IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY, A Nevada Corporation; HAROLD WYATT; AND MARY WYATT,

Appellants,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Respondent.

No. 75323

APPELLANTS' APPENDIX
VOLUME 1

Appeal from Fourth Judicial District Court, Division 2
Case No. CV-C-12-175

APPELLANTS' APPENDIX - VOLUME 1

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APPENDIX SUMMARY
Alphabetical Order

Document	Date	Vol.	Joint Appendix "JA" Pg. Nos.
Acceptance of Service	March 21, 2012	1	27
Affidavit of Robert Wines	May 31, 2012	3	165-170
Amended Stipulation and Order to Amend Complaint, Answer and Counterclaim Pursuant to Order RE: Joinder of Necessary Parties Entered September 11, 2015	February 10, 2016	4	108-142
Answer to Complaint and Counterclaim	April 2, 2012	1	28-49
Answer to Counterclaim	April 16, 2012	1	50-57
Answer to First Amended Complaint; Counterclaim and Cross-Claim	March 11, 2016	4	168-188
Answer to Second Amended Complaint; Counterclaim and Cross-Claim	April 14, 2016	4	222-242
Answer to Second Amended Counterclaim	May 4, 2016	5	1-10
Arbitration Order (Exhibit)	February 7, 2012	5	219-222
Attorney General's Opinion to Mendy K. Elliott (Exhibit)	August 11, 2008	5	178-190
Complaint	March 2, 2012	1	1-26
Deed Lot 4 Block F - Stephen G. Wright & Mavis S. Wright to Van Der Meer 1983 Trust (Exhibit)	February 15, 1990	5	163-164
Deed Lot 5 Block F - Cattlemen's Title Guarantee Company to Mary E. Wyatt and Harold L. Wyatt (Exhibit)	December 12, 2001	5	167

Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company (Exhibit)	June 16, 1994	5	165-166
Deed - Stephen G. Wright & Mavis S. Wright to RLEHOA (Exhibit)	August 28, 2007	5	175-177
Final Judgment	February 26, 2018	5	132-142
First Amended Complaint	February 17, 2016	4	143-167
Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company (Exhibit)	December 15, 1989	5	161
Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill (Exhibit)	February 12, 1990	5	162
Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company (Exhibit)	February 18, 2010	5	216-217
Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim	May 12, 2016	5	11-23
Harold Wyatt and Mary Wyatt's Joinder in Artemis Exploration Company's Motions and Opposition	October 17, 2016	5	24-103
Harold Wyatt and Mary Wyatt's Reply to Ruby Lake Estates Homeowners Association's Response to Harry and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's Motions and Opposition	December 21, 2016	5	116-122
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Official Plat of Ruby Lake Estates (Exhibit)	September 15, 1989	5	152-154
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Ruby Lake Estates Homeowner's Association's Articles of Incorporation (Exhibit)	January 18, 2006	5	173-174
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Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment	May 30, 2012	2	1-37
Ruby Lake Estates Homeowner's Association's Reply to Plaintiff's Opposition to RLEHOA's Motion for Summary Judgment	July 3, 2012	4	1-28
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CASE NO. CV-C-12-175

DEPT. NO. 1

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

FILED

2012 MAR -2 P 3:06

ELKO CO[illegible] COURT

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,

vs.

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

Defendants.

---/

COMPLAINT

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.

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.

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

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

COMMON FACTS

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

7. 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.

8. 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.

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

10. 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."

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

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

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

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

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

16. In response to her letter of inquiry concerning the association's legitimacy, Leroy Perks, President of the Ruby Lake Estates Homeowner's Association, replied in a letter dated December 9, 2009, explaining, "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." See letter from Lee Perks dated December 9, 2009, attached hereto as Exhibit C.

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

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

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

20. On or about January 3, 2011, Ruby Lake Estates Homeowner's Association engaged Angius & Terry Collections, LLC, a collection agency, to send a notice to Artemis Exploration

Company threatening that a "Delinquent Assessment Lien" would be placed on the property of Artemis Exploration Company if the purported dues and assessments were not paid. See Notice of Intent to Record a Notice of Delinquent Assessment Lien dated January 4, 2011, attached hereto as Exhibit E.

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

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

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

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

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

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

26. The Declaration, Restrictions and Covenants of Ruby Lake Estates does not obligate the property owners of Ruby Lake Estates subdivision "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." NRS 116.021(1).

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

SECOND CLAIM FOR RELIEF
(Damages)

28. Plaintiff restates and re-alleges each prior allegation as if set forth fully herein.

29. Defendant falsely represented that the so-called Ruby Lake Estates Homeowner's Association has authority to compel the payment of dues and assessments against Plaintiff and the property owners of the Ruby Lake Estates.

30. Defendant caused invoices to be sent to the owners of the Ruby Lake Estates and collected monies under false pretenses that they were not entitled to collect.

31. Plaintiff is entitled to recover an award of restitution and damages against Defendant, including but not limited to the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's Association, or such greater amount as the court may award, together reasonable attorneys fees, costs, and interest.

THIRD CLAIM FOR RELIEF
(Fraud)

32. Plaintiff restates and re-allege each prior allegation as if set forth fully herein.

33. Defendant represented and continues to represent to Plaintiff that it organized and controls a homeowner's association with authority to compel Plaintiff to pay homeowners fees under threat of liens, collections, and legal prosecution.

34. The representations pertained to existing material facts.

35. The representations were false because Defendant knew or should have known that the Declaration, Restrictions and Covenants of the Ruby Lake Estates did not authorize the Ruby Lake Estates Homeowner's Association to compel the payment of dues or assessments, and that Ruby Lake Estates subdivision is not authorized by law to compel the payment of dues or assessments.

36. Defendant knew or should have known that these statements were false or else made these representations recklessly, knowing that it had insufficient knowledge upon which to base such representations.

37. Defendant made these representations for the purpose of inducing Plaintiff to rely on these representations and to coerce payments from Plaintiff which were not legally required or due.

38. Defendant acted with an intent to induce Plaintiff to make payments to Defendant.

39. Plaintiff, acting reasonably and in ignorance of the falsity of these representations, did, in fact, rely on these representations and was induced to act or refrain from acting to its damage or injury.

40. To its detriment, Plaintiff relied on the falsity of these representations which resulted in Plaintiff paying money to Defendant under false pretenses.

41. Defendant acted deliberately, maliciously, and with conscious disregard for Plaintiff's rights.

42. Defendant's actions were oppressive and constitute fraud, for which Plaintiff is entitled to damages in an amount to be determined at trial, including exemplary or punitive damages.

43. Plaintiff has been required to retain the services of a lawyer to prosecute this action. Plaintiff has incurred and will incur costs and fees in this action, and Plaintiff is entitled to recover said costs and fees from Defendant.

44. The undersigned counsel hereby swears under penalty of perjury that the issues addressed in this Complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and are now being submitted for a legal decision.

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

PRAYER FOR RELIEF

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

1. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association 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 so-called Ruby Lake Estates Homeowner's Association;

2. For an award of restitution and damages against Defendant, including but not limited to the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's Association;

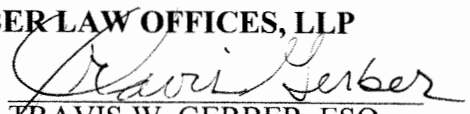
3. For Plaintiff's reasonable attorney fees and costs of suit;

4. For exemplary or punitive damages; and

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

DATED this 2nd day of March, 2012.

GERBER LAW OFFICES, LLP

BY: 

TRAVIS W. GERBER, ESQ.
State Bar No. 8083
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR PLAINTIFF
ARTEMIS EXPLORATION
COMPANY

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on this date I deposited for mailing, at Elko, Nevada, by regular U.S. mail, a true copy of the foregoing Complaint, addressed to the following:

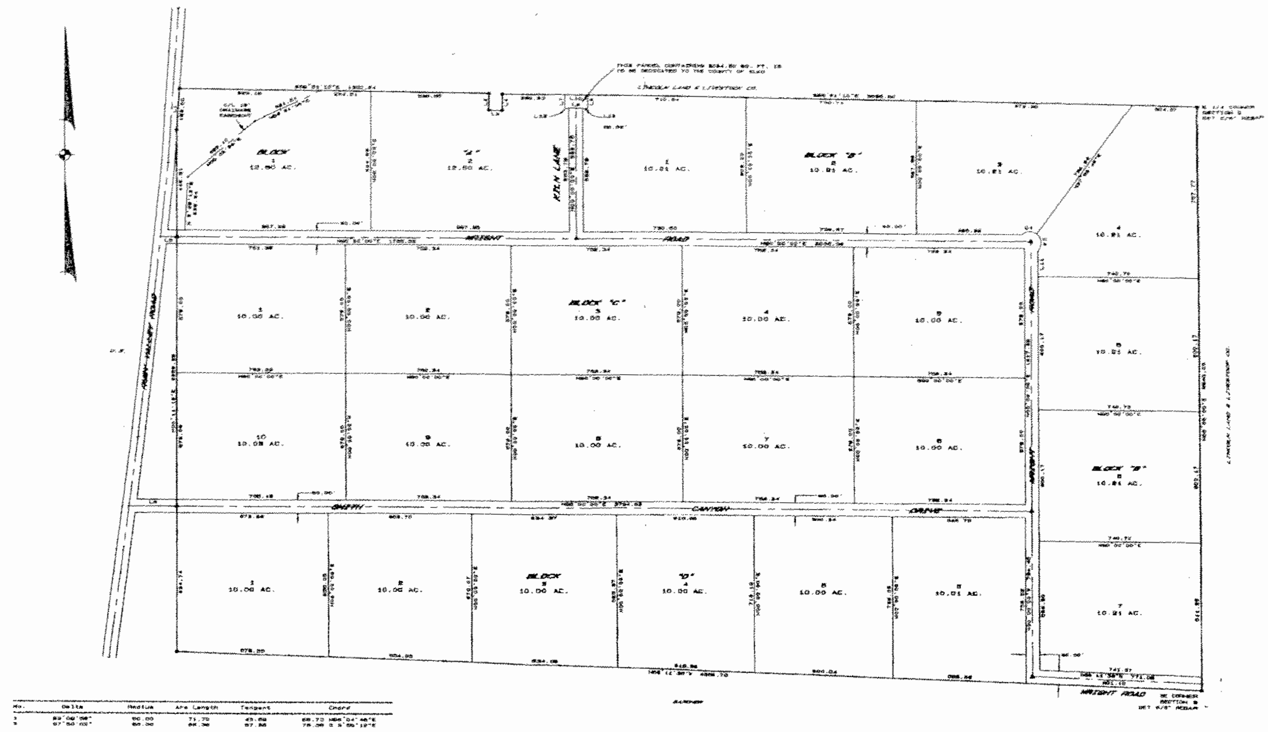
Gayle A. Kern
Kern & Associates, Ltd
5421 Kietzke Lane, suite 200
Reno, Nevada 89511

DATED: March 2, 2012.

Darlene McGarr
DARLENE McGARR

EXHIBIT A

Sheet 2 of 3



No.	Delta	Radius	Arc Length	Tangent	Chord
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2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

No.	Direction	Length
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7	[illegible]	[illegible]
8	[illegible]	[illegible]
9	[illegible]	[illegible]
10	[illegible]	[illegible]
11	[illegible]	[illegible]
12	[illegible]	[illegible]
13	[illegible]	[illegible]

NOTES :

1) THE TOTAL SUBDIVIDED AREA OF THIS MAP EQUALS [illegible] ACRES.

2) A 5/8" REBAR WITH CAP MARKED RLS [illegible] WILL BE SET AT EACH LOT CORNER SHOWN.

3) IN ADDITION TO ANY EASEMENTS SHOWN, THE LOTS SHOWN ARE SUBJECT TO 5' DRAINAGE AND UTILITY EASEMENTS ALONG ALL LOT LINES.

4) A BLANKET DRAINAGE AND UTILITY EASEMENT IS CONTAINED WITHIN ALL STREET RIGHTS OF WAY.

5) BASIS OF BEARINGS : RECORD OF SURVEY FOR STEPHEN G. & HAVIS B. WRIGHT, FILE NO. [illegible].

6) REFER TO THE RECORD OF SURVEY FOR STEPHEN G. & HAVIS B. WRIGHT, FILE NO. [illegible], FOR SURVEY INFORMATION REGARDING THE ESTABLISHMENT OF SECTION CORNERS AND SECTION LINES AS IT PERTAINS TO THE BOUNDARIES FOR THIS SUBDIVISION.

7) THE LINE SHOWN AS THE BUILDING SETBACK LINE IS TO BE USED AS THE LINE FROM WHICH THE SIDE AND OR REAR SETBACK DISTANCES ARE DETERMINED FOR THE PLACEMENT OF BUILDINGS ON LOTS 1 - 6 OF BLOCK "E".

LEGEND

▲ = STREET MONUMENT

● = SET 5/8" REBAR WITH CAP MARKED RLS [illegible]

SCALE : 1" = 200'

0 100 200 400 600 800 1000

FILE [illegible] SHEET NO. 2 OF 3

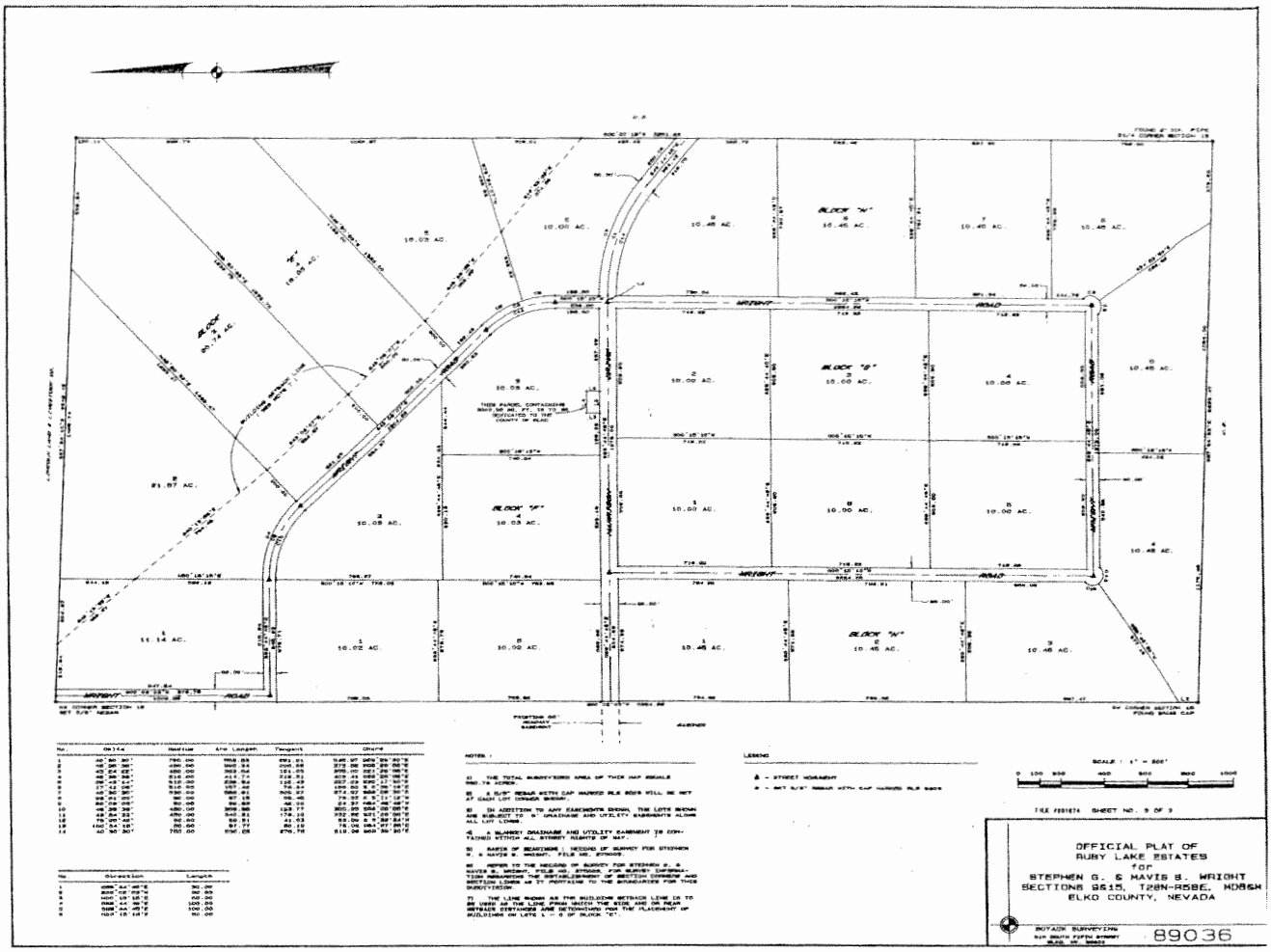
OFFICIAL PLAT OF
RUBY LAKE ESTATES
for
STEPHEN G. & HAVIS B. WRIGHT
SECTIONS 9&15, T28N-R58E, MDB&M
ELKO COUNTY, NEVADA

BOYACK SURVEYING

89036

SHEET 2 OF 3

DRAWING NUMBER Sheet 3 of 3



No.	Delta	Radius	Arc Length	Tangent	Chord
1	46°55'30"	790.00	966.88	512.01	S45°37'55"E 906.20'E
2	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
3	46°55'30"	690.00	844.64	447.31	S45°37'55"E 791.78'E
4	21°42'05"	610.00	231.10	116.83	S33°51'02"E 229.73'E
5	21°42'05"	610.00	231.10	116.83	S33°51'02"E 229.73'E
6	21°42'05"	510.00	193.15	97.67	S33°51'02"E 192.01'E
7	21°42'05"	510.00	193.15	97.67	S33°51'02"E 192.01'E
8	89°23'03"	90.00	84.16	53.17	S44°41'32"E 75.87'E
9	89°23'03"	90.00	84.16	53.17	S44°41'32"E 75.87'E
10	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
11	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
12	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
13	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
14	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
15	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
16	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
17	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
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21	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
22	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
23	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
24	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
25	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
26	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
27	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
28	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
29	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
30	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
31	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
32	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
33	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
34	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
35	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
36	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
37	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
38	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
39	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
40	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
41	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
42	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
43	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
44	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
45	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
46	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
47	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
48	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
49	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
50	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
51	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
52	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
53	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
54	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
55	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
56	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
57	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
58	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
59	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
60	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
61	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
62	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
63	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
64	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
65	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
66	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
67	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
68	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
69	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
70	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
71	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
72	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
73	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
74	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
75	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
76	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
77	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
78	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
79	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
80	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
81	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
82	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
83	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
84	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
85	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
86	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
87	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
88	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
89	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
90	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
91	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
92	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
93	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
94	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
95	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
96	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
97	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
98	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
99	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E
100	46°55'30"	490.00	599.83	317.66	S45°37'55"E 562.39'E

No.	Direction	Length
1	S89°44'49"E	330.00
2	S00°15'11"W	330.00
3	S89°44'49"E	330.00
4	S00°15'11"W	330.00
5	S89°44'49"E	330.00
6	N00°15'11"E	330.00

NOTES :

1) THE TOTAL SURVEYED AREA OF THIS MAP REGALS 980.78 ACRES.

2) A 5/8" REBAR WITH CAP MARKED PLS 8069 WILL BE SET AT EACH LOT CORNER SHOWN.

3) IN ADDITION TO ANY EASEMENTS SHOWN, THE LOTS SHOWN ARE SUBJECT TO 5' DRAINAGE AND UTILITY EASEMENTS ALONG ALL LOT LINES.

4) A BLANKET DRAINAGE AND UTILITY EASEMENT TO CONFORM WITH ALL EXISTING RIGHTS OF WAY.

5) BASIS OF BEARINGS (RECORD OF SURVEY FOR STEPHEN P. & MAYES B. WRIGHT, FILE NO. 87900).

6) REFER TO THE RECORD OF SURVEY FOR STEPHEN P. & MAYES B. WRIGHT, FILE NO. 87900A, FOR SURVEY INFORMATION REGARDING THE ESTABLISHMENT OF SECTION CORNERS AND SECTION LINES AS IT PERTAINS TO THE BOUNDARIES FOR THIS SUBDIVISION.

7) THE LINE SHOWN AS THE BUILDING SETBACK LINE IS TO BE USED AS THE LINE FROM WHICH THE SIDE AND OR REAR SETBACK DISTANCES ARE DETERMINED FOR THE PLACEMENT OF BUILDINGS ON LOTS 1 - 6 OF BLOCK "E".

LEGEND

▲ - STREET MONUMENT
● - SET 5/8" REBAR WITH CAP MARKED PLS 8069

SCALE : 1" = 800'

0 100 200 400 600 800 1000

FILE #891874 SHEET NO. 3 OF 3

OFFICIAL PLAT OF
RUBY LAKE ESTATES
for
STEPHEN G. & MAVIS B. WRIGHT
SECTIONS 9&15, T28N-R58E, MDB&M
ELKO COUNTY, NEVADA

BOYACK SURVEYING
520 SOUTH FIFTH STREET
ELKO, NV 89801

89036

SHEET 3 OF 3

1 AA000012

00003

EXHIBIT B

RUBY LAKE ESTATES

DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 6th day of ____, 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 unsightly 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.

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)
)SS.
COUNTY OF Elko)

On Sept. 16, 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. Tritz
NOTARY PUBLIC

MARGO K. TRITZ
Notary Public-State of Nevada
Elko County-Nevada
COMM. EXP. 7-14-93

INDEXED :

FEE 10.00 FILE # 283750
FILED FOR RECORD
AT REQUEST OF
Manuel + Hansen
'89 OCT 25 A10:43

RECORDED BK 703 PG 287
JERRY D. REYNOLDS
ELKO CO. RECORDER

283750

703 PG 287

EXHIBIT C

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

687 6th Street, Suite1
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

Payment Due By:

January 31, 2011

PLEASE REMIT TO:765 E. GREG ST #103
SPARKS, NEVADA 89431

Total $226

EXHIBIT E

ANGIUS & TERRY COLLECTIONS LLC
A Division of ANGIUS & TERRY LLP
ATTORNEYS

January 4, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

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

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

Carolyn Swanson
Angius & Terry Collections, LLC

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

CASE NO. CV-C-12-175

DEPT. NO. 1

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

FILED

2012 MAR 21 P 3:19

ELKO CO DISTRICT COURT

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,

vs.

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

Defendants.

---/

ACCEPTANCE OF SERVICE

COMES NOW, GAYLE A. KERN, ESQ., Attorney for Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, and hereby accepts service of the Complaint on behalf of the Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION.

DATED this 20 day of March, 2012.

KERN & ASSOCIATES, LTD.

By: Gayle A. Kern

GAYLE A. KERN
Attorney for RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION

ORIGINAL

CASE NO. CV-C-12-175

DEPT. NO. I

FILED

2012 APR -2 P 1:48

ELKO CO DISTRICT COURT

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,

Plaintiffs,

vs.

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

Defendants.

_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant.

_____/

ANSWER TO COMPLAINT AND COUNTERCLAIM

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

JURISDICTION

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

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

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

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

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

COMMON FACTS

6. Answering paragraph 6 of Plaintiff's Complaint, Ruby Lake incorporates by reference each and every answer contained in paragraphs 1 through 5 stated above.

7. Answering paragraph 7 of Plaintiff's Complaint, Ruby Lake asserts that there was no Exhibit A and based thereon denies each and every allegation.

8. Answering paragraph 8 of Plaintiff's Complaint, Ruby Lake asserts that there was no Exhibit B and based thereon denies each and every allegation.

9. Answering paragraph 9 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 9.

10. Answering paragraph 10 of Plaintiff's Complaint, Ruby Lake asserts the Declaration of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary allegations.

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

12. Answering paragraph 12 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 12.

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

14. Answering paragraph 14 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 14. Ruby Lake admits that in accordance with Nevada law and the governing documents of Ruby Lake, assessments were properly made and collected to pay for the common expenses of the common-interest community.

15. Answering paragraph 15 of Plaintiff's Complaint, Ruby Lake denies the allegations regarding action by the Architectural Review Committee. Ruby Lake admits Beth Essington had communications. Ruby Lake denies each and every remaining allegation contained in paragraph 15.

16. Answering paragraph 16 of Plaintiff's Complaint, Ruby Lake asserts there was no Exhibit C and based thereon denies each and every allegation contained in paragraph 16.

17. Answering paragraph 17 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 17.

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

19. Answering paragraph 19 of Plaintiff's Complaint, Ruby Lake asserts there was no Exhibit D and based thereon denies each and every allegation contained in paragraph 19.

20. Answering paragraph 20 of Plaintiff's Complaint, Ruby Lake asserts there is no Exhibit E and based thereon denies each and every allegation contained in paragraph 20.

21. Answering paragraph 21 of Plaintiff's Complaint, Ruby Lake asserts there was no Exhibit E in paragraph 20 and referenced again in paragraph 21, and based thereon denies each and every allegation contained in paragraph 21.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

22. Answering paragraph 22 of Plaintiff's Complaint, Ruby Lake incorporates by reference each and every answer contained in paragraphs 1 through 21 stated above.

23. Answering paragraph 23 of Plaintiff's Complaint, Ruby Lake is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23, and based thereon denies the same.

24. Answering paragraph 24 of Plaintiff's Complaint, Ruby Lake asserts that the statute speaks for itself.

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

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

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

SECOND CLAIM FOR RELIEF

(Damages)

28. Answering paragraph 28 of Plaintiff's Complaint, Ruby Lake incorporates by reference each and every answer contained in paragraphs 1 through 27 stated above.

29. Answering paragraph 29 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 29.

30. Answering paragraph 30 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 30.

31. Answering paragraph 31 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 31.

THIRD CLAIM FOR RELIEF

(Fraud)

32. Answering paragraph 32 of Plaintiff's Complaint, Ruby Lake incorporates by reference each and every answer contained in paragraphs 1 through 31 stated above.

33. Answering paragraph 33 of Plaintiff's Complaint, Ruby Lake is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33, and based thereon denies the same.

34. Answering paragraph 34 of Plaintiff's Complaint, Ruby Lake is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34,

and based thereon denies the same.

35. Answering paragraph 35 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 35.

36. Answering paragraph 36 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 36.

37. Answering paragraph 37 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 37.

38. Answering paragraph 38 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 38.

39. Answering paragraph 39 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 39.

40. Answering paragraph 40 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 40.

41. Answering paragraph 41 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 41.

42. Answering paragraph 42 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 42.

43. Answering paragraph 43 of Plaintiff's Complaint, Ruby Lake denies each and every allegation contained in paragraph 43.

44. Answering paragraph 44 of Plaintiff's Complaint, Ruby Lake is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44, and based thereon denies the same.

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

FIRST AFFIRMATIVE DEFENSE

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

///

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

Ruby Lake acted in good faith.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time

of the filing of Ruby Lake's answer, all possible affirmative defenses may not have been alleged inasmuch as insufficient facts and other relevant information is unknown at this time. Ruby Lake reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants the same.

WHEREFORE, Ruby Lake prays as follows

1. That Plaintiff takes nothing by reason of its Complaint;

2. That the Complaint be dismissed;

3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a reasonable attorneys' fee, for costs of suit; and

4. For such other and further relief as may be just and proper in the premises.

COUNTERCLAIM

As and for a counterclaim against Artemis Exploration Company ("Artemis"), Ruby Lake, alleges as follows:

GENERAL ALLEGATIONS

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

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

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

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

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

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

7. Articles of Incorporation for RLEHOA were filed with the Nevada Secretary of

State on January 16, 2006.

8. Prior to the filing of the Articles of Incorporation, the ARC served as the governing body of the Association.

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

10. Assessments were levied in order to pay for the maintenance of the community roads and other common elements.

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

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

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

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

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

16. Mel Essington seconded the adoption of the Bylaws and was an active participant in the business affairs of the Association.

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

18. Mel Essington represented his authority to act and all members of the Association relied on such representation.

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

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

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

> Each of us purchased lots in the subdivision with the knowledge, understanding, and acceptance of the Covenants, Conditions, and Restriction's (CCR's) [sic] that attended our property deeds. The CCR's [sic] were designed to work for the good of the owners, assure the aesthetic qualities of the subdivision, protect the value of our investments, and the beauty of Ruby Valley. The association also has the capability of providing services for the subdivision that might otherwise elude the individual owners. Those services include: assisting in acquiring telephone service, periodic road maintenance, coordinating with County officials on planning issues, . . . and getting regular snow removal on the CCC road, organizing an annual meeting and BBQ, and publishing an annual news letter. The effectiveness of the CCR's [sic] and the association is the responsibility of the owners as expressed through the association; . . ..
>
> Mr. Leroy Perks and others recognized and accepted the responsibility past [sic] on by Mr. Wright several years ago when they organized the association and worked towards achieving progress toward its stated goals. . . I am proposing to organize an election of association officers that will be motivated and dedicated to making and keeping the association the effective representational and oversight organization it was intended to be. . . ."

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

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

> . . . As head of the homeowners association you need to work to protect the value of the investments of all of the individual owners and be able to look beyond your own more restricted outlook. . . . I assume you are aware Nevada has found it necessary

> to create a commission to oversee the operation of the many HOA's [sic] in the state. I would also assume you are aware that NRS 116, Section 10, 8(f) now requires that the HOA records including financial records be located within sixty miles of the physical location of the community for inspection purposes. I presume that Mr. Wines will fulfill that function for the Association.

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

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

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

> The Ruby Lakes Estates is a common-interest ownership community as defined by State statute. The Community has been established by proper recording of the 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 end of Kiln road and the parcel containing the well, pump, and water truck fill point on the CCC road near its intersection with the Overland road.
>
> Under the statutes both the HOA and each individual unit owner share responsibility and liability for the common elements. It is the expressed responsibility of the HOA executive board to insure sufficient maintenance of the common elements in this instance the community roads. Our roads are open to the public and carry responsibility and liability. Accepted surface road maintenance standards include shoulder and drainage features as well as the road surface. Because community roads have not received any maintenance for 8 years the shoulders have become weed and brush infested, and some sections lack adequate drainage. Obviously, it is past time to reestablish minimal road maintenance requirements. The HOA's budget does not currently permit meeting a contractor's fee to perform such

maintenance. Hence, a temporary annual fee increase is necessary to raise those funds. It is anticipated that once the maintenance work is completed the fees may be reduced to their former level.

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

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

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

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

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

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

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

32. The ARC and Board took the position that such a structure was permitted and the Essingtons disputed this position.

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

assessments.

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

35. Invoices generated in the ordinary course of business for the Association were sent to the Essingtons.

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF
(Breach of Contract and Breach of Statutory Duties)

43. Ruby Lake incorporates paragraphs 1 through 42 as if set forth in full herein.

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

45. Artemis incurred damages in excess of $10,000.00.

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

SECOND CLAIM FOR RELIEF
(Negligence)

47. Ruby Lake incorporates paragraphs 1 through 46 as if set forth in full herein.

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

49. Artemis was negligent in its actions with Ruby Lake.

50. As a proximate cause of Artemis' negligence, Ruby Lake incurred damages in excess of $10,000.00.

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

THIRD CLAIM FOR RELIEF
(Violations)

52. Ruby Lake incorporates paragraphs 1 through 51 as if set forth in full herein.

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

54. Artemis should pay all damages sustained.

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

FOURTH CLAIM FOR RELIEF
(Confirmation of Award of Attorneys Fees and Costs)

56. Ruby Lake incorporates by reference the allegations of paragraphs 1 through 55 as though fully set forth herein.

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

58. An Award for attorney's fees in the amount of $22,092.00 and costs in the amount

of $4,718.67 was in favor of Ruby Lake in the non-binding arbitration proceeding NRED Claim 11-82, a copy of which is attached as Exhibit "1".

59. The Award entered should be confirmed and adopted.

FIFTH CLAIM FOR RELIEF
(Damages - Attorneys Fees)

60. Ruby Lake incorporates paragraphs 1 through 59 as if set forth in full herein.

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

62. 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.

63. Artemis should pay all damages sustained.

64. 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.

65. 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)

66. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 65 of its Counterclaim as though fully set forth herein.

67. 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 81 and 116 of the Nevada Revised Statutes. An order should be entered resolving this controversy in favor of Ruby Lake.

///

SEVENTH CLAIM FOR RELIEF
(Preliminary and Permanent Injunction)

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

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

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

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

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

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

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

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

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

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

2. That Ruby Lake 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 81 and 116 of the Nevada Revised Statutes;

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

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

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

6. That Ruby Lake be awarded its costs;

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

8. 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 29th day of March, 2012.

KERN & ASSOCIATES, LTD.

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Attorneys for Ruby Lake Estates

CERTIFICATE OF SERVICE

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

ANSWER TO COMPLAINT AND COUNTERCLAIM

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

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

_____ Via facsimile transmission

_____ Personal delivery, upon:

_____ United Parcel Service, Next Day Air, addressed to:

Travis Gerber, Esq.
Gerber Law Offices, LLP
491 4th Street
Elko, NV 89801

DATED this 21st day of March, 2012.

Teresa A. Gearhart
TERESA A. GEARHART

EXHIBIT "1"

EXHIBIT "1"

LEONARD I. GANG
ATTORNEY AT LAW
ARTIBRATION * MEDIATION

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February 7, 2012

Travis W. Gerber, Esq.
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Gayle A. Kern, Esq.
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Re: Artemis Exploration Company v. Ruby Lake Estates Architectural Review Committee & Ruby Lake Estates Homeowner's Association & Leroy Perks & Valerie McIntyre & Dennis McIntyre & Michael Cecchi
ADR Control No. 11-82

The salient facts in this case are not in dispute. The legal effect of certain provisions of the Uniform Common-Interest Ownership Act (Chapter 116 of NRS) as applied to lots located in Ruby Lakes Estates, a subdivision located in Elko County, forms the essence of this complaint. Only the facts necessary to understanding this decision will be set forth.

FACTS

Artemis Exploration Company, the Complainant (herinafter Artemis), owns two lots in Ruby Lakes Estates. The first was purchased in June 1994 and the second in March 2010. CC&Rs applicable to Ruby Lake Estates were recorded on October 25, 1989. The deeds clearly reflect that the property is subject to CC&Rs.

NRS 116.3101(1) entitled, "Organization of Unit-Owners Association" provides in part as follows:

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

This act was passed by the Nevada legislature in 1991. The Ruby Lakes Homeowner's Association (hereinafter RLHOA or Association) filed its Articles of Incorporation on January 18, 2006. This action was taken after consulting counsel. The RLHOA assessed dues. Artemis paid dues for a period of time but now claims that the Association lacks the authority to "impose any fee, penalty, or assessment for any reason." It basis its argument on the fact that the Association was not formed prior to the conveyance of the first lot as required in NRS 116.3101(1) quoted above..

Artemis filed an "Intervention Affidavit" with the Real Estate Division on December 18, 2009, claiming that Ruby Lakes Estates Homeowner's Association was an invalid homeowner's association. After reviewing the complaint, the Ombudsman's Office of the Real Estate Division opined as follows:

> "***For these reasons, we are not, as you requested, going to declare that Ruby Lakes Estates Homeowner's Association is invalid. In other words, it is our view that the Association is required to comply with the laws pertaining to homeowner's associations, specifically NRS 116 and related laws and regulations." Emphasis added.

RLHOA filed Articles of Association Cooperative Association with the Secretary of State approximately October 27, 2005. Acting on advice of counsel, RLHOA filed its initial Association Registration Form with the Real Estate Division approximately March 31, 2006. It adopted By Laws on August 12, 2006.

DISCUSSION

Artemis interprets the Ombudsman's Office decision as, "The Ombudsman took no action," in regard to their Intervention Affidavit. It asserts a myriad of reasons why, in its opinion, the RLHOA is not valid. RLHOA continues to comply with the laws and regulations pertaining to homeowner's associations as the Real Estate Ombudsman's office opined it should, including assessing dues to pay for insurance, having a reserve study conducted, leveeing assessments in accordance with the requirements of the reserve study and, in the case of Artemis, referring it to a collection agency due to its refusal to pay its assessments.

Artemis appears to argue that since the RLHOA was not formed until after the first lot was sold, it could never thereafter be brought into compliance with the law. It takes the position even though the law, requiring it to be formed no later than the date the first lot was sold, was not passed until two years after the first lot in the Association was sold.

DECISION

It is difficult to understand why, faced with the overwhelming evidence that RLHOA is a valid HOA, any one would continue to maintain that it is not. The HOA owns property within the subdivision, it maintains roads, signs, gates, culverts and fencing. It is incorporated as required by law. Indeed, Mr. Essington was at one time on the board of directors of RLHOA and was a moving force in its formation and incorporation. He signed and filed a "Declaration of Certification Common -Interest Community Board Member" with the Real Estate Division certifying that he read and understood the governing documents of the Association and the provisions of Chapter 116 of Nevada Revised Statutes and the Administrative Code. His wife, Elizebeth Essington, apparently owns all of the stock in Artemis.

Artemis has filed a complaint against each of the members of the board alleging misrepresentation, fraud and oppression and seeks punitive damages. I have carefully considered all of the many allegations and arguments of the Claimant and find them unpersuasive. Indeed, I find the interpretation of counsel that the Real Estate Ombudsman took no action when it opined that RLHOA had to comply with the laws of Nevada pertaining to homeowner's associations

illogical. The Ombudsman clearly opined that the HOA was subject to the laws of Nevada that applied to HOA's. The Ombudsman took no action on the complaint of Artemis because the HOA was validly formed and obliged to comply with the law relating to HOA's.

ORDER

1. Ruby Lake Estates is a Common -Interest Community and is subject to NRS Chapter 116. It was lawfully formed and is a validly existing non-profit common interest association.

2. The complaint against the individual board members is dismissed since no evidence was presented that they acted with willful or wanton misfeasance or gross negligence or were guilty of intentional misrepresentation or negligence.

3. Claimant is not entitled to punitive damages as a matter of law and no evidence was presented that would warrant such an award.

4. Respondent is entitled to an award of attorney's fees in the amount of $22,092.00 and costs in the amount of $4,718.67. I make this award taking into consideration the Brunzell factors. These factors were clearly articulated in the affidavit of Mrs. Kerns in support of her request for attorney's fees and costs and I find them to be accurate based upon my personal observations of Mrs. Kern's performance as an attorney representing homeowner's associations in these types of matters.

IT IS SO ORDERED.

Dated this 7th day of February, 2012.

ARBITRATOR,

Leonard I. Gang, Esq.

LIG:rg

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of February, 2012 I mailed a copy of the foregoing DECISION AND AWARD in a sealed envelope to the following counsel of record and the Office of the Ombudsman, Nevada Real Estate Division and that postage was fully prepaid thereon.

Travis W. Gerber, Esq.
491 Fourth Street
Elko, NV 89801

Gayle Kern, Esq.
5421 Kietzke Lane, Ste. 200
Reno NV 89511

Roberta Gang
ROBERTA GANG

CASE NO. CV-C-12-175

DEPT. NO. 1

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

FILED

2012 APR 16 P 3:16

ELKO CO DISTRICT COURT

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,

vs.

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

Defendants.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant.

---/

ANSWER TO COUNTERCLAIM

Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY (hereinafter "ARTEMIS"), hereby files its Answer to the Counterclaim filed herein by Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, dated March 29, 2012:

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

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

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

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

4. ARTEMIS denies the allegations contained in Paragraph 4 of the Counterclaim.

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

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

7. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles of Incorporation for RLEHOA were filed with the Nevada Secretary of State on January 18, 2006, and denies the remaining allegations contained in Paragraph 7 of the Counterclaim.

8. ARTEMIS denies the allegations contained in Paragraph 8 of the Counterclaim.

9. ARTEMIS admits that newsletters and written communications have been sent to property owners located within Ruby Lake Estates subdivision, including to Mr. and Mrs. Essington, and that meetings were held by the Board of Directors of the RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, but denies the remaining allegations contained in Paragraph 9 of the Counterclaim.

10. ARTEMIS admits that the RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION has attempted to levy assessments against the property owners within the Ruby Lake Estates subdivision, but denies the remaining allegations contained in Paragraph 10 including a denial that there are any common elements within the subdivision or that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION has any authority to make assessments.

11. ARTEMIS admits that it and Mel Essington initially paid some invoices sent by RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, but denies the remaining allegations contained in Paragraph 11 of the Counterclaim.

12. ARTEMIS admits that Lee Perks, President of RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, authored a letter dated June 28, 2010, but denies the remaining allegations contained in Paragraph 12 of the Counterclaim.

13. ARTEMIS admits that Elizabeth and Mel Essington may have been initially in favor of the creation of an association before they learned that Ruby Lake Estates does not qualify as a common-interest community, but denies the remaining allegations contained in Paragraph 13 of the Counterclaim.

14. ARTEMIS admits that a form for Articles of Incorporation was filled out listing Mel and Elizabeth Essington as incorporators and officers, but denies that said form was filed and denies the remaining allegations contained in Paragraph 14 of the Counterclaim.

15. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles of Incorporation for RLEHOA were filed with the Nevada Secretary of State by Lee Perks on January 18, 2006. ARTEMIS is without sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of the Counterclaim.

16. ARTEMIS admits that Mel Essington initially participated in the activities of the Ruby Lake Estates Homeowner's Association as a board member, but lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 16.

17. ARTEMIS admits that Mel Essington served as a board member, but denies the remaining allegations contained in Paragraph 17.

18. ARTEMIS denies the allegations contained in Paragraph 18.

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

20. ARTEMIS denies the allegations contained in Paragraph 20.

21. ARTEMIS admits the allegations contained in Paragraph 21.

22. ARTEMIS admits that Ruby Lake Estates Homeowner's Association is a voluntary association that elected a board of directors, but denies any other inference or allegations contained in Paragraph 22.

23. ARTEMIS admits that Mel Essington authored a letter to Lee Perks dated January 14, 2007, and that said letter speaks for itself. ARTEMIS denies the remaining allegations contained in Paragraph 23.

24. ARTEMIS denies the allegations contained in Paragraph 24.

25. ARTEMIS admits that Mel Essington sent correspondence which correspondence speaks for itself. ARTEMIS denies the remaining allegations contained in Paragraph 25.

26. ARTEMIS admits that Mel Essington paid assessments as levied by Ruby Lake Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph 26.

27. ARTEMIS admits that Mel Essington sent correspondence to other lot owners within Ruby Lake Estates which correspondence speaks for itself. ARTEMIS denies the remaining allegations contained in Paragraph 27.

28. ARTEMIS admits that Mel Essington served as a board member of Ruby Lake Estates Homeowner's Association beginning in or around August of 2007, but denies the remaining allegations contained in Paragraph 28.

29. ARTEMIS denies the allegations contained in Paragraph 29.

30. ARTEMIS admits that Mel Essington initially participated in the activities of the Ruby Lake Estates Homeowner's Association as a board member, but lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 30.

31. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size of the structure, but denies the remaining allegations contained in Paragraph 31.

32. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size of the structure and that the structure was approved by the board of Ruby Lake Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph 32.

33. ARTEMIS denies the allegations contained in Paragraph 33.

34. ARTEMIS admits that it ceased paying assessments, but denies the remaining allegations contained in Paragraph 34.

35. ARTEMIS admits that invoices were sent to ARTEMIS by Ruby Lake Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph 35.

36. ARTEMIS admits the allegations contained in Paragraph 36.

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

38. ARTEMIS admits that it stopped paying assessments when it discovered that the homeowner's association was not valid, but denies the remaining allegations contained in Paragraph 38.

39. ARTEMIS denies the allegations contained in Paragraph 39.

40. ARTEMIS denies the allegations contained in Paragraph 40.

41. ARTEMIS denies the allegations contained in Paragraph 41.

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

43. Paragraph 43 does not require any response.

44. ARTEMIS denies the allegations contained in Paragraph 44.

45. ARTEMIS denies the allegations contained in Paragraph 45.

46. ARTEMIS denies the allegations contained in Paragraph 46.

47. Paragraph 47 does not require any response.

48. ARTEMIS denies the allegations contained in Paragraph 48.

49. ARTEMIS denies the allegations contained in Paragraph 49.

50. ARTEMIS denies the allegations contained in Paragraph 50.

51. ARTEMIS denies the allegations contained in Paragraph 51.

52. Paragraph 52 does not require any response.

53. ARTEMIS denies the allegations contained in Paragraph 53.

54. ARTEMIS denies the allegations contained in Paragraph 54.

55. ARTEMIS denies the allegations contained in Paragraph 55.

56. Paragraph 56 does not require any response.

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

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

59. ARTEMIS denies the allegations contained in Paragraph 59.

60. Paragraph 60 does not require any response.

61. ARTEMIS denies the allegations contained in Paragraph 61.

62. ARTEMIS denies the allegations contained in Paragraph 62.

63. ARTEMIS denies the allegations contained in Paragraph 63.

64. ARTEMIS denies the allegations contained in Paragraph 64.

65. ARTEMIS denies the allegations contained in Paragraph 65.

66. Paragraph 66 does not require any response.

67. ARTEMIS admits that a real controversy exists regarding the validity of Ruby Lake Estates Homeowner's Association as a common-interest community under NRS 116, and denies the remaining allegations contained in Paragraph 67.

68. Paragraph 68 does not require any response.

69. ARTEMIS denies the allegations contained in Paragraph 69.

70. ARTEMIS denies the allegations contained in Paragraph 70.

71. ARTEMIS denies the allegations contained in Paragraph 71.

72. ARTEMIS denies the allegations contained in Paragraph 72.

73. ARTEMIS denies the allegations contained in Paragraph 73.

74. ARTEMIS denies the allegations contained in Paragraph 74.

75. ARTEMIS denies the allegations contained in Paragraph 75.

PRAYER FOR RELIEF

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

1. That Defendant/Counterclaimant take nothing by way of its Counterclaim filed herein;

2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association 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;

3. For an award of restitution and damages against Defendant, including but not limited to the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's Association;

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

5 For exemplary or punitive damages; and

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

DATED this 16 day of April, 2012.

GERBER LAW OFFICES, LLP

BY: Travis Gerber

TRAVIS W. GERBER, ESQ.
State Bar No. 8083
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR PLAINTIFF
ARTEMIS EXPLORATION
COMPANY

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on this date I deposited for mailing, at Elko, Nevada, by regular U.S. mail, a true copy of the foregoing Complaint, addressed to the following:

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

DATED: April 16, 2012.

Darlene McGarr
DARLENE McGARR

CASE NO. CV-C-12-175

DEPT. NO. 1

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

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,

vs.

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

Defendants.

MOTION FOR SUMMARY JUDGMENT

Plaintiff, ARTEMIS EXPLORATION COMPANY (hereinafter "ARTEMIS"), hereby files its Motion of Summary Judgment and requests that a declaratory judgment be entered against Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION (herein referred to as "Association"), establishing that Defendant is not a valid common-interest community under Chapter 116 of the Nevada Revised Statutes. Specifically, a declaratory judgment should be entered on Plaintiffs First Claim for Relief (Declaratory Judgment) under the following rules of law:

1) A declaratory judgment should be entered declaring the Association invalid under NRS 116.3101(1) because the lots of Ruby Lake Estates subdivision were not bound by any covenant to pay dues or participate in a homeowner's association prior to the conveyance of the lots. In *Caughlin Ranch Homeowners Ass'n v. Caughlin Club, 109 Nev. 264 (1993)*, the Supreme Court of Nevada ruled that a lot owner could not be

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placed under new obligations it did not have notice of prior to the purchase of its lot. *Caughlin Club*, 109 Nev. 264, 268 (1993); and

2) A declaratory judgment should be entered declaring the Association invalid under NRS 116.021 because Ruby Lake Estates subdivision does not have any common areas or expenses described in its Declaration of Reservations, Conditions and Restrictions and therefore the subdivision does not meet the definition of a common-interest community under NRS 116.021.

This Motion for Summary Judgment is based upon the following Memorandum of Points and Authorities, the attached Affidavit of Elizabeth Essington, President of ARTEMIS, and all other papers and pleadings on file herein.

GERBER LAW OFFICES, LLP

By: _____
TRAVIS W. GERBER, ESQ.
491 4th Street
Elko, Nevada 89801
ATTORNEYS FOR PLAINTIFF
ARTEMIS EXPLORATION
COMPANY

MEMORANDUM OF POINTS AND AUTHORITIES

A. ***Facts and Concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue:***

There is no genuine issue of any fact in this case that is material to the disposition of this case and therefore the case is appropriate for summary judgment. The facts material to the disposition of this case, and to which there is no genuine dispute, are listed below as follows:

1. Ruby Lake Estates is a rural subdivision consisting of 51 lots located in Ruby Valley, Elko County, Nevada. 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. A true and correct copy of the parcel map of Ruby Lake Estates is attached hereto as Exhibit A.

2. 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. A true and correct copy of the Declaration of Reservations, Conditions and Restrictions for the Ruby Lake Estates is attached hereto as Exhibit B.

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

4. 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. A true and correct copy of said Deed is attached hereto as Exhibit C.

5. 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. A true and correct copy of said Grant, Bargain & Sale Deed is attached hereto as Exhibit D.

6. Defendant, Ruby Lake Estates Homeowners Association, registered itself as a domestic non-profit cooperative association in the State of Nevada on or about January 18, 2006, 17 years after the creation of the Ruby Lake Estates subdivision, and purports to represent property owners of the Ruby Lake Estates subdivision located in Elko County, Nevada.

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

8. The Declaration of Reservations, Conditions and Restrictions does not mention or provide any covenant for the creation or authorization of a homeowners association.

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

11. The Declaration of Reservations, Conditions and Restrictions does not grant any authority or power to the Architectural Review Committee or any other group or association to levy dues or any other assessments, or to compel the payment of dues or any other assessments.

12. The Declaration of Reservations, Conditions and Restrictions makes no reference to any common areas and there is no record of any common areas belonging to the Ruby Lake Estates subdivision at the time of its formation or anytime thereafter.

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

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

15. In response to her letter of inquiry concerning the association's legitimacy, Leroy Perks, President of the Ruby Lake Estates Homeowner's Association, replied in a letter dated December 9, 2009, explaining, "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." See letter from Lee Perks dated December 9, 2009, attached hereto as Exhibit E.

16. There is no provision in the Declaration, Restrictions and Covenants of the Ruby Lake Estates subdivision for any person, group, or entity to collect dues or assessments, or to compel property owners within the Ruby Lake Estates to participate in the activities of an associaiton.

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

18. Ruby Lake Estates Homeowner's Association continues to send delinquent account statements to Artemis Exploration Company, and other property owners similarly situated, threatening collections and legal action. See Invoice from Ruby Lake Estates Homeowner's Association dated December 15, 2010, attached hereto as Exhibit F.

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

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

21. Plaintiff seeks a declaratory judgment to establish that the Ruby Lake Estates subdivision is not a common-interest community as defined by Chapter 116 of the Nevada Revised Statutes, specifically under NRS 116.3101(1) and NRS 116.021.

22. NRS 116.3101(1) requires, "A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed."

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

24. Ruby Lake Estates subdivision does not have any common elements or expenses nor are any common elements or expenses described in the Declaration, Restrictions and Covenants of Ruby Lake Estates subdivision. Defendant claims that it owns the streets, road signs, entrance sign, catteguards, and perimeter fencing, however Defendant has no proof or record of conveyance to support its claims.

25. The roads within Ruby Lake Estates subdivision are public roads and were dedicated to the County of Elko on July 5, 1989 as evidenced by Page 1 of the Parcel Map 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 Exhibit A.

26. The Declaration, Restrictions and Covenants of Ruby Lake Estates does not obligate the property owners of Ruby Lake Estates subdivision "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," and therefore Ruby Lake Estates is not a common-interest community under NRS 116.021(1).

B. LAW AND ARGUMENT

1. RULE 56 OF THE NEVADA RULES OF CIVIL PROCEDURE GOVERNS THE PROCEDURE FOR SUMMARY JUDGMENT.

RULE 56. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

. . . .

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. Motions for summary judgment and responses thereto shall include a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to 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.

> (d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

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 this rule, 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. NRCP 56(e).

2. <u>RUBY LAKE ESTATES HOMEOWNER'S ASSOCATION IS AN INVALID ASSOCIATION UNDER NRS 116.3101(1) BECAUSE THE LOTS OF RUBY LAKE ESTATES SUBDIVISION WERE NOT BOUND BY ANY COVENANT TO PAY DUES OR PARTICIPATE IN A HOMEOWNER'S ASSOCIATION PRIOR TO THE CONVEYANCE OF THE LOTS.</u>

The Ruby Lake Estates Homeowner's Association is not a valid unit-owners' association under NRS 116.3101(1) because it was not organized prior to the conveyance of the lots in Ruby Lake Estates subdivision.

NRS 116.3101(1) requires:

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

The Ruby Lake Estates Homeowner's Association was organized and filed with the Nevada Secretary of State on January 18, 2006, <u>17 years after</u> Ruby Lake Estates was subdivided. The

newly-formed association does not comply with this basic requirement for the formation of a homeowner's or unit-owner's association because the lots within Ruby Lake Estates were conveyed to individual buyers prior to the formation of the Association.

The Declaration of Reservations, Restrictions and Covenants of Ruby Lake Estates did not provide any covenant for the creation of a homeowner's association. It is a basic principle of property law that new covenants cannot be created after a deed is conveyed. To allow otherwise would be a violation of basic property law principles.

Under NRS 116.3101(1), the newly-formed Ruby Lake Estates Homeowner's Association is clearly invalid. The Declaration, Restrictions and Covenants of Ruby Lake Estates did not provide for the creation of a homeowner's association and Ruby Lake Estates Homeowner's Association was created 17 years after the Parcel Map was recorded and lots were conveyed to individual buyers.

Therefore, Ruby Lake Estates HOA should be declared an invalid association under NRS 116.3101(1). Ruby Lake Estates HOA was not formed until 17 years after Ruby Lake Estates was subdivided and the subdivision's lots were sold and conveyed. NRS 116.3101(1) explicitly states that a unit-owners' association must be formed before the first lot is sold. Consequently, Ruby Lakes Estates HOA cannot be deemed to be a valid common-interest community association under the Nevada Revised Statutes.

3. THE DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS DID NOT PROVIDE FOR A ROAD MAINTENANCE ASSOCIATION NOR DID IT PROVIDE FOR ANY ASSESSMENTS, THEREFORE ANY ATTEMPT TO COLLECT ASSESSMENTS IS INVALID.

"[A] grantee can only be bound by what he had notice of, not the secret intentions of the grantor." *Lakeland Prop. Owners Ass'n v. Larson*, 459 N.E.2d 1164, 1170 (1984). Artemis only had notice of the provisions set forth in the Declaration, Restrictions and Covenants when it purchased its subdivided lots. In this case, the grantor/developer of Ruby Lake Estates did not create a homeowner's association, and there was no intent to create a homeowner's association. Thus,

Artemis cannot be bound by the decisions of a new group of property owners to form an unit-owner's association and their attempt to impose new covenants or restrictions.

This issue has already been decided by the Nevada Supreme Court. In *Caughlin Ranch Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 268 (1993)*, the Supreme Court of Nevada ruled that a lot owner could not be placed under new obligations it did not have notice of prior to the purchase of its lot. *Caughlin Club*, 109 Nev. 264, 268 (1993). In that case, Urie, a lot owner, purchased a commercial parcel within a subdivision. The subdivision's covenants, codes and restrictions (CC & R's) provided that the CC & R's "could be amended to affect the assessment obligations imposed upon owners of single-family residences or a living unit in multi-family residences," however the CC & R's placed no restrictions on commercial parcels, such as Urie's commercial parcel. *Id.* at 267. Still, a majority of the homeowners voted to amend the CC & R's to require commercial parcel owners to pay assessments, too. *Id.* at 265. Upon review of this action, the Supreme Court concluded that even when a majority of the homeowners voted to amend the CC & R's to create new property classifications and to assess Urie's commercial parcel, the amendments had "no legal effect" because they were not authorized under the CC & R's to require commercial parcel owners to pay assessments. *Id.* at 268. In other words, the homeowners could not create new covenants out of thin air.

Further, the Nevada Supreme Court agreed "with the reasoning of the Illinois Appellate Court in *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805 (1984), where it encountered a similar situation." In that case, a similar situation developed in which other homeowners attempted to created and enforce a new covenant to levy assessments after the deed was conveyed to the property owner. In *Lakeland* the court reviewed the deed and found:

> "...the instant deed does not contain such a covenant. Therefore, while it may have been wise and proper for the developer to include such a covenant because assessments of this nature serve an important function to insure that owners of individual lots may enjoy the use of their easements and maintain the value of their property (see *Boyle v. Lake Forest Property Owners Association, Inc* (S.D.Ala.1982), 538 F.Supp. 765, 770), the developer failed

> to so include a provision and defendant purchased the property without notice that such a provision may later be imposed upon him. Therefore, just as courts will enforce changes of restrictions made pursuant to a provision so permitting because the grantees take title of the property with notice of the possibility that the original restrictions may be changed (see *Warren v. Del Pizzo* (1980), 46 Or.App. 153, 611 P.2d 309, 311; *Bryant v. Lake Highlands Development Co. of Texas, Inc.* (Tex.Civ.App.1981), 618 S.W.2d 921, 923), they should not enforce changes where a grantee takes title without proper notice that a majority of the lot owners may impose an assessment upon his property at some future time. Such a grantee can only be bound by what he had notice of, not the secret intentions of the grantor. *Cimino v. Dill* (1982), 108 Ill.App.3d 782, 785, 64 Ill. Dec. 315, 439 N.E.2d 980,

Lakeland, 121 Ill. App. 3d 805, 812 (1984).

Like the cases in *Caughlin Club* and *Lakeland*, the Supreme Court of Nebraska ruled that if the CC & R's say nothing about landowners adding new amendments to the CC & R's, then the addition of new covenants is not authorized. The court stated, "We find that there is no other reasonable reading of this provision and that the provision does not authorize a majority of lotowners to bind all lotowners to new and different covenants which restrict the use of land." *Boyles v. Hausmann*, 246 Neb. 181, 189-90, 517 N.W.2d 610, 616 (1994).

Additionally in *Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, 226 P.3d 411 (Ct. App. 2010), the Arizona Supreme Court struck down provisions "to require membership in an association and the imposition of assessments" on homeowners who did not contemplate the creation of the association or fees when they purchased their lots. *Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, 49, 226 P.3d 411, 418 (Ct. App. 2010), reconsideration denied (June 7, 2010). In *Dreamland Villa*, a subdivision was created "without common areas, containing only restrictive covenants pertaining to each lot owner's personal residence." *Id.* However, the subdivision's Declaration of Restrictive Covenants allowed for the Declaration's amendment by a majority of lot owners. *Id.* Subsequently, a recreational club was created with voluntary homeowner membership,

and over time, a majority of homeowners converted the club into a homeowner's association, which sought to require membership by all landowners. *Id.* The association proceeded to impose assessments on homeowners, and filed lawsuits upon homeowners who did not pay. *Id.* at 44. The homeowners sought a declaratory judgment to establish that association membership was not required by the Declaration of Restrictive Covenants and that the assessments were invalid. *Id.*

After citing *Lakeland, Caughlin*, and other applicable cases, the Arizona Supreme Court ruled that membership in the association was not compulsory and that the assessments were invalid. *Id.* at 49-51. Furthermore, the court also ruled that the imposition of assessments was invalid because there was no common property in the subdivision. *Id.*

The cases in *Caughlin, Lakeland, and Dreamland Villa*, are precisely on point with the present case. Moreover, the case of Ruby Lake Estates is even more simple because the Declaration of Reservations, Conditions and Restrictions of Ruby Lake Estates does not even go so far as to allow the Declaration to be amended by a majority of the property owners. In all of these cases, including the present case, lot owners can only be bound by the covenants that existed at the time of conveyance.

Courts construe covenants in favor of the free use of land. In *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557 (2006), the Supreme Court of North Carolina held that "[c]ovenants are strictly construed in favor of free use of land," and courts are " 'not inclined' to read covenants into deeds when the parties have left them out." *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557 (2006) (See *Wise*, 357 N.C. at 407, 584 S.E.2d at 739–40; quoting *Hege*, 241 N.C. at 249, 84 S.E.2d at 899). There, landowners purchased lots in a subdivision with a plot map that showed no common property and that all roads were public roads. *Id.* at 548-549. Also, in the subdivision's Declaration of Restrictive Covenants a homeowners association was contemplated to relieve the contractor of architectural covenants and restrictions found in the association's Declaration, and a provision allowed a majority of homeowners to amend the Declaration. Id. After several years, a majority of homeowner's voted to amend the Declaration to require membership in a newly-created association and to compel the payment of assessments for snow removal, association operating expenses, and legal fees. *Id.* Homeowners began paying the assessments, but after time,

realized that the assessments were not legitimate and sought reimbursements from the association. *Id.* at 551.

The court reviewed case law and secondary sources concerning covenants and explained:

> The word covenant means a binding agreement or compact benefitting both covenanting parties. See generally Black's 369; The American Heritage Dictionary of the English Language 432 (3rd ed.1992) [hereinafter Heritage]; Random House Webster's College Dictionary 314 (1991) [hereinafter Webster's]. A covenant represents a meeting of the minds and results in a relationship that is not subject to overreaching by one party or sweeping subsequent change." *Id.* at 554. Further, "Real covenants are either restrictive or affirmative. Classic restrictive covenants include covenants limiting land use to single family residential purposes and establishing setback and side building line requirements. Affirmative covenants impose affirmative duties on landowners, such as an obligation to pay annual or special assessments for the upkeep of common areas and amenities in a common interest community. Because covenants originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to the original intent of the parties; however, covenants are strictly construed in favor of the free use of land whenever strict construction does not contradict the plain and obvious purpose of the contracting parties. *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967) ("[T]he fundamental rule is that the intention of the parties governs" construction of real covenants.) But see *Wise*, 357 N.C. at 404, 584 S.E.2d at 737 (When a covenant infringes on common law property rights, " '[a]ny doubt or ambiguity will be resolved against the validity of the restriction.' " (quoting *Cummings*, 273 N.C. at 32, 159 S.E.2d at 517)); *J.T. Hobby & Son, Inc.*, 302 N.C. at 71, 274 S.E.2d at 179 ("The rule of strict construction is grounded in sound considerations of public policy: It is in the

best interests of society that the free and unrestricted use and enjoyment of land be encouraged to its fullest extent.").

Id. at 555.

After this analysis, the court ruled that the amendment requiring association membership and payment of assessments was not contemplated or recorded at the time the homeowners purchased their lots, and was therefore invalid. *Id.* The court reasoned that definite "provisions in a declaration does not imply that subsequent additional assessments were contemplated by the parties, and courts are "'not inclined' to read covenants into deeds when the parties have left them out." *Id.* at 557. (See *Wise*, 357 N.C. at 407, 584 S.E.2d at 739–40; quoting *Hege*, 241 N.C. at 249, 84 S.E.2d at 899). Thus, the court ruled that the subsequent amendment was not contemplated, and the amendment requiring membership and assessing fees was invalid. *Id.*

In the present case of the Ruby Lake Estates, there is no provision whatsoever in the Declaration of Reservations, Conditions and Restrictions of Ruby Lake Estates for any assessment of the lot owners.

In its Articles of Incorporation filed with the Secretary of State, Ruby Lake Estates Homeowner's Association stated that its purpose is to: "Maintain roadways and enforce restrictive covenants." See Articles of Incorporation of Ruby Lake Estates Homeowners' Association filed on January 18, 2006, attached hereto as Exhibit H. The Declaration of Reservations, Conditions and Restrictions did not provide for road maintenance, nor did it provide for the collection of fees or dues for any purpose. The Architectural Review Committee is a an architectural review committee, empowered only to "accept or reject [architectural building plans], or to give a conditional acceptance thereof" (Declaration, Article III(D)), and, "[t]he 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 *to carry out its purpose*." See Declaration of Reservations, Conditions and Restrictions, Article III(D) and Article II attached hereto as Exhibit B (Emphasis added). The phrase "reasonable rules and regulations to carry out its purpose" means that the Architectural Review Committee is make reasonable rules and regulations to carry out the purpose of determining whether or not the reservations, restrictions, covenants, and conditions are being

complied with, and for that determinative purpose only. This phrase does not give the Architectural Review Committee the authorization or discretion to create new covenants or to levy dues or assessments in any way. This provision does not allow the Architectural Review Committee to make rules and regulations regarding any other matter than such a determination of compliance with the existing covenants contained within the Declaration of Reservations, Conditions and Restrictions.

Inherently, the only remedy the Architectural Review Committee has to enforce the Declaration of Reservations, Conditions and Restrictions is the same remedy that any other property owner within the subdivision has, namely, to file suit to enforce its determination of any violation of the existing covenants. The Architectural Review Committee has authority to deny a building plan that does not conform to the conditions stated in the Declaration, is not approved by an applicable agency, or does not conform to code, but it has no authority to impose any new covenant, homeowners dues, or assessments against lot owners.

Thus, Artemis "can only be bound by what [it] had notice of." *Lakeland*, at 1170. When Artemis purchased its lots, the only covenants of record were the subdivision's Declaration of Reservations, Conditions and Restrictions. No provision in the Declaration of Reservations, Conditions and Restrictions provided for the creation of a homeowner's association or for any compulsory admission to any association or the assessment of dues. Yet, Ruby Lake Estates Homeowner's Association has sprang into existence 17 years after the subdivision was created, claiming to be legitimate without any valid covenant or authority, and imposing new assessments upon Artemis and other lot owners without prior notice.

The case law clearly establishes the Declaration of Reservations, Conditions and Restrictions should be interpreted as a contract and construed towards the free use of land when determining the legitimacy of the association and any assessments. In doing so, and while following the Supreme Court's ruling in *Caughlin Club*, a majority of homeowners cannot vote to burden Artemis' property with new provisions that were not contemplated in the CC & Rs and which did not exist at the time its parcels were purchased. *Caughlin Club*, 109 Nev. at 268. Therefore, the new covenants and assessments that Ruby Lake Estates Homeowner's Association is seeking to enforce against Artemis

and other lot owners have "no legal effect" and the assessments that have been collected should be returned to the property owners. *Id.*

In 2009, the Nevada Legislature amended NRS 116.021 to clarify that any common elements or expenses must be "described in that declaration" in order for a subdivision to qualify as a common-interest community. The amendment to NRS 116.021 added the words "described in that declaration" to the statute. The amendment was in direct response to an erroneous Nevada Attorney General's Opinion dated August 11, 2008, wherein the Attorney General's Office experimented with the question of whether a homeowner's association could be created and whether assessments could be imposed even when a subdivision did not own any property in common. In its opinion, the Attorney General's Office opined that CC & R's - in and of themselves - are "common elements" and therefore, in the opinion of the Attorney General's Office, any subdivision with CC & R's could be regarded as a common-interest community even when the subdivision did not intend or include any covenant for the payment of common expenses in its declaration. See Attorney General Opinion dated August 11, 2008 attached hereto as Exhibit I. In the Attorney General's Opinion, the Attorney General erroneously concluded that a homeowner's association could be created in Nevada anytime that a subdivision had any restrictive covenants on record, because in the Attorney General's Opinion, the CC & R's - in and of themselves - theoretically constituted some form of common property rights. This Attorney General's conclusion, however, was in direct opposition to the Nevada Supreme Court's previous holdings in *Caughlin Club*. Interestingly, the Attorney General's Office did not even cite *Caughlin Club*, apparently because the Attorney General's Office and the Nevada Real Estate Division did not like the result of the Nevada Supreme Court's holding.

Instead, the Attorney General based its Opinion on *Evergreen Highlands Ass'n v. West*, 73 P.3d 1 (Colo. 2003), a divergent Colorado case, and explained that the *Evergreen* case was applicable to Nevada law because NRS Chapter 116 "Common Interest Ownership (Uniform Act)" is similar to Colorado's statute, Uniform Common Interest Ownership Act.

In *Evergreen* the Colorado court "examined two divergent lines of cases from other states" wherein courts reviewed CC & R's to determine whether homeowners could add new provisions to the CC & R's and create new assessments. *Evergreen*, 73 P.3d at 3. The line of cases that the

Colorado court in *Evergreen* chose to follow is referred to as the "Zito Line." In the Zito Line of cases, courts allowed homeowners to amend the CC & R's to create new provisions in certain cases, even after lots had been conveyed to homeowners. *Id.* at 5. In the case of *Evergreen*, a valid homeowner's association existed under the original CC & R's, however there was a 22.3 acre park located within the subdivision with no provision in the CC & R's to provide for its cost of maintenance. In that case, a majority of the property owners in the subdivision invoked a provision in the CC & R's that allowed a majority of the lot owners to amend the CC & R's, and therefore amended the CC & R's to create an assessment on all of the property owners for the maintenance of the park. *Id.* at 3. In following the Zito Line, the court in *Evergreen* liberally construed the CC & R's to allow for the amendment. *Id.* at 3-4.

The court in *Evergreen* court also examined the opposing *Lakeland* line of cases, and specifically cited the Supreme Court of Nevada case in *Caughlin Club* as an example of states that do not allow CC & R's to be amended with new provisions even by a majority of homeowners. *Id.* The Attorney General's Office somehow erred in its Opinion by overlooking the Nevada precedent which had already been established in *Caughlin Club*. One can only surmise that such ignorance was intentional. It most certainly appears that the Attorney General's Office did not like the result of *Caughlin Club* because it did not cite to *Caughlin Club* or to *any* of the Lakeland line of cases in its Opinion, even though the Supreme Court of Nevada explicitly stated that it would follow the *Lakeland* line. *Caughlin Club*, 109 Nev. at 268.

In *Dreamland Villa*, the court explained that Arizona courts had favorably cited to *Evergreen* in some cases, however the Arizona court distinguished *Evergreen* from the facts in *Dreamland Villa* by explaining that in *Evergreen* there was extensive common property (a 22.3 acre park), and that in *Dreamland Villas* the CC & R's did not contemplate or include any common property. *Dreamland Villa*, at 49-51. In *Dreamland Villa*, the Arizona court ruled in line with the *Lakeland* line of cases, including the Supreme Court of Nevada's *Caughlin Club*, because in *Dreamland Villa* no common property existed in the subdivision and the original declaration did not provide for an association or the imposition of assessments. *Id.*

Consequently, the Nevada Attorney General's Office was misguided in its analysis of case law pertinent to the subject in Nevada. In the instance case, just as in *Caughlin Club*, the Declaration, Covenants and Restrictions of Ruby Lake Estates did not alert Artemis that it could eventually be subject to a homeowners association or assessments, and thus the CC & R's cannot be construed to allow for such. In construing these provisions against Ruby Lake Estates Homeowner's Association, no provisions in the CC & R's can be interpreted to allow homeowners to vote to form a homeowners association or to make mandatory assessments, because no provisions exist to allow for such. Therefore, even if homeowners believe that it may have been wise for the developer to include a covenant for common expenses, "... the developer failed to so include a provision and defendant purchased the property without notice that such a provision may later be imposed upon him." *Lakeland*, 121 Ill. App. 3d 805, 812 (1984).

4. LOT OWNERS WHO INITIALLY PAID INVALID ASSESSMENTS DO NOT VALIDATE AN INVALID ASSOCIATION.

Although Artemis originally paid assessments under mistake and misrepresentation, Artemis is not bound to continue paying dues to an invalid association. Initially, Beth Essington, President of Artemis, and Mel Essington, her husband with whom she resides, paid the dues invoices that were sent by the Association to their home in or around 2006 and 2007 because the incorporators told Artemis that they had researched statutes and that the Association was valid. Mr. Essington was nominated and served on the initial board of directors. When he learned that Ruby Lake Estates Homeowner's Association was invalid, he withdrew and resigned. His wife, Beth Essington, who is the sole officer, director, and shareholder of Artemis Exploration Company, refused to pay dues on behalf of Artemis after she discovered that the Ruby Lake Estates Homeowner's Association was not legally formed and lacked authority to compel the payment of dues.

The fact that Ruby Lake Estates Homeowner's Association assessed property owners and that the property owners paid assessments, does not have any bearing on whether the association is a valid

common-interest community. In *Caughlin Club*, the lot owner was not bound by subsequent invalid amendments to the CC & R's because he initially paid an assessment brought against him. *Caughlin Club*, 109 Nev. at 267. There, the lot owner paid the initial assessment and thereafter "refused to pay any additional sums on grounds that his property was not subject to assessment." *Id.* at 265-66. Following the lot owner's refusal, the association recorded an assessment lien against the lot owner's property. *Id.* Yet when deciding whether the lot owner would be bound, the Supreme Court of Nevada found, "There were simply no provisions in the CC & R's that would have alerted [the lot owner] to the possibility…[of] assessment by the Association." *Id.* at 267. Therefore, the association could not bind the lot owner, even though the lot owner originally paid the assessment.

Also in *Armstrong*, lot owners initially began paying dues when they were assessed, but ceased to do so when they determined that the declaration did not provide for the association or assessments. *Armstrong*, 360 N.C. 547 at 557. The court reasoned, "Although individual lot owners may voluntarily undertake additional responsibilities that are not set forth in the declaration, or undertake additional responsibilities by mistake, lot owners are not contractually bound to perform or continue to perform such tasks." *Id.* at 557. Thus, even though the lot owners originally were induced to pay the assessments by "mistake" and others "voluntarily" took on more responsibilities within the subdivision, the court in *Armstrong* held that an association and assessments that were not contemplated in the original declaration could not bind the lot owners. *Id.*

Here, after Beth Essington, President of Artemis, refused to pay Ruby Lake Estates Homeowner's Association's invalid assessments, she submitted an Ombudsman Intervention Affidavit dated December 18, 2009, requesting that the Ombudsman review the matter and to declare the Ruby Lake Estates Homeowner's Association "invalid and non-binding on the several homeowners." See Ombudsman Intervention Affidavit attached hereto as Exhibit J. The Ombudsman's office informed Essington by telephone that there are only two ways that an HOA can be formed in Nevada: 1) by the developer recording a declaration that creates an HOA prior to conveying the lots (NRS 116.3101(1)); or 2) by written consent of 100% of the individual owners after the lots were sold. See Letter from Beth Essington to Ombudsman dated April 15, 2010, identified as Exhibit K.

On July 1, 2010, the Ombudsman answered the Intervention Affidavit by declining to take any action. The Ombudsman stated in a letter, ". . . we are not, as you requested, going to declare that the Ruby Lake Estates Homeowners Association is invalid." The Ombudsman did not declare the Association valid, but concluded, ". . . in our view this Association is required to comply with the law pertaining to homeowners associations, specifically, NRS 116 and related laws and regulations." See Letter from Office of the Ombudsman dated July 1, 2010, attached hereto as Exhibit L. In other words, the Ombudsman took no action to declare the association valid or invalid, but concluded that NRS Chapter 116 is the law in Nevada that common-interest communities or associations must follow. The Ombudsman did not review or comment on Ruby Lake Estate Homeowner's Association's compliance with NRS Chapter 116. The Ombudsman's Office not a judicial body and it does not give legal advice.

Ruby Lake Estates Homeowner's Association took this letter from the Ombudsman to be a legally binding decision claiming, "We received their [the Ombudsman's] official opinion July 1, 2010 stating that we are a legal homeowners association . . . ." See Association Newsletter dated July 2010 attached hereto as Exhibit M. Six months later in the December 2010 Newsletter, the Association went even farther in claiming, "The State of Nevada has mandated that we are a legitimate association in writing and we are mandated to collect dues, have insurance, pay taxes, etc." See Association Newsletter dated December 2010 attached hereto as Exhibit N. These statements are obvious misrepresentations and overstatements of the Ombudsman's letter and are evidence of the Association's intent to deceive, mislead, and defraud the lot owners of Ruby Lake Estates.

Moreover, the Association has sought to oppress and discredit Artemis, and to deter opposition from other lot owners, by publishing the following notice in its July 2010 Newsletter: "But needless to say the investigation [referring to the Ombudsman's response to the Intervention Affidavit] was not without cost and the Board may have to consider a special assessment of dues to cover the additional legal fees caused by this [Artemis'] complaint." See Association Newsletter dated July 2010 attached hereto as Exhibit M. This commentary in the Association's newsletter, which was mailed to all the residents, was an attempt to chill opposition to the invalid and oppressive covenants that the Association was seeking to impose on lot owners. The threat was that if anyone objected or

opposed the assessments, the Association would just raise more assessments to overburden the property owners.

Defendant, Ruby Lake Estates Homeowner's Association and its officers and directors represent and continue to represent to the owners of Ruby Lake Estates that they are lawfully organized and that they control a homeowner's association with authority to compel the owners to pay increasing homeowners fees under threat of liens, collections, and legal prosecution. These representations are false because Ruby Lake Estates Homeowner's Association and its officer and directors have specific knowledge that the Declaration of Reservations, Conditions and Restrictions of the Ruby Lake Estates subdivision does not provide for the payment of any common expenses, dues or assessments. Ruby Lake Estates Homeowner's Association has been put on notice by residents and counsel on numerous occasions to cease and desist, but the Association persists in making inflated and false claims regarding the legitimacy of the Association. The Association makes these representations for the purpose of inducing the owners of Ruby Lake Estates to rely on their representations and to coerce payments from the owners, which the owners are not legally required to pay. The Defendant's actions are oppressive, malicious, and constitute fraud, for which Plaintiffs are entitled to damages in an amount to be determined at trial, including exemplary or punitive damages.

For the present Motion for Summary Judgment, a declaratory judgment is sought only with respect to Plaintiff's First Claim for Relief which is for a declaratory judgment to declare the Association invalid under NRS 116.3101(1) and NRS 116.021.

5. RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION IS NOT A "COMMON-INTEREST COMMUNITY" UNDER NRS 116 BECAUSE IT DOES NOT HAVE ANY COMMON ELEMENTS OR COMMON EXPENSES DESCRIBED IN THE DECLARATION.

Ruby Lake Estates subdivision does not have any common elements, and no common elements or common expenses are described in the Declaration of Reservations, Conditions and Restrictions recorded on October 25, 1989, in the Office of the Recorder of Elko County in Book 703,

Page 287, for the Ruby Lake Estates subdivision. Therefore, Ruby Lake Estates Homeowner's Association, nor any other person, group or entity can compel lot owners to pay any expenses, dues or assessments.

Prior to filing for judicial review, this case was arbitrated by the Nevada Real Estate Division as required by NRS Chapter 38. In the course of arbitration, Artemis sent the Association interrogatories and requests for production requesting that the Association identify any common elements within the subdivision. The Association responded and provided a handwritten diagram of the subdivision (Bates Stamped and identified as RLE 015A) apparently asserting that the following items are common areas of Ruby Lake Estates subdivision: "1) cattle guard - RLE entrance over head sign - street sign; 2) same as above; 3) property owned by RLEHA; 4) all roads except Ruby Valley Road; 5) all perimeter fencing; 6) culverts." See Respondents/Counter Claimant's Third Supplemental List of Documents and the handwritten notations identified as RLE 015A attached hereto as Exhibit O.

First, the Association is in error because the roads within the Ruby Lake Estates subdivision are public right-of-ways that were dedicated to Elko County and accepted by Elko County at the time the subdivision was formed. See page 1 of the Parcel Map of Ruby Lake Estates attached hereto as Exhibit A. Page 1 of the Parcel Map is signed by the Chairman of the Elko County Commission accepting the roads for dedication to the County. Given the fact that these roads were dedicated to Elko County, it is indisputable that the roads are not common elements and they were not retained by the developer of Ruby Lake Estates subdivision.

Moreover, roads are not described in the Declaration. The word "road" is not even mentioned in the Declaration of Ruby Lake Estates. Moreover, the Declaration of Ruby Lake Estates never intended that lot owners have a duty of maintenance for roadways. There is no reference in the Declaration to road maintenance, nor was any road maintenance association or any association contemplated.

Roads in Ruby Lake Estates are unmaintained. When the County accepted the roads for public dedication, Elko County did not accept any responsibility for maintenance. See page 1 of the Parcel Map attached hereto as Exhibit A. The court may take judicial notice that many rural

subdivisions in Elko County and throughout the state have unmaintained roads, such as Osino, Ryndon, Last Chance Ranchos, and others. In those subdivisions, efforts have been made to form voluntary associations, however the associations are strictly voluntary because they lack the authority to compel the payment of dues. To be valid Nevada "common-interest communities," associations must be formed prior to conveyance of the lots. In fact, Elko County publishes and disseminates a notice to property owners entitled "Rural Living in Elko County – Things You Need to Know About Rural Living," which states, "There are many road that are not maintained by the county - no grading or snow plowing. There are even some public roads that are not maintained by anyone! Make sure you know what type of maintenance to expect and who will provide that maintenance." See notice attached hereto as Exhibit P.

The "property owned by RLEHA" identified on the handwritten notations presented by Ruby Lake Estates Homeowner's Association (see Exhibit O attached hereto) refers to a small rectangular parcel of land (60' x 100') that is depicted on page 2 of the Parcel Map (Exhibit A attached hereto). This small parcel is occupied by an irrigation water well that is owned and used by the neighboring ranch. This parcel remained in the ownership of Ruby Lake Estates' developers, Stephen and Mavis Wright, until 2007 when the Wrights deeded the parcel to the Ruby Lake Estates Homeowner's Association. See Deed attached hereto as Exhibit Q. To date, the Association has not done anything with the parcel and it serves no use to the subdivision. See photograph of parcel attached hereto as Exhibit R.

Another parcel of identical size (60' x 100') was also created and depicted on page 3 of the Parcel Map by the developer. In 2002, the developers (Wrights) conveyed the parcel to the Ruby Valley Volunteer Fire Department for fire suppression. See Deed attached hereto as Exhibit S. This parcel has a water well and a hose for filling fire trucks. See photograph of parcel attached hereto as Exhibit T.

Both of these small parcels are labeled on the Parcel Map expressly stating, "THIS PARCEL CONTAINING [square footage] IS TO BE DEDICATED TO THE COUNTY OF ELKO." See Parcel Map pages 2 and 3 attached hereto as Exhibit A.

As stated above, the small parcel the was transferred to Ruby Lake Estates Homeowner's Association is not used by the subdivision for any common purpose, nor was it intended to be a common area of the subdivision. The Parcel Map expressly states that the parcel was intended to be dedicated to Elko County. There was no intent of the developers to ever create an association or common-interest community. The acquisition of this small parcel by Ruby Lake Estates Homeowner's Association was a mere attempt to create a foothold or a semblance of common interest property by the Association, although for no real purpose. Notably, it is *the only property*, including real and personal property, to which Ruby Lake Estates Homeowner's Association holds any title or has any evidence of conveyance. The parcel of land was acquired by the Association in 2007 *after* the Association was organized and *18 years after* the subdivision was established. Therefore, the parcel was not owned by the Association at the time lots were conveyed to lot owners commencing in 1989. Naturally, then, the parcel is not mentioned or described in the Declaration because there was never any intention for the lot owners to pay for its expense and maintenance. Accordingly, lot owners of Ruby Lake Estates are not obligated to pay for its common expense or maintenance.

The cattleguard, signs, perimeter fencing, and culverts identified on the handwritten notations presented by Ruby Lake Estates Homeowner's Association (attached hereto as Exhibit O) are not owned by Ruby Lake Estates Homeowner's Association. Any cattleguard, culverts, and road signs within the 60' roadway easements belong to the County because they were dedicated to the County along with the roadways and roadway easements. The fencing belongs to the respective individual property owners on which the fencing is located. However, none of these items (cattleguards, culverts, perimeter fence, or signs) were described in the Declaration, nor was it ever intended at any time that the lot owners of Ruby Lake Estates be obligated to pay for common expenses or maintenance of any of these items. There is a very minimal amount of property that Ruby Lake Estates Homeowner's Association can even identify as having any resemblance to "common" property.

Directly at issue in this case is the fact that no common elements were described in the Declaration and the property owners of Ruby Lake Estates were not "obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses

related to common elements, other units or other real estate described in the declaration." NRS 116.021. Thus, Artemis is not bound by Ruby Lake Estates Homeowner's Association or any of its assessments.

5. **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION IS NOT A "COMMON-INTEREST COMMUNITY" UNDER NRS 116 BECAUSE IT DOES NOT HAVE ANY COMMON ELEMENTS OR COMMON EXPENSES DESCRIBED IN THE DECLARATION.**

The Association claims and continues to claim that it is a "common-interest community" under NRS 116. Contrary to the Association's claims, Ruby Lake Estates is not a "common-interest community" because it has no common elements or expenses described in the Declaration. See Declaration of Reservations, Conditions and Restrictions for Ruby Lake Estates attached hereto as Exhibit B.

A "common-interest community" is defined by NRS 116.021:

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

Ruby Lake Estates is not a "common-interest community" because it does not have any common elements, and no common elements or expenses are described in its Declaration. Indeed, the Declaration has no mention or covenant for any taxes, insurance premiums, maintenance, improvement, services, common elements, real estates, or any expenses whatsoever. See Exhibit B.

As the Association is fully aware, NRS 116.021 was amended in 2009 specifically to add the words "described in that declaration." These words were added to override the Nevada Attorney General Opinion dated August 11, 2008, wherein the Attorney General opined that CC & R's – in and of themselves – are "common elements" and that a subdivision could be regarded as a common

interest community even when the subdivision did not intend or require the payment of common expenses in its declaration. See Attorney General Opinion dated August 11, 2008 attached hereto as Exhibit I.

To avoid this absurd result and to avoid converting all subdivisions into "common-interest communities," the Nevada Legislature amended the definition to include only those subdivisions that notify prospective homeowners in their declarations that they are obligated to pay common expenses. Therefore the legislature clarified that subdivisions whose declarations do not specifically inform and obligate homeowners to pay for common element expenses in writing in the declaration are not "common-interest communities."

In the Nevada Assembly Committee Minutes addressing this issue, Assemblyman Horne asked Michael Buckley, Chair, Real Property Section, State Bar of Nevada, if adding "described in the declaration" to NRS 116.021 would change state law. Mr. Buckley replied:

> Last August the Attorney General's (AG) Office, for the Real Estate Division (Division), opined that if there were CC&Rs in place, then there was a CIC [common-interest community]. I know the Commission for Common-Interest Communities and Condominium Hotels (Commission) and our subcommittee in the Real Property Section believed that was an overly broad interpretation of what a CIC is. This is the uniform definition and it tries to tighten up the interpretation a little so that just because you have CC&Rs does not necessarily make it a CIC. There has to be an obligation to pay taxes, common elements, or common expenses. It is part of the same law that NRS Chapter 116 came from. It is not intended to change the definition of CIC where they have a declaration that complies with NRS Chapter 116, but to exclude other arrangements that might not rise to a full CIC.

See Nevada Assembly Committee Minutes, May 11, 2009. (Attached hereto as Exhibit U.)

Additionally, Senator Schneider was explicit in stating that the Attorney General's Office was misguided when it construed NRS 116.021 to conclude that CC & R's in and of themselves are "common elements" of a community. Senator Schneider quoted the preamble of the bill which unequivocally states the legislature's intent in amending NRS 116.021 in 2009, as recorded in the Nevada Senate Journal:

> I want to thank my colleagues in the Legislature for enacting Senate Bill 182. I have championed the reforms contained in this bill for many years. They will help restore the balance between the rights of individual citizens living in common-interest communities and the governmental structures we as legislators have created and to a certain extent, imposed on average homeowners, sometimes to their detriment. I want to repeat the language of the preamble to the bill as introduced because it summarizes all the important reasons we are enacting this bill:
>
> WHEREAS, The Nevada Legislature previously noted that some unit-owners' associations in this State have a history of abuse of power; and
>
> WHEREAS, The Nevada Legislature previously noted that unit owners' associations have power over one of the most important aspects of a person's life, his residence; and
>
> WHEREAS, The Nevada Legislature previously noted that homeowners invest financially and emotionally in their homes; and
>
> WHEREAS, The Nevada Legislature previously declared that homeowners have the right to reside in a community without fear of illegal, unfair,

unnecessary, unduly burdensome or costly interference with their property rights; and

WHEREAS, Many of the concerns previously noted by the Nevada Legislature persist to this day; and

Thank you again for understanding the nature and importance of what we are doing with this bill. It is my sincere hope that this measure will allow citizens of Nevada to live secure in their rights in their homes in a manner consistent with their constitutional rights. If any court has occasion to interpret the provisions of this bill or indeed of any provision in Chapter 116 or 116A of the Nevada Revised Statutes, let the court be guided by these principles I have just reviewed with you.

There is one other important issue I need to touch on so there is no further misunderstanding about the reach and scope of Nevada Revised Statutes chapters 116 and 116A. Section 6 of the Senate Bill 182 as originally introduced was designed to clarify, and I emphasize the term "clarify," existing law. Section 6 does not and was not intended to effect any change in existing law. It is clarifying language only. The distinguishing factor in a common-interest community (CIC) is ownership of common areas, not the existence of covenants, conditions and restrictions (CC&Rs). This is the essential difference between a CIC and a homeowners' association, a name often used interchangeably with CIC but a legally distinct type of entity. Section 6 was necessary because the Real Estate Division has taken the position that a homeowners' association with only CC&Rs, as distinct from a CIC, is subject to Nevada Revised Statutes (NRS) Chapter 116 and 116A when in actuality it is not by virtue of the fact that a homeowners association does not own common property.

The Real Estate Division has also been charging home owners in associations the $3/door charge that is legally only chargeable to a CIC. These associations, as opposed to CICs, were never intended to be subject to NRS Chapter 116. They derive no benefit from the Real Estate Division and do not even have mechanisms to collect the door charge from homeowners because there are no executive boards or other governing bodies in these associations. The Real Estate Division has been trying to collect "back" door charges from as long ago as ten years, despite protest that, even if the Division was legally entitled to such fees, the statute of limitations would prohibit collection for periods beyond three years at most. The Attorney General's Office issued AGO on August 11, 2008 purporting to support the concept that homeowner associations are subject to Chapter 116. This opinion was rebutted by a Legislative Counsel Bureau Legal Opinion. The Real Estate Division has agreed to drop its assertions but only if NRS 116.021 is clarified. Section 6 of Senate Bill 182 as introduced provided that clarification.

However, Section 6 was deleted in favor of language from the Uniform Act that was placed in Section 7 of Senate Bill 261 of this Session. Though the phrasing of Section 7 of Senate Bill 261 is a little different than the language of Section 6 of Senate Bill 182, the intent is the same. Section 7 of Senate Bill 261 is the language the Legislature has chosen to clarify the existing language of Nevada Revised Statutes 116.021 and to most emphatically reject the erroneous interpretation placed on that section by the Real Estate Division and the Attorney General's Office. The only thing that remains now is for the Real Estate Division to refund the sums erroneously collected from homeowner associations that only have CC&Rs and do not have common elements, as

Motion carried by a constitutional majority.

See Nevada Senate Journal, Seventy-Fifth Session, One Hundred and Twentieth Legislative Day, Nevada Senate Journal, 75th Sess. No. 120. (Attached hereto as Exhibit V.)

Thus, the Nevada legislature amended NRS 116.021 in 2009 to dismiss the Nevada Attorney General's Opinion and to clarify that CC & R's in and of themselves are not common elements of a community. Common elements and expenses must be expressly included in the declarations to be valid and enforceable covenants, otherwise property owners are not bound by them. The Declaration of Ruby Lake Estates contains no covenant concerning common elements or expenses, and therefore Ruby Lake Estates Homeowner's Association lacks any legitimacy or authority to make assessments and should be declared invalid.

6. ARTEMIS SHOULD BE AWARDED ITS COURT COSTS AND ATTORNEY'S FEES.

Under Article V of the Declaration of Reservations, Conditions and Restrictions of Ruby Lake Estates, the Declaration provides, "The prevailing party shall be entitled to recover its court costs and attorney's fees," in any action to enforce the conditions set forth in the Declaration.

Defendant, Ruby Lake Estates Homeowner's Association has violated the conditions of the Declaration by attempting to create a homeowner's association and collect assessments where no such authority or covenant is described in the Declaration. Therefore, Artemis should be awarded its court costs and attorney's fees under the prevailing party clause in Article V of the Declaration.

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

PRAYER FOR RELIEF

Plaintiff, therefore, respectfully requests that summary judgment be entered in Plaintiff's favor and against Defendant as follows:

1. For a declaratory judgment declaring the Ruby Lake Estates Homeowner's Association invalid under NRS 116.3101(1) because the lots of Ruby Lake Estates were not bound by any covenant to pay dues or participate in a homeowner's association prior to the conveyance of the lots.

2. For a declaratory judgment declaring the Ruby Lake Estates Homeowner's Association invalid under NRS 116.021 because Ruby Lake Estates subdivision does not have any common areas or expenses described in its Declaration of Reservations, Conditions and Restrictions and therefore the subdivision does not meet the definition of a common-interest community under NRS 116.021.

3. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association 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 so-called Ruby Lake Estates Homeowner's Association;

4. For an order and injunction freezing the bank accounts of Ruby Lake Estates Homeowner's Association to secure all remaining funds and to prevent all remaining funds from being misappropriated.

5. For an award of restitution and damages against Defendant, including but not limited to the repayment to Plaintiff of all monies paid by Plaintiff that were collected by the Ruby Lake Estates Homeowner's Association in an amount to be proven at trial.

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

7. For the Court to set trial on Plaintiff's Second Claim for Relief for Damages and Plaintiff's Third Claim for Relief for Fraud; and

///

///

///

///

///

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

DATED this 29 day of April, 2012.

GERBER LAW OFFICES, LLP

BY: _____

TRAVIS W. GERBER, ESQ.
State Bar No. 8083
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR PLAINTIFF
ARTEMIS EXPLORATION
COMPANY

AFFIDAVIT OF ELIZABETH ESSINGTON

STATE OF NEVADA)
: ss.
COUNTY OF ELKO)

Under penalty of perjury the undersigned declares that she is the President of Artemis Exploration Company, the Plaintiff named in the foregoing action; that she has read the foregoing Motion for Summary Judgment and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes the same to be true.

Elizabeth Essington

ELIZABETH ESSINGTON, President
ARTEMIS EXPLORATION COMPANY

Subscribed and sworn to before me
this 30th day of April, 2012.

R. Darlene McGarr

NOTARY PUBLIC

Notary Public - State of Nevada
County of Elko
R. DARLENE MCGARR
No. 00-61724-6 My Commission Expires May 2013

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on this date I deposited for mailing, at Elko, Nevada, by regular U.S. mail, a true copy of the foregoing Complaint, addressed to the following:

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

DATED: April 30th, 2012.

Darlene McGarr
DARLENE McGARR

EXHIBIT A

EXHIBIT A

RUBY L
ELKO C

THESE PRESENT THAT, STEPHEN G.
THE OWNERS OF THOSE PARCELS AS
EREBY CONSENT TO THE PREPAR-
MAP AND OFFER FOR DEDICATION
ASEMENTS FOR PUBLIC ACCESS AND
AS DESIGNATED HEREON. IN WIT-
OUR HANDS ON THE DATE SHOWN.

June 28 1989

APPROVAL - ELKO COUNTY
PLANNING COMMISSION

AT A REGULAR MEETING OF THE ELK
COMMISSION, STATE OF NEVADA, HELD ON
MAY, 1989, A TENTATI
SUBDIVISION WAS APPROVED PURSUANT TO
THIS FINAL PLAT SUBSTANTIALLY COMPLI
TIVE PLAT AND ALL CONDITIONS PURSUAN
MET.

G-28-87
DATE

Acting Director of Engineering

SHEET 1 OF 3

FILING DATA

FILE NO. 281674

FILED AT THE REQUEST OF BOYACK SURVEYING.

DATE SEPT. 15, 1988

TIME 10:27 A.M.

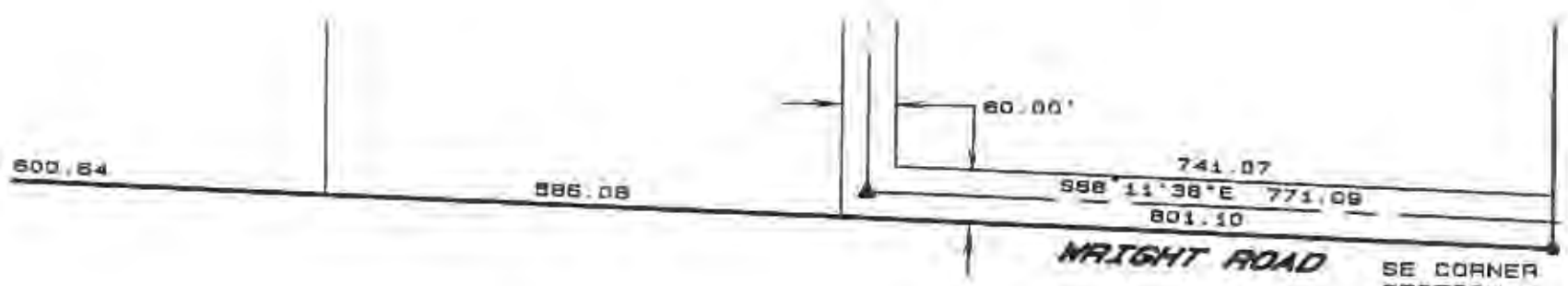
ELKO COUNTY RECORDER
JERRY D. REYNOLDS.

OFFICIAL PLAT OF RUBY LAKE ESTATES for STEPHEN G. & MAVIS S. WRIGHT SECTIONS 9&15, T28N-R58E, MDB&M ELKO COUNTY, NEVADA

BOYACK SURVEYING
515 SOUTH FIFTH STREET
ELKO, NV. 89801

89036

98



1 AA000094

SCALE : 1" = 200'

0 100 200 400 600 800 1000

UMENT

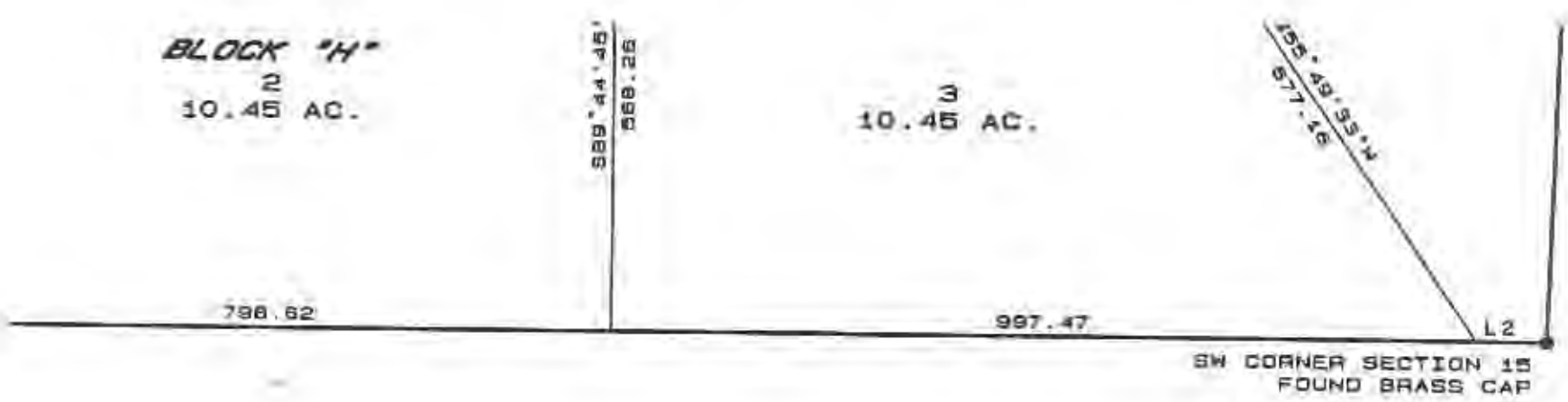
EBAR WITH CAP MARKED RLS 6203

FILE #281674 SHEET NO. 2 OF 3

OFFICIAL PLAT OF RUBY LAKE ESTATES for STEPHEN G. & MAVIS S. WRIGHT SECTIONS 9&15, T28N-R58E, MDB&M ELKO COUNTY, NEVADA

BOYACK SURVEYING
518 SOUTH FIFTH STREET
ELKO, NV. 89801

89036



1 AA000095

NUMENT

REBAR WITH CAP MARKED RLS 6203

SCALE : 1" = 200'

0 100 200 400 600 800 1000

FILE #281674 SHEET NO. 3 OF 3

OFFICIAL PLAT OF RUBY LAKE ESTATES for STEPHEN G. & MAVIS S. WRIGHT SECTIONS 9&15, T28N-R58E, MDB&M ELKO COUNTY, NEVADA

BOYACK SURVEYING
515 SOUTH FIFTH STREET
ELKO, NV. 89801

89036

98

EXHIBIT B

RUBY LAKE ESTATES

DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 12 day of _____, 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:* Except 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 unsightly 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.

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)
)ss.
COUNTY OF Elko)

On Oct 16, 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. Tritz
NOTARY PUBLIC

MARGO K. TRITZ
Notary Public State of Nevada
Elko County-Nevada
COMM. EXP. 7-14-93

INDEXED

FEE 10.00 FILE # 283750
FILED FOR RECORD
AT THE REQUEST OF
Marvel + Hansen
'89 OCT 25 A10:43
RECORDED IN BK 703 PG 287
JERRY D. REYNOLDS
ELKO CO RECORDER

00011

283750

BOOK 703 PAGE 292

EXHIBIT C

420306 TD

Documentary Transfer Tax $ 15.60

[X] Computed on full value of property conveyed

[ ] Computed on full value less liens and encumbrances remaining thereon at time of transfer

Under penalty of perjury

CATTLEMEN'S TITLE GUARANTEE COMPANY

By _____

Signature of declarant or agent determining tax-firm name

RLE-1010

Deed

THIS INDENTURE, made this 16th day of June 1994 by and between CATTLEMEN'S TITLE GUARANTEE COMPANY (as Trustee), a Nevada Corporation, hereinafter referred to as Grantor, and

ARTEMIS EXPLORATION COMPANY

hereinafter referred to as Grantee(s)

whose address is

P.O. Box 363
Ely, Nevada 89301

WITNESSETH

For valuable consideration received, Grantor does by these presents grant, bargain and sell unto said Grantee(s) and to its heirs and assigns forever, all that certain real property situate in the County of Elko, State of Nevada that is described as follows: TP #07-03A-42-0

Lot 6, Block G, ~~UNIT FOUR~~ RUBY LAKE ESTATES/, as platted of record
at Elko County, Nevada Subdivision

SUBJECT TO taxes for the present fiscal year and subsequently, covenants, conditions, restrictions, exceptions and reservations, easements, encumbrances, leases or licenses, rights and rights of way of record, if any.

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or appertaining and the reversion and reversions, remainder and remainder, rents, issues and profits thereof.

TO HAVE AND TO HOLD said premises, together with the appurtenances, unto said Grantee(s), and to its heirs and assigns forever.

IN WITNESS WHEREOF, the Grantor has caused this conveyance to be executed the day and year first above written.

00019

CATTLEMEN'S TITLE GUARANTEE COMPANY
as Trustee

BY _____

Title: Johanna M. Kolli, Assistant

STATE OF Arizona)
) ss
COUNTY OF Maricopa)

1 AA000104

On June 16, 1994 personally appeared before me, a Notary Public,

Johanna K. Kobli

who acknowledged that ___S___ he executed the above instrument.

Robin R Shilletto

NOTARY PUBLIC

OFFICIAL SEAL
ROBIN R. SHILLETO
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Expires Aug. 16, 1995

FEE 7.00 FILE # 351630
FILED FOR RECORD
AT REQUEST OF
First American Title Co. Of Nev.
'94 JUN 21 P1:37
INDEXED
RECORDED IN BOOK 860 PAGE 625
JERRY D. REYNOLDS
CLERK OF RECORDER

351630 BOOK 860 PAGE 625

EXHIBIT D

DOC # [redacted]
03/09/2010 03:51 PM
Official Record
Requested By
JAMES M. COPENHAVER
Elko County - NV
Jerry D. Reynolds - Recorder
Page 1 of 2 Fee: $15.00
Recorded By: NR RPTT: $117.00

APN: 007-03A-044

Send Tax Statements To:
Artemis Exploration Company
HC 60 Box 760
Ruby Valley, NV 89833

When recorded return to:
James M. Copenhaver, PC
950 Idaho Street
Elko, NV 89801

GRANT, BARGAIN & SALE DEED

FOR CONSIDERATION RECEIVED, **ADRIAN P. PREADER and JACKIE R. PREADER**, husband and wife, as Grantors, do hereby grant, bargain and sell to to **ARTEMIS EXPLORATION COMPANY**, a Nevada Corporation, and to its successors and assigns, forever, the property located in the County of Elko, State of Nevada, described as follows:

APN: 007-03A-044

Lot 2, Block H of RUBY LAKE ESTATES as shown on the Official map of said subdivision recorded in the office of the Elko County Recorder on September 15, 1989 as File No. 281674.

EXCEPTING THEREFROM all minerals lying in and under said land as reserved by the UNITED STATES OF AMERICA in Patent recorded May 14, 1964 in Book 45, Page 373, Official Records, Elko County, Nevada.

FURTHER EXCEPTING THEREFROM 50% of all oil, gas and mineral rights lying in and under said land as reserved by RAYMOND JOHN GARDNER, also known as RAYMOND J. GARDNER and RAYMOND GARDNER, and EDNA O. GARDNER, his wife, in Deed recorded July 10, 1972, in Book 164, Page 654, Official Records, Elko County, Nevada.

TOGETHER WITH any buildings or improvements located thereon.

TOGETHER WITH all and singular the tenements, hereditaments, easements, and appurtenances thereunto belonging or in anywise appertaining, and the reversions,

remainders, rents, issues and profits thereof, or of any part thereof.

SUBJECT TO all taxes and assessments, reservations, exceptions, easements, rights of way, limitations, covenants, conditions, restrictions, terms, liens, charges and licenses affecting the property of record.

TO HAVE AND TO HOLD the property, with the appurtenances to the Grantee and the successors and assigns of the Grantee, forever.

SIGNED this 18 day of February, 2010.

GRANTORS:

Adrian P Preader

ADRIAN P. PREADER

Jackie R. Preader

JACKIE R. PREADER

State of Idaho
County of Twin Falls

This instrument was acknowledged before me on the 18 day of February, 2010, by **ADRIAN P. PREADER.**

Mark Lebsack
NOTARY PUBLIC

MARK LEBSACK NOTARY PUBLIC STATE OF IDAHO

State of Idaho
County of Twin Falls

This instrument was acknowledged before me on the 18 day of February, 2010, by **JACKIE R. PREADER.**

Mark Lebsack
NOTARY PUBLIC

MARK LEBSACK NOTARY PUBLIC STATE OF IDAHO

EXHIBIT E

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

687 6th Street, Suite1
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 Parks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

EXHIBIT F

Statement

Ruby Lake Estates
687 6th Street Ste I
Elko, NV 89801

Date
12/15/2010

To:
ARTEMIS EXPLORATION HC 60 BOX 755 RUBY VALLEY, NV 89833

Amount Due	Amount Enc.
$273.48	

Date	Transaction	Amount	Balance
12/31/2009	Balance forward		223.48
03/08/2010	INV #269, Due 03/08/2010.	25.00	248.48
04/19/2010	INV #271, Due 04/19/2010.	25.00	273.48

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	273.48	$273.48

00111

EXHIBIT G

ANGIUS & TERRY COLLECTIONS LLC

A Division of ANGIUS & TERRY LLP ATTORNEYS

January 4, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

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

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

Carolyn Swanson
Angius & Terry Collections, LLC

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

EXHIBIT H

DEAN HELLER
Secretary of State
206 North Carson Street
Carson City, Nevada 89701-4299
(775) 684 5708
Website: secretaryofstate.biz

Articles of Association
Cooperative Association
(PURSUANT TO NRS 81.170-81.270)

Important: Read attached instructions before completing form. ABOVE SPACE IS FOR OFFICE USE ONLY

1. *Name of Association:*	RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION
2. *Resident Agent Name and Street Address:* (must be a Nevada address where Process may be served)	LEE PERKS Name 765 E. GREG STREET, #103 — SPARKS — NEVADA — 89431 Physical Street Address — City — Zip Code Additional Mailing Address — City — State — Zip Code
3. Term: (may be perpetual)	
4. *Names & Addresses of Board of Directors/Trustees:* (attach additional pages there are more than 3)	1. LEE PERKS Name 765 E. GREG STREET, #103 — SPARKS — NV — 89431 Address — City — State — Zip Code 2. BILL HARMON Name HC 60, BOX 725 — RUBY VALLEY — NV — 89833 Address — City — State — Zip Code 3. MIKE CECCHI Name 10890 Osage Rd — RENO — NV — 89506 Address — City — State — Zip Code
5. *Membership Fee:* (must be completed)	The Membership fee is $ yearly fee per member. Each member signing the articles has paid the fee and their interests and rights are equal
6. *Purpose:* (must be completed)	The purpose of this Association shall be: Maintain roadways and enforce restrictive covenants
7. *Names, Addresses and Signatures of Subscribers:* (attach additional pages there are more than 3 subscribers must be associated to the original members or members)	LEE PERKS Name 765 E. GREG STREET, #103 — SPARKS — NV — 89431 Address — City — State — Zip Code Signature DENNIS McINTYRE Name 1535 Sunset View Dr. — SPARKS — NV — 89436 Address Sparks Nev 89436 — City — State — Zip Code Signature MIKE CECCHI Name 10890 Osage Rd — RENO — NV — 89506 Address — City — State — Zip Code Signature
8. *Certificate of Acceptance of Appointment of Resident Agent*	I hereby accept appointment as Resident Agent for the above named Association. Authorized Signature of R.A. or On Behalf of R.A. Company — Date: 10-27-2015

This form must be accompanied by appropriate fees. See attached fee schedule.

4. CONTINUED

DENNIS McINTYRE

1530 SOUTH VIEW DR

SPARKS, NV 89436

BILL NOBLE

4626 BRUSHFIRE ST

~~**LAS VEGAS**~~**, NV** N. LAS Vegas NV 89031

EXHIBIT I

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

August 11, 2008

Mendy K. Elliott, Director
Department of Business and Industry
901 South Stewart Street, Suite 1003
Carson City, Nevada 89701-5453

Dear Ms. Elliott:

You have requested an Attorney General's Opinion regarding the interpretation of the provisions of NRS Chapter 116 to determine whether or not certain "planned communities" are "common-interest communities." Subsequent to your initial request, we have received additional input and clarification from the Real Estate Division and your Deputy Director concerning the specific facts underlying some of your inquiries. The questions initially submitted have, in some cases, been slightly modified to reflect the clarifications.

QUESTION ONE

If a planned community does not have any common elements, is it a common-interest community pursuant to NRS Chapter 116, which is required to register with and pay fees to the Ombudsman's Office as provided in NRS 116.31158 and 116.31155 respectively?

ANALYSIS

It is our understanding that Question One is premised upon the assertion of several homeowners associations that they are not common-interest communities subject to the provisions of NRS Chapter 116 (Chapter 116 or NRS 116), because the association does not have any common elements. The associations involved have Declarations of Covenants, Conditions, and Restrictions (CC&Rs or Declaration), that

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run with the land and, in some instances, other "governing documents" as defined in NRS 116.049. The issue has only arisen in communities which were created before 1992.[1]

NRS 116.075 states that a "[p]lanned community" means a common-interest community that is not a condominium or cooperative." Our analysis and conclusions, throughout this opinion, will address the application and interpretation of Chapter 116 only as it pertains to planned communities.

For the purposes of Chapter 116, a common-interest community "means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021. "Real estate" as used throughout Chapter 116 is specifically defined in NRS 116.081, as follows:

> "Real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Interests that by custom, usage or law pass with the conveyance of land though not described in the contract of sale or instrument of conveyance" encompass CC&Rs which run with the land. NRS 116.081. The substance of the CC&Rs is determinative of whether they are "real estate" within the context of NRS 116. Documents which are recorded to create common-interest communities may be titled differently and hence a generic description was used in the definition. The inclusion of the custom, usage, or law clause in the definition of "real estate" explicitly includes interests other than land, structures, fixtures, or improvements as the basis for determining or defining a particular planned community to be a common-interest community.

[1] Due to the difficulty the Ombudsman's Office has identifying existing common-interest communities subject to the registration and fee requirements of NRS 116.31155 and NRS 116.31158, the Legislature provided a means, through NRS 78.170, for there to be coordination between the Secretary of State's corporate registration process and the registration required of common-interest communities with the Ombudsman's Office. As a result, common-interest communities which had not been previously identified have been contacted by the Ombudsman's Office for payment of the statutorily imposed fee, as they have been identified during the process of renewing the registration of the corporations formed by the homeowner's associations, with the Secretary of State's Office.

It is well established that where a statute is clear and unambiguous a court may not look beyond the language of the statute to determine the Legislature's intent. *Westpark Owners' Ass'n v. Eighth Jud. Dist. Ct.*, 123 Nev __, 167 P.3d 421, 427 (Adv. Op. 37, September 20, 2007); *Sheriff v. Witzenburg*, 122 Nev. ____, 145 P.3d 1002 (2006); *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 648, 730 P.2d 438,441 (1986). The term "real estate" contained within the definition of "common-interest community" in NRS 116.021 is clear and unambiguous, and may include CC&Rs which run with the land.

The NRS 116.081 definition of "real estate" is more expansive than the phrase would be in its more common usage. Where there is a specific statute, that specific statute prevails over a more general statute. *Gaines v. State*, 116 Nev. 359, 365, 998 P.2d 166, 170 (2000). The definition of "real estate," used throughout Chapter 116, encompasses not only land, structures, fixtures and other improvements, but also "interests that by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance." The CC&Rs are a separate property interest from the land with which they run, *Thirteen South Ltd. v. Summit Village Inc.*, 109 Nev. 1218, 1221, 866 P.2d 257, 259 (1993), and are, therefore, "real estate" within the context in which the term is used in NRS 116.021.

It appears that the confusion about whether or not a particular planned community is a common-interest community arises from the phrase, "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021. There is no specification of when the obligation to pay for real estate that is not part of the owned unit must occur, the nature or frequency of the payments, or to whom such payment is anticipated to be directed. An owner might be obligated to pay for the value of the benefits conferred by the CC&Rs that preserve the standards, quality, character, or value of the neighborhood in which the unit is located, as a component of the purchase price of a unit.

In statutory interpretation, a legislative enactment must be read as a whole, and no part of a statute is to be rendered meaningless. *D.R. Horton Inc. v. Eighth Jud. Dist. Ct.* 123 Nev ___, 168 P.3d 731, 738 (Adv. Op. 45, October 11, 2007). In order to find that the type of planned communities addressed here were not subject to NRS 116, the custom, usage, or law clause contained in NRS 116.081 would have to be ignored and given no effect.

Typical CC&Rs, for the planned communities at issue, include a statement of purpose to the effect that the CC&Rs have been recorded to maintain the quality, standards, character, or value of the neighborhood, or language having similar effect. The CC&Rs also typically impose restrictions on what can be constructed on the lots, how the individual properties must be maintained, and/or what changes to the lots and/or structures can be made subject to the CC&Rs. Examples of the types of use restrictions contained in the CC&Rs include requirements for initial construction and subsequent additions, improvements, or changes to any structures built upon the land, including without limitation, the minimum square footage of a residence, the maximum number of stories, acceptable architectural styles, exterior colors, landscaping materials, roofing and fencing materials, height limitations, and minimum setbacks.

Many of the planned communities which have claimed not to be common-interest communities under NRS 116 have CC&Rs which require approval of an architectural review committee before construction of the plans for original construction and/or subsequent improvements or additions to structures on the affected lots can be started. Many of the CC&Rs similarly require approval of landscaping plans, and contain restrictions imposing other limitations on the appearance or exterior aesthetics of the units within the community.

The restrictions in the CC&Rs provide assurance to those who purchase property within a planned community that there are legally enforceable standards and requirements with which neighboring homes must comport, making it foreseeable that the neighborhood will have a consistent quality and value. Neighbors cannot change their property to the extent that it might adversely affect the property values within the planned community. The CC&Rs have an inherent value included in the price paid for a unit to which CC&Rs apply. Pursuant to the provisions of NRS 116.021, using the definition for real estate in NRS 116.081, CC&Rs for planned communities constitute "real estate," other than the unit owned, for which a person is obligated to pay.

Common elements in a planned community are defined in NRS 116.017(2) as, "any real estate within the planned community . . . other than a unit." The definition of real estate, contained in NRS 116.081, also applies to the term's use in NRS 116.017 resulting in an expansion of the term "common elements" from what the commonly held understanding of the phrase might otherwise be.

There is no reference to "common elements" in the NRS 116 definition of either "common-interest community" or "planned community." The exclusion of a requirement that a common-interest community must have "common elements" is deemed to have been intentional under well established rules of statutory construction. *Dep't. of*

Taxation v. DaimlerChrysler Services North America, LLC, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005). As explicitly defined in NRS 116, a planned community is not required to have "common elements," or to have physical property, such as land, structures, fixtures, or improvements, in addition to the individual units, in order to be defined as a common-interest community pursuant to NRS 116.021.

The evolution of the language, contained in NRS 116, further supports the interpretation of the provisions set forth above. Chapter 116 was originally enacted into law in Nevada in 1991. The language was adopted, substantially verbatim, from the Uniform Common-Interest Ownership Act (UCIOA) which had been adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1982. In sessions since 1991, the Nevada Legislature has enacted amendments, but the definitions contained in NRS 116.021, NRS 116.075, and NRS 116.081 have remained the same. UCIOA was amended in 1994. The definitions of "real estate," "planned community," and "common-interest community" were not changed by the NCCUSL's 1994 amendments. To date, Nevada has not adopted the 1994 amendments to UCIOA. The history of the drafting of UCIOA is instructive in the interpretation of the provisions of Chapter 116 addressed here. *Beazer Homes Nevada, Inc. v. Eighth Jud. Dist. Ct.*, 120 Nev. 575, 583, 97 P.3d 1132, 1137 (2004).

Prior to UCIOA, the NCCUSL had promulgated the Uniform Condominium Act (UCA) in 1977, an amended version of which it adopted in 1980. The NCCUSL had also adopted the Uniform Planned Community Act (UPCA) in 1980. The version of UCIOA, adopted in 1982 by the NCCUSL, later adopted by Nevada as NRS 116, incorporated elements of the UCA, the UPCA, and the Model Real Estate Cooperative Act (1981) with the goal of consistency in the governance of communities where there were common ownership interests.

The interpretation of "real estate" as used in the Act is pivotal in responding to Question One. A review of the acts combined into UCIOA establishes that the definition of "real estate" is the same, verbatim, in the UCA, and in the UPCA. However, the definition of a "planned community" contained in the UPCA differs significantly from that used in UCIOA.

In the UPCA, "planned community" was defined, in pertinent part, as: "real estate with respect to which any person by virtue of his ownership of a unit, is obligated to pay *for real property taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration.*" National Conference of Commissioners on Uniform State Laws *Uniform Planned Commissioners on Uniform State Laws*, Houston, TX, February 9, 1981 at _____ (emphasis added).

The UCA did not contain a definition of "planned community." Neither the UPCA nor the UCA included a definition of "common-interest community." One of the express goals of the NCCUSL in drafting UCIOA was to have a Uniform Act which addressed, cohesively and consistently, the law applying to the various forms of common ownership interests in which real property could be held. Some provisions of the previous acts were incorporated, some were not, some were revised, and others were drafted anew. Since the committee utilized the UPCA in drafting UCIOA, it is clear that their exclusion of the narrower definition of "planned community" was intentional. "Common-interest community," although not previously defined, could have been drafted using narrower language, similar to the definition of "planned community" used in the UPCA. Again, the drafters intentionally decided to adopt a broader definition. They were aware of the narrower language in the UPCA and chose not to use it.

To date six other states, Alaska, Colorado, Connecticut, Minnesota, Vermont, and West Virginia have enacted UCIOA into law. Of significance to the interpretation of NRS 116, as currently in effect, is each of the other six states have enacted a narrower, more specific, definition of "common-interest community" than contained in UCIOA. *See Alaska Stat. Ann.* 34.08.990(7); Colo. Rev. Stat. Ann. 38-33.3-103; Conn. Gen. Stat. Ann. 47-202(7); Minn. Stat. Ann. 515B.1-103(10); Vt. Stat. Ann. 27A.1-103(7); and W. Va. 36B.1-103(7).

Discussions and hearings concerning amendments to UCIOA have been ongoing since 2005 by the NCCUSL committee, and some revisions have been made to the initial 2005 draft. It is clear from the proposed amendments and the changes which have evolved over the past two years that the NCCUSL committee recognizes that the interpretation of NRS 116.021 that we have provided above is consistent with their interpretation of the identical language currently contained in UCIOA.[2] In the absence of legislative amendment of the pertinent provisions of Chapter 116, the statute must be applied according to the provisions of law as currently in effect, and not as they might be if amended.

The Nevada Legislature has recognized the breadth of the current definition of "common-interest community" in NRS 116. During the 2007 Legislative Session, an unsuccessful effort was made to narrow the definition of "common-interest community." Assembly Bill 396, Sec. 6, proposed that the definition of "common-interest community" in NRS 116.021 be revised to include, as subpart 3, the following: "For the purposes of determining whether real estate is a 'common-interest community' pursuant to this section, the fact that the real estate is subject to covenants, conditions and restrictions is not relevant or determinative."

[2] November 2007 draft of proposed amendments, Section 1-210.

Inherent in the substance of the amendment proposed at the 2007 Legislative Session is the understanding that the definition of "common-interest community" currently in effect is as we have opined above.

A.B. 398 (2007) was not signed into law, therefore, the definitions of "common-interest community," "planned community," and "real estate" continue in effect as originally adopted by the NCCUSL and by the Nevada Legislature. Pursuant to the law as it currently exists, a common-interest community can exist in the absence of any "common elements" commonly owned land, structures, fixtures, or improvements.

CONCLUSION TO QUESTION ONE

Common elements, or commonly owned land, structures, fixtures, or improvements, separate from the individually owned unit, are not required for a planned community to be found to be a common-interest community under Chapter 116. Covenants, conditions, and restrictions may be "real estate" within the definition set forth in NRS 116.081.

QUESTION TWO

Can the CC&Rs constitute an "interest that by custom, usage or law passes with land though not described in the contract of sale or instrument of conveyance"?

CONCLUSION TO QUESTION TWO

For the reasons discussed in responding to Question One above, the CC&Rs may constitute an interest that by custom, usage, or law passes with the land though not described in the contract of sale, or instrument of conveyance.

QUESTION THREE

What is the effect of an owners association's assertion that the association is a "voluntary" association or a "social club" on the determination of whether there is, or is not, a common-interest community?

ANALYSIS

Question Three is addressed in the context where an owners association has been formed and incorporated with the Secretary of State. The members of the association are all owners of property subject to the same Declaration or CC&Rs. The

CC&Rs contain use restrictions, such as limitations of what can be built on the property, how the property must be maintained, and/or what additions or improvements can be made, and which materials can be used. Pursuant to the discussion above, absent statutory exclusions, the community in issue would be a common-interest community under NRS 116.021.

The associations at issue, in many instances, collect monies from the Unit Owners, which they characterize as "voluntary" dues. The dues are voluntary in the sense that no one takes action against the unit owners who do not pay. The dues are usually fairly nominal because the association is not responsible for maintaining any commonly owned land, structures, fixtures, or improvements. The fact that the board or members have not pursued collection of the dues does not change the fact that the planned community at issue is, by definition, a common-interest community. The characterization of the members association as a "social club" does not affect the determination that the planned community at issue is a common-interest community. At some point in time the units in such a planned community will be sold to others. A group of newer owners could, at some point, decide to pursue collection of the unpaid dues, and, if not paid, could pursue actions to collection.

CONCLUSION TO QUESTION THREE

The characterization of an association as a "social club" has no impact upon the determination of whether or not it is a common-interest community subject to NRS 116. Neither does the characterization of dues as being "voluntary."

QUESTION FOUR

If an association has not taken any action to enforce the use restrictions in the CC&Rs, does that effect a determination that the community is a common-interest community?

ANALYSIS

The CC&Rs are recorded against each lot or unit, and run with the land. Although they are considered a separate property interest, the CC&Rs cannot be severed from the property. All owners of the property continue to be bound by and subject to the use restrictions in the CC&Rs until the CC&Rs are lawfully terminated. The fact that no action has been taken may result from the Unit Owners' compliance with the CC&Rs. That does not preclude enforcement actions in the future. If the

CC&Rs are terminated in conformance with Nevada law the community would no longer be a common-interest community; otherwise they continue to run with each unit.

CONCLUSION TO QUESTION FOUR

The fact that the association has not ever taken action to enforce the restrictions in their CC&Rs does not affect the determination of whether a common-interest community exists.

QUESTION FIVE

If the association in a planned community dissolves the corporation through which the community acts, does the community cease to be a common-interest community?

CONCLUSION TO QUESTION FIVE

A common-interest community is created through the recordation of the Declaration/CC&Rs which will continue to run with the land until terminated. The dissolution of the association's corporation does not terminate the CC&Rs and does not change its status as a common-interest community subject to NRS 116.

QUESTION SIX

Does the fact that a common-interest community's CC&Rs were recorded and/or the homeowners association was formed prior to the enactment of NRS Chapter 116 impact whether or not the common-interest community must comply with NRS 116.31155 and 116.31158?

ANALYSIS

The language contained in the provisions of Chapter 116 makes clear that the Act was intended to apply to all common-interest communities in existence at the time of its enactment, as well as those formed after the Act took effect. NRS 116.1201(1), provides in pertinent part that, "[e]xcept as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities within this State

NRS 116.1201(2) provides exemptions from Chapter 116. Chapter 116 does not apply to a limited purpose association, except that a limited purpose association must pay the fees required by NRS 116.31155, must register with the Ombudsman as required by NRS 116.31158, and shall comply with several other provisions of NRS 116, delineated.

NRS 116.1201(2)(d) provides that NRS 116 does not apply to a common interest community that was created before January 1, 1992, which is located in a county whose population is less than 50,000, and which has less than 50 percent of its units put to residential use. The specificity of the pre-1992 common-interest community which is excluded from the requirements of NRS 116 emphasizes the inclusion of all common-interest communities which do not come within the exclusion.

The intent of the Legislature to have Chapter 116 apply to certain common-interest communities which had been created prior to 1992 is also evident from the substance of NRS 116.1109 and NRS 116.1201(3)(b). NRS 116.1109(2) expresses the intention for the enactment of Chapter 116, as follows: "This chapter must be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it."

The intended purpose of the Act, as well as clear intention that the Act be applied to certain common-interest communities in existence prior to 1992, would be defeated were common-interest communities created before 1992 excluded from compliance with the Act, other than as stated within the provisions of the Act.

NRS 116.1201(3)(b) explicitly provides that common-interest communities created before 1992 are not required to comply with the provisions contained in NRS 116.2101 - 2122, inclusive. By implication, common-interest communities created prior to 1992 must comply with all provisions of Chapter 116, from which they are not expressly excluded. Common-interest communities created before 1992 are not exempt or otherwise immune from the requirement of NRS 116.31155 to pay the annual per unit fee, nor are they exempt or immune from the requirement that they register annually with the Ombudsman's Office under NRS 116.31158.

NRS 116.1206(1) provides that any provision of a common-interest community's governing documents which violates the provisions of Chapter 116 will be deemed by operation of law to conform to NRS 116 without being required to amend their governing documents. NRS 116.1206 sets forth a different standard for amending governing documents to be applied to a common-interest community created before January 1, 1992. However, there are otherwise no differences in the treatment of governing

document violations as they exist in a common-interest community created either before or after January 1, 1992.

CONCLUSION TO QUESTION SIX

Common-interest communities created before and after January 1, 1992, are required to comply with NRS 116.31155 and NRS 116.31168, with the narrow exception contained in NRS 1201(2)(d), for common-interest communities in counties with a population of less than 50,000 which have less than half of their units being used for residential purposes.

QUESTION SEVEN

Can a common-interest community, created before 1992, which has no provision in its CC&Rs authorizing it to impose assessments on its members, make assessments of its members for the purpose of paying the per unit fee required to be paid pursuant to NRS 116.31155?

ANALYSIS

The planned communities, in which this issue has arisen, have CC&Rs containing use restrictions for the benefit of all units and have homeowners associations which have been incorporated with the Secretary of State's Office. Most collect "dues," although the payment of the dues is contended to be "voluntary."

NRS 116.31155(1) provides, in pertinent part:

> Except as otherwise provided in subsection 2, an association shall:
> (a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

In order for a homeowners association to complete its annual renewal with the Secretary of State's Office, evidence must be provided that its fees have been paid, pursuant to NRS 116.31155, to the Ombudsman's Office. Upon receipt of such payment the Administrator provides documentation to the association that its obligation to pay the fees and any penalties and interest has been met. The documentation must

be provided to the Secretary of State's Office before an association can renew its registration. The only exceptions to the requirement that the association for a common-interest community pay the per unit fee are contained in NRS 116.31155(2), and relate to master associations and their sub-associations.

The fee owed by each common-interest community to the Ombudsman's Office, under NRS 116.31155, is a common expense and a financial obligation of the common-interest community. The issue of the extent to which a common-interest community may require its members to contribute to the common expenses of the community has not been addressed by the Nevada Supreme Court. However, the principle under which a common-interest community would have authority to impose fees on its members for commonly owed expenses has been addressed in *Evergreen Highlands Ass'n v. West*, 73 P.3d 1 (Colo. 2003). UCIOA, as enacted in Nevada, was adopted in Colorado in 1992. The applicable provisions, adopted in Colorado, are identical to the provisions in NRS 116, and thus the Colorado Supreme Court's decision is relevant to the application of law that would be made under the uniform code. *Moody v. Manny's Auto Repair*, 110 Nev. 320, 871 P.2d 935 (1994).

validly organized

In *Evergreen*, *supra*, a subdivision was created in 1972 which consisted of 63 lots and a 22.3 acre park for the use of the members and owned by the association. The association was formed in 1973, and the park was conveyed to the association by the developer in 1976. From 1976 to 1995 the Association relied upon voluntary assessments from lot owners to pay for costs of maintenance and improvements of the park. Expenses incurred for the park annually included taxes and insurance. In 1995, 75 percent of the lot owners voted to add a new article to the CC&Rs. The article required all lot owners to be members of the Association and to pay assessments.

consent of assoc.

One of the lot owners who had not voted in favor of the amendment brought suit challenging the validity of the 1995 amendment. The association counterclaimed seeking declaratory judgment that it had implied power to collect assessments from all lot owners in the subdivision. The Colorado Supreme Court holding was based upon the Restatement (Third) of Property: Servitudes § 6.5 (2000). The Restatement provides, in pertinent part: "the power to raise funds reasonably necessary to carry out the functions of a common-interest community will be implied if not expressly granted by the declaration."

The court held that even in absence of an express provision in the CC&Rs, the association had an implied power to levy assessments to raise the funds necessary to maintain the park.

Although the decision in *Evergreen* addressed the issue of expenses for maintenance of common area, the basis for the court's holding, pursuant to the Restatement of Property, is broader and clearly extends beyond expenses related to common area, to "funds necessary to carry out the functions of a common-interest community . . . ." *Evergreen*, 73 P.3d at 1. Pursuant to NRS 116, common-interest communities are required, by law, to register and pay fees to the Ombudsman's Office on a per unit basis. The payment is a function of a common-interest community and hence, one for which the homeowners association for a common-interest community has implied authority to make assessments of all affected lot owners.

CONCLUSION TO QUESTION SEVEN

A common-interest community created before 1992, which does not have an express provision in its Declaration of CC&Rs authorizing its homeowners association to impose assessments on its members, has implied authority to make assessments to raise funds to pay the amounts due to the Ombudsman's Office pursuant to NRS 116.31155.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: NANCY D. SAVAGE
Senior Deputy Attorney General
Business and Licensing Division
(702) 486-3192

NDS/EFB

EXHIBIT J

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

2501 East Sahara Avenue, Suite 202 * Las Vegas, NV 89104-4137 * (702) 486-4480
E-mail: CICOmbudsman@red.state.nv.us http://www.red.state.nv.us

OMBUDSMAN INTERVENTION AFFIDAVIT

STATE OF NEVADA

COUNTY OF Elko Date: 12/18/09

I, Elizabeth E. Essington (Claimant), after being first duly sworn, state under penalty of perjury and based upon personal knowledge:

1. I have been aggrieved by an alleged violation of Chapter 116 of the Nevada Revised Statutes, Nevada Administrative Code or the governing documents of the association. The person or entity who committed the alleged violation is Mr. Leroy Perks (Respondent).

2. The Homeowners Association involved in this intervention affidavit is:

   Secretary of State filing # for the association: NV 20061436915
   (filing # located at: https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx)

   Name of the Homeowners Association: Ruby lake Estates

   Address for the Homeowners Association: 765 E. Greg St #103, Sparks, NV 89431 | Mr. Bob Wines - Attorney for HOA, 687 Sixth ST. Elko, NV, clearing house for files & correspondence

   Phone number for the Homeowners Association (President or other contact): (775) 358-4403

   Name of President or contact for the Homeowners Association: Mr. Leroy Perks

3. I have provided the Respondent, Mr. Leroy Perks via certified mail, return receipt requested, with written notice of the exact issues listed in the intervention affidavit. ***I UNDERSTAND THAT IF THE ALLEGATIONS (AND SUPPORTING FACTS) IN MY CERTIFIED LETTER DO NOT MATCH THE ALLEGATIONS (AND SUPPORTING FACTS) DESCRIBED IN #7 BELOW, THOSE ISSUES WILL NOT BE CONSIDERED AS PART OF MY COMPLAINT.***

4. The written notice specified, in reasonable detail, the alleged violation, any actual damages I suffered as a result of the alleged violation, and the corrective action I proposed, if any.

5. The notice referred to in # 3 was mailed to respondent's last known address.

6. ***Attached to the Affidavit as Exhibit "1" is a copy of the certified letter sent to respondent AND stapled to that letter is the certified return receipt from the post office.*** This may constitute evidence that the respondent has been given a reasonable opportunity, after receipt of the written notice, to correct the alleged violation.

00124

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

2501 East Sahara Avenue, Suite 202 * Las Vegas, NV 89104-4137 * (702) 486-4480
E-mail: CICOmbudsman@red.state.nv.us http://www.red.state.nv.us

7. You must provide a ***BRIEF*** statement of the ***LAW AND/OR GOVERNING DOCUMENT VIOLATIONS*** you are alleging. You must provide a ***BRIEF SUMMARY*** of the facts which you believe prove your complaint. ***DO NOT WRITE "SEE ATTACHMENT" AND THEN ATTACH DOCUMENTS.*** Affidavits received with "See Attachments" will be considered incomplete and not processed. ***YOU MUST*** list your allegations and supporting facts on this page and use additional pages, only if necessary. Again, ***ONLY*** list those allegations (with supporting facts) identical to the allegations (and supporting facts) which you sent to the respondent by certified mail.

Begin Statement Here.

1- The Ruby lake Estates were established with CCR's but without a Home Owners Association (HOA).

2. The CCR's do provide for an Architectural Review Committee (ARC) but do not mention, much less establish an HOA.

3. An HOA was allegedly formed many years later and well after the fact. After talking with several of the other land/homeowners, it is my belief and contention the HOA was never properly formed because none of the homeowners ever signed legal, consensual, "all disclosure documentation obligating and binding their land, homes, and financial investments/resources in perpetuity to the HOA, its Executive Board, its subsequent rule makings and imposed financial obligations for dues, fees, and fines.

4. I contend proof of my allegations and a preponderance of evidence are borne out by the recorded CCR's in Elko County, organizational documents for the HOA filed with the Nevada Secretary of State, and 2006 HOA meeting records.

5. The attached response from the Respondent clearly attempts to confuse and misrepresent establishment of the ARC in the CCR's with the much delayed and improper establishment of an HOA.

6. I am asking the Ombudsman to declare the Ruby lake Estates Homeowners Associatio invalid and non-binding on the several homeowners. Preferably, I am asking that the HOA be declared improperly documented, invalid, and dissolved.

8. I have read the foregoing Affidavit consisting of _____ pages (including all additional attached pages), and it is true and correct to the best of my knowledge and belief.

(Signature of complainant) Beth Essington
Name Beth Essington
Street Address HC60 Box 760
City, State, Zip Ruby Valley, NV 89833
Area Code 775 / Phone 397-0376

Subscribed and sworn to before me
This 18 day of December, 2009

Andrea Hensley
NOTARY PUBLIC

ANDREA HENSLEY
Notary Public
State of Idaho

00125

EXHIBIT K

Elizabeth E. Essington
HC 60 Box 760
Ruby Valley, NV 89833

April 15, 2010

Ms. Sonya Meriweather, Program Officer III
2501 East Sahara Ave, Suite 202
Las Vegas, Nevada 89104-4137

Reference: Complaint against the Ruby Lake Estates Homeowners Association

Dear Ms. Meriweather;

This is a reminder of our phone conversation on March 29, 2010 during which you indicated I would be receiving a written response to my formal complaint to the Ombudsman concerning the Ruby Lake Estates Homeowners Association. I have yet to receive that response from your office. At the time we spoke you indicated you were about to attend a staff meeting to discuss my complaint. I would certainly like to receive notification of the results of that meeting.

When we spoke you stated that an HOA could only be formed in Nevada in two ways. First, by the developer and attached to each of the lot titles and included in the CC&R's before the lots were originally sold. Secondly, it could only be formed by written consent of 100% of the individual owners after the lots were sold. I would appreciate it if you could provide me with a reference as to where I can locate those requirements. As you know, the organizers of the alleged Ruby Lake Estates HOA attempted to form the HOA 13 years after the subdivision was formed through a mere show of hands vote of an alleged simple majority of owners.

I understand the Ombudsman's office was established to assist owners with difficulties arising from the management of HOA's. If your office has determined that it is unable to assist me because the Ruby Lake Estates HOA was improperly constituted, I would appreciate your so informing me. I would appreciate your candor in this matter. I shall await your written response to this request.

Sincerely,

Elizabeth Essington

EXHIBIT L

JIM GIBBONS
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR OWNERS IN
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
CICOmbudsman@red.state.nv.us
http://www.red.state.nv.us

JANNIE GURNWALL
Director

PAUL J. ANDERSON
Administrator

LINDSAY WITTE
Ombudsman

July 1, 2010

Ms. Elisabeth Essington
HC 60 Box 760
Ruby Valley, Nevada 89833

Dear Ms. Essington:

This office has completed the review of your Intervention Affidavit dated December 18, 2009, received in this Office on December 22, 2009 and forwarded to me initially on January 28, 2010. On March 8, 2010, I wrote to you indicating there would be a review of the matter.

We have carefully reviewed your allegations – that Ruby Lakes Estates Homeowners Association (RLEHOA) is an invalid homeowner association. Your association, on the other hand, asserts that RLEHOA is a proper homeowner association under NRS 116 per advice from its legal counsel.

We reviewed information sent from you with your Intervention Affidavit, which included the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions (dated September 6, 1989).

We also received information sent to this office by the Association Board President and the Board's attorney, as follows: a newsletter (that appears to be from 1987) that pertained to collecting association fees for road maintenance, weed control and possible legal fees; an August 12, 2006 copy of Board minutes, in part, adopting association bylaws; the bylaws; a February 21, 2000 letter to property owners regarding (in part) the landowners' responsibility to maintain the roads, the establishment of a fee for road grading, and the deeding of the wells from the Wrights to the Association; a June 18, 2010 letter from Attorney Wines to this office indicating his legal advice to the Association that it is an association obligated to comply with the provisions of NRS 116.

For these reasons, we are not, as you requested, going to declare that Ruby Lake Estates Homeowners Association is invalid. In other words, it is our view that this Association is

00122

required to comply with the laws pertaining to homeowner associations, specifically NRS 116 and related laws and regulations.

Sincerely,

Lindsay Waite
Ombudsman

Sonya Meriweather
Program Officer III

cc: Gail Anderson, Administrator, Nevada Real Estate Division
Lee Perks, President, RLEHA, 687 6th St., Suite #1, Elko, NV 89801
Robert J. Wines, Attorney at Law, P.O. Box 511, Elko, NV 89803

EXHIBIT M

VOLUME 1 ISSUE 4

Ruby Lake Estates Newsletter

July 2010

Receivina RLEHA Information

We will be continuing to keep you up to date in regards to what is happening in our community via this newsletter and other types of correspondence. Please let Valeri know if you would like to receive information via e-mail, fax or mail she would be happy to update your preference in our system. You can contact Valeri @ valeri@perkspetroleum.com, via fax 775-358-4411 or call her at 775-358-4403.

Message from the President

Dear Members,

Well the Association has had a busy and sorry to say difficult beginning to the year. If you were not aware, one of our Members filed a complaint with the State of Nevada Ombudsman's Office this last December in regards to the validity of our Homeowners Association. The process was not a quick one. The Ombudsman's Office took the complaint very seriously with having the Attorney Generals Office review the complaint. We received their official opinion July 1, 2010 stating that we are a legal homeowners association and are required to follow Nevada Revised Statute 116. I am including a copy of that decision with this Newsletter. What bring me the greatest sadness is that the association wasn't being attacked, but the person who represents us was questioned as to his knowledge of the law and that was our legal council Bob Wines. As far as I am concerned Bob had not ever steered us wrong in his opinions and has always taken our Associations business very seriously. I am also going to include some of the original correspondence from the original board in regards to dues and maintenance of the subdivision as this was the intent from the beginning to have an association. But needless to say the investigation was not with out cost and the Board may have to consider a special assessment of dues to cover the additional legal fees caused by this complaint. This will be a very important agenda item for the Members meeting so I hope you all can attend so that we may have your input on the matter. But back to happier events we would like everyone to know that we have cleaned up all the architectural violation notices we had as of year. We also have additional lots with building permits in to add structures to their lots while others a completing their structures started last year. We are growing and I believe we are becoming a better and more pleasurable community. I am always available to listen to your comments and concerns so please do not hesitate to call me. Look forward to seeing you at the annual meeting.

Lee

Contact Information

Payment Address

765 East Greg St #103

Sparks, Nevada 89431

775-358-4403

Submit Plans for Architectural Review & Correspondence

687 6th Street, Suite 1

Elko, Nevada 89801

Meeting Dates

Executive Board

687 6th St, Elko, 1:30P.M.
January 15, 2010
April 16, 2010
July 16, 2010
October 15, 2010

Annual Members Meeting

Ruby Valley Community Hall
August 7, 2010
@ 11:00 A.M.

Board Members

Lee Perks, Pres.
Mike Cecchi, V.P.
Dennis McIntyre, Treas.
Valeri McIntyre, Sec.
Mel Essington, Dir.
Bill Noble, Dir

Spring Weed Abatement

The Board is sorry to say that the Spring Weed Abatement was not completed. We tried to hire a person certified in chemical spraying to do our spring application, but due to the circumstances out of their control the process was not completed. We are now anticipating that the weed control process will be completed this fall. There will be additional work need for the fall application as now the "V" ditches will have to be mowed prior to the application process for the best results. If anyone would like to volunteer any of their services for any of this process it would be greatly appreciated.

Thank you,

The Board

Annual Members Meeting
August 7, 2010
@ 11:00 A.M.
Bar-B-Que immediately following
Come meet your neighbors

In need of Volunteers

We will be in search of persons willing to work on the election committee for the annual Members Meeting in August. The responsibilities will be of collecting ballots at the meeting and tallying the votes per the recommended procedures. If you are interested in helping please let Lee or Valeri know. Lee@perkspetroleum.com or Valeri@perkspetroleum.com via mail 765 East Greg Street, Sparks, Nevada 89431 or fax 775-358-4411. We can be reached also at 775-358-4403

Election:

Along with this newsletter the "Official Ballots" for the 2010 Elections will be included. Please mail the ballots back by 8/5/10 in the self addressed envelope or bring them to the Annual Members Meeting.

Architectural Committee

This Committee would like to remind everyone that plans for lot improvements need to be mailed to Bob Wines office at 687 6th Street Suite 1, Elko, Nevada 89801, to be distributed to the Committee from there. You may contact Mike Cecchi with any preliminary questions you may have at:

Mike Cecchi
C/O Bramco Construction
325 South 18th St.
Sparks, Nevada 89431
775-356-1781 / cell 775-741-7610
mike@bramcoconst.com

Attached to this newsletter:

Ombudsman's Ruling in regards to the status of the Ruby Lake Estates Homeowners Association and its compliance with NRS 116. Also included are newletters from the original board and its intent to collect dues for road maintenance and other common needs for the subdivision.

Just for Thought:

A Strong Board Member Exhibits:

Good Character, Strong Judgement, A willingness to serve, they are Committed to the best interests of the ***Community as a whole***, Possess Relevent Experience or Background for the job, Previous volunteer service, and strong "People Skills"

Weak Board Members Are:

Unable to Put the Welfare of the Community first, Work behind the Board to run things their own way, are impulsive or quick tempered, Have a Personal or Hidden agenda, Put their individual interests first, Have little or no experience in management, Leadership or Service, and are ineffective and unable to work with others for the common good.

EXHIBIT N

VOLUME 2 ISSUE 1

Ruby Lake Estates Newsletter

December 2010

Contact Information

Payment Address

765 East Greg St #103

Sparks, Nevada 89431

775-358-4403

Submit Plans for Architectural Review & Correspondence

687 6th Street, Suite 1

Elko, Nevada 89801

Meeting Dates

Executive Board

687 6th St, Elko, 1:30P.M.
January 21, 2011
April 22, 2011
July 15, 2011
October 14, 2011

Annual Members Meeting

Ruby Valley Community Hall
August 13, 2011
@ 11:00 A.M.

Board Members

Lee Perks, Pres.
Mike Cecchi, V.P.
Dennis McIntyre, Treas.
Valeri McIntyre, Sec.
C Mel Essington, Dir.
Dennis Cunningham, Dir

Receiving RLEHA Information

We will be continuing to keep you up to date in regards to what is happening in our community via this newsletter and other types of correspondence. Please let Valeri know if you would like to receive information via e-mail, fax or mail she would be happy to update your preference in our system. You can contact Valeri @ valeri@perkspetroleum.com, via fax 775-358-4411 or call her at 775-358-4403.

Message from the President

Dear Members,

Merry Christmas to everyone! Winter is settling in with a couple of inches of snow with a lot of drifts around the Estates. A couple of sections of roads are starting to drift as of last week making travel around the estates a little more difficult.

I would like to welcome our new board member Dennis Cunningham. I would like to thank Dennis for volunteering his time to help our community.

Several more residences are close to completion. This will give us 12 residences with rumors of a couple of more starting in spring. Barrick Gold has purchased the property on both sides of Ruby Lake Estates. I have had a little personal contact with Barrick Gold so far. We do not know why they have purchased the ranch lands yet, but I am sure we will know soon.

We have purchased several sections of culverts but the weather has put a halt to the install most likely until next spring. Our goal is to install 12 culvers where ever needed over the next several years to help control the eroding of the road drainage ditches.

Unfortunately we are still spending additional attorney fees because one member continues to disagree with the board. The State of /Nevada has stated that we are a legitimate association in writing and we are mandated to collect dues, have insurance, pay taxes, etc,etc.

Our dues are due again January 1, 2011, but not considered past due until January 31, 2011. Please help the board save time with you timely remittance.

Best wishes to everyone

Lee

00096

Spring Weed Abatement

We still have our chemicals purchased for our Weed abatement program. Due to the unfortunate availability of volunteers and the wind we were unable to proceed with the spraying this Fall. We hope we will complete it this in the Spring. Due to the delay the some of the growth in the ditches will have to be mowed prior to applying the chemicals. Please let the Board know if you would like to volunteer to help in the Spring so we can keep our ditches flowing and our fire threat down.

Thank you.

The Board

Annual Members Meeting
August 13, 2011
@ 11:00 A.M.
Bar-B-Que immediately following
Come meet your neighbors

In need of Volunteers

We are always looking for volunteers. We will be in need of volunteers for the Spring Weed Abatement. This summer we will need election volunteers and person willing to help out with the annual Bar-B-Que If you are interested in helping please let Lee or Valeri know. Lee@perkspetroleum.com or Valeri@perkspetroleum.com via mail 765 East Greg Street, Sparks, Nevada 89431 or fax 775-358-4411. We can be reached also at 775-358-4403

Architectural Committee

This Committee would like to remind everyone that plans for lot improvements need to be mailed to Bob Wines office at 687 6th Street Suite 1, Elko, Nevada 89801, to be distributed to the Committee from there. You may contact Mike Cecchi with any preliminary questions you may have at:

Mike Cecchi
C/O Bramco Construction
325 South 18th St.
Sparks, Nevada 89431
775-356-1781 / cell 775-741-7610
mike@bramcoconst.com

Attached to this newsletter:

Attached to this newletter is you 2011 Assessment. Please be advised it is due by January 1, 2011, but will not be considered late until February 1, 2011. We would appreciate your timely payment.

Member Contact Information:

If any of your contact information has changed or if you would like to add your email please let me know. You can reach me by phone 775-358-4403, fax 775-358-4411 or email valeri@perkspetroleum.com

EXHIBIT O

KERN & ASSOCIATES, LTD.
GAYLE A. KERN, ESQ.
Nevada Bar # 1620
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511
Telephone: (775) 324-5930
Facsimile: (775) 324-6173
E-mail: gaylekern@kernltd.com

Attorneys for Respondents and Counter Claimants

STATE OF NEVADA

IN THE DEPARTMENT OF BUSINESS AND INDUSTRY

REAL ESTATE DIVISION

ARTEMIS EXPLORATION COMPANY, on behalf of itself and all others similarly situated,

Claimants,

vs.

RUBY LAKE ESTATES ARCHITECTURAL COMMITTEE, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, LEROY PERKS, VALERI MCINTYRE, DENNIS MCINTYRE, MICHAEL CECCHI,

Respondents.

NRED Control No. 11-82

RESPONDENTS/COUNTER CLAIMANT'S THIRD SUPPLEMENTAL LIST OF DOCUMENTS

RUBY LAKE ESTATES ARCHITECTURAL COMMITTEE, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, LEROY PERKS, VALERI MCINTYRE, DENNIS MCINTYRE, MICHAEL CECCHI,

Counter Claimants,

vs.

ARTEMIS EXPLORATION COMPANY,

Counter Respondents.

Respondents/Counter Claimants, Ruby Lake Estates Architectural Committee, Ruby Lake Estates Homeowner's Association, Leroy Perks, Valeri Mcintyre, Dennis Mcintyre, Michael Cecchi, (collectively "Ruby Lake Estates"), by and through their attorneys, Kern & Associates, Ltd. submit this Supplemental List of Documents:

DOCUMENTS

Ruby Lake Estates produces the following documents:

Bates Nos. RLE 015A and RLE 016A.

Ruby Lake Estates reserves the right to supplement the above list of documents and further, reserves the right to use any document or thing identified by Claimant/Counter-Respondent, Artemis Exploration Company.

DATED this 30th day of November, 2011.

KERN & ASSOCIATES, LTD.

GAYLE A. KERN, ESQ.
Attorneys for Defendants

KERN & ASSOCIATES, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern & Associates, Ltd., 5421 Kietzke Lane, Suite 200, Reno, NV 89511, and this day I served the foregoing document described as follows:

RESPONDENTS/COUNTER CLAIMANT'S THIRD SUPPLEMENTAL LIST OF DOCUMENTS

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

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

X Via e-mail transmission

_____ Personal delivery, upon:

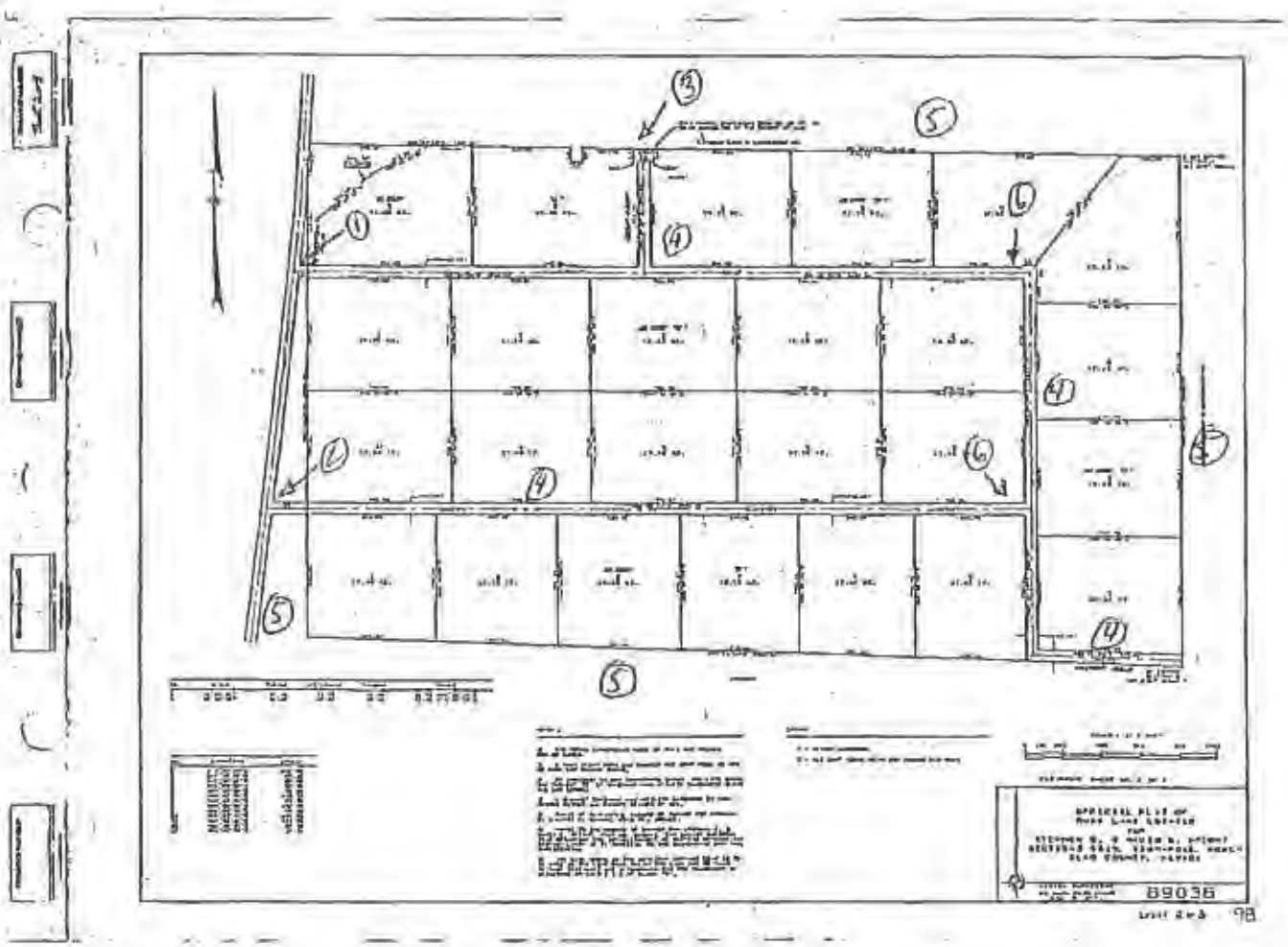
_____ United Parcel Service, 2nd Day Air, addressed to:

Travis W. Gerber
Gerber Law Offices, LLP
491 4th Street
Elko, NV 89801

DATED this 30th day of November, 2011.

Teresa A. Gearhart
TERESA A. GEARHART

KERN & ASSOCIATES, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930



① CATTLE GUARD - RLE ENTRANCE over head sign - street sign

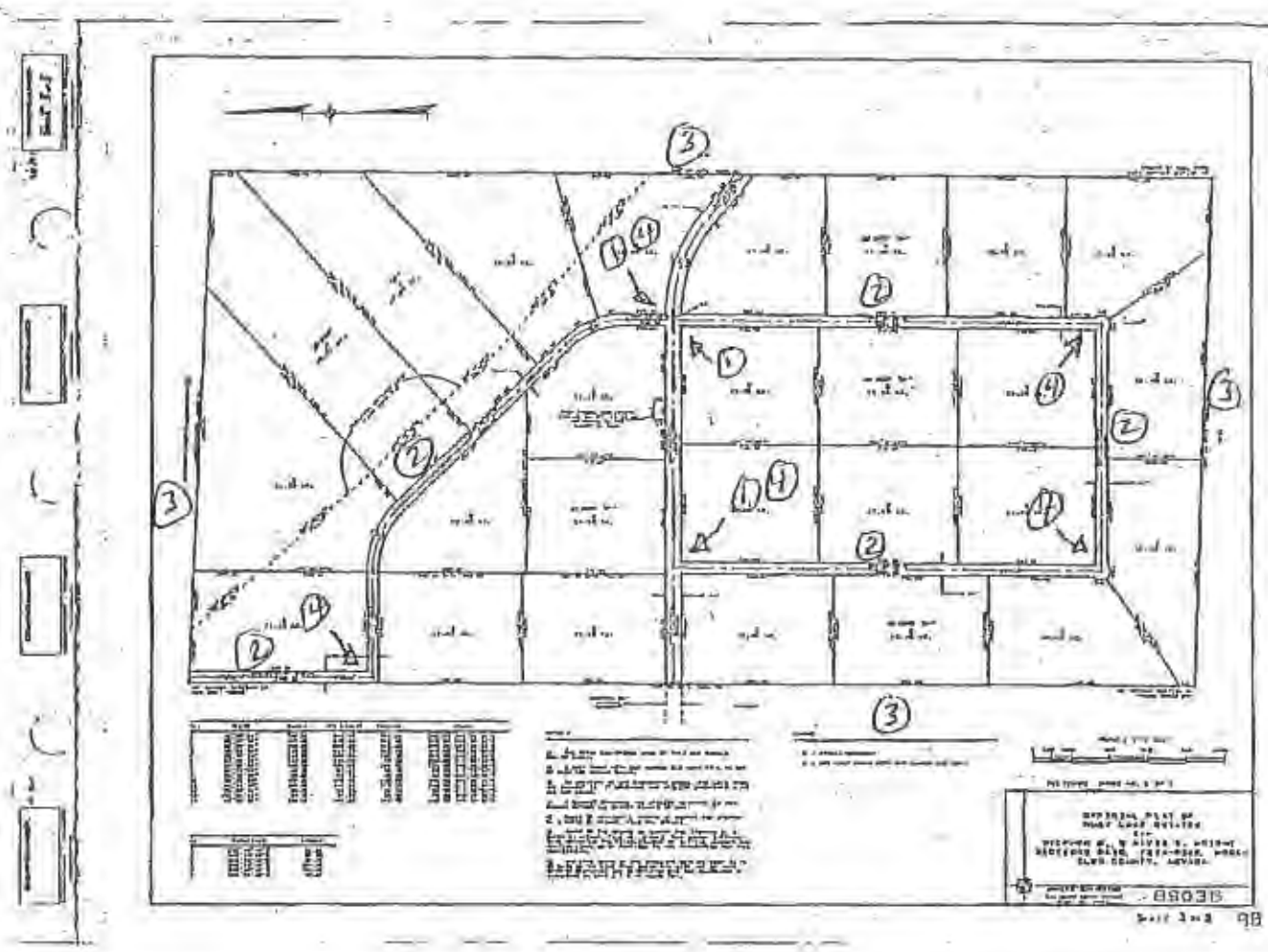
② SAME AS ABOVE

③ Property OWNED By RLEHA

④ ALL ~~RA~~ ROADS EXCEPT RUBY VALLEY RD

⑤ ALL PERIMETER FENCING

⑥ CULVERTS



① GATES

② ALL Rds except CCC Rd

③ ALL Perimeter Fencing

④ STREET SIGNS

EXHIBIT P

Rural Living in Elko County

Things You Need To Know About Rural Living

Access

The fact that you can drive to your property does not necessarily guarantee that you, your guests and emergency service vehicles can achieve that same level of access at all times. Please consider:

Emergency response times (Sheriff, fire suppression, medical care, etc.) cannot be guaranteed. Under some extreme conditions, you may find that emergency response is extremely slow and expensive.

There can be problems with the legal aspects of access, especially if you gain access across property belonging to others. A visual inspection of a property may reveal a road that is not shown on a map or a road that bisects a parcel. It is wise to obtain legal advice and understand easements and road issues when these types of questions arise. A beginning point would be to contact Elko County Planning and Zoning at 775-738-6816.

You can experience problems with the maintenance and cost of maintenance of your road. Elko County maintains approximately 1100 miles of paved and graveled roads. There are many more miles of unimproved prescriptive use roads and tracks that are not maintained. Many rural properties are served by private and public roads which are maintained by private road associations. There are many roads that are not maintained by the county - no grading or snow plowing. There are even some public roads that are not maintained by anyone! Make sure you know what type of maintenance to expect and who will provide that maintenance. Information concerning road maintenance can be obtained by contacting the Elko County Road Supervisor at 775-738-5036.

Extreme weather conditions can destroy roads. It is wise to determine whether or not your road was properly engineered and constructed.

Extreme weather changes may strand the motorist in rural areas on roads that are infrequently travelled upon. It is important to carry clothing and provisions while in rural Nevada.

Many large construction vehicles cannot navigate small, narrow roads. If you plan to build, it is prudent to check out construction access.

School buses travel only on maintained county roads that have been designated as school bus routes by the school district. You may need to drive your children to the nearest county road so they can get to school.

EXHIBIT Q

DOC # 580650
08/31/2007 11:37 AM
Official Record
Requested By
ROBERT J. WELLS PROF. CORP
Elko County - NV
Jerry D. Reynolds - Recorder
Page 1 of 2 Fee: 15.00
Recorded By: NH RPTT: 0.00

APN: 007-03A-053

Send tax statement to:

Ruby Lake Estates, Homeowner's Association
c/o Lee Perks
765 E Greg Ste # 103
Sparks, NV 89431

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE, made and entered into as of the 28 day of Aug., 2007, by STEPHEN G. WRIGHT and MAVIS S. WRIGHT, husband and wife as joint tenants with right of survivorship, Grantors; and RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, a Nevada nonprofit co-operative association, Grantee;

WITNESSETH:

That the Grantors, for and in consideration of the sum of TEN DOLLARS ($10.00), lawful, current money of the United States of America, to them in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said Grantee, and to the successors or assigns of the Grantee, forever, all that certain real property situate, lying and being in the County of Elko, State of Nevada, and more particularly described as follows:

See Exhibit "A" attached hereto and incorporated herein.

TOGETHER WITH any and all buildings and improvements situate thereon.

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

SUBJECT TO all rights of way, easements, assessments, reservations and restrictions of record.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances unto the said Grantee, and to the successors and assigns of the Grantee forever.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands as of the day and year first hereinabove written.

STEPHEN G. WRIGHT

MAVIS S. WRIGHT

STATE OF NEVADA)
) SS.
COUNTY OF ELKO)

On this 28 day of August, 2007, personally appeared before me, a Notary Public, STEPHEN G. WRIGHT and MAVIS S. WRIGHT, who acknowledged that they executed the foregoing instrument.

NOTARY PUBLIC STATE OF NEVADA
County of Elko
JOLYNE SMITH
Appt No. 03-83941-8
My Appt. Expires June 4, 2011

NOTARY PUBLIC

EXHIBIT "A"

That Certain parcel of land located in Section 9, T 28 N, R 58 E, MDB & M., Elko County, Nevada, being those parcels offered for dedication as shown on the official plat of RUBY LAKE ESTATES SUBDIVISION on file in the office of the Elko County Recorder, Elko, Nevada, as file number 281674, more particularly described as follows:

Commencing at the East ¼ corner of said Section 9, thence N 89° 21' 10" W, 2,726.17 feet along the North line of said RUBY LAKE ESTATES SUBDIVISION to corner number 1, the true point of beginning;

Thence continuing N 89° 21' 10" W, 100.01 feet along the said North Line of the RUBY LAKE ESTATES to corner number 2;

Thence South, 61.41 feet to corner number 3;

Thence East, 100.00 feet to corner number 4;

Thence North, 60.28 feet to corner number 1, the point of beginning, containing 6,084.50 square feet more or less.

(Metes & Bounds description contained in deed recorded January 18, 1991, Book 744, page 260, as file number 302103, Official Records, Elko County, Nevada Recorder's office.)

EXHIBIT R

EXHIBIT S

485985

SEND TAX STATEMENT TO:
Ruby Valley Volunteer Fire Dept., Inc.
c/o Steve Wines
HC 60, Box 685
Ruby Valley, NV 89833

APN 007-01A-052

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE, made and entered into as of the 24th day of July, 2002, by and between STEPHEN G. WRIGHT and MAVIS S. WRIGHT, husband and wife, of Wells, Nevada, First Parties and Grantors, and, RUBY VALLEY VOLUNTEER FIRE DEPARTMENT, INCORPORATED, a Nevada Non-profit corporation, of Ruby Valley, Nevada, Second Party and Grantee;

WITNESSETH:

For good and valuable consideration, the receipt of which is hereby acknowledged by the First Parties, First Parties do by these presents, grant, bargain, sell, convey and confirm unto the Second Party, and to the successors and assigns of the Second Party, the hereinafter described parcel of land and water and water rights situate in the County of Elko, State of Nevada, situate in Section 15, T.28N., R.58E., M.D.B.&M., described as follows: Real Est

Commencing at the Southwest corner of said Section 15, thence N 0° 02' 03" E, 2751.09 feet along the West line of said Section 15 to a point being on the Northerly line of Harrison Drive as shown on said plat of Ruby Lake Estates, thence S 89° 44' 45" E, 1359.73 feet along the said Northerly line of Harrison Drive to corner no. 1, the true point of beginning.

Thence continuing S 89° 44' 45" E, 100.00 feet along the said Northerly line of Harrison Drive to corner no.2;

Thence N 0° 15' 15" E, 60.00 feet to corner no. 3;

Thence N 89° 44' 45" W, 100.00 feet to corner no. 4;

Thence S 0° 15' 15" W, 60.00 feet to corner no. 1, the point of beginning containing

6,000.00 square feet more or less.

TOGETHER WITH those certain water rights appropriated pursuant to Permit number 64198, consisting of sufficient quantities of water for Fire Protection, being 0.56 cfs, from an Underground source.

TOGETHER WITH any and all buildings and improvements situate thereon.

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

SUBJECT TO all existing covenants, conditions, restriction, reservations, rights of way and easements of record.

TO HAVE AND TO HOLD, all and singular, the said premises and water rights unto Second Party, its successors and assigns forever.

IN WITNESS WHEREOF, the First Parties have hereunto set their hands as of the day and year first above written.

First Parties:

STEPHEN G. WRIGHT

MAVIS S. WRIGHT

STATE OF NEVADA)
) SS.
COUNTY OF ELKO)

On this 24 day of July, 2002, personally appeared before me, a Notary Public, STEPHEN G. WRIGHT and MAVIS S. WRIGHT, known or proved to me to be said persons, who acknowledged that they executed the foregoing instrument.

Janyce E Jenkins
NOTARY PUBLIC

JANYCE E. JENKINS
NOTARY PUBLIC - STATE of NEVADA
Elko County - Nevada
CERTIFICATE # 02-1432-6
APPT. EXP. SEPT. 12, 2004

Mekes + Bounds rec
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MARY E. REYNOLDS
ELKO CO. RECORDER

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EXHIBIT T

EXHIBIT U

Robert Robey, Private Citizen, Las Vegas, Nevada
Roy Oxenrider, Private Citizen, Las Vegas, Nevada
John Radocha, Private Citizen, Las Vegas, Nevada

Chairman Anderson:

[Roll was called and Committee rules and protocol explained.] Let us start with Senate Bill 261 (1st Reprint).

Senate Bill 261 (1st Reprint): Makes various changes relating to common-interest ownership. (BDR 10-789)

Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada:

I would like to explain how this bill was brought forward.

The Real Property Section of the State Bar of Nevada (Bar) has a common-interest community (CIC) subcommittee, which is composed of about 15 lawyers who represent developers, homeowners association boards, and community managers. Our mission statement, so to speak, as volunteers from the Bar, is to bring forward legislation in an unbiased fashion which we feel will benefit the real estate community as a whole. As the Committee may be aware, *Nevada Revised Statutes* (NRS) Chapter 116 was adopted in 1991 as the Uniform Common-Interest Ownership Act (Act). Since that date, there have been two revisions to the Act made by the Uniform Laws Commissioners, once in 1994 and again in 2008.

Our subcommittee looked at the revisions that have been made to the Uniform Act and selected three topics we felt were needed in Nevada and are the subject of this bill. Those are exempting nonresidential condominiums from NRS Chapter 116, exempting cost-sharing agreements from NRS Chapter 116, and creating a new category of master planned community.

I would like to go through those sections of the bill. Sections 2 and 3 deal with nonresidential condominiums, and they are defined in section 2 as condominiums in which all units are restricted exclusively to nonresidential use. Currently the law exempts nonresidential planned communities, but nonresidential condominiums are not exempt from the Act. The Bar subcommittee felt that the protections that are afforded in NRS Chapter 116 and its various provisions are more tailored toward a residential community and do not really fit the nonresidential context. An example of a nonresidential condominium would be an office condominium. They do not need all of the protections and the consumer-oriented provisions that are found in NRS Chapter 116.

Basically section 3 allows a developer of an office condominium to exempt the project completely out of the Act or out of certain sections of the Act. Likewise, section 4 of the bill exempts cost-sharing agreements. An example of a cost-sharing agreement would be a road maintenance agreement. I recall several years ago a group of owners had a private road with 15 lots, and they had to form an association and thus had to comply with NRS Chapter 116 simply because of the cost-sharing agreement to maintain the road. That was the only common-use property. Section 4 would exempt cost-sharing agreements from the provisions of the Act so that the owners of lots, such as that group, would not have to form an association. Also, two associations or an association and a private lot owner can enter into a cost-sharing agreement.

I have provided written testimony (Exhibit C). The tabs represent the Uniform Act provisions from which this bill was taken.

Section 5 creates a new category called master planned communities. This is identical to section 2.123 of the Uniform Act. It is tab "C" of the exhibit. Currently there is no provision for master planned communities in NRS Chapter 116. I want to differentiate from master associations, which are in NRS 116.212. A master planned community is a very large community of at least 500 acres, and the developer has to have reserved the right to develop at least 1,000 units. This is a long-range community which is developed over many years, and at the outset the developer does not have a specific plan for each of the portions of that community. It is therefore difficult to comply with some of the provisions of NRS Chapter 116.

Section 5, subsection 2, of the bill exempts master planned communities from stating the maximum number of units which will be developed. It would be difficult for a developer to identify with any certainty the maximum number of units which may be built in these larger projects. The second part of subsection 2 should be read together with subsection 3, and together they say, at the outset, the developer does not have to comply with the requirements that must be set forth in the declaration, but once a unit in the master planned community is conveyed to a purchaser, then the declaration must contain everything that any other declaration must contain.

Nevada Assembly Committee Minutes, May 11, 2009

May 11, 2009
Nevada Assembly Committee on Judiciary
Seventy-Fifth Session, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:16 a.m. on Monday, May 11, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:
Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:
Assemblyman John C. Carpenter (excused)
Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:
None

STAFF MEMBERS PRESENT:
Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:
Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada; also representing Lake at Las Vegas Joint Venture, Las Vegas, Nevada
Michael Buckley, Chair, Real Property Section, State Bar of Nevada; Chair, Commission for Common-Interest Communities and Condominium Hotels
Mandy Shavinsky, Real Property Section, State Bar of Nevada
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada.
John Leach, Las Vegas, Nevada, representing the Nevada Chapter, Community Associations Institute
Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry

The counterpart to that is subsection 4, which basically states that the undeveloped portion of the planned community is not subject to NRS Chapter 116. As the area is brought in, it becomes subject to NRS Chapter 116.

Assemblyman Manendo:

Because there are no homes developed at that time, you want these developments to be exempt from NRS Chapter 116 until there is a home built?

Karen Dennison:

The idea is that there is a lot of property and you do not have specific plans and therefore you cannot make specific disclosures or provisions in the covenants, conditions and restrictions (CC&Rs) which would otherwise be required of a smaller community. The idea of a master planned community is that the declaration must be amended--which is what the Uniform Act language states--to include those provisions once a unit is sold. So for the units that are sold, and for all of the units that were previously sold, you would have a complete declaration, but for the undeveloped portion of the community, there will not necessarily be references in the declaration, or there will not be disclosures in the public offering statement.

Currently a developer cannot add unspecified real estate from the outset which exceeds 10 percent of that which was described in the declaration. Section 5, subsection 6, would exempt a master planned community from that requirement, so if there is other unspecified real estate which was not specified at the beginning to be added, it can be added by the developer.

Finally, subsection 7 of section 5 states that the declarant can set its own terms for declarant turnover of the association. We are talking about turnover of board control to the owners. Generally speaking, current law states that when 75 percent of the units have been sold, the association must be turned over to the owners. In a large master planned community you could have many acres of land that are yet undeveloped, and it is in the best interest of the developer, in that case, to keep control considering the developer's investment in the community. The consumer protection in all of this is that the declaration must specify the conditions under which the board is assumed by the owners, so that anyone going into that community is going to know when developer control will be turned over to the owners.

Chairman Anderson:

I am curious about how some things are going to fit. In these master planned communities, is there going to be a specified date of when the sections are going to be turned over, or is it going to be open-ended? In this economy, one may be in the middle of development for years and it is not known how large the community is going to be.

Karen Dennison:

Your point is well taken, and part of the reason for the master planned community section of the Uniform Act has to do with the ups and downs of market conditions and the fact that this can be a long, drawn-out process over decades, even in the best of circumstances. Section 5, subsection 7, does provide that the declarant must, from the outset, specify the conditions under which the control turnover will be made. It is set going in, and there is also a provision which allows a declarant to voluntarily surrender the control, which is also in current law.

Section 7 is the definition of a common-interest community. This is the Uniform Act definition of CIC, and the benefit is that it talks with specificity as to what makes a community a CIC, which is the sharing of real estate taxes, insurance premiums, the maintenance of improvements and services, or other expenses related to the common elements. It also talks about expenses pertaining to real estate which is described in the declaration which may not be common elements, for example, many large communities are required to maintain median strips and public roads.

Chairman Anderson:

So section 5, subsection 7, is where the time factor is further defined?

Karen Dennison:

Yes. This refers to the declarant voluntarily surrendering all rights to control the activities of the association as an option for the

declarant. Either the conditions for turning over must be specified initially or there is the option to voluntarily surrender control, which is in current law.

Chairman Anderson:

Is this going to change the status of the amounts of reserves that these business parks have to maintain? Will they still be able to participate in making sure that the reserves are such to take care of the common interests? How does this impact the public meetings requirement and the election of the boards of directors?

Karen Dennison:

This bill does not affect the reserves requirements for associations, which are generally based on the property that is annexed to or included in the declaration. Meetings and other rights of homeowners would remain intact. The only changes are the ones in subsections 1 through 7 of section 5 of the bill.

Chairman Anderson:

The nonresidential condominium groups are still going to have public meeting requirements?

Karen Dennison:

Nonresidential condominiums could conceivably have none of the requirements of NRS Chapter 116, but other specific provisions could be adopted. One of the choices in this law is that the developer could choose to have only the assessment lien provisions apply. This would allow for foreclosure on the individual condominiums that do not pay their assessments. It is conceivable that none of the provisions that are normally afforded to residential owners would be allowed. Current law does allow commercial planned communities to be exempt from NRS Chapter 116 entirely, so this bill mirrors that.

Chairman Anderson:

I wanted to make sure I was clear that we are not taking away a right that they currently have.

Assemblyman Horne:

It looks like we are creating a Frankenstein of CICs. We are taking what we want and leaving out bits and pieces of other laws.

I would like some more clarity on the nonresidential condominiums in section 3. You said it could be an office building, is that correct?

Karen Dennison:

Yes, an office building would be probably the most common example of a nonresidential condominium.

Assemblyman Horne:

I have never heard of an office complex called condominiums before. Is that in statute?

Karen Dennison:

Currently, both residential and nonresidential properties can be subdivided into condominiums, and the idea is that a person can own their office within, say, a high-rise building by making it a condominium. There currently are provisions in the law which allows office buildings to become condominiums.

Assemblyman Horne:

Section 3, subsection 2, paragraph (b), states "purchasers of units must execute proxies, powers of attorney, or similar devices in favor of declarant..." Could you explain that please?

Karen Dennison:

One of the elections that can be made by a commercial condominium developer would be that the entire chapter of NRS Chapter 116 would apply to the project. If that is the case, then there are a couple of provisions here from which the commercial condominium would be exempt. One of those would be subsection 2, paragraph (b), which provides that the purchasers of units execute proxies or powers of attorney or similar devices in favor of the declarant regarding specific matters which must be enumerated in the proxy. So up front, an office owner could be required to give the declarant certain voting rights with respect to matters that come before the association.

Assemblyman Horne:

This is saying they would not have to do that if they are exempt?

Karen Dennison:

If they are entirely exempt from the Uniform Act, they are then not governed by the Act and the proxies. One of the features of this bill is to allow proxies to be given. Now NRS Chapter 116 only allows proxies to be given to people who live in the CIC or a relative of that person, so it is an owner, a tenant, or a relative of the owner. This provision, if one were to opt into NRS Chapter 116, would allow proxies to be given to the declarant as well.

Assemblyman Horne:

It would make it mandatory?

Karen Dennison:

It would make it mandatory only if the declaration so required. It would be in the declaration.

Assemblyman Horne:

Section 5, subsection 6, states, "Limitations in this chapter on the addition of unspecified real estate do not apply to a master-planned community." You were saying that a master planned community was 500 acres or more, so this provision would allow them to add additional unspecified acreage at their whim?

Karen Dennison:

The limitation of 10 percent of unspecified acreage would not apply to the master planned community, so if there were an opportunity to acquire and develop another portion of land which exceeded 10 percent of the original amount specified in the declaration, then that could be added to the master planned community.

Assemblyman Horne:

That seems problematic if we are also going to consider them not having the maximum number of units to declare. It seems very expansive and open-ended, and it does not seem like a master plan anymore.

How is the change in the definition of a CIC going to change existing law?

Michael Buckley, Chair, Real Property Section, State Bar of Nevada:

Last August the Attorney General's (AG) Office, for the Real Estate Division (Division), opined that if there were CC&Rs in place, then there was a CIC. I know the Commission for Common-Interest Communities and Condominium Hotels (Commission) and our subcommittee in the Real Property Section believed that was an overly broad interpretation of what a CIC is. This is the uniform definition and it tries to tighten up the interpretation a little so that just because you have CC&Rs does not necessarily make it a CIC. There has to be an obligation to pay taxes, common elements, or common expenses. It is part of the same law that NRS Chapter 116 came from. It is not intended to change the definition of CIC where they have a declaration that complies with NRS Chapter 116, but to exclude other arrangements that might not rise to a full CIC.

Assemblyman Horne:

Do you know how many jurisdictions have adopted this Uniform Act?

Michael Buckley:

The Uniform Common Interest Ownership Act was an expansion of the Uniform Condominium Act, and I believe the Uniform Condominium Act was adopted by 15 or 17 states. Then there is also something called a Master Planned Community Act, and I am not sure how many jurisdictions have adopted it. The Act was an idea to make one law that applies to condominiums, planned communities, cooperatives, et cetera, which was adopted in 1982 by the Uniform Laws Commissioners and then amended in 1994 and 2008. I believe it has been adopted in four to seven states. I know that Colorado and Connecticut have adopted it, and I think Alaska has too. We have changed it substantially since it came to Nevada.

Assemblyman Segerblom:

Would Summerlin and Lake at Las Vegas be master planned communities?

Karen Dennison:

If this law had been in effect, they could have been. In my opinion, I do not know how one could go back and make an existing community fall under this new law because the disclosures are already done and the maximum number of units has already been set. There are already developer control turnover provisions in the CC&Rs. So this bill would be prospective–for future communities.

Assemblyman Segerblom:

So assuming there are master planned communities, what about the neighborhoods? Do they have homeowners associations (HOAs)?

Karen Dennison:

There are one or two, or more, separate HOAs at Lake at Las Vegas. Generally the master association there controls the entire project.

Assemblyman Segerblom:

So we have the master planned community which would be governed by this bill, and then there are HOAs underneath it. Which law applies in examples like the 75-percent control?

Karen Dennison:

I would say that only the master association would be subject to the master planned community rules because the other associations would not fit the 1,000-unit, 500-acre criteria set forth in this bill.

Michael Buckley:

Assemblyman Segerblom has it right in that there is this big association and underneath it the smaller associations. In Summerlin for example, Howard Hughes would have been the developer, but for the other associations it would have been Pardee Homes or Pulte Homes, et cetera, and they would have had their own set of rules for their own group. There would be different issues for different associations.

Assemblyman Segerblom:

But it could not be argued that because there are fewer than 1,000 units in the community, then even for the HOAs the 75-percent rule does not apply because we have to look at them as part of the larger picture?

Michael Buckley:

No.

Assemblyman Cobb:

You mentioned the exemption from the rules for turning over the board in certain circumstances with some of these new developments coming up. I live in a newer development, and something I see as a substantial problem is that we are exempting

the developers from the rules but not the members who live under the CC&Rs. For example, the restriction on the overall number of rentals allowed within a homeowners association is currently included under NRS Chapter 116. If we were to allow for exemption of the developers under the 75-percent rule, would we also want to exempt all those other rules for the members as well?

Karen Dennison:

The purpose of section 5 is to overlay onto NRS Chapter 116 these particular rules for a master planned community. They are not intended to; in any way affect the other portions of NRS Chapter 116 which would apply to the master planned community association.

Assemblyman Cobb:

In the newer developments, if they have a prohibition against having a certain percentage of rentals, the developer generally builds all of those properties and is the first able to rent out properties that cannot be sold. So now we see the situation where individuals cannot afford their properties anymore, but cannot rent their properties because of the percentage rules. When they go to the board to try to get the rule changed, the developer owns the board and will not change the rules.

My question is, if we are going to give exemptions to the developer so they can stay in control of the board, is it not a good thing to provide the same exemptions to the members of the communities?

Karen Dennison:

The restrictions on the rentals would be in the CC&Rs, and that would be controlled by the amendment provisions of the CC&Rs, and developer control of the board does not allow the developer to control the amendments to the CC&Rs. Those are done by whatever percentage of owners is required to vote. Granted, the developer, in the beginning and for a long time, will have control of these master planned communities--will have control of the vote for the amendments-- but that is a fact of the CC&Rs. Let us say it is a majority requirement. When 51 percent are sold, then the owners would have, if they all voted, the ability to amend the CC&Rs without a developer vote.

Assemblywoman Parnell:

This issue came up before and I know you were going to address it. I could not agree more with Assemblyman Cobb. We need to pay attention to this issue in whatever homeowners association bills pass because it is happening in his area, and in mine, where there are X number of rentals owned primarily by the developer and if there are extenuating circumstances, the owner is unable to rent the property. We need to protect all homeowners, not just the developer-owner.

Chairman Anderson:

You are referring to Senate Bill 253 (1st Reprint), and it is in a work session document.

Mandy Shavinsky, Real Property Section, State Bar of Nevada:

I will be discussing sections 8, 12, 21, and 24. The purpose of our changes was to make certain changes to NRS Chapters 116 and 116B regarding references to plats and plans.
A plat is generally referred to as a final map and is one of the instruments that actually creates the CIC. One of the difficulties that the real estate practitioners and others have is that in sections 8, 12, 21, and 24, and in various other places throughout NRS Chapters 116 and 116B, are the references to the word "plans." There has been a struggle over what was the exact definition of the word "plans" in the context of the creation of a CIC. Generally, the declaration and the plat upon recordation create the CIC. In connection with trying to obtain some clarification as to what "plans" meant, we met with Ron Lynn at the Clark County Building Department, and Jeff Ohrn, formerly of the Clark County Surveyors Office, as well as the Nevada Association of Land Surveyors. After talking with all of those representatives and with various lawyers, we agreed that no one was in agreement on what the term "plan" meant, and that it was superfluous and quite confusing.

In addition, there are other sections of NRS Chapter 116 which seek to provide consumer protections in addition to whatever the word "plans" was intended to mean. What we have done with input from various governmental agencies, lawyers, and the

private surveyors association is to delete the words "and plan" out of several sections of this bill. The Committee will see those changes in the sections to which I have previously referred.

In section 12, subsection 2, paragraph (e), there is an addition of the words "with reference to an established datum..." That change was made to be analogous to NRS Chapter 116B, which passed in the 2007 Legislative Session. The surveyors we had talked to looked at that bill and this language, and there is a section that is exactly the same, and they determined that language would be helpful in locating dimensions and unit boundaries.

Section 12, subsection 4, is another analogous change. The word "elevations" was added in response to some comments by the Nevada Association of Land Surveyors. In subsection 5, there is a reference to the declarant providing a plan of development for a CIC and provisions that have to be met. This was the same concept as the word "plan." No one really knew what a plan of development was; however, there are provisions in the 400 series of NRS Chapter 116 which require and mandate the developer provide certain disclosures. We determined those disclosures always have to be made and that the disclosures set forth in section 5, so far as a plan of development goes, were confusing at best.

Chairman Anderson:

I understand the "plat" question, but what about the height of buildings and such? Are those also covered on a plat?

Mandy Shavinsky:

Those would definitely be covered on a plat.

Chairman Anderson:

I thought the plat was generally a physical description based upon the landmarks that are set for roads and other terrain features. I thought it also dealt with city zoning questions, and now you are of the opinion that by using the word "plat" consistently it will take care of all that?

Mandy Shavinsky:

I think that is a bigger question, but as far as the elevation of a particular building being included on a map, every final map I have seen contains an elevation of the building itself. There is usually not an elevation indicator for each single floor if you are talking about a high-rise condominium. Generally the height of the building is reflected on the final map. There are different measurements on how to calculate height.

In section 12, subsection 6, there are additional changes that were recommended by the Nevada Association of Land Surveyors. The Committee will see the word "independent" has been deleted. The Nevada Association of Land Surveyors wondered what "independent" meant, because generally a surveyor is contracted by the developer or a government association to prepare the plat. They determined the word to be quite confusing. I do not think it was in the Act as originally passed.

The additional deletion is in subsection 6 which had said that the plans of the units could be certified by an architect or engineer. Because we had deleted the word "plans" throughout NRS Chapter 116 this was no longer necessary.

Subsection 7 was originally included in this bill when it was proposed, and had been included in NRS Chapter 116B. This section says that one does not have to show the locations and dimensions of the unit boundaries and the limited common elements if the plat already shows those locations generally. We took this section out because there were some comments submitted by the City of Henderson and Clark County because their determination was that they wanted as much shown on the plat as possible. So, that change has been taken out, and this provision of NRS Chapter 116 will remain unmodified. An analogous change was also made to NRS Chapter 116B. This section was originally included in NRS Chapter 116B when it passed in 2007. We are proposing to remove it from NRS Chapters 116 and 116B.

The next section that was originally proposed to be deleted and has been added back in is section 21, which is a change to NRS 116.4119. This section was proposed to be deleted, but I think that was a mistake. This is the section I was referring to which provides consumer protection for homeowners, insofar as disclosing that the improvements marked "need not be built" should be built and that the declarant complete the improvements depicted on the site plan they provide to unit owners in connection

with the sales process. It will remain in the bill, as several members of our committee expressed concern that it should remain intact.

Section 24 has changes to NRS Chapter 116B which are exactly the same changes I have discussed. These are the same changes that were made to section 12. We are trying to make the plats provision in NRS Chapter 116 and NRS Chapter 116B analogous.

Chairman Anderson:

The bill is dropping the word "independent" for the land surveyors, so the part about professional engineers or architects is dropped at the same time. So if there is a professional engineer who is not the surveyor, are we not going to cover him?

Mandy Shavinsky:

The thought there was a licensed surveyor should be the only one signing that plat. As to different kinds of things like engineering plans, et cetera, which are not necessarily addressed by NRS Chapter 116, a licensed engineer could definitely sign those. The language that was taken out in regards to an architect or engineer was in reference to the "plans."

Chairman Anderson:

This then goes back to my original question of the difference between a master plan, which might include the number of stories in a hotel and the actual dimensions of the properties, as compared to a plat. Is that what we are removing in section 24?

Mandy Shavinsky:

Section 24 is analogous to section 12. Section 24 addresses NRS Chapter 116B while section 12 addresses NRS Chapter 116. They are the same changes; they just relate to different acts.

Chairman Anderson:

By removing the word "independent," are we removing the city and county surveyors?

Mandy Shavinsky:

The surveyor in each respective county would review a final map, and the different utilities always review the final plats, but they are not the ones signing and certifying the content of the plat. Usually a third-party private surveyor is responsible and puts his license on the line for signing those plats. The county surveyor would review all of the plats and then eventually sign off on the map as having reviewed it. Those are two different things.

Chairman Anderson:

Are we still guaranteeing that it is someone with a professional standing separate from the government entity or utility?

Mandy Shavinsky:

The word "independent" was deleted because no one really knew what it meant. The private surveyors who were contracted by developers to prepare, sign, and then submit the plats to the state were confused as to what categories had to apply for them to really be independent. That is, completely independent of, say, the Clark County surveyor or the Washoe County surveyor, because they have to review the plats anyway and this statute is not intended to take anything away from the county surveyors or in any way hamper their ability to protect the public in reviewing those plans before approving them for recording.

Michael Buckley:

I would like to add something to what Ms. Dennison said at the beginning of her testimony. It is not the policy of the State Bar to take a policy approach to anything; it is only to help make good law. I mention this in relation to section 5. If the Committee believes this is a policy issue, we have no problem backing away from that proposed amendment on master planned communities. As we looked at it, it is part of the uniform law, and we thought it made sense because it allows flexibility for large developments; however, large developments have been built in Nevada without it. To the extent the Committee believes

that we are somehow affecting policy, it is not our intent.

Chairman Anderson:

I will turn to those who are opposed to S.B. 261 (R1).

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

I have about four points which are delineated in my handout (Exhibit D). The first item is section 12, subsection 4, line 32, which deals with elevations. It does not make sense if it is not a high-rise. It states, "Unless the declaration provides otherwise, when the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part, the elevations need not be depicted on the plats." How does one know the inside and the outside dimensions are not the same unless they are shown on the plat?

Section 12, subsection 5, lines 34 to 44 on page 9 and lines 1 to 8 on page 10, indicates that in a master planned community, someone would know what is going in there. For instance, a clubhouse, swimming pool, or golf course would be shown. Removing the language is taking that protection away from a potential buyer, where it says "must be built" or "need not be built." I heard something in previous testimony about it being put back in, but it is not in this version.

Section 24, subsection 4, paragraph (b), needs to be restored as it clearly defines what owners are purchasing and eliminates any misunderstandings or misrepresentations. The final item, in the subsection renumbered 5, is the same issue as we had discussed in section 12, that elevations need not be depicted in certain circumstances.

A lot of times, when developments are being built, people buy from a set of plans. They do not know what the topography is; they could be in a hole or on a hillside.

Chairman Anderson:

I have never bought a home that was not already constructed, but I have looked at plenty of maps. I cannot imagine someone purchasing a new home without taking a close examination of the terrain features, such as drainage, whether they are at the bottom of a hill, how close are they to a major intersection, et cetera. Why would you think those things are not depicted on the plats?

Jonathan Friedrich:

Several things come to mind. Back in the boom days of 2004 and 2005, people were buying off of a schematic plan and they did not even see the plat. I purchased a home in Arlington Ranch, which had a release every Saturday morning, and their attitude was, "If you do not like it, there is the door." A sophisticated buyer might bring in an architect or they might be able to read drawings, and they might be able to determine where the house would be situated in relationship to the topography. In August 2003, there were heavy rains and a number of homes in the Summerlin area were inundated and sustained substantial damage. They were in a runoff area.

Chairman Anderson:

I think the question you are raising is one of a person speculating in real estate versus the individual who is planning on purchasing and moving in right away. You are right; when there is a place that does not have to discriminate among its buyers, it is a market that does not exist today and did not exist 20 years ago.

Jonathan Friedrich:

I see it as a bit of added protection for the buyer.

Chairman Anderson:

You think that the plan and plat should remain?

Jonathan Friedrich:

There are going to be plans which are going to have to be filed with the local jurisdiction for approval which will show the topography, drainage, and the underground utilities, so why not include those on the plat, and have one-stop shopping?

Chairman Anderson:

Ms. Dennison, did you have any amendments?

Karen Dennison:

No, we have no amendments to S.B. 261 (R1); they were put in on the Senate side.

Chairman Anderson:

I will close the hearing on S.B. 261 (R1). I will open the hearing on Senate Bill 351 (1st Reprint).

Senate Bill 351 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-1145)

John Leach, Las Vegas, Nevada, representing the Nevada Chapter, Community Associations Institute:

I presented this bill in the Senate. I would like to take a moment to explain the origination of this bill. Prior to this session, I met with several practitioners, meaning attorneys who represent common-interest communities (CICs) or homeowners associations (HOAs), in northern and southern Nevada. You are familiar with Mr. Buckley and Ms. Dennison. Their practices deal mostly with the developers and builders, whereas the practitioners I am talking about represent CICs and HOAs sometimes during the declarant-control period, but more often than not, after the control period has lapsed. We are working mostly with lay board members. So before the session we tried to come up with provisions concerning the issues we believe are very important. In my handout (Exhibit E), I tried to highlight the sections that I thought were of greatest concern.

Section 3 of the bill would add a new provision to *Nevada Revised Statutes* (NRS) Chapter 116 that would expressly address association funding and investments. Currently there is a *Nevada Administrative Code* (NAC) provision that specifically says that the community association manager and the board will "deposit all money of an association that is in the possession or control ... in a federally insured financial institution authorized to do business in this State." Many questions arose from that. Board members were asking what types of investments they can invest in and what is acceptable and reasonable. Section 3 attempts to address that.

There are three parts to section 3. Parts one and three describe the types of institutions in which the funds may be invested, whereas part two of section 3 addresses the types of investments where the funds of the associations may be invested. We believe this is an important clarification on an existing code provision.

Section 6 would adopt an amendment to allow an executive board of an association to amend the association's governing documents without membership approval if the amendment is for the sole and limited purpose of bringing the association's governing documents into compliance with Nevada law.

As the law is currently, if this amendment is not adopted, then an association has two options. They can do a traditional amendment through the membership, mail out notices and ballots, and have a vote; but irrespective of that outcome of the vote, the law is what the law is. The law has already said that that provision of the governing documents no longer applies. The second option is to keep handing out documents that are outdated and contain provisions which are no longer valid and enforceable because of the changes in the law.

Purchasing a home is still the most significant purchase for most consumers, perhaps more now than ever before. They cannot be expected to read outdated governing documents, be asked to read NRS Chapter 116, and then decide which provisions of their governing documents for the home they are buying have been superseded by the law and which are still enforceable.

Disclosure is a pretty critical component in the purchase of a residence as evidenced by NRS Chapter 116. The fourth section of that Chapter (NRS 116.4101/116.412) was consumer protection. It was in the context of consumer protection that the law

required developers to give public offering statements and make disclosures to homeowners regarding the homes they are buying. Other parts of the fourth section of NRS Chapter 116 talk about resale and how important it is that when one is selling a unit as an individual, he provides documents and information to the new buyer. It seems inconsistent to require a vote of the membership for amendments to those documents when the law has already changed them. The general public and consumers benefit from accurate governing documents, and there is no known detriment to the general public or unit owners by allowing the board to amend the governing documents for the sole and limited purpose of bringing those documents into compliance with the law.

In 1999 the Nevada Legislature adopted what was a reviser's note, which made it mandatory for all CICs or associations created after January 1 of 1992 to amend their governing documents on or before October 1, 2000. The reviser's note was removed sometime after the 2003 Session. Even though the requirement has been removed, it has still been customary in the industry for CICs to try to update their governing documents so they are in compliance with the law.

There has been some suggestion that this provision would put too much power in the hands of a board, but my firm represents 500 to 600 homeowners associations that have been involved with hundreds of amendments to the governing documents to bring them into compliance with the law, and I am not aware of a single incident where a board has attempted to use this process to circumvent the normal amendment process. I am not aware of it, and I do not think it happens.

This amendment would benefit more the consumer who is not yet an owner--someone who moves to Nevada, has never lived in a CIC, buys a home, and is handed a set of covenants, conditions, and restrictions (CC&Rs) that are no longer consistent with the law.

Chairman Anderson:

Reviser's notes carry for a short period of time with the hope that it will become common practice for the boards and commissions, knowing that it will not happen in a day, but it will eventually. The Legislature changes the law and then dictates that the CICs' rules conform to their set of rules and that is the way it is. So I am not sure about the statement regarding the reviser's note; maybe we should just leave it there, so that the CICs will do what we ask.

John Leach:

That is a good point. First, board members under Nevada law are fiduciaries and are bound by the business judgment rule. The Commission for Common-Interest Communities and Condominium Hotels has adopted regulations regarding the responsibilities of board members, and one of those says that they must keep informed of new developments in the law. They have an obligation to stay abreast of these changes and to try to implement them in the governance of their associations.

Another excellent point you made is that there are going to be times when the Legislature makes a change, but the Legislature acknowledges that change is subject to the CC&Rs. There is an indication that the existing CC&R provisions are still controlling so the Legislature is not necessarily always undoing that instrument under which a person bought. But in the last several sessions, there were some rather significant changes made that were substantive and would have superseded the CC&Rs. Those might be everything from rentals to political signs, use of the units, and things of that nature. Those types of things should be updated in the governing documents. Those substantive types of changes may not occur every session, but every once in a while we get those kinds of changes, and section 6 of this bill would give the board the discretion to amend their governing documents to come into compliance with the law. When the board hands out those documents, they can have a clear conscience that the people who are buying that property, no matter if they are coming from Nebraska or Iowa and have never been in a common-interest community, are being given documents that are accurate and consistent with the laws that the Legislature has asked us to implement.

Chairman Anderson:

I appreciate the subtlety of that even as I appreciate the fact the CICs differ dramatically depending on population size. Some are much more sophisticated than others, and they have voluntary boards of directors, who may or may not recognize the full legal obligations of the fiduciary responsibilities that they pick up. How are you going to make the people in the CICs knowledgeable about the changes in the law that will affect their day-to-day activities, for example political signs?

John Leach:

The mechanism to educate the homeowner is already in NRS Chapter 116. As the Committee well knows, we can offer the education--you can lead a horse to water, but you cannot make him drink. Before the board takes any action of that nature it must be placed on an agenda for a board of directors meeting. So every homeowner in that association is going to get a notice of a meeting and an agenda on which would be, "amending the CC&Rs to come into compliance with law, board action may be taken." The homeowner knows there will be a discussion about it at the meeting, and ultimately they will have access to the minutes of the meeting. *Nevada Revised Statutes* Chapter 116 also requires that after an amendment to the CC&Rs has been implemented, it must be mailed out to all of the homeowners. So the existing homeowner now has the update that is consistent with the law. When the owner gets ready to sell his unit, he is required to give governing documents to the buyer. If he does not have them he goes to the board and gets a copy, and then he knows with some certainty that the documents being passed on to the buyer do include the substantive changes in the law that affect the use in that community.

There is a system in place already where the existing homeowner gets the notice. Our big concern truly is twofold, not just for the existing homeowner but also the prospective buyer who might be given documents that are not consistent with the law. It is not reasonable to require a prospective buyer to read the documents, and then read NRS Chapter 116, and make their own analysis as to what supersedes. The board has an obligation to notify the membership of that.

[Vice Chair Segerblom assumed the Chair.]

Assemblyman Horne:

After hearing your comment about boards not abusing their authority, I wish you could see the emails I have received since 2003. A couple of board members once told me, "How dare you tell us how to run our association. You have no right to do so." Those boards are not there. They may not be the ones you deal with, but they are out there.

In section 3 regarding investments, the law currently says that the funds have to be deposited into a Federal Deposit Insurance Corporation (FDIC) insured institution. This new language is talking about investments. Is it public policy that associations should be investing the funds of an association in the first place? I can understand having meetings and a majority of the owners vote to invest the funds, but poor investments can result in harm to the entire community including those who thought the investment choices were ill-advised. Are there currently boards that are doing investments other than depositing the money into regular bank accounts or certificates of deposit (CDs)?

John Leach:

I think there have been more inquiries than there has been actual investment. All the current provision says is that they have to be deposited in an institution that is federally insured--it does not say that the amount has to be insured. There are limits on what the bank will insure; we know the limit has gone up to $250,000, but most likely, that amount will go back to $100,000 at the end of the year. We have associations throughout the state that spend more than six figures in a month, if they were to have all of their funds insured, would have to have accounts all over town.

The concept of the provision is twofold. One is to try to define the type of institution the funds could be placed in, and that is what section 3 attempts to do. The second part is the issue of types of investments. The objective is not to place the money in the stock market. Subsection 2 mentions insured accounts, whether it be FDIC or Securities Investor Protection Corporation (SIPC) insured accounts.

There is another statute about insured funds, so I do not view this as a vehicle by which we are trying to allow boards to unilaterally put association funds at risk, but there are vehicles out there that can help them deposit the funds into a depository and then, within that depository, invest them in different vehicles. The two provisions read hand in hand.

Assemblyman Horne:

I agree with you in part about a board's ability to act in bringing their documents in compliance with the law. Reserve funds come to mind, especially when the association has members who refuse to vote to bring the reserves to the levels required by law. In these situations the board is hamstrung because they are supposed to have a certain amount in their reserves, but the association is not electing to raise it to that. The problem is, if the association has to have $500,000 in reserve and the amount is below that and you need to raise fees to get it up to that reserve, then the members should be allowed to take part in the board's decision to raise the reserve level above the $500,000. If the board wants a buffer, say $600,000, that is the purview of the

association to determine if they wish to have a buffer. In that instance I think it is appropriate that the issue be brought before the homeowners.

John Leach:

Section 3 has language that the Commission was instrumental in putting together, so Mr. Buckley might be able to address the issue.

[Chair Anderson resumed the Chair.]

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:

The language came from the Commission, and the intent was not to allow associations to invest; section 3 really specifies those deposits be insured. There was first a problem that it is not the institution that is insured; it is the account. We wanted to make that change, and we also wanted to expand it to include credit unions and SIPC. Associations like Summerlin have millions of dollars coming and going in a month. The change would allow them to put the deposits into government securities accounts, which is why it mentions government-backed securities. This was not an attempt to allow anything beyond an insured account or United States government-type securities.

John Leach:

On the section 6 issue, Assemblyman Horne gave an excellent example with respect to the board's authority to raise assessments to address reserves. The way the statute reads is: are the reserves fully funded? Concerning having a surplus of funds, an argument can be made that is going above and beyond the authority the statute gives. Most associations that have found themselves underfunded in reserves base the entire decision on a reserve study. They hire a reserve specialist who prepares a reserve study, which identifies how much money should be in the reserve account today and then over a 30-year time period. Traditionally, the board tries to get up to fully funded, which would be 100 percent, under the reserve specialist. There have been some associations that over time, maybe as a result of litigation, had funds deposited into their reserve account that caused them to be overfunded. They then have the ability to control their assessments on a future basis with the budget.

Taking that parallel with section 6, all we are asking is to be allowed to update the governing documents so they are consistent with what the Legislature believes is important for the homeowner. There is a mechanism in NRS Chapter 116 that allows us to notify all of our existing homeowners by giving them a copy of the updated records and also giving notice before it goes into effect. If there is a board that goes beyond that and tries to incorporate something that is not required in order to come into compliance with the law, there is the Commission and the Real Estate Division to examine whether a board has gone beyond the scope of their authority and acted inappropriately. We have a system in place to review the process to make sure boards are doing things correctly.

Assemblyman Segerblom:

You want to allow boards to make these changes, but will the homeowners be notified beforehand or afterwards?

John Leach:

They have an obligation to do both. First they have an obligation to send every homeowner a notice of a board meeting and have as an agenda item that the board will take action relative to this process. While I cannot promise that the homeowner will read the notice, it is our mechanism of communication. Thereafter, any homeowner who requests it is entitled to a copy of the minutes of a meeting, and this is governed by NRS 116.31083 which is the section that governs board meetings. After the amendment is done, then the homeowner will also get another notice which will include a copy of the language that was changed.

Assemblyman Segerblom:

People would probably feel more comfortable if the obligations were delineated. Even though I understand that under rules, they are required to do that, it sounds like they are going to sit in the backroom and make these changes without telling anyone ahead of time or after the fact.

John Leach:

I am probably one of the few practicing lawyers who went to board meetings before NRS Chapter 116 was in existence, and in those days meetings were treated just like for corporations. Homeowners were treated as shareholders, and for board meetings in corporations, notices do not go out to shareholders. So prior to 1992, the meeting would consist of the board, the manager, and me because homeowners did not even know we were having a meeting because no notice was required. Fortunately, since NRS Chapter 116 was adopted in 1992, that all ceased. Now, if there is going to be board action, it must be on a notice and an agenda; the board does not have the authority to make decisions outside a board meeting.

Assemblyman Segerblom:

When you read section 6, subsection 2, it says "without complying with the procedural requirements of NRS 116.2117..." It specifically says the board does not have to comply. I would like to change that part.

John Leach:

That section refers to the membership vote. It says that most amendments would require a majority vote and this would bypass the amendment process, but all of the other notice requirements would still be required under NRS 116.31083, which is the section that governs board meetings.

Assemblyman Manendo:

Could you go back to the comment about the minutes being distributed to the members? Is that for any board meeting?

John Leach:

Yes, any homeowner is entitled to request a copy of the minutes of a board meeting. Most associations do not normally make a bunch of copies of the minutes and take them to their meetings, but any homeowner who requests a copy of the minutes of an executive board meeting or a membership meeting is entitled to those minutes. The only exception being an executive session meeting if there is a hearing regarding another homeowner. If it is your hearing about a violation, you are entitled to a copy of the executive session decision regarding you, but you are not entitled to get a copy of the hearing of someone else. The minutes are restricted by law in that one area.

Assemblyman Manendo:

Is there a fee, and what is the timeline after the request is submitted? Is it six months or a year?

John Leach:

No, NRS Chapter 116 specifically says you are supposed to make the request in writing. Under the statute once the meeting is over the minutes of the meeting are supposed to be prepared within 30 days. Sometimes boards do not meet every 30 days, so there might just be a draft of the minutes. The law in NRS 116.31177 requires that once something is in writing, the requester is supposed to have a copy within 14 days.

Chairman Anderson:

The question about the availability of minutes has always been a bit of a problem for smaller associations that do not have a secretarial staff. The question about turnaround or the release of draft minutes often becomes problematic. Here at the Legislature we are live on the Internet, and anyone can put a compact disc (CD) in their home computer and record the whole thing; however, when our minutes actually come out after having been reviewed by several people, they might not be posted until long after the 30 days. So I am concerned about the reality when you say they should be out in 30 days.

Homeowners association boards generally know how many people are going to show up at public meetings who have requested copies of minutes. Would it not be prudent, as a management practice, to make an initial printing of the whole thing at one time?

John Leach:

Let me start by answering more of Assemblyman Manendo's questions. The maximum cost for copies is 25 cents a page. I know that some associations do not necessarily charge for minutes, but most do. There is a pending bill that would change that to 10 cents a page.

Chairman Anderson, most associations that have community association managers are doing a pretty admirable job of preparing minutes within 30 days. The law does not mandate that an association have a community association manager, so there are many that are self-managed. In the discussions I have had with the Division, I have been advised that most associations have a manager, but there are still some that do not. I really do believe that most associations have the draft minutes done within 30 days. As you pointed out, there are times when they do not get them approved in the very first meeting, but at least the draft has to be completed in 30 days. There may be notation on the document that it is just a draft. One of the concerns about bringing the minutes to the meeting, say February's minutes to the March meeting, and distributing them is that someone may make a motion to amend the minutes and then they are adjusted. Then there are two sets of minutes out there and one is inaccurate. Most associations are doing an admirable job of meeting the 30-day requirement. Some associations probably are bringing minutes to the meetings, but I do not think it is the norm. More often than not, they wait for the request.

Section 7 is an attempt to bring our statute into compliance with the Uniform Common-Interest Ownership Act (Uniform Act). It is also intended to remove the hardship created by the *Red Hills* Nevada Supreme Court case [*Red Hills Homeowners Association v. Larry R. Knapp, et al*] which basically said that changes to the use to which a unit is placed--most associations have a section of the CC&Rs called use restrictions, which covers pets, signs, and nuisance-- would not need unanimous consent, which is practically impossible, but rather a supermajority.

Section 8 was intended to address what we thought was some confusion because there is currently some introductory language in NRS 116.3102 which says "subject to the provisions of the declaration," and then enumerates many powers that the boards of directors and executive boards may implement. We proposed some language which you see in the bill, but I have also submitted an amendment (Exhibit F) which would return it back to the original language. There is belief that the changes in the bill would create some unintended consequences where certain powers that would generally be given to an executive board could then be omitted through expressed language in the CC&Rs. While I think that is still the case the way it currently reads, I did not want there to be any confusion.

Section 9 was intended to grant powers to the board and specifically says that one of the powers is to fill a vacancy on the board. Most governing documents make a distinction between a vacancy that is created because a person moves, resigns, dies, et cetera, versus a person who is removed from the board by an election of the membership. Many governing documents would specifically say that if a director is removed by vote of the membership then the membership should be the ones that fill the vacancy. This tries to recognize that if the vacancy is created by removal by vote of the membership, then they should fill it, not the balance of the board. This is in keeping with the membership having the ability to determine as much as possible who is serving on their board of directors.

Section 10 addresses removal elections and special meetings. There is some confusion on this matter, and the bill clarifies the powers of the board, keeping in mind that associations are nonprofit corporations. In nonprofit corporations, the executive board or board of directors is empowered to call meetings of the membership. *Nevada Revised Statutes* 116.3108 specifically says that a special meeting of the owners may be called by the president, a majority of the board, or the units' owners constituting 10 percent. There is no qualifier as to what types of meetings board members cannot call. *Nevada Revised Statutes* 116.3103, subsection 2, lists restrictions on the boards' powers. If the Legislature had intended executive boards to not be entitled to call special meetings, they would have changed NRS 116.3108. Please keep in mind, it is the unit owners' vote. We are talking about meetings of the membership. The statute then goes on to say that "The same number of units' owners may also call a removal election..." You will note there is no provision that says the board can call a removal election, only a special meeting. The statute then delineates two different procedures; if there is a call for a special meeting of the members to vote on removal, or if there is just a petition. The time frames are a little different and there are two separate processes.

One of my clients received a letter from the Real Estate Division demanding that they cease and desist holding a special meeting of the membership for the purpose of voting on the removal of a director. Their conclusion was that they do not have the authority to call it. The law does not say that. It is standard practice for elections and removal elections to take place at membership meetings. I have seen some negative comments toward this provision, which I do not understand because it allows the members to vote. If the board calls the meeting, there must be a special meeting, which means that the board must give notice, an agenda must accompany it, members would be allowed to speak, everything. But if the membership petitions for just

a removal election, there is no notice requirement, no agenda, and no membership forum. The ballots get mailed out, the membership votes, and it is done. These are two different processes that are delineated in statute. The bill tries to clarify this in light of the issuance of the letter by the Division.

Assemblyman Manendo:

You want to be able to allow the board to call a special meeting, and in that special meeting, the board could recall board members and would go through the process. If I wanted to recall a board member, I would have to go around and collect the 10 percent.

John Leach:

Yes. General corporate law like NRS Chapter 82, or any of the sections regarding corporations, allows a board of directors to do just what you suggested, which is to call the meeting, at which the shareholders, or in this case, the homeowners, would be voting, and that is the law already.

The example that frequently comes up is that there is a five-member board and one board member either chooses to never participate, never attend, or he cannot even be found. The board president could call a meeting of the homeowners to allow the homeowners to vote on whether this person should still be on the board. It is not the board deciding; it is the homeowners who get to vote. If the homeowners do not want to remove a person, it does not have to happen. The minimum standard is 35 percent of all homeowners to remove him, not 35 percent of those who participate.

Assemblyman Manendo:

I am concerned because sometimes there are board squabbles. If there were a three-member board and two were in alliance and did not like the other, they could continuously attempt to recall that member as a form of harassment. I have concerns about this section.

John Leach:

I am not aware—which does not mean it is not happening—of a situation where directors continually call meetings for removal. I have seen some instances where petitions filed by homeowners failed, but they do another and another and another meeting. I agree that there are situations where a minority number of the board may feel, at times, that they cannot get things done. This is a byproduct of the system which is that the majority is going to make the decision. This is a chance for the members to vote on something. This is not the board voting to get rid of another board member; the board would only have the authority to call the meeting and then ask the homeowners to support it.

Assemblyman Manendo:

You just said they have the ability to do it. I think this point is moot.

John Leach:

I would agree with you except that I have had clients who have received letters that have contrary interpretations from the Division. We want the Legislature to make the law.

Assemblyman Manendo:

Who cannot recall them?

John Leach:

The executive board can call the meeting. Right now the law already says that the executive board may call a special meeting of the units' owners, and that would include a vote by the membership for the removal of a board member, but there is written correspondence from the Division saying an executive board does not have the authority to call the meeting. So all this section does is clarify that the executive board may call a special meeting of the units' owners to address that issue. We would not have

recommended this amendment to the existing law but for the letters from the Division, which seem inconsistent with the statute.

Assemblyman Manendo:

Those of us in the Legislature do not recall ourselves but our constituents can, so to me if there is a bad board member, the constituents can recall that board member.

John Leach:

The board cannot remove him. There needs to be a distinction between a government and a corporation. Homeowners associations are corporations and the practices of the boards of directors tend to be in harmony with corporate law unless modified by specific statute. While the board members, or the president of the board, may call the meeting to bring the issue to a head, the units' owners are still the only ones that can take the action.

Assemblywoman Parnell:

I, too, have concerns about this section. I would imagine that most HOAs have bylaws, is that correct?

John Leach:

Yes.

Assemblywoman Parnell:

Most bylaws would give cause for dismissal from the board. In the example you used of someone who has missed meetings or cannot be found, that should not have to be dependent upon a board vote. It should be in the association bylaws that, if any board member misses two meetings in a row or a total of three meetings in X amount of time, then that person is off the board. That is what keeps it objective--the objective criteria for a board member should be clearly stated as cause in the bylaws. Then that takes any personality or any of the concerns out of the process. That is how I would prefer to see it.

John Leach:

Most bylaws do not grant that authority to the boards. I do not represent many builders or developers, so I do not draft the original bylaws that are usually created for CICs and associations. The bylaws usually contain the procedure for election and removal, but it is rare that one would find a set of bylaws that state what you have said, which is that after certain conduct or behavior, one is no longer on the board. What has evolved over the years is that the membership gets to elect and they get to remove. People do resign because these are volunteer positions. I have seen a few bylaws over the last 20 years where there was a provision that said if a board member missed three consecutive meetings without cause, then his seat could be deemed vacant, but that is by far and away the minority. Your point is well taken and is a positive thing, but it is not required.

Assemblywoman Parnell:

I would just add then perhaps what we need to look at doing in this piece of legislation is in fact requiring the stipulation and cause in bylaws. You used the words "conduct" and "behavior" and that gives me great concern.

John Leach:

Even if we were able today at this juncture to amend the law to address the situation with prospective developments, we are talking about thousands of CICs that do not have that provision. It just does not exist. All this is doing is allowing for an issue to be brought to the membership; the key is that the units' owners have the right to make the decision, not the board.

Section 11 would amend NRS 116.31083 to clarify that the executive board may meet and conduct workshops outside of the presence of the membership without satisfying the formalities of the statute, which are the notices and agenda, et cetera.

Chairman Anderson:

Sometimes when one arrives at a meeting, he thinks he clearly understands what the impact is going to be of some proposed

change, only to find in the course of the discussion that it has several tentacles to it that were not anticipated. The workshops are closed, but the interaction between the staff and the executive board may be helpful to members of an association who want to become involved. How would the membership find out that maybe the board members are not happy, because sometimes there is the public face of the board compared to that at a workshop? There are the people who ask good questions in workshops, but they sit quietly in the public meeting.

John Leach:

There is no way to legislate away human nature. Mr. Buckley was kind enough to share in his submission an example where the Commission has had to address this issue in a CIC in northern Nevada. It was believed that everything was being done outside the meeting and then a de facto, rubber-stamp meeting was run in public. The Commission has a good feel when that is happening and, when they see it, will sanction the board members or the association that is involved for doing it that way.

The concept behind this is more efficient, productive governance. The law currently reads that no action can be taken except if it is on the agenda at an open meeting of the board. The example in my handout is that oftentimes board members seek board training and go to a location where there is someone presenting changes in the law. If workshops are not allowed then when a quorum of the board shows up at a seminar, they would have to send notice to the homeowners that the board members are going to a seminar to receive board training. If workshops are not permitted, not only does it become more expensive and time consuming for associations but it deprives them of the opportunity to prepare to do their job more efficiently.

Another example is vendors working in the community. The vendor may be a landscaper the board is having problems with, so on a Tuesday morning, three members of the board are going to meet with the landscaper to walk through the community to discuss the landscaping and what can be done to improve the landscaping under the contract. If the board is not allowed to do this, then what is being said is that notice has to be mailed out at least ten days in advance so if the homeowners want to tag along, they can.

Common-interest communities already have so many situations right now where they are having interference with existing contracts. People are quitting because the homeowners think they can negotiate individually with the landscaper or tell him what to do. Those are contracts with the association, and if the board wants to meet with them informally to walk through the property, we do not understand why there would have to be notice to all of the homeowners. The board is trying to resolve an issue on a contract. There are other examples in the handout such as interviewing potential vendors, like an accountant. To think that the board would interview him in an open meeting while other accountants are sitting in the lobby waiting, and then have someone in the meeting tell the waiting interviewees what the bid is, seems to undermine the bid process.

Chairman Anderson:

You are going to preclude the attendance of the homeowners and also the report and notification of workshops and the recording and distribution of minutes of the workshop, so the homeowner could not even review it as an after-action report. I can appreciate that if three board members show up somewhere, and if notice has to be given, it creates a problem. But what about when all of the board members go to the same cocktail party, is that a board meeting? The answer simply is no. If on the other hand the board members are discussing board business, then it is a yes. There will be a record of the meeting for use of the members of the executive board; why would we exclude that information from the units' owners? While recognizing it is a corporation, not a governmental body, there are still questions about the open meeting law.

John Leach:

Even in the opposition there is the suggestion that properly conducted workshops are beneficial. There was a suggestion that a workshop might have 24 hours notice and there is no public comment, but then we are creating another subset of types of meetings that is not necessary. Workshops are not intended as forums to make decisions, have minutes, agendas, or notices. They are informal meetings where board members prepare themselves for the next board meeting. Chairman Anderson gave a good example of our dialogue on section 11, which is: what can we do to prevent board members from going to a workshop, sharing their ideas, coming to a consensus or feeling about a matter, going to the board meeting only to make a motion, and then the motion is seconded and passed without discussion? The spirit and intent of the law clearly has been violated because the membership has the right to hear the discussion. When that happens, those boards should have a meeting with the Division and Commission. But competitive bidding, meetings with vendors, counsel, or management to get more training fall within the

exceptions which are the executive session parameters.

Take a large association like Summerlin or some of these master planned communities we were discussing before. A single notice can be to thousands of people, which is expensive. When I discussed this with other practitioners in this area, we thought the key concern is "action being taken." As long as no action is being taken and it is placed on the agenda for a future meeting, the membership is entitled to see the action and hear the decision. And if the board is not doing it correctly, then the Commission is there to consider a potential violation.

Assemblyman Manendo:

There was something mentioned that had to do with the towing of cars. I know that part of it is in existing language, but I recall something about HOAs towing cars that are on public streets. Has that been removed?

John Leach:

That was not in S.B. 351 (R1). There are two statutes that have references to towing.

Assemblyman Manendo:

Maybe that was what section 8 would have done without your amendment.

John Leach:

Section 8, if it was not deleted, would have said that unless the governing documents prohibit it, the HOA can do those things.

Assemblyman Manendo:

I wanted to make sure that was on the record.

Chairman Anderson:

You are talking about section 8, subsection 1, paragraph (s), which says, "Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038 . . ." You are establishing for the record that all of those provisions are still in there.

John Leach:

That removes that concern, and then there is NRS 116.350, which also specifically prohibits an association from regulating parking on public streets. It gives four examples of exceptions, but those do not allow towing.

Chairman Anderson:

Did you work with the former chair of this Committee on the formation of this chapter?

John Leach:

Mr. Buckley was far more involved in the process than I was.

Michael Buckley:

The Commission is generally in support of the bill. The Commission has some concerns, the first of which is section 6 about the board amending governing documents; it is not necessary and is subject to mischief. Assemblyman Segerblom's proposal that there be some specific language in the bill, if the Committee does approve it, to spell out a procedure, like sending out the draft amendment, would go a long way to solving our concerns.

The other concern was in section 10. Dealing with removals is a complicated section already. The removals appear in a number of sections, and the Commission was in opposition to this proposal because we thought it mixed up meetings with the election

itself.

The Commission tried to draft a regulation in two or three meetings on workshops. We concluded that although we support workshops and think they are important and useful, putting it into statute or regulation just could not be done where there was one set of rules all of the time. We are therefore in opposition to section 11.

We had a case in the Commission earlier this year, where a board was deciding things in workshops. The Commission felt that rather than having the tension there saying, "If you have a board meeting, this is how you have do it," we do not need to define it. If it is a legitimate workshop, there does not need to be notice. It is not a board meeting.

I did have a technical note on section 3. There is some use of the phrase "financial institution," but looking at it, I do not think we really know what it means. If we allow associations, as the Commission proposes, to put money with a credit union--and I am not sure that a credit union is a financial institution--we need to take a more careful look at the use of that term.

Chairman Anderson:

The email (Exhibit G) that Mr. Buckley sent will be in the work session document.

Karen Dennison, representing Lake at Las Vegas Joint Venture, Las Vegas, Nevada:

My comments are only about section 6, which has been discussed at length by the Committee (Exhibit H). It is a slippery slope to allow a board to amend CC&Rs without the check and balance of an owner vote. Mr. Leach and I have had discussions about this, and we do not see eye to eye. It is not that difficult to allow the amendment to go out to the owner vote. That is what the owners bought into, that the CC&Rs say any amendment has to go to owner vote. Covenants, conditions, and restrictions can be very complicated. For example, the CC&Rs at Lake at Las Vegas are 110 pages. To have a lay board simply take a red pen to the existing CC&Rs and to put those of record without an owner vote, and then put the onus on the owners to correct any mistakes because the amendments were not in compliance with NRS Chapter 116, is an unnecessary burden to put on the homeowner. The law is working fine the way it is. As far as the common practice is concerned, a reviser's note is not law. I am not aware of anyone in our office who has ever taken it upon themselves to amend CC&Rs with just a board vote, even if it is just to comply with NRS Chapter 116.

We have put in a protection in section 14 as an amendment submitted in the Senate. That has not been discussed. It is part of the information statement which is handed out to all owners, both those who buy from the developers and also resales. The change is in subsection 2 and says, "Certain provisions in the CC&Rs and other governing documents may be superseded by contrary provisions of Chapter 116 of the Nevada Revised Statutes." Then it gives the website to look at the NRS sections which may interest a prospective purchaser.

Assemblyman Segerblom:

Do you agree with Mr. Leach that current law would require membership be notified before the board met to change the CC&Rs to conform with law, and they would have to receive notice after the fact also?

Karen Dennison:

Yes, that is current law. Board members would have to notice this as a board agenda item, and members would be allowed to attend; then after the fact the amendments would be sent out to the owners. The owners would have no opportunity to vote; they can only speak at the board meeting.

Chairman Anderson:

I will enter a letter from Richard Post, the President of Sun City Summerlin Community Association, Inc., as well as one from Kay Dwyer of Henderson, and one from Michelle Duncan of Las Vegas (Exhibit I).

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:

This is in regard to section 10, special meetings of the units' owners. I have discussed this with my staff and the Real Estate

Division counsel, and that resulted in the letters Mr. Leach has referenced. In subsection 2, a meeting for a removal election is called out separately from the special meeting of the units' owners. That needs to be looked at. It is mentioned separately under NRS 116.31036 and that may be part of your consideration.

Chairman Anderson:

Ms. Chisel and Mr. Anthony, could you look into that for us?

We will turn to those in opposition.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

[Read from prepared statement (Exhibit J).]

Robert Robey, Private Citizen, Las Vegas, Nevada:

I am a board member; however, I am representing myself only. [Submitted comments (Exhibit K).]

I have sat here in awe today with what you all have to put up with. I would like to explore further the idea that those of us who live in a CIC live in a corporation. When my children were very young, I bought my first townhouse and was on the board. We ran the association as though it were a city. I believed in the open meeting law that had just come out, and in my townhouse association we had open meetings.

I drove up here last night to be able to participate today. The Legislature states that it cannot pass legislation to decide who is right and who is wrong. I am not asking them to do that. I am asking that I and everyone else who made the mistake of buying into a corporation when we thought it was a CIC be given back our dignity, our right to vote, and not allow these secret workshops. This bill is taking away the rights of the person.

We have heard about architectural control committees that are going to meet in secret. Why? Because one cannot see the plans? No, one cannot copy the plans, but one can sit in an open meeting to hear his neighbors say that they want to build a 20-foot gazebo in their backyard. One has the right to hear that, and to participate in the meeting.

I ask the Committee to restore the rights of people who live in CICs. I do not ask for myself because I live in a good association. I am on the board of Sun City Summerlin, from whom you got the letter. I have gone to, and been in, board meetings where members have said that they cannot release certain information. We had an attorney come to an executive session of the homeowners association I serve on, and she had a legal opinion to present to us. I asked, "Do you think it is proper for you to talk about a legal opinion that belongs to the owners in an executive session?" She reviewed NRS Chapter 116 and said, "You are right; it has to be done in the open." The other board members were shocked and said that they had been told that it had to be done in secret. I asked her if we should release the opinion, and she said she had to release the opinion. It still has not been released.

That is not the fault of the board; it is the advice they get. I wonder why we cannot know what is going on. The second page of my handout reads, "If the board of directors obtains a legal opinion because of alleged confusion as to the interpretation of any governing document and or statute then that attorney's opinion must be footnoted ..." so that people know why the governing document has been changed. I want more openness.

Chairman Anderson:

I know that you have testified many times in Las Vegas and I appreciate the time you have taken. This is why we make sure we are videolinked every meeting. It is good to know that there are people out there who are following through to make sure the bills are debated and watched by those with an active interest.

Roy Oxenrider, Private Citizen, Las Vegas, Nevada:

I would like only to submit my handout (Exhibit L) and make a couple of comments. I would like to thank Assemblyman Mark Manendo because he has gone above and beyond the call of duty to keep me informed about the HOAs. I appreciate his concern

and cave.

I moved to Nevada in 2004 and into the first HOA I have ever lived in. All unit owners must be treated fairly and equally, and I believe section 2 of this bill will not do that. If you look at the letter dated February 28, 2009, this is the one Assemblyman Manendo helped me with. We obtained a cease and desist order, and he took it from there to see if the board had the recall right. The Division said it did not. I am here to ask that boards stay out of the recall process. That is a democratic process and I would not expect the board members to agree on all subjects. We need differences of opinions and just cause to remove someone. We do not have transparency in our community. Our budget for attorney's fees is 11 percent, which is over $37,000 of last year's $350,000 budget. That is too much. The board is trying to raise a legal case against me because I ask these questions. It takes multiple requests to obtain a financial statement. The last one I received was from December 2008.

Chairman Anderson:

Assemblyman Manendo has been actively involved in this area of legislation for many sessions.

John Radocha, Private Citizen, Las Vegas, Nevada:

I strongly disagree with John Leach, and I am very aware of abuses by boards (Exhibit M). He is the attorney for my CIC.

I would like to see section 6, subsection 2, deleted. I would like section 8, subsection 1, where it says "the associations may do any or all of the following" deleted because it gives boards a blank check. The phrase "may do any or all" is the problem. I would like the bill to say, "The homeowners shall have the right to overrule the boards by paper ballot." I say this because I live in a working community and the board meetings are at 5:00 or 5:30 p.m. when people cannot attend. At the meetings the president says "all in favor" and the vote is over in a flash. If there is a paper ballot, then it is fair. There should be 25 to 30 percent vote by the membership when the board amends bylaws, rules, and regulations. I agree that this should not apply to legislative law; the boards should be allowed to amend the bylaws for that. It is when boards just make changes and spend money without checks.

In my community, we have speed bumps. We paid $15,000 for signs for those and some people complained about them. Now the signs are gone, but what about the $15,000? I asked my fellow homeowners if they knew about the signs and the response was no one knew. We should be able to vote by paper on items that concern the community.

Chairman Anderson:

We could allow for those with the access to participate electronically, and we do not want to preclude electronic balloting.

John Radocha:

In section 11, subsection 8, paragraph (d), I would like it to read, "A record of each member's vote or proxy vote on any matter decided by a vote at the meeting." In other words, if a person comes to a meeting and they have a show of hands, and a person was authorized by homeowners to represent them if they cannot attend the meeting, this proxy vote should be acceptable. Mr. Robey also made the point that people cannot make all of the meetings.

Chairman Anderson:

The question of proxies is difficult. What would preclude someone coming out and taking a group of proxies and then voting as he wants, rather than representing the proxies?

John Radocha:

Here is an example: my HOA had a meeting about speed bump removals. I had a list with about 50 signatures of owners and the board refused to take it. The president then held a vote, the board voted, and it was over with. I spent the time to get these signatures and people came to me to sign since they could not attend the meeting. I agree that proxies should only be allowed for yes or no votes, not to change anything.

Chairman Anderson:

Is there anyone else to testify? [There were none.] I will close the hearing on S.B. 351 (R1).

I will enter the email from Robert Hall regarding several Senate bills into the record as well (Exhibit N).

We are adjourned [at 11:46 a.m.].

RESPECTFULLY SUBMITTED:

_____
Emilie Reafs
Committee Secretary

_____
Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

_____

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 11, 2009 Time of Meeting: 8:16 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B.261 (R1)	C	Karen Dennison, State Bar of Nevada	Written Testimony
S.B.261 (R1)	D	Jonathan Friedrich, Private Citizen	Handout
S.B.351 (R1)	E	John Leach, Community Associations Institute	Handout
S.B.351 (R1)	F	John Leach, Community Associations Institute	Proposed amendment
S.B.351 (R1)	G	Michael Buckley, Commission for Common-Interest Communities and Condominium Hotels	Email in support with exceptions
S.B.351 (R1)	H	Karen Dennison, representing Lake at Las Vegas Joint Venture	Proposed amendment

S.B.351 (R1)	I	Chairman Bernie Anderson	Letters in support
S.B.351 (R1)	J	Jonathan Friedrich, Private Citizen	Prepared Statement
S.B.351 (R1)	K	Robert Robey, Private Citizen	Comments
S.B.351 (R1)	L	Roy Oxenrider, Private Citizen	Handout
S.B.351 (R1)	M	John Radocha, Private Citizen	Letter in opposition, proposed amendment
S.B.351 (R1)	N	Robert Hall, Private Citizen	Letter in opposition

End of Document

EXHIBIT V

Nevada Senate Journal, Seventy-Fifth Session, One Hundred and Twentieth Legislative Day

Monday, June 1, 2009
Nevada Senate
Seventy-Fifth Session, 2009

Senate called to order at 12:39 p.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Dear Lord, every day since February we have carved out a few moments to invite You to be part of the process or government. It was You who elected these women and men to serve. It was You who gave them the talents to do their jobs. Thank You for the wisdom for the tasks given to them. They have left family, friends and businesses to do the work that needs to be done to bring prosperity to the districts they represent.

Today we also give thanks to our Secretary of the Senate and all her faithful staff. Without their help the time these Senators have taken in committees would not be recorded or made available.

We have now come to the close of this Seventy-Fifth Session. As we go back to our homes, much work has been done. Some times there have been differences of opinions on bills proposed. Bring healing to things said or done that have hurt others. Help them to walk the way of surrender to Your will, guided by Your wisdom. Show them the spiritual foundations of our heritage that they may conserve and protect them. Draw them close to You and to one another in humility and service. To You who is the real leader of government we give thanks.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 31, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day failed to sustain the Governor's veto of Senate Bills Nos. 195, 319, 363, 394 of the 75th Session.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 942 to Assembly Bill No. 482; Senate Amendment No. 639 to Assembly Bill No. 503; Senate Amendments Nos. 970, 971 to Assembly Bill No. 521.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No.

995 to Assembly Concurrent Resolution No. 30.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Kirkpatrick, Anderson and Settelmeyer as a Conference Committee concerning Senate Bill No. 242, Assembly Amendment No. 978.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Smith, Kirkpatrick and Hardy as a Conference Committee concerning Assembly Bill No. 223.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Horne, McClain and Carpenter as a Conference Committee concerning Assembly Bill No. 385.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Senate Bill No. 55; Senate Bill No. 68; Senate Bill No. 119; Senate Bill No. 332; Senate Bill No. 411; Assembly Bill No. 84; Assembly Bill No. 320.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly
ASSEMBLY CHAMBER, Carson City, June 1, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolutions Nos. 19, 26.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Assembly Bill No. 140.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Mr. President:

The Conference Committee concerning Senate Bill No. 182, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 947 of the Assembly be concurred in. It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 25, which is attached to and hereby made a part of this report.

Conference Amendment.

"SUMMARY--Makes various changes relating to common-interest communities. (BDR 10-795)"

"AN ACT relating to common-interest communities; clarifying various provisions of existing law relating to certain provisions of governing documents that violate statutory provisions, elections and the authority of an association to levy certain assessments under certain circumstances; revising certain provisions governing the authority of an association to impose fines under certain circumstances; making various other changes to the provisions governing common-interest communities; providing penalties; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 3 of this bill provides that a person who knowingly, willfully and with the intent to fraudulently alter the outcome of the election of a member to the executive board of an association or other votes of the units' owners engages in certain acts pertaining to the ballot or the casting of votes in such election is guilty of a category D felony. (NRS 116.31034) Existing law prohibits a community manager, an officer or a member of the executive board from accepting or soliciting compensation that would influence him or appear to be a conflict of interest. (NRS 116.31185) Section 4 of this bill provides that a community

manager or member of the executive board who asks for or receives compensation to influence his vote, opinion or action upon any official matter is guilty of a category D felony. Section 4 also provides that a person who offers or gives any gratuity, compensation or reward, or makes a promise thereof, to a community manager or member of the executive board in exchange for a vote, opinion or action on any official matter is guilty of a category D felony.

Existing law requires each agency to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency, and the Department of Business and Industry, which includes the Real Estate Division, has accordingly adopted regulations for such petitions. (NRS 233B.120; NAC 232.020) However, the Real Estate Division has not adopted any regulations pertaining to such petitions. Section 5 of this bill enacts a specific statutory provision requiring the Real Estate Division to adopt regulations pertaining to such petitions.

Existing law contains provisions concerning units or common elements of an association that are acquired by eminent domain. (NRS 116.1107) Section 7 of this bill clarifies that existing law does not authorize an association to exercise the power of eminent domain. Section 8 of this bill clarifies that any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of chapter 116 of NRS is superseded by the provisions of chapter 116 of NRS, regardless of whether the provision became effective before the enactment of the statutory provision being violated. (NRS 116.1206)

Section 8.5 of this bill provides that an association may not charge a fee for entry into the common-interest community against a person providing services to a unit, a unit's owner or a tenant of a unit's owner or against a visitor, guest or invitee of a unit's owner or a tenant of a unit's owner. (NRS 116.2111)

Section 9 of this bill revises existing law to limit an association's power to include certain provisions in certain contracts involving the association. (NRS 116.3102)

Existing law authorizes an executive board to impose fines under certain circumstances. (NRS 116.31031) Section 12 of this bill limits the imposition of fines against a unit's owner for violations of the governing documents by a tenant or an invitee of the unit's owner or the tenant.

Sections 13, 14 and 16 of this bill revise provisions relating to certain elections and meetings of an association by: (1) requiring members of the executive board to be units' owners; (2) providing that officers of an association are not required to be units' owners, unless the governing documents provide otherwise; (3) providing certain rights for candidates for election to an executive board; (4) reducing the votes necessary for removal of a member of an executive board; (5) prohibiting an association from interfering with the collection of signatures for a special meeting or removal election; and (6) providing immunity from criminal or civil liability for an association, its officers, employees and agents for the disclosure or publication of certain information pursuant to certain duties required of the association or its officers, employees and agents. *Section 14 also provides that punitive damages may not be recovered against the members of the executive board or the officers of an association for acts or omissions that occur in their capacity as members or officers.* (NRS 116.31034, 116.31036, 116.3108)

Section 15 of this bill clarifies existing law concerning the respective duties of an association and the units' owners regarding the maintenance, repair and replacement of the common elements and the units. (NRS 116.3107)

Sections 17-19 of this bill revise provisions relating to board meetings and hearings by: (1) requiring that meetings of the executive board be audio recorded and available in a certain manner; (2) requiring that certain written complaints be placed on the agenda; and (3) providing due process protections to units' owners at certain hearings. (NRS 116.31083, 116.31085, 116.31087) Section 17 also revises existing law to allow public comments to be made at both the beginning and the end of a meeting. (NRS 116.31083)

Existing law provides that an association has the statutory obligation to: (1) fund adequately its reserves; (2) include in its annual budget a statement concerning its reserves and whether it will be necessary to impose any special assessments; and (3) review its study of the reserves on an annual basis and make any appropriate adjustments necessary to ensure that the reserves are always funded adequately. (NRS 116.3115, 116.31151, 116.31152) Section 21 of this bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate

reserves. This section also provides that any such assessments imposed must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.

Section 22 of this bill authorizes the filing of a civil action to recover certain fees, administrative penalties and interest that were imposed erroneously. (NRS 116.31155)

Existing law provides that an executive board of an association must, upon written request of a unit's owner, make available certain records and papers of the association, except for certain personnel records, records of other units' owners or contracts between the association and an attorney. (NRS 116.31175) Section 23.5 of this bill removes from the exemptions for the production of records those records which pertain to a contract between the association and an attorney.

Sections 24, 26 and 28 of this bill provide certain additional rights to units' owners by: (1) increasing the scope and definition of prohibited retaliatory action; (2) authorizing the exhibition of certain political signs in certain areas; and (3) mandating notice before interruption of utility service to a unit's owner. (NRS 116.31183, 116.325, 116.345)

Section 25 of this bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing. (NRS 116.31187) Section 27 of this bill: (1) provides that existing law concerning drought tolerant landscaping must be construed broadly; and (2) clarifies the definition of "drought tolerant landscaping." (NRS 116.330) Section 29 of this bill provides that if a community manager fails or refuses to comply with the governing documents of the association or the provisions of chapter 116 of NRS, any person or class of persons may bring a civil action for damages or other relief. (NRS 116.4117)

Section 30 of this bill increases the membership of the Commission by adding two members who are units' owners but who are not required to have served as members of an executive board. (NRS 116.600) Section 31 of this bill revises provisions relating to the Commission's duties by providing for the use of training officers to perform certain duties. (NRS 116.605)

Section 36 of this bill clarifies that if the Commission or hearing officer orders an audit of an association, the audit is conducted at the expense of the association. (NRS 116.790)

Existing law provides that a written affidavit, supporting documentation and information compiled as the result of an investigation of an alleged violation are confidential unless and until a formal complaint is filed. (NRS 116.757, 116A.270) Sections 33 and 37 of this bill clarify existing law to provide that such confidential information must not be disclosed to any person, including a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed.

Section 39 of this bill provides that the Commission must adopt regulations requiring an applicant for a certificate as a community manager or the applicant's employer to post a bond. *Section 39 also provides for the issuance of temporary certificates for community managers for a period of 1 year under certain circumstances.* (NRS 116A.410)

Section 40 of this bill revises existing law to provide that upon selection or appointment of an arbitrator, the arbitrator must provide certain information concerning the procedures of the arbitration and applicable law to each party to the arbitration, and each party must return to the arbitrator an acknowledgment of the information provided by the arbitrator. (NRS 38.330)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *1. A person shall not knowingly, willfully and with the intent to fraudulently alter the true outcome of an election of a member of the executive board or any other vote of the units' owners engage in, attempt to engage in, or conspire with another person to engage in, any of the following acts.*

(a) Changing or falsifying a voter's ballot so that the ballot does not reflect the voter's true ballot.

(b) Forging or falsely signing a voter's ballot.

(c) Fraudulently casting a vote for himself or for another person that the person is not authorized to cast.

(d) Rejecting, failing to count, destroying, defacing or otherwise invalidating the valid ballot of another voter.

(e) Submitting a counterfeit ballot.

2. A person who violates this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 4. *1. Except as otherwise provided in subsection 3, a community manager or member of the executive board who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may be brought before him in his capacity as a community manager or member of the executive board, will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

2. Except as otherwise provided in subsection 3, a person who offers or gives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that the vote, opinion or action of a community manager or member of the executive board upon any matter then pending or which may be brought before the community manager or member of the executive board in his capacity as a community manager or member of the executive board will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. The provisions of this section do not prohibit:

(a) An employee of a declarant or an affiliate of a declarant who is a member of an executive board from asking for or receiving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, from the declarant or affiliate.

(b) A declarant or an affiliate of a declarant whose employee is a member of an executive board from offering or giving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, to the employee who is a member of the executive board.

(c) A community manager from asking for or receiving, directly or indirectly, or an employer of a community manager from offering or giving, directly or indirectly, any compensation for work performed by the community manager pursuant to the laws of this State.

Sec. 5. *1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:*

(a) Any provision of this chapter or chapter 116A or 116B of NRS;

(b) Any regulation adopted by the Commission, the Administrator or the Division; or

(c) Any decision of the Commission, the Administrator or the Division or any of its sections.

2. Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.

3. A petition filed pursuant to this section must:

(a) Set forth the name and address of the petitioner; and

(b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.

4. A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.

5. The Division shall:

(a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and

(b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.

Sec. 6. (Deleted by amendment.)

Sec. 7. NRS 116.1107 is hereby amended to read as follows:

116.1107 1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as otherwise provided in subsection 1, if part of a unit is acquired by eminent domain, the award must compensate the unit's owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

3. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

5. The provisions of this section do not authorize an association to exercise the power of eminent domain pursuant to chapter 37 of NRS, and an association may not exercise the power of eminent domain, as provided in NRS 37.0097.

Sec. 8. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter [shall]:

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

(b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

2. In the case of amendments to the declaration, bylaws or plats and plans of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 8.5. NRS 116.2111 is hereby amended to read as follows:

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) *Charge any fee for a person to enter the common-interest community to provide services to a unit, a unit's owner or a tenant of a unit's owner or for any visitor to the common-interest community or invitee of a unit's owner or a tenant of a unit's owner to enter the common-interest community.*

(c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:

(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit;

(3) Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or

(4) A system that uses wind energy to reduce the costs of energy for the unit if the boundaries of the unit encompass 2 acres or more within the common-interest community.

~~[(c)]~~ *(d)* With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

4. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph 4 of paragraph ~~[(b)]~~ *(c)* of subsection 2 unless he first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

Sec. 9. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

(a) Adopt and amend bylaws, rules and regulations.

(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.

(c) Hire and discharge managing agents and other employees, agents and independent contractors.

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) Make contracts and incur liabilities. *Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.*

(f) Regulate the use, maintenance, repair, replacement and modification of common elements.

(g) Cause additional improvements to be made as a part of the common elements.

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) Grant easements, leases, licenses and concessions through or over the common elements.

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.

(k) Impose charges for late payment of assessments.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in

the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or ~~[guest]~~ *an invitee* of a unit's owner *or a tenant* violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or ~~[guest]~~ *the invitee* of the unit's owner *or the tenant* from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or ~~[guest]~~ *the invitee* of the unit's owner *or the tenant* from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or ~~[guest]~~ *the invitee* of the unit's owner *or the tenant* for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

(c) Had an opportunity to stop the violation and failed to do so.

3. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

~~[3.]~~ *4.* The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

~~[4.]~~ *5.* The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

(b) Executes a written waiver of the right to the hearing; or

(c) Fails to appear at the hearing after being provided with proper notice of the hearing.

~~[5.]~~ *6.* If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

~~[6.]~~ *7.* If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

~~[7.]~~ *8.* The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

~~[8.]~~ *9.* Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

(1) May not exceed $20, if the outstanding balance is less than $200.

(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) May not exceed $500, if the outstanding balance is $5,000 or more.

(c) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~[9.]~~ *10.* As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.

Sec. 12.5. NRS 116.310315 is hereby amended to read as follows:

116.310315 If an association has imposed a fine against a unit's owner or a tenant or ~~[guest]~~ *an invitee* of a unit's owner *or a tenant* pursuant to NRS 116.31031 for violations of the governing documents of the association, the association:

1. Shall, in the books and records of the association, account for the fine separately from any assessment, fee or other charge; and

2. Shall not apply, in whole or in part, any payment made by the unit's owner for any assessment, fee or other charge toward the payment of the outstanding balance of the fine or any costs of collecting the fine, unless the unit's owner provides written authorization which directs the association to apply the payment made by the unit's owner in such a manner.

Sec. 13. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, ~~[at least a majority]~~ *all* of whom must be units' owners. ~~[Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners.]~~ The executive board shall elect the officers of the association. *Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.* The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 2 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

→ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot in the manner established in the bylaws of the association.

6. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, he shall file proof in the records of the association that:

(a) He is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate

8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) A quorum is not required for the election of any member of the executive board.

(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in his campaign for election as a member of the executive board, except that his campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement,

(a) Must be no longer than a single, typed page;

(b) Must not contain any defamatory, libelous or profane information; and

(c) May be sent with the secret ballot mailed pursuant to subsection 8 or in a separate mailing.

→ The association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to this subsection.

10. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 14. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section ~~[the]~~ :

(a) The number of votes cast ~~[in favor of removal]~~ constitutes ~~[:~~

~~(a) At]~~ *at* least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election ~~[.]~~ *are cast in favor of removal.*

2. The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against ~~[the]~~ :

(a) The association ~~[.]~~ ~~[, but may be recovered from persons whose activity gave rise to the damages.]~~ .

(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or

(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 15. NRS 116.3107 is hereby amended to read as follows:

116.3107 1. Except to the extent provided by the declaration, subsection 2 and NRS 116.31135, the association ~~[is responsible]~~ *has the duty to provide* for *the* maintenance, repair and replacement of the common elements, and each unit's owner ~~[is responsible]~~ *has the duty to provide* for *the* maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability that a declarant as a unit's owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to developmental rights. No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.

3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

Sec. 16. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

→ The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer

specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the

units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 17. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every 90 days.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the *audio recording, the* minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. ~~[The]~~ *A* period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for *both* the beginning *and the end* of each meeting. *During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda.* In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to

the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause *each meeting of the executive board to be audio recorded and the* minutes to be recorded or otherwise taken at each meeting of the executive board ~~[.]~~ *, but if the executive board is meeting in executive session, the meeting must not be audio recorded.* Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the *audio recording of the meeting, the* minutes ~~[or]~~ *of the meeting and* a summary of the minutes of the ~~[meetings]~~ *meeting* to be made available to the units' owners. A copy of the *audio recording, the* minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 18. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract. ~~[, unless it is a contract between the association and an attorney.]~~

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive. ~~[, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.]~~

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; ~~[and]~~

(b) *Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and*

(c) Is not entitled to attend the deliberations of the executive board.

5. *The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.*

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

~~[6.]~~ 7. Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 19. NRS 116.31087 is hereby amended to read as follows:

116.31087 1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall ~~[, if action is required by the executive board,]~~ *, upon the written request of the unit's owner,* place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

2. Not later than 10 business days after the date that the association receives such a complaint, the executive board or an

authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if ~~[action is required by the executive board,]~~ *the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board,* the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the common elements are necessary. *Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.*

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgement against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 22. NRS 116.31155 is hereby amended to read as follows:

116.31155 1. Except as otherwise provided in subsection 2, an association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, or as any other authorized business entity, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association that is subject to the governing documents of the master association, unless the governing documents of the master association provide otherwise. The provisions of this subsection do not relieve any association that is subject to the governing documents of a master association from its ultimate responsibility to pay the fees required pursuant to this section to the Administrator if they are not paid by the master association.

3. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the Division.

(b) Deposited with the State Treasurer for credit to the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630.

(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed $3 per unit.

4. The Division shall impose an administrative penalty against an association or master association that violates the provisions of this section by failing to pay the fees owed by the association or master association within the times established by the Division. The administrative penalty that is imposed for each violation must equal 10 percent of the amount of the fees owed by the association or master association or $500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 from the date the fees are due until the date the fees are paid in full.

5. A unit's owner may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to both an association and a master association.

6. An association that is subject to the governing documents of a master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by the master association.

7. A master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by an association that is subject to the governing documents of the master association.

8. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

9. Any person, association or master association which has been requested or required to pay any fees, administrative penalties or interest pursuant to this section and which believes that such fees, administrative penalties or interest has been imposed in error may, without exhausting any available administrative remedies, bring an action in a court of competent jurisdiction to recover:

(a) Any amount paid in error for any fees, administrative penalties or interest during the immediately preceding 3 years;

(b) Interest on the amount paid in error at the rate set forth in NRS 99.040; and

(c) Reasonable costs and attorney's fees.

Sec. 23. (Deleted by amendment.)

Sec. 23.5. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees; *and*

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2, ~~[; and~~

~~(c) A contract between the association and an attorney.]~~

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

Sec. 24. NRS 116.31183 is hereby amended to read as follows:

116.31183 An executive board, a member of an executive board, *a community manager* or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

2. Recommended the selection or replacement of an attorney, community manager or vendor; or

~~[2.]~~ *3.* Requested in good faith to review the books, records or other papers of the association.

Sec. 25. NRS 116.31187 is hereby amended to read as follows:

116.31187 1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide *financing,* goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing *financing,* goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any *financing,* goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 26. NRS 116.325 is hereby amended to read as follows:

116.325 1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting ~~[a political sign]~~ *one or more political signs* within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively ~~[if the political sign is]~~ *, subject to the following conditions:*

(a) All political signs exhibited must not *be* larger than 24 inches by 36 inches.

(b) If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.

(c) All political signs exhibited are subject to any applicable provisions of law governing the posting of political signs.

(d) A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question.

2. The provisions of this section establish the minimum rights of a unit's owner or an occupant of a unit to exhibit ~~[a]~~ political ~~[sign]~~ *signs.* The provisions of this section do not preempt any provisions of the governing documents that provide greater rights and do not require the governing documents or the executive board to impose any restrictions on the exhibition of political signs other than those established by other provisions of law.

3. As used in this section, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question ~~.~~ *in any federal, state or local election or any election of an association.*

Sec. 27. NRS 116.330 is hereby amended to read as follows:

116.330 1. The executive board shall not and the governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping within such physical portion of the common-interest community as that owner has a right to occupy and use exclusively, *including, without limitation, the front yard or back yard of the unit's owner,* except that:

(a) Before installing drought tolerant landscaping, the unit's owner must submit a detailed description or plans for the drought tolerant landscaping for architectural review and approval in accordance with the procedures, if any, set forth in the governing documents of the association; and

(b) The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

→ *The provisions of this subsection must be construed liberally in favor of effectuating the purpose of encouraging the use of drought tolerant landscaping, and the executive board shall not and the governing documents must not unreasonably deny or withhold approval for the installation of drought tolerant landscaping or unreasonably determine that the drought tolerant landscaping is not compatible with the style of the common-interest community.*

2. Installation of drought tolerant landscaping within any common element or conversion of traditional landscaping or cultivated vegetation, such as turf grass, to drought tolerant landscaping within any common element shall not be deemed to be a change of use of the common element unless:

(a) The common element has been designated as a park, open play space or golf course on a recorded plat map; or

(b) The traditional landscaping or cultivated vegetation is required by a governing body under the terms of any applicable zoning ordinance, permit or approval or as a condition of approval of any final subdivision map.

3. As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions. *The term includes, without limitation, the use of mulches such as decorative rock and artificial turf.*

Sec. 28. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat or plan of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility

service. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 29. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. ~~[If]~~ *Subject to the requirements set forth in subsection 2, if* a declarant, *community manager* or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply ~~[has a claim]~~ *may bring a civil action* for *damages or other* appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages ~~[caused by]~~ *or other appropriate relief for* a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

(1) A declarant; ~~[or]~~

(2) *A community manager; or*

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

3. ~~[Punitive]~~ *Except as otherwise provided in NRS 116.31036, punitive* damages may be awarded for a willful and material failure to comply with *any provision of* this chapter if the failure is established by clear and convincing evidence.

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

5. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

Sec. 30. NRS 116.600 is hereby amended to read as follows:

116.600 1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of ~~[five]~~ *seven* members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) *Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;*

(c) One member who is in the business of developing common-interest communities in this State;

~~[(c)]~~ *(d)* One member who holds a certificate;

~~[(d)]~~ *(e)* One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

~~[(e)]~~ *(f)* One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least ~~[three]~~ *four* members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than $80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 31. NRS 116.605 is hereby amended to read as follows:

116.605 1. The Division shall *employ one or more training officers who are qualified by training and experience to* provide ~~[or arrange to have provided]~~ to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission. *Such courses of instruction may be made available to the staff of the Division as well as to community managers.*

2. *The training officer shall:*

(a) Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and

(b) Perform any other duties as directed by the Division.

3. Each member of the Commission must attend the courses of instruction *described in subsection 1* not later than 6 months after the date that the member is first appointed to the Commission.

Sec. 32. NRS 116.675 is hereby amended to read as follows:

116.675 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 33. NRS 116.757 is hereby amended to read as follows:

116.757 1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit filed with the Division pursuant to NRS 116.760, all documents and other information filed with the written affidavit and all documents and other information compiled as a result of an investigation conducted to determine whether to file a formal complaint with the Commission are confidential. *The Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 2 and the disclosure is required pursuant to subsection 2.*

2. A formal complaint filed *by the Administrator* with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, are public records.

Sec. 34. (Deleted by amendment.)

Sec. 35. (Deleted by amendment.)

Sec. 36. NRS 116.790 is hereby amended to read as follows:

116.790 1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association [.] *at the expense of the association.*

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:

(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

(a) Take charge of the estate and effects of the association;

(b) Appoint an agent or agents;

(c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;

(d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and

(e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court.

Sec. 37. NRS 116A.270 is hereby amended to read as follows:

116A.270 1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Division alleging a violation of this chapter or chapter 116 or 116B of NRS, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential. ~~[and may be disclosed]~~

2. The Division shall not disclose any information that is confidential pursuant to subsection 1, in whole or in part ~~[only]~~ *, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 3 and the disclosure is required pursuant to subsection 3, except that the Division may disclose the information described in subsection 1* as necessary in the course of administering this chapter or to a licensing board or agency or any other governmental agency, including, without limitation, a law enforcement agency, that is investigating a person who holds a certificate or permit issued pursuant to this chapter.

~~[2.]~~ *3.* The *formal* complaint or other charging documents filed *by the Administrator* with the Commission to initiate disciplinary action and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline are public records.

Sec. 38. NRS 116A.300 is hereby amended to read as follows:

116A.300 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 39. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. *The regulations must include, without limitation, provisions that:*

(1) Provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Holds a professional designation in the field of management of a common-interest community from a nationally recognized organization;

(II) Provides evidence that the person has been engaged in the management of a common-interest community for at least 5 years; and

(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common-interest community;

(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Receives an offer of employment as a community manager from an association or its agent; and

(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in sub-subparagraph (I). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph;

(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1-year period if the certificate holder ceases to be employed by the association, or its agent, which offered him employment as described in subparagraph (2);

(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act within the 1-year period;

(5) Provide for the issuance of a certificate at the conclusion of the 1-year period if the person:

(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act; and

(II) Has not been the subject of any disciplinary action pursuant to this chapter or chapter 116 of NRS or any regulations adopted pursuant thereto;

(6) Provide that a temporary certificate described in subparagraph (1) or (2), and a certificate described in subparagraph (5):

(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and

(II) Must not be treated as a limited, restricted or provisional form of a certificate;

(b) *Must require an applicant or the employer of the applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds;*

(c) May require applicants to pass an examination in order to obtain a certificate [.] *other than a temporary certificate described in paragraph (a).* If the regulations require such an examination, the Commission shall by regulation establish fees to pay the

costs of the examination, including any costs which are necessary for the administration of the examination.

~~[(c)]~~ *(d)* May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~[(d)]~~ *(e)* Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~[(e)]~~ *(f)* Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military:

(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and

(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association.

Sec. 40. NRS 38.330 is hereby amended to read as follows:

38.330 1. If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.

2. If all the parties named in the claim do not agree to mediation, the parties shall select an arbitrator from the list of arbitrators maintained by the Division pursuant to NRS 38.340. Any arbitrator selected must be available within the geographic area. If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. *An arbitrator shall, not later than 5 days after his selection or appointment pursuant to this subsection, provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:*

(a) Must be written in plain English;

(b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

(c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

3. The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this

section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

(a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and

(b) There is money available in the account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

5. If all the parties have agreed to nonbinding arbitration, any party to the *nonbinding* arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such *binding* arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

7. If, after the conclusion of *binding* arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

→ the party shall, if he fails to obtain a more favorable award or judgment than that which was obtained in the initial *binding* arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

Sec. 41. The Governor shall appoint to the Commission for Common-Interest Communities and Condominium Hotels pursuant to NRS 116.600, as amended by section 30 of this act:

1. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2010; and

2. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2011.

Sec. 42. The manual described in subsection 2 of NRS 116.605, as amended by section 31 of this act, must be prepared and made available by October 1, 2010.

Sec. 43. *1. This section becomes effective upon passage and approval.*

2. Section 39 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2010, for all other purposes.

3. Sections 1 to 38, inclusive, 40, 41 and 42 of this act become effective on October 1, 2009.

MICHAEL SCHNEIDER	TICK SEGERBLOM
TERRY CARE	RUBEN KIHUEN
MIKE MCGINNESS	JOHN HAMBRICK
Senate Conference Committee	*Assembly Conference Committee*

Senator Schneider moved that the Senate adopt the report of the Conference Committee concerning Senate Bill No. 182.

Remarks by Senator Schneider.

Senator Schneider requested that his remarks be entered in the Journal.

I want to thank my colleagues in the Legislature for enacting Senate Bill 182. I have championed the reforms contained in this bill for many years. They will help restore the balance between the rights of individual citizens living in common-interest communities and the governmental structures we as legislators have created and to a certain extent, imposed on average homeowners, sometimes to their detriment. I want to repeat the language of the preamble to the bill as introduced because it summarizes all the important reasons we are enacting this bill:

WHEREAS, The Nevada Legislature previously deemed it important to set forth its intent regarding the creation and proper functioning of planned communities; and

WHEREAS, The Nevada Legislature previously noted that planned communities are a dominant method of residential development in the State of Nevada; and

WHEREAS, The Nevada Legislature previously noted that planned communities are developed for the purposes of preserving neighborhood continuity and creating desirable places to reside; and

WHEREAS, The Nevada Legislature previously noted that planned communities are governed by specific rules and regulations and by unit-owners' associations; and

WHEREAS, The Nevada Legislature previously noted that a unit owners' association is the form of self-government closest to the people; and

WHEREAS, The Nevada Legislature previously declared that all forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution; and

WHEREAS, The Nevada Legislature previously noted that some unit-owners' associations in this State have a history of abuse of power; and

WHEREAS, The Nevada Legislature previously noted that unit owners' associations have power over one of the most important aspects of a person's life, his residence; and

WHEREAS, The Nevada Legislature previously noted that homeowners invest financially and emotionally in their homes; and

WHEREAS, The Nevada Legislature previously declared that homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly interference with their property rights; and

WHEREAS, Many of the concerns previously noted by the Nevada Legislature persist to this day; and

WHEREAS, The Nevada Legislature deems it necessary and important to reiterate and endorse both the intent and the concerns previously expressed by the Nevada Legislature; and

WHEREAS, The establishment of planned communities is required by many local governments as a condition of granting necessary building permits for residential housing; and

WHEREAS, The form of self-government of a unit-owners' association includes legislative, executive and quasi-judicial powers and functions; now, therefore,

Thank you again for understanding the nature and importance of what we are doing with this bill. It is my sincere hope that this measure will allow citizens of Nevada to live secure in their rights in their homes in a manner consistent with their constitutional rights. If any court has occasion to interpret the provisions of this bill or indeed of any provision in Chapter 116 or 116A of the Nevada Revised Statutes, let the court be guided by these principles I have just reviewed with you.

There is one other important issue I need to touch on so there is no further misunderstanding about the reach and scope of Nevada Revised Statutes chapters 116 and 116A. Section 6 of the Senate Bill 182 as originally introduced was designed to clarify, and I emphasize the term "clarify," existing law. Section 6 does not and was not intended to effect any change in existing law. It is clarifying language only. The distinguishing factor in a common-interest community (CIC) is ownership of common areas, not the existence of covenants, conditions and restrictions (CC&Rs). This is the essential difference between a CIC and a homeowners' association, a name often used interchangeably with CIC but a legally distinct type of entity. Section 6 was necessary because the Real Estate Division has taken the position that a homeowners' association with only CC&Rs, as distinct from a CIC, is subject to Nevada Revised Statutes (NRS) Chapter 116 and 116A when in actuality it is not by virtue of the fact that a homeowners association does not own common property.

The Real Estate Division has also been charging home owners in associations the $3/door charge that is legally only chargeable to a CIC. These associations, as opposed to CICs, were never intended to be subject to NRS Chapter 116. They derive no benefit from the Real Estate Division and do not even have mechanisms to collect the door charge from homeowners because there are no executive boards or other governing bodies in these associations. The Real Estate Division has been trying to collect "back" door charges from as long ago as ten years, despite protest that, even if the Division was legally entitled to such fees, the statute of limitations would prohibit collection for periods beyond three years at most. The Attorney General's Office issued AGO on August 11, 2008 purporting to support the concept that homeowner associations are subject to Chapter 116. This opinion was rebutted by a Legislative Counsel Bureau Legal Opinion. The Real Estate Division has agreed to drop its assertions but only if NRS 116.021 is clarified. Section 6 of Senate Bill 182 as introduced provided that clarification.

However, Section 6 was deleted in favor of language from the Uniform Act that was placed in Section 7 of Senate Bill 261 of this Session. Though the phrasing of Section 7 of Senate Bill 261 is a little different than the language of Section 6 of Senate Bill 182, the intent is the same. Section 7 of Senate Bill 261 is the language the Legislature has chosen to clarify the existing language of Nevada Revised Statutes 116.021 and to most emphatically reject the erroneous interpretation placed on that section by the Real Estate Division and the Attorney General's Office. The only thing that remains now is for the Real Estate Division to refund the sums erroneously collected from homeowner associations that only have CC&Rs and do not have common elements, as those are defined in statute. With this explanation and the clarification provided by Senate Bill 261, I hope this issue is laid to rest once and for all.

Motion carried by a constitutional majority.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Carlton moved that the Conference Committee Reports on Senate Bill No. 269; Assembly Bill No. 454 be taken from Unfinished Business and placed on Unfinished Business on the fourth agenda.

Remarks by Senator Carlton.

Motion carried.