                  SEVENTH AFFIRMATIVE DEFENSE

13           Counter-Defendant hereby incorporates by reference those affirmative defenses enumerated  
14 in Rule 8 of the Nevada Rules of Civil Procedure as fully set forth herein. In the event further  
15 investigation or discovery reveals the applicability of any such defenses, Counter-Defendant reserves  
16 the right to seek leave of Court to amend this Answer to specifically assert the same. Such defenses  
17 are herein incorporated by reference for the specific purpose of not waiving the same.

18                                  PRAYER FOR RELIEF

19           Plaintiff, therefore, respectfully request that judgment be entered in Plaintiff's favor and  
20 against Defendant as follows:


- 21           1. That Defendant/Counterclaimant take nothing by way of its Counterclaim filed herein;  
22           2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association  
23 is not authorized under the Ruby Lake Estates Declaration, Restrictions and Covenants to compel the  
24 payment of dues or assessments, or to otherwise compel property owners within the Ruby Lake  
25 Estates to participate in the activities of the Ruby Lake Estates Homeowner's Association;  
26           3. For an award of restitution and damages against Defendant, including but not limited to  
27 the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's  
28 Association;

- 1 4. For Plaintiff's reasonable attorney fees and costs of suit;  
2 5 For exemplary or punitive damages; and  
3 6. For such other and further relief as the Court may deem just and proper.

4 DATED this 4<sup>th</sup> day of May, 2016.

5 GERBER LAW OFFICES, LLP

6 BY:

7   
8 ~~TRAVIS W. GERBER, ESQ.~~  
9 Nevada State Bar No. 8083  
10 ZACHARY A. GERBER, ESQ.  
11 Nevada State Bar No. 13128  
12 491 4<sup>th</sup> Street  
13 Elko, Nevada 89801  
14 (775) 738-9258  
15 ATTORNEYS FOR PLAINTIFF  
16 ARTEMIS EXPLORATION  
17 COMPANY  
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GERBER LAW OFFICES, LLP

491 4<sup>th</sup> Street  
Elko, Nevada 89801

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Madison Johnson  
MADISON JOHNSON

**EXHIBIT 4**

**EXHIBIT 4**

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

3 Affirmation: This document does  
4 not contain the social security  
5 number of any person.

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

Plaintiff,

10 vs.

11 RUBY LAKE ESTATES HOMEOWNER'S  
12 ASSOCIATION, STEPHEN WEST; DOMINIC  
13 DIBONA; EVELYN DIBONA; MICHAEL  
14 BRENNAN AND MARNIE BRENNAN; RICHARD  
15 BECKERDITE; BILL NOBLE AND CHERYL NOBLE;  
16 AARON MOTE; BILL HARMON AND TERI HARMON;  
17 LEROY PERKS AND NORA PERKS; JUAN LA CHICA  
18 AND VICTORIA LA CHICA; BRAD KEIFE; SEVEN K  
19 PROPERTIES; MIKE CECCHI AND KRIS CECCHI;  
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ROGERS AND SUSAN ROGERS; ROCKY ROA;  
BEVERLY PATTERSON; DENNIS CUNNINGHAM;  
RILEY MANZONIE; DAVID NORWOOD; and DOES I-X,

Defendants.

26 RUBY LAKE ESTATES HOMEOWNER'S  
27 ASSOCIATION,

28 Counterclaimant,

**HAROLD WYATT AND**  
**MARY WYATT'S**  
**ANSWER TO SECOND**  
**AMENDED COMPLAINT AND**  
**CROSS-CLAIM**

GERBER LAW OFFICES, LLP

491 4<sup>th</sup> Street

Elko, Nevada 89801

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vs.

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Counterdefendant.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

Cross-Claimant,

vs.

STEPHEN WEST; DOMINIC DIBONA;  
EVELYN DIBONA; MICHAEL BRENNAN  
AND MARNIE BRENNAN; RICHARD BECKERDITE;  
BILL NOBLE AND CHERYL NOBLE; AARON  
MOTES; BILL HARMON AND TERI HARMON;  
LEROY PERKS AND NORA PERKS; JUAN LA  
CHICA AND VICTORIA LA CHICA; BRAD KEIFE;  
SEVEN K PROPERTIES; MIKE CECCHI AND KRIS  
CECCHI; WAYNE CIRONE AND ILA CIRONE;  
CONNIE STAFFORD; AARON YOHEY; PAUL LUCAS;  
DAVE MILLER; JAMES TAYLOR; MIKE MASON AND  
SHELLY MASON; JIMMY SARGENT AND ELLEN  
SARGENT; JACK HEALY AND YVETTE HEALY;  
BO HARMON; MICHAEL GOWAN AND MARY ANN  
GOWAN; PHIL FRANK AND DOROTHY FRANK; JOE  
HERNANDEZ AND PAULA HERNANDEZ; DENNIS  
MCINTYRE AND VALERI MCINTYRE; ROBERT  
HECKMAN AND NATHAN HECKMAN; JAMES  
VANDER MEER; HAROLD WYATT AND MARY  
WYATT; ROBERT CLARK; BETH TEITTEBAUM;  
DANIEL SPILSBURY AND DELAINE SPILSBURY;  
TERRY HUBERT AND BONNIE HUBERT;  
RUSSELL ROGERS AND SUSAN ROGERS;  
ROCKY ROA; BEVERLY PATTERSON; DENNIS  
CUNNINGHAM; RILEY MANZONIE; DAVID  
NORWOOD; and DOES I-X,

Cross-Defendants.

Defendants/Cross-Defendants, HAROLD WYATT AND MARY WYATT (hereinafter "LOT  
OWNERS"), hereby file their Answer to the Second Amended Complaint, filed by Plain'  
ARTEMIS EXPLORATION COMPANY ("ARTEMIS") on April 14, 2016, and Second Amr  
Cross-Claim, filed by Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCI  
("RLEHOA") on April 14, 2016:

**Answer to Second Amended Complaint**

1. LOT OWNERS admit the allegations contained in Paragraph 1 of the Complaint.
2. LOT OWNERS admit the allegations contained in Paragraph 2 of the Complaint.
3. LOT OWNERS admit the allegations contained in Paragraph 3 of the Complaint.
4. LOT OWNERS admit the allegations contained in Paragraph 4 of the Complaint.
5. LOT OWNERS admit the allegations contained in Paragraph 5 of the Complaint.
6. LOT OWNERS admit the allegations contained in Paragraph 6 of the Complaint.
7. LOT OWNERS restate and incorporate each prior allegation as if set forth fully herein.
8. LOT OWNERS admit the allegations contained in Paragraph 8 of the Complaint.
9. LOT OWNERS admit the allegations contained in Paragraph 9 of the Complaint.
10. LOT OWNERS admit the allegations contained in Paragraph 10 of the Complaint.
11. LOT OWNERS admit the allegations contained in Paragraph 11 of the Complaint.
12. LOT OWNERS admit the allegations contained in Paragraph 12 of the Complaint.
13. LOT OWNERS admit the allegations contained in Paragraph 13 of the Complaint.
14. LOT OWNERS admit the allegations contained in Paragraph 14 of the Complaint.
15. LOT OWNERS admit the allegations contained in Paragraph 15 of the Complaint.
16. LOT OWNERS admit the allegations contained in Paragraph 16 of the Complaint.
17. LOT OWNERS admit the allegations contained in Paragraph 17 of the Complaint.
18. LOT OWNERS admit the allegations contained in Paragraph 18 of the Complaint.
19. LOT OWNERS admit the allegations contained in Paragraph 19 of the Complaint.
20. LOT OWNERS admit the allegations contained in Paragraph 20 of the Complaint.
21. LOT OWNERS admit the allegations contained in Paragraph 21 of the Complaint.
22. LOT OWNERS admit the allegations contained in Paragraph 22 of the Complaint.
23. LOT OWNERS restate and incorporate each prior allegation as if set forth fully herein.
24. LOT OWNERS admit the allegations contained in Paragraph 24 of the Complaint.
25. LOT OWNERS admit the allegations contained in Paragraph 25 of the Complaint.
26. LOT OWNERS admit the allegations contained in Paragraph 26 of the Complaint.
27. LOT OWNERS admit the allegations contained in Paragraph 27 of the Complaint.

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491 4<sup>th</sup> Street  
Elko, Nevada 89801

1 28. LOT OWNERS admit the allegations contained in Paragraph 28 of the Complaint.

2  
3 **Answer to Second Amended Cross-Claim**

4 1. LOT OWNERS admit that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION  
5 registered itself as a domestic non-profit cooperative association in the State of Nevada on or about  
6 January 18, 2006, but deny that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION is a  
7 common-interest community association under the laws of the State of Nevada.

8 2. LOT OWNERS admit the allegations contained in Paragraph 2 of the Crossclaim.

9 3. LOT OWNERS admit the allegations contained in Paragraph 3 of the Crossclaim.

10 4. LOT OWNERS admit the allegations contained in Paragraph 4 of the Crossclaim.

11 5. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
12 allegations contained in Paragraph 5 of the Crossclaim, and therefore deny the allegations contained  
13 in Paragraph 5 of the Crossclaim.

14 6. LOT OWNERS admit the allegations contained in Paragraph 6 of the Crossclaim.

15 7. LOT OWNERS admit the allegations contained in Paragraph 7 of the Crossclaim.

16 8. LOT OWNERS admit, based on records from the Nevada Secretary of State, that Articles  
17 of Incorporation for RLEHOA were filed with the Nevada Secretary of State on January 18, 2006, and  
18 deny the remaining allegations contained in Paragraph 8 of the Crossclaim.

19 9. LOT OWNERS deny the allegations contained in Paragraph 9 of the Crossclaim.

20 10. LOT OWNERS admit that newsletters and written communications have been sent to  
21 property owners located within Ruby Lake Estates subdivision and that meetings were held by the  
22 Board of Directors of the RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, but deny the  
23 remaining allegations contained in Paragraph 10 of the Crossclaim.

24 11. LOT OWNERS admit that the RUBY LAKE ESTATES HOMEOWNER'S  
25 ASSOCIATION has attempted to levy assessments against the property owners within the Ruby Lake  
26 Estates subdivision, but deny the remaining allegations contained in Paragraph 11 including a denial  
27 that there are any common elements within the subdivision or that RUBY LAKE ESTATES  
28 HOMEOWNER'S ASSOCIATION has any authority to make assessments.

1       12. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
2 allegations contained in Paragraph 12 of the Crossclaim, and therefore deny the allegations contained  
3 in Paragraph 12 of the Crossclaim.

4       13. LOT OWNERS admit that Lee Perks, President of RUBY LAKE ESTATES  
5 HOMEOWNER'S ASSOCIATION, authored a letter dated June 28, 2010, but deny the remaining  
6 allegations contained in Paragraph 13 of the Crossclaim.

7       14. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
8 allegations contained in Paragraph 14 of the Crossclaim, and therefore deny the allegations contained  
9 in Paragraph 14 of the Crossclaim.

10       15. LOT OWNERS admit that a form for Articles of Incorporation was filled out listing Mel  
11 and Elizabeth Essington as incorporators and officers, but deny that said form was filed and deny the  
12 remaining allegations contained in Paragraph 15 of the Crossclaim.

13       16. LOT OWNERS admit, based on records from the Nevada Secretary of State, that Articles  
14 of Incorporation for RLEHOA were filed with the Nevada Secretary of State by Lee Perks on January  
15 18, 2006. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
16 remaining allegations contained in Paragraph 16 of the Crossclaim.

17       17. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
18 allegations contained in Paragraph 17 of the Crossclaim, and therefore deny the allegations contained  
19 in Paragraph 17 of the Crossclaim.

20       18. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
21 allegations contained in Paragraph 18 of the Crossclaim, and therefore deny the allegations contained  
22 in Paragraph 18 of the Crossclaim.

23       19. LOT OWNERS deny the allegations contained in Paragraph 19.

24       20. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
25 allegations contained in Paragraph 20 of the Crossclaim, and therefore deny the allegations contained  
26 in Paragraph 20 of the Crossclaim.

1           21. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
2 allegations contained in Paragraph 21 of the Crossclaim, and therefore deny the allegations contained  
3 in Paragraph 21 of the Crossclaim.

4           22. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
5 allegations contained in Paragraph 22 of the Crossclaim, and therefore deny the allegations contained  
6 in Paragraph 22 of the Crossclaim.

7           23. LOT OWNERS admit that Ruby Lake Estates Homeowner's Association is a voluntary  
8 association that elected a board of directors, but deny any other inference or allegations contained in  
9 Paragraph 23.

10           24. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
11 allegations contained in Paragraph 24 of the Crossclaim, and therefore deny the allegations contained  
12 in Paragraph 24 of the Crossclaim.

13           25. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
14 allegations contained in Paragraph 25 of the Crossclaim, and therefore deny the allegations contained  
15 in Paragraph 25 of the Crossclaim.

16           26. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
17 allegations contained in Paragraph 26 of the Crossclaim, and therefore deny the allegations contained  
18 in Paragraph 26 of the Crossclaim.

19           27. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
20 allegations contained in Paragraph 27 of the Crossclaim, and therefore deny the allegations contained  
21 in Paragraph 27 of the Crossclaim.

22           28. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
23 allegations contained in Paragraph 28 of the Crossclaim, and therefore deny the allegations contained  
24 in Paragraph 28 of the Crossclaim.

25           29. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
26 allegations contained in Paragraph 29 of the Crossclaim, and therefore deny the allegations contained  
27 in Paragraph 29 of the Crossclaim.

28           30. LOT OWNERS deny the allegations contained in Paragraph 30.

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1        31. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
2 allegations contained in Paragraph 31 of the Crossclaim, and therefore deny the allegations contained  
3 in Paragraph 31 of the Crossclaim.

4        32. LOT OWNERS admit that there were concerns regarding the size of the structure, but  
5 deny the remaining allegations contained in Paragraph 32.

6        33. LOT OWNERS admit that there were concerns regarding the size of the structure and  
7 that the structure was approved by the board of Ruby Lake Estates Homeowner's Association, but  
8 deny the remaining allegations contained in Paragraph 33.

9        34. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
10 allegations contained in Paragraph 34 of the Crossclaim, and therefore deny the allegations contained  
11 in Paragraph 34 of the Crossclaim.

12        35. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
13 allegations contained in Paragraph 35 of the Crossclaim, and therefore deny the allegations contained  
14 in Paragraph 35 of the Crossclaim.

15        36. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
16 allegations contained in Paragraph 36 of the Crossclaim, and therefore deny the allegations contained  
17 in Paragraph 36 of the Crossclaim.

18        37. LOT OWNERS admit the allegations contained in Paragraph 37.

19        38. LOT OWNERS admit the Ombudsman's Office issued an opinion dated July 1, 2012, in  
20 which it declined to take any action. The Ombudsman stated in its letter, "... we are not, as you  
21 requested, going to declare that the Ruby Lake Estates Homeowners Association is invalid." The  
22 Ombudsman did not declare the Association valid, but concluded, "... in our view this Association  
23 is required to comply with the law pertaining to homeowners associations, specifically, NRS 116 and  
24 related laws and regulations."

25        39. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
26 allegations contained in Paragraph 39 of the Crossclaim, and therefore deny the allegations contained  
27 in Paragraph 39 of the Crossclaim.

1       40. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
2 allegations contained in Paragraph 40 of the Crossclaim, and therefore deny the allegations contained  
3 in Paragraph 40 of the Crossclaim.

4       41. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
5 allegations contained in Paragraph 41 of the Crossclaim, and therefore deny the allegations contained  
6 in Paragraph 41 of the Crossclaim.

7       42. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
8 allegations contained in Paragraph 42 of the Crossclaim, and therefore deny the allegations contained  
9 in Paragraph 42 of the Crossclaim.

10       43. LOT OWNERS are without sufficient information to form a belief as to the truth of the  
11 allegations contained in Paragraph 43 of the Crossclaim, and therefore deny the allegations contained  
12 in Paragraph 43 of the Crossclaim.

13       44. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
14 Claim.

15       45. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
16 Claim.

17       46. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
18 Claim.

19       47. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
20 Claim.

21       48. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
22 Claim.

23       49. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
24 Claim.

25       50. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
26 Claim.

27       51. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
28 Claim.

1        52. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
2 Claim.  
3        53. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
4 Claim.  
5        54. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
6 Claim.  
7        55. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
8 Claim.  
9        56. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
10 Claim.  
11       57. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
12 Claim.  
13       58. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
14 Claim.  
15       59. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
16 Claim.  
17       60. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
18 Claim.  
19       61. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
20 Claim.  
21       62. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
22 Claim.  
23       63. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
24 Claim.  
25       64. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
26 Claim.  
27       65. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
28 Claim.

1       66. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
2 Claim.

3       67. Paragraph 67 does not require any response.

4       68. LOT OWNERS admit that a real controversy exists regarding the validity of Ruby Lake  
5 Estates Homeowner's Association as a common-interest community under NRS 116, and deny the  
6 remaining allegations contained in Paragraph 68.

7       69. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
8 Cross-Claim.

9       70. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the Cross-  
10 Claim.

11       71. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
12 Cross-Claim.

13       72. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
14 Cross-Claim.

15       73. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
16 Cross-Claim.

17       74. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
18 Cross-Claim.

19       75. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
20 Cross-Claim.

21       76. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the  
22 Cross-Claim.

23                                   **AFFIRMATIVE DEFENSES**

24       LOT OWNERS hereby present their affirmative defenses in the above-entitled action as  
25 follows:

26                                   **FIRST AFFIRMATIVE DEFENSE**

27       The Crossclaim fails to state a claim upon which relief can be granted.  
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**SECOND AFFIRMATIVE DEFENSE**

The Crossclaim is barred because Crossclaimant is not a valid unit-owners' association that was "organized" prior to the conveyance of the "first unit in the common-interest community" pursuant to NRS 116.3101.

**THIRD AFFIRMATIVE DEFENSE**

The Crossclaim is barred because Crossclaimant is not a valid unit-owners' association located in a "common-interest community" pursuant to NRS 116.021.

**FOURTH AFFIRMATIVE DEFENSE**

The Crossclaim is barred under the doctrines of estoppel, laches, and/or unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

The Cross-Defendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Cross-Defendants reserve the right to seek leave of Court to amend this Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**PRAYER FOR RELIEF**

Cross-Defendants, therefore, respectfully request that judgment be entered in Cross-Defendants' favor and against Defendant as follows:

1. That Defendant/Crossclaimant take nothing by way of its Crossclaim filed herein;
2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association is not located within a common-interest community and is not authorized under the Ruby Lake Estates Declaration, Restrictions and Covenants to compel the payment of dues or assessments, or to otherwise compel property owners within the Ruby Lake Estates to participate in the activities of the Ruby Lake Estates Homeowner's Association; and
3. For such other and further relief as the Court may deem just and proper.

///  
///  
///

1 DATED this 12<sup>th</sup> day of May, 2016.

2 GERBER LAW OFFICES, LLP

3 BY: 

4 TRAVET W. GERBER, ESQ.

5 Nevada State Bar No. 8083

6 ZACHARY A. GERBER, ESQ.

7 Nevada State Bar No. 13128

8 491 4<sup>th</sup> Street

9 Elko, Nevada 89801

10 (775) 738-9258

11 ATTORNEYS FOR CROSS-  
12 DEFENDANTS  
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Gayle A. Kern  
Kern & Associates, Ltd  
5421 Kietzke Lane, suite 200  
Reno, Nevada 89511

Madison Johnson  
MADISON JOHNSON

# **EXHIBIT 5**

# **EXHIBIT 5**

1 CASE NO. CV-C-12-175

2 DEPT. ~~1~~ 2

3 Affirmation: Pursuant to NRS 239B.030,  
4 this document does not contain the social  
5 security number of any person.

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK DEPUTY *MA*

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF ELKO**

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,  
10  
11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S  
14 ASSOCIATION, *et. al.*,  
15 Defendants.

16 RUBY LAKE ESTATES HOMEOWNER'S  
17 ASSOCIATION,  
18 Counterclaimant,

19 vs.

20 ARTEMIS EXPLORATION COMPANY,  
21 a Nevada Corporation,  
22 Counterdefendant.

23 RUBY LAKE ESTATES HOMEOWNER'S  
24 ASSOCIATION,  
25 Cross-Claimant,

26 vs.

27 STEPHEN WEST; *et. al.*,  
28 Cross-Defendants.

**STIPULATION AND ORDER FOR**  
**DISMISSAL OF COUNTERCLAIMS**  
**AND CROSS-CLAIM WITHOUT**  
**PREJUDICE, WITHDRAWAL OF**  
**PENDING MOTIONS, AND FOR**  
**FINAL JUDGMENT**

1 Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY ("Artemis"),  
2 Defendant/Cross-Defendant, HAROLD and MARY WYATT ("Wyatts"), and  
3 Defendant/Counterclaimant/Cross-Claimant RUBY LAKE ESTATES HOMEOWNER'S  
4 ASSOCIATION ("RLEHOA") (collectively the "Parties"), by and through their respective,  
5 undersigned counsel, hereby STIPULATE AND AGREE, as follows:

6 1. The Parties stipulate to dismiss all RLEHOA's counterclaims and cross-claim without  
7 prejudice pursuant to NRCP 41(a)(1)(ii) and 41(c).

8 2. The Parties stipulate to withdraw all pending motions, including RLEHOA's Motion  
9 for Summary Judgment on Counterclaims, Artemis's Motion for Summary Judgment on Defendant's  
10 Remaining Counterclaims, Artemis's Motion for Leave to File Supplement to Motion for Summary  
11 Judgment on Defendant's Remaining Counterclaims, and Artemis's Motion for Reconsideration of  
12 Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment. The Parties  
13 agree that all documents filed in the case shall be a matter of record upon appeal, and the law and  
14 facts stated therein shall not be precluded from being presented on appeal.

15 3. The Parties stipulate that Artemis' and Wyatts' pending Motion to Dismiss  
16 Counterclaims and Cross-Claims Under NRCP 41(e) and to Deny Pending Motions For Lack of  
17 Jurisdiction ("Motion to Dismiss") is moot and, therefore, withdrawn upon the entry of this  
18 Stipulation and Order and Final Judgment. The withdrawn Motion to Dismiss, and any arguments,  
19 case law, or allegations in relation thereto, shall not be subject to or presented in any appeal.

20 4. This dismissal of RLEHOA's Counterclaims and Cross-claim shall not constitute an  
21 adjudication on the merits, and all Parties stipulate and agree to bear their own fees and costs incurred  
22 in the prosecution and/or defense of the Counterclaims and Crossclaim.

23 5. In accord with this Court's Order: Joinder of Necessary Parties entered September 11,  
24 2015 ("Joinder Order"), Artemis filed its Second Amended Complaint on or about April 14, 2016,  
25 naming all additional property owners of RLEHOA, and RLEHOA filed its Answer, Counterclaims,  
26 and Cross-claim on or about April 14, 2016. Thereafter, and following proper service of process of  
27 the Second Amended Complaint and RLEHOA's Cross-claim, the Wyatts filed their Answer on or  
28 about May 16, 2016. The Second Amended Complaint contains a single declaratory relief claim

1 seeking determination that RLEHOA does not constitute a common interest community pursuant to  
2 NRS Chapter 116. In further accord with the Court's Joinder Order, RLEHOA's single Cross-claim  
3 against the other property owners is also a declaratory relief claim seeking a determination that  
4 RLEHOA is a common interest community subject to the provisions of NRS Chapter 116.

5 6. Artemis, RLEHOA, and the Wyatts are the only parties which have appeared in this  
6 matter. All other named property owner/defendants/cross-defendants were properly served with the  
7 Second Amended Complaint and RLEHOA's Cross-claim in accord with the Nevada Rules of Civil  
8 Procedure, but no appearances were made, and defaults have been duly entered with the Court as  
9 to all of the non-appearing property owners/defendants/cross-defendants.

10 7. The Parties stipulate that, with the dismissal of the Cross-claim without prejudice,  
11 the non-appearing property owners/defendants/cross-defendants and the Wyatts shall no longer be  
12 cross-defendants to this matter. The Wyatts shall remain as party defendants only by virtue of  
13 Artemis's Second Amended Complaint and the Wyatts' Answer filed on or about May 16, 2016.  
14 Defaults remain of record as to the non-appearing property owners/defendants to Artemis's Second  
15 Amended Complaint for declaratory relief, which is identical to the declaratory relief claim asserted  
16 in Artemis's original Complaint filed on or about March 2, 2012 ("Original Complaint").

17 8. The Wyatts stipulate and agree to be bound by this Court's Order Granting RLEHOA's  
18 Motion for Summary Judgment entered February 14, 2013, on Artemis's declaratory relief claim as  
19 asserted in its Original Complaint, and which is identical to Artemis's declaratory relief claim in its  
20 Second Amended Complaint. The Wyatts further stipulate and agree to be bound by this Court's  
21 Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013 on Artemis's  
22 declaratory relief claim as asserted in its Original Complaint, and which is identical to Artemis's  
23 declaratory relief claim in its Second Amended Complaint. In both of its Orders, the Court determined  
24 as a matter of law that RLEHOA is a common interest community pursuant to NRS Chapter 116,  
25 valid at its inception, and continues to be so today. The Wyatts further stipulate and agree to be bound  
26 by any decision from the Nevada Supreme Court and/or Nevada Court of Appeals in connection with  
27 any appeal of this Court's February 2013 Orders referenced herein-above.

28 ///

1 9. The Parties stipulate and agree that all claims have been resolved as to all parties which  
2 have appeared in this matter, including the Wyatts who have stipulated to be bound by this Court's  
3 February 12, 2013 and February 14, 2013 Orders, that the other named property owners/defendants  
4 were properly served and defaulted as to Artemis's Second Amended Complaint, which is identical  
5 to Artemis's declaratory relief claim already adjudicated by the Court's February 2013 Orders.

6 10. Wherefore, the Parties stipulate, agree, and request that the Court enter Final Judgment  
7 as to Artemis, RLEHOA, and the Wyatts, and as to the defaulted defendants pursuant to NRCP 54(b)  
8 because there is no just reason to delay entry of Final Judgment. A proposed Judgment is attached  
9 hereto as Exhibit "A".


10 DATED this 16<sup>th</sup> day of February, 2018.

11 KERN & ASSOCIATES, LTD.

12   
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Email: gaylekern@kernltd.com  
Email: karenayarbe@kernltd.com  
Attorneys for Defendant Ruby Lake  
Estates Homeowner's Association

DATED this 20<sup>th</sup> day of February, 2018.

GERBER LAW OFFICE, LLP

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Email: zag@gerberlegal.com  
Attorneys for Plaintiff Artemis Exploration  
Company and Defendants Harold and Mary  
Wyatt

**ORDER**

19  
20 IT IS SO ORDERED this 26 day of February, 2018.


21  
22   
23 DISTRICT COURT JUDGE  
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EXHIBIT "A"

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

3 *Affirmation: This document does*  
4 *not contain the social security*  
5 *number of any person.*

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

11 FINAL JUDGMENT

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S  
14 ASSOCIATION AND DOES I-X,

15 Defendants.  
16 \_\_\_\_\_/

17 The Court, having reviewed and considered the parties' Stipulation and Order for Dismissal  
18 of Counterclaims and Crossclaim Without Prejudice, Withdrawal of Pending Motions, and for Final  
19 Judgment ("Stipulation and Order"), and further based upon this Court's review and consideration  
20 of the Motion for Summary Judgment of Defendant Ruby Lake Estates Homeowner's Association  
21 ("RLEHOA") on Plaintiff Artemis Exploration Company's ("Artemis's") Declaratory Relief Claim,  
22 the exhibits in support of RLEHOA's Motion, Artemis's Opposition thereto, RLEHOA's Reply; and  
23 Artemis's Motion for Summary Judgment on its Declaratory Relief Claim, RLEHOA's Opposition  
24 thereto, and Artemis's Reply; and the Court being fully informed in the premises:

25 The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained  
26 a cause of action for Declaratory Relief, and other causes of action that were subsequently,  
27 voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed  
28 counterclaims against Artemis. After competing Motions for Summary Judgment were filed by

1 Artemis and RLEHOA regarding Artemis's sole claim of Declaratory Relief, this Court entered its  
2 Order Granting RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the  
3 Court's Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013. The  
4 Orders determined as a matter of law that RLEHOA is a common interest community pursuant to  
5 NRS Chapter 116, valid at its inception, and it continues to be so today.  
6

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,  
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property  
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended  
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against  
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision  
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter  
13 116: All property owners within Ruby Lake Estates subdivision were properly served in accord with  
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's  
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property  
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have  
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims  
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been  
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint  
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for  
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion  
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.  
23  
24  
25

26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment  
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in  
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

1 RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the Court's Order  
2 Denying Artemis's Motion for Summary Judgment entered February 12, 2013. These Orders have  
3 not been reconsidered or reversed, and therefore as standing Orders this Court finds that Artemis's  
4 claim for declaratory relief has been resolved as a matter of law in accordance with the Court's  
5 Orders as to all active litigants which have appeared in this matter, Artemis, RLEHOA, Harold  
6 Wyatt, and Mary Wyatt.

8 ***IT IS THEREFORE ORDERED*** that ***JUDGMENT*** is entered in favor of RLEHOA in  
9 accord with the Court's Order Granting RLEHOA's Motion for Summary Judgment entered  
10 February 14, 2013, and the Court's Order Denying Artemis's Motion for Summary Judgment  
11 entered February 12, 2013, and that RLEHOA is a common interest community pursuant to NRS  
12 Chapter 116, valid at its inception, and it continues to be so today.

14 ***IT IS FURTHER ORDERED*** that, as to the properly served and defaulted property owner  
15 defendants to Artemis's Second Amended Complaint, there is no just reason for delay, Artemis's  
16 identical claim for declaratory relief has been resolved as to all appearing parties, and that this  
17 ***JUDGMENT*** shall be entered as a ***FINAL JUDGMENT*** in accord with NRCP 54(b).

19 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

23 \_\_\_\_\_  
24 DISTRICT COURT JUDGE

**EXHIBIT 6**

**EXHIBIT 6**

1 CASE NO. CV-C-12-175

2 DEPT. NO. *12*

3 *Affirmation: This document does*  
4 *not contain the social security*  
5 *number of any person.*

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY *JA*

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

FINAL JUDGMENT

11 vs.

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION AND DOES I-X,

14 Defendants.  
15 \_\_\_\_\_ /

16 The Court, having reviewed and considered the parties' Stipulation and Order for Dismissal  
17 of Counterclaims and Crossclaim Without Prejudice, Withdrawal of Pending Motions, and for Final  
18 Judgment ("Stipulation and Order"), and further based upon this Court's review and consideration  
19 of the Motion for Summary Judgment of Defendant Ruby Lake Estates Homeowner's Association  
20 ("RLEHOA") on Plaintiff Artemis Exploration Company's ("Artemis's") Declaratory Relief Claim,  
21 the exhibits in support of RLEHOA's Motion, Artemis's Opposition thereto, RLEHOA's Reply; and  
22 Artemis's Motion for Summary Judgment on its Declaratory Relief Claim, RLEHOA's Opposition  
23 thereto, and Artemis's Reply; and the Court being fully informed in the premises:  
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26 The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained  
27 a cause of action for Declaratory Relief, and other causes of action that were subsequently,  
28 voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed  
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3 Court's Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013. The  
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13 116. All property owners within Ruby Lake Estates subdivision were properly served in accord with  
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15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property  
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have  
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims  
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been  
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint  
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for  
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion  
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.  
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26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment  
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in  
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

1 RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the Court's Order  
2 Denying Artemis's Motion for Summary Judgment entered February 12, 2013. These Orders have  
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4 claim for declaratory relief has been resolved as a matter of law in accordance with the Court's  
5 Orders as to all active litigants which have appeared in this matter, Artemis, RLEHOA, Harold  
6 Wyatt, and Mary Wyatt.

8 *IT IS THEREFORE ORDERED* that *JUDGMENT* is entered in favor of RLEHOA in  
9 accord with the Court's Order Granting RLEHOA's Motion for Summary Judgment entered  
10 February 14, 2013, and the Court's Order Denying Artemis's Motion for Summary Judgment  
11 entered February 12, 2013, and that RLEHOA is a common interest community pursuant to NRS  
12 Chapter 116, valid at its inception, and it continues to be so today.

14 *IT IS FURTHER ORDERED* that, as to the properly served and defaulted property owner  
15 defendants to Artemis's Second Amended Complaint, there is no just reason for delay, Artemis's  
16 identical claim for declaratory relief has been resolved as to all appearing parties, and that this  
17 *JUDGMENT* shall be entered as a *FINAL JUDGMENT* in accord with NRCP 54(b).

19 DATED this 26 day of February, 2018.

21  
22 /S/ ALVIN R KACIN

23 \_\_\_\_\_  
24 DISTRICT COURT JUDGE  
25  
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**EXHIBIT 7**

**EXHIBIT 7**

Case No. CV-C-12-175

Dept. No. 2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Plaintiff,

v.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION AND DOES I-X,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

This is a dispute between a property owner and its homeowners association.

On April 20, 2012, Plaintiff/Counterdefendant Artemis Exploration Company (hereinafter "Artemis") filed a Motion for Summary Judgment (hereinafter "MSJ") against Defendant/Counterclaimant Ruby Lake Estates Homeowner's Association (hereinafter "the HOA"). The HOA opposed the MSJ on May 30, 2012. Artemis filed its "Reply to Opposition to Plaintiff's Motion for Summary Judgment" on June 15, 2012.

By its MSJ, Artemis seeks the entry of a judgment declaring the HOA invalid.

Having carefully considered the matter, the Court is denying the MSJ.

**1. Law of Summary Judgment**

"A party seeking to recover upon a claim . . . may, at any time after the expiration of 20 days from the commencement of the action . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." NRCP 56(a).

///

1 NRCP 56(c) reads, in pertinent part:

2 Motions for summary judgment and responses thereto shall include a concise statement  
3 setting forth each fact material to the disposition of the motion which the party claims is or  
4 is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition,  
5 interrogatory, answer, admission, or other evidence upon which the party relies. The  
6 judgment sought shall be rendered forthwith if the pleadings, depositions, answers to  
7 interrogatories, and admissions on file, together with the affidavits, if any, show that there  
8 is no genuine issue as to any material fact and that the moving party is entitled to a judgment  
9 as a matter of law. A summary judgment, interlocutory in character, may be rendered on the  
10 issue of liability alone although there is a genuine issue as to the amount of damages. An  
11 order granting summary judgment shall set forth the undisputed material facts and legal  
12 determinations on which the court granted summary judgment.

13 NRCP 56(e) reads, in relevant part:

14 Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such  
15 facts as would be admissible in evidence, and shall show affirmatively that the affiant is  
16 competent to testify to the matters stated therein. Sworn or certified copies of all papers or  
17 parts thereof referred to in an affidavit shall be attached thereto or served therewith. The  
18 court may permit affidavits to be supplemented or opposed by depositions, answers to  
19 interrogatories, or further affidavits. When a motion for summary judgment is made and  
20 supported as provided in [NRCP 56], an adverse party may not rest upon the mere allegations  
21 or denials of the adverse party's pleading, but the adverse party's response, by affidavits or  
22 as otherwise provided in [NRCP 56], must set forth specific facts showing that there is a  
23 genuine issue for trial. If the adverse party does not so respond, summary judgment, if  
24 appropriate, shall be entered against the adverse party.

25 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and  
26 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the  
27 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729  
28 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).  
"[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn  
from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving  
the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451  
(1985).

"The substantive law controls which factual disputes are material and will preclude summary  
judgment; other factual disputes are irrelevant." Wood, 121 Nev. at 731 (citing Anderson v. Liberty  
Lobby, Inc., 477 U.S. 242, 248 (1986)). "A factual dispute is genuine when the evidence is such that a  
rational trier of fact could return a verdict for the nonmoving party." Id. (citations omitted).

"While the pleadings and other proof must be construed in a light most favorable to the  
nonmoving party, that party bears the burden to 'do more than simply show that there is some

1 metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the  
2 moving party's favor." Id. at 732. "The nonmoving party 'must, by affidavit or otherwise, set forth  
3 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered  
4 against him.'" Id. (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110 (1992)). The nonmoving  
5 party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Bulbman, 108 Nev. at 110 (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302 (1983)).

## 7 **2. Undisputed Material Facts**

8 The facts material to the disposition of the MSJ are in the following recitation of undisputed fact.  
9 The Court has relied much on the HOA's pinpoint citations to the record.

10 Artemis is a Nevada corporation whose president, secretary, treasurer and sole director is  
11 Elizabeth Essington (hereinafter "Mrs. Essington"). Mrs. Essington's husband is George "Mel"  
12 Essington (hereinafter "Mr. Essington").

13 The official Plat Map for Ruby Lake Estates was recorded in Elko County on September 15,  
14 1989, by Stephen and Mavis Wright (hereinafter "the Wrights") as File No. 281674. Included on the  
15 Plat Map are residential lots within the community, as well as roadways, easements, building set-back  
16 lines and street monuments.

17 With respect to the roadways, the first sheet of the Plat Map reads:

18 At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada,  
19 held on the 5<sup>th</sup> day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS  
20 278.328. The Board does hereby reject on behalf of the public all streets or roadways for  
maintenance purposes and does hereby accept all streets and easements therein offered for  
utility, drainage and access purposes only as dedicated for public use.

21 The roads within Ruby Lake Estates have never been accepted for maintenance by Elko County.  
22 Yet, Elko County requires the roadways and adjoining ditches and culverts to be maintained for health  
23 and safety reasons.

24 On October 25, 1989, the Wrights recorded a Declaration of Reservations, Conditions and  
25 Restrictions for Ruby Lake Estates (hereinafter "CC&Rs"). The CC&Rs were recorded in the Office of  
26 the Elko County Recorder.

27 Article I of the CC&Rs provides:

28 The real property affected hereby is subjected to the imposition of the covenants, conditions,  
restrictions and reservations specified herein to provide for the development and maintenance

1 of an aesthetically pleasing and harmonious community of residential dwellings for the  
2 purpose of preserving a high quality of use and appearance and maintaining the value of each  
and every lot and parcel of said property . . .”

3 Artemis acquired Lot 6 of Block G (hereinafter Lot G-6) of Ruby Lake Estates on June 21, 1994.

4 Artemis acquired Lot 2 of Block H (hereinafter Lot H-2) of Ruby Lake Estates on March 9, 2010.

5 Both Lot G-6 and Lot H-2 were created by the Plat Map and subject to the CC&Rs. Title to the  
6 lots was taken subject to the CC&Rs.

7 The HOA Articles of Incorporation were filed by Lee Perks on January 16, 2006.

8 The Initial Association Registration Form was filed on March 31, 2006, with the Office of the  
9 Ombudsman for Common-Interest Communities.

10 In filing the Articles of Incorporation and forming the HOA, the owners of Ruby Lake Estates  
11 took action consistent with the opinion of its counsel.

12 For over seventeen years (1994-2011), Mr. and Mrs. Essington represented that Lot G-6 was  
13 owned by one or both of them.

14 Mr. Essington represented to members of the Association that he had the capacity and authority  
15 to act on behalf of Artemis and/or Mrs. Essington.

16 Mr. Essington served on the HOA's Board of Directors (hereinafter "the Board") from 2007 until  
17 he resigned in January, 2011.

18 Following his election to the Board, Mr. Essington signed a Declaration of Certification as a  
19 Common-Interest Community Board Member, as required by NRS 116.31034(9).

20 Representing himself to be a lot owner, Mr. Essington seconded a motion to approve its Bylaws.

21 The Bylaws specifically provide, "All officers must be property owners and members of the  
22 Ruby Lake Homeowners Association in good standing their entire term of office."

23 Mr. Essington violated this provision when, for sixteen years, he held himself out as an owner of  
24 a lot.

25 The Bylaws also read: "An assessment fee will be charged yearly for maintenance, roads, fire  
26 protection, and other expenditures as the board allows or required by Elko County."

27 Maintenance of the roadways as well as ditches, culverts and other improvements has repeatedly  
28 been recognized as the collective responsibility of the owners of the lots within the Ruby Lake Estates

1 subdivision, including Artemis.

2 Road maintenance by the HOA has been an ongoing topic of communications between members  
3 and at HOA meetings in the years since the Wrights turned over maintenance in 1997.

4 After becoming a member of the Board, Mr. Essington voted to levy assessments against all  
5 HOA members for roadway maintenance, weed abatement and the repair of signs and culverts.

6 The HOA holds title to real property which was deeded to it by the Wrights. The members of the  
7 HOA, including Mr. Essington while serving on the Board and while representing himself to be an  
8 owner of Lot G-6, voted to accept title to this real property, pay documentary transfer tax and procure  
9 liability insurance in the name of the HOA.

10 On July 14, 2009, the Board caused a Reserve Study to be prepared as required by NRS  
11 116.31153. The Reserve Study was prepared by an independent and licensed community association  
12 consultant. The Reserve Study identified the reserve items of the Association as cattle guards, dirt road  
13 maintenance, fencing, gates, entrance signs and street signs. Mr. Essington voted to approve the Reserve  
14 Study at the August 8, 2009, meeting of the Board. Mr. Essington voted to levy assessments in  
15 accordance with the Reserve Study and the 2010 budget, which he also approved.

16 Since the HOA's formation, assessments have been levied and budgets were adopted by  
17 members to pay for road and real property maintenance, as well as fire protection. Mr. Essington  
18 approved these budgets and assessments. Mr. and Mrs. Essington regularly paid assessments from their  
19 personal bank account.

20 In 2009, a dispute arose between Mrs. Essington and the Ruby Lakes Estates Architectural  
21 Review Committee (ARC) regarding the construction of a large building to house machinery and other  
22 equipment at the subdivision. The ARC and the Board took the position that the structure was permitted  
23 under the CC&Rs.

24 Artemis stopped paying its HOA assessments, all of which had been approved by Mr. Essington  
25 as a Board member. Invoices generated in the ordinary course of business were sent to Artemis care of  
26 Mr. and Mrs. Essington. Eventually, the HOA hired a collection agency to try and collect the delinquent  
27 assessments. It is the sending of these invoices and notice of the HOA's intent to record a Notice of  
28 Delinquent Assessment Lien.

1     **3.     Analysis**

2             The Court has spent hour upon hour studying the memoranda of points and authorities and  
3 supporting exhibits on file in this case. The Court has decided that it is best to consider the substance of  
4 the MSJ even though it is not supported as required by NRCP 56(e).

5             In its MSJ, Artemis makes nonsensical substantive arguments. For example, Artemis argues that  
6 the HOA is "invalid" under NRS 116.3101(1) "because the lots of Ruby Lakes Estates [ ] were not  
7 bound by any covenant to pay dues or participate in a homeowner's association prior to the conveyance  
8 of the lots." The HOA effectively rebuts this argument and others in its Opposition to Plaintiff's Motion  
9 for Summary Judgment.<sup>1</sup> Artemis also unconvincingly argues that Caughlin Homeowners Ass'n v.  
10 Caughlin Club, 109 Nev. 264 (1993), a case with facts strikingly different from this one and predating  
11 the application of NRS Chapter 116 to common interest communities created before 1992, is  
12 dispositive.<sup>2</sup>

13             In the end, the Court has concluded that Ruby Lakes Estates qualified as a common-interest  
14 community to which the Uniform Common-Interest Ownership Act (hereinafter "the Act") applied when  
15 the HOA was incorporated. Once the HOA was incorporated as required by the Act, it was entitled to  
16 exercise all of the powers vested in it by NRS Chapter 116, including the collection of assessments for  
17 common expenses at Ruby Lakes Estates. NRS 116.3102. Valid at its inception, the HOA continues to  
18 be so today.

19             The Court has reached this determination for two primary reasons: (1) the CC&Rs are "real  
20 estate" within the meaning of NRS 116.081; and (2) the CC&Rs constitute contractual interests for  
21 which Ruby Lakes Estates lot owners were obligated to pay at the time of the HOA's incorporation.  
22 NRS 116.021.

23     ///

24  
25     <sup>1</sup> Since the Act was adopted in Nevada, NRS 116.3101 has read that "[a] unit-owners' association must be organized no  
26 later than the date the first unit in the common-interest community is conveyed." As the HOA notes in its Opposition, if  
27 this argument held water a valid homeowners association for a common interest community that existed before 1992  
28 could never be formed.

29     <sup>2</sup> In Caughlin Homeowners Ass'n, the Nevada Supreme Court held that: (1) a deed to commercial property in a  
30 residential subdivision could not be made subject to later amendments to CC&Rs that created new covenants for which  
31 notice was not given at the time of acquisition; and (2) the amendment to CC&Rs creating new property classifications  
32 and assessments purporting to burden the commercial parcel had no legal effect. 109 Nev. at 267.

1 The Act was codified as NRS Chapter 116 in 1991. In 1999, the Legislature applied the Act to  
2 common-interest communities created prior to 1992. NRS 116.1201.

3 Upon the HOA's incorporation in 2006, a "common-interest community" was defined as "real  
4 estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real  
5 estate other than that unit." NRS 116.021. As now, "real estate" was defined then as "any leasehold or  
6 other estate or interest in, over or under land, including structures, fixtures and other improvements *and*  
7 *interests that by custom, usage or law pass with a conveyance of land though not described in the*  
8 *contract of sale or instrument of conveyance.*" NRS 116.081 (emphasis added).

9 By 2006, NRS 116.1201 had been amended to provide that the Act does not apply to a common-  
10 interest community that was created before January 1, 1992, is located in a county whose population is  
11 less than 50,000 and has less than 50 percent of the units within the community put to residential use,  
12 unless a majority of the unit owners otherwise elect in writing. However, the Act continued to apply to  
13 Ruby Lakes Estates, which in 2006 had at least 50 percent of its units in residential use.

14 In an unofficial 2008 Nevada Attorney General's Opinion (hereinafter "2008 AGO"), a Senior  
15 Deputy Attorney General opined that: (1) commonly owned land, structures, fixtures or improvements,  
16 separate from an individually-owned unit, were not required for a planned community to be a common-  
17 interest community under the Act; and (2) covenants, conditions and restrictions may be "real estate"  
18 within the definition set forth in NRS 116.081. Although somewhat flawed in its reasoning in the  
19 Court's view, the 2008 AGO turned on the Act's expansive definition of real estate.<sup>3</sup>

20 A covenant is "[a] formal agreement or promise to do or not do a particular act." Black's Law  
21 Dictionary 419 (9<sup>th</sup> ed. 2009). A covenant running with the land is "[a] covenant intimately and  
22 inherently involved with the land and therefore binding subsequent owners and successor grantees  
23 indefinitely." *Id.* at 421. "The important consequence of a covenant running with the land is that its  
24 burden or benefit will thereby be imposed or conferred upon a subsequent owner of the property who  
25 never actually agreed to it." *Id.* (quoting Roger Bernhardt, *Real Property in a Nutshell* 212 (3d ed.

26  
27 <sup>3</sup> Artemis has harshly criticized the 2008 AGO, which the Court believes is a faithful interpretation of the text of the  
28 statutes at issue. In an era when many are rightfully questioning the use of legislative history to interpret statutes, Artemis  
invites the Court to rely on a legislator's 2009 interpretation of NRS 116.021 as support for the proposition that the 2008  
AGO is wrong. Respectfully, the Court declines the invitation. See Antonin Scalia and Bryan A. Garner, *Reading Law:  
The Interpretation of Legal Texts*, 391-96 (2012).

1 1993)). CC&Rs are a property interest separate from the land with which they run. Thirteen South, Ltd.  
2 v. Summit Village, Inc., 109 Nev. 1218, 1221 (1993).

3 The Ruby Lakes Estates CC&Rs specifically provide that they exist for the mutual benefit of all  
4 subdivision lots "and of each owner or user thereof." The CC&Rs expressly run with the land "and  
5 inure to *and pass with the land and apply to and bind respective successors in interest thereto.*" The  
6 CC&Rs are described as mutually enforceable equitable servitudes "in favor of each and every other  
7 parcel included within [Ruby Lakes Estates]." "[I]nterests that by custom, usage or law pass with the  
8 conveyance of land though not described in the contract of sale or instrument of conveyance" clearly  
9 encompass CC&Rs that run with the land. In 2006 and today, no reasonable argument can be made that  
10 the CC&Rs do not constitute "real estate" within the meaning of NRS 116.081.

11 Common sense and logic dictate that the substance of the CC&Rs should determine whether they  
12 comprised "real estate" *for which lot owners were obligated to pay*, thus rendering Ruby Lakes Estates a  
13 "common interest community" to which NRS Chapter 116 applied upon the HOA's incorporation.

14 The CC&Rs include a statement that they exist "to provide for the development and maintenance  
15 of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of  
16 preserving a high quality of use and appearance and maintaining the value of each and every lot and  
17 parcel" of Ruby View Estates.

18 The CC&Rs establish the ARC "for the general purpose of providing for the maintenance of a  
19 high standard of architectural design, color and landscaping harmony and to preserve and enhance  
20 aesthetic qualities and high standards of construction in the development and maintenance" of Ruby  
21 Lake Estates. The ARC is charged in the CC&Rs with: (1) determining CC&R compliance; and (2)  
22 promulgating and adopting reasonable rules and regulations in order to perform its duties.

23 The CC&Rs also impose restrictions on what can be constructed on the lots of Ruby Lakes  
24 Estates. There are requirements for initial construction and subsequent additions, improvements or  
25 changes to any structures built upon the lots. The CC&Rs contain many use conditions, including  
26 conditions that: (1) each lot contain only one dwelling; (2) plans for original construction and alterations  
27 of structures and fences be approved in writing by an ARC before construction or an alteration begins;  
28 (3) all construction conform with current requirements of the Uniform Building Code, Uniform

1 Plumbing Code, National Electric Code and Uniform Fire Code; (4) all housing not built or constructed  
2 on site be approved by the Nevada Division of Manufactured Housing; and (5) all mobile or modular  
3 housing be approved by the ARC.

4 Finally, the CC&Rs provide the ARC the power to: (1) grant variances; and (2) enforce the  
5 CC&Rs by bringing an action at law or in equity.

6 Upon the HOA's incorporation, the CC&Rs provided assurance to those who purchased property  
7 within Ruby Lakes Estates that there are legally enforceable standards and requirements with which  
8 neighboring homes must comport, making it foreseeable that the subdivision would continue to have  
9 consistent quality and value. Then, as now, lot owners cannot change their property to the extent that it  
10 might adversely affect the property values within Ruby Lakes Estates. Then, as now, the CC&Rs added  
11 value for all units in Ruby Lakes Estates, including the establishment of an enforcement body, the  
12 operations for which lot owners were obligated to pay at least by implication. See Evergreen Highlands  
13 Ass'n v. West, 73 P.3d 1, 7-9 (Colorado 2003) (even in absence of express covenant, CC&Rs for  
14 subdivision in UCIOA jurisdiction were sufficient to create a common interest community by  
15 implication with concomitant power to impose mandatory dues on lot owners to pay for maintenance of  
16 common areas; implied obligation may be found where the declaration expressly creates body for  
17 enforcing use restrictions and design controls, but fails to include a mechanism for providing the funds  
18 necessary to carry out its functions, and when such an implied obligation is established the subdivision is  
19 a common interest community); Restatement (Third) of Property: Servitudes § 6.2 cmt. a (2000).

20 For all of these reasons, pursuant to the provisions of NRS 116.021, and using the definition for  
21 real estate in NRS 116.081, the CC&Rs constituted *real estate, other than the unit owned, for which unit*  
22 *owners are obligated to pay* when the HOA was incorporated.<sup>4</sup> A common interest community at the  
23 HOA's incorporation, the HOA is not "invalid" today.

24 ///

25 ///

26  
27 <sup>4</sup> The Court also concludes that the Ruby Lakes Estates plat also constitutes "real estate," other than the unit owned, for  
28 which unit owners are obligated to pay. NRS 116.2101 (common-interest community may be created pursuant to Act  
only by recording a declaration executed in the same manner as a deed); NRS 116.2109(1) (plats are part of the  
declaration). The plat contains "common elements" as that term is currently defined in NRS 116.017, including fixtures  
such as gates.

1 **4. Order**

2 For all of the foregoing reasons, the Plaintiff's Motion for Summary Judgment is hereby  
3 DENIED.

4 DATED this 12 day of February, 2013.

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7 The Honorable Alvin R. Kacin  
8 District Judge/Department 2  
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1 CERTIFICATE OF MAILING

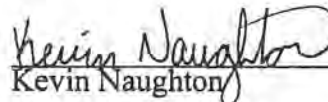
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District  
3 Judge, Fourth Judicial District Court, Department 2, and that on this 12 day of February, 2013,  
served by the following method of service:

4 ☒ Regular US Mail ☐ Overnight UPS  
5 ☐ Certified US Mail ☐ Overnight Federal Express  
6 ☐ Registered US Mail ☐ Fax to # \_\_\_\_\_  
☐ Overnight US Mail ☐ Hand Delivery  
☐ Personal Service ☒ Box in Clerk's Office

7 a true copy of the foregoing document addressed to:

8 Travis Gerber, Esq.  
9 491 Fourth Street  
10 Elko, Nevada 89801  
[Box in Clerk's Office]

11 Gayle A. Kern, Esq.  
12 5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
[Regular US Mail]

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14 Kevin Naughton  
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# EXHIBIT 8

# EXHIBIT 8

vc

Case No. CV-C-12-175

Dept. No. 2

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Plaintiff,

v.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION AND DOES I-X,

Defendants.

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

This is a dispute between a property owner and its homeowners association.

On May 30, 2012, Defendant/Counterclaimant Ruby Lakes Homeowner's Association (hereinafter "the HOA") filed a Motion for Summary Judgment (hereinafter "MSJ") against Plaintiff/Counterdefendant Artemis Exploration Company (hereinafter "Artemis"). Artemis filed an "Opposition to Defendant's Motion for Summary Judgment" (hereinafter "Opposition") on June 22, 2012. The HOA replied to the Opposition on July 5, 2012.

By its MSJ, the HOA seeks the entry of summary judgment as to all Artemis claims, which include claims for declaratory relief and damages. In its Opposition, Artemis abandoned its claims for damages, one of which is for fraud.

Having carefully considered the matter, the Court is granting the MSJ.

///

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1 **1. Law of Summary Judgment**

2 "A party seeking to recover upon a claim . . . may, at any time after the expiration of 20 days  
3 from the commencement of the action . . . move with or without supporting affidavits for a summary  
4 judgment in the party's favor upon all or any part thereof." NRCP 56(a).

5 NRCP 56(c) reads, in pertinent part:

6 Motions for summary judgment and responses thereto shall include a concise statement  
7 setting forth each fact material to the disposition of the motion which the party claims is or  
8 is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition,  
9 interrogatory, answer, admission, or other evidence upon which the party relies. The  
10 judgment sought shall be rendered forthwith if the pleadings, depositions, answers to  
11 interrogatories, and admissions on file, together with the affidavits, if any, show that there  
12 is no genuine issue as to any material fact and that the moving party is entitled to a judgment  
13 as a matter of law. A summary judgment, interlocutory in character, may be rendered on the  
14 issue of liability alone although there is a genuine issue as to the amount of damages. An  
15 order granting summary judgment shall set forth the undisputed material facts and legal  
16 determinations on which the court granted summary judgment.

17 NRCP 56(e) reads, in relevant part:

18 Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such  
19 facts as would be admissible in evidence, and shall show affirmatively that the affiant is  
20 competent to testify to the matters stated therein. Sworn or certified copies of all papers or  
21 parts thereof referred to in an affidavit shall be attached thereto or served therewith. The  
22 court may permit affidavits to be supplemented or opposed by depositions, answers to  
23 interrogatories, or further affidavits. When a motion for summary judgment is made and  
24 supported as provided in [NRCP 56], an adverse party may not rest upon the mere allegations  
25 or denials of the adverse party's pleading, but the adverse party's response, by affidavits or  
26 as otherwise provided in [NRCP 56], must set forth specific facts showing that there is a  
27 genuine issue for trial. If the adverse party does not so respond, summary judgment, if  
28 appropriate, shall be entered against the adverse party.

29 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and  
30 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the  
31 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729  
32 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).  
33 "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn  
34 from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving  
35 the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451  
36 (1985).

37 "The substantive law controls which factual disputes are material and will preclude summary  
38 judgment; other factual disputes are irrelevant." Wood, 121 Nev. at 731 (citing Anderson v. Liberty

1 Lobby, Inc., 477 U.S. 242, 248 (1986)). "A factual dispute is genuine when the evidence is such that a  
2 rational trier of fact could return a verdict for the nonmoving party." Id. (citations omitted).

3 "While the pleadings and other proof must be construed in a light most favorable to the  
4 nonmoving party, that party bears the burden to 'do more than simply show that there is some  
5 metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the  
6 moving party's favor." Id. at 732. "The nonmoving party 'must, by affidavit or otherwise, set forth  
7 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered  
8 against him.'" Id. (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110 (1992)). The nonmoving  
9 party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Bulbman,  
10 108 Nev. at 110 (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302 (1983)).

## 11 **2. Undisputed Material Facts**

12 The facts material to the disposition of the MSJ are in the following recitation of undisputed fact.  
13 The Court has relied much on the HOA's pinpoint citations to the record.

14 Artemis is a Nevada corporation whose president, secretary, treasurer and sole director is  
15 Elizabeth Essington (hereinafter "Mrs. Essington"). Mrs. Essington's husband is George "Mel"  
16 Essington (hereinafter "Mr. Essington").

17 The official Plat Map for Ruby Lake Estates was recorded in Elko County on September 15,  
18 1989, by Stephen and Mavis Wright (hereinafter "the Wrights") as File No. 281674. Included on the  
19 Plat Map are residential lots within the community, as well as roadways, easements, building set-back  
20 lines and street monuments.

21 With respect to the roadways, the first sheet of the Plat Map reads:

22 At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada,  
23 held on the 5<sup>th</sup> day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS  
24 278.328. The Board does hereby reject on behalf of the public all streets or roadways for  
maintenance purposes and does hereby accept all streets and easements therein offered for  
utility, drainage and access purposes only as dedicated for public use.

25 The roads within Ruby Lake Estates have never been accepted for maintenance by Elko County.  
26 Yet, Elko County requires the roadways and adjoining ditches and culverts to be maintained for health  
27 and safety reasons.

28 ///

1 On October 25, 1989, the Wrights recorded a Declaration of Reservations, Conditions and  
2 Restrictions for Ruby Lake Estates (hereinafter "CC&Rs"). The CC&Rs were recorded in the Office of  
3 the Elko County Recorder.

4 Article I of the CC&Rs provides:

5 The real property affected hereby is subjected to the imposition of the covenants, conditions,  
6 restrictions and reservations specified herein to provide for the development and maintenance  
7 of an aesthetically pleasing and harmonious community of residential dwellings for the  
purpose of preserving a high quality of use and appearance and maintaining the value of each  
and every lot and parcel of said property . . ."

8 Artemis acquired Lot 6 of Block G (hereinafter Lot G-6) of Ruby Lake Estates on June 21, 1994.

9 Artemis acquired Lot 2 of Block H (hereinafter Lot H-2) of Ruby Lake Estates on March 9, 2010.

10 Both Lot G-6 and Lot H-2 were created by the Plat Map and subject to the CC&Rs. Title to the  
11 lots was taken subject to the CC&Rs.

12 The HOA Articles of Incorporation were filed by Lee Perks on January 16, 2006.

13 The Initial Association Registration Form was filed on March 31, 2006, with the Office of the  
14 Ombudsman for Common-Interest Communities.

15 In filing the Articles of Incorporation and forming the HOA, the owners of Ruby Lake Estates  
16 took action consistent with the opinion of its counsel.

17 For over seventeen years (1994-2011), Mr. and Mrs. Essington represented that Lot G-6 was  
18 owned by one or both of them.

19 Mr. Essington represented to members of the Association that he had the capacity and authority  
20 to act on behalf of Artemis and/or Mrs. Essington.

21 Mr. Essington served on the HOA's Board of Directors (hereinafter "the Board") from 2007 until  
22 he resigned in January, 2011.

23 Following his election to the Board, Mr. Essington signed a Declaration of Certification as a  
24 Common-Interest Community Board Member, as required by NRS 116.31034(9).

25 Representing himself to be a lot owner, Mr. Essington seconded a motion to approve its Bylaws.

26 The Bylaws specifically provide, "All officers must be property owners and members of the  
27 Ruby Lake Homeowners Association in good standing their entire term of office."

28 ///

1 Mr. Essington violated this provision when, for sixteen years, he held himself out as an owner of  
2 a lot.

3 The Bylaws also read: "An assessment fee will be charged yearly for maintenance, roads, fire  
4 protection, and other expenditures as the board allows or required by Elko County."

5 Maintenance of the roadways as well as ditches, culverts and other improvements has repeatedly  
6 been recognized as the collective responsibility of the owners of the lots within the Ruby Lake Estates  
7 subdivision, including Artemis.

8 Road maintenance by the HOA has been an ongoing topic of communications between members  
9 and at HOA meetings in the years since the Wrights turned over maintenance in 1997.

10 After becoming a member of the Board, Mr. Essington voted to levy assessments against all  
11 HOA members for roadway maintenance, weed abatement and the repair of signs and culverts.

12 The HOA holds title to real property which was deeded to it by the Wrights. The members of the  
13 HOA, including Mr. Essington while serving on the Board and while representing himself to be an  
14 owner of Lot G-6, voted to accept title to this real property, pay documentary transfer tax and procure  
15 liability insurance in the name of the HOA.

16 On July 14, 2009, the Board caused a Reserve Study to be prepared as required by NRS  
17 116.31153. The Reserve Study was prepared by an independent and licensed community association  
18 consultant. The Reserve Study identified the reserve items of the Association as cattle guards, dirt road  
19 maintenance, fencing, gates, entrance signs and street signs. Mr. Essington voted to approve the Reserve  
20 Study at the August 8, 2009, meeting of the Board. Mr. Essington voted to levy assessments in  
21 accordance with the Reserve Study and the 2010 budget, which he also approved.

22 Since the HOA's formation, assessments have been levied and budgets were adopted by  
23 members to pay for road and real property maintenance, as well as fire protection. Mr. Essington  
24 approved these budgets and assessments. Mr. and Mrs. Essington regularly paid assessments from their  
25 personal bank account.

26 In 2009, a dispute arose between Mrs. Essington and the Ruby Lakes Estates Architectural  
27 Review Committee (ARC) regarding the construction of a large building to house machinery and other  
28 equipment at the subdivision. The ARC and the Board took the position that the structure was permitted

1 under the CC&Rs.

2 Artemis stopped paying its HOA assessments, all of which had been approved by Mr. Essington  
3 as a Board member. Invoices generated in the ordinary course of business were sent to Artemis care of  
4 Mr. and Mrs. Essington. Eventually, the HOA hired a collection agency to try and collect the delinquent  
5 assessments. It is the sending of these invoices and notice of the HOA's intent to record a Notice of  
6 Delinquent Assessment Lien.

7 **3. Analysis**

8 The Court has spent hour upon hour studying the memoranda of points and authorities and  
9 supporting exhibits on file in this case.

10 In its Opposition, Artemis makes nonsensical substantive arguments. For example, Artemis  
11 argues that the HOA is "invalid" under NRS 116.3101(1) "because the lots of Ruby Lakes Estates [ ]  
12 were not bound by any covenant to pay dues or participate in a homeowner's association prior to the  
13 conveyance of the lots." The HOA effectively rebuts this argument and others in its MSJ.<sup>1</sup> Artemis also  
14 unconvincingly argues that Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264 (1993), a case  
15 with facts strikingly different from this one and predating the application of NRS Chapter 116 to  
16 common interest communities created before 1992, is dispositive.<sup>2</sup>

17 In the end, the Court has concluded that Ruby Lakes Estates qualified as a common-interest  
18 community to which the Uniform Common-Interest Ownership Act (hereinafter "the Act") applied when  
19 the HOA was incorporated. Once the HOA was incorporated as required by the Act, it was entitled to  
20 exercise all of the powers vested in it by NRS Chapter 116, including the collection of assessments for  
21 common expenses at Ruby Lakes Estates. NRS 116.3102. Valid at its inception, the HOA continues to  
22 be so today.

23 ///

24  
25 <sup>1</sup> Since the Act was adopted in Nevada, NRS 116.3101 has read that "[a] unit-owners' association must be organized no  
26 later than the date the first unit in the common-interest community is conveyed." As the HOA notes in its Opposition, if  
27 this argument held water a valid homeowners association for a common interest community that existed before 1992  
28 could never be formed.

<sup>2</sup> In Caughlin Homeowners Ass'n, the Nevada Supreme Court held that: (1) a deed to commercial property in a  
residential subdivision could not be made subject to later amendments to CC&Rs that created new covenants for which  
notice was not given at the time of acquisition; and (2) the amendment to CC&Rs creating new property classifications  
and assessments purporting to burden the commercial parcel had no legal effect. 109 Nev. at 267.

1 The Court has reached this determination for two primary reasons: (1) the CC&Rs are “real  
2 estate” within the meaning of NRS 116.081; and (2) the CC&Rs constitute contractual interests for  
3 which Ruby Lakes Estates lot owners were obligated to pay at the time of the HOA’s incorporation.  
4 NRS 116.021.

5 The Act was codified as NRS Chapter 116 in 1991. In 1999, the Legislature applied the Act to  
6 common-interest communities created prior to 1992. NRS 116.1201.

7 Upon the HOA’s incorporation in 2006, a “common-interest community” was defined as “real  
8 estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real  
9 estate other than that unit.” NRS 116.021. As now, “real estate” was defined then as “any leasehold or  
10 other estate or interest in, over or under land, including structures, fixtures and other improvements *and*  
11 *interests that by custom, usage or law pass with a conveyance of land though not described in the*  
12 *contract of sale or instrument of conveyance.*” NRS 116.081 (emphasis added).

13 By 2006, NRS 116.1201 had been amended to provide that the Act does not apply to a common-  
14 interest community that was created before January 1, 1992, is located in a county whose population is  
15 less than 50,000 and has less than 50 percent of the units within the community put to residential use,  
16 unless a majority of the unit owners otherwise elect in writing. However, the Act continued to apply to  
17 Ruby Lakes Estates, which in 2006 had at least 50 percent of its units in residential use.

18 In an unofficial 2008 Nevada Attorney General’s Opinion (hereinafter “2008 AGO”), a Senior  
19 Deputy Attorney General opined that: (1) commonly owned land, structures, fixtures or improvements,  
20 separate from an individually-owned unit, were not required for a planned community to be a common-  
21 interest community under the Act; and (2) covenants, conditions and restrictions may be “real estate”  
22 within the definition set forth in NRS 116.081. Although somewhat flawed in its reasoning in the  
23 Court’s view, the 2008 AGO turned on the Act’s expansive definition of real estate.<sup>3</sup>

24 A covenant is “[a] formal agreement or promise to do or not do a particular act.” Black’s Law  
25 Dictionary 419 (9<sup>th</sup> ed. 2009). A covenant running with the land is “[a] covenant intimately and

26  
27 <sup>3</sup> Artemis has harshly criticized the 2008 AGO, which the Court believes is a faithful interpretation of the text of the  
28 statutes at issue. In an era when many are rightfully questioning the use of legislative history to interpret statutes, Artemis  
invites the Court to rely on a legislator’s 2009 interpretation of NRS 116.021 as support for the proposition that the 2008  
AGO is wrong. Respectfully, the Court declines the invitation. See Antonin Scalia and Bryan A. Garner, Reading Law:  
The Interpretation of Legal Texts, 391-96 (2012).

1 inherently involved with the land and therefore binding subsequent owners and successor grantees  
2 indefinitely.” *Id.* at 421. “The important consequence of a covenant running with the land is that its  
3 burden or benefit will thereby be imposed or conferred upon a subsequent owner of the property who  
4 never actually agreed to it.” *Id.* (quoting Roger Bernhardt, *Real Property in a Nutshell* 212 (3d ed.  
5 1993)). CC&Rs are a property interest separate from the land with which they run. Thirteen South, Ltd.  
6 v. Summit Village, Inc., 109 Nev. 1218, 1221 (1993).

7       The Ruby Lakes Estates CC&Rs specifically provide that they exist for the mutual benefit of all  
8 subdivision lots “and of each owner or user thereof.” The CC&Rs expressly run with the land “and  
9 inure to *and pass with the land and apply to and bind respective successors in interest thereto.*” The  
10 CC&Rs are described as mutually enforceable equitable servitudes “in favor of each and every other  
11 parcel included within [Ruby Lakes Estates].” “[I]nterests that by custom, usage or law pass with the  
12 conveyance of land though not described in the contract of sale or instrument of conveyance” clearly  
13 encompass CC&Rs that run with the land. In 2006 and today, no reasonable argument can be made that  
14 the CC&Rs do not constitute “real estate” within the meaning of NRS 116.081.

15       Common sense and logic dictate that the substance of the CC&Rs should determine whether they  
16 comprised “real estate” *for which lot owners were obligated to pay*, thus rendering Ruby Lakes Estates a  
17 “common interest community” to which NRS Chapter 116 applied upon the HOA’s incorporation.

18       The CC&Rs include a statement that they exist “to provide for the development and maintenance  
19 of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of  
20 preserving a high quality of use and appearance and maintaining the value of each and every lot and  
21 parcel” of Ruby View Estates.

22       The CC&Rs establish the ARC “for the general purpose of providing for the maintenance of a  
23 high standard of architectural design, color and landscaping harmony and to preserve and enhance  
24 aesthetic qualities and high standards of construction in the development and maintenance” of Ruby  
25 Lake Estates. The ARC is charged in the CC&Rs with: (1) determining CC&R compliance; and (2)  
26 promulgating and adopting reasonable rules and regulations “in order to carry out its purpose.”

27       The CC&Rs also impose restrictions on what can be constructed on the lots of Ruby Lakes  
28 Estates. There are requirements for initial construction and subsequent additions, improvements or

1 changes to any structures built upon the lots. The CC&Rs contain many use conditions, including  
2 conditions that: (1) each lot contain only one dwelling; (2) plans for original construction and alterations  
3 of structures and fences be approved in writing by an ARC before construction or an alteration begins;  
4 (3) all construction conform with current requirements of the Uniform Building Code, Uniform  
5 Plumbing Code, National Electric Code and Uniform Fire Code; (4) all housing not built or constructed  
6 on site be approved by the Nevada Division of Manufactured Housing; and (5) all mobile or modular  
7 housing be approved by the ARC.

8 Finally, the CC&Rs provide the ARC the power to: (1) grant variances; and (2) enforce the  
9 CC&Rs by bringing an action at law or in equity.

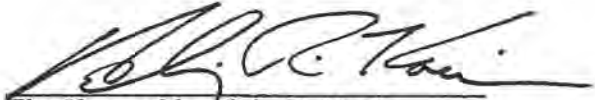
10 Upon the HOA's incorporation, the CC&Rs provided assurance to those who purchased property  
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12 neighboring homes must comport, making it foreseeable that the subdivision would continue to have  
13 consistent quality and value. Then, as now, lot owners cannot change their property to the extent that it  
14 might adversely affect the property values within Ruby Lakes Estates. Then, as now, the CC&Rs added  
15 value for all units in Ruby Lakes Estates, including the establishment of an enforcement body, the  
16 operations for which lot owners were obligated to pay at least by implication. See Evergreen Highlands  
17 Ass'n v. West, 73 P.3d 1, 7-9 (Colorado 2003) (even in absence of express covenant, CC&Rs for  
18 subdivision in UCIOA jurisdiction were sufficient to create a common interest community by  
19 implication with concomitant power to impose mandatory dues on lot owners to pay for maintenance of  
20 common areas; implied obligation may be found where the declaration expressly creates body for  
21 enforcing use restrictions and design controls, but fails to include a mechanism for providing the funds  
22 necessary to carry out its functions, and when such an implied obligation is established the subdivision is  
23 a common interest community); Restatement (Third) of Property: Servitudes § 6.2 cmt. a (2000); see  
24 also Southeastern Jurisdictional Admin. Council, Inc. v. Emerson, 683 S.E.2d 366 (N.C. 2009)  
25 (reversing Southeastern Jurisdictional Admin. Council, Inc. v. Emerson, 655 S.E.2d 719, 721 (N.C. App.  
26 2008), in which the North Carolina Court of Appeals opined that "[t]he duty to pay an assessment is an  
27 affirmative obligation; strict construction of the [CC&Rs] would require such a duty to have specific  
28 authorization, not a secondary authorization under the rubric of rules and regulations").

1 For all of these reasons, pursuant to the provisions of NRS 116.021, and using the definition for  
2 real estate in NRS 116.081, the CC&Rs constituted *real estate, other than the unit owned, for which unit*  
3 *owners are obligated to pay* when the HOA was incorporated.<sup>4</sup> A common interest community at the  
4 HOA's incorporation, the HOA is valid today.

5 **4. Order**

6 **For all of the foregoing reasons, Artemis is not entitled to the declaratory relief sought in its**  
7 **Complaint, and the Defendant's Motion for Summary Judgment is hereby GRANTED.**

8  
9 DATED this 14 day of February, 2013.

10  
11   
12 The Honorable Alvin R. Kacin  
13 District Judge/Department 2  
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27 <sup>4</sup> The Court also concludes that the Ruby Lakes Estates plat also constitutes "real estate," other than the unit owned, for  
28 which unit owners are obligated to pay. NRS 116.2101 (common-interest community may be created pursuant to Act  
only by recording a declaration executed in the same manner as a deed); NRS 116.2109(1) (plats are part of the  
declaration). The plat contains "common elements" as that term is currently defined in NRS 116.017, including fixtures  
such as gates.

1 CERTIFICATE OF MAILING

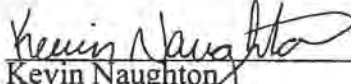
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District  
3 Judge, Fourth Judicial District Court, Department 2, and that on this 14 day of February, 2013,  
served by the following method of service:

4 (X) Regular US Mail ( ) Overnight UPS  
5 ( ) Certified US Mail ( ) Overnight Federal Express  
6 ( ) Registered US Mail ( ) Fax to # \_\_\_\_\_  
( ) Overnight US Mail ( ) Hand Delivery  
( ) Personal Service (X) Box in Clerk's Office

7 a true copy of the foregoing document addressed to:

8 Travis Gerber, Esq.  
9 491 Fourth Street  
10 Elko, Nevada 89801  
[Box in Clerk's Office]

11 Gayle A. Kern, Esq.  
12 5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
[Regular US Mail]

13   
14 Kevin Naughton

**EXHIBIT 9**

**EXHIBIT 9**

FILED

2018 MAR -1 PM 2:47

4th DISTRICT COURT

A

1 CASE NO. CV-C-12-175

2 DEPT. 2

3 Affirmation: Pursuant to NRS 239B.030,  
4 this document does not contain the social  
5 security number of any person.

6 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF ELKO**

8  
9 **ARTEMIS EXPLORATION COMPANY,**  
10 **a Nevada corporation,**

11 Plaintiff,

12 vs.

13 **RUBY LAKE ESTATES HOME**  
**OWNER'S ASSOCIATION; and DOES I-X,**

14 Defendants.

**NOTICE OF ENTRY OF FINAL**  
**JUDGMENT**

15  
16 **RUBY LAKE ESTATES HOMEOWNER'S**  
**ASSOCIATION,**

17 Counterclaimant,

18 vs.

19 **ARTEMIS EXPLORATION COMPANY,**  
20 **a Nevada corporation,**

21 Counterdefendant.

22 TO: RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, Defendant/Counterclaimant


23 GAYLE A. KERN, ESQ., KERN & ASSOCIATES, LTD., attorneys for  
24 Defendant/Counterclaimant

25 PLEASE TAKE NOTICE that a Final Judgment was entered in the above-entitled matter on  
26 February 26, 2018. A copy of the Final Judgment is attached hereto as Exhibit A.

27 ///

1 DATED this 27<sup>th</sup> day of February, 2018.

2 GERBER LAW OFFICES, LLP

3  
4 By:   
5 TRAVIS W. GERBER, ESQ.  
6 Nevada State Bar No. 8083  
7 ZACHARY A. GERBER, ESQ.  
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1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,  
3 LLP, and that on the 28 day of February, 2018, I deposited for mailing, postage prepaid, at Elko,  
4 Nevada, a true and correct copy of the foregoing *Notice of Entry of Final Judgment* addressed as  
5 follows:

6 Gayle A. Kern, Esq.  
7 Kern & Associates, Ltd.  
8 5421 Kietzke Lane, Suite 200  
9 Reno, Nevada 89511

10 *Madison Wallock*  
11 MADISON WALLOCK  
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CASE NO. CV-C-12-175

DEPT. NO. 12

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ELKO CO DISTRICT COURT

*Affirmation: This document does not contain the social security number of any person.*

CLERK. DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

Plaintiff,

FINAL JUDGMENT

vs.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION AND DOES I-X,

Defendants.

The Court, having reviewed and considered the parties' Stipulation and Order for Dismissal of Counterclaims and Crossclaim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment ("Stipulation and Order"), and further based upon this Court's review and consideration of the Motion for Summary Judgment of Defendant Ruby Lake Estates Homeowner's Association ("RLEHOA") on Plaintiff Artemis Exploration Company's ("Artemis's") Declaratory Relief Claim, the exhibits in support of RLEHOA's Motion, Artemis's Opposition thereto, RLEHOA's Reply; and Artemis's Motion for Summary Judgment on its Declaratory Relief Claim, RLEHOA's Opposition thereto, and Artemis's Reply; and the Court being fully informed in the premises:

The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained a cause of action for Declaratory Relief, and other causes of action that were subsequently, voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed counterclaims against Artemis. After competing Motions for Summary Judgment were filed by

1 Artemis and RLEHOA regarding Artemis's sole claim of Declaratory Relief, this Court entered its  
2 Order Granting RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the  
3 Court's Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013. The  
4 Orders determined as a matter of law that RLEHOA is a common interest community pursuant to  
5 NRS Chapter 116, valid at its inception, and it continues to be so today.  
6

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,  
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property  
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended  
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against  
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision  
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter  
13 116. All property owners within Ruby Lake Estates subdivision were properly served in accord with  
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's  
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property  
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have  
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims  
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been  
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint  
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for  
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion  
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.  
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26 Thus, the Court finds that the only claim not dismissed is Artemis's declaratory judgment  
27 claim, which was filed as part of Artemis's original Complaint and re-filed in identical form in  
28 Artemis's Second Amended Complaint. Artemis's claim was resolved by the Court's Order Granting

1 RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the Court's Order  
2 Denying Artemis's Motion for Summary Judgment entered February 12, 2013. These Orders have  
3 not been reconsidered or reversed, and therefore as standing Orders this Court finds that Artemis's  
4 claim for declaratory relief has been resolved as a matter of law in accordance with the Court's  
5 Orders as to all active litigants which have appeared in this matter, Artemis, RLEHOA, Harold  
6 Wyatt, and Mary Wyatt.

8 *IT IS THEREFORE ORDERED* that *JUDGMENT* is entered in favor of RLEHOA in  
9 accord with the Court's Order Granting RLEHOA's Motion for Summary Judgment entered  
10 February 14, 2013, and the Court's Order Denying Artemis's Motion for Summary Judgment  
11 entered February 12, 2013, and that RLEHOA is a common interest community pursuant to NRS  
12 Chapter 116, valid at its inception, and it continues to be so today.

14 *IT IS FURTHER ORDERED* that, as to the properly served and defaulted property owner  
15 defendants to Artemis's Second Amended Complaint, there is no just reason for delay, Artemis's  
16 identical claim for declaratory relief has been resolved as to all appearing parties, and that this  
17 *JUDGMENT* shall be entered as a *FINAL JUDGMENT* in accord with NRCP 54(b).

19 DATED this 26 day of February, 2018.

22 /S/ ALVIN R KACIN

23 \_\_\_\_\_  
24 DISTRICT COURT JUDGE  
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ORIGINAL

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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ELKO CO DISTRICT COU

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5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA *49*

6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

**NOTICE OF ENTRY OF ORDER**  
**GRANTING DEFENDANT'S MOTION FOR**  
**SUMMARY JUDGMENT**

11 RUBY LAKE ESTATES HOMEOWNER'S  
12 ASSOCIATION AND DOES I-X,

13 Defendants.

14 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

15 Counterclaimant,

16 vs.

17 ARTEMIS EXPLORATION COMPANY, a  
18 Nevada Corporation,

19 Counterdefendant.

20 PLEASE TAKE NOTICE that on February 14, 2013, an Order Granting Defendant's Motion  
21 for Summary Judgment was entered by the Court. A copy of the Order Granting Defendant's Motion  
22 for Summary Judgment is attached hereto.

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**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document filed in the above-entitled case does not contain the social security number of any person.

DATED this 25 day of February, 2013.

KERN & ASSOCIATES, LTD.



GAYLE A. KERN, ESQ.

NEVADA BAR #1620

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Attorneys for Ruby Lake Estates

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**NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

on the parties set forth below, at the addresses listed below by:

United Parcel Service, Next Day Air, addressed to:

DATED this 21<sup>st</sup> day of February, 2013.

Teresa A. Gearhart  
TERESA A. GEARHART

Case No. CV-C-12-175

Dept. No. 2

FILED

2013 FEB 14 PM 2:55  
ELKO CO DISTRICT COURT

CLERK DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Plaintiff,

v.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION AND DOES I-X,

Defendants.

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

This is a dispute between a property owner and its homeowners association.

On May 30, 2012, Defendant/Counterclaimant Ruby Lakes Homeowner's Association (hereinafter "the HOA") filed a Motion for Summary Judgment (hereinafter "MSJ") against Plaintiff/Counterdefendant Artemis Exploration Company (hereinafter "Artemis"). Artemis filed an "Opposition to Defendant's Motion for Summary Judgment" (hereinafter "Opposition") on June 22, 2012. The HOA replied to the Opposition on July 5, 2012.

By its MSJ, the HOA seeks the entry of summary judgment as to all Artemis claims, which include claims for declaratory relief and damages. In its Opposition, Artemis abandoned its claims for damages, one of which is for fraud.

Having carefully considered the matter, the Court is granting the MSJ.

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1 **1. Law of Summary Judgment**

2 "A party seeking to recover upon a claim . . . may, at any time after the expiration of 20 days  
3 from the commencement of the action . . . move with or without supporting affidavits for a summary  
4 judgment in the party's favor upon all or any part thereof." NRCP 56(a).

5 NRCP 56(c) reads, in pertinent part:

6 Motions for summary judgment and responses thereto shall include a concise statement  
7 setting forth each fact material to the disposition of the motion which the party claims is or  
8 is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition,  
9 interrogatory, answer, admission, or other evidence upon which the party relies. The  
10 judgment sought shall be rendered forthwith if the pleadings, depositions, answers to  
11 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 a judgment  
as a matter of law. A summary judgment, interlocutory in character, may be rendered on the  
issue of liability alone although there is a genuine issue as to the amount of damages. An  
order granting summary judgment shall set forth the undisputed material facts and legal  
determinations on which the court granted summary judgment.

12 NRCP 56(e) reads, in relevant part:

13 Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such  
14 facts as would be admissible in evidence, and shall show affirmatively that the affiant is  
15 competent to testify to the matters stated therein. Sworn or certified copies of all papers or  
16 parts thereof referred to in an affidavit shall be attached thereto or served therewith. The  
17 court may permit affidavits to be supplemented or opposed by depositions, answers to  
18 interrogatories, or further affidavits. When a motion for summary judgment is made and  
supported as provided in [NRCP 56], an adverse party may not rest upon the mere allegations  
or denials of the adverse party's pleading, but the adverse party's response, by affidavits or  
as otherwise provided in [NRCP 56], must set forth specific facts showing that there is a  
genuine issue for trial. If the adverse party does not so respond, summary judgment, if  
appropriate, shall be entered against the adverse party.

19 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and  
20 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the  
21 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729  
22 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).  
23 "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn  
24 from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving  
25 the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451  
26 (1985).

27 "The substantive law controls which factual disputes are material and will preclude summary  
28 judgment; other factual disputes are irrelevant." Wood, 121 Nev. at 731 (citing Anderson v. Liberty

1 Lobby, Inc., 477 U.S. 242, 248 (1986)). "A factual dispute is genuine when the evidence is such that a  
2 rational trier of fact could return a verdict for the nonmoving party." Id. (citations omitted).

3 "While the pleadings and other proof must be construed in a light most favorable to the  
4 nonmoving party, that party bears the burden to 'do more than simply show that there is some  
5 metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the  
6 moving party's favor." Id. at 732. "The nonmoving party 'must, by affidavit or otherwise, set forth  
7 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered  
8 against him.'" Id. (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110 (1992)). The nonmoving  
9 party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Bulbman, 108 Nev. at 110 (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302 (1983)).  
10

## 11 **2. Undisputed Material Facts**

12 The facts material to the disposition of the MSJ are in the following recitation of undisputed fact.  
13 The Court has relied much on the HOA's pinpoint citations to the record.

14 Artemis is a Nevada corporation whose president, secretary, treasurer and sole director is  
15 Elizabeth Essington (hereinafter "Mrs. Essington"). Mrs. Essington's husband is George "Mel"  
16 Essington (hereinafter "Mr. Essington").

17 The official Plat Map for Ruby Lake Estates was recorded in Elko County on September 15,  
18 1989, by Stephen and Mavis Wright (hereinafter "the Wrights") as File No. 281674. Included on the  
19 Plat Map are residential lots within the community, as well as roadways, easements, building set-back  
20 lines and street monuments.

21 With respect to the roadways, the first sheet of the Plat Map reads:

22 At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada,  
23 held on the 5<sup>th</sup> day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS  
24 278.328. The Board does hereby reject on behalf of the public all streets or roadways for  
25 maintenance purposes and does hereby accept all streets and easements therein offered for  
26 utility, drainage and access purposes only as dedicated for public use.

27 The roads within Ruby Lake Estates have never been accepted for maintenance by Elko County.  
28 Yet, Elko County requires the roadways and adjoining ditches and culverts to be maintained for health  
and safety reasons.

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1 On October 25, 1989, the Wrights recorded a Declaration of Reservations, Conditions and  
2 Restrictions for Ruby Lake Estates (hereinafter "CC&Rs"). The CC&Rs were recorded in the Office of  
3 the Elko County Recorder.

4 Article I of the CC&Rs provides:

5 The real property affected hereby is subjected to the imposition of the covenants, conditions,  
6 restrictions and reservations specified herein to provide for the development and maintenance  
7 of an aesthetically pleasing and harmonious community of residential dwellings for the  
purpose of preserving a high quality of use and appearance and maintaining the value of each  
and every lot and parcel of said property . . ."

8 Artemis acquired Lot 6 of Block G (hereinafter Lot G-6) of Ruby Lake Estates on June 21, 1994.

9 Artemis acquired Lot 2 of Block H (hereinafter Lot H-2) of Ruby Lake Estates on March 9, 2010.

10 Both Lot G-6 and Lot H-2 were created by the Plat Map and subject to the CC&Rs. Title to the  
11 lots was taken subject to the CC&Rs.

12 The HOA Articles of Incorporation were filed by Lee Perks on January 16, 2006.

13 The Initial Association Registration Form was filed on March 31, 2006, with the Office of the  
14 Ombudsman for Common-Interest Communities.

15 In filing the Articles of Incorporation and forming the HOA, the owners of Ruby Lake Estates  
16 took action consistent with the opinion of its counsel.

17 For over seventeen years (1994-2011), Mr. and Mrs. Essington represented that Lot G-6 was  
18 owned by one or both of them.

19 Mr. Essington represented to members of the Association that he had the capacity and authority  
20 to act on behalf of Artemis and/or Mrs. Essington.

21 Mr. Essington served on the HOA's Board of Directors (hereinafter "the Board") from 2007 until  
22 he resigned in January, 2011.

23 Following his election to the Board, Mr. Essington signed a Declaration of Certification as a  
24 Common-Interest Community Board Member, as required by NRS 116.31034(9).

25 Representing himself to be a lot owner, Mr. Essington seconded a motion to approve its Bylaws.

26 The Bylaws specifically provide, "All officers must be property owners and members of the  
27 Ruby Lake Homeowners Association in good standing their entire term of office."

28 ///

1 Mr. Essington violated this provision when, for sixteen years, he held himself out as an owner of  
2 a lot.

3 The Bylaws also read: "An assessment fee will be charged yearly for maintenance, roads, fire  
4 protection, and other expenditures as the board allows or required by Elko County."

5 Maintenance of the roadways as well as ditches, culverts and other improvements has repeatedly  
6 been recognized as the collective responsibility of the owners of the lots within the Ruby Lake Estates  
7 subdivision, including Artemis.

8 Road maintenance by the HOA has been an ongoing topic of communications between members  
9 and at HOA meetings in the years since the Wrights turned over maintenance in 1997.

10 After becoming a member of the Board, Mr. Essington voted to levy assessments against all  
11 HOA members for roadway maintenance, weed abatement and the repair of signs and culverts.

12 The HOA holds title to real property which was deeded to it by the Wrights. The members of the  
13 HOA, including Mr. Essington while serving on the Board and while representing himself to be an  
14 owner of Lot G-6, voted to accept title to this real property, pay documentary transfer tax and procure  
15 liability insurance in the name of the HOA.

16 On July 14, 2009, the Board caused a Reserve Study to be prepared as required by NRS  
17 116.31153. The Reserve Study was prepared by an independent and licensed community association  
18 consultant. The Reserve Study identified the reserve items of the Association as cattle guards, dirt road  
19 maintenance, fencing, gates, entrance signs and street signs. Mr. Essington voted to approve the Reserve  
20 Study at the August 8, 2009, meeting of the Board. Mr. Essington voted to levy assessments in  
21 accordance with the Reserve Study and the 2010 budget, which he also approved.

22 Since the HOA's formation, assessments have been levied and budgets were adopted by  
23 members to pay for road and real property maintenance, as well as fire protection. Mr. Essington  
24 approved these budgets and assessments. Mr. and Mrs. Essington regularly paid assessments from their  
25 personal bank account.

26 In 2009, a dispute arose between Mrs. Essington and the Ruby Lakes Estates Architectural  
27 Review Committee (ARC) regarding the construction of a large building to house machinery and other  
28 equipment at the subdivision. The ARC and the Board took the position that the structure was permitted

1 under the CC&Rs.

2 Artemis stopped paying its HOA assessments, all of which had been approved by Mr. Essington  
3 as a Board member. Invoices generated in the ordinary course of business were sent to Artemis care of  
4 Mr. and Mrs. Essington. Eventually, the HOA hired a collection agency to try and collect the delinquent  
5 assessments. It is the sending of these invoices and notice of the HOA's intent to record a Notice of  
6 Delinquent Assessment Lien.

7 **3. Analysis**

8 The Court has spent hour upon hour studying the memoranda of points and authorities and  
9 supporting exhibits on file in this case.

10 In its Opposition, Artemis makes nonsensical substantive arguments. For example, Artemis  
11 argues that the HOA is "invalid" under NRS 116.3101(1) "because the lots of Ruby Lakes Estates [ ]  
12 were not bound by any covenant to pay dues or participate in a homeowner's association prior to the  
13 conveyance of the lots." The HOA effectively rebuts this argument and others in its MSJ.<sup>1</sup> Artemis also  
14 unconvincingly argues that Caughlin Homeowners Ass'n v. Caughlin Club, 109 Nev. 264 (1993), a case  
15 with facts strikingly different from this one and predating the application of NRS Chapter 116 to  
16 common interest communities created before 1992, is dispositive.<sup>2</sup>

17 In the end, the Court has concluded that Ruby Lakes Estates qualified as a common-interest  
18 community to which the Uniform Common-Interest Ownership Act (hereinafter "the Act") applied when  
19 the HOA was incorporated. Once the HOA was incorporated as required by the Act, it was entitled to  
20 exercise all of the powers vested in it by NRS Chapter 116, including the collection of assessments for  
21 common expenses at Ruby Lakes Estates. NRS 116.3102. Valid at its inception, the HOA continues to  
22 be so today.

23 ///

24  
25 <sup>1</sup> Since the Act was adopted in Nevada, NRS 116.3101 has read that "[a] unit-owners' association must be organized no  
26 later than the date the first unit in the common-interest community is conveyed." As the HOA notes in its Opposition, if  
this argument held water a valid homeowners association for a common interest community that existed before 1992  
could never be formed.

27 <sup>2</sup> In Caughlin Homeowners Ass'n, the Nevada Supreme Court held that: (1) a deed to commercial property in a  
28 residential subdivision could not be made subject to later amendments to CC&Rs that created new covenants for which  
notice was not given at the time of acquisition; and (2) the amendment to CC&Rs creating new property classifications  
and assessments purporting to burden the commercial parcel had no legal effect. 109 Nev. at 267.

1 The Court has reached this determination for two primary reasons: (1) the CC&Rs are "real  
2 estate" within the meaning of NRS 116.081; and (2) the CC&Rs constitute contractual interests for  
3 which Ruby Lakes Estates lot owners were obligated to pay at the time of the HOA's incorporation.  
4 NRS 116.021.

5 The Act was codified as NRS Chapter 116 in 1991. In 1999, the Legislature applied the Act to  
6 common-interest communities created prior to 1992. NRS 116.1201.

7 Upon the HOA's incorporation in 2006, a "common-interest community" was defined as "real  
8 estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real  
9 estate other than that unit." NRS 116.021. As now, "real estate" was defined then as "any leasehold or  
10 other estate or interest in, over or under land, including structures, fixtures and other improvements *and*  
11 *interests that by custom, usage or law pass with a conveyance of land though not described in the*  
12 *contract of sale or instrument of conveyance.*" NRS 116.081 (emphasis added).

13 By 2006, NRS 116.1201 had been amended to provide that the Act does not apply to a common-  
14 interest community that was created before January 1, 1992, is located in a county whose population is  
15 less than 50,000 and has less than 50 percent of the units within the community put to residential use,  
16 unless a majority of the unit owners otherwise elect in writing. However, the Act continued to apply to  
17 Ruby Lakes Estates, which in 2006 had at least 50 percent of its units in residential use.

18 In an unofficial 2008 Nevada Attorney General's Opinion (hereinafter "2008 AGO"), a Senior  
19 Deputy Attorney General opined that: (1) commonly owned land, structures, fixtures or improvements,  
20 separate from an individually-owned unit, were not required for a planned community to be a common-  
21 interest community under the Act; and (2) covenants, conditions and restrictions may be "real estate"  
22 within the definition set forth in NRS 116.081. Although somewhat flawed in its reasoning in the  
23 Court's view, the 2008 AGO turned on the Act's expansive definition of real estate.<sup>3</sup>

24 A covenant is "[a] formal agreement or promise to do or not do a particular act." Black's Law  
25 Dictionary 419 (9<sup>th</sup> ed. 2009). A covenant running with the land is "[a] covenant intimately and  
26

27 <sup>3</sup> Artemis has harshly criticized the 2008 AGO, which the Court believes is a faithful interpretation of the text of the  
28 statutes at issue. In an era when many are rightfully questioning the use of legislative history to interpret statutes, Artemis  
invites the Court to rely on a legislator's 2009 interpretation of NRS 116.021 as support for the proposition that the 2008  
AGO is wrong. Respectfully, the Court declines the invitation. See Antonin Scalia and Bryan A. Garner, Reading Law:  
The Interpretation of Legal Texts, 391-96 (2012).

1 inherently involved with the land and therefore binding subsequent owners and successor grantees  
2 indefinitely." Id. at 421. "The important consequence of a covenant running with the land is that its  
3 burden or benefit will thereby be imposed or conferred upon a subsequent owner of the property who  
4 never actually agreed to it." Id. (quoting Roger Bernhardt, *Real Property in a Nutshell* 212 (3d ed.  
5 1993)). CC&Rs are a property interest separate from the land with which they run. Thirteen South, Ltd.  
6 v. Summit Village, Inc., 109 Nev. 1218, 1221 (1993).

7 The Ruby Lakes Estates CC&Rs specifically provide that they exist for the mutual benefit of all  
8 subdivision lots "and of each owner or user thereof." The CC&Rs expressly run with the land "and  
9 inure to *and pass with the land and apply to and bind respective successors in interest thereto.*" The  
10 CC&Rs are described as mutually enforceable equitable servitudes "in favor of each and every other  
11 parcel included within [Ruby Lakes Estates]." "[I]nterests that by custom, usage or law pass with the  
12 conveyance of land though not described in the contract of sale or instrument of conveyance" clearly  
13 encompass CC&Rs that run with the land. In 2006 and today, no reasonable argument can be made that  
14 the CC&Rs do not constitute "real estate" within the meaning of NRS 116.081.

15 Common sense and logic dictate that the substance of the CC&Rs should determine whether they  
16 comprised "real estate" *for which lot owners were obligated to pay*, thus rendering Ruby Lakes Estates a  
17 "common interest community" to which NRS Chapter 116 applied upon the HOA's incorporation.

18 The CC&Rs include a statement that they exist "to provide for the development and maintenance  
19 of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of  
20 preserving a high quality of use and appearance and maintaining the value of each and every lot and  
21 parcel" of Ruby View Estates.

22 The CC&Rs establish the ARC "for the general purpose of providing for the maintenance of a  
23 high standard of architectural design, color and landscaping harmony and to preserve and enhance  
24 aesthetic qualities and high standards of construction in the development and maintenance" of Ruby  
25 Lake Estates. The ARC is charged in the CC&Rs with: (1) determining CC&R compliance; and (2)  
26 promulgating and adopting reasonable rules and regulations "in order to carry out its purpose."

27 The CC&Rs also impose restrictions on what can be constructed on the lots of Ruby Lakes  
28 Estates. There are requirements for initial construction and subsequent additions, improvements or

1 changes to any structures built upon the lots. The CC&Rs contain many use conditions, including  
2 conditions that: (1) each lot contain only one dwelling; (2) plans for original construction and alterations  
3 of structures and fences be approved in writing by an ARC before construction or an alteration begins;  
4 (3) all construction conform with current requirements of the Uniform Building Code, Uniform  
5 Plumbing Code, National Electric Code and Uniform Fire Code; (4) all housing not built or constructed  
6 on site be approved by the Nevada Division of Manufactured Housing; and (5) all mobile or modular  
7 housing be approved by the ARC.

8 Finally, the CC&Rs provide the ARC the power to: (1) grant variances; and (2) enforce the  
9 CC&Rs by bringing an action at law or in equity.

10 Upon the HOA's incorporation, the CC&Rs provided assurance to those who purchased property  
11 within Ruby Lakes Estates that there are legally enforceable standards and requirements with which  
12 neighboring homes must comport, making it foreseeable that the subdivision would continue to have  
13 consistent quality and value. Then, as now, lot owners cannot change their property to the extent that it  
14 might adversely affect the property values within Ruby Lakes Estates. Then, as now, the CC&Rs added  
15 value for all units in Ruby Lakes Estates, including the establishment of an enforcement body, the  
16 operations for which lot owners were obligated to pay at least by implication. See Evergreen Highlands  
17 Ass'n v. West, 73 P.3d 1, 7-9 (Colorado 2003) (even in absence of express covenant, CC&Rs for  
18 subdivision in UCIOA jurisdiction were sufficient to create a common interest community by  
19 implication with concomitant power to impose mandatory dues on lot owners to pay for maintenance of  
20 common areas; implied obligation may be found where the declaration expressly creates body for  
21 enforcing use restrictions and design controls, but fails to include a mechanism for providing the funds  
22 necessary to carry out its functions, and when such an implied obligation is established the subdivision is  
23 a common interest community); Restatement (Third) of Property: Servitudes § 6.2 cmt. a (2000); see  
24 also Southeastern Jurisdictional Admin. Council, Inc. v. Emerson, 683 S.E.2d 366 (N.C. 2009)  
25 (reversing Southeastern Jurisdictional Admin. Council, Inc. v. Emerson, 655 S.E.2d 719, 721 (N.C. App.  
26 2008), in which the North Carolina Court of Appeals opined that "[t]he duty to pay an assessment is an  
27 affirmative obligation; strict construction of the [CC&Rs] would require such a duty to have specific  
28 authorization, not a secondary authorization under the rubric of rules and regulations").

1 For all of these reasons, pursuant to the provisions of NRS 116.021, and using the definition for  
2 real estate in NRS 116.081, the CC&Rs constituted *real estate, other than the unit owned, for which unit*  
3 *owners are obligated to pay* when the HOA was incorporated.<sup>4</sup> A common interest community at the  
4 HOA's incorporation, the HOA is valid today.

5 **4. Order**

6 For all of the foregoing reasons, Artemis is not entitled to the declaratory relief sought in its  
7 Complaint, and the Defendant's Motion for Summary Judgment is hereby GRANTED.  
8

9 DATED this 14 day of February, 2013.

10  
11   
12 The Honorable Alvin R. Kacin  
13 District Judge/Department 2  
14  
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27 <sup>4</sup> The Court also concludes that the Ruby Lakes Estates plat also constitutes "real estate," other than the unit owned, for  
28 which unit owners are obligated to pay. NRS 116.2101 (common-interest community may be created pursuant to Act  
only by recording a declaration executed in the same manner as a deed); NRS 116.2109(1) (plats are part of the  
declaration). The plat contains "common elements" as that term is currently defined in NRS 116.017, including fixtures  
such as gates.

CERTIFICATE OF MAILING

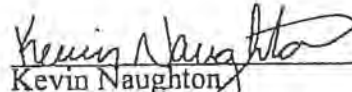
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District Judge, Fourth Judicial District Court, Department 2, and that on this 14 day of February, 2013, served by the following method of service:

<input checked="" type="checkbox"/> Regular US Mail	<input type="checkbox"/> Overnight UPS
<input type="checkbox"/> Certified US Mail	<input type="checkbox"/> Overnight Federal Express
<input type="checkbox"/> Registered US Mail	<input type="checkbox"/> Fax to # _____
<input type="checkbox"/> Overnight US Mail	<input type="checkbox"/> Hand Delivery
<input type="checkbox"/> Personal Service	<input checked="" type="checkbox"/> Box in Clerk's Office

a true copy of the foregoing document addressed to:

Travis Gerber, Esq.  
491 Fourth Street  
Elko, Nevada 89801  
[Box in Clerk's Office]

Gayle A. Kern, Esq.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
[Regular US Mail]

  
Kevin Naughton

ORIGINAL

FILED

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ELKO CO DISTRICT COURT

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA *KJ*

6

IN AND FOR THE COUNTY OF ELKO

7

8 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

9

Plaintiffs,

10

vs.

**NOTICE OF ENTRY OF ORDER DENYING  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT**

11

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION AND DOES I-X,

12

Defendants.

13

14 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

15

Counterclaimant,

16

vs.

17

ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

18

Counterdefendant.

19

20

PLEASE TAKE NOTICE that on February 12, 2013, an Order Denying Plaintiff's Motion  
21 for Summary Judgment was entered by the Court. A copy of the Order Denying Plaintiff's Motion  
22 for Summary Judgment is attached hereto.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

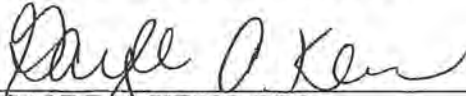
1  
2  
3 **AFFIRMATION**

4 **Pursuant to NRS 239B.030**

5 The undersigned does hereby affirm that the preceding document filed in the above-entitled  
6 case does not contain the social security number of any person.

7 DATED this 25 day of February, 2013.

8 KERN & ASSOCIATES, LTD.

9 

10 GAYLE A. KERN, ESQ.

11 NEVADA BAR #1620

12 5421 Kietzke Lane, Suite 200

13 RENO, NEVADA 89511

14 Telephone: 775-324-5930

15 Fax: 775-324-6173

16 Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)

17 Attorneys for Ruby Lake Estates  
18  
19  
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23  
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28

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern & Associates,  
3 Ltd., and that on this day I served the foregoing document described as follows:

4 NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY  
5 JUDGMENT

6 on the parties set forth below, at the addresses listed below by:

7 X Placing an original or true copy thereof in a sealed envelope place for collection and  
8 mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid,  
9 following ordinary business practices, addressed to:

10            Via facsimile transmission

11            Via e-mail.

12            Personal delivery, upon:

13            United Parcel Service, Next Day Air, addressed to:

14 Travis Gerber, Esq.  
15 Gerber Law Offices, LLP  
16 491 4<sup>th</sup> Street  
17 Elko, NV 89801

18 DATED this 20<sup>th</sup> day of February, 2013.

19 Teresa A. Gearhart  
20 TERESA A. GEARHART  
21  
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FILED

2013 FEB 12 PM 3:23  
ELKO CO DISTRICT COURT

LENN — DEPUTY — *DL*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Plaintiff,

v.

RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION AND DOES I-X,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT**

This is a dispute between a property owner and its homeowners association.

On April 20, 2012, Plaintiff/Counterdefendant Artemis Exploration Company (hereinafter "Artemis") filed a Motion for Summary Judgment (hereinafter "MSJ") against Defendant/Counterclaimant Ruby Lake Estates Homeowner's Association (hereinafter "the HOA"). The HOA opposed the MSJ on May 30, 2012. Artemis filed its "Reply to Opposition to Plaintiff's Motion for Summary Judgment" on June 15, 2012.

By its MSJ, Artemis seeks the entry of a judgment declaring the HOA invalid.

Having carefully considered the matter, the Court is denying the MSJ.

**1. Law of Summary Judgment**

"A party seeking to recover upon a claim . . . may, at any time after the expiration of 20 days from the commencement of the action . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." NRCP 56(a).

///

1 NRCP 56(c) reads, in pertinent part:

2 Motions for summary judgment and responses thereto shall include a concise statement  
3 setting forth each fact material to the disposition of the motion which the party claims is or  
4 is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition,  
5 interrogatory, answer, admission, or other evidence upon which the party relies. The  
6 judgment sought shall be rendered forthwith if the pleadings, depositions, answers to  
7 interrogatories, and admissions on file, together with the affidavits, if any, show that there  
8 is no genuine issue as to any material fact and that the moving party is entitled to a judgment  
9 as a matter of law. A summary judgment, interlocutory in character, may be rendered on the  
10 issue of liability alone although there is a genuine issue as to the amount of damages. An  
11 order granting summary judgment shall set forth the undisputed material facts and legal  
12 determinations on which the court granted summary judgment.

13 NRCP 56(e) reads, in relevant part:

14 Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such  
15 facts as would be admissible in evidence, and shall show affirmatively that the affiant is  
16 competent to testify to the matters stated therein. Sworn or certified copies of all papers or  
17 parts thereof referred to in an affidavit shall be attached thereto or served therewith. The  
18 court may permit affidavits to be supplemented or opposed by depositions, answers to  
19 interrogatories, or further affidavits. When a motion for summary judgment is made and  
20 supported as provided in [NRCP 56], an adverse party may not rest upon the mere allegations  
21 or denials of the adverse party's pleading, but the adverse party's response, by affidavits or  
22 as otherwise provided in [NRCP 56], must set forth specific facts showing that there is a  
23 genuine issue for trial. If the adverse party does not so respond, summary judgment, if  
24 appropriate, shall be entered against the adverse party.

25 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and  
26 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the  
27 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729  
28 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).  
"[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn  
from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving  
the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451  
(1985).

"The substantive law controls which factual disputes are material and will preclude summary  
judgment; other factual disputes are irrelevant." Wood, 121 Nev. at 731 (citing Anderson v. Liberty  
Lobby, Inc., 477 U.S. 242, 248 (1986)). "A factual dispute is genuine when the evidence is such that a  
rational trier of fact could return a verdict for the nonmoving party." Id. (citations omitted).

"While the pleadings and other proof must be construed in a light most favorable to the  
nonmoving party, that party bears the burden to 'do more than simply show that there is some

1 metaphysical doubt' as to the operative facts in order to avoid summary judgment being entered in the  
2 moving party's favor." Id. at 732. "The nonmoving party 'must, by affidavit or otherwise, set forth  
3 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered  
4 against him.'" Id. (citing Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110 (1992)). The nonmoving  
5 party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" Bulbman, 108 Nev. at 110 (quoting Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302 (1983)).

## 7 **2. Undisputed Material Facts**

8 The facts material to the disposition of the MSJ are in the following recitation of undisputed fact.  
9 The Court has relied much on the HOA's pinpoint citations to the record.

10 Artemis is a Nevada corporation whose president, secretary, treasurer and sole director is  
11 Elizabeth Essington (hereinafter "Mrs. Essington"). Mrs. Essington's husband is George "Mel"  
12 Essington (hereinafter "Mr. Essington").

13 The official Plat Map for Ruby Lake Estates was recorded in Elko County on September 15,  
14 1989, by Stephen and Mavis Wright (hereinafter "the Wrights") as File No. 281674. Included on the  
15 Plat Map are residential lots within the community, as well as roadways, easements, building set-back  
16 lines and street monuments.

17 With respect to the roadways, the first sheet of the Plat Map reads:

18 At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada,  
19 held on the 5<sup>th</sup> day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS  
20 278.328. The Board does hereby reject on behalf of the public all streets or roadways for  
maintenance purposes and does hereby accept all streets and easements therein offered for  
utility, drainage and access purposes only as dedicated for public use.

21 The roads within Ruby Lake Estates have never been accepted for maintenance by Elko County.  
22 Yet, Elko County requires the roadways and adjoining ditches and culverts to be maintained for health  
23 and safety reasons.

24 On October 25, 1989, the Wrights recorded a Declaration of Reservations, Conditions and  
25 Restrictions for Ruby Lake Estates (hereinafter "CC&Rs"). The CC&Rs were recorded in the Office of  
26 the Elko County Recorder.

27 Article I of the CC&Rs provides:

28 The real property affected hereby is subjected to the imposition of the covenants, conditions,  
restrictions and reservations specified herein to provide for the development and maintenance

1 of an aesthetically pleasing and harmonious community of residential dwellings for the  
2 purpose of preserving a high quality of use and appearance and maintaining the value of each  
and every lot and parcel of said property . . .”

3 Artemis acquired Lot 6 of Block G (hereinafter Lot G-6) of Ruby Lake Estates on June 21, 1994.

4 Artemis acquired Lot 2 of Block H (hereinafter Lot H-2) of Ruby Lake Estates on March 9, 2010.

5 Both Lot G-6 and Lot H-2 were created by the Plat Map and subject to the CC&Rs. Title to the  
6 lots was taken subject to the CC&Rs.

7 The HOA Articles of Incorporation were filed by Lee Perks on January 16, 2006.

8 The Initial Association Registration Form was filed on March 31, 2006, with the Office of the  
9 Ombudsman for Common-Interest Communities.

10 In filing the Articles of Incorporation and forming the HOA, the owners of Ruby Lake Estates  
11 took action consistent with the opinion of its counsel.

12 For over seventeen years (1994-2011), Mr. and Mrs. Essington represented that Lot G-6 was  
13 owned by one or both of them.

14 Mr. Essington represented to members of the Association that he had the capacity and authority  
15 to act on behalf of Artemis and/or Mrs. Essington.

16 Mr. Essington served on the HOA's Board of Directors (hereinafter “the Board”) from 2007 until  
17 he resigned in January, 2011.

18 Following his election to the Board, Mr. Essington signed a Declaration of Certification as a  
19 Common-Interest Community Board Member, as required by NRS 116.31034(9).

20 Representing himself to be a lot owner, Mr. Essington seconded a motion to approve its Bylaws.

21 The Bylaws specifically provide, “All officers must be property owners and members of the  
22 Ruby Lake Homeowners Association in good standing their entire term of office.”

23 Mr. Essington violated this provision when, for sixteen years, he held himself out as an owner of  
24 a lot.

25 The Bylaws also read: “An assessment fee will be charged yearly for maintenance, roads, fire  
26 protection, and other expenditures as the board allows or required by Elko County.”

27 Maintenance of the roadways as well as ditches, culverts and other improvements has repeatedly  
28 been recognized as the collective responsibility of the owners of the lots within the Ruby Lake Estates

1 subdivision, including Artemis.

2 Road maintenance by the HOA has been an ongoing topic of communications between members  
3 and at HOA meetings in the years since the Wrights turned over maintenance in 1997.

4 After becoming a member of the Board, Mr. Essington voted to levy assessments against all  
5 HOA members for roadway maintenance, weed abatement and the repair of signs and culverts.

6 The HOA holds title to real property which was deeded to it by the Wrights. The members of the  
7 HOA, including Mr. Essington while serving on the Board and while representing himself to be an  
8 owner of Lot G-6, voted to accept title to this real property, pay documentary transfer tax and procure  
9 liability insurance in the name of the HOA.

10 On July 14, 2009, the Board caused a Reserve Study to be prepared as required by NRS  
11 116.31153. The Reserve Study was prepared by an independent and licensed community association  
12 consultant. The Reserve Study identified the reserve items of the Association as cattle guards, dirt road  
13 maintenance, fencing, gates, entrance signs and street signs. Mr. Essington voted to approve the Reserve  
14 Study at the August 8, 2009, meeting of the Board. Mr. Essington voted to levy assessments in  
15 accordance with the Reserve Study and the 2010 budget, which he also approved.

16 Since the HOA's formation, assessments have been levied and budgets were adopted by  
17 members to pay for road and real property maintenance, as well as fire protection. Mr. Essington  
18 approved these budgets and assessments. Mr. and Mrs. Essington regularly paid assessments from their  
19 personal bank account.

20 In 2009, a dispute arose between Mrs. Essington and the Ruby Lakes Estates Architectural  
21 Review Committee (ARC) regarding the construction of a large building to house machinery and other  
22 equipment at the subdivision. The ARC and the Board took the position that the structure was permitted  
23 under the CC&Rs.

24 Artemis stopped paying its HOA assessments, all of which had been approved by Mr. Essington  
25 as a Board member. Invoices generated in the ordinary course of business were sent to Artemis care of  
26 Mr. and Mrs. Essington. Eventually, the HOA hired a collection agency to try and collect the delinquent  
27 assessments. It is the sending of these invoices and notice of the HOA's intent to record a Notice of  
28 Delinquent Assessment Lien.

1    **3.     Analysis**

2           The Court has spent hour upon hour studying the memoranda of points and authorities and  
3 supporting exhibits on file in this case. The Court has decided that it is best to consider the substance of  
4 the MSJ even though it is not supported as required by NRCP 56(e).

5           In its MSJ, Artemis makes nonsensical substantive arguments. For example, Artemis argues that  
6 the HOA is "invalid" under NRS 116.3101(1) "because the lots of Ruby Lakes Estates [ ] were not  
7 bound by any covenant to pay dues or participate in a homeowner's association prior to the conveyance  
8 of the lots." The HOA effectively rebuts this argument and others in its Opposition to Plaintiff's Motion  
9 for Summary Judgment.<sup>1</sup> Artemis also unconvincingly argues that Caughlin Homeowners Ass'n v.  
10 Caughlin Club, 109 Nev. 264 (1993), a case with facts strikingly different from this one and predating  
11 the application of NRS Chapter 116 to common interest communities created before 1992, is  
12 dispositive.<sup>2</sup>

13           In the end, the Court has concluded that Ruby Lakes Estates qualified as a common-interest  
14 community to which the Uniform Common-Interest Ownership Act (hereinafter "the Act") applied when  
15 the HOA was incorporated. Once the HOA was incorporated as required by the Act, it was entitled to  
16 exercise all of the powers vested in it by NRS Chapter 116, including the collection of assessments for  
17 common expenses at Ruby Lakes Estates. NRS 116.3102. Valid at its inception, the HOA continues to  
18 be so today.

19           The Court has reached this determination for two primary reasons: (1) the CC&Rs are "real  
20 estate" within the meaning of NRS 116.081; and (2) the CC&Rs constitute contractual interests for  
21 which Ruby Lakes Estates lot owners were obligated to pay at the time of the HOA's incorporation.  
22 NRS 116.021.

23    ///

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<sup>1</sup> Since the Act was adopted in Nevada, NRS 116.3101 has read that "[a] unit-owners' association must be organized no  
25 later than the date the first unit in the common-interest community is conveyed." As the HOA notes in its Opposition, if  
26 this argument held water a valid homeowners association for a common interest community that existed before 1992  
could never be formed.

27           <sup>2</sup> In Caughlin Homeowners Ass'n, the Nevada Supreme Court held that: (1) a deed to commercial property in a  
28 residential subdivision could not be made subject to later amendments to CC&Rs that created new covenants for which  
notice was not given at the time of acquisition; and (2) the amendment to CC&Rs creating new property classifications  
and assessments purporting to burden the commercial parcel had no legal effect. 109 Nev. at 267.

1 The Act was codified as NRS Chapter 116 in 1991. In 1999, the Legislature applied the Act to  
2 common-interest communities created prior to 1992. NRS 116.1201.

3 Upon the HOA's incorporation in 2006, a "common-interest community" was defined as "real  
4 estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real  
5 estate other than that unit." NRS 116.021. As now, "real estate" was defined then as "any leasehold or  
6 other estate or interest in, over or under land, including structures, fixtures and other improvements *and*  
7 *interests that by custom, usage or law pass with a conveyance of land though not described in the*  
8 *contract of sale or instrument of conveyance.*" NRS 116.081 (emphasis added).

9 By 2006, NRS 116.1201 had been amended to provide that the Act does not apply to a common-  
10 interest community that was created before January 1, 1992, is located in a county whose population is  
11 less than 50,000 and has less than 50 percent of the units within the community put to residential use,  
12 unless a majority of the unit owners otherwise elect in writing. However, the Act continued to apply to  
13 Ruby Lakes Estates, which in 2006 had at least 50 percent of its units in residential use.

14 In an unofficial 2008 Nevada Attorney General's Opinion (hereinafter "2008 AGO"), a Senior  
15 Deputy Attorney General opined that: (1) commonly owned land, structures, fixtures or improvements,  
16 separate from an individually-owned unit, were not required for a planned community to be a common-  
17 interest community under the Act; and (2) covenants, conditions and restrictions may be "real estate"  
18 within the definition set forth in NRS 116.081. Although somewhat flawed in its reasoning in the  
19 Court's view, the 2008 AGO turned on the Act's expansive definition of real estate.<sup>3</sup>

20 A covenant is "[a] formal agreement or promise to do or not do a particular act." Black's Law  
21 Dictionary 419 (9<sup>th</sup> ed. 2009). A covenant running with the land is "[a] covenant intimately and  
22 inherently involved with the land and therefore binding subsequent owners and successor grantees  
23 indefinitely." *Id.* at 421. "The important consequence of a covenant running with the land is that its  
24 burden or benefit will thereby be imposed or conferred upon a subsequent owner of the property who  
25 never actually agreed to it." *Id.* (quoting Roger Bernhardt, Real Property in a Nutshell 212 (3d ed.

26  
27 <sup>3</sup> Artemis has harshly criticized the 2008 AGO, which the Court believes is a faithful interpretation of the text of the  
28 statutes at issue. In an era when many are rightfully questioning the use of legislative history to interpret statutes, Artemis  
invites the Court to rely on a legislator's 2009 interpretation of NRS 116.021 as support for the proposition that the 2008  
AGO is wrong. Respectfully, the Court declines the invitation. See Antonin Scalia and Bryan A. Garner, Reading Law:  
The Interpretation of Legal Texts, 391-96 (2012).

1 1993)). CC&Rs are a property interest separate from the land with which they run. Thirteen South, Ltd.  
2 v. Summit Village, Inc., 109 Nev. 1218, 1221 (1993).

3 The Ruby Lakes Estates CC&Rs specifically provide that they exist for the mutual benefit of all  
4 subdivision lots "and of each owner or user thereof." The CC&Rs expressly run with the land "and  
5 inure to *and pass with the land and apply to and bind respective successors in interest thereto.*" The  
6 CC&Rs are described as mutually enforceable equitable servitudes "in favor of each and every other  
7 parcel included within [Ruby Lakes Estates]." "[I]nterests that by custom, usage or law pass with the  
8 conveyance of land though not described in the contract of sale or instrument of conveyance" clearly  
9 encompass CC&Rs that run with the land. In 2006 and today, no reasonable argument can be made that  
10 the CC&Rs do not constitute "real estate" within the meaning of NRS 116.081.

11 Common sense and logic dictate that the substance of the CC&Rs should determine whether they  
12 comprised "real estate" *for which lot owners were obligated to pay*, thus rendering Ruby Lakes Estates a  
13 "common interest community" to which NRS Chapter 116 applied upon the HOA's incorporation.

14 The CC&Rs include a statement that they exist "to provide for the development and maintenance  
15 of an aesthetically pleasing and harmonious community of residential dwellings for the purpose of  
16 preserving a high quality of use and appearance and maintaining the value of each and every lot and  
17 parcel" of Ruby View Estates.

18 The CC&Rs establish the ARC "for the general purpose of providing for the maintenance of a  
19 high standard of architectural design, color and landscaping harmony and to preserve and enhance  
20 aesthetic qualities and high standards of construction in the development and maintenance" of Ruby  
21 Lake Estates. The ARC is charged in the CC&Rs with: (1) determining CC&R compliance; and (2)  
22 promulgating and adopting reasonable rules and regulations in order to perform its duties.

23 The CC&Rs also impose restrictions on what can be constructed on the lots of Ruby Lakes  
24 Estates. There are requirements for initial construction and subsequent additions, improvements or  
25 changes to any structures built upon the lots. The CC&Rs contain many use conditions, including  
26 conditions that: (1) each lot contain only one dwelling; (2) plans for original construction and alterations  
27 of structures and fences be approved in writing by an ARC before construction or an alteration begins;  
28 (3) all construction conform with current requirements of the Uniform Building Code, Uniform

1 Plumbing Code, National Electric Code and Uniform Fire Code; (4) all housing not built or constructed  
2 on site be approved by the Nevada Division of Manufactured Housing; and (5) all mobile or modular  
3 housing be approved by the ARC.

4 Finally, the CC&Rs provide the ARC the power to: (1) grant variances; and (2) enforce the  
5 CC&Rs by bringing an action at law or in equity.

6 Upon the HOA's incorporation, the CC&Rs provided assurance to those who purchased property  
7 within Ruby Lakes Estates that there are legally enforceable standards and requirements with which  
8 neighboring homes must comport, making it foreseeable that the subdivision would continue to have  
9 consistent quality and value. Then, as now, lot owners cannot change their property to the extent that it  
10 might adversely affect the property values within Ruby Lakes Estates. Then, as now, the CC&Rs added  
11 value for all units in Ruby Lakes Estates, including the establishment of an enforcement body, the  
12 operations for which lot owners were obligated to pay at least by implication. See Evergreen Highlands  
13 Ass'n v. West, 73 P.3d 1, 7-9 (Colorado 2003) (even in absence of express covenant, CC&Rs for  
14 subdivision in UCIOA jurisdiction were sufficient to create a common interest community by  
15 implication with concomitant power to impose mandatory dues on lot owners to pay for maintenance of  
16 common areas; implied obligation may be found where the declaration expressly creates body for  
17 enforcing use restrictions and design controls, but fails to include a mechanism for providing the funds  
18 necessary to carry out its functions, and when such an implied obligation is established the subdivision is  
19 a common interest community); Restatement (Third) of Property: Servitudes § 6.2 cmt. a (2000).

20 For all of these reasons, pursuant to the provisions of NRS 116.021, and using the definition for  
21 real estate in NRS 116.081, the CC&Rs constituted *real estate, other than the unit owned, for which unit*  
22 *owners are obligated to pay* when the HOA was incorporated.<sup>4</sup> A common interest community at the  
23 HOA's incorporation, the HOA is not "invalid" today.

24 ///

25 ///

26  
27 <sup>4</sup> The Court also concludes that the Ruby Lakes Estates plat also constitutes "real estate," other than the unit owned, for  
28 which unit owners are obligated to pay. NRS 116.2101 (common-interest community may be created pursuant to Act  
only by recording a declaration executed in the same manner as a deed); NRS 116.2109(1) (plats are part of the  
declaration). The plat contains "common elements" as that term is currently defined in NRS 116.017, including fixtures  
such as gates.

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1 CERTIFICATE OF MAILING

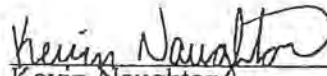
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District  
3 Judge, Fourth Judicial District Court, Department 2, and that on this 12 day of February, 2013,  
served by the following method of service:

4 ☒ Regular US Mail ☐ Overnight UPS  
5 ☐ Certified US Mail ☐ Overnight Federal Express  
6 ☐ Registered US Mail ☐ Fax to # \_\_\_\_\_  
☐ Overnight US Mail ☐ Hand Delivery  
☐ Personal Service ☒ Box in Clerk's Office

7 a true copy of the foregoing document addressed to:

8 Travis Gerber, Esq.  
9 491 Fourth Street  
10 Elko, Nevada 89801  
[Box in Clerk's Office]

11 Gayle A. Kem, Esq.  
12 5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
[Regular US Mail]

13   
14 Kevin Naughton