

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 Electronically Filed
Aug 07 2018 02:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
APPELLANTS' APPENDIX
VOLUME 3

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

APPELLANTS' APPENDIX - VOLUME 3

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APPENDIX SUMMARY
Alphabetical Order

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Answer to Complaint and Counterclaim	April 2, 2012	1	28-49
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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
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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
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never been done that it wasn't very effective. This year with the road grading and the ditches have been cleared we should be more successful.

- b. **Sign Repair** – The sign repair has been completed. Future repairs will be addressed in the Reserve Study.
- c. **Status of Roads** – The Board updates the Members on the current status of the roads. The grading has been completed per the available funds that were approved at last years meeting. Since the roads were graded we have had a lot of rain and it is clear where culverts need to be placed to keep the quality of the roads. Members discuss some of their concerns as to way the roads were graded. Mike explains how they were graded and the reason as to why. He also explains that this will be the closest we can come to a standard with the funds we have available. He also advises that we do not want the county coming in and taking control as this would increase taxes and the county would impose a special assessment to complete the work. Members discuss bringing in gravel for the roads. There is discussion of getting gravel from the Forestry Division, but who will bring it in and lay it down? Where are the funds? Who would volunteer?

New Business:

- a. **Reserve Study** – Lee presents the Reserve Study to the Members. He advises that the Reserve Study is a requirement from the State of Nevada Ombudsman's Office. The purpose of the Reserve Study is to make sure that Association's in Nevada have the required money available to maintain the infrastructure of the Association. The Reserve Specialists are licensed by the State to study the needs of the Association. They advise repair/replacement costs, Life expectancy of materials/equipment, plus insurance, dues and operating costs. The Reserve study also helps maintain and guide the amount of dues needed to maintain the integrity of the Association. The Study does need to be updated every couple of years, but can be done by the board at that time, yet it still needs to be has to be certified every 5 years.
- b. **Council Interpretation of CC&R's**
Bob Wines updates the Members of the 2 years of work that the Board has put in trying to please all the Members in regards to the interpretation of the livestock clarification of the CC&R's. There have been several surveys of the Members, many arguments and lots of frustration trying to make a few happy. After hours of deliberation with the Board, the Board approved the attached interpretation as a Rule to the Associations CC&R's. Bob Wines informs the Members how difficult it is to change the CC&R's but interpretations addressed as rules can be used to clarify/interpret unclear language. He also advises that Rules can be changed and a New Board may interpret things differently. He also discusses a

process for a variance in regards to additional Livestock (not to exceed 4 horses) that a property owner can apply for. The Board has approved this method to allow exceptions to the CC&R's.

- c. **Dues** – The dues are reflected by the Reserve Study. This year they will be slightly less than last year. The new amount will be \$223.48 per lot.
- d. **Culverts and Cattle Guards** - After the grading was completed and the rains came. It was made clear where the culverts need to be placed. It is discussed that culverts will need to be placed at driveways, but it is the responsibility of the property owner to purchase and place them in their driveways. It is discussed that the Cattle Guard at the North entrance has begun to sink. It will have to be addressed as a repair item shortly. Who will repair? Volunteers? More discussion will need to be addressed as to the timing of repair and who it will be completed by.
- e. **In need of Volunteers** – The Board discusses with the Members all the time they have put in with the quarterly meetings, meeting with contractors, required classes, weed abatement, maintenance. They advise that it would be greatly appreciated if we could get some help with administering the Reserve Study, Elections committees, helping with projects for the upkeep of the Association. We all enjoy having a nice place to go to. It would be appreciated if we had some members other than the Board Members to take an active interest in the Association. Any one interested in volunteering can contact any Member of the Board with how they would like to help.

Good of the Association

- a. **Donations** – The Members discuss that it is a neighborly to keep our budget at its current level to make contributions to the local community. This last year the Association made a contribution to the Friendship Fund. The funds were used to repair the Community Hall after it was damaged from weather. The Members were able to see the repairs at this year's meeting since we use the Community Hall for our Meetings. All members were in agreement and the vote passed.

Additional items requested at the meeting:

- a. A Member requested from the Board an explanation of the new procedures the Architectural Committee is using in regards to Violations. As having received a notice she was concerned as she was unsure how to interpret the letter she received. She felt that it was unclear as to what the actual violations were for as it only referenced paragraphs from the CC&R's. She would have liked to see a more personal notification such as a visit to their place rather than a letter. It is explained as to why it needs

to be properly addresses in writing rather than personally. She still feels the letter should express better detail into why a person is receiving a violation letter. It is discussed that she will submit an alternate procedure for the Board to review.

Election Committee – Lee requests volunteers to enlist in the election committee. Nora Perks, Rhonda Keife and Kris Cecchi volunteer for the Election Committee

Adjournment – Steve Forbes Motions for adjournment. Rhonda Keife seconds. All Members are in favor and adjourn to the Bar-B-Que.

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

RUBY VALLEY, NEVADA

BOARD OF DIRECTORS AND LANDOWNERS MEETING MINUTES

SATURDAY, AUGUST 08, 2009 11:00 AM

AT

Ruby Valley Community Hall

Board Members Present: Lee Perks, Mike Cecchi, Dennis McIntyre, Valeri McIntyre
Mel Essington, Bill Noble.

Board Members Absent: None

Members Present: 19 parcel owners represented

Call Meeting to Order

Lee Perks called Meeting to order.

Minutes of previous meeting: Mike Cecchi motions for approval of the minutes.
Rhonda Keife seconds motion. All Members in favor – Pass

Presidents Address: Lee discusses all the work the Board has done in regards to
developing the association to the States Standards, The Reserve Study and its purpose,
and what is required for a Board Member.

Treasurer's Report: Dennis McIntyre updates financial report. Dennis discusses 2010
budget. Roger Clark motions to approve 2010 Budget, Kris Cecchi seconds motion. All
Members in favor - Pass

Old Business:

- a. **Weed Abatement** - The Board updated the Members in regards to the
progress of our weed abatement program and the future plans for plan for
the program. The weed abatement was not very successful last year and
this fall the plan will be to use alternate chemicals. Last year the chemical
that were used were recommended by the Local Farm Bureau and persons
from the Refuge, but did not work. The weeds were so thick since it had

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never been done that it wasn't very effective. This year with the road grading and the ditches have been cleared we should be more successful.

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Statement of Interpretation of language for Covenants, Conditions, and Restrictions
Ruby Lake Estates Homeowner's Association
July, 2009

Whereas, the Ruby Lake Estates Homeowner's Association (hereinafter "Association") has considered the desirability of amending certain provisions of the Covenants, Conditions, and Restrictions (hereinafter "CCR's") recorded on October 25, 1989, in Book 703, Page 287, as Document No. 283759, Official Records, Elko County, Nevada Recorder's Office; and

Whereas, the Board of Directors of Ruby Lake Estates Homeowner's Association, (hereinafter "Board:") do not believe they will have unanimous agreement to amend those CCR's, and therefore, have elected not to amend them; and

Whereas, circumstances exist which require the interpretation of certain provisions of the CCR's, and the Board desires to make this written record of their interpretation, so that all property owners of property within Ruby Lake Estates Subdivision (hereinafter "RLE") will be able to review whether the Board is following its own interpretation.

Based on the foregoing, the Board does hereby adopt the following interpretations:

FIRST: Article III states:

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

Article III, Paragraph H currently states:

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, and 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) . . .

SECOND: The Board has been presented with several interpretations or issues associated with this language, which are as follows: Does hunting season include bow, black powder and rifle seasons for deer? Does hunting season include duck and goose hunting season? Does it apply to Sage Hen season? There are only about two months of each year that are not a "hunting season" for something. Additionally, there are issues relating to "fishing season", which exceeds the 45 day period. The provision allows "four head of livestock" without limiting they number of any particular type, and then allows more than "two horses" during hunting and fishing season. Is this an enforceable limitation limiting the number of horses to "two horses" during all other periods of the year? If a person owns more than one lot, is that person allowed to possess more than the "four head of livestock"? Is

this application different when a person owns two lots that are contiguous, versus lots that are not contiguous? Is the interpretation different if one lot is owned, and another leased? Is the CCR designed to prevent overgrazing? Is the CCR designed to limit the buildup of Nitrates in the soil?

THIRD: The Board does hereby adopt the following basic considerations:

1. Any lot owner may have two horses as a matter of right. Lots owned by or controlled by any single person or family shall all be considered as a single lot
2. Any lot owner may have a total of "4 head of livestock" but not more than "2 horses" on each lot that is individually fenced, as a matter of right, whether there is a residence located on both lots or not.
3. Any lot owner who owns or controls more than one lot, either contiguous or separated, and whether owned or leased, and who asserts a right to stable more than two horses on the premises controlled by that individual, shall apply to the Board for a Conditional Use Exception. Said Conditional Use Exception shall govern for all horses in excess of the two authorized animals, for all periods of time. The entire property owned or controlled must be enclosed by a fence.
4. Conditional Use Exception shall disclose the number of horses which the applicant desires to maintain on the premises, the period of time the horses will be maintained on the premises, the use to which the horses will be put, and a proposal regarding maintenance of the lot or pen which will prevent waste to the property or the accumulation of feces. Said Conditional Use Exception shall also contain a disclosure whether the applicant has conferred with his immediate adjoining neighbors (including neighbors across any road or street), and whether those neighbors approve the proposed use or oppose it.
5. Conditions for granting Conditional Use Exception, shall include the following: payment of an application fee of \$175.00; filing of a complete application; Consent by more than 50% of adjoining neighbors; membership in the Association must be in good standing; the member shall not have any pending violations of any covenant; no application for Conditional Use Exception shall be granted if there is opposition by more than 1 adjoining neighbor; the Board may consider historical violations which may affect either the issuance or conditions placed on any Use Exception; a Conditional Use Exception may contain any provision the Board shall deem necessary or reasonable to maintain the quality of living in RLE, and which shall be reasonably necessary for the protection of the adjoining neighbors; the Board may require such insurance as the Board shall deem necessary for any Conditional Use Exception for as Special Event. No Conditional Use Exception shall be granted allowing in excess of four horses per lot.

5. Any Conditional Use Exception shall be valid until December 31 unless granted for a Special Event or for a specific period of time (for example, for a special event, such as a roping); upon written request, a Conditional Use Exception shall be extended for an additional year, upon payment of a fee of \$40.00, provided there have not been any written complaints regarding any matter placed as a condition of the exception; no Conditional Use Exception for a special event shall be automatically renewed.
6. All Conditional Use Exceptions shall be issued to the applicant, and shall be personal to the applicant; no Conditional Use Exception shall be transferrable, and any issued Exception shall expire upon sale, conveyance or transfer of the lot, except to a wholly owned corporation or to a family trust.
7. Issuance of a Conditional Use Exception shall require an affirmative vote of a majority of the Board.
8. The Board recognized that homeowners may have children involved with 4-H projects. Any member whose children shall desire to undertake an active 4-H project which shall include the rearing or raising of livestock shall be subject to the following conditions: In the event the 4-H project shall increase the number of livestock above the allowable number, the homeowner shall apply for a Conditional Use Exception for the active 4-H project. There shall not be an application fee charged. Any such application shall be approved if the child is an active member of a 4-H club and if the project has been approved by the 4-H leader. The Board shall be entitled to contact the 4-H leader to determine that the project is an active, approved project. Provided that all conditions are met, approval of the Conditional Use Exception shall be approved.

AESTHETICALLY PLEASING/ SHEDS, CONTAINERS, AND STORAGE STRUCTURES WITHIN RLEHA

Sheds, containers and Storage Structures must adhere to the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions, Article #3, Condition Sections D, F, I, K, L, M, N, O, P or other conditions within the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions; in addition, all such structures must comply with all Local, State or Federal Regulations that might apply.

Should a residential dwelling exist prior to the installation/erection of the shed, container or storage structure, such buildings must be painted of a complimentary color as the residential dwelling with the roof pitched to conform with The Elko County Building Departments codes/regulations and must be of complimentary color as the existing residential dwelling roof.

Should a temporary building be placed upon the lot prior to the erection or placement of a residential dwelling, the temporary building, storage structure, shed must be approved by the Architectural Review Committee prior to installation, and shall meet with the Architectural Review Committee's approval per The Ruby Lake Estates Declaration of Reservation, Conditions and Restrictions Article #3, Conditions. Any such approval may limit the time that such temporary structure may remain on the premises. In the event the resident shall desire to convert the temporary storage structure to a permanent improvement, the resident shall be required to obtain approval from the Architectural Review Committee. However, should a residential dwelling be installed or erected after the placement of the temporary building, storage structure or shed, the residential dwelling and the temporary building, storage structure or shed shall have complimentary color roof and exterior color. All colors shall be muted and complimentary with desert and earth tones.



7-5-09

My following signature acknowledges
that I have completed and submitted
my nomination form for selection
as a director of the Board for the
RLE HOA

G.M. Essington



10-26-09

Ruby Lakes Home Owners Association Member

I am writing this letter to inform you of recent construction activity in the Ruby Lake Estate subdivision. Contrary to the expressed purpose of the CCR's a very large, commercial type structure has been erected in the subdivision. The building is 40' W 80' L and 23' High. It is a standard metal commercial type of structure common to industrial developments. It is out of place in a residential/vacation home subdivision. Due to its size, it interferes with the view from several lots.

The CCRs clearly express the intention to establish and maintain a residential and recreational home environment. This building is definitely not within that standard and thereby serves to degrade the value of the homes and land owners that are in keeping with the CCR's. Other home owners have built barns that look fully appropriate for the subdivision and provide the same storage function. Unbelievably, this monstrosity was ordered by the supervisor of Petks Plumbing secretary of the HOA, built by the president of the HOA, and approved by the vice president/chairman of the Architectural Review Committee. These are the very individuals elected and charged with the preservation of the CCRs. The President and Vice President are plumbers and business associates that live and work in Reno, and visit the subdivision only a few times each year. The second signature from the Architectural Review Committee approving the construction plans was by an individual totally unaccustomed to reviewing such construction plans who states he did not understand what it was he was approving.

If you also believe this type of over-sized, commercial building is inappropriate you can protest to the Architectural Review Committee and Board of Directors. Objections can be directed to Bob Wines, attorney for the HOA, who provides a clearinghouse function for the association. Mr. Wines can be reached at 687 6th Street, Elko, Nevada 89801 (775) 738-3171. In addition or alternatively protests can be placed with the Nevada State Ombudsman, who provides oversight of HOAs, they can be reached 2501 East Sahara Avenue, Suite 102, Las Vegas, Nevada 89104-4137 (702) 486-4033. The Ombudsman will investigate in full.

Sincerely

E. Essington



#21

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

765 East Greg Street, #103
Sparks, Nevada 89431
(Remit to)

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

November 16, 2009

To: All lot owner of the Ruby Lake Estates Homeowners Association

Re: E. Essington correspondence dated 10-26-09

Dear Lot Owners of the Ruby Lake Estates,

This correspondence is being transmitted as a result to correspondence that I'm sure most, if not all of the lot owners have received from an E. Essington (lot owner within the Ruby Lake Estates), with regards to a shop/structure that has recently been constructed within the Ruby Lake Estates. Personally as a lot owner myself I have not received the E. Essington correspondence and only have knowledge of the correspondence as sent to me through other lot owners requesting clarification of the E. Essington correspondence contents. Should I or The Ruby Lake Estates Homeowners Association received this correspondence when initially transmitted I would have made every attempt to address the E. Essington contents and concerns in a more timely fashion!

As to the structure being of the size that is described with in the correspondence; yes it is of those dimensions described. The Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions (CC&R's), does not stipulate as to any square footage size or height restrictions for either a residential structure or to any attached/detached structure and apparently neither does the Elko County Building Department codes as they were the governing authority to which issued the building permit for the construction of this structure.

The correspondence proceeds to ascertain that the CC&R's INTENTION is to establish and maintain a residential and recreation home environment; and I do believe to some extent that this is a true statement, although the CC&R's do not specifically allude to such! However; to say that this structure (that will house boats, trailers, off road ATV's and a backhoe along with other recreational items), is not within the norm for structures being built with in the Estates, degrades property values along with obstructing views is in nothing more than one persons opinion! Obstruction of views from an existing dwelling/structure is always impacted by building progress; as the view from my place of residence within the Estates has been impaired by at least five to six structures built within the last two to three years; I don't condemn the right of anyone to position a structure any place within their own property as long as it does not violate the CC&R's as

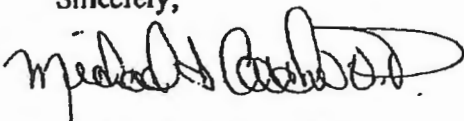
originally implemented (9-6-89), and as the Board of Directors have interpreted the CC&R's through survey results/opinions transmitted to the board from the lot owners.

With regard to the defamatory statements that the President, Vice President and Secretary (actually the Treasurer, for clarification), of the Ruby Lake Estates Home Owners Association conspired to erect this structure in some illegal manner is ludicrous at best! The same individuals as listed in the E. Essington correspondence are the very same individuals that have worked very diligently in assuring that the Association is a legal binding authority (to which it wasn't in the past), with the State of Nevada and are the very same individuals that you the lot owners voted to office to insure the implementation and preservation of the CC&R's in an effort to assure a community that all of us can be proud of.

Any and all structures, fences, additions to structures, ECT require two Architectural Review Committee signatures, either to submit for an Elko County Building Department Permit or to construct a non-permit improvement. In this specific case two signatures were obtained prior to the submittal of plans and specifications to the Elko County Building Department for approval to construct. For the E. Essington correspondence to allude to the fact that the other elected Board member that approved this structure was an individual totally unaccustomed to reviewing such construction plans and who did not understand what it is was he was approving is mind boggling to me! If in the fact, the second individual didn't understand the process perhaps the second signature shouldn't been attached to the plans and specifications until further review of the issue was implemented, commented on or voted upon by the entire Executive Board as perhaps another interpretation issue of the CC&R's!

In conclusion; I hope that this correspondence, clarifies any and all questions you may have in regards to the E. Essington correspondence, however should you have additional questions/concerns please do not hesitate to contact me at your earliest convenience.

Sincerely,



Michael L. Cecchi, V.P.
Ruby Lake Estates Homeowners Association
Chairman Architectural Review Committee
325 South 18th Street
Sparks, Nevada 89431
775-356-1781
775-356-6122 (Fax)
775-741-7610 (Cell)
Mike@bramcoconst.com

P.S. Should you not have received a copy of the E. Essington correspondence, please see the attached for your reference to this response.

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

December 4, 2009

Mr. Lee Perks,
President Ruby Lake Estates HOA
765 E. Greg St. #103
Sparks, NV 89431-7133

Dear Mr. Perks:

A question concerning the HOA has arisen in my mind to which I am seeking an answer from you and or Mr. Wines. Given my research into the Nevada Revised Statutes and level of knowledge I have a question as to just how the Ruby Lake Estates Home Owners Association was formed. Specifically, I am researching the legal relationship of my land and home to the HOA given that my land was purchased and my home/office was constructed prior to formation of the HOA. I have signed no documentation legally binding or obligating my land or home to the HOA, as is also true of several other of the home owners. My research indicates a HOA is normally formed first by the developer and it is attached to the deed before the land/home is sold or alternatively some form of legally binding affidavit from all of the home owners is required. To my knowledge this has not been done in the case of the Ruby Lake Estates.

Further, my research leads me to question the actual manner in which the HOA was actually formed. Was there an acceptable written record of how many and specifically which verified land owners attended and voted at the meeting at which the HOA was supposed to have been formed? I did not attend the meeting and do not know. Did the each of the verified land owners at the organizational meeting sign any legitimate document or documents acknowledging they were legally signing away their individual rights thus binding and obligating their land and homes to the HOA and implied authority of the Executive Board? I certainly have not. In the strictest legal sense just how did our land and homes come under this implied obligation in the absence of pertinent legal documentation and supposedly via a mere show of hands by God only knows who? In short just what is the legal status of the Ruby Lake Estates HOA under the NRS's? I am greatly perplexed by this issue and am seeking your response and clarification.

Sincerely,



Elizabeth Essington

Cc.: Bob Wines, Esq., Legal Counsel for the RLEHOA

RECEIVED DEC 07 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

December 4, 2009

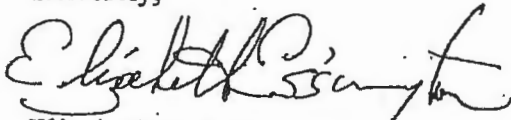
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Sincerely,



Elizabeth Essington

Cc.: Bob Wines, Esq., Legal Counsel for the RLEHOA

3 AA000021



#25

HARRIS & THOMPSON
AN ASSOCIATION OF ATTORNEYS

RICHARD W. HARRIS
RICHARD K. THOMPSON

received
6-14-10

6121 LAKESIDE DRIVE
SUITE 260
RENO, NEVADA 89511
PHONE (775) 825-4300
FAX (775) 825-4629

June 9, 2010

Robert J. Wines, Esq.
687 Sixth Street, Suite 1
Elko, Nevada 89801

Re: Ruby Lake Estates

Dear Mr. Wines:

Please be advised that our office has been retained by Ms. Elizabeth Essington, whose company, Artemis Exploration Corp., owns property in Ruby Lake Estates, Elko County, Nevada. Ms. Essington has asked me to contact you regarding formation of Ruby Lake Estates Homeowner's Association in January 2006. Ms. Essington has filed a written objection with the Office of the Ombudsman of the Nevada Real Estate Division regarding formation of the Association without unanimous consent of the homeowners.

In reviewing NRS 116.3101(1), I note that "A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed." It would appear that the Association was formed well after the 1989 subdivision of Ruby Lake Estates.

May I have your comments in this regard? Thank you for your attention.

Very truly yours,

Richard W. Harris

Richard W. Harris

RWH:hhr
(w) Artemis Exploration/8186/letters 2010
Cc: Ms. Elizabeth Essington

3 10000023

HARRIS & THOMPSON
AN ASSOCIATION OF ATTORNEYS

RICHARD W. HARRIS
RICHARD K. THOMPSON

6121 LAKESIDE DRIVE
SUITE 260
RENO, NEVADA 89511
PHONE (775) 825-4300
FAX (775) 825-4829

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Very truly yours,



Richard W. Harris

RWH:hbr
(w) Artemis Exploration/8186/letters 2010
Cc: Ms. Elizabeth Essington

3 AA000024



RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

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

December 9, 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

Dear Mrs. Essington,

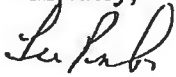
I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

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

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

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

Sincerely,



Lee Perks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

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

December 9, 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

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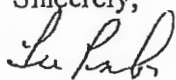
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statues and administration code though the direction of our council Bob Wines. I hope this helps you understand your obligations.

Sincerely,



Lee Perks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

Ruby Valley, Nevada

January 7, 2008

Dear RLEHA Members,

Again this year I would like to thank everyone for attending the August 11, 2007 Association meeting. This year the meeting was held at the Ruby Valley Community Center and worked out very well. I would like to thank Valeri McIntyre for putting everything together to have a barbecue after the meeting. It was nice to have the time to meet with all of our neighbors.

I would like to welcome on the board this year Mel Essington who was elected this year as a director. Valeri McIntyre, Secretary and I, president were reelected for the next two years.

Again this year there were discussions regarding the storage and use of recreation vehicles and raising livestock. With the assistance of Bob Wines a questionnaire is being sent out to help the board clarify definitions and interpretations of our CC&R's. Please take the time to review the questionnaire and fill it out. The board will be able to propose resolutions with the findings of the questionnaire to help us all with a clear direction in the future.

We spent quite a while discussing the budget and being able to format a much more comprehensive budget forecast for our association. Dennis McIntyre has enclosed his new budget proposal. Please comment if more info is needed. We have set aside \$10,000.00 for any emergencies that may arise due to fires, floods or other unforeseen event. With the association's permission this year we would like to make this a permanent fund.

We have established a budget for our roads and can do very limited work presently. We are working with Susie Wines currently to be able and obtain weed abatement spray chemicals that the Dept. of Wildlife uses at the marshes. We are hoping to spray early spring. We should be able to use or rent the Dept. of Wildlife spray equipment.

There have been quite a few new water wells drilled this year and several members are planning construction this upcoming year. Everyone needs to be reminded to send their plans to the architectural committee first before applying for a permit. This includes any fences that you propose on your property.

Our next meeting will be August 9, 2008.

Lee Perks



RUBY LAKE ESTATES

687 6TH Street, Suite 1
Elko, Nevada 89801

Artemis Exploration
HC 60 Box 755
Ruby Valley, NV 89833

Attention: Ms. Elizabeth Essington
President

Dear Ms. Essington

I am sure you are aware that your association fees are delinquent for 2010.
We have sent numerous communications requesting payment.

Please remit \$273.48 (Two Hundred Seventy Three Dollars and Forty Eight Cents) within 15 days of receipt or we will be forced as required by state law to pursue collections through legal council and NRS 116.

Sincerely,



Dennis McIntyre
Treasurer
Ruby Lake Estates

Certified Mail: 7010 1060 0001 9219 7163

Enclosures

cc: Richard Harris (Resident Agent) Artemis Exploration
Certified Mail: 7010 1060 0001 9219 7170

Robert Wines (Legal Counsel) Ruby Lake Estates

Fax

From: Beth Essington

To: Travis Gerber, Fax # (775)738-8198

Date 11/18/2010

Attached please find the invoice I received to day



Beth

Ruby Lake Estates Home Owners Association

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/31/2009	253

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

P.O. No.	Terms	Project
	DUE JANUARY 1, 2...	

Quantity	Description	Rate	Amount
1	YEARLY ASSESSMENT	223.48	223.48

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

Total

\$223.48

3 AA000035
00103

Ruby Lake Estates Homeowners Association

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
3/8/2010	269

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

P.O. No.	Terms	Project
	DUE JANUARY 1, 2...	

Quantity	Description	Rate	Amount
	LATE FEE	25.00	25.00
		00104	
Total3 AA000036			\$25.00

Ruby Lake Estates Homeowners Association

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
4/19/2010	271

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
	LATE FEE FOR SECOND NOTICE	25.00	25.00
		00105	
		3 AA000037	

PLEASE REMIT IMMEDIATELY TO STOP FURTHER ACTION

Statement

Ruby Lake Estates Homeowners Association
687 6th Street Ste 1
Elko, NV 89801

Date
7/13/2010

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

		Amount Due	Amount Enc.
		\$273.48	
Date	Transaction	Amount	Balance
11/30/2009	Balance forward		0.00
12/31/2009	INV #253. Due 12/31/2009.	223.48	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

RUBY LAKE ESTATES

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

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

December 16, 2010

Dear New Property Owner,

Welcome to Ruby Lake Estates and congratulations on your purchase. Please find enclosed your Annual Assessment for 2011. If you did not receive a copy the CC&R's, Reserve Study or the By-Laws when you purchased your property please let me know and I will forward them to you.

If you could please supply me with all your contact information such as phone numbers, email and any other way you would like to be contacted it would be appreciated.

Also, for your information we would like you to know that the Association has an annual Members Meeting the second Saturday of August to bring you up to date with all the Associations Business. This meeting is followed by a Bar-B-Que so you can meet and visit your neighbors. We also try to get a newsletter out at least twice a year to keep you up to date that way too.

The Board of Directors meet quarterly and you are also welcome to attend those meetings. The dates are posted in the newsletter. The meetings are held at the Office of Robert Wines, the Associations attorney his address is listed above.

If you need to submit plans please submit plans to the Elko address listed above and they will be forwarded to our architectural committee. If you have architectural questions please contact Mike Cecchi the Chairman of the Architectural Committee @775-356-1781 or mike@bramcoconst.com.

If you have any governing questions please contact Lee Perks, President. He can be contacted at 775-358-4403 or lee@perkspetroleum.com.

I hope you will be able to enjoy your property and the beautiful valley. Please do not hesitate to call me or any of the Board Members. My contact information is 775-358-4403 or Valeri@perkspetroleum.com.

Sincerely,

Valeri McIntyre
Secretary
Ruby Lake Estates

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		Total	\$226.99

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

3 AA000040

00108

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	318

Bill To
ARTEMIS EXPLORATION 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	\$226.99

3 AA000041
00109

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	320

Bill To
ARTEMIS EXPLORATION H2 HC 60 BOX 760 RUBY VALLEY, NV 89833-9804

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	\$226.99

3 AA000042
00110

Statement

12/15/2010

ARTEMIS EXPLORATION
HC 60 BOX 755
RUBY VALLEY, NV 89833

3 AA000043
00111

FAX Message

January 14, 2011

To: Travis Gerber 775-738-8198

From: Beth Essington

I received four different copies the attached Bill of Collection from the Ruby lake Estates Homeowners Association in today's mail. I trust you will deal with this at your earliest opportunity.

Attachment: Bill of Collection

**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
Angius & Terry Collections, LLC

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

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

1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304
tel 877.781.8885 fax 877.781.8886
ATCollections.com

3 AA000045

00113

**Angius & Terry Collections, LLC****1120 North Town Center Drive, Suite 260****Las Vegas, NV 89144****Office Phone (702) 255-1124 – Office Fax (702) 255-1125****Toll Free Phone (877) 781-8885 – Toll Free Fax (877) 781-8886****TO: Homeowner(s)****RE: NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)
15 U.S.C. Section 1601, As Amended**

1. The estimated amount to reinstate your membership account must be requested. Please call Angius & Terry Collections, LLC ("ATC") for the most current amount to reinstate your membership account.

The creditor is set forth in the enclosed notice and it is the creditor to whom the debt is owed.

3. The homeowner(s) may dispute the validity of this notice/delinquency within 30 days. If the homeowner(s) does not dispute the delinquency within 30 days, then the creditor will assume the same valid.
4. If the homeowner(s) notifies ATC in writing within 30 days from receipt of this notice, ATC will obtain verification of the delinquency and ATC will mail a copy of the verification to the homeowner(s).
5. If the named creditor is not the original creditor, and if the homeowner(s) makes a written request to ATC within 30 days of receipt of this notice the name and address of the original creditor will be mailed to the homeowner(s) by ATC.
6. Written requests pursuant to this notice should be addressed to the above address.
7. This communication is for the purpose of collecting a debt, and any information obtained from the homeowner(s) will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act (FDCPA) and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy laws of the United States.

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tel 877.781.8885 fax 877.781.8886

ATCollections.com

3 AA000046
00114

Ruby Lake Estates
687 6th Street Ste 1
Elko, NV 89801

Statement

Date
2/15/2011

To:
ARTEMIS EXPLORATION H2 HC 60 BOX 760 RUBY VALLEY, NV 89833-9804

RECEIVED 10.5.11 2011

		Amount Due	Amount Enc.		
		\$251.99			
Date	Transaction	Amount	Balance		
11/30/2010	Balance forward		0.00		
12/16/2010	INV #320. Due 01/15/2011.	226.99	226.99		
02/15/2011	INV #342. Due 02/15/2011.	25.00	251.99		
Ruby Lake Estates C/O L. A. Perks 765 East Greg Street, Suite 103 Sparks, Nevada 89431					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
25.00	0.00	226.99	0.00	0.00	\$251.99

3 AA000047
00115

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
2/15/2011	341

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

RECEIVED FEB 23 2011

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
1	LATE FEE #1 CERTIFIED MAIL RECEIPT #7010 1060 0001 9219 7262 MAILED 2/15/11	25.00	25.00
We appreciate your prompt payment.		Total	\$25.00

3 AA000048
00116

Ruby Lake Estates
687 6th Street Ste 1
Elko, NV 89801

Statement

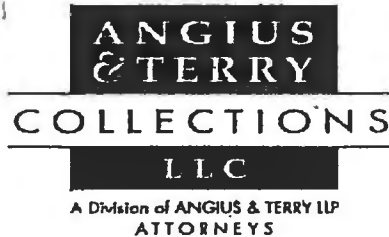
Date
2/15/2011

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

RECEIVED FEB 15 2011

		Amount Due	Amount Enc.
		\$525.47	
Date	Transaction	Amount	Balance
11/30/2010	Balance forward		273.48
12/16/2010	INV #318. Due 01/15/2011.	226.99	500.47
02/15/2011	INV #341. Due 02/15/2011.	25.00	525.47

3 AA000049
00117



Angius & Terry Collections, LLC
1120 North Town Center Drive, Suite 260
Las Vegas, NV 89144

Office Phone (702) 255-1124 – Office Fax (702) 255-1125
Toll Free Phone (877) 781-8885 – Toll Free Fax (877) 781-8886

TO: Homeowner(s)

RE: NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)
15 U.S.C. Section 1601, As Amended

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5. If the named creditor is not the original creditor, and if the homeowner(s) makes a written request to ATC within 30 days of receipt of this notice the name and address of the original creditor will be mailed to the homeowner(s) by ATC.
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1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304
tel 877.781.8885 fax 877.781.8886
ATCollections.com

#33

**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.

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

Sincerely,


Carolyn Swanson
Angius & Terry Collections, LLC

cc: Ruby Lake Estates
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1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304
tel 877.781.8885 fax 877.781.8886
ATCollections.com

31A000051



Invoice

Date	Invoice #
12/31/2009	253

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

P.O. No.	Terms	Project
	DUE JANUARY 1, 2...	

Quantity	Description	Rate	Amount
1	YEARLY ASSESSMENT	223.48	223.48

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

Total:

\$223.48

3 AA000053
00103

Ruby Lake Estates Homeowners Association

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
3/8/2010	269

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

P.O. No.	Terms	Project
	DUE JANUARY 1, 2...	

Quantity	Description	Rate	Amount
	LATE FEE	25.00	25.00
			00104
			Total3 AA000054 \$25.00

Ruby Lake Estates Homeowners Association

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
4/19/2010	271

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
	LATE FEE FOR SECOND NOTICE	25.00	25.00
		00105	
		3 AA000055	

PLEASE REMIT IMMEDIATELY TO STOP FURTHER ACTION

Statement

Ruby Lake Estates Homeowners Association
687 6th Street Ste 1
Elko, NV 89801

Date
7/13/2010

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

PLEASE REMIT TO:
RLEHA
765 EAST GREG ST #103
SPARKS, NV 89431

				Amount Due	Amount Enc.
				\$273.48	
Date	Transaction			Amount	Balance
11/30/2009	Balance forward				0.00
12/31/2009	INV #253. Due 12/31/2009.			223.48	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
					</

3 AA000056

RUBY LAKE ESTATES

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

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

December 16, 2010

Dear New Property Owner,

Welcome to Ruby Lake Estates and congratulations on your purchase. Please find enclosed your Annual Assessment for 2011. If you did not receive a copy the CC&R's, Reserve Study or the By-Laws when you purchased your property please let me know and I will forward them to you.

If you could please supply me with all your contact information such as phone numbers, email and any other way you would like to be contacted it would be appreciated.

Also, for your information we would like you to know that the Association has an annual Members Meeting the second Saturday of August to bring you up to date with all the Associations Business. This meeting is followed by a Bar-B-Que so you can meet and visit your neighbors. We also try to get a newsletter out at least twice a year to keep you up to date that way too.

The Board of Directors meet quarterly and you are also welcome to attend those meetings. The dates are posted in the newsletter. The meetings are held at the Office of Robert Wines, the Associations attorney his address is listed above.

If you need to submit plans please submit plans to the Elko address listed above and they will be forwarded to our architectural committee. If you have architectural questions please contact Mike Cecchi the Chairman of the Architectural Committee @775-356-1781 or mike@bramcoconst.com.

If you have any governing questions please contact Lee Perks, President. He can be contacted at 775-358-4403 or lee@perkspetroleum.com.

I hope you will be able to enjoy your property and the beautiful valley. Please do not hesitate to call me or any of the Board Members. My contact information is 775-358-4403 or Valeri@perkspetroleum.com.

Sincerely,

Valeri McIntyre
Secretary
Ruby Lake Estates

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			
REMIT TO: 765 E. GREG ST #103 SPARKS, NEVADA 89431		Total	\$226.99

3 AA000058
00108

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	318

Bill To
ARTEMIS EXPLORATION 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	\$226.99

3 AA000059
00109

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	320

Bill To
ARTEMIS EXPLORATION H2 HC 60 BOX 760 RUBY VALLEY, NV 89833-9804

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

3 AA000060
00110

Statement

12/15/2010

ARTEMIS EXPLORATION
HC 60 BOX 755
RUBY VALLEY, NV 89833

3 AA000061
00111

FAX Message

January 14, 2011

To: Travis Gerber 775-738-8198

From: Beth Essington

I received four different copies the attached Bill of Collection from the Ruby lake Estates Homeowners Association in today's mail. I trust you will deal with this at your earliest opportunity.

Attachment: Bill of Collection

**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):

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Sincerely,



Carolyn Swanson
Angius & Terry Collections, LLC

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

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tel 877.781.8885 fax 877.781.8886
ATCollections.com

3 AA000063
00113



Angius & Terry Collections, LLC

1120 North Town Center Drive, Suite 260

Las Vegas, NV 89144

Office Phone (702) 255-1124 – Office Fax (702) 255-1125

Toll Free Phone (877) 781-8885 – Toll Free Fax (877) 781-8886

TO: Homeowner(s)

RE: NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)
15 U.S.C. Section 1601, As Amended

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tel 877.781.8885 fax 877.781.8886

ATCollections.com

3 AA000064
00114

Ruby Lake Estates
687 6th Street Ste 1
Elko, NV 89801

Statement

Date
2/15/2011

To:
ARTEMIS EXPLORATION H2 HC 60 BOX 760 RUBY VALLEY, NV 89833-9804

RECEIVED 165 2011

		Amount Due	Amount Enc.		
		\$251.99			
Date	Transaction	Amount	Balance		
11/30/2010	Balance forward		0.00		
12/16/2010	INV #320. Due 01/15/2011.	226.99	226.99		
02/15/2011	INV #342. Due 02/15/2011.	25.00	251.99		
Ruby Lake Estates C/O L. A. Perks 765 East Greg Street, Suite 103 Sparks, Nevada 89431					
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
25.00	0.00	226.99	0.00	0.00	\$251.99

Ruby Lake Estates

687 6th Street Ste 1

Elko, NV 89801

Invoice

Date	Invoice #
2/15/2011	341

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

RECEIVED FEB 25 2011

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
1	LATE FEE #1 CERTIFIED MAIL RECEIPT #7010 1060 0001 9219 7262 MAILED 2/15/11	25.00	25.00
We appreciate your prompt payment.		Total	\$25.00

3 AA000066
00116

Ruby Lake Estates
687 6th Street Ste 1
Elko, NV 89801

Statement

Date
2/15/2011

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

RECEIVED FEB 15 2011

					Amount Due	Amount Enc.
					\$525.47	
Date	Transaction				Amount	Balance
11/30/2010	Balance forward					273.48
12/16/2010	INV #318. Due 01/15/2011.				226.99	500.47
02/15/2011	INV #341. Due 02/15/2011.				25.00	525.47

3 AA000067
00117



George M. Essington
HC 60 Box 760
Ruby Valley, NV 89833

January 6, 2011

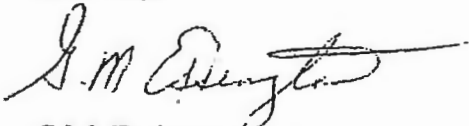
Mr. Lee Perks
765 E. Greg St.
Sparks, NV 89431

Dear Mr. Perks;

I have noted in recent documents you mailed to the property owners of the Ruby Lake Estates Subdivision you erroneously listed my name in association with your alleged Ruby Lake Estates Home Owners Association. As I clearly stated in the correspondence I coauthored with Mr. Bill Noble and, mailed to the same property owners in June 2010, it is evident to us that you never legally formed or constituted a Home Owners Association under the Nevada Revised Statutes. You are well aware that I have divorced and disassociated myself from any manner or form of association with you or your alleged organization since well before that mailing. Although I feel no need to resign from your alleged organization, as one does not legally exist I now do so. Consider this my formal resignation. I will not be associated with such illicit activities. Please correct your mailings, documentation, and any necessary files to the effect that I have no association with your alleged Home Owners organization; to state otherwise is misleading to the property owners and others.

My wife, Beth, continues to receive dues invoices for Artemis Exploration Company's parcel. You have also disregarded her lawyer's letter, on her behalf, requiring you to cease sending demands for dues. Artemis Exploration Company is preparing a Complaint against the alleged homeowners association and its officers and directors unless you **IMMEDIATELY** contact Artemis Exploration Company, or its attorney, in writing and agree to cease holding yourselves out as a legitimate homeowners association and sending such demands.

Sincerely,



G.M. Essington
Cc: Travis Gerber
Bob Wines

George M. Essington
HC 60 Box 760
Ruby Valley, NV 89833

January 6, 2011

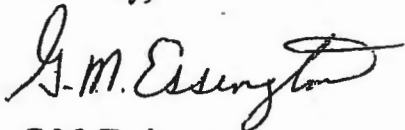
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765 E. Greg St.
Sparks, NV 89431

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Sincerely,



G.M. Essington
Cc: Travis Gerber
Bob Wines

RECEIVED

JAN 10 2011

3 AA000070

00102

November 24, 2010

Artemis Exploration Company
Beth Essington
HC 60 Box 760
Ruby Valley, NV 89833

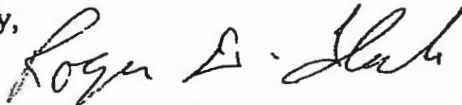
Dear Beth,

I just received another letter that rehashes the same things again. I recall seeing a letter from the state saying we have and need an association to manage our neighbor hood, which they disagreed with your take on our association.

I enjoy my time in Ruby Valley and I think our association is doing a good job and keeping things low key. Steve Wright explained to me when I purchased my property that the roads, culverts weeds etc were our responsibility to handle as a group. I have no problem with the couple of hundred dollars a year needed to help with this.

Please consider being a good neighbor and making it easier for all of us that are involved with the Ruby Lake Estates and do not create unwanted tension in the Ruby Lake Estates.

Sincerely,



Roger Clark
Lot H8
754 Balzar Cir.
Reno, NV 89502

CC: Gerber Law Offices
Robert Wines esq.

RECEIVED

NOV 30 2010

3 AA000072
00094

11/24/2010

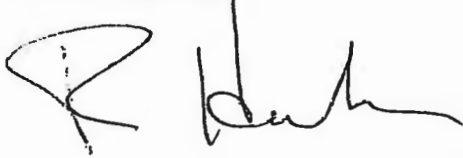
Dear Beth,

After reading this letter it appears you are continuing your vendetta against the board for allowing the building that was built last year that you did not like..It seems you are just taking a different angle to the same conclusion. I am disappointed to see this starting again.

What is it you want to accomplish? Have every decision or disagreement handled by attorneys? Who ever has the most money wins? Or is it just to make it a free for all so you can do what you want and attempt to create chaos?

I am supportive of the association and all of the things that they are accomplishing.

Bob Heckman

A handwritten signature in black ink, appearing to read 'R. Heckman', written over the printed name.

RECEIVED

NOV 30 2010

3 AA000073
00095

LEONARD I. GANG
ATTORNEY AT LAW
ARTIBRATION * MEDIATION

P.O. Box 4394
Incline Village, Nevada 89450
Tel: (702) 525-2742
Fax: (775) 593-2765
Email: leonardgang@gmail.com

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FEB - 9 2012

GAYLE A. KERN, LTD

February 7, 2012

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

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

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 (hereinafter 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..

3 AA000075

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.

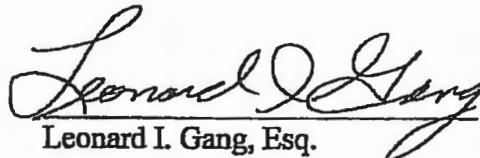
ORDER

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



G-4

RUBY LAKE ESTATES 2006

SURVEY QUESTIONNAIRE ENTERED

Date: 6-28-06

JUL 05 2006

Property owners name Artemis Exploration - Mel/Beth Essington
Lot Number? Block G lot C
Phone Number 775-397-0370 Cell

Do you have a present house or structure on your property? Yes
Are you planning to construct a house or structure within the next 5 years?
Was your purchase strictly for investment purposes? Yes

Do you have a copy of the CCR's? Yes
Would you like a copy of the CCR's
Do you have any concerns or questions regarding the CCR's? No
If yes what section(s)?

The Fire Department has requested that we keep the roads graded and free of weeds. We are to provide fire breaks on lots to protect your neighbors and remove weeds and brush around structures. If we do this we will meet the intent of NRS 474.580.

If the Ruby Lake Estates fails to maintain the roads, the property owner(s) can petition the county for road maintenance for safety and fire protection. All property owners will be billed equally on there tax bill for this service. The special assessment for this would be collected at the same time and in the same manner as ordinary county taxes are collected, and subject to the same penalties and the same procedures and sale in case of delinquency.

Are you in favor of Elko County providing road maintenance? No, Or would you be in favor of Ruby Lake Estates Association provide the road maintenance? Yes

Are you in favor of Ruby Lake Estates providing a management plan to the local Fire Department in an attempt to meet the requirements of NRS.474.580? Yes

Would you like to see garbage service provided for the entire estate? Yes
Would you be willing to pay a fee for such a service? Yes

Would you like to have telephone service within the Ruby Lake Estates? Yes
Would you apply for a phone if available? Yes When? Immediately

Do you visit the Ruby Lake Estates in the winter months? Yes
Would you like to see snow removal on the CCC road during the winter months?

Yes
Would you like to see snow removal on all of the Ruby Lake Estate roads? No
Would you be willing to pay extra for snow removal through Elko County Road Department? At a reasonable rate

While the declaration of Reservation, Conditions and Restrictions does not specifically provide that property owners will be required to pay annual dues, it is implicit in the requirement that such dues may be assessed. If the review committee is to exercise any authority or powers granted to it by the restrictions, it must be able to engage in legal accounting, maintenance and other professional services.

Would \$150.00 to \$200.00 per year be reasonable for road maintenance and other services? Yes

To change or raise fees would you want a simple majority of land owner to approve? Yes, or 2/3 of land owners approval _____.

Are there any other issues that need to be addressed by the Architectural Committee or Ruby Lake Estates? Yes, the uniform compliance with the CCR's

Please respond by July 21, 2006

Lee Perks (775) 358-4403
Dennis McIntyre
Bill Harmon
Mike Cecchi
Bill Noble





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>

DIANNE CORNWALL
Director

GAIL J. ANDERSON
Administrator

LINDSAY WAITE
Ombudsman

July 1, 2010

Ms. Elisabeth Essington
HC60 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).

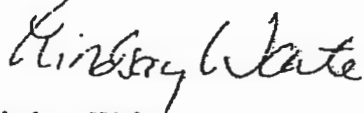
We also received information sent to this office by the Association Board President and the Board's attorney, as follows: a newsletter (that appears to be from 1987) that pertained to collecting association fees for road maintenance, weed control and possible legal fees; an August 12, 2006 copy of Board 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

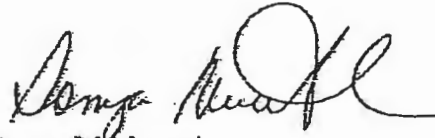
RLE 127

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

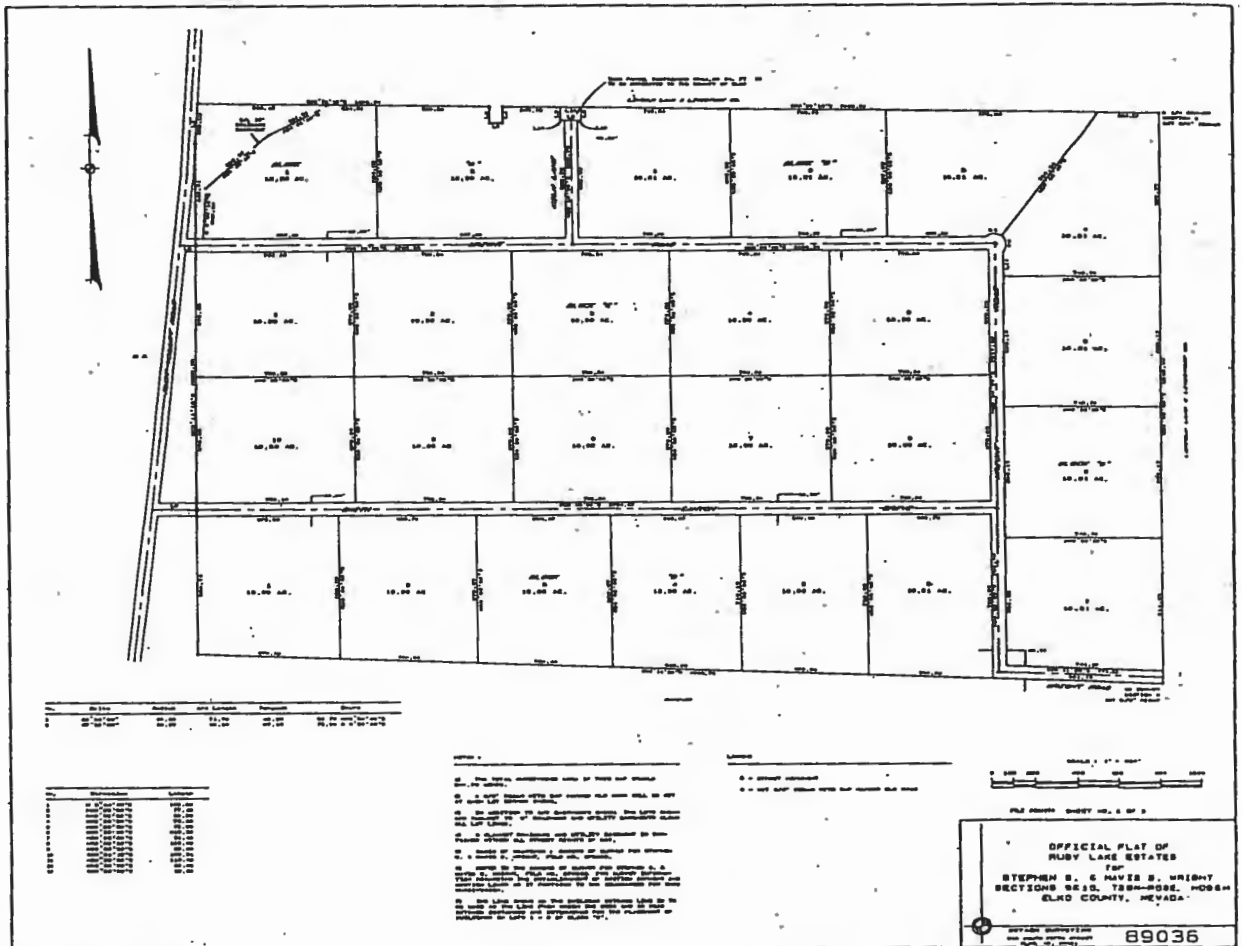
cc: Gail Anderson, Administrator, Nevada Real Estate Division
Lee Perks, President, RLEHA, 687 6th St., Suite #1, Elko, NV 89801
Robert J. Wines, Attorney at Law, P.O. Box 511, Elko, NV 89803

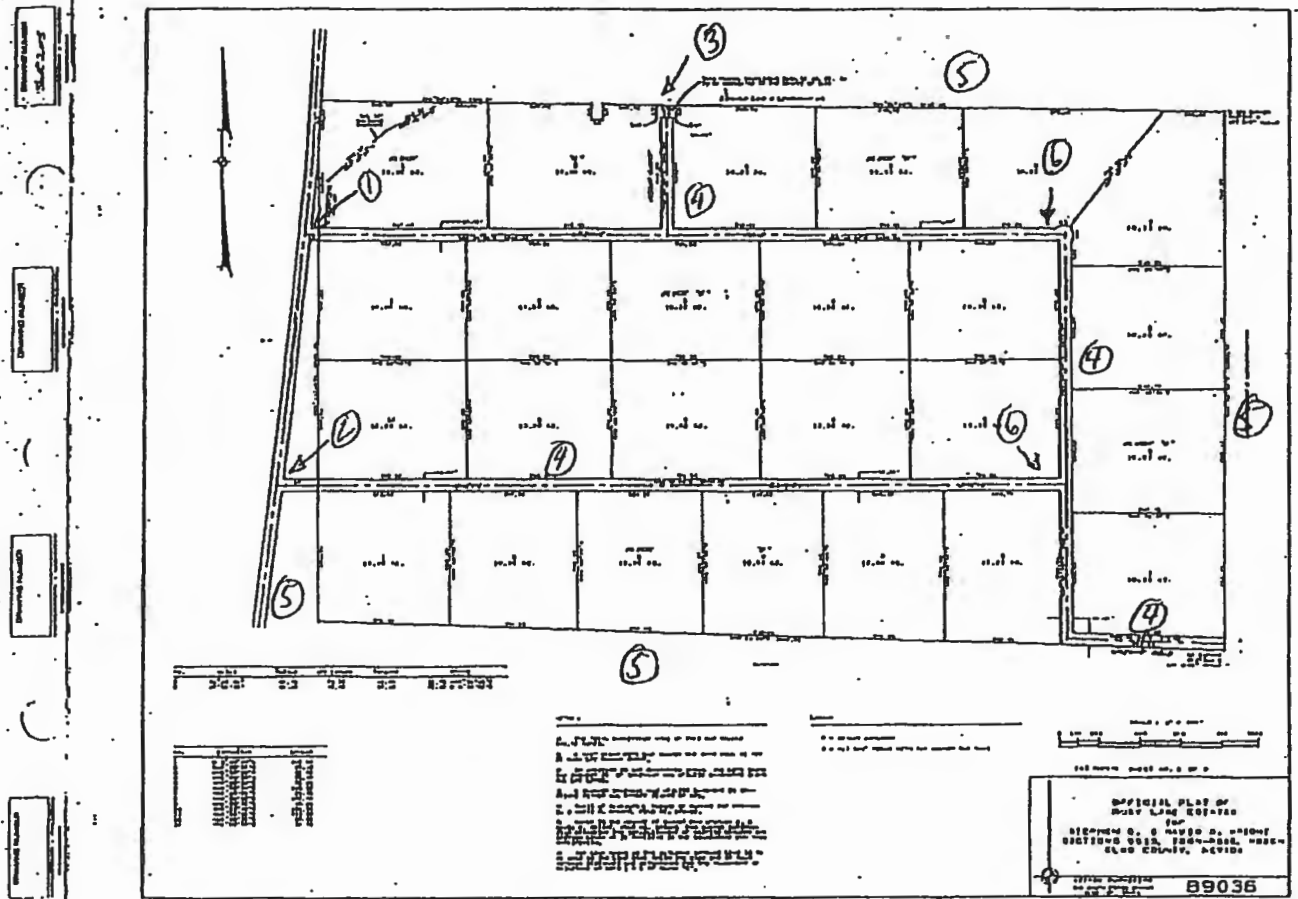
CHARTERED SURVEY
1894, 2, 27

CHARTERED SURVEY

CHARTERED SURVEY

CHARTERED SURVEY





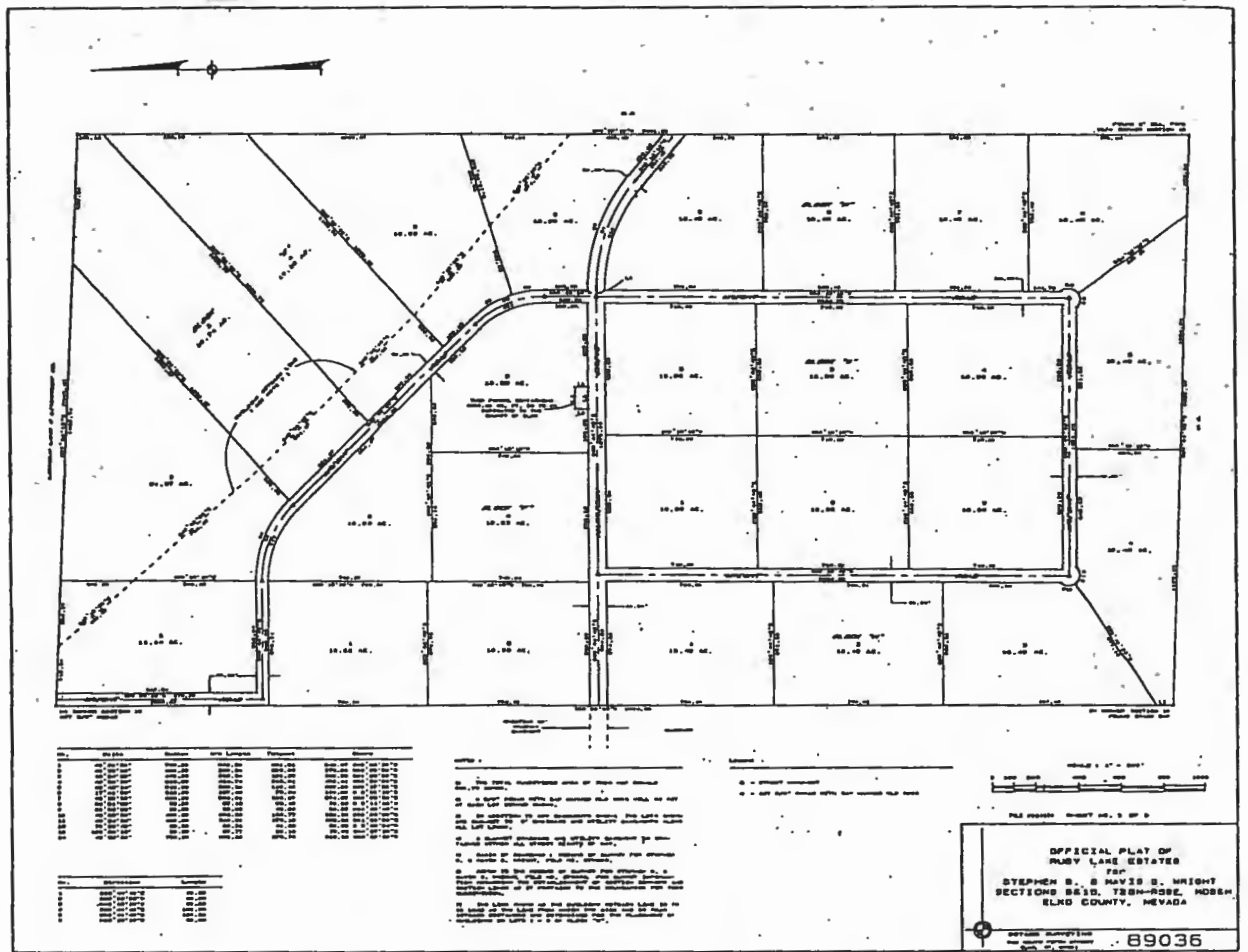
- ① CATTLE GUARD - RLE ENTRANCE over hand sign - street sign
- ② SAME AS ABOVE
- ③ Property owned By RLEHA
- ④ ALL ~~RA~~ ROADS EXCEPT RUBY VALLEY Rd
- ⑤ ALL PERIMETER FENCING
- ⑥ CULVERTS

CHANCE NUMBER
Sheet 3 of 3

CHANCE NUMBER

CHANCE NUMBER

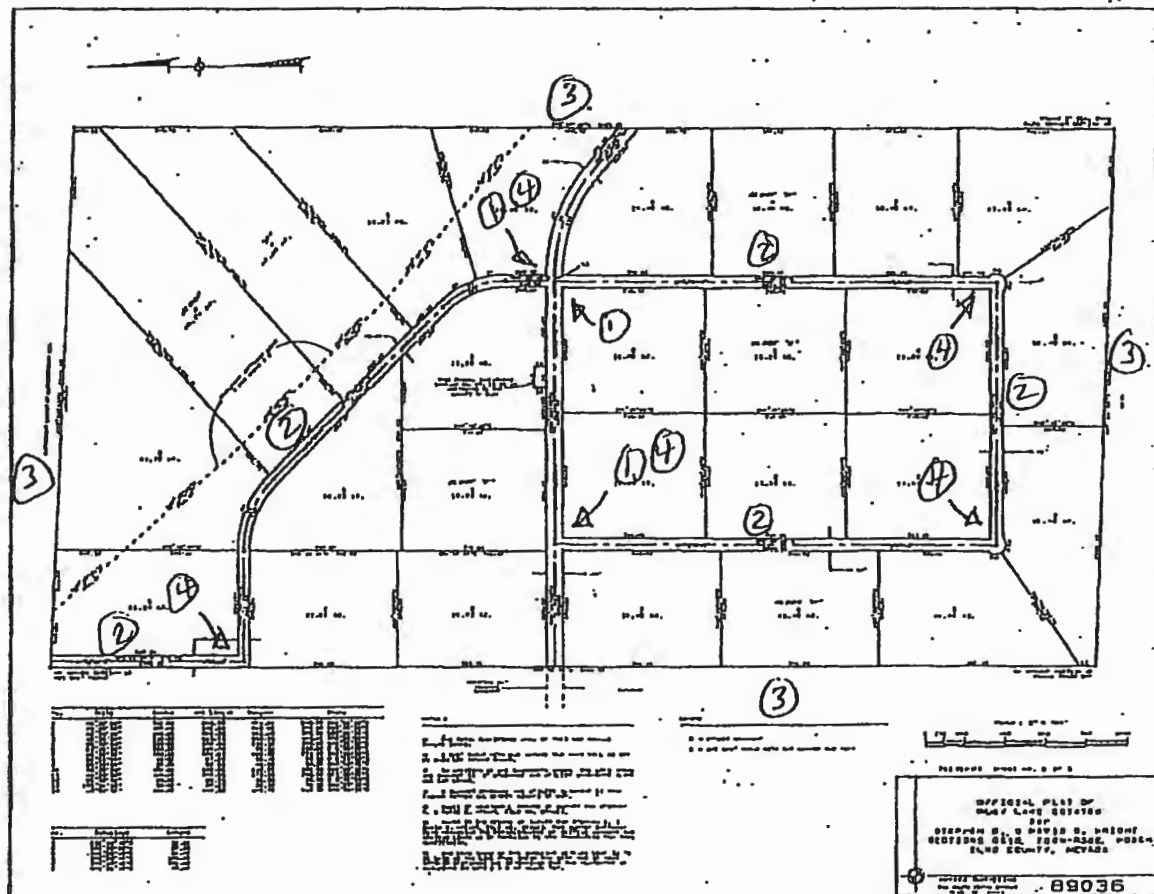
CHANCE NUMBER



OFFICIAL PLAT OF
RUBY LANE ESTATES
T2N
STEPHEN S. & MARIE S. WRIGHT
SECTIONS 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
BLVD COUNTY, NEVADA

89036

Sheet 3 of 3 98





STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES

788 Fairview Drive, Suite 200 • Carson City, Nevada 89701-5453 • (775) 687-4280
2501 East Sahara Avenue, Suite 102 • Las Vegas, Nevada 89104-4137 • (702) 486-4033
2501 East Sahara Avenue, Suite 201 • (702) 486-4480 • Fax: (702) 486-4520
Toll free: (877) 829-9907 <http://www.red.state.nv.us>

INITIAL ASSOCIATION REGISTRATION FORM

Note: Please read instructions on reverse side before completing registration form.

¹ Indicate by checking which type of entity the association will be organized with the SOS, pursuant to NRS 116.3101:

Corporation: <input type="checkbox"/> Profit <input checked="" type="checkbox"/> Nonprofit	<input type="checkbox"/> Trust	Partnership: <input type="checkbox"/> General <input type="checkbox"/> Limited <input type="checkbox"/> Limited Liability
--	--------------------------------	---

² Association

Name Ruby lake Estates Homeowner's Association

Address:

Number and Street 687 6th Street suite 1

City/State/Zip Code Elko, NV 89801

Telephone Number (775) 738-3171

⁴ County Elko

⁵ Number of Units 51

and

Maximum Number of Units that may be built 51

³

Indicate by checking the type of Common-Interest Community for association:

Condominium ☐
 Cooperative ☐
 Planned Community (PC) ☒
 If PC, select type(s) of units in association:
 Single Family Dwelling ☒ Condominium ☐
 Townhouse ☐ Manufactured Housing ☐

⁶

Please indicate by checking the type of association:

Master Association ☒

Sub-Association ☐

Not Applicable ☐

Note: If Sub-Association, please record the following information in the space provided:

• Name of the Master Association that the Sub is part of: _____

• Association responsible for payment of the Ombudsman's Unit Fees: _____

Master Association ☐

Sub-Association ☐

Executive Board	President	Secretary	Treasurer
Board Member's Name	LeRoy Perks	Dennis McIntyre	Mike Cecchi
Address: Number and Street City / State / Zip Code	3030 Brenda Way Carson City, NV 89704	1530 Southview Dr. Sparks, Nv 89436	10890 Osage Rd. Reno, NV 89506
Telephone Number	(775) 358-4403	(775) 358-4403	(775) 356-1781
E-mail Address (Optional)	lee@perksplumbing.com	dennis@perksplumbing.com	mike@bramcoconst.com
	⁸ Community Manager	⁹ Custodian of Records	¹⁰ Attorney
Business Name	Executive Board of Association	Mathews & Wines	Mathews & Wines
Contact Name	LeRoy Perks	Robert Wines	Robert Wines
Address: Number and Street City / State / Zip Code	3030 Brenda Way Carson City, NV 89704	687 6th St. Suite 1 Elko, NV 89801	687 6th St. suite 1 Elko, NV 89801
Telephone Number	(775) 358-4403	(775) 738-3171	(775) 738-3171
E-mail Address (Optional)	lee@perksplumbing.com	bobwines@citlink.net	bobwines@citlink.net
	¹¹ Declarant		
	Steve & Mavis Wright		

¹² Signature/Title (Individual completing form):

LeRoy Perks

Date signed: 3/31/04

To be completed by Ombudsman Office only.

Fiscal Year: _____

SOS Filing Date: _____

SOS File Number: _____

Initials and Date received: _____

Initials and Date entered: _____

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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• (702) 486-4480 • Toll free: (877) 829-9907 • Fax: (702) 486-4520
<http://www.red.state.nv.us>

ANNUAL ASSOCIATION REGISTRATION

NOTE: Please read instructions on pages 3 & 4 of how to complete the form correctly.

Association name: Ruby Lake Estates Homeowners Association

Subdivision name(s) for the Association: Ruby Lake Estates

Nevada Secretary of State (SOS) File Number: E0047202006 **SOS Original Filing Date:** 1/18/06

(For SOS filing information, log onto <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>)

Pursuant to NRS 116.3101 and NRS 116B.415, indicate the type of common-interest community (choose one):

☐ For-profit corporation ☒ Non-profit corporation ☐ Trust ☐ General partnership ☐ Limited partnership ☐ Limited liability partnership

Association's physical address (if no address, list closest cross streets): 687 6th Street, Suite 1

City: Elko State: Nevada Zip: 89801 County in which association is located: Elko

Current billing/contact address for Division purposes: 687 6th Street, Suite 1

City: Elko State: NV Zip: 89801 Telephone: (775) 738-3171

**** Is the association a (check one)?** ☐ Condominium ☐ Cooperative ☐ Condominium Hotel ☒ Planned Community

**** If a planned community, indicate which types of units it includes:**

☒ Single Family Dwelling ☐ Condominium ☐ Townhouse ☐ Manufactured Housing ☐ Duplex

Is the common-interest community a master association or sub-association? (If so, indicate which.) ☒ Master ☐ Sub ☐ N/A

If a sub-association, to which master association does sub association belong? N/A

As of this date, the number of units that currently have liens filed for unpaid owner assessments: 0 (Zero)

Number of foreclosures, in the prior calendar year, based on liens for failure of unit owner to pay assessments: 0 (Zero)

Units/Budget/Assessments

Date of conveyance/closing of first residential unit (Mo./day/yr.): 02/02/90 Units conveyed/closed to date: 51

When/If all units have been conveyed/closed how many total units will be/are in the community? 51

Have the declarant's developmental rights (right to annex additional units) expired? ☐ Yes ☐ No

Date most recent annual meeting was held: (Mo./day/yr.): 08/08/09 Fiscal Year End Date (Mo./day/yr.): 12/31/09

Total annual budgeted assessments (combined assessment amounts for all units within the community): \$ 11397.48

Total annual budgeted revenue (combined assessment amounts for all units, including interest, other income, etc.): \$ 11500.00

The most recent independent CPA financial statements, required by NRS 116.31144 were: ☒ reviewed ☐ audited

The fiscal or calendar year for which the reviewed or audited financial statements represent: 2009

The date the reviewed or audited financial statements were completed by the CPA: (Mo./day/yr.): 01/14/2010

For office use only

Check No.: _____ Amount: _____ First Date Stamp: _____

Receipt No.: _____ Fiscal Year: _____ Second Date Stamp: _____

Third Date Stamp: _____

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Reserve Study (NRS 116.31152 or NRS 116B.605 and NRS 116B.610)Has a reserve study ever been conducted? ☒ Yes ☐ No Date of the most recent reserve study was performed: (Mo./day/yr.): 7/14/09Was the most recent study adopted by Board? ☒ Yes ☐ No Date the board adopted the study: (Mo./day/yr.): 07/19/09Was the most recent Reserve Summary Form (# 609) mailed/sent to Ombudsman? ☐ Yes ☒ No (Mo./day/yr.):

Name of Reserve Specialist who conducted recent study, if applicable: Better Reserve Consultants Registration #: RS025

If not prepared by a Reserve Specialist, provide the name and title of Executive Board Member responsible for preparation of the reserve study: Name _____ Title _____

*If the common-interest community contains 20 or fewer units and is located in a county whose population is 50,000 or less, the study of the reserves required by NRS 116.31152 may be conducted by any person whom the executive board deems qualified to conduct the study (AB 207, Sec. 1.3(2)) (2009 Legislation)*Has the executive board performed its annual review of the reserve study pursuant to NRS 116.31152 (1) (b)? ☒ Yes ☐ NoHas the executive board made the necessary adjustments after the review pursuant to NRS 116.31152 (1) (c)? ☒ Yes ☐ No

Required reserve balance as of the end of the current fiscal year, per the most recent adopted reserve study: 4237.00

Projected reserve account balance as of the end of the association's current fiscal year, per most recent adopted study: 4392.50

Is there currently a Reserve Assessment in effect? ☐ Yes ☒ No If so, how long is the assessment? _____**Board/Management/Declarant**

Current number of board members: 6 Number of board members per governing documents: 6

Have all board members completed and signed Form 602 within 90 days of appointment or election per NRS 116.31034 (9) or NRS 116B.445(9)? ☒ Yes ☐ No / Have copies of Form 602 for each board member been submitted to the Ombudsman☐ Yes ☐ No / If no, why not? _____**Please use a separate sheet of paper for additional board members and attach to this form.**

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Hotel Unit Owner (If applicable)
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Management Company, if applicable	Custodian of Records	Attorney, if applicable	Declarant
Business Name		Robert Wines, Prof	Robert Wines, Prof	Steve & Mavis Wright
Contact Name		Robert Wines	Robert Wines	Steve Wright
Address, Number & Street City / State / Zip Code		687 6th ST. Suite 1 Elko, NV 89801	687 6th ST., Suite 1 Elko, NV 89801	P. O. Box 486 Wells, NV 89835
Telephone Number and (Fax Number - Optional)	T () F ()	T (775) 738-3171 F (775) 753-9860	T (775) 738-3171 F (775) 753-9860	T (775) 752-2477 F ()
E-mail Address (Optional)				

Name of person completing form (not

Signature: _____

Title: Secretary

Date signed: 2/8/10

Mgr. License #

3 AA000995

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
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• (702) 486-4480 • Toll free: (877) 829-9907 • Fax: (702) 486-4520
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JAN 27 2010

ANNUAL ASSOCIATION REGISTRATION

DEPT OF BUSINESS & INDUS
Real Estate Division - LV

NOTE: Please read instructions on pages 3 & 4 of how to complete the form correctly.

Association name: Ruby Lake Estates Homeowners Association

Subdivision name(s) for the Association: _____

Nevada Secretary of State (SOS) File Number: E0047202006 SOS Original Filing Date: 1/18/06

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Current billing/contact address for Division purposes: 687 6th Street, Suite 1

City: Elko State: nv Zip: 89801 Telephone: (775) 738-3171

** Is the association a (check one)? ☐ Condominium ☐ Cooperative ☐ Condominium Hotel ☒ Planned Community

** If a planned community, indicate which types of units it includes:

☒ Single Family Dwelling ☐ Condominium ☐ Townhouse ☐ Manufactured Housing ☐ Duplex

Is the common-interest community a master association or sub-association? (If so, indicate which.) ☒ Master ☐ Sub ☐ N/A

If a sub-association, to which master association does sub association belong? N/A

As of this date, the number of units that currently have liens filed for unpaid owner assessments: 0 (Zero)

Number of foreclosures, in the prior calendar year, based on liens for failure of unit owner to pay assessments: 0 (Zero)

Units/Budget/Assessments

Date of conveyance/closing of first residential unit (Mo./day/yr.): 02/02/90 Units conveyed/closed to date: 51

When/If all units have been conveyed/closed how many total units will be/are in the community? 51

Have the declarant's developmental rights (right to annex additional units) expired? ☐ Yes ☐ No

Date most recent annual meeting was held: (Mo./day/yr.): 08/08/09 Fiscal Year End Date (Mo./day/yr.): 12/31/09

Total annual budgeted assessments (combined assessment amounts for all units within the community): \$ 11397.48

Total annual budgeted revenue (combined assessment amounts for all units, including interest, other income, etc.): \$ 11500.00

The most recent independent CPA financial statements, required by NRS 116.31144 were: ☒ reviewed ☐ audited

The fiscal or calendar year for which the reviewed or audited financial statements represent: 2009

The date the reviewed or audited financial statements were completed by the CPA: (Mo./day/yr.): 01/14/2010

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Check No.: <u>1054</u>	Amount: <u>153.00</u>	First Date Stamp: <u>RECEIVED JAN 27 2010</u>
Receipt No.: <u>201176</u>	Fiscal Year: <u>09-10</u>	Second Date Stamp: _____
		Third Date Stamp: _____

3 AA000096

Reserve Study (NRS 116.31152 or NRS 116B.605 and NRS 116B.610)Has a reserve study ever been conducted? ☒ Yes ☐ No Date of the most recent reserve study was performed: (Mo./day/yr.): 7/14/09Was the most recent study adopted by Board? ☒ Yes ☐ No Date the board adopted the study: (Mo./day/yr.): 07/19/09Was the most recent Reserve Summary Form (# 609) mailed/sent to Ombudsman? ☐ Yes ☒ No (Mo./day/yr.): _____Name of Reserve Specialist who conducted recent study, if applicable: Better Reserve Consultants Registration #: RS025

If not prepared by a Reserve Specialist, provide the name and title of Executive Board Member responsible for preparation of the reserve study: Name _____ Title _____

*If the common-interest community contains 20 or fewer units and is located in a county whose population is 50,000 or less, the study of the reserves required by NRS 116.31152 may be conducted by any person whom the executive board deems qualified to conduct the study (AB 207, Sec. 1.3(2)) (2009 Legislation)*Has the executive board performed its annual review of the reserve study pursuant to NRS 116.31152 (1) (b)? ☒ Yes ☐ NoHas the executive board made the necessary adjustments after the review pursuant to NRS 116.31152 (1) (c)? ☒ Yes ☐ NoRequired reserve balance as of the end of the current fiscal year, per the most recent adopted reserve study: 4237.00Projected reserve account balance as of the end of the association's current fiscal year, per most recent adopted study: 4392.50Is there currently a Reserve Assessment in effect? ☐ Yes ☒ No If so, how long is the assessment? _____**Board/Management/Declarant**Current number of board members: 6 Number of board members per governing documents: 6Have all board members completed and signed Form 602 within 90 days of appointment or election per NRS 116.31034 (9) or NRS 116B.445(9)? ☒ Yes ☐ No / Have copies of Form 602 for each board member been submitted to the Ombudsman☐ Yes ☐ No / If no, why not? _____

Please use a separate sheet of paper for additional board members and attach to this form.

Executive Board	President <input checked="" type="checkbox"/>	Secretary <input checked="" type="checkbox"/>	Treasurer <input checked="" type="checkbox"/>
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director <input checked="" type="checkbox"/>	Director	Hotel Unit Owner (if applicable)
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Management Company, if applicable	Custodian of Records	Attorney, if applicable	Declarant
Business Name		Robert Wines, Prof	Robert Wines, Prof	Steve & Mavis Wright
Contact Name		Robert Wines	Robert Wines	Steve Wright
Address: Number & Street City / State / Zip Code		687 6th ST. Suite 1 Elko, NV 89801	687 6th ST., Suite 1 Elko, NV 89801	P. O. Box 486 Wells, NV 89835
Telephone Number and (Fax Number - Optional)	T () F ()	T (775) 738-3171 F (775) 753-9860	T (775) 738-3171 F (775) 753-9860	T (775) 752-2477 F ()
E-mail Address (Optional)				

Name of pe:

Signature: _____

Title: SecretaryDate signed: 1/22/10

Mgr. License # _____

3 AA0009

COPY

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DEPT OF BUSINESS AND
Real Estate Division

ANNUAL ASSOCIATION REGISTRATION

NOTE: Please read directions on page 3 before filling out this form. Questions? Call (877)829-9907.

Association name: Ruby Lake Estates Homeowners Association

Nevada Secretary of State (SOS) File Number: E004-472020069 SOS Original Filing Date: 1/18/06
(For SOS filing information, log onto <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>)

Pursuant to NRS 116.3101 and NRS 116B.415, indicate the type of common-interest community (choose one):

- ☐ For-profit corporation ☒ Nonprofit corporation ☐ Trust
☐ General partnership ☐ Limited partnership ☐ Limited liability partnership

Physical Address: 687 6th Street Ste 1 City: Elko State: NV Zip: 89801 ☒
Mailing Address: Same as above City: _____ State: _____ Zip: _____
Telephone: (775) 738-3171 County where association is located: Elko

**** Is the association a (check one)** ☐ Condominium ☐ Cooperative ☒ Planned Community ☐ Condominium Hotel?

**** If a planned community, indicate which types of units it includes:**

- ☒ Single Family Dwelling ☐ Condominium ☐ Townhouse ☐ Manufactured Housing ☐ Duplex

Is the common-interest community a master association or sub-association? (If so, indicate which.) ☒ Master ☐ Sub ☐ N/A

If a sub-association, to which master association does it belong? N/A

NOTE: Pursuant to NRS 116.31155(2), all master associations are responsible for payment of the annual unit fee with the Ombudsman for each sub-association unless governing documents provide otherwise; verification required by this office.

Number of foreclosures in prior calendar year based on liens for failure to pay assessments: 0

Units/Budget/Assessments

Date of conveyance of first residential unit (Mo./day/yr.): 02/20/90 Units conveyed to date: 51

Maximum number units that may be built: 51 Have declarant's development rights expired? ☐ Yes ☒ No

Annual meeting date (Mo./day/yr.): 08/08/09 Fiscal Year End Date (Mo./day/yr.): 12/31/09 ☒

Total annual assessment: \$ 11,475.00 ☒ How are assessments paid? ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total annual budgeted revenue: \$ 11,475.00

Current year's financial statements were: ☐ Audited ☐ Reviewed ☒ Neither Date (Mo./day/yr.): _____

If audited, was the opinion ☐ qualified or ☐ unqualified? If reviewed, was report ☐ modified or ☐ unmodified?

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Check No.: 1033 Amount: 153.00 First Date Stamp: **RECEIVED JAN 09 2009**
Receipt No.: 162666 Fiscal Year: 08-09 Second Date Stamp: **RECEIVED JAN 28 2009**
MISSING INFO ON BACK OF FORM Third Date Stamp: _____

COPY

Reserve Study (NRS 116.31152 or NRS 116B.605 and NRS 116B.610)

Was a reserve study conducted? ☐ Yes ☒ No Date of most recent study (Mo./day/yr.): _____

Was the most recent study adopted by board? ☐ Yes ☒ No Adoption date (Mo./day/yr.): _____

Study performed by: _____

Was a Reserve Study Summary, Form 609 sent to Ombudsman? ☐ Yes ☒ No Date mailed (Mo./day/yr.): _____

Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☒ other: Waiting on Study

Required reserve balance as of the beginning of the association's fiscal year, per reserve study: Waiting on Study

Actual reserve account balance as of the beginning of the association's fiscal year, per approved budget: waiting on study

Type of account in which reserve funds are kept: waiting on study Reserve Special Assessment in effect? ☐ Yes ☒ No

If the association is a condo/hotel, are there any other reserve accounts? ☐ Yes ☒ No (If yes, please file addendum.)

Board/Management/Declarant

Current number of board members: 6 Number of board members per governing documents: 6

Have all board members completed and signed Form 602 per NRS 116.31034 (9) or NRS 116B.445(9)? ☒ Yes ☐ No

Have copies of Form 602 been submitted to the Ombudsman for each board member? ☐ Yes ☒ No

Executive Board	President	Secretary	Treasurer
Board Member's Name	✓	✓	✓
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director
Board Member's Name	✓	✓	✓
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

Please use a separate sheet of paper for additional board members and attach to this form

	Management Company	Custodian of Records	Attorney	Declarant
Business Name		Robert Wines, Prof.	Robert Wines, Proff	Steve & Mavis Wright
Contact Name		Robert Wines	Robert Wines	Steve Wright
Address: Number & Street City / State / Zip Code		687 6th Street Ste. 1 Elko, NV 89801	687 6th Street, Ste. 1 Elko, NV 89801	P. O. Box 486 Wells, NV 89835
Telephone Number	()	(775) 738-3171	(775) 738-3171	(775) 752-2477
E-mail Address (Optional)				

Name of person completing form (print)

Signature: _____

Title: Secretary

Date signed: 1/7/09

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
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JAN 09 2009

DEPT OF BUSINESS & INDUSTRY
Real Estate Division - I

ANNUAL ASSOCIATION REGISTRATION

NOTE: Please read directions on page 3 before filling out this form. Questions? Call (877)829-9907.

Association name: Ruby Lake Estates Homeowners Association

Nevada Secretary of State (SOS) File Number: E004-472020069 SOS Original Filing Date: 1/18/06
(For SOS filing information, log onto <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>)

Pursuant to NRS 116.3101 and NRS 116B.415, indicate the type of common-interest community (choose one):

- ☐ For-profit corporation ☒ Nonprofit corporation ☐ Trust
☐ General partnership ☐ Limited partnership ☐ Limited liability partnership

Physical Address: 687 6th Street Ste 1 City: Elko State: NV Zip: 89801
Mailing Address: Same as above City: _____ State: _____ Zip: _____
Telephone: (775) 738-3171 County where association is located: Elko

** Is the association a (check one) ☐ Condominium ☐ Cooperative ☒ Planned Community ☐ Condominium Hotel?

** If a planned community, indicate which types of units it includes:

- ☒ Single Family Dwelling ☐ Condominium ☐ Townhouse ☐ Manufactured Housing ☐ Duplex

Is the common-interest community a master association or sub-association? (If so, indicate which.) ☐ Master ☐ Sub ☐ N/A

If a sub-association, to which master association does it belong? N/A

NOTE: Pursuant to NRS 116.31155(2), all master associations are responsible for payment of the annual unit fee with the Ombudsman for each sub-association unless governing documents provide otherwise; verification required by this office.

Number of foreclosures in prior calendar year based on liens for failure to pay assessments: 0

Units/Budget/Assessments

Date of conveyance of first residential unit (Mo./day/yr.): 02/20/90 Units conveyed to date: 51

Maximum number units that may be built: 51 Have declarant's development rights expired? ☐ Yes ☒ No

Annual meeting date (Mo./day/yr.): 08/08/09 Fiscal Year End Date (Mo./day/yr.): 12/31/09

Total annual assessment: \$ 11,475.00 How are assessments paid? ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total annual budgeted revenue: \$ _____

Current year's financial statements were: ☐ Audited ☐ Reviewed ☒ Neither Date (Mo./day/yr.): _____

If audited, was the opinion ☐ qualified or ☐ unqualified? If reviewed, was report ☐ modified or ☐ unmodified?

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Check No.: 1033 Amount: 153.00 First Date Stamp: RECEIVED JAN 09 2009
Receipt No.: 162666 Fiscal Year: 08-09 Second Date Stamp: _____
Third Date Stamp: _____

Reserve Study (NRS 116.311, NRS 116B.605 and NRS 116B.610)

Was a reserve study conducted? ☐ Yes ☒ No Date of most recent study (Mo./day/yr.): _____

Was the most recent study adopted by board? ☐ Yes ☒ No Adoption date (Mo./day/yr.): _____

Study performed by: _____

Was a Reserve Study Summary, Form 609 sent to Ombudsman? ☐ Yes ☒ No Date mailed (Mo./day/yr.): _____

Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☐ other: _____

Required reserve balance as of the beginning of the association's fiscal year, per reserve study: _____

Actual reserve account balance as of the beginning of the association's fiscal year, per approved budget: _____

Type of account in which reserve funds are kept: _____ Reserve Special Assessment in effect? ☐ Yes ☐ No

If the association is a condo/hotel, are there any other reserve accounts? ☐ Yes ☒ No (If yes, please file addendum.)

Board/Management/Declarant

Current number of board members: 6 Number of board members per governing documents: 6

Have all board members completed and signed Form 602 per NRS 116.31034 (9) or NRS 116B.445(9)? ☒ Yes ☐ No

Have copies of Form 602 been submitted to the Ombudsman for each board member? ☐ Yes ☐ No

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

Please use a separate sheet of paper for additional board members and attach to this form

	Management Company	Custodian of Records	Attorney	Declarant
Business Name		Robert Wines, Prof.	Robert Wines, Prof.	Steve & Mavis Wright
Contact Name		Robert Wines	Robert Wines	Steve Wright
Address: Number & Street City / State / Zip Code		687 6th Street Ste. 1 Elko, NV 89801	687 6th Street, Ste. 1 Elko, NV 89801	P. O. Box 486 Wells, NV 89835
Telephone Number	()	(775) 738-3171	(775) 738-3171	(775) 752-2477
E-mail Address (Optional)				

Name of person:

Signature: _____

Revised 12/15/07

Title: Secretary

Date signed: 1/7/09

Page 2 of 3

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JAN 8 2009 10:00

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• (702) 486-1480 • Toll free: (877) 829-9907 • Fax: (702) 486-4520
<http://www.red.state.nv.us>

ANNUAL ASSOCIATION REGISTRATION

NOTE: Please read directions on page 3 before filling out this form. Questions? Call (877) 829-9907.

Association name: High Lake Island Homeowners Assoc.

Nevada Secretary of State (SOS) File Number: 17262000 SOS Original Filing Date: 1/15/02
(For SOS filing information, log onto <https://sos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>)

Pursuant to NRS 116.3101 and NRS 116B.415, indicate the type of common-interest community (choose one):

- ☐ For-profit corporation ☒ Nonprofit corporation ☐ Trust
☐ General partnership ☐ Limited partnership ☐ Limited liability partnership

Physical Address: 6876 1/2 St Ste 1 City: Elko State: nv Zip: 89801
Mailing Address: 6876 1/2 St Ste 1 City: Elko State: nv Zip: 89801
Telephone: (775) 738-3471 County where association is located: Elko

** Is the association a (check one) ☐ Condominium ☐ Cooperative ☒ Planned Community ☐ Condominium Hotel?

** If a planned community, indicate which types of units it includes:

- ☒ Single Family Dwelling ☐ Condominium ☐ Townhouse ☐ Manufactured Housing ☐ Duplex

Is the common-interest community a master association or sub-association? (If so, indicate which.) ☒ Master ☐ Sub ☐ N/A

If a sub-association, to which master association does it belong? n/a

NOTE: Pursuant to NRS 116.31155(2), all master associations are responsible for payment of the annual unit fee with the Ombudsman for each sub-association unless governing documents provide otherwise; verification required by this office.

Number of foreclosures in prior calendar year based on liens for failure to pay assessments: 4

Units/Budget/Assessments

Date of conveyance of first residential unit (Mo./day/yr.): 02/20/90 Units conveyed to date: 51

Maximum number units that may be built: 51 Have declarant's development rights expired? Yes ☐ No ☒

Annual meeting date (Mo./day/yr.): 08/09/08 Fiscal Year End Date (Mo./day/yr.): 12/31/08

Total annual assessment: \$ 7650 How are assessments paid? ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total annual budgeted revenue: \$ 7650

Current year's financial statements were: ☐ Audited ☐ Reviewed ☒ Neither Date (Mo./day/yr.): _____

If audited, was the opinion ☐ qualified or ☐ unqualified? If reviewed, was report ☐ modified or ☐ unmodified?

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Check No.: <u>1019</u>	Amount: <u>153</u>	First Date Stamp: <u>RECEIVED JAN 9 5 2008</u>
Receipt No.: <u>123986</u>	Fiscal Year: <u>07-08</u>	Second Date Stamp: <u>RECEIVED FEB 21 2008</u>
* MUST BE IN MM/DD/YY FORMAT Third Date Stamp: _____		

Reserve Study (NRS 116.31152, NRS 116B.605 and NRS 116B.610)

Was a reserve study conducted? ☐ Yes ☒ No Date of most recent study (Mo./day/yr.): _____

Was the most recent study adopted by board? ☐ Yes ☐ No Adoption date (Mo./day/yr.): _____

Study performed by: _____

Was a Reserve Study Summary, Form 609 sent to Ombudsman? ☐ Yes ☒ No Date mailed (Mo./day/yr.): _____

Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☐ other: _____

Required reserve balance as of the beginning of the association's fiscal year, per reserve study: 11/14

Actual reserve account balance as of the beginning of the association's fiscal year, per approved budget: 12,080

Type of account in which reserve funds are kept: Checking Reserve Special Assessment in effect? ☐ Yes ☒ No

If the association is a condo/hotel, are there any other reserve accounts? ☐ Yes ☐ No (If yes, please file addendum.)

Board/Management/Declarant

Current number of board members: 6 Number of board members per governing documents: 6

Have all board members completed and signed Form 602 per NRS 116.31034 (9) or NRS 116B.445(9)? ☒ Yes ☐ No

Have copies of Form 602 been submitted to the Ombudsman for each board member? ☒ Yes ☐ No

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director Hotel Unit Owner (if applicable)
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

Please use a separate sheet of paper for additional board members and attach to this form

	Management Company	Custodian of Records	Attorney	Declarant
Business Name		Robert Wines, P.C.	Robert Wines, P.C.	Steven M. Wines
Contact Name		Robert Wines	Robert Wines	Steve Wines
Address: Number & Street City / State / Zip Code		687 6th St. Ste 1 Elko NV 89801	687 6th St. Ste 1 Elko NV 89801	P.O. Box 444 Elko NV 89801-0444
Telephone Number		(775) 738-3171	(775) 738-3171	(775) 738-3177
E-mail Address (Optional)				

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Name of person completing form (print): _____

Signature: _____

Title: _____

Date signed: _____

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<http://www.red.state.nv.us>

ANNUAL ASSOCIATION REGISTRATION

NOTE: Please read directions on page 3 before filling out this form. Questions? Call (877) 829-9907.

Association name: Ruby Lake Estates Homeowners Assoc.

Nevada Secretary of State (SOS) File Number: E00472020067 SOS Original Filing Date: 1/15/06

(For SOS filing information, log onto <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>)

Pursuant to NRS 116.3101 and NRS 116B.415, indicate the type of common-interest community (choose one):

- ☐ For-profit corporation ☒ Nonprofit corporation ☐ Trust
☐ General partnership ☐ Limited partnership ☐ Limited liability partnership

Physical Address: 687 6th St Ste 1 City: Elko State: NV Zip: 89801

Mailing Address: 687 6th St Ste 1 City: Elko State: NV Zip: 89801

Telephone: (775) 738-3171 County where association is located: Elko

** Is the association a (check one) ☐ Condominium ☐ Cooperative ☒ Planned Community ☐ Condominium Hotel?

** If a planned community, indicate which types of units it includes:

- ☒ Single Family Dwelling ☐ Condominium ☐ Townhouse ☐ Manufactured Housing ☐ Duplex

Is the common-interest community a master association or sub-association? (If so, indicate which.) ☒ Master ☐ Sub ☐ N/A

If a sub-association, to which master association does it belong? n/a

NOTE: Pursuant to NRS 116.31155(2), all master associations are responsible for payment of the annual unit fee with the Ombudsman for each sub-association unless governing documents provide otherwise; verification required by this office.

Number of foreclosures in prior calendar year based on liens for failure to pay assessments: 0

Units/Budget/Assessments

Date of conveyance of first residential unit (Mo./day/yr.): _____ Units conveyed to date: 51

Maximum number units that may be built: 51 Have declarant's development rights expired? ☐ Yes ☐ No

Annual meeting date (Mo./day/yr.): Second Sat Aug 08 Fiscal Year End Date (Mo./day/yr.): 12/31/08

Total annual assessment: \$ 7650⁰⁰ How are assessments paid? ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total annual budgeted revenue: \$ 7650⁰⁰

Current year's financial statements were: ☐ Audited ☐ Reviewed ☒ Neither Date (Mo./day/yr.): _____

If audited, was the opinion ☐ qualified or ☐ unqualified? If reviewed, was report ☐ modified or ☐ unmodified?

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Check No.: <u>1019</u>	Amount: <u>153</u>	First Date Stamp: RECEIVED JAN 25 2003
Receipt No.: <u>12398</u>	Fiscal Year: <u>07-08</u>	Second Date Stamp: _____
Third Date Stamp: _____		

Reserve Study (NRS 116.311 or NRS 116B.605 and NRS 116B.610)Was a reserve study conducted? ☐ Yes ☒ No Date of most recent study (Mo./day/yr.): _____Was the most recent study adopted by board? ☐ Yes ☐ No Adoption date (Mo./day/yr.): _____

Study performed by: _____

Was a Reserve Study Summary, Form 609 sent to Ombudsman? ☐ Yes ☒ No Date mailed (Mo./day/yr.): _____Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☐ other: _____Required reserve balance as of the beginning of the association's fiscal year, per reserve study: n/aActual reserve account balance as of the beginning of the association's fiscal year, per approved budget: 12,080.00Type of account in which reserve funds are kept: Checking Reserve Special Assessment in effect? ☐ Yes ☒ NoIf the association is a condo/hotel, are there any other reserve accounts? ☐ Yes ☐ No (If yes, please file addendum.)**Board/Management/Declarant**Current number of board members: 6 Number of board members per governing documents: 6Have all board members completed and signed Form 602 per NRS 116.31034 (9) or NRS 116B.445(9)? ☒ Yes ☐ NoHave copies of Form 602 been submitted to the Ombudsman for each board member? ☒ Yes ☐ No

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director Hotel Unit Owner (if applicable)
Board Member's Name			
Physical address: Number & Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

Please use a separate sheet of paper for additional board members and attach to this form

	Management Company	Custodian of Records	Attorney	Declarant
Business Name		Robert Wines, Prof	Robert Wines, Prof	Steven Mavisuriga
Contact Name		Robert Wines	Robert Wines	Steve Wright
Address: Number & Street City / State / Zip Code		687 6th St Ste 1 Elko NV 89801	687 6th St Ste 1 Elko NV 89801	P.O. Box 486 Wells NV 89835
Telephone Number	()	(775) 738-3171	(775) 738-3171	(775) 752-2477
E-mail Address (Optional)				

Name of person: _____

Signature: _____

Date signed: 1/22/08Title: President**COPY**

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

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e-mail: realest@red.state.nv.us http://www.red.state.nv.us

Declaration of Certification
Common-Interest Community Board Member
NRS 116.310(4)(9)

I _____, an appointed
(print name)

or elected member of the executive board of Roby Lake Estates,
homeowner association, Secretary of State (SOS) File # E00472020069.

certify that I have read and understand, to the best of my ability, the governing
documents of the association and the provisions of Chapter 116 of Nevada Revised
Statutes ("NRS") and the Nevada Administrative Code ("NAC").

Date of election or appointment to the board 08 12 2006
month day year

"I declare under penalty of perjury under the law of the State of Nevada that the
foregoing is true and correct."

Executed on 1/26/08
Date

Signature

The Administrator of the Real Estate Division requires the association to submit a copy of this
certification for each member of the executive board at the time the association registers
annually with the Office of the Ombudsman pursuant to Nevada Revised Statutes ("NRS")
116.31158. All declarations are to be submitted to the Las Vegas address listed above

COPY

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

788 Fairview Drive, Suite 200 * Carson City, NV 89701-5453 * (775) 687-4280
2501 East Sahara Avenue, Suite 102 * Las Vegas, NV 89104-4137 * (702) 486-4033
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

**Declaration of Certification
Common-Interest Community Board Member
NRS 116.31034(9)**

I _____, an appointed
(print name)

or elected member of the executive board of Ruby Lake Estates Homeowners Assoc
homeowner association, Secretary of State (SOS) File # E00472020069,

certify that I have read and understand, to the best of my ability, the governing
documents of the association and the provisions of Chapter 116 of Nevada Revised
Statutes ("NRS") and the Nevada Administrative Code ("NAC").

Date of election or appointment to the board 8 12 06
month day year

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on Jan. 18, 2008
Date

Signature

The Administrator of the Real Estate Division requires the association to submit a copy of this certification for each member of the executive board at the time the association registers annually with the Office of the Ombudsman pursuant to Nevada Revised Statutes ("NRS") 116.31158. All declarations are to be submitted to the Las Vegas address listed above.

COPY

STATE OF NEVADA
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REAL ESTATE DIVISION

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2501 East Sahara Avenue, Suite 102 * Las Vegas, NV 89104-4137 * (702) 486-4033
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

**Declaration of Certification
Common-Interest Community Board Member
NRS 116.31034(9)**

I _____, an appointed
(print name)

or elected member of the executive board of Ruby Lake Estates Homeowners
Association,
homeowner association, Secretary of State (SOS) File # EC0472020069

certify that I have read and understand, to the best of my ability, the governing
documents of the association and the provisions of Chapter 116 of Nevada Revised
Statutes ("NRS") and the Nevada Administrative Code ("NAC").

Date of election or appointment to the board 8 11 2007
month day year

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on 1-8-2008
Date

Signature

The Administrator of the Real Estate Division requires the association to submit a copy of this certification for each member of the executive board at the time the association registers annually with the Office of the Ombudsman pursuant to Nevada Revised Statutes ("NRS") 116.31158. All declarations are to be submitted to the Las Vegas address listed above.

COPY

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

788 Fairview Drive, Suite 200 * Carson City, NV 89701-5453 * (775) 687-4280
2501 East Sahara Avenue, Suite 102 * Las Vegas, NV 89104-4137 * (702) 486-4033
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

**Declaration of Certification
Common-Interest Community Board Member
NRS 116.31034(9)**

I _____, an appointed
(print name)

or elected member of the executive board of Ruby Lake Estates Homeowners Assoc
homeowner association, Secretary of State (SOS) File # 600472020069,

certify that I have read and understand, to the best of my ability, the governing
documents of the association and the provisions of Chapter 116 of Nevada Revised
Statutes ("NRS") and the Nevada Administrative Code ("NAC").

Date of election or appointment to the board 8 12 06
month day year

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on 1-8-08
Date

Signature

The Administrator of the Real Estate Division requires the association to submit a copy of this certification for each member of the executive board at the time the association registers annually with the Office of the Ombudsman pursuant to Nevada Revised Statutes ("NRS") 116.31158. All declarations are to be submitted to the Las Vegas address listed above.

COPY

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

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2501 East Sahara Avenue, Suite 102 * Las Vegas, NV 89104-4137 * (702) 486-4033
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

**Declaration of Certification
Common-Interest Community Board Member
NRS 116.31034(9)**

I _____, an appointed
(print name)

or elected member of the executive board of Ruby Lake Estates,
homeowner association, Secretary of State (SOS) File # E00472020069,

certify that I have read and understand, to the best of my ability, the governing
documents of the association and the provisions of Chapter 116 of Nevada Revised
Statutes ("NRS") and the Nevada Administrative Code ("NAC").

Date of election or appointment to the board August 11, 2007
month day year

"I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on 1-11-08 _____
Date Signature

The Administrator of the Real Estate Division requires the association to submit a copy of this certification for each member of the executive board at the time the association registers annually with the Office of the Ombudsman pursuant to Nevada Revised Statutes ("NRS") 116.31158. All declarations are to be submitted to the Las Vegas address listed above.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES

788 Fairview Drive, Suite 200 • Carson City, Nevada 89701-5453 • (775) 687-4280
2501 East Sahara Avenue, Suite 202 • Las Vegas, Nevada 89104-4137
• (702) 486-4480 • Toll free: (877) 829-9907 • Fax: (702) 486-4520
<http://www.red.state.nv.us>

ANNUAL ASSOCIATION REGISTRATION FORM

Please read directions on page 3 before filling out this form

For SOS filing information, log onto: <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>

Nevada Secretary of State (SOS) File Number: E00472020069 SOS Original Filing Date: 1/18/06

Indicate by checking which type of entity the association is organized with the SOS, pursuant to NRS 116.3101

Corporation:

☐ Profit ☒ Nonprofit

☐ Trust

Partnership:

☐ General ☐ Limited ☐ Limited Liability

Association's Physical Address:

Association Name: Ruby Lake Estate Homeowners Assoc

Number and Street: 687 6th St Ste 1

City/State/Zip Code: Elko, NV 89801

Telephone Number: () 775-738-3171

County: Elko

Association's Mailing Address:

Association Name: Ruby Lake Estates Homeowners Assoc

Number and Street: 687 6th St Ste 1

City/State: Elko, NV

Zip: 89801

Number of foreclosures in prior year: 0

Indicate by checking the type of Common Interest Community for association:

☐ Condominium

☒ Planned Community (PC)

If Planned Community, select type(s) of units in association:

☒ Single Family Dwelling ☐ Condominium

☐ Townhouse ☐ Manufactured Housing

☒ Cooperative

Indicate if the association is one of the following: ☒ Master Association ☐ Sub-association

Note: If Sub-association, please record the following information in the space provided:

• Name of the Master Association which the Sub is part: _____

Note: Effective Oct. 1, 2005, Senate Bill 325, Sec. 69 indicates that all Master Associations are responsible for payment of the Ombudsman's fee for each sub-association unless governing documents provide otherwise; verification required by this office.

Units/Budget/Assessments

Date of first conveyance of unit: 2/20/90

* (Mo./date/yr.)

Total Number of current units conveyed: 51

Maximum Number of Units that may be built: 51

Annual Meeting Date: 2ND SAT AUG. 2007
(Mo./day/yr.)

Fiscal Year Ending Date: 12/31/2007
(Mo./day/yr.)

Total Annual Assessment: \$ 7650⁰⁰

☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total Annual Budgeted Revenue: \$ UNAVAILABLE

Where financial statements audited or reviewed?: ☐ Yes ☒ No Date audit or review completed: _____

(Mo./day/yr.)

Circle whether the audit opinion was qualified or unqualified or whether the review report was modified or unmodified.

Revised 11/14/06

Page 1 of 3

* Missing information
on back Thank you

RECEIVED JAN 08 2007

RECEIVED 3 AA000 P41
JAN 2 0 2007

COA

Reserve Study (NRS 116.31152)Study Conducted: ☐ Yes ☒ NoSummary form mailed to Ombudsman's office ☒ Yes ☐ No

Date Mailed _____

(Mo./date/yr)

Date of most current Study: _____

(Mo./date/yr)

Study performed by: _____

Adoption date: _____

(Mo./date/yr.)

Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☐ other _____

Total reserve requirement January 1 of current year: _____

Actual reserve account balance January 1 of current year: _____

Total current year annual funding: _____

Current month actual reserve balance: Month 5757⁰⁰

\$ _____

Annual Funding Requirement on Reserve Study: \$ _____

Type of account for reserve fund: CHECKINGAre there restrictions in association documents regarding special assessments? ☐ Yes ☒ NoReserve Special Assessment: ☐ Yes ☒ No

Duration of Special Assessment: _____

Indicate by checking payment of assessment: ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☐ Annual ☐ One-time**Board/Management/Declarant**Current number of board members: 6Number of board members per governing docs: 6Have all board members signed declarations per NRS 116.31034 (9) and submitted to Ombudsman's office: ☒ Yes ☐ No

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Home address: Number & street			
City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director
Board Member's Name			
Home address: Number & Street			
City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Community Manager	Custodian of Record	Attorney	Declarant
Business Name	Executive Board of Assoc	Mathews & Wines	Mathews & Wines	Steve & Mavis Wright
Contact Name	LeRoy Perks	Robert Wines	Robert Wines	Steve Wright
Address: Number & Street City / State / Zip Code	3030 Brenda Way Carson City, NV 89701	687 6th St Ste 1 Elko, NV 89801	687 6th St Ste 1 Elko, NV 89801	P. O. Box 486 Wells, NV 89835
Telephone Number	() 775-849-2494	() 775-738-3171	() 775-738-3171	() 775-752-2477
E-mail Address (Optional)				

Signature (Individual completing form): _____

Date signed: 1-3-2007

To be completed by Ombudsman Office only

Fiscal Year

Initials and Date received

RECEIVED

JAN 08 2007

Initials and Date entered

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES
788 Fairview Drive, Suite 200 • Carson City, Nevada 89701-5453 • (775) 687-4280
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<http://www.red.state.nv.us>

ANNUAL ASSOCIATION REGISTRATION FORM
Please read directions on page 3 before filling out this form

For SOS filing information, log onto: <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>

Nevada Secretary of State (SOS) File Number: E00472020069 SOS Original Filing Date: 1/18/06

Indicate by checking which type of entity the association is organized with the SOS, pursuant to NRS 116.3101

Corporation:

☐ Profit ☒ Nonprofit

☐ Trust

Partnership:

☐ General ☐ Limited ☐ Limited Liability

Association's Physical Address:

Association Name: Ruby Lake Estate Homeowners Assoc

Number and Street: 687 6th St Ste 1

City/State/Zip Code: Elko, NV 89801

Telephone Number: () 775-738-3171

County: Elko

Association's Mailing Address:

Association Name: Ruby Lake Estates Homeowners Assoc

Number and Street: 687 6th St Ste 1

City/State: Elko, NV

Zip: 89801

Number of foreclosures in prior year: 0

Indicate by checking the type of Common Interest Community for association:

☐ Condominium

☒ **Planned Community (PC)**

If Planned Community, select type(s) of units in association:

☒ Single Family Dwelling ☐ Condominium

☐ Townhouse ☐ Manufactured Housing

☒ **Cooperative**

Indicate if the association is one of the following: ☒ Master Association ☐ Sub-association

Note: If Sub-association, please record the following information in the space provided:

• Name of the Master Association which the Sub is part: _____

Note: Effective Oct. 1, 2005, Senate Bill 325, Sec. 69 indicates that all Master Associations are responsible for payment of the Ombudsman's fee for each sub-association unless governing documents provide otherwise; verification required by this office.

Units/Budget/Assessments

Date of first conveyance of unit: 2/20/90
* (Mo./date/yr.)

Total Number of current units conveyed: 51

Maximum Number of Units that may be built: 51

Annual Meeting Date: 2ND SAT AUG. 2007
(Mo./day/yr.)

Fiscal Year Ending Date: 12/31/2007
(Mo./day/yr.)

Total Annual Assessment: \$ 7650⁰⁰

☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total Annual Budgeted Revenue: \$ UNAVAILABLE

Where financial statements audited or reviewed?: ☐ Yes ☒ No Date audit or review completed: _____

(Mo./day/yr.)

Circle whether the audit opinion was qualified or unqualified or whether the review report was modified or unmodified.

Reserve Study (NRS 116.31152)Study Conducted: ☐ Yes ☒ No Reserve Summary form mailed to Ombudsman's office: ☐ Yes ☒ No Date Mailed _____ (Mo./date/yr)

Date of most current Study: _____ Study performed by: _____ Adoption date: _____ (Mo./date/yr)

Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☐ other _____

Total reserve requirement January 1 of current year: _____

Actual reserve account balance January 1 of current year: _____

Total current year annual funding: _____

Current month actual reserve balance: Month 5757⁰⁰ \$ _____

Annual Funding Requirement on Reserve Study: \$ _____

Type of account for reserve fund: CHECKINGAre there restrictions in association documents regarding special assessments? ☐ Yes ☒ NoReserve Special Assessment: ☐ Yes ☒ No Duration of Special Assessment: _____Indicate by checking payment of assessment: ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☐ Annual ☐ One-time**Board/Management/Declarant**Current number of board members: 6 Number of board members per governing docs: _____Have all board members signed declarations per NRS 116.31034 (9) and submitted to Ombudsman's office: ☒ Yes ☐ No

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Home address: Number & street			
City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director
Board Member's Name			
Home address: Number & Street			
City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Community Manager	Custodian of Record	Attorney	Declarant
Business Name	Executive Board of Assoc	Mathews & Wines	Mathews & Wines	Steve & Mavis Wright
Contact Name	LeRoy Perks	Robert Wines	Robert Wines	Steve Wright
Address: Number & Street	3030 Brenda Way	687 6th St Ste 1	687 6th St Ste 1	P. O. Box 486
City / State / Zip Code	Carson City, NV 89701	Elko, NV 89801	Elko, NV 89801	Wells, NV 89835
Telephone Number	() 775-849-2494	() 775-738-3171	() 775-738-3171	() 775-752-2477
E-mail Address (Optional)				

Signature (Individual completing form)

Date signed: 1-3-2007

To be completed by Ombudsman Office only

Fiscal Year: _____

Initials and Date received: **RECEIVED** JAN 6 8 2007

Initials and Date entered: _____

3 AA006110

COPY

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES
788 Fairview Drive, Suite 200 • Carson City, Nevada 89701-5453 • (775) 687-4280
2501 East Sahara Avenue, Suite 202 • Las Vegas, Nevada 89104-4137
• (702) 486-4480 • Toll free: (877) 829-9907 • Fax: (702) 486-4520
<http://www.red.state.nv.us>

ANNUAL ASSOCIATION REGISTRATION FORM
Please read directions on page 3 before filling out this form

For SOS filing information, log onto: <https://esos.state.nv.us/SOSServices/AnonymousAccess/CorpSearch/CorpSearch.aspx>

Nevada Secretary of State (SOS) File Number: E00472020069 SOS Original Filing Date: 1/18/06

Indicate by checking which type of entity the association is organized with the SOS, pursuant to NRS 116.3101

Corporation:

☐ Profit ☒ Nonprofit

☐ Trust

Partnership:

☐ General ☐ Limited ☐ Limited Liability

Association's Physical Address:

Association Name: Ruby Lake Estate Homeowners Assoc

Number and Street: 687 6th St Ste 1

City/State/Zip Code: Elko, NV 89801

Telephone Number: () 775-738-3171

County: Elko

Association's Mailing Address:

Association Name: Ruby Lake Estates Homeowners Assoc

Number and Street: 687 6th St Ste 1

City/State: Elko, NV

Zip: 89801

Number of foreclosures in prior year: 0

Indicate by checking the type of Common Interest Community for association:

☐ Condominium

☒ Planned Community (PC)

If Planned Community, select type(s) of units in association:

☒ Single Family Dwelling ☐ Condominium

☐ Townhouse ☐ Manufactured Housing

☐ Cooperative

Indicate if the association is one of the following: ☒ Master Association ☐ Sub-association

Note: If Sub-association, please record the following information in the space provided:

Name of the Master Association which the Sub is part: _____

Note: Effective Oct. 1, 2005, Senate Bill 325, Sec. 69 indicates that all Master Associations are responsible for payment of the Ombudsman's fee for each sub-association unless governing documents provide otherwise; verification required by this office.

Units/Budget/Assessments

Date of first conveyance of unit: _____
(Mo./date/yr.)

Total Number of current units conveyed: 51 Maximum Number of Units that may be built: 51

Annual Meeting Date: 2ND SAT AUG. 2007 Fiscal Year Ending Date: 12/31/2007
(Mo./day/yr.) (Mo./day/yr.)

Total Annual Assessment: \$ 7650⁰⁰ ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☒ Annually

Total Annual Budgeted Revenue: \$ UNAVAILABLE

Where financial statements audited or reviewed?: ☐ Yes ☒ No Date audit or review completed: _____
(Mo./day/yr.)

Circle whether the audit opinion was qualified or unqualified or whether the review report was modified or unmodified.

Reserve Study (NRS 116.311)Study Conducted: ☐ Yes ☒ No Reserve Summary form mailed to Ombudsman's office: ☐ Yes ☒ No Date Mailed _____ (Mo./date/yr)

Date of most current Study: _____ Study performed by: _____ Adoption date: _____ (Mo./date/yr)

Type of funding method used: ☐ Full funding ☐ Threshold funding ☐ Baseline funding ☐ other _____

Total reserve requirement January 1 of current year: _____

Actual reserve account balance January 1 of current year: _____

Total current year annual funding: _____

Current month actual reserve balance: Month 5757⁰⁰ \$ _____

Annual Funding Requirement on Reserve Study: \$ _____

Type of account for reserve fund: CHECKINGAre there restrictions in association documents regarding special assessments? ☐ Yes ☐ NoReserve Special Assessment: ☐ Yes ☐ No Duration of Special Assessment: _____Indicate by checking payment of assessment: ☐ Monthly ☐ Quarterly ☐ Semi-Annually ☐ Annual ☐ One-time**Board/Management/Declarant**Current number of board members: 6 Number of board members per governing docs: _____Have all board members signed declarations per NRS 116.31034 (9) and submitted to Ombudsman's office: ☐ Yes ☐ No

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Home address: Number & street			
City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Director	Director	Director
Board Member's Name			
Home address: Number & Street			
City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

	Community Manager	Custodian of Record	Attorney	Declarant
Business Name	Executive Board of Assoc ✓	Mathews & Wines ✓	Mathews & Wines ✓	Steve & Mavis Wright
Contact Name	LeRoy Perks	Robert Wines	Robert Wines	Steve Wright
Address: Number & Street	3030 Brenda Way	687 6th St Ste 1	687 6th St Ste 1	P. O. Box 486
City / State / Zip Code	Carson City, NV 89701	Elko, NV 89801	Elko, NV 89801	Wells, NV 89835
Telephone Number	() 775-849-2494	() 775-738-3171	() 775-738-3171	() 775-752-2477
E-mail Address (Optional)				

Signature (Individual completing form)

Date signed: 1-3-2007

To be completed by Ombudsman's Office only: _____ Fiscal Year: _____

Initials and Date received: RECEIVED JAN 11 8 2007 Initials and Date entered: _____

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES

788 Fairview Drive, Suite 200 • Carson City, Nevada 89701-5453 • (775) 687-4280
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 2501 East Sahara Avenue, Suite 201 • (702) 486-4480 • fax: (702) 486-4520
 Toll free: (877) 829-9907 <http://www.rcd.state.nv.us>

INITIAL ASSOCIATION REGISTRATION FORM

Note: Please read instructions on reverse side before completing registration form.

¹ Indicate by checking which type of entity the association will be organized with the SOS, pursuant to NRS 116.3101:

Corporation: <input type="checkbox"/> Profit <input checked="" type="checkbox"/> Nonprofit	<input type="checkbox"/> Trust	Partnership: <input type="checkbox"/> General <input type="checkbox"/> Limited <input type="checkbox"/> Limited Liability
--	--------------------------------	---

² Association

Name Ruby lake Estates Homeowner's Association

Address:

Number and Street 687 6th Street suite 1

City/State/Zip Code Elko, NV 89801

Telephone Number (775) 738-3171 ⁴County Elko

⁵Number of Units 51 and Maximum Number of Units that may be built 51

³

Indicate by checking the type of Common-Interest Community for association:

Condominium ☐
 Cooperative ☐
 Planned Community (PC) ☒
 If PC, select type(s) of units in association:
 Single Family Dwelling ☒ Condominium ☐
 Townhouse ☐ Manufactured Housing ☐

⁶ Please indicate by checking the type of association: Master Association ☒ Sub-Association ☐ Not Applicable ☐
Note: If Sub-Association, please record the following information in the space provided:
 • Name of the Master Association that the Sub is part of: _____
 • Association responsible for payment of the Ombudsman's Unit Fees: Master Association ☐ Sub-Association ☐

Executive Board	President	Secretary	Treasurer
Board Member's Name			
Address: Number and Street City / State / Zip Code			
Telephone Number			
E-mail Address (Optional)			

Community Manager	Custodian of Records	Attorney	Declarant
Business Name	Mathews & Wines	Mathews & Wines	Steve & Mavis Wright
Contact Name	Robert Wines	Robert Wines	Steve Wright
Address: Number and Street City / State / Zip Code	687 6th St. Suite 1 Elko, NV 89801	687 6th St. suite 1 Elko, NV 89801	P.O. Box 486 Wells, NV 89835
Telephone Number	(775) 738-3171	(775) 738-3171	(775) 752-2477
E-mail Address (Optional)	bobwines@citlink.net	bobwines@citlink.net	

¹²Signature/Title (Individual completing form): _____

Date signed: 11-21-2005

To be completed by Ombudsman Office only.		Fiscal Year: _____
SOS Filing Date: _____	SOS File Number: _____	
Initials and Date received: _____	Initials and Date entered: _____	

COPY



DOC #

580650

03/31/2007

11:37 AM

Official Record

Requested By
ROBERT J. WINES PROF. CORP.

Elko County - NV

Jerry D. Reynolds - Recorder

Page 1 of 3 Fee: \$16.00

Recorded By: NR RPTT: \$3.90

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.



580650

08/31/2007
002 of 3

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.

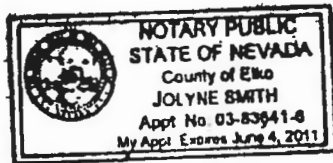
IN WITNESS WHEREOF, the said Grantors have hereunto set their hands as of the day and year first hereinabove written.

Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. 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.



Jolyne Smith
NOTARY PUBLIC



580650

08/31/2007
003 of 3

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 $\frac{1}{4}$ 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.)



JOC # DV-

580650

08/31/2007

11:37 AM

Official Record

Requested By
ROBERT J. WINES PROF. CORP.

Elko County - NV

Jerry D. Reynolds - Recorder

FOR RECORDER

Document/Instru

Book:

Date of Recordir

Notes:

Page 1 of 1 Fee: \$16.00
Recorded By: NR RPTT: \$3.90

STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number (s)

- a) 007-03A-053
b) _____
c) _____
d) _____

2. Type of Property:

- | | |
|--|---|
| a) <input checked="" type="checkbox"/> Vacant Land | b) <input type="checkbox"/> Single Fam Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex |
| e) <input type="checkbox"/> Apt Bldg. | f) <input type="checkbox"/> Comm'Wind'l |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home |
| i) <input type="checkbox"/> Other | |

3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property) \$

Transfer Tax Value: \$

Real Property Transfer Tax Due: \$

1,000-

3.90

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Robert J. Wines Capacity Attorney
Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Stephen G. & Mavis Wright
Address: P.O. Box 486
City: Wells
State: NV Zip: 89835

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Ruby Lake Estates Homeowner's Assoc.
Address: 765 E. Greg Ste 103
City: Sparks
State: NV Zip: 89431

COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: _____ Escrow # _____
Address: _____
City: _____ State: _____ Zip: _____

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1 CASE NO. CV-C-12-175


2 DEPT. NO. I

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

FILED

12 MAY 30 A11:26

ELKO CO. DISTRICT COURT

CLERK DEPUTY 

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

10 Plaintiff,

11 vs.

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

14 Defendants.

15 RUBY LAKE ESTATES HOMEOWNER'S
16 ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a
20 Nevada Corporation,

21 Counterdefendant.

22 **OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

23 Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION ("the Association" or
24 "RLEHOA"), hereby presents its Opposition to the Motion for Summary Judgment ("MSJ") filed by Plaintiff,
25 ARTEMIS EXPLORATION COMPANY, a Nevada Corporation ("Artemis" or "Plaintiff"). All Exhibits
26 referred to herein are filed separately as RLEHOA's Composite of Exhibits in Support of: (1) RLEHOA's
27 Opposition to Plaintiff's Motion for Summary Judgment; and (2) RLEHOA's Motion for Summary Judgment.

28 Plaintiff's Motion for Summary Judgment ("MSJ") should be denied. Neither the undisputed facts nor
the applicable law support the relief sought by way of Plaintiff's Motion. In fact, as explained below, there is

3 AA000123

1 no basis to award Plaintiff any relief whatsoever with respect to the Association. Plaintiff has clearly failed to
2 recognize the many Nevada statutory provisions applicable to the Ruby Lake Estates community, and has failed
3 to bring to the Court's attention material and relevant facts which cannot be denied by Plaintiff, all of which
4 demonstrate that NRS Chapter 116 applies to the Ruby Lake Estates community, as a matter of law. Various
5 statutory provisions of NRS Chapter 116 undermine and make inapplicable Plaintiff's legal arguments and
6 authorities. Moreover, the cases relied upon by Artemis are wholly irrelevant to this matter. Artemis
7 misapprehends the holdings of the cases it cites.

8 Further, the factual evidence demonstrates that Artemis not only consented to the formation of the
9 Association, it was instrumental in the formation of the Association and extolled the virtues and advantages of
10 a homeowner's association to other homeowners as being needed to maintain the roads and other common
11 elements of the Ruby Lake Estates community. Artemis' representative, Mel Essington, was knowledgeable
12 about the requirements of NRS Chapter 116, repeatedly acknowledged the existence of the common elements
13 of the Association, the applicability of NRS 116 and NAC 116 as governing the affairs of the Association, and
14 the need and requirement of this common-interest community to maintain these common elements.

15 Mr. Essington served as a member of the Association's Board of Directors and Architectural Review
16 Committee ("ARC") from 2007 to 2011. During that time he voted to levy assessments, adopt budgets and
17 reserve studies describing these common elements, collect assessments from other owners, maintain the common
18 elements of the Association, and generally operate the Association in accordance with the requirements of NRS
19 Chapter 116. Mr. Essington signed a declaration under penalty of perjury to the effect that as a Board member,
20 he was familiar with and would comply with the provisions of NRS Chapter 116. Accordingly, Artemis cannot
21 now disavow the actions of its agent, Mel Essington, and seek to declare the Association invalid under any
22 theory in law or in equity. At a minimum, the evidence presented herewith raises material issues of fact directly
23 contrary to the "undisputed facts" recited by Plaintiff, thereby prevented the entry of an order for summary
24 judgment in favor of Plaintiff.

25 I.
26 **FACTS SUPPORTED BY ADMISSIBLE EVIDENCE**

27 The official Plat Map 89036 ("Plat Map") for Ruby Lake Estates was recorded in the records of Elko
28

1 County on September 15, 1989, by Stephen and Mavis Wright, as File No. 281674. *See* Exhibit "A" to MSJ¹.
2 Included on the Plat Map are the residential lots within the community as well as the roadways, easements,
3 building set back lines, and street monuments, among other things. With respect to the roadways, Sheet 1 of
4 3 of the Plat Map states:

5 At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada,
6 held on the 5th day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS 278.328.
7 **The Board does hereby reject on behalf of the public all streets or roadways for
maintenance purposes** and does hereby accept all streets and easements therein offered for
utility, drainage and access purposes only as dedicated for public use. [Emphasis added.]

8 The roads within Ruby Lake Estates have never been accepted for maintenance by Elko County. Elko County
9 requires the roadways and adjoining ditches and culverts to be maintained for health and safety reasons, e.g.,
10 fire truck access and fire fuels mitigation. *See* Exhibit "4", Wines Affidavit; *see also* Exhibit "19" at RLE
11 022. Thus, maintenance of the roads and other common elements discussed below is clearly the responsibility
12 of the owners of the residential lots within the Ruby Lake Estates subdivision. Plaintiff's assertion that "no one"
13 is responsible for maintaining the roads is dangerous and completely nonsensical.

14 On October 25, 1989, Stephen and Mavis Wright recorded certain Reservations, Conditions and
15 Restrictions for Ruby Lake Estates ("CC&Rs"). The CC&Rs were recorded in the Office of the Elko County
16 Recorder in Book 703, Page 287. *See* Exhibit "B" to MSJ. The Plat Map constitutes part of the Declaration.
17 NRS 116.2109(1).

18 In 1991, the Nevada Legislature adopted the Uniform Common-interest Ownership Act ("UCIOA") in
19 the form of Chapter 116 of the Nevada Revised Statutes. NRS 116.1201 provides that with certain limited
20 exceptions, "this chapter applies to all common-interest communities created within this state." NRS
21 116.1201(2) then sets forth those certain limited exceptions. None of those exceptions apply to Ruby Lake
22 Estates. Specifically, contrary to Plaintiff's assertion, although Ruby Lake Estates is a common-interest
23 community which was created before January 1, 1992, Ruby Lake is not "located in a county whose population
24 is less than 55,000², and [does not have] less than 50 percent of the units within the community put to residential

25 ¹ Exhibits attached to Plaintiff's Motion for Summary Judgment are referred to herein as lettered Exhibits "A" through "V".
26 The Association's exhibits are contained in the Composite of Exhibits filed contemporaneously and numbered consecutively. Exhibits may
27 include documents with Bates Stamp numbers as produced by the parties in NRED Control No. 11-82 and in this action. Documents
produced by the Association are labeled with Bates Stamps "RLE 00X". Documents previously produced by Plaintiff have only a Bates
Stamp number.

28 ² Up until January 1, 2012, the population criteria was 50,000. Elko County reports a population in excess of 51,000.

1 use, . . .” All but one of the units in Ruby Lake Estates are residential use. Also, contrary to Plaintiff’s
2 assertions, there are no other “opt-out” provisions found within NRS Chapter 116. Thus, assuming Ruby Lake
3 Estates met the definition of a common-interest community in 1999 when NRS Chapter 116 was made
4 applicable to pre-1992 communities, the provisions of NRS Chapter 116 apply to govern the actions of the
5 members and the Association. However, because the CC&Rs and Plat Map were recorded prior to 1992, the
6 Association is not required to comply with the provisions of NRS 116.2101 to 116.2122, inclusive. *See* NRS
7 116.2101(3)(b) and legal arguments below.

8 Artemis is a Nevada Corporation whose President, Secretary, Treasurer and sole director is Elizabeth
9 E. Essington. *See* Exhibit “1”, RLE 116-117. Mrs. Essington’s husband is George “Mel” Essington. As
10 demonstrated by the evidence submitted herewith and discussed below, for over seventeen years (1994-2011),
11 Mr. and Mrs. Essington implicitly and expressly represented that Lot G-6, which was acquired in 1994, was
12 owned by one or both of them. In the alternative, Mr. Essington represented that he had the capacity and
13 authority to act on behalf of Artemis and/or Mrs. Essington. *See, e.g.*, Exhibit “48”, RLE 021F to 021H.
14 Artemis and/or Mrs. Essington ratified all actions by Mr. Essington.

15 The Essingtons’ personal residence is located on Lot G-6. Both before and after filing of the Articles
16 of Incorporation for the Association, assessments for the costs of roadway maintenance and other common
17 expenses were regularly paid by the Essingtons with checks written on the joint bank account of Elizabeth and
18 George Essington. *See* Exhibit “9”, RLE 027, RLE 036, RLE 058, RLE 081. In 2009, after becoming unhappy
19 because of a building approved by the ARC which she did not like, Mrs. Essington asserted, for the first time,
20 that she had never consented to the formation of the Ruby Lake Estates Homeowners Association. Such consent
21 is irrelevant because it is not required, as a matter of law. Thereafter, the President of the Board asked Mr.
22 Essington, on at least two occasions, to provide evidence of his authority to act on behalf of Artemis as he had
23 repeatedly represented. He refused to do so. *See* Exhibit “2”, RLE 118, RLE 131. As a consequence, Mr.
24 Essington resigned from the Board of Directors of the Association.

25 Artemis further admits that it acquired a second lot in Ruby Lake Estates, Lot 2, Block H, on March
26 9, 2010, after formation of the alleged “illegal” homeowners association. Both Lot G-6 and Lot H-2 (the “Lots”)
27 were created by the Plat Map and are subject to the terms, conditions and restrictions set forth in the CC&Rs.
28 The legal description in the Deeds attached as Exhibits “C” and “D” to Plaintiff’s MSJ, reference the subdivision

1 as platted in the records in Elko County, Nevada (*i.e.*, the Plat Map recorded on September 15, 1989 as File No
2 281674.) Title to the Lots was taken subject to “. . . covenants, conditions, restrictions, exceptions and
3 reservations, easements encumbrances, leases or licenses, rights, and rights of way of record, if any.” The Policy
4 of Title Insurance issued on June 21, 1994 for Lot G-6 specifically references the CC&Rs as an exception on
5 Schedule B, item 10. *See* Exhibit “3”, 00021-00027.

6 Artemis further admits that Articles of Incorporation for the Association were filed with the Nevada
7 Secretary of State on January 18, 2006 as File Number E00472020069. *See* Exhibit “H” to MSJ. Prior to the
8 filing of the Articles of Incorporation, the Architectural Review Committee (“ARC”) established pursuant to the
9 CC&Rs and an informal committee identified as the Ruby Lake Estates Landowners Association, served as the
10 governing body of the Association. However, under NRCP 17(b), such entities are not recognized as an entity
11 with legal capacity. Therefore, the ARC had no enforcement power to compel compliance with the CC&Rs or
12 to maintain the roadways or other common elements of the community for which the owners were responsible.
13 These included not only the road ways, but the entrance monument signs, perimeter fencing, gates, culverts and
14 ditches with weed abatement as required by Elko County fire authorities. Nevada law requires that in order to
15 enforce the provisions of the CC&Rs, an association of unit owners must “be organized as a profit or nonprofit
16 corporation, association, limited liability company, trust or partnership. *See* NRS 116.3101(3)(a). Robert Wines
17 stated his opinion that the lot owners should form a homeowner’s association to be governed by the provisions
18 of NRS Chapter 116 in order to provide for the maintenance of the roadways, weed abatement, culverts, and
19 other elements of the real property for which the owners were jointly responsible. *See* Exhibit “4”, Wines
20 Affidavit. *See also* Exhibit “5” RLE 120-121.

21 As early as 1997, newsletters and written communications were regularly sent to the members of the
22 Ruby Lake Estates community, including Mr. and Mrs. Essington, and meetings were held by members of the
23 community, the ARC and later by the RLEHOA Board of Directors. *See* Exhibit “6”, RLE 018-019D.
24 Communications continually discussed the maintenance of the community roadways. In a newsletter sent in the
25 summer of 1997, the Chairman of the ARC states:

26 Another topic brought up at the committee meeting was road maintenance. Steve Wright, the
27 property developer, was responsible for the upkeep on the roads until all of the lots were sold.
28 Now that they have all been sold, the property owners are now responsible. Therefore, we feel
that a property association fee paid yearly, by each property owner would take care of road
maintenance, weed control and any legal fees that may arise.

1 *Id.*, RLE 019. These topics were also discussed in subsequent Newsletters. Plaintiff received these Newsletters.
2 *See* Exhibit "7", 0062-0064, 0085-0087, 0096-0101. In her deposition, Mrs. Essington admitted receiving a
3 copy of the July 2010 Newsletter. *See* Exhibit "8 ", 71:21-24.

4 Assessments were levied and budgets were adopted to pay for county requirements of road maintenance
5 and fire protection. *See* Exhibit "6" at RLE 019C. Mr. and Mrs. Essington, expressly and implicitly representing
6 they were the owners of Lot G-6, regularly paid the assessments from their personal joint bank account. *See*
7 Exhibit "9", RLE 027, RLE 036, RLE 058, RLE 081. *See also*, Exhibit "48" at RLE 021F, 021G, 021H, which
8 is a questionnaire returned for Lot G-6 indicating the property owner's name as: "Artemis Exploration -
9 Mel/Beth Essington." At no time prior to 2011, did the Association receive any funds from Artemis. *See*
10 Exhibit "10", Affidavit of Lee Perks in Support of Opposition to Motion for Summary Judgment ("Perks
11 Affidavit"). In August of 2006, Mr. Essington sent a letter to Lee Perks enclosing "our personal check in the
12 amount of \$150. This amount will cover our Ruby Lake Estates Homeowners dues for 2006." *See* Exhibit "26",
13 RLE 027A.

14 Prior to the formation of the Association, Mr. Essington sent letters to the Association urging them to
15 revitalize the Association. *See* Exhibit "11", RLE 021A-021D. He made it clear that Artemis knew assessments
16 would be required in accordance with the sales literature provided to Artemis in 1994 or before. *Id.* Mel
17 Essington also signed member meeting rosters as the owner of Lot G-6. *See* Exhibit "12" at RLE 026; *see also*
18 Exhibit "13" at RLE 051. The members relied upon these representations and elected Mr. Essington to the
19 Board of Directors in 2007 and 2009. *See* Exhibit "42", RLE 058A; Exhibit "7" at 0062.

20 In February 2000, after NRS Chapter 116 was made applicable to the Ruby Lake Estates subdivision,
21 the members of the Board sent a letter to all owners, referencing a community meeting held in November 1999³.
22 *See* Exhibit "14", RLE 020-021. The letter states:

23 Last November a meeting was held for the Ruby Lakes Estates. A committee was established
24 to meet the county requirements of road maintenance and basic fire protection. . . .

25 These committee members were directed to write Bylaws to establish the Ruby Lakes Estates
26 Landowners Association (RLELA) which is to collect moneys to meet Elko County
27 Requirements.

28 ³ Artemis received this letter as it was produced by Artemis in the underlying NRED action as 00029-00030.

1 In a meeting with the local fire dept. last fall it was suggested that the Ruby Valley Estates
2 owners should keep the roads graded and free of weeds to provide fire breaks and fire truck
3 access. Also, owners are to keep a firebreak around their structures. This will help limit each
4 individual landowners liability and the necessity of making fire breaks on each lot. . . .

5 On November 19, 1999, Steve Wright obtained the services of Attorney Robert Wines regarding
6 the maintenance of the roads per County policy. In Mr. Wines' response he stated that Elko
7 County Code (ECC) describes the Elko County Road policy. This authorizes the County to use
8 'any appropriate means to maintain the county roads.' The 'Appropriate Means' employed by
9 the county on roads such as in Ruby Lakes Estates Subdivision, is to require the property owners
10 to enter into a road maintenance agreement. Mr. Wines suggested we enter into an Association
11 to maintain these roads at a small fee now, than [sic] wait until major work and expense is
12 needed. We should note that once the county has approved the original installation and accepted
13 it, the developer is no longer obligated to repair or maintain these roads, except to the extent he
14 is a property owner and jointly responsible with all other property owners.

15 In the past Steve Wright [the Developer/Declarant] has paid for the grading of the roads, but now
16 that all lots are sold it is the responsibility of all of the landowners to maintain the roads. As
17 owners in the Ruby Lakes Estate, we would much rather be in control of our roads than allow
18 the County to maintain and charge us for this service.

19 The Committee has set a yearly fee of \$100.00 (\$8.34 per month) per lot to have the roads
20 graded twice a year. . . .

21 On another note Steve and Mavis Wright are going to deed the two commercial wells in the
22 Ruby Lakes Estates to the Association for fire protection or whatever other uses we deem
23 necessary.

24 In 2005, Mel and Elizabeth Essington demanded that a non-profit corporation, as required by NRS
25 116.3101(3)(a), be formed for purposes of maintaining the roadways and other common elements of the
26 community and enforcing the CC&Rs. *See* Exhibit "5" at RLE 120; *see also* Exhibit "4", Wines Affidavit. Mr.
27 and Mrs. Essington even prepared Articles of Incorporation, pursuant to NRS 81.410-81.540, for filing with the
28 Nevada Secretary of State listing themselves as the incorporators and officers of the "Ruby Lakes Estates
Homeowners Association." *See* Exhibit "16", RLE 143. On June 28, 2010, an overview of the history and
establishment of the Association was provided to its members in a letter from Lee Perks, President of the
Association and long time resident of the community. This letter confirms that Elizabeth and Mel Essington were
the owners who demanded in 2005 that a non-profit corporation be formed and a Board of Directors be elected.
See Exhibit "17", RLE 125-126.

On August 22, 2005, Mel Essington wrote a letter to all property owners encouraging them to
"reorganize and vitalize the Ruby Lakes Estates property owners association. . . and assist in making it function
as it was intended." *See* Exhibit "11" at RLE 021A-021C. Mr. Essington's letter recognizes the roadways and
culverts as the common elements of the community and the need for maintenance of the same as had been

1 described in the sales literature received by Artemis. Mr. Essington also extolled the advantages of having these
2 collective maintenance obligations performed by a homeowners association. Mr. Essington's letter states in part,

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

14 Mr. Leroy Perks and others recognized and accepted the responsibility past [sic] on by Mr.
15 Wright several years ago when they organized the association and worked towards achieving
16 progress toward its stated goals. . . Several years have passed now and due largely to a period
17 of inactivity at the subdivision that organizational attempt has become dysfunctional. **I have**
18 **discussed the situation with Mr. Perks as well as some of the other owners and believe he**
19 **and nearly all of the other property owners agree we need to reorganize the association**
20 **and move ahead with its intent.. . [Emphasis added.]**

21 I am proposing to organize an election of association officers that will be motivated and
22 dedicated to making and keeping the association the effective representational and oversight
23 organization it was intended to be. . . I propose to organize a mail-in election. . . .

24 I am presently asking for those of you who are interest in working on or for the association to
25 provide me with your name, an indication of what capacity or office you are interested in filling,
26 and a short description of your background for other voting owners to evaluate. Voting and
27 participation in the association will, of course, be limited to registered owners and/or spouses.
28 I will take that information and prepare an election ballot to be sent to each of the registered
owners for their vote on the association officers.

See Exhibit "11" at RLE 021A-021B. Mr. Essington clearly drafted this letter as evidenced by the accompanying
letter of the same date. *Id.*, at RLE 021C.

In September 2005, Lee Perks communicated with Robert Wines confirming the directions given the
ARC at the November 1999 meeting to establish the Association and asking for his assistance in doing so. See
Exhibit "15", 00033.

The Articles of Association -Cooperative Association, were filed by Lee Perks on January 16, 2006. See
Exhibit "18", RLE 011-013; *see also* Exhibit "H" to MSJ, 00034-00035. The initial Association Registration
Form was filed on March 31, 2006 with the Office of the Ombudsman for Common-interest Communities, State
of Nevada, Department of Business and Industry-Real Estate Division. *Id.*, at RLE 012.

In June of 2006, the initial volunteer members of the Board and incorporators, notified owners of an

1 upcoming meeting of owners and addressed other important matters. Specifically, they informed the owners
2 about the Elko County requirement that the roads be graded and kept free of weeds. Fire truck access was
3 required and fire breaks were required:

4 The Fire Department has requested that we keep the roads graded and free of weeds. We
5 are to provide fire breaks on all lots to protect our neighbors and remove weeds and brush
6 around structures. If we do this we will meet the intent of NRS 474.580. . . We have no choice
7 but to start Ruby Lakes Estates Landowner dues effective immediately this year. If Elko County
8 steps in because of complaints of safety every land owner could receive a bill for \$1000.00 plus
yearly on their tax bill. It will be much more cost effective to handle this management on our
own through the association. We understand that not all landowners visit or stay at their
property very often but they still have an obligation to their neighbors regardless, under state
law.

9 See Exhibit "19", RLE 022.

10 The responsibility of the owners to collectively pay for road maintenance was addressed by other
11 homeowners in correspondence dated July 18, 2006. See Exhibit "20", RLE 021E. This letter states:

12 **Roads-** The road's supervisor Otis Tipton was contacted in regards to maintaining *private roads*
13 in the Ruby Lakes Estates. **They do not do it.** [Emphasis in original.] It has to be contracted out
14 to a private contractor. They [Elko County] will establish an account for the Ruby Lakes Estates
Property Owner's Association through our county tax bill. This is called a GID. . ." [Emphasis
added.]

15 Neither the Ruby Lake Estates owners nor Elko County ever took any action to form a road maintenance
16 agreement or a community improvement district. Instead the owners of lots within Ruby Lake Estates
17 consistently acknowledged their responsibility and obligation to maintain the roads and other common elements
18 through the validly formed and constituted homeowners association. In forming the Association, the members
19 acted in accordance with reasonable business standards and prudently and consistently engaged and relied upon
20 the advice of legal counsel. See Exhibit "10", Perks Affidavit.

21 In 2006, the members were asked to complete a survey regarding what functions they wanted the
22 homeowners association to perform. The survey completed for Lot G-6 was received by the Association July
23 5, 2006, and indicated the owner of Lot G-6 to be "Artemis Exploration-Mel/Beth Essington." See Exhibit "48"
24 at RLE 021F. More importantly, the following statement and question was posed and answered by Artemis -
25 Mel/Beth Essington:

26 While the Declaration of Reservation, Conditions and Restrictions does not specifically provide
27 that property owners will be required to pay annual dues, it is implicit in the requirement that
28 such dues may be assessed. If the review committee is to exercise any authority or powers
granted to it by the restrictions, it must be able to engage in legal accounting, maintenance and
other professional services.

1 Would \$150.00 to \$200.00 per year be reasonable for road maintenance and other services?

2 "Artemis - Mel/Beth Essington" answered "Yes".

3 Artemis - Mel/Beth Essington also agreed that to change or raise fees would take only the approval of a simple
4 majority of land owners. *See* Exhibit "48" at RLE 021G.

5 This evidence conclusively demonstrates that not only did the Essingtons know about and support the
6 Association, they wanted and *expected* the Association to take care of the roads and were willing to pay
7 assessments to the Association for that purpose. *See also* Exhibit "10", Perks Affidavit.

8 Legal counsel for the Association prepared the Articles of Association as well as the Bylaws of the
9 Association. Both the Bylaws and the Articles were approved by James Copenhaver. *See* Exhibit "4", Wines
10 Affidavit; *see also* Exhibit "5" at RLE 120; Exhibit "21", RLE 142, 145. Mr. Copenhaver served as counsel
11 for both Mr. and Mrs. Essington. *See* Exhibit "22", Deposition of Mel Essington, 5:25; 6:8-11; 8:10-14; 9:9-13;
12 11:8-12.

13 The first meeting of the members of the newly formed RLEHOA was held on August 12, 2006. *See*
14 Exhibit "12", RLE 023-029. Mr. Essington attended the meeting and signed in as "Mel Essington/Artemis Exp.
15 G.M. Essington, G-6." *Id.*, at RLE 026. The Minutes reflect discussion by the members of road maintenance:

16 Lee discusses road maintenance for the association. Dennis Cunningham bring up the NRS
17 statute in regards to county requirements. Dennis states he would like the roads maintained with
18 weed control, but not necessarily graded every year. Lee brought it to the member's [sic]
19 attention that we are required by the Fire Department to have firebreaks around power poles to
20 impede any fire hazard if lightning was attracted to a pole and sparked a fire. . . Lee informed
the association of who was required to maintain roads not included in the association, in
particular the CCC road. He advised that the BLM was in charge of this road and suggested that
members of the association that this affected write letters to the appropriate agency."

21 At the August 2006 meeting, the RLEHOA adopted its Mission Statement and By-Laws. *See* Exhibit
22 "23", RLE 007-010. Mel Essington, representing himself as an owner of Lot G-6 and/or representative of
23 Artemis, seconded the adoption of the Bylaws. *See* Exhibit "12" at RLE 024 and RLE 026. The Bylaws
24 specifically provide, "All officers must be property owners and members of the Ruby Lake Estates Homeowners
25 Association in good standing their entire term of office." *See* Exhibit "23" at RLE 008. Mel Essington
26 continually violated this provision when, for over sixteen years, he held himself out as an owner of a Lot.
27 Furthermore, as Artemis' representative, Mr. Essington should not have served on the Board after Artemis
28 stopped paying its assessments in 2009 or at the very least, was required to disclose the refusal to pay

1 assessments. NRS 116.31034(8).

2 Mr. Essington continued to represent himself as a lot owner or the owner's representative, and urged
3 the Association to enforce the CC&Rs. On November 13, 2006, he wrote a letter to a member of the Board
4 regarding the Board's and ARC's duty to enforce the CC&Rs. *See* Exhibit "24" at RLE 030. The letter is written
5 on Mr. Essington's letter head and is signed "G.M. Essington- Block G Lot 6."

6 Mr. Essington's knowledge and acceptance of NRS Chapter 116 as governing the affairs of the
7 Association is evidenced by a letter addressed to "Mr. Lee Perks, President, Ruby Lake Homeowners
8 Association," dated January 14, 2007. Mr. Essington wrote:

9 . . . As head of the homeowners Association you need to work to protect the value of the
10 investments of all of the individual owners and be able to look beyond your own more restricted
11 outlook. . . . I assume you are aware Nevada has found it necessary to create a commission to
12 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.

13 *See* Exhibit "25" at RLE 037-039.

14 Mr. Essington regularly attended all meetings of the members and was an active participant in the affairs
15 of the Association. The Minutes of all meetings reflect his participation in the affairs of the Association. The
16 members of the Association relied upon these misrepresentations by electing Mr. Essington to the Board of
17 Directors at the August 2007 meeting. *See* Exhibit "26 ", at 00048, *see also* Exhibit "42" at RLE 058A.

18 During the August 2007 meeting, the need for maintenance of other common elements of the community
19 was discussed, including the fact that the developer proposed to convey certain real property to the Association,
20 now that it was validly formed and constituted.

21 "Robert Wines [counsel for the Association] discusses that Steve Wright is willing to transfer
22 title to [the Association] of small lot that is located at the end of Kiln Road for a dumpster
location or how we see fit. He also discusses concreting an area and fencing it off with a locked
gate and who may be allowed access."

23 *See* Exhibit "13", at RLE 045. There was a discussion at the meeting as to the Association's responsibility to
24 pay the documentary transfer taxes and property taxes for 2007-2008 for the small lot, as well as obtain liability
25 insurance for the Association due to its ownership of this property. All members present, 31 out of 51 lot owners,
26 including Mr. Essington, voted to acquire the property as common area of the association, pay the documentary
27 transfer tax, liability insurance, and all other fees associated with acquiring the property. *Id.*, at RLE 045. The
28

1 property was deeded to the Association by the Wrights on August 28, 2007. *See* Exhibit "Q" to MSJ. Thus,
2 contrary to Plaintiff's assertions, the Association does hold title to common area property and Mr. Essington
3 voted in favor of the Association acquiring that property. *See* Exhibit "13" at 00045 and 00051.

4 Mrs. Essington also admits the Association holds title to common area real property. Referring to
5 Plaintiff's Answers to Interrogatories, in her deposition testimony Mrs. Essington stated:

6 Q. Did you acknowledge and admit in this answer that the property is titled in the
7 name of the Ruby Lakes Estates Homeowners Association—

8 A: It is. It is titled that way.

9 *See* Exhibit "8", at 51:12-15.

10 At the August 2007 members' meeting, the amount of assessments was also discussed as was the need
11 for preparation of a budget. Finally, the subject of road maintenance was discussed:

12 **Roads-** Bob Wines discusses [sic] legal way for paying for road maintenance. He discusses [sic]
13 time and material work versus Bid work. He explains difference between a personal individual
14 and a licensed contractor. He suggests a budget number of around \$5000.00. Dave Miller
discusses 2 contractors. . . Mike Cecchi suggests weed abatement first then grade every other
year. Bill Harmon discussed the road conditions the last time they were graded. . . the road
would need material to be repaired. . .

15 Mel Essington remarked at the members' meeting that there may be extra material at the hatchery to perform
16 the road repairs. *See* Exhibit "13" at 00046. After further discussion, an operating budget line item of \$5,000
17 with \$10,000 in reserves was approved by 30 out of 31 members. *Id.*

18 Mr. Essington signed the member's log at the meeting as owner of Lot G-6, "G.M. Essington." The
19 members relied upon this misrepresentation, as Mr. Essington was elected as a member of the Board at the
20 August 2007 meeting of members. *Id.*, at 00048. Following his election, Mr. Essington signed a Declaration
21 of Certification as a Common-Interest Community Board Member as required by NRS 116.31034(9). In this
22 Declaration he declared, under penalty of perjury, that he had read and understood, ". . . the governing
23 documents of the Association and the provisions of Chapter 116 of Nevada Revised Statutes ("NRS") and the
24 Nevada Administration Code ("NAC"). *See* Exhibit "27", RLE 053.

25 The maintenance of the community roads by the Association has continued to be a topic of discussion
26 at each meeting of owners from 2006 through 2011. Minutes of a meeting of members held August 09, 2008,
27 when Mr. Essington was a member of the Board, reflect:

28 ///

1 **Status of Roads-** Updated discussion on the conditions of the Roads. The roads in the
2 association have been deemed in need of extensive work to bring them up so that they do not
3 continually blow away. There was discussion on prioritizing repairs and maintenance due to
4 limited budget. Questions were brought up about having the County take over the roads. If the
5 county would even consider taking over the roads, the roads would have to be brought up to
6 county code prior to release of the roads. This would cost the members (property owners) of the
7 association Hundreds of Thousands or even Million's [sic] of dollars in improvements. It was
8 decided to improve the roads without bringing in the County. The Board decided that it was
9 going to research options as to the best way to begin the project.

10 *See Exhibit "28 ", at RLE 060.*

11 As a member of the Board and the ARC, Mr. Essington performed compliance inspections of lots within
12 the community and noted violations. *See Exhibit "29 ", RLE 076.* He also authored a statement entitled "Role
13 and Function of the Architectural Committee" which was sent to all owners. *See Exhibit "30", RLE 112-114.*
14 In this document Mr. Essington states, "As stated in the CCRs, authority of the ARC was ultimately transferred
15 from the real estate developer (Declarant) to the HOA. Bylaws adopted by the subsequently formed HOA
16 established that the ARC will be comprised of the Vice President as chairperson and two directors, each duly
17 elected by the membership."

18 At various times after becoming a member of the Board in August 2007, Mr. Essington voted to levy
19 assessments against all members for roadway maintenance, weed abatement, and the repair of signs and culverts.
20 During his tenure on the Board, Mr. Essington wrote letters to the members of the Association confirming the
21 existence and necessity of the Association, the applicability of NRS Chapter 116, and the ability and
22 responsibility of the Association to levy and collect assessments for maintenance of the common elements. In
23 an e-mail communication dated September 12, 2008, sent from "beth essington" to "Mike", Mel Essington again
24 acknowledges the need for assessments to maintain the community roads, as well as the applicability of NAC
25 116 [NRS 116]:

26 1. I agreed to the annual association fee increase with the understanding that it would be in
27 place only until the roads were graded. After that we would look a[t] the possible need to haul
28 in material in some locations needed and it is justified. I specifically requested in on [sic] e-mail
29 a letter be sent with the fee increase notice explaining to those not in attendance at the annual
30 meeting the reasons for the need of the increase and a statement that the board would return the
31 fee to its previous level if possible after the road work was completed. . . .

32 2. The information on board duties and responsibilities that was sent out notes that under NAC
33 116 the location of the financial records must be within 60 miles from the physical location. .
34 ..

35 3. Again NAC 116 [sic] stresses the obligation for uniformly enforcing the provisions of the
36 governing documents of the Association. We're way behind on compliance in this area and need

1 to discuss how we are going to achieve compliance.

2 4. The document states the board needs to formerly [sic] establish the Association's fiscal year
3 on page 35. This is mere housekeeping but needs to be done.

4 *See Exhibit "31", RLE 076A.*

5 On October 13, 2008, Mr. Essington followed up with an e-mail communication to his fellow board
6 members covering a letter which he authored to all members of the Association. In this letter, Mr. Essington
7 again acknowledges the Association and the applicability of NRS Chapter 116, as well as the common elements
8 of the Association and the Association's duty and responsibility to maintain the same. Finally, Mr. Essington
9 clearly acknowledges the Association's right and obligation to levy and collect assessments. Mr. Essington
10 stated:

11 * * *

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

19 Under section 3107 [NRS 116.3107] of the statutes, 'the Association is responsible for
20 maintenance, repair and replacement of the common elements, and each unit's owner is
21 responsible for maintenance, repair and replacement of his unit'. The common elements in the
22 Ruby Lakes Estates include two small land parcels and several access roads. The two land
23 parcels are comprised of the lot on the north end of Kiln road and the parcel containing the well,
24 pump, and water truck fill point on the CCC road near its intersection with the Overland road.

25 Under the statutes both the HOA and each individual unit owner share responsibility and liability
26 for the common elements. It is the expressed responsibility of the HOA executive board to
27 insure sufficient maintenance of the common elements in this instance the community roads.
28 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.

25 *See Exhibit "32" at RLE 078. Mrs. Essington thereafter paid the increased assessment as levied by the Board*
26 *members, effectively ratifying the authority of Mr. Essington, acting as Artemis' representative, to serve on the*
27 *Board of Directors and levy and collect assessments. See Exhibit "9" at RLE 081.*

28 On June 20, 2010, Mr. Essington wrote a letter to his fellow homeowners in which he again

1 acknowledged the existence and powers of the Association, including its power to levy assessments:

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

9 See Exhibit "33", RLE 122-123.

10 On or about July 14, 2009, the Association's Board, of which Mr. Essington was a member, caused a
11 Reserve Study to be prepared as required by NRS 116.31153. The Reserve Study was prepared by an
12 independent consultant and identified the common elements of the Association as "cattle guards, dirt road
13 maintenance, fencing, gates, entrance signs, and street signs. See Exhibit "34", RLE 084-101. Mr. Essington
14 voted to approve this Reserve Study at the August 08, 2009 Board of Directors and Landowners Meeting, where
15 it was discussed in detail. See Exhibit "35", RLE 105A to RLE 105D, 00055-00061⁴. Mr. Essington also voted
16 to approve the Association's budget for 2010. Assessments for 2010 were determined and levied against all
17 owners in accordance with the approved Reserve Study and budget. *Id.*, at 00057.

18 At the August 8, 2009, meeting, various other components of the common elements and problems with
19 maintenance thereof were discussed, including weed abatement, roadways, culverts and cattle guards. *Id.*, at
20 00055 to 00057. Due to recent rains the culverts needed to be replaced and the cattle guard at the north entrance
21 to the community had begun to sink. The Board and the members discussed the need for weed abatement along
22 the roads and even voted to allocate additional Association funds in order to hire professionals to apply the weed
23 killer. *Id.*, at 00055-00056. The surface condition of the roads and culverts were also discussed, as was the fact
24 that Association common funds only allowed the surface of the roads to be maintained at a minimal level. The
25 Minutes of the August 2009 meeting reflect the members' desire to continue to have the Association maintain
26 the roads.

27 Mike explains how they were graded and the reason as to why. He also explains that this will
28 be the closest we can come to a standard with the funds we have available. He also advises that
29 we do not want the county coming in and taking control as this would increase taxes and the
30 county would impose a special assessment to complete the work. Members discuss bringing in
31 gravel for the roads. . . .

⁴ Plaintiff produced an incomplete copy of the August 8, 2009, meeting Minutes in the underlying NRED action as 00055-00057. Plaintiff failed to produce the 4th page of the Minutes which is included with Exhibit "35" but bears no Bates Stamp number.

1 *Id.*, at 00056.

2 In July 2009, Mr. Essington nominated himself for re-election to the Board of Directors. *See* Exhibit
3 "36", RLE 083. Again, relying upon Mr. Essington's representations that he either owned the property or was
4 an authorized representative of the owner, at the August 2009 members meeting, Mel Essington was re-elected
5 to serve on the Board for another two year term. *See* Exhibit "7 " at 0062.

6 The October 2009 Newsletter produced by Artemis mentions "changes made to the NRS 116 statutes
7 this year", thereby again giving Plaintiff notice of the applicability of NRS Chapter 116. Regarding culverts,
8 roads and weed abatement, the Newsletter states:

9 This winter we will identify the areas where our roads need culverts and will start installing a
10 few over the next couple of years. . . . We will be spraying the drainage ditches again for weeds
11 again this fall and spring. If anyone does not want this done in the drainage ditches by their lots
please notify the Board in "writing". . . . that you will maintain the drainage ditches weed and
brush free to your property line.

12 *See* Exhibit "7 " at 0062. Obviously, the members of the Board, including Mr. Essington, as well as the other
13 members of the Association, unequivocally recognized and accepted the Association's duty and responsibility
14 to maintain the surface of the roadways and to keep the adjacent ditches and culverts free of weeds. The
15 Association and its members also recognized these as common areas of the Association and the members'
16 concomitant obligation to pay to have these areas maintained and repaired. The Newsletter also states," With
17 the completion of the reserve study our long term issues should be in order. Our dues this year will be \$223.48.
18 . . .Dues are due January 1, 2010. Late fees will be assessed after January 31, 2010. *Id.*, at 00062-00063. As
19 a member of the Board, Mr. Essington approved the budget as well as the increase in assessments for 2010.

20 Plaintiff bases its Motion upon the following "undisputed fact", a fact that is patently false:

21 24. Ruby Lakes subdivision does not have any common elements or expenses nor are
22 any common elements or expenses described in the Declaration, Restrictions and Covenants of
23 Ruby Lakes subdivision. Defendant claims that it owns the streets, road sign, entrance signs,
cattle guards, and perimeter fencing, however Defendant has no proof or record of conveyance
to support its claims." *See* MSJ, para. 24, pg 5.

24 This supposedly undisputed fact is false and is a seminal fact supporting denial of Plaintiff's Motion. RLEHOA
25 does, in fact, own real property deeded to it from the developer. *See* Exhibit "Q" to MSJ. Additionally,
26 RLEHOA has never asserted that it "owns" the road ways, cattle guards, signs or perimeter fencing. More
27 fundamentally, as discussed in the legal arguments set forth below, the ownership of common elements by the
28 Association is not a prerequisite for the qualification of a community as a common-interest community.

1 In 2009 a dispute arose between the Essingtons and the ARC regarding the construction within the Ruby
2 Lake Estates subdivision of a large building used to house machinery and other equipment. Mrs. Essington
3 wrote a letter to the Board dated October 26, 2009. *See* Exhibit "37", RLE 106. The ARC and the Board took
4 the position that such a structure was permitted. *See* Exhibit "38", RLE 107-108. The Essingtons disputed this
5 position.

6 Artemis thereafter ceased paying its assessments, all of which had been approved by Mr. Essington as
7 a Board member. Invoices generated in the ordinary course of business for the Association were sent to the
8 Essingtons. *See* Exhibit "43", 0092-0093; 00103-00117. Eventually, the Association was forced to hire a
9 collection agency to try and collect Artemis' delinquent assessments. *Id.*, at 00113, 00114. It is the sending of
10 these invoices and notice of the Association's assessment lien created as a matter of law pursuant to NRS
11 116.3116, that constitute the sole and only factual basis for Plaintiff's claim that the Association acted with
12 oppression, malice and fraud. *See* Exhibit "8", Deposition of Elizabeth Essington, at 23:12-13; 24:14-23; 34:17-
13 19.

14 Following the approval of this building by the ARC, the Essingtons began to assert that the Association
15 was not validly formed and had no authority to levy or collect assessments. On December 4, 2009, Elizabeth
16 Essington wrote a letter to Lee Perks, President of the HOA, questioning the formation of the homeowners
17 association. *See* Exhibit "39 ", RLE 109; Exhibit "40", RLE 119. Mr. Perks responded by letter dated
18 December 9, 2002, explaining that the CC&Rs to which Mrs. Essington and her property were subject,
19 evidenced the developer's intent to create a community governing body in the form of the architectural
20 committee. *See* Exhibit "41", RLE 110-111. Mr. Perks also sent a letter to all homeowners explaining the
21 history and formation of the RLEHOA. *See* Exhibit "17", RLE 125-126. Following the enactment of NRS
22 Chapter 116 and its applicability to pre-1992 communities, members of the community were advised they
23 needed to comply with the provisions of NRS 116 and form a legal entity pursuant to the requirements of the
24 Nevada Secretary of State and NRS 116.2101. A committee of homeowners is not recognized as an entity with
25 legal capacity. NRCP 17(b). At the urging of the Essingtons, and based upon the advice of counsel, members
26 of the ARC filed the Articles of Incorporation for the RLEHOA. Since the filing of the Articles, the Association
27 has operated in accordance with the requirements of Chapter 116 of the Nevada Revised Statutes. *See* Exhibit
28 "4", Wines Affidavit.

1 On December 18, 2009, Mrs. Essington filed an Intervention Affidavit with the Office of the
2 Ombudsman, Department of Business and Industry, Real Estate Division, asking the Ombudsman to declare "the
3 Ruby Lakes Estates Homeowners Association invalid and non-binding on the several homeowners. Preferably
4 I am asking that the HOA be declared improperly documented, invalid and dissolved." *See* Exhibit "J" to MSJ.

5 Even after the filing of the Intervention Affidavit, Mel Essington continued to serve as a Board member
6 and member of the ARC. On or about January 17, 2010, Mr. Essington authored a document entitled Role and
7 Function of the Architectural Review Committee. *See* Exhibit "30", RLE 112-114. In this document, he
8 acknowledged the existence and authority of the homeowner's association, noting that the bylaws of the
9 Association established the composition of the ARC. More importantly, Mr. Essington acknowledged the
10 intended purpose and intent of the CC&Rs.

11 The stated purpose of this requirement is to insure the maintenance of an aesthetically pleasing
12 and harmonious community of a residential or recreational community for the purpose of
preserving a high quality of use, appearance, and of maintaining the value of each and every lot.

13 *Id.*, at 113. This stated purpose of the CC&RS could never be fulfilled if the entrance signs of the community
14 were allowed to fall into disrepair and the streets and culverts were allowed to become impassable due to wind
15 and water erosion as well as infested with weeds. Quite simply, the stated purpose of the CC&Rs could never
16 be fulfilled unless these services were performed by a community association.

17 In response to the filing of the Intervention Affidavit, on June 18, 2010, Mr. Robert Wines, counsel for
18 the Association wrote to Ms. Meriweather of the Ombudsman's Office, explaining the history and formation of
19 the Association. *See* Exhibit " 5" at RLE 120-121. Mr. Wines clearly explained that the formation of the
20 Association pursuant to NRS 116 was required due to the Elko County's refusal of accept the roadways in the
21 community for maintenance, Steve Wright's intent to have an Association formed, and the requirement of the
22 CC&Rs "that an organization be created to not only review architectural plans, but also to 'promulgate and adopt
23 reasonable rules and regulations in order to carry out its purpose.' The CCR's [sic] also obligate the entity to
24 'maintain' the subdivision." Mr. Wines' letter also states that prior to filing the Articles of Incorporation for
25 the Association, the articles were provided to James M. Copenhaver, counsel for both Mr. and Mrs. Essington.
26 *See also* Exhibit "4", Wines Affidavit. As admitted by Mr. Essington in deposition, Mr. Copenhaver was counsel
27 for both Mel and Elizabeth Essington. *See* Exhibit "22", 11:4-12. Finally, Mr. Wines states:

28 ///

1 . . . [I]t was my opinion that this Association was a Common-interest Community, because the
2 Association had control of certain elements that were for the benefit of not only the landowners,
3 but also the public (roads). The 2009 Legislature adopted certain 'opt-out' provisions, which
have not been adopted by Association, and as such, the Association remains obligated to comply
with NRS Chapter 116 as a Common-interest Community.

4 See Exhibit "5" at 121.

5 July 1, 2010, the Ombudsman's Office completed its review and issued its opinion, noting that it had
6 received and reviewed various documents and information from Mrs. Essington, Board President Lee Perks, and
7 counsel for the Association, Robert Wines, Esq. A copy of the Ombudsman's letter opinion is attached as
8 Exhibit "L" to MSJ. The Ombudsman noted the June 18, 2010, letter from Robert Wines indicating his legal
9 advice to the Association that it is a common-interest community and obligated to comply with the provisions
10 of NRS 116. Contrary to the assertions of Plaintiff, the Ombudsman's office did take action. It just did not take
11 the action Plaintiff requested.

12 "For these reasons, we are not, as you requested, going to declare that Ruby Lakes Estates
13 Homeowners Association is invalid. In other words, it is our view that this Association is
14 required to comply with the laws pertaining to homeowners Associations, specifically, NRS 116
and related laws and regulations."

15 *Id.* Notwithstanding the ruling of the Ombudsman, Artemis refused to pay its assessments and the Board of
16 Directors was forced to take appropriate action to collect the delinquent assessments. The Board did nothing
17 more than follow its normal procedures for collecting delinquent accounts which it was obligated to do in order
18 to protect the interests of the other members of the Association. NRS 116.3102.

19 After the filing of the Complaint with the Ombudsman's office, the Association learned that Mr.
20 Essington was not an officer, director, or shareholder, of Artemis. See Exhibit "1", RLE 116. This was directly
21 contrary to the representations made by Mr. Essington for over sixteen (16) years. Furthermore, Artemis had not
22 paid its assessments since 2009 and therefore, its representative should not serve on the Board of Directors.
23 Artemis was asked to pay its delinquent assessments and Mr. Essington was asked to provide proof that he was
24 an officer, director or other authorized representative of Artemis. See Exhibit "2", at RLE 118, RLE131. Mr.
25 Essington subsequently resigned from the Board of Directors per letter dated January 6, 2011. See Exhibit "45",
26 RLE 134.

27 Contrary to Plaintiff's allegations, the members of the Association do not support Plaintiff's position and
28 realize that the Association was properly formed and is required by Nevada law to enforce the CC&Rs and levy

1 and collect assessments for the maintenance of the common elements. They fully recognize the actions of the
2 Essingtons as being a vendetta against the Board and the ARC because of the building approved by the Board
3 and ARC. *See* Exhibit "46", 00094, 00095.

4 On February 15, 2011, Artemis filed as Case No. CV-C-11-147 in the Fourth Judicial District of the State
5 of Nevada for the County of Elko, a Complaint for Declaratory Judgment, Restitution and Damages, against the
6 Association and members of the Board and ARC. Mr. Essington was notably not named as a party defendant
7 although he was instrumental in the formation of the Association, and had served on the Board of Directors and
8 ARC from 2007 to the previous month, i.e., January 2011. The named defendants filed a Motion to Dismiss the
9 Complaint on the basis Artemis was required to comply with the mandatory community association arbitration
10 provisions of NRS 38.300 *et. seq.* The parties stipulated to dismiss the complaint without prejudice and submit
11 the claims to arbitration.

12 Artemis' then filed its ADR Claim on May 6, 2011 as NRED Control No. 11-82. After discovery was
13 completed, including written interrogatories, requests for admissions, depositions of the principals, and the
14 submission of written briefs and oral arguments before the arbitrator, Arbitrator Leonard Gang found that the
15 Association "is a Common-Interest Community and is subject to NRS Chapter 116. It is lawfully formed and
16 is a validly existing non-profit common-interest association." *See* Exhibit "47"; *see also* Exhibit "1" attached
17 to the Association's Answer and Counterclaim. In issuing his decision and award, including an award of
18 attorney's fees and costs in favor of the Association, Arbitrator Gang stated,

19 It is difficult to understand why, faced with the overwhelming evidence that RLHOA is a valid
20 HOA, any one would continue to maintain that it is not. The HOA owns property within the
21 subdivision, it maintains roads, signs, gates, culverts and fencing. It is incorporated as required
22 by law. Indeed, Mr. Essington was at one time on the board of directors of RLHOA and was
23 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 Administrative Code. His wife,
Elizabeth Essington, apparently owns all the stock in Artemis.

24 ... I have carefully considered all of the many allegations and arguments of the Claimant and
25 find them unpersuasive. Indeed, I find the interpretation of counsel that the Real Estate
26 Ombudsman took no action when it opined that RLHOA had to comply with the laws of the
27 Nevada pertaining to homeowners association illogical. The Ombudsman clearly opined that
the HOA was subject to the laws of Nevada that applied to HOA's [sic]. The Ombudsman took
no action on the complaint of Artemis because the RLHOA was validly formed and obliged to
comply with the law relating to HOA's [sic].

28 ///

II.
LEGAL ARGUMENTS

The foregoing evidence and undisputed facts demonstrate that Artemis is not entitled to any relief against the Association, either at law or in equity. Furthermore, they demonstrate RLEHOA clearly meets the requirements of a common-interest community under Chapter 116, and that RLEHOA was lawfully formed and has sought to comply with the requirements of NRS Chapter 116 since its formation. These material and relevant facts further demonstrate that Plaintiff is estopped from denying the validity and existence of the Association based upon its own actions and the actions of its apparent agent, Mel Essington. Finally, the legal arguments advanced by Artemis are without merit and contrary to Nevada law. Plaintiff's Motion should be denied as it has no basis in law or in fact.

A. Plaintiff Has Failed to Meet the Standards for Summary Judgment.

1. Analysis of a Motion for Summary Judgment.

Pursuant to NRCP 56, "[s]ummary judgment is appropriate. . . when the pleadings, depositions, answers to interrogatories, admission and affidavits, if any that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

A genuine issue of material fact exists where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 483, 441-42 (1993); *Wood*, 121 Nev. at 731, 121 P3d at 1031. When evaluating whether genuine issues of material fact exist, the trial court should view the record in the light most favorable to the non-moving party. *NGA No.2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P2d 163, 167 (1997). Moreover, "[factual allegations and all reasonable inference of the party opposing summary judgment must be accepted as true. *Michael v. Sudek*, 107 Nev. 332, 334, 810 P2d 1212, 1213 (1991).

A trial court should exercise great caution in granting summary judgment. *Posadas*, 109 Nev. At 452, 851 P2d at 442. If the moving party will bear the burden of persuasion at trial, as is the case here, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. *Crusse v. Univ. & Cmty Coll. Sys. Of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).

///

2. *Plaintiff Failed to Comply with NRCP 56(e).*

The Affidavit proffered by Elizabeth Essington in support of Plaintiff's Motion is defective on its face and cannot be considered as evidence in support of Plaintiff's MSJ. Plaintiff has quite clearly not met the requirements of NRCP 56(e) and Plaintiff's motion should be summarily denied. An "affidavit" qualifies under NRCP56(c) to support a motion for summary judgment only to the extent it meets *all* of the following requirements as set forth in NRCP 56(e):

(1) It must be made on personal knowledge of the Affiant. *See Bird v. Casa Royale West*, 97 Nev. 67, 70-71, 624 P.2d 17, 19 (1981); *Gunlord Corp. v. Bozzano*, 95 Nev. 243, 245-246, 591 P.2d 1149, 1150 (1979); *Daugherty v. Wabash Life Insurance Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971); *Osborn v. Richardson-Lovelock, Inc.*, 79 Nev. 71, 74, 378 P.2d 521, 522 (1963); *Dredge Corp. v. Husite Co.*, 78 Nev. 69, 88-89, 369 P.2d 676, 687 *cert. denied*, 371 U.S. 821, 83 S.Ct. 39, 9 L.Ed 2d 61 (1962).

(2) The facts must be admissible in evidence at trial, under the ordinary rules of trial evidence. *Collins v. Union Federal Savings & Loan Association*, 99 Nev. 284, 294, 662 P.2d 610, 616 (1983); *Daughtery v. Wabash Life Insurance Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971); *Adamson v. Bowker*, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969); *Catrone v. 105 Casino Corp.*, 82 Nev. 166, 171, 414 P.2d 106, 109 (1966).

(3) The facts may not be set forth in a conclusory manner without factual support in the record; but rather must be stated specifically. *Michaels v. Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991); *Las Vegas Star Taxi v. St. Paul Fire & Marine Insurance Co.*, 102 Nev. 11, 13, 714 P.2d 562, 563-564 (1986); *Ma-Gar Mining & Exploration v. Comstock Bank*, 100 Nev. 66, 68, 675 P.2d 992, 993 (1984); *Gunlord Corp. v. Bozzano*, 95 Nev. 243, 245, 591 P.2d 1149 (1979); *Daugherty v. Wabash Life Insurance Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971); *Bond v. Stardust*, 82 Nev. 47, 50, 410 P.2d 472, 473 (1966).

(4) The affiant must demonstrate affirmatively that he or she is competent to testify to the matters stated. *Gunlord Corp. v. Bozzano*, 95 Nev. 243, 245, 591 P.2d 1149 (1979); *Saka v. Sahara-Nev. Corp.*, 92 Nev. 703, 705, 558 P.2d 535, 536 (1976); *Daugherty v. Wabash Life Insurance Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (1971).

Elizabeth Essington's affidavit meets none of these criteria. She asserts no facts based upon her personal knowledge. A mere statement that the information in the affidavit is "true and accurate to the best of my knowledge" does not affirmatively demonstrate "personal knowledge." *Frost v. Perry*, 919 F. Supp.1459 (D.

1 Nev. 1996). Personal "belief" is not the same as personal knowledge. *See Bliesner v. Commc'ns Workers of Am.*,
2 464 F. 3d 910, 915 (9th Cir. 2006.)

3 Quite clearly, there are no facts set forth in the Affidavit that would be admissible under the ordinary
4 rules of evidence as if the affiant were testifying at trial. Furthermore, no facts are stated with specificity.
5 There are no facts stated with respect to any of the other Exhibits Plaintiff offers in support of its Motion.
6 Therefore, as a matter of law, the failure to provide an affidavit as to the exhibits dictates that these exhibits
7 should not be considered by the Court. Artemis' documentation must be admissible evidence and it is not
8 "entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Collins v. Union Fed.*
9 *Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)(quoting *Hahn v. Sargent*, 523 F.2d 461, 467 (1st
10 Cir. 1975), *cert. denied*, 425 U.S. 904, 96 S.Ct. 1495, 47 L.Ed.2d 754 (1976).

11 **3. *There Is No Merit to Artemis' Arguments.***

12 Plaintiff's Motion for Summary Judgment asks this Court to enter a declaratory judgment, thereby
13 "establishing that Defendant is not a common-interest community under Chapter 116 of the Nevada Revised
14 Statutes," specifically under NRS 116.3101(1) and NRS 116.021. *See* MSJ, para. 21, pg. 5:9-11. Plaintiff
15 asserts that NRS Chapter 116 is inapplicable because the Ruby Lake Estates subdivision does not have any
16 common areas or expenses *described in the CC&Rs*, does not own any common areas, (a statement that is
17 patently false, as demonstrated by Plaintiff's own evidence, and therefore does not meet the definition of a
18 common-interest community under NRS 116.021, as recently amended. Such arguments are not only contrary
19 to the principles of statutory interpretation, they are inapplicable to Ruby Lake Estates as a pre-1992 community,
20 *as a matter of law*.

21 Plaintiff has also asserted RLEHOA is not a common-interest community because the Association was
22 not formed at the time the first lot was conveyed to a third party purchaser. Such arguments make no sense and
23 show a lack of understanding of statutory construction and legislative intent, as well as the application of time
24 to statutory interpretation. Again, these arguments are inapplicable to Ruby Lake Estates as a pre-1992
25 community, *as a matter of law*. Plaintiff's arguments also completely ignore the undisputed facts regarding the
26 recognized common elements of the Association and the owners' collective responsibility to maintain the same,
27 as required by Elko County authorities.

28 Plaintiff then argues that the decisions in *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109

1 Nev. 264 (1993) and its progeny are determinative of the issues. Not only are the facts of this case clearly
2 distinguishable from the *Caughlin* decision, thereby making it in applicable to this case, more importantly,
3 Plaintiff's arguments ignore the clear provisions of NRS Chapter 116 which demonstrate, as a matter of law,
4 RLEHOA is a common-interest community subject to the provisions of NRS Chapter 116. As such, the powers
5 of the Association to levy assessments and collect the same arise from the provisions of Chapter 116, not from
6 the CC&Rs. The *Caughlin* case and its progeny are irrelevant to the issues in this case. Plaintiff also
7 completely ignores the actions and representations made by its agent, Mel Essington, regarding these same
8 issues. Plaintiff's Motion for Summary Judgment should be denied as it has no basis in law or in fact.

9 **B. RLEHOA Is a Common-interest Community Subject to the Provisions of NRS Chapter 116, As**
10 **A Matter of Law.**

11 There is no dispute as to RLEHOA's qualification as a common-interest community. The Ruby Lake
12 Estates subdivision was formed in 1989 through the filing and recording of the Plat Map and the CC&Rs. Two
13 years later, in 1991, the Nevada Legislature adopted the Uniform Common-interest Ownership Act ("UCIOA")
14 in the form of Chapter 116 of the Nevada Revised Statutes. In 1999, the Nevada legislature made common-
15 interest communities created by plat and declaration prior to 1992, subject to NRS Chapter 116.

16 **I. *Ruby Lake Estates Meets the Historical Definition of a Common Interest Community.***

17 The Nevada legislature has declared a common-interest community is created through the recording of
18 a declaration in the county in which any portion of the common-interest community is located. NRS 116.2101.
19 The Plat Map is deemed part of the Declaration. NRS 116.2109. Contrary to the false assertions made by
20 Artemis, the Plat Map includes the roadways and common elements. Therefore, the declaration includes all
21 necessary descriptions. Thus, Ruby Lake Estates meets the foundational requirements for formation of a
22 common-interest community.

23 Historically, a "common-interest community" was defined as "real estate with respect to which a person,
24 by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." See NRS 116.021
25 (substituted in revision for NRS 116.110323) as enacted in 1991 pursuant to Assembly Bill 221. In 1999 when
26 NRS Chapter 116 was made applicable to pre-1992 communities, "Real estate" was defined in NRS 116.110378
27 as:

28 ". . . any leasehold or other estate or interest in, over, or under the land, including structures,
fixtures and other improvements and interests that by custom, usage or law pass with a

1 conveyance of land though not described in the contract of sale or instrument of conveyance. . .”

2 The same definition was in effect as NRS 116.081 when the Articles of Association were filed.

3 “Interests that by custom, usage or law pass with the conveyance of land though not described in the
4 contract of sale of instrument of conveyance” encompass CC&Rs which run with the land. Significantly, CC&Rs
5 have been found to be a separate property interest from the land with which they run. *See Thirteen South Ltd.*
6 *v. Summit Village Inc.*, 109 Nev. 1218, 1221, 886 P.2d 257, 259 (1993). Therefore, CC&Rs have been found
7 to be “real estate” within the context in which the term is used in NRS 116.021. This was confirmed by the
8 Nevada Attorney General in her Opinion of August 11, 2008. *See Exhibit “I” to MSJ.*

9 NRS 116.1201 provides that with certain limited exceptions, “this chapter applies to all common-interest
10 communities created within this state.” NRS 116.1201(2)(a)-(e) then sets forth those certain limited exceptions.
11 None of those exceptions apply to the Ruby Lake Estates community. Specifically, contrary to Plaintiff’s
12 assertion, although Ruby Lake Estates is a common-interest community which was created before January 1,
13 1992, Ruby Lake Estates does not have less than 50 percent of the units within the community put to residential
14 use. NRS 116.1201(2)(d). There are no other “opt-out” provisions found within NRS Chapter 116. Thus,
15 because Ruby Lake Estates met the definition of a common-interest community in 1999, the provisions of NRS
16 Chapter 116 apply.

17 **2. NRS 116.021, As amended in 2009, is Not Applicable to RLEHOA.**

18 Citing the 2009 amendments to NRS 116.021, Plaintiff argues that RLEHOA does not meet the
19 definition of a common-interest community for purposes of the application of NRS Chapter 116, because the
20 real estate of the community must be “described in a declaration.” All of Plaintiff’s arguments and criticism of
21 the 2008 Opinion of the Nevada Attorney General and discussion of the 2009 Legislative changes to NRS
22 116.012, are not only unwarranted, they are completely irrelevant. Plaintiff’s arguments fail, as a matter of law
23 for two reasons. First, as discussed below, the Plat Map includes the roads and all real estate. Therefore, the
24 CC&Rs do cover and encompass real estate. Second, the current requirements of what must be included in a
25 declaration are not applicable as also discussed below. The 2009 amendment was intended to address
26 communities that had no maintenance responsibilities for real estate. It certainly was not intended to create a
27 situation where roads would be completely abandoned to no maintenance, creating dangerous conditions for the
28 public and owners of property that depend on the roads. The Amendment is intended to address a community

1 with nothing but CC&Rs. It was not intended to prevent a community like Ruby Lake Estates from maintaining
2 its roads, road signs, entrance signs, cattle guards, fencing and parcel of real property.

3 The Ruby Lake Estates subdivision clearly met the definition of a common-interest community set forth
4 in NRS 116.021, in 1999 when Chapter 116 was made applicable to pre-1992 communities. NRS 116.021, as
5 **amended** in 2009, and at all times since its adoption in 1991, was intended to apply only to common-interest
6 communities formed *after* any amendment took effect. The requirement that the common areas be described
7 *in a declaration* is not only inapplicable to Ruby Lake Estates, such requirement is inapplicable to *any*
8 association formed prior to 2010 when the amended version of NRS 116.021 went into effect. The changes
9 made to NRS 116.021 in the 2009 Legislative session could not feasibly have been made retroactive to
10 associations formed before 2010.

11 This same premise was applied by the Legislature in 1999 when NRS Chapter 116 was made effective
12 as to pre-1992 communities such as Ruby Lake Estates. The Legislature wanted *all* common-interest
13 communities in Nevada to be subject to NRS Chapter 116, as Chapter 116 is clearly a consumer protection
14 statute. However, recognizing that communities created prior to 1992, and their governing documents, could
15 not feasibly be changed to meet *newly adopted* statutory requirements, the Legislature made certain exceptions
16 for communities formed prior to 1992.

17 **3. The Declaration Does Include the Roads.**

18 The Plat Map clearly depicts the roads that Artemis is so adamant not be maintained. *See* Exhibit "50".
19 The Plat Map is a part of the Declaration. *See* NRS 116.2109. Therefore, Artemis' contention that the
20 Declaration does not include the real estate at issue is without merit. Because the Plat Map describes and
21 includes the roads, the Declaration does include such property and the Plaintiff's arguments fail *as a matter of*
22 *law*.

23 **4. The Common Elements of the Association Are Not Required to Be Described in the CC&Rs.**

24 NRS 116.1201(3) specifically provides that the provisions of "this Chapter do not: . . . (b) Require a
25 common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101
26 to 116.2122, inclusive; . . ." NRS 116.2105 specifies the contents of the Declaration. However, as a pre-1992
27 community, RLEHOA is not required to comply with these requirements. In essence, there is no requirement
28 that the Declaration contain a description of the real estate included in the common-interest community. *See*

1 NRS 116.2105(1)(c). Furthermore, as to pre-1992 communities, there is no requirement that the Declaration
2 contain a description of "any real estate that is or must become common elements." NRS 116.2105(1)(f).
3 Plaintiff's arguments that RLEHOA is not a common-interest community because the common elements are
4 not described in the CC&Rs as allegedly required by NRS 116.2105(1)(c) fail, as a matter of law.

5 The provisions of NRS 116.021 are not affirmative obligations. Rather, the obligation is found in NRS
6 116.2105(1)(c) and such requirement is not applicable to a pre-1992 Association. In fact, the definition is not
7 applied to any Association formed before 2009. It can't be. If Artemis was correct, you would have an ever-
8 changing application of Chapter 116. In 2008 it applied and now it does not? Such a result would be absurd.

9 **5. *Plaintiff's Arguments Regarding NRS 116.3101 Also Fail As A Matter of Law.***

10 Citing NRS 116.3101, Plaintiff argues that the Association could never be formed, because it was
11 required to be "organized no later than the date the first unit in the common-interest community is conveyed".
12 Once again this would mean that a pre-1992 Association could never be formed because a requirement that was
13 not even in existence was not met and would be a bar forever. Once the legislature decided that Chapter 116
14 would apply to pre-1992 communities, the practical effect must be that the community take those steps to form
15 an entity if one had not been formed before. Plaintiff's arguments with respect to NRS 116.3101 also fail as a
16 matter of law.

17 In a twist of irony, Plaintiff ignores the contradiction that on the one hand it asserts Chapter 116 is
18 inapplicable to Ruby Lake Estates, but on the other hand, Chapter 116 required the formation of the entity in
19 1989 - two years before Chapter 116 even existed. As with the contention the roads should not be maintained
20 by the Ruby Lake Estates Homeowners Association, this argument is nonsensical.

21 NRS 116.3101 provides that this is when the unit-owner's association *should* be organized; it does not
22 state that absent such timely formation the Association is forever lost. In this case, the provisions of NRS
23 Chapter 116 were not even in effect as to Ruby Lake Estates until 1999. Further, under the Plaintiff's analysis,
24 a developer who failed to file the Articles of Incorporation could avoid the obligations of Chapter 116 in
25 perpetuity. Such a result would be nonsensical and clearly contrary to the legislative intent to make the
26 protections and requirements of Chapter 116 applicable to members of all common-interest communities.

27 Importantly, NRS 116.3101 does not preclude the formation of the unit-owners association after
28 conveyance of the first unit. It could not because Chapter 116 was retroactively made applicable to pre-1992

Associations in 1999 and there had often been no formal unit owners association formed in pre-1992 associations. Even today, there are instances where a homeowner's association is not formed until well after the conveyance of the first lot by the developer. This does not preclude the formation of an association there after. Just as in this case, prior to the formation of an association, the developer pays for the common expenses and maintains the common elements for what is often a prolonged period of time while the lots are being marketed and sold. That is what happened here. Until all the lots were sold in 1997 and the developer appointed the members of the ARC and they began levying assessments to pay for the common elements of the community, the developer paid for the road maintenance.

The members of the ARC were advised and recognized they were required to comply with NRS Chapter 116 in 1999. They did not get around to filing the Articles of Incorporation until 2006, after Mr. Essington insisted the Association be formed. Mr. Essington explained this to the members in his August 2005 letter. *See* Exhibit "11" at RLE 021A ("Several years have passed now and due largely to a period of inactivity at the subdivision that organizational attempt has become dysfunctional.") Prior to the formation of the Association, the ARC collected assessments as early as 1997. *See* Exhibit "6" at RLE 019B. This was still two years before the Association was made subject to Chapter 116.

In sum, there is nothing in Nevada law which precludes the filing of articles of incorporation at any time, especially where there is the clear necessity of a community association for purposes of maintaining common roadways and other common elements, and especially when the members of an association have been conducting themselves as a members' association for purposes of levying assessments and maintaining the common areas.

6. *The Facts Demonstrate There Are Common Elements Which the Association Is Required to Maintain.*

a. The Plat Map is part of the CC&Rs.

The Plat Map for Ruby Lake Estates establishes fifty-one residential lots and one commercial lot, and the roadways, easements, and set back requirements, as well as the lot which was deeded to the Association as common-area in 2007. Contrary to the current assertion of Artemis, there was no secret about the roads. They are clearly identified on the Plat Map. These and other common elements of the community, which the Association is required to maintain, consisting of the roadways, entrance sign, culverts, perimeter fencing, cattle guards, and a small lot are depicted on sheets 2 and 3 of the Plat Map attached as Exhibit "O" to MSJ, at RLE

1 015A and 016A.

2 With respect to the roadways, Sheet 1 of 3 of the Plat Map specifically states:

3 "At a regular meeting of the Board of Commissioners of Elko County, State of Nevada, held on
4 the 5th day of July 1989, this Plat was approved as a Final Plat pursuant to N.R.S. 278.360. **The**
5 **Board does hereby reject on behalf of the public all streets or roadways for maintenance**
purposes and does hereby accept all streets and easements therein offered for utility, drainage,
and access purposes only as dedicated for public use." [Emphasis added.]

6 See Exhibit "50" at RLE 014; *see also* Exhibit "A" to MSJ, Sheet 1 of 3.

7 Article I of the CC&Rs provides:

8 The real property affected hereby is subjected to the imposition of the covenants,
9 conditions, restrictions and reservations specified herein to provide for the development *and*
10 *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*. . . ." [Emphasis added.]

11 See Exhibit "B" to MSJ at 00006.

12 Although as a pre-1992 common-interest community, the CC&Rs are not required to describe either the
13 real property which is subject to the CC&Rs or the common elements of the community, the real property which
14 is subject to the CC&Rs is described by the Plat Map which is considered part of the declaration. The real
15 property effected by the CC&Rs is *all* of the real property described in the Plat Map and the improvements
16 located thereon, including the roadways, drainage ditches, signs, perimeter fencing and culverts. Plaintiff's
17 Deeds attached as Exhibit "C" and "D" to MSJ clearly describe both Lot G-6 and Lot H-2 with reference to the
18 recorded Plat Map. The fact that Plaintiff took title to the recorded CC&Rs is referenced not only in the Deeds
19 but in the Policy of Title Insurance she produced for Lot G-6. See Exhibit "3" at 00027. For Mrs. Essington
20 to claim she had no notice of the provisions of the CC&Rs or the provisions of the Plat Map is completely false.

21 Plaintiff's arguments that the neither the Association nor its individual members have an obligation to
22 maintain these roadways because they are "public" is simply wrong. The evidence presented herein clearly
23 establishes that although the public has access to these roadways, the roadways have never been accepted by
24 Elko County for maintenance. Furthermore, the evidence clearly establishes that Elko County requires these
25 roads to be maintained for access and fire protection in order to protect the health and safety of the public and
26 the members of the Association. This obligation can only be fulfilled by either the Association or through a
27 publicly formed improvement district.

28 Not only must the surface of the roads and the drainage culverts be maintained, but the weeds must be

1 abated along the sides of the roadways in the adjoining ditches and culverts. The evidence presented clearly
2 shows that the members of the community intentionally wanted to avoid getting the County involved with the
3 maintenance of these roads, ditches or culverts. As evidenced by the minutes of member meetings, the members
4 and the Board recognized that the County could collect money through real property tax assessments. They also
5 recognized that it would cost every member of the Ruby Lake Estates community more to have the County do
6 the work, than if the Association performed the work. Members recognized that the roads would have to be
7 brought up to County Code before the County would accept them for maintenance and that this would cost
8 members of the Association hundreds of thousands, if not millions of dollars. *See* Exhibit "28" at RLE 060.

9 As early as 2006, Plaintiff and Mel/Beth Essington recognized and wanted the Association to maintain
10 the community roadways. They indicated they were willing to pay \$150-\$200 per year for this maintenance and
11 for other expenses of the Association. *See* Exhibit "48" at RLE 021G.

12 For the members of the community, acting through the Association, to not maintain the roads,
13 contravenes the spirit and intent of Article I of the CC&Rs. Simple logic compels one to recognize that a
14 community cannot be of "high quality of use and appearance" if its streets are not being maintained.
15 Furthermore, to not maintain the streets, culverts, cattle guards and fencing directly contradicts the purpose of
16 the CC&Rs which mandates "maintenance" in order to assure the members of an aesthetically pleasing and
17 harmonious community. The recorded Plat Map, establishing and creating Ruby Lake Estates, includes the real
18 property that must be maintained. Finally, to not maintain these areas contravenes the stated purpose of the
19 community of "maintaining the value of each and every lot and parcel of said property." Now, directly
20 contradicting a position it took in 2006, Plaintiff believes neither it, nor the Association, nor Elko County, is
21 responsible for maintaining these roads. Such a position begs the question, who does Mrs. Essington think is
22 responsible? Plaintiff objects to the Association performing these duties but presents no good alternatives. The
23 President of Artemis clearly says she is not going to maintain them. *See* Exhibit "8" at 18:15-18; 53:22-25;
24 56:20-25. Again, such statements directly contradict earlier requests of Plaintiff that the Association assume
25 these responsibilities. *See* Exhibit "48" at RLE 021G.

26 b. The Association Holds Title to Real Property.

27 Plaintiff unequivocally states in paragraph 12 of its MSJ, that "there is no record of any common areas
28

1 belonging to the Ruby Lake Estates subdivision at the time of its formation or anytime thereafter.”⁵ This
2 statement is patently false and is contradicted by Plaintiff’s own evidence in the form of Exhibit “Q” which
3 Plaintiff attaches to its MSJ. As noted above, the statement is also contrary to the deposition testimony of
4 Elizabeth Essington. Exhibit “Q” is a grant deed from Stephen and Mavis Wright as Grantors, to the Association
5 as Grantee, for a parcel of real property described on the Plat Map. The conveyance of this parcel to the
6 Association was discussed at the meeting of members held on August 11, 2007. See Exhibit “13” at 00045.
7 The Deed was recorded August 31, 2007, days after the meeting. Mr. Essington voted to have the Association
8 accept title to this parcel subject to payment of documentary transfer taxes and secured real property taxes for
9 2007-2008. Furthermore, he voted to have the Association procure liability insurance covering this parcel.

10 During her deposition, Mrs. Essington admitted the Association holds title to real property. The
11 following exchange occurred between counsel for the Association and Elizabeth Essington:

12 Q: You agree that you answered and admitted that the property is titled in the name of the
13 Ruby Lakes Estates Homeowners Association?

14 A: Yes, it is.

15 See Exhibit “8 ” at 52:6-9.

16 Plaintiff argues that this lot cannot constitute the common area of the Association because the Plat Map
17 states that this lot is to be dedicated to Elko County. Although the developer may have originally contemplated
18 dedicating this small lot to the County, this does not preclude conveying this property to the Association rather
19 than Elko County. If the County will not accept the property, and /or will not maintain the same, and/or will
20 not utilize the property for the purposes of providing services to the Association, all of which is presumed to be
21 the case, there is nothing in the governing documents or in NRS Chapter 116 that prevents the developer from
22 conveying this property to the Association in order to provide services for the benefit of the Association. This
23 is exactly what happened. Furthermore, a majority of owners (31 out of 51 owners, including Mr. Essington)
24 were present at the meeting and unanimously agreed to accept the conveyance of this parcel in the name of the
25 Association. Plaintiff cannot now be heard to assert that the Association does not hold title to any common
26

27 ⁵ It should be noted there is nothing in the historical definition of a common-interest community provided by NRS 116.110323
28 (now NRS 116.021), nor in the historical definition of “real estate” provided by NRS 116.110378 (now NRS 116.081) that requires an
Association to “own” real estate in order to be considered a common-interest community. Ruby Lake Estates meets the historical
definition of a common-interest community under NRS 116.110323 which controls, not the 2009 Amendment to NRS 116.021.

1 elements of the community.

2 These common-elements of the Ruby Lake Estates community, consisting of the road ways, ditches and
3 culverts, signs, perimeter fencing, gates, and parcel of property, are detailed in the Reserve Study which Mr.
4 Essington approved. The obligations of the Association to maintain these elements clearly bring Ruby Lake
5 Estates under the historical definition of a common-interest community provided by NRS 116.021. They are
6 “real estate or improvements to real estate with respect to which a person, by virtue of his ownership of a unit,
7 is obligated to pay for, other than that unit.” By virtue of owning property in Ruby Lake Estates, the owners
8 must “pay for a share of ... maintenance ... to other real estate described in that declaration.”

9 Here the roadways and improvements are plainly part of the property described by the Plat Map which
10 created the common-interest community, the Ruby Lake Estates. Additionally, the evidence presented
11 overwhelming demonstrates that the members of the community, including the Plaintiff and Mr. and Mrs.
12 Essington, recognized that these and other common elements must be maintained by a properly formed
13 community association.

14 The members of the ARC acted with all prudence and reasonableness in repeatedly seeking the advice
15 of counsel with respect to these matters. In each and every instance, counsel advised the members of the
16 community that the roadways, culverts, signs, fences, and gates constituted common-elements of the community
17 for which the members were responsible. Furthermore, counsel correctly recognized that the Ruby Lake Estates
18 subdivision was properly classified as a non-exempt common-interest community subject to the provisions of
19 NRS Chapter 116. The Ombudsman was also of the same opinion as was Arbitrator Leonard Gang. Plaintiff's
20 claims to the contrary fail, as a matter of law.

21 **7. *The RLEHOA was Properly Formed and Is the Entity Charged with Maintaining the***
22 ***Common Elements of the Ruby Lake Community.***

23 NRCP 17(b) provides that the capacity of an individual, including one acting in a representative capacity,
24 to sue or be sued, shall be determined by the laws of this State. There is no provision in Nevada law which
25 recognizes a committee as an entity with legal capacity. The members of the Architectural Committee were
26 properly advised by legal counsel to form a community association for purposes of maintaining the common
27 elements of the community. NRS 116.3101(3)(a) mandates that the “association must be organized as a profit
28 or nonprofit corporation, association, limited-liability company, trust or partnership.” The Articles of

1 Incorporation were properly prepared, executed and filed. Each year thereafter, the Association has complied
2 with the requirements of the Nevada Division of Real Estate and registered the Association as a common-interest
3 community. Fees as required have been paid to the NRED Ombudsman office, regular meetings of the Board
4 and members have been held, elections have taken place with Mr. Essington being elected to the Board several
5 times. *See* Exhibit "10", Perks Affidavit.

6 Plaintiff does not raise any technical defects with the filing of the Articles of Incorporation. Plaintiff
7 only asserts that the Articles should not have been filed because Plaintiff allegedly did not approve them. This
8 statement is in error for at least three reasons. First, the June 18, 2010 letter from Robert Wines states that the
9 Articles were approved by James Copenhaver, Esq. In her deposition testimony Mrs. Essington admits that Mr.
10 Copenhaver was her personal attorney. *See* Exhibit "8" at 12:21-25. Additionally, in his deposition testimony,
11 Mel Essington stated that Mr. Copenhaver was counsel for both Mr. and Mrs. Essington. *See* Exhibit "22 " at
12 11:4-12. Therefore, counsel for Mrs. Essington, who is the sole director and shareholder of Artemis, approved
13 the Articles of Incorporation. This is also true of the Bylaws. Mr. Wines provided Mr. Copenhaver a copy of
14 the Bylaws before they were approved by the Board and members. *See* Exhibit "4 ", Wines Affidavit.
15 Therefore, Plaintiff's assertion that she did not approve the formation of the Association and the filing of the
16 Articles, is false.

17 Secondly, the evidence presented herein demonstrates that Mr. and Mrs. Essington were the moving
18 force behind formation of the Association. They even prepared Articles of Incorporation for the Association
19 which they were prepared to file if members of the ARC did not file Articles. Additionally, there is no legal
20 requirement that future members of an association consent to the filing of the organization documents of an
21 association. Filing of such documents is mandated by NRS 116.3101(3). Therefore, Plaintiff's contention that
22 the Association is invalid because she did not approve the Articles, is not only factually incorrect, it is legally
23 incorrect. There is no such approval requirement.

24 In sum, there can be no doubt; the Association meets the historical definition of a common-interest
25 community. There are common improvements it is required to maintain. It holds title to common area real
26 property. It's Articles of Association were properly filed and it has complied with all filing and registration
27 requirements of the Nevada Real Estate Division. RLEHOA is a common interest community association, as
28 a matter of law.

C. The Powers of the RLEHOA to Levy and Collect Assessments Arise Under the Provisions of NRS 116, Not Through Declaration Amendment.

1. *The Decision in Caughlin Ranch Homeowners Ass'n v. Caughlin Club, 109 Nev. 264, 849 P.2d 310 (1993) is Irrelevant to the Case at Bar.*

Citing *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 849 P.2d 310 (1993), Plaintiff asserts that a "declaratory judgment should be entered declaring the Association invalid under NRS116.3101(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." We have already discussed why Plaintiff's arguments with respect to NRS 116.3101(1) are completely nonsensical and inapplicable to this case, as a matter of law; NRS 116.3101(1) did not even apply to the Ruby Lake Estates subdivision until 1999, long after the first lot was conveyed. Similarly, Plaintiff's arguments regarding the applicability of the *Caughlin* decision misapprehend the intent and purpose of NRS Chapter 116 and its applicability to this case. Quite simply, neither the *Caughlin* decision, nor the decisions in *Lakeland Property Owners Ass'n v. Larson*, 459 N.E. 2d 1164 (1984), nor the Arizona decision in *Dreamland Villa Cmty. Club, Inc. v. Rainey*, 224 Ariz. 42, 49, 226 P3d 411, 418, nor the North Carolina decision in *Armstrong v. Ledges Homeowners Ass'n, Inc.* 360 N.C. 547 (2006), have any applicability to this case. Those cases involve homeowner amendments to a declaration of covenants, conditions and restrictions; this case does not. This case involves the mandates of Chapter 116. Furthermore, neither Illinois, nor Arizona, nor North Carolina, have adopted UCIOA and do not have the equivalent of NRS Chapter 116.

In the present case, neither the Association nor its members have ever sought to amend the CC&Rs for Ruby Lake Estates. It is unnecessary. All actions taken to form the Association, enforce the governing documents, and levy assessments for the payment of common expenses, arise from the applicability and mandated requirements of NRS Chapter 116, not from any attempt to amend the governing documents or the provisions therein. The cases cited by Plaintiff and Plaintiff's arguments regarding the same, show a lack of understanding behind the intent and purpose of NRS Chapter 116 and its applicability, as a matter of law, to the Ruby Lake Estates subdivision.

2. *The Provisions of the CC&Rs Are Deemed to Comply with NRS Chapter 116.*

The Nevada legislature has made it abundantly clear; with certain very limited exceptions, it intends NRS Chapter 116 to apply to all common-interest communities within Nevada. *See* NRS 116.1201(1). When

1 the Plat Map was recorded evidencing the need to maintain the roads not maintained by the County, a common-
2 interest community was created. Recognizing that pre-1992 communities could not feasibly amend their
3 governing documents, but intending to make these communities subject to the provisions of Chapter 116, the
4 Legislature enacted NRS 116.1206:

5 1. Any provision contained in a declaration, bylaw or other governing document of a
6 common-interest community that violates the provisions of this chapter:

7 (a) Shall be deemed to conform with those provisions by operation of law, and any
8 such declaration, bylaw or other governing document is not required to be
9 amended to conform to those provisions.

10 Based upon the foregoing provision, there was no need for the Association to even attempt to amend its
11 CC&Rs. The power of the Association are based upon statutory authority. Additionally, even if this case were
12 deemed to involve a purported amendment to the CC&Rs, which it clearly does not, Plaintiff's claims would
13 necessarily be denied, *as a matter of law*. First, if the actions of the members in forming the Association in 2006
14 and levying assessments could be deemed an amendment to the CC&Rs, the survey completed by Artemis -
15 Mel/Beth Essington show it (they) consented and approved any putative amendment. See Exhibit "48" at RLE
16 021G. Secondly, NRS 116.2117(1) provides that a declaration may be amended by a vote or agreement of unit
17 owners to which at least a majority off the votes in the Association are allocated. There is no requirement that
18 *all* homeowners approve an amendment.

19 Even though not required, the evidence presented herein shows that a majority of owners, including
20 Artemis and the Essingtons, approved of the formation of the Association and the levying of assessments. This
21 is stated specifically by Mr. Essington in his August 2005 correspondence: "I have disucees the situation with
22 Mr. Perks as well as some of the other owners and believe he and nearly all of the other owners agree we need
23 to reorganize the association and move ahead with its intent."

24 A majority of the members, including Mr. Essington, approved the adoption of the Bylaws. A majority
25 of members approved operating budgets and the Reserve Study. A majority of members approved the
26 maintenance and upkeep of the common elements of the Association, including the gates, entrance sign,
27 perimeter fencing, culverts and cattle guards. At virtually every meeting of members, from 2006 through 2010,
28 a majority of members were present. The minutes of these meetings reflect the unanimous approval of the
members as to these and other actions. Thus, even if the actions of the members could be construed as a putative

1 amendment to the CC&Rs, a majority of members approved that amendment as did Plaintiff and the Essingtons.
2 These facts undermine all of Plaintiff's claims, and demonstrate Plaintiff has failed to state any claim for relief
3 against the Association.

4 Finally, if this case did involve amending the governing documents, Plaintiff's claims would be time
5 barred by NRS 116.2117(2): "No action to challenge the validity of an amendment adopted by the association
6 pursuant to this section may be brought more than 1 year after the amendment is recorded." Plaintiff asserts
7 the invalid action of the Association occurred in 2006 when the Articles of Incorporation were filed and
8 assessments were levied by the Board of Directors. Following Plaintiff's line of reasoning, this is when the
9 alleged amendment to the CC&Rs would have been made.

10 Notwithstanding that Plaintiff approved this alleged amendment, Plaintiff did not assert that the
11 Association was invalid until more than three (3) years after the putative amendment would have allegedly been
12 made. Even if the Association's actions in forming the Association and levy could be construed as an
13 amendment to the CC&Rs or other governing documents, Plaintiff's claims fail as a matter of law, as they are
14 clearly time barred by NRS 116.2117(2). (*See also* arguments set forth in RLEHOA's companion Motion for
15 Summary Judgment filed contemporaneously herewith.)

16 **3. *The Powers of the Association to Levy and Collect Assessments Arise From NRS***
17 ***Chapter 116, Not the Governing Documents.***

18 Plaintiff alleges that the Association's actions in levying and collecting assessments were knowing
19 misrepresentations, fraudulent, oppressive and done with malice. *See* Complaint, Second and Third Claims for
20 Relief; *see also* MSJ, pgs. 19-20. Such claims are not only unfounded based upon the facts, they are without
21 merit, as a matter of law. The actions taken by the Association in levying and collecting assessments arise from
22 statutory provisions and requirements of Nevada Law, not the governing documents. Even if those powers are
23 not specifically set forth in the governing documents, pursuant to NRS 116.2106, the governing documents are
24 deemed to comply with the provisions of NRS Chapter 116 and the Board is has the statutory powers set forth
25 in NRS Chapter 116.

26 The Association, acting through its Board of Directors, is granted all the powers set forth in NRS
27 116.3102, among others. These include the following:

- 28 1. "Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for
common expenses from the units' owners." NRS 166.3102 (1)(b).

2. "To regulate the use, maintenance, repair, replacement and modification of the common elements." NRS 116.3102(f).
3. "Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property. . ." NRS 116.3102(h).
4. "Impose charges for the late payment of assessments pursuant to NRS 116.3115." NRS 116.3102(k)
5. "Provide for the indemnification of its officers an executive boar and maintain directors' and officers' liability insurance." NRS 116.3102(o)
6. "Exercise all other powers that may be exercised in this State by legal entities of the same type as the association." NRS 116.3102(r).
7. "Exercise any other powers necessary and proper for the governance and operation of the association." NRS 116.3102(t).
8. "Adopt and amend bylaws, rules and regulations." NRS 116.3102(a).

In addition to the foregoing, pursuant to NRS 116.31031, the Board may impose fines and sanctions for violation of the governing documents. Pursuant to NRS 116.310313, the Board may charge an owner reasonable fees to cover the costs of collecting any past due obligation. Pursuant to NRS 116.3107, the Association has imposed upon it *the duty* to provide for the maintenance, repair and replacement of the common elements. Pursuant to NRS 116.3113, the Association is required to maintain property and liability insurance, and pursuant to NRS 116.3115, the Association is required to levy assessments, at least annually, according to an adopted budget and reserve study. The Association has a statutory lien for unpaid assessments which it may foreclose if assessments remain unpaid. NRS 116.3116. These are just a few of the rights and powers afforded the Association, acting through its Board of Directors, by NRS Chapter 116.

The facts alleged by Plaintiff which underlie its claims of fraud, misrepresentation, monetary damages and punitive damages, are nothing more than the actions taken by the Association in levying and attempting to collect its assessments as mandated by Chapter 116. This was confirmed by Elizabeth Essington, during her deposition. *See* Exhibit "8" at 32:13-25; 33:1-25; 34:5-9. No other supposed "oppressive, malicious, or fraudulent" acts are alleged by Plaintiff other than the mere mention of the Ombudsman's opinion in the December 2010 Newsletter (Exhibit "M" to MSJ). *See* MSJ, at 19:12-28; 20:1-17. The brief mention of the Ombudsman's opinion was for information only, information that the members were entitled to receive. Neither Artemis nor the Essingtons' names were even mentioned. Without doubt, these statements do not rise to the level of "oppressive, malicious and fraudulent conduct designed to discredit Artemis" and were not "an attempt

1 to chill opposition to the invalid and oppressive covenants that the Association was seeking to impose on lot
2 owners." See MSJ, 19:21-28. "The words 'malice' and 'malicious' mean a wish to vex, annoy, or injure another
3 person. Malice means that attitude or state of mind which actuates the doing of an act for some improper or
4 wrongful motive or purpose." See *California Jury Instructions*, Civil 8th Edition, pg. 341, BAJI 7.34. Plaintiff
5 did nothing more than what it was obligated to do under the law and therefore, there was no improper motive
6 or purpose.

7 The invoices for assessments and correspondence sent to Plaintiff regarding the delinquent invoices were
8 generated in the ordinary course of business. See Exhibit "44", 000103-00113. There is nothing "malicious" or
9 "oppressive" about them. All of Plaintiff's claims for general and special damages fail, *as a matter of law*.

10 **D. Plaintiff Acquiesced to the Actions of Mel Essington and is Estopped to Deny His Actions and**
11 **Apparent Authority.**

12 **1. Plaintiff Has Failed to State a Claim Against the Association.**

13 The equitable doctrines of apparent authority, acquiescence, waiver and estoppel operate to deny all of
14 Plaintiff's claims. At the very least, these equitable defenses raise questions of fact which preclude summary
15 judgment in favor of Plaintiff. See *Great American Ins. Co. v. General Builders, Inc.*, 113 Nev. 346, 352, 934
16 P2d 257, 261 (2007). Plaintiff has failed to state a claim against the Association for any form of relief. The
17 2006 Survey completed and returned for Lot G-6 undermines all of Plaintiff's claims. It clearly evidences
18 Plaintiff's consent to the levy of assessments and knowledge of the responsibilities of the Association. See
19 Exhibit "48" a RLE 021G.

20 **2. Mel Essington Represented Himself as the Owner of a Lot with the Full Knowledge**
21 **of Plaintiff.**

22 The principles of agency law and apparent authority operate to deny all of Plaintiff's claims for
23 declaratory relief. As the facts and evidence presented herein demonstrate, at all times relevant, Mel Essington
24 represented himself to be, and had the apparent authority to act as the owner of Lot G-6. He represented himself
25 to be that owner on numerous occasions and signed into numerous member meetings as the owner of Lot G-6.
26 In 2006, he indicated the owner of Lot G-6 to be, "Mel Essington/Artemis." See Exhibit "12", at RLE 026. See
27 also Exhibit "48" at RLE 021F-021G. At other times, he signed the members' rooster as "G.M. Essington" as
28 owner of Lot G-6. See Exhibit "13" at RLE 051 In deposition, Mr. Essington admitted that prior to running for
the Board of Directors, he never disclosed to anyone that he was not the legal owner of Lot G-6 or Lot H-2.

1 See Exhibit "22", at 22:8-25. Such disclosure is required by NRS 116. 31034(8)(b) as well as the Bylaws of the
2 Association which Mr. Essington voted to approve.

3 Elizabeth Essington, Mr. Essington's wife of more than thirty-five years, was aware of the
4 representations and actions of Mr. Essington and made no attempt to disavow or curtail his actions as either a
5 putative owner of Lot G-6 or a representative of Artemis. Her deposition testimony makes this clear:

6 Q: Did you ever tell him that he did not have authority to represent Artemis Exploration at any
7 association meeting?

8 A. No.

9 See Exhibit "8", at 69:19-25; 78:11-14. Mrs. Essington clearly knew Mr. Essington was serving on the Board
10 of Directors of the Association. *Id.*, at 71:17-25; 72:1-7. With respect to Mr. Essington's authority to act on
11 behalf of Artemis, Mrs. Essington had no problem with Mr. Essington representing Artemis:

12 Q: So your concern for Artemis Exploration wasn't whether or not he had the authority to
13 represent the corporation. It was simply to what entity he was purporting to have
14 authority?

15 A: Correct. The architectural review committee is- it's in the CC&Rs.

16 Mel Essington, acting as the agent of Artemis, not only consented to the formation of the Association,
17 he served on its Board of Directors from 2007 through 2011. The members relied upon these representations
18 by electing him to the Board. He extolled the virtues, advantages, and application of NRS Chapter 116 on
19 numerous occasions. He approved budgets and voted to levy assessments. He approved a Reserve Study
20 showing the gates, roadways, signs, perimeter fencing, ditches and culverts and the common elements of the
21 Association.

22 Both he and Mrs. Essington were the moving force behind the formation of the Association. In 2006,
23 Mr. Essington seconded a motion to approve the Bylaws. He was familiar with the Bylaws, as his attorney
24 approved them. The Bylaws stated that in order to serve on the Board, you were required to be an owner of a
25 lot. He specifically wanted people to think he was a landowner. See Exhibit "22" at 27:10-15. He knew this
26 statement to be false. *Id.* at 28:1-6. As he admitted, his actions were specifically designed to mislead the
27 members of the Association. The members clearly relied on these misrepresentations.

28 Mr. Essington never disclosed to anyone that he was not the legal owner of the Lots. He didn't think
it was important or relevant. According to Mr. Essington, he had the right to serve on the Board because his

1 personal residence was located on Lot G-6, and he was "concerned about the well being of the subdivision." *Id.*
2 at 17:15-22.

3 The Association had every reason to believe that Mr. Essington was the owner of Lot 6, or if not the
4 owner, was acting with the authority of the owner. Mr. and Mrs. Essington wrote checks to the Association on
5 their joint bank account. No funds were ever paid to the Association directly by Artemis. *See* Exhibit "10",
6 Perks Affidavit. The reliance of the Association on Mr. Essington's apparent authority was reasonable. *See*
7 *Great Am. Ins. Co. v. General Builders, Inc.*, 113 Nev. 346, 1997 Nev. LEXIS 36 (1997). A principal is
8 bound by the acts of its agent done within the scope of the agent's apparent authority. It is not necessary that a
9 particular act or failure to act be expressly authorized by the principal in order to bring it within the agent's
10 authority. 1 Witkin, Summary of Calif. Law (8th ed.), Agency and Employment, § 164; Restatement, Second,
11 Agency §§ 228-237. Artemis is estopped to deny the authority of Mr. Essington and is bound by all actions of
12 Mr. Essington. Equitable estoppel functions to prevent the assertion of legal rights that in equity and good
13 conscience should not be available due to a party's conduct. *See Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 1992
14 Nev. LEXIS 155 (1992). Any questions of Mr. Essington's authority to bind Artemis are questions of fact, not
15 questions of law, which preclude summary judgment in favor of Artemis. *See Great American Ins. Co. vs.*
16 *General Builders, Inc.*, 113 Nev. 346, 352, 934 P2d 257, 261 (2007).

17 **E. Artemis Should Not Be Awarded its Fees and Costs.**

18 Once again, Artemis takes a position that is directly contrary to any logic. On the one hand, Plaintiff
19 asserts the Association has no legal authority to collect money. On the other hand, the Association should pay
20 Artemis money. So apparently it is not okay to maintain roads and take care of its parcel of land, but it is ok to
21 collect money from members to write a check to Artemis.

22 Although lacking any substantive argument, Artemis claims entitlement to attorney's fees and costs
23 because the Association violated the conditions of the CC&Rs. Of course, Artemis fails to quote or cite this
24 alleged condition that was violated because no such condition exists. There is simply no basis for a finding that
25 the Association violated the CC&Rs as a result of ensuring the safety of its members by maintaining the roads,
26 road signs, entrance signs, cattle guards, fencing and real property deeded to the Association. Artemis should
27 be denied its attorney's fees and costs.

28 ///

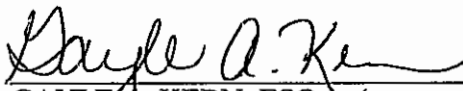
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III.
CONCLUSION

Plaintiff's Motion for Summary Judgment must be denied. Plaintiff has failed to meet its burden under NRCPP 56(c). Neither the facts, nor the applicable law, demonstrate that Plaintiff is entitled to summary judgment, as a matter of law. Indeed, the facts and the applicable provisions of Nevada law demonstrate the exact opposite. At the very least, there are genuine issues of material fact concerning the authority of Mel Essington to act on behalf of Plaintiff which preclude summary judgment in favor of Plaintiff. Plaintiff's Motion should be denied. Ruby Lake Estates Homeowners Association must be allowed to continue to preserve the safety and maintenance of the roadways, culverts, entrance sign, cattle guards, perimeter fencing and parcel of land, in order to insure an aesthetically pleasing and harmonious community and the safety and welfare of the public and members of the Association.

DATED this 29th day of May, 2012.

KERN & ASSOCIATES, LTD.



GAYLE A. KERN, ESQ.

NEVADA BAR #1620

5421 Kietzke Lane, Suite 200

RENO, NEVADA 89511

Telephone: 775-324-5930

Fax: 775-324-6173

Email: gaylekern@kernltd.com

Attorneys for Ruby Lake Estates Homeowners Association

1 CERTIFICATE OF SERVICE

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

4 OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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

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

8 Via facsimile transmission

9 Personal delivery, upon:

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

11 Travis Gerber, Esq.
12 Gerber Law Offices, LLP
13 491 4th Street
Elko, NV 89801

14 DATED this 29th day of May, 2012.

15 
16 TERESA A. GEARHART

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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

FILED
2012 MAY 31 A 10:50

CLERK OF DISTRICT COURT

CLERK DEPUTY *VA*

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

8
9 ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

10 Plaintiff,

AFFIDAVIT OF ROBERT WINES

11 vs.

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

14 Defendants.
/

15 RUBY LAKE ESTATES HOMEOWNER'S
16 ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

20 Counterdefendant.
/

21 STATE OF NEVADA)
22) ss:
23 COUNTY OF ELKO)

24 1. That your Affiant, Robert Wines, is an attorney licensed to practice law in the State
25 of Nevada. I am competent to testify as to the matters set forth herein below based upon my
26 personal knowledge. I make this Affidavit on behalf of Ruby Lake Estates Homeowner's
27 Association ("RLEHOA").

28 ///

2. After the filing of the Official Plat Map and Declaration of Covenants, Conditions and Restrictions for Ruby Lake Estates, I was retained by Stephen Wright to represent him and his wife on various matters relating to the Ruby Lake Estates subdivision. In 1997, I reviewed the appointment of owners of lots within Ruby Lake Estates to the Architectural Review Committee ("ARC").

3. In 1999, I determined that the Ruby Lake Estates subdivision was a common-interest community subject to the requirements of NRS Chapter 116, due to the fact that the community members were required to maintain the roadways as shown on the Official Plat Map. In 1999, the provisions of NRS Chapter 116 were made applicable to subdivisions created prior to 1992, with certain limited exceptions, none of which applied to Ruby Lake Estates.

4. In my opinion, the provisions of the Declaration of Covenants, Conditions and Restrictions for Ruby Lake Estates (the "Declaration"), showed an intent to form a governing body for the community in order to maintain the road ways and other common areas of the subdivision as well as adopt rules and regulations for the community. It was also my opinion that the Declaration expressed an intent and purpose that all lots and parcels within the development, including the roadways, be developed and maintained in an aesthetically pleasing and harmonious manner in order to preserve a high quality of use and appearance, as well as the value of all lots within the subdivision. Without maintenance of the roads within the subdivision, this purpose could not be accomplished.

5. I knew that the County of Elko had stopped accepting roads for maintenance in approximately 1986. This is why the County did not accept the roads within the Ruby Lake Estates subdivision for maintenance when the Plat Map was recorded in 1989. To this date, to the best of my knowledge, the County of Elko does not accept any roads for maintenance. Instead, the County of Elko accepts roads only for purposes of public access but without a concomitant obligation to maintain the same. The County requires that public roads within a subdivision be maintained either through a road maintenance agreement and government improvement district (GID), or by a homeowners association. In my experience, maintenance of the roadways by the County through a road maintenance agreement or GID, and having those costs collected through

1 real property taxes, is much more expensive for the homeowners than maintaining the roads
2 through a common-interest community association.

3 6. In 2005, I was contacted by James Copenhaver, an attorney representing Mel and
4 Elizabeth Essington. I was provided with a copy of Articles of Incorporation which the Essingtons
5 threatened to file if Articles for a homeowners association were not filed by other owners of lots
6 within the Ruby Lake Estates subdivision. A true and correct copy of those Articles, as maintained
7 in my records, is contained in the Association's Composite of Exhibits as Exhibit "16", RLE 143.

8 7. I thereafter assisted Mr. Lee Perks with the filing of the Articles of Association for
9 the Ruby Lake Estates Homeowners Association. I provided a copy of the Articles of Association,
10 as shown on Exhibit "18" to RLEHOA's Opposition, to counsel for Mr. and Mrs. Essington. I also
11 provided a copy of the Bylaws of the Association, as shown on Exhibit "23" to RLEHOA's
12 Opposition, to Mr. Copenhaver who I understood to be counsel for both Mr. and Mrs. Essington.
13 A true and correct copy of a letter dated May 25, 2006, as maintained in my files and records,
14 which I received from Mr. Copenhaver is contained in the Association's Composite of Exhibits
15 as Exhibit "21", RLE 142. A true and correct copy of my August 24, 2006 letter to Mr.
16 Copenhaver is contained in the Association's Composite of Exhibits as Exhibit "21", RLE 145.

17 8. I have served as general counsel to the Association since the filing of the Articles
18 of Association through the present. I have attended all Board meetings, many of which have been
19 held in my office, and have attended all meetings of the members of the Association since 2006
20 through 2011. At various members' meetings held annually from 2006 through 2011, the members
21 have discussed the ongoing problems and costs relating to maintaining the roads and other
22 common elements within the Association. At each meeting, the actions of at least a majority of
23 members have reaffirmed the Association's duty and responsibility to maintain these areas.

24 9. Members of the Board of Directors have regularly sought my advice on matters
25 relating to the Association. To the best of my knowledge and belief, since its formation, the
26 Association has met all registration and filing requirements required by the Nevada Division of
27 Real Estate and the Nevada Secretary of State, and has paid all required fees for a common-interest
28

community association. Regular Board meetings have been held along with regular meeting of members and elections have taken place. Budgets have been adopted and assessments have been levied, all in accordance with NRS Chapter 116. The Association commissioned a Reserve Study and has levied assessments in accordance therewith and its adopted budgets. To the best of my knowledge and belief, the Association has complied with all applicable provisions of NRS Chapter 116.

10. In 2007, Mavis and Stephen Wright, the original developer of Ruby Lake Estates and the Declarant under the Declaration, proposed to dedicate to the Association, a small parcel of property shown on the Official Plat, for purposes of providing a location for a community dumpster or other use, as desired by the Association members. The proposed conveyance was discussed at the meeting of members held August 11, 2007, at which I was present. The conveyance was approved by all members in attendance, including Mr. Essington who I remember as being present. The Wrights thereafter conveyed the parcel to the Ruby Lake Estates Homeowners Association by Grant, Bargain and Sale Deed dated August 28, 2007. The Deed was recorded at my request in the Official Records of Elko County on August 31, 2007, as Document No. 580650. To the best of my knowledge and belief, the Association currently holds title to this property. Another small parcel of property containing a pump and well was deeded to the Ruby Valley Volunteer Fire Department, at the behest of the Association, in order to provide nearby water for fire safety for members of the community.

11. In 2009, I determined it was necessary for the Association to obtain a Reserve Study for its common elements. The Reserve Study shows the common areas of the Association to be the roadways, entrance sign, gates, perimeter fencing, culverts and cattle guards, as well as a small parcel conveyed to the Association in 2007.

12. On June 9, 2010, I received a letter from Richard W. Harris, purporting to be counsel for Elizabeth Essington. A true and correct copy of the letter I received from Mr. Harris, as maintained in my records, is contained in the Association's Composite of Exhibits as Exhibit "40".

1 13. After the filing of the Intervention Affidavit by Artemis with the State of Nevada,
2 Department of Business and Industry Real Estate Division Office of the Ombudsman, I wrote a
3 letter to Sonya Meriweather of the Ombudsman's Office. A true and correct copy of this letter,
4 as maintained in my records, is contained in the Association's Composite of Exhibits as Exhibit
5 "5". The matters set forth in the letter express my opinion that the Ruby Lake Estates subdivision
6 is subject to the provisions of NRS Chapter 116, owns common elements, and is required to
7 maintain the same. If called to testify, I would so testify.

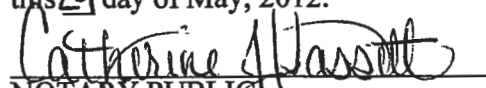
8 I, Robert J. Wines, do hereby swear under penalty of perjury that the matters set forth in
9 this Affidavit are true and correct to the best of my knowledge and belief.

10 Dated: May ²⁹, 2012

11 
12 Robert J. Wines, Esq.

13
14
15 SUBSCRIBED AND SWORN to before me

16 this ²⁹ day of May, 2012.

17 
18 NOTARY PUBLIC



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of ROBERT J.
3 WINES, PROF. CORP., and that on the 31st day of May, 2012, I served the foregoing document
4 described as follows:

5 **AFFIDAVIT OF ROBERT WINES**

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


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

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

12 Via facsimile transmission

13 Personal delivery, upon:

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

15 
16 CATHERINE J. HASSETT

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

FILED

2012 JUN 15 P 3:52

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY KA

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

9
10 **ARTEMIS EXPLORATION COMPANY,**
11 **a Nevada Corporation,**

12 **Plaintiff,**

13 **vs.**

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

16 **Defendants.**

REPLY TO OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

17 Plaintiff, ARTEMIS EXPLORATION COMPANY (hereinafter "ARTEMIS"), hereby files
18 its Reply to the Opposition to Plaintiff's Motion of Summary Judgment filed by RUBY LAKE
19 ESTATES HOMEOWNER'S ASSOCIATION.

20 In its Opposition, Ruby Lake Estates Homeowner's Association presents no covenant, law,
21 or argument to justify its validity. Summary judgment should be granted declaring the homeowner's
22 association invalid because it was organized 17 years after the conveyance of lots, and without any
23 recorded covenants authorizing an association, the acquisition or maintenance of common elements,
24 or the assessment of dues.

25 There is no genuine issue of any fact in this case that is material to the disposition of this case
26 and therefore the case is appropriate for summary judgment. One-half of Defendant's 41 page
27 Opposition merely chronicles the evolution of the Ruby Lake Estate Homeowner's Association
28 ("RLEHOA") from an Architectural Review Committee into a homeowner's association with

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1 mandatory assessments and self-appointed responsibilities to maintain the public right of ways which
2 were never intended in the recorded Declaration of the Ruby Lake Estates subdivision. The balance
3 of the Opposition ignores and avoids settled case law, the clear language of NRS 116, and the
4 legislative intent of NRS 116.

5 The Opposition also weaves a partial history of its dealings and misgivings with Artemis and
6 the other lot owners that live within Ruby Lake Estates. Defendant's Opposition is evidence in itself
7 of the vitriol, oppression, and fraud that homeowner's associations can wage on homeowners, and
8 for which reason the legislature enacted NRS 116.

9
10 **A. RUBY LAKES ESTATES IS NOT A COMMON INTEREST COMMUNITY.**

11 Ruby Lake Estates does not meet the definition of a valid common-interest community as
12 defined in NRS 116.021. The subdivision's Declaration, plat map, and deed do not require Artemis
13 to pay for any common elements within the community, nor does the Declaration describe any
14 common elements for which dues or assessments would be required.

15 Defendant contends that the CC&Rs (25), "roadways [sic], ditches [sic], culverts, signs,
16 perimeter fencing, gates, and [a] parcel of property" (32) "are common-elements of the Ruby Lake
17 Estates community." (32). Yet, Ruby Lake Estates did not own any of these items from the time Ruby
18 Lake Estates was subdivided in 1989 to the time all of the lots were originally conveyed in 1997.
19 Further, none of the original lot owners were put on notice that they would be required to pay for any
20 assessments when they purchased their parcels. Now, RLEHOA, which was created in 2006, argues
21 that RLEHOA somehow acquired these items, that it is now RLEHOA's sole responsibility to care
22 for these items, and by virtue of this self-appointed responsibility, RLEHOA is free to levy
23 assessments against Ruby Lake Estates' lot owners. This reasoning flies in the face of the Nevada
24 Supreme Court's decision to adopt *Lakeland Property Owners Ass'n v. Larson* as governing case law
25 in this situation. *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268 (1993).
26 In *Lakeland*, the court found, "A grantee can only be bound by what he had notice of." *Lakeland*
27 *Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805 (1984). Plaintiff did not have notice of any
28

1 requirement to pay for common elements within Ruby Lake Estates when it purchased its lots, and
2 therefore cannot be required to be a member of RLEHOA or pay its demand for assessments.

3 **1. CC & RS ARE NOT COMMON ELEMENTS UNDER NRS 116.021.**

4 Defendant argues, "Ruby Lake Estates meets the historical definition of a common interest
5 community" (24) and that it is not bound by NRS 116.021, including the 2009 amendments enacted
6 by the Nevada State Legislature to specifically clarify the definition of a common interest community
7 (25). Defendant contends that the "historic definition" interprets the mere existence of any CC & R's
8 to be "real estate," and therefore if a subdivision created before 1992 has any CC & R's then it is a
9 common-interest community. (25). However, Defendant admits that this notion was rejected by the
10 Nevada legislature in 2009. (25). In fact, the Nevada made clear in 2009 that CC & R's were never
11 considered "real estate" under NRS 116.021.

12 The legislature has explained that the "intent" of the "historic definition" (Senate Bill 182) "is
13 the same" as NRS 116.021 in its current form (Senate Bill 261). Nevada Senate Journal, Seventy-Fifth
14 Session, One Hundred and Twentieth Legislative Day, Nevada Senate Journal, 75th Sess. No. 120.
15 (See Exhibit V attached to Plaintiff's Motion for Summary Judgment). The language of NRS 116.021
16 was specifically amended in 2009 to "clarify" Senate Bill 182, and "to most emphatically reject the
17 erroneous interpretation placed on that section by the Real Estate Division and the Attorney General's
18 Office." *Id.*

19 Prior to the 2009 amendment, the Real Estate Division took the position that a
20 common-interest community's distinguishing factor was its CC & R's, and that CC&R's - in and of
21 themselves - were common elements. In 2008, the Attorney General's Office wrote an Opinion,
22 which agreed with this interpretation. *Id.* When the legislature confronted the Real Estate Division
23 about its interpretation, the Real Estate Division "agreed to drop its assertions . . . only if NRS
24 116.021 [was] clarified." Thus, the legislature's 2009 amendments were adopted only to "clarify,"
25 and "was not intended to effect any change in existing law." *Id.* Thus, NRS 116.021, either
26 historically as NRS 116.110323 or with its 2009 amendments, has always had the same meaning.
27 This meaning is that "[t]he distinguishing factor in a common-interest community (CIC) is ownership
28 of common areas, not the existence of covenants, conditions and restrictions (CC&Rs)." *Id.*

1 Defendant has produced no evidence that rebuts the legislature's intent in NRS 116.021, and yet it is
2 still arguing the merits of the Real Estate Division and Attorney General's former Opinion even
3 though the legislature emphatically rejected and declared the Attorney General's Opinion erroneous.

4 Additionally, Assemblyman Horne asked Michael Buckley, Chair, Real Property Section,
5 State Bar of Nevada, if adding the 2009 amendments would change state law. Mr. Buckley replied:
6 "Last August the Attorney General's (AG) Office, for the Real Estate Division (Division), opined that
7 if there were CC&Rs in place, then there was a CIC [common-interest community]. I know the
8 Commission for Common-Interest Communities and Condominium Hotels (Commission) and our
9 subcommittee in the Real Property Section believed that was an overly broad interpretation of what
10 a CIC is. This is the uniform definition and it tries to tighten up the interpretation a little so that just
11 because you have CC&Rs does not necessarily make it a CIC. There has to be an obligation to pay
12 taxes, common elements, or common expenses. It is part of the same law that NRS Chapter 116 came
13 from. It is not intended to change the definition of CIC where they have a declaration that complies
14 with NRS Chapter 116, but to exclude other arrangements that might not rise to a full CIC. Nevada
15 Assembly Committee Minutes, May 11, 2009. (See Exhibit U attached the Plaintiff's Motion for
16 Summary Judgment).

17 Thus, Defendant's interpretation that Ruby Lake Estates subdivision is a common-interest
18 community because it has CC & Rs is "erroneous." *Id.* Nonetheless, Defendant maintains this view
19 in spite of reason and continues to cite to the refuted "Nevada Attorney General in her Opinion dated
20 August 11, 2008" as authority. (25). This interpretation was "most emphatically rejected" and never
21 was the correct interpretation of NRS 116.021 according to the state legislature. Therefore, Ruby
22 Lake Estates is not a common-interest community simply because it has CC & Rs.

23 Further, the only case that Defendant cites in claiming that Ruby Lake Estates is a
24 common-interest community is not applicable to the facts in this case. (25). Defendant cites to
25 *Thirteen South Ltd. v. Summit Village Inc.*, 109 Nev. 1218 (1993), where a buyer in a tax sale
26 attempted to take its lot free and clear of the express covenants found in the CC & Rs for the
27 subdivision. *Thirteen S. Ltd. v. Summit Vill., Inc.*, 109 Nev. 1218, 1219 (1993). The Supreme Court
28 of Nevada ruled that the affirmative covenants existed at the time of purchase, that the buyer was put

1 on notice of the covenants, and that the covenants passed with the sale. *Id.* In this case, the issue is
2 not whether CC & Rs burden the lots, but whether the CC & Rs contain an express provision allowing
3 for the organization of a homeowner's association, the acquisition and maintenance of common
4 elements, and the assessment of dues.

5 *Thirteen S. Ltd.* demonstrates how the Supreme Court of Nevada determines whether
6 affirmative covenants burden a lot, and whether the lot owner is required to be a member of an HOA
7 and pay assessments. In that case, the Court explained, "The CC & Rs created the Association to
8 manage the subdivision, and required, inter alia, that lot owners pay assessments to the Association
9 for the repair and maintenance of common areas, for the cost of recreational facilities, and for
10 insurance premiums and other services, such as trash and snow removal. The CC & Rs also allowed
11 the Association to levy a lien on a burdened lot to secure the payment of delinquent Association
12 assessments, and they authorized judicial and extra-judicial sale to satisfy such liens." *Thirteen S.*
13 *Ltd.*, 109 Nev. at 1219. Thus, the Supreme Court of Nevada determined that the Association and its
14 mandatory assessments were valid as to lot owners within the subdivision, because the CC & Rs
15 expressly provided for such. In the present case, CC & Rs exist to create an Architectural Review
16 Committee to maintain building codes and aesthetic standards, no provisions in the CC & Rs require
17 Artemis or any other lot owner to join an association or to pay mandatory assessments.

18
19 2. **RUBY LAKE ESTATES IS NOT A COMMON-INTEREST COMMUNITY**
20 **UNDER NRS 116.021 BECAUSE LOT OWNERS ARE NOT OBLIGATED TO**
21 **PAY FOR THE COUNTY ROADS OR ANY COMMON ELEMENTS.**

22 For Ruby Lake Estates to be a common-interest community, its lot owners would have to be
23 "obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement
24 of, or services or other expenses related to, common elements, other units or other real estate
25 described in that declaration." Nev. Rev. Stat. Ann. § 116.021. NRS 116.021 cannot be met because
26 the lot owners of Ruby Lake Estates were not obligated to pay for any common elements within Ruby
27 Lake Estates, nor were they put on notice by the Declaration that they must do so.

1 Defendant contends that the roads, ditches, culverts, signs, perimeter fencing, and gates are
2 common elements. (32). Defendant is loath to admit it, but there is no affirmative covenant to
3 maintain county roads or even any mention of roads in the Declaration of Reservations, Conditions
4 and Restrictions of Ruby Lake Estates. Further, Defendant asserts that the roads are shown on the
5 plat map (26), but admits that the roads were dedicated to the county and were intended as public
6 right of ways (29). Although the county rejected maintenance of the roads (29), Defendant admits
7 throughout the Opposition that there were several options for road maintenance other than the
8 formation of an association. (7, 9, 29). Therefore, the fact that the CC & Rs do not mention an
9 association or mandatory assessments to care for the roads, the lot owners do not have an obligation
10 to pay for the maintenance of the county roads. Ruby Lake Estates does not have any common
11 elements and does not meet the definition of a common-interest community. NRS 116.021. Defendant
12 has presented no evidence that the lot owners were "**obligated to pay**" for road maintenance as
13 required under NRS 116.021.

14 Defendant refers to Article I of Ruby Lake's Estates' Declaration of Reservations, Conditions
15 and Restrictions. (29). Article I states that the purpose of the CC & Rs is to provide for "an
16 aesthetically pleasing and harmonious community of residential dwellings for the purpose of
17 preserving a high quality of use and appearance and maintaining the value of each and every lot and
18 parcel of said property. All divisions of said real property are hereafter referred to as 'lots.' " (
19 Declaration of Reservations, Conditions and Restrictions). Defendant construes this purpose to mean
20 that for "safety" reasons, lot owners are obligated to pay for "maintenance" of county roads. (29-30).
21 This is a far stretch of the language.

22 The Declaration of Reservations, Conditions and Restrictions does not refer to maintenance
23 of county roads, nor does it put lot owners on notice that they would be obligated to join an
24 association and pay mandatory assessments to care for the county roads. First, the provision refers
25 to "lots," and expressly states that it will refer to "lots" throughout the rest of the provisions. (CC &
26 Rs). In so doing, the provision never mentions that it is referring to the maintenance of county roads.

27 Secondly, the CC & Rs must be "construe[d] . . . as a whole" in ascertaining the intent of the
28

1 provision, just as courts do with other contracts. *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032,
2 1039 (2004).

3 Nearly ninety percent of the CC & Rs govern the Architectural Review Committee.
4 Declaration of Reservations, Conditions and Restrictions). The Architectural Review Committee's
5 responsibilities are to review architectural plans to maintain code compliance, and to insure that the
6 specified CC & Rs are enforced. Specifically, two provisions in the CC & Rs are "N. Due Diligence
7 in Construction" and "O. Maintenance of Lot Grade." *Id.* Obviously, provision "O" refers to
8 "Maintenance of Lot Grade[s]", not maintenance of county roads, because maintenance of lot grades
9 is the only "maintenance" mentioned in the CC & Rs other than the maintenance of aesthetic and
10 architectural qualities intended by the specific CC & R restrictions. Maintenance of county roads is
11 never mentioned in the CC & Rs, and an interpretation of "road maintenance" can not be sustained
12 under a reading of Article I in the absence of any mention of roadways. *Id.*

13 Again, roads were never mentioned in any provision of the CC & Rs. The Declaration of
14 Reservations, Conditions and Restrictions of Ruby Lake Estates specifically provided for an
15 Architectural Review Committee to ensure that building codes were followed and that specific
16 restrictions were maintained within the subdivision to maintain an aesthetically pleasing subdivision.
17 Road maintenance was not among the *aesthetic* and *architectural* considerations intended by the
18 Declaration of Reservations, Conditions and Restrictions that were recorded for Ruby Lake Estates
19 in 1989. The subdivision was a rural subdivision and no provision was made for road maintenance.

20 Third, case law in Nevada rejects anything not expressly written in the CC & Rs. The Nevada
21 Supreme Court adopted and agreed "with the reasoning of the Illinois Appellate Court in *Lakeland*
22 *Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805 (1984)." *Caughlin Ranch Homeowners Ass'n*
23 *v. Caughlin Club*, 109 Nev. 264, 268 (1993). In *Lakeland*, the court explained, "[W]hile it may have
24 been wise and proper for the developer to include such a covenant because assessments of this nature
25 serve an important function to insure that owners of individual lots may enjoy the use of their
26 easements and maintain the value of their property (see *Boyle v. Lake Forest Property Owners*
27 *Association, Inc.* (S.D.Ala.1982), 538 F.Supp. 765, 770), the developer failed to so include a
28 provision and defendant purchased the property without notice that such a provision may later be

1 imposed upon him." Further, in *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557
2 (2006), the Supreme Court of North Carolina held that "[c]ovenants are strictly construed in favor of
3 free use of land," and courts are " 'not inclined' to read covenants into deeds when the parties have
4 left them out." *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557 (2006) (See *Wise*,
5 357 N.C. at 407, 584 S.E.2d at 739-40; quoting *Hege*, 241 N.C. at 249, 84 S.E.2d at 899).
6 Additionally, as stated before, "[A] grantee can only be bound by what he had notice of, not the secret
7 intentions of the grantor. *Lakeland*, 121 Ill. App. 3d 805, 812 (1984) (See *Cimino v. Dill* (1982), 108
8 Ill.App.3d 782, 785, 64 Ill. Dec. 315, 439 N.E.2d 980). Therefore, because the CC & Rs do not
9 obligate lot owners to pay for maintenance of county roads, the covenant cannot now be added.

10 Lastly, Defendant's citing of Article I is the only time that Defendant specifically cites to the
11 CC & Rs of Ruby Lake Estates. Defendant does not cite to any other wording of the CC & Rs
12 because no provision in the CC & Rs refers to county roads, nor does any other provision make lot
13 owners "obligated to pay" for the county roads or any other common element. Nev. Rev. Stat. Ann.
14 § 116.021. Nothing in the plat map or the CC & Rs puts any lot owners on notice that they would
15 later be obligated to pay for the roads through an association with mandatory membership.

16 Additionally, Defendant states, "Mrs. Essington . . . claims she had no notice of the provisions
17 of the CC&Rs or the provisions of the Plat Map . . ." (29). This is a delusional statement. Artemis
18 had constructive notice of the CC & Rs and Plat Map at the time it purchased its lots, but was not and
19 could not have been put on notice that it would be "obligated to pay" for maintenance of county roads
20 because these documents do not reference any such affirmative duty.

21 Further, defendant still has presented no evidence that lot owners within Ruby Lake Estates
22 are "obligated to pay" for maintenance of the county roads, ditches, culverts, signs, perimeter fencing,
23 and gates. The first time Defendant mentions someone other than the lot owners themselves or their
24 attorney's suggestion that lot owners should knock down weeds or grade the roads was in the year
25 2000 - three years after all of the lots within Ruby Lake Estates were sold. In February 2000, a
26 newsletter was sent between the lot owners, which mentioned "a meeting with the local fire dept."
27 (7). In that meeting "it was **suggested** that Ruby Valley Estates owners should keep the roads graded
28 and free of weeds to provide fire breaks and fire truck access." (7) [emphasis added]. It was only

1 "suggested" that maintenance should be done. The lot owners were not "obligated to pay" for the
2 maintenance of the county roads. Also, the lot owners' newsletter did not even explain who
3 "suggested" that the roads should be maintained.

4 Later, in 2006, members of the RLEHOA board sent a letter to lot owners, which stated that
5 "[t]he Fire Department has requested that we keep the roads graded and free of weeds." (9) [emphasis
6 added]. Again, the Defendant has not presented any evidence that the lot owners are obligated to pay
7 for maintenance of the county roads. However emphatically the defendant refers to "the Elko County
8 requirement that the roads be graded and kept free of weeds," no evidence has been presented that
9 proves that lot owners are obligated to pay for the maintenance of the county roads. (9). This
10 requirement does not exist.

11 Surprisingly, Defendant offers alternatives to requiring lot owners to join an association to
12 care for the county roads. In the February 2000 newsletter that was sent to the lot owners, it was
13 suggested that "a road maintenance agreement" could be entered into. (9). In the June 2006 newsletter
14 sent to the lot owners, it was mentioned that "Elko County [could] step[] in" (9). Defendant also
15 asserts that the association was created rather than taking the alternative "action to form a road
16 maintenance agreement or a community improvement district." (9). Further, defendant explained that
17 the road maintenance could "be fulfilled by either the Association or through a publicly formed
18 improvement district." (29). Compounding all of these options is the obvious fact that for seventeen
19 years no association was formed to care for the county roads. No action was ever taken by anyone
20 to obligate lot owners to pay for the maintenance of county roads for over two decades. Yet,
21 RLEHOA, in 2006, took it upon itself to force lot owners to join Ruby Lake Estates and pay
22 mandatory assessments to pay for the roads. This never was and is not now an obligation of the lot
23 owners.

24 Defendant also presents evidence that obligating members to pay for the roads through
25 mandatory assessments to RLEHOA began only as an "opinion." (5). Defendant explained that in
26 1999 - two years after all the lots were sold - its attorney "stated his opinion that the lot owners should
27 form a homeowner's association . . . in order to provide for the maintenance of the roadways, weed
28 abatement, culverts, and other elements" (5). After the attorney's "suggest[ion]," lot owners

1 argued in the February 2000 newsletter that they "would much rather be in control of [the county]
2 roads than allow the County to maintain and charge [them] for [the] service." (7). This was clearly
3 a false choice, because there is no evidence that the County was requiring maintenance. In the June
4 2006 newsletter, the RLEHOA board asserted their argument that requiring mandatory dues would
5 be "much more cost effective to handle this management" of the county roads. (9). Further, the board
6 also makes an impassioned plea that the lot owners "have no choice but to start Ruby Lakes Estates
7 Landowner dues" that same year. (9). Such a plea is clearly only an opinion in the face of all of the
8 options that were given. The plea was also likely used to make lot owners believe that they were
9 obligated to pay for the maintenance of the county roads through RLEHOA. Such a proposition is
10 fallacious.

11 Consequently, Ruby Lake Estates is not a common-interest community under NRS 116.021,
12 because lot owners are not "obligated to pay" for the maintenance of the county roads. No provision
13 of the CC & Rs or plat map put lot owners on notice that they would be obligated to pay an
14 association for maintenance of county roads. Defendant has only presented a newsletter as evidence
15 that a meeting with the local fire department occurred wherein it was "suggested" that roads be
16 maintained. (7). Defendant also presents several other options to requiring mandatory assessments
17 to care for the roads. Further, the lot owners were not "obligated to pay" the assessments for
18 seventeen years, until RLEHOA took it upon itself to require mandatory assessments by telling the
19 lot owner that they "have no choice." Thus, Ruby Lake Estates is not a common-interest community
20 under NRS 116.021 because lot owners are not "obligated to pay" for the maintenance of the county
21 roads.

22
23 **3. A PARCEL OF PROPERTY DEEDED TO RLEHOA EIGHTEEN YEARS**
24 **AFTER RUBY LAKE ESTATES' CC & RS WERE RECORDED, DOES NOT**
25 **MAKE RUBY LAKE ESTATES A COMMON-INTEREST COMMUNITY**
26 **UNDER NRS 116.021.**

27 Defendant's argument that the statement "there is no record of any common areas belonging
28 to the Ruby Lake Estates subdivision at the time of its formation or anytime thereafter" is "patently

1 false" proves, once again, that defendant misunderstands or is dodging the central issue of this case.
2 (30-31). Defendant argues that RLEHOA had a "parcel of real property" deeded to it on "August 31,
3 2007," as evidence that there are common areas belonging to Ruby Lake Estates subdivision. (31).
4 First, Defendant confuses Ruby Lake Estates subdivision and RLEHOA. Ruby Lake Estates
5 subdivision does not now and never has owned common property. Ruby Lake Estates subdivision
6 is a subdivision of land comprised of 51 individually owned lots. The lots were owned by the
7 developer, then deeded to individual owners. The "parcel of real property" was deeded from the
8 developer to RLEHOA, not to Ruby Lake Estates subdivision. The roadways and right of ways were
9 dedicated to the county. (29). Thus, Ruby Lake Estates subdivision has never contained or owned
10 any common areas.

11 Secondly, Defendant admits "the developer may have originally contemplated dedicating [the
12 parcel of real property] to the County." (31). "May have" is incorrect. The developer expressly stated
13 on the parcel map that "THIS PARCEL CONTAINING [square footage] IS TO BE DEDICATED
14 TO THE COUNTY OF ELKO." Yet, in 2007 the lot was deeded by the developer to RLEHOA in
15 contravention of the original intent! This language did not put lot owners on notice when they
16 purchased their lots between 1989 and 1997 that they would later be required to maintain the taxes
17 and expenses of this parcel and other self-proclaimed common elements of a future undisclosed
18 "Association." Thus, lot owners cannot be "obligated to pay" for a lot deeded to a newly-conceived
19 association a decade after all of the lots were conveyed.

20 Further, this conveyance in no way makes Ruby Lake Estates a common interest community
21 under NRS 116.021. A ruling to the contrary would mean that the developer in this case could
22 subdivide land with no mention of common elements in its CC & Rs, then seventeen years later –
23 after all the lots are sold – a faction of lot owners could form an arbitrary association, and a year later
24 the association acquires a piece of property and claims that the subdivision is a now a
25 common-interest community because lot owners are obligated to pay for the parcel's maintenance.
26 This is absolutely absurd reasoning, and goes against decades of property law that states that "a
27 grantee can only be bound by what he had notice of, not the secret intentions of the grantor. *Lakeland*,
28 121 Ill. App. 3d at 812 (1984). In this case, there is not even any evidence to suggest that the

1 developers intended to create a common interest community. To the contrary, the developers clearly
2 specified the ownership of each parcel of land and did not require lot owners to maintain the roads
3 or anything else. Thus, Ruby Lake Estates does not own any common property, and the fact that
4 RLEHOA had a "small parcel" deeded to it in 2007 (which was expressly intended to be dedicated
5 to Elko County) does not make Ruby Lake Estates a common-interest community under NRS
6 116.021.

7
8 **B. RLEHOA IS AN INVALID ASSOCIATION.**

9 To create a valid HOA, "[a] unit-owners' association must be organized no later than the date
10 the first unit in the common-interest community is conveyed. Nev. Rev. Stat. Ann. § 116.3101. Ruby
11 Lake Estates began selling lots in 1989 and sold the last lot in 1997. RLEHOA was not formed until
12 2006. Thus, RLEHOA is an invalid association because Ruby Lake Estates is not a common-interest
13 community, as presented above, and RLEHOA was not organized before "the first unit in the
14 common-interest community [was] conveyed." *Id.*

15 Defendant adamantly argues that RLEHOA is "subject to the provisions of NRS Chapter 116"
16 throughout the Opposition. (24). It also argues that "[i]n 1999, the Nevada legislature made
17 common-interest communities created by plat and declaration prior to 1992, subject to NRS Chapter
18 116." (24). Further, defendant argues multiple times that NRS 116.3101(3)(a) applies to the
19 formation of RLEHOA. (5, 27, 32, 33). Yet, when it comes to NRS 116.3101(1), Defendant strangely
20 argues that the provision does not apply because NRS 116.3101(1) only suggests a time only "when
21 the unit-owner's association *should* be organized" (27) [emphasis in the original]. Surprisingly,
22 Defendant states, "NRS 116.3101 does not preclude the formation of the unit-owners association after
23 conveyance of the first unit." (27). And the most shocking statement, "In sum, there is nothing in
24 Nevada law which precludes the filing of articles of incorporation at any time, especially where there
25 is the clear necessity of a community association" (28).

26 Defendant's argument could not be more wrong. NRS 116.3101 states that an association
27 must be organized before any lots are conveyed. The provision gives no exceptions as Defendant
28 asserts. Defendant presents no authority to support or define what would constitute its made-up

1 standard of "clear necessity." Weeds? Ungraded roads? Rusty signs and cattle guards? Such an
2 interpretation would necessitate that every subdivision in Nevada adopt an association. Clearly,
3 Defendant's position is without support.

4 Defendant attempts to back up its interpretation of NRS 116.3101 by stating that "[e]ven
5 today, there are instances where a homeowner's association is not formed until well after the
6 conveyance of the first lot by the developer." (28). Defendant appears to be blurring the issue by
7 using the word "formed" rather than the word "organized" which is used in the statute. NRS
8 116.3101. Defendant appears to be arguing that an association may be "formed" or incorporated with
9 the Secretary of State after lots are conveyed. First, defendant provides no evidence of this assertion.
10 Second, there can be no dispute that the statute requires that an association be "organized" by express
11 provisions in the CC&Rs prior to the conveyance of the first lot by the developer. In other words, a
12 covenant to create a homeowner's association must exist before the first lot conveyance, otherwise
13 there is no recorded covenant to create a common interest community. Here, no covenant to organize
14 a homeowner's association or common interest community is found in the Declarations of Ruby Lake
15 Estates.

16 NRS 116.3101 is a codification of common law. Mandatory membership in an association
17 or the duty to pay dues or assessments is an affirmative covenant. "Affirmative covenants impose
18 affirmative duties on landowners, such as an obligation to pay annual or special assessments for the
19 upkeep of common areas and amenities in a common interest community. Because covenants
20 originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to
21 the original intent of the parties; however, covenants are strictly construed in favor of the free use of
22 land whenever strict construction does not contradict the plain and obvious purpose of the contracting
23 parties." *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557 (2006) (Citing *Long v.*
24 *Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238 (1967)). Further, a lot buyer "can only be bound
25 by what he had notice of, not the secret intentions of the grantor." *Lakeland*, 121 Ill. App. 3d 805, 812
26 (1984).

27 Thus, for an affirmative covenant to be valid against the purchaser of a lot, the purchaser must
28 have had notice in writing of the affirmative covenant at the time of sale. This is black letter law in

1 Nevada. NRS 111.315 requires the "Recording of conveyances and instruments" to afford "Notice
2 to third persons," to wit: "Every conveyance of real property, and every instrument of writing setting
3 forth an agreement to convey any real property, or whereby any real property may be affected, proved,
4 acknowledged and certified in the manner prescribed in this chapter, to operate as notice to third
5 persons, shall be recorded in the office of the recorder of the county in which the real property is
6 situated . . . but shall be valid and binding between the parties thereto without such record. NRS
7 111.315 Furthermore, the statute of frauds voids agreements not in writing if the agreement is for
8 any "interest in lands" or is for an "agreement that, by the terms, is not to be performed within 1 year
9 from the making thereof." NRS 111.210 and NRS 111.220.

10 Defendant states, "Citing NRS 116.3101, Plaintiff argues that the Association could never be
11 formed, because it was required to be "organized no later than the date the first unit in the
12 common-interest community is conveyed".[sic] Once again this would mean that a pre-1992
13 Association could never be formed because a requirement that was not even in existence was not met
14 and would be a bar forever. Once the legislature decided that Chapter 116 would apply to pre-1992
15 communities, the practical effect must be that the community take those steps to form an entity if one
16 had not been formed before." (27). Defendant again obfuscates the law. Defendant argues that NRS
17 116.3101 does not apply to RLEHOA because NRS 116 was not codified until 1992. However,
18 Defendant argues two paragraphs later that NRS 116 became applicable to Ruby Lake Estates in
19 1999; yet, defendant still contends that NRS 116.3101 does not apply to RLEHOA because otherwise
20 "it could never be formed" because of the timing of the law and Ruby Lake Estates creation. (27).

21 As stated, Defendant makes it unclear whether NRS 116.3101 or the common law applies to
22 the required time for RLEHOA to be formed. Indeed, both NRS 116.3101 and the common law
23 apply. NRS 116.3101 and the common law require that a homeowner's association must be
24 "organized", or in other words, created by written covenant in the recorded documents, before any
25 lots are conveyed. NRS 116.3101 is a codification of the common law, because under the common
26 law Artemis and other lot owners would have had to be put on notice if they were to be bound by any
27 affirmative covenants when they purchased their lots. *Dreamland Villa*, 224 Ariz. at 49. In this case,
28

1 they were not bound by any covenant to pay dues, maintain any common elements, or to participate
2 in an association.

3 Artemis does not contend that the "Association could never be formed . . ." as the Defendant
4 asserts. (27). Artemis only claims what NRS 116.3101 and the common law state: that the
5 Association must have been organized by express covenants before any of the lots were conveyed.

6 RLEHOA is simply an invalid association because no association was created by the
7 Declaration of Ruby Lake Estates that was recorded in 1989. RLEHOA was conceived in the minds
8 of its incorporators, not in any recorded covenant or document. RLEHOA was formed seventeen
9 years after the first Ruby Lake Estates lot was conveyed and nine years after all of the lots were
10 conveyed. The organization of RLEHOA is in direct violation of NRS 116.3101.

11 As noted above, *Thirteen S. Ltd.* is a case wherein the Supreme Court of Nevada determined
12 that membership in an association was mandatory after a tax sale because the association was
13 organized by a recorded covenant and the buyer had notice. *Thirteen S. Ltd.*, 109 Nev. at 1219. In that
14 case, the Court explained that the CC& Rs of record specifically required lot owners to be members
15 of the association and to pay assessments. *Id.* Thus, the lot owners were put on notice of the
16 affirmative covenants when they purchased their lots, and were bound by the covenant they entered
17 into.

18 Conversely, the Supreme Court of Arizona in *Dreamland Villa Cmty. Club, Inc. v. Raimy*
19 struck down a requirement of mandatory membership in an association when membership was not
20 contemplated by lot owners when they purchased their lots. *Dreamland Villa*, 224 Ariz. 42, 49 (Ct.
21 App. 2010). After citing to the Supreme Court of Nevada's *Caughlin Club*, the court ruled that
22 because the community's declaration did not put lot owners on notice that there would be mandatory
23 membership in the association, the affirmative covenant imposed was invalid. *Id.*

24 Here, Artemis and other lot owners were not aware of any affirmative covenants that required
25 mandatory membership in an association or dues assessments when they purchased their lots. Thus,
26 RLEHOA is an invalid association because the lot owners did not agree to the affirmative covenant
27 when they purchased their lots.
28

1 Further, RLEHOA was created fourteen years after NRS 116 was codified (1991), and seven
2 years after Defendant claims NRS 116 began to apply to Ruby Lake Estates (1999). So, it is
3 surprising that Defendant admits, "The members of the ARC were advised and recognized they were
4 required to comply with NRS Chapter 116 in 1999. They did not get around to filing the Articles of
5 Incorporation until 2006" (28). It is interesting that Defendant believes RLEHOA could spring
6 into existence and organize "at any time" merely because Ruby Lakes Estates was subdivided before
7 1992 when NRS 116 was enacted. (28). The common law concerning affirmative covenants does not
8 allow for this interpretation, nor does NRS 116. The lackadaisical nature of the filing is evidence that
9 RLEHOA was never intended to be created in 1989, when the first lots were being sold, or anytime
10 thereafter. Organizing a homeowner's association 17 years after all the lots were sold is in direct
11 violation of NRS 116.3101, the common law, and of Ruby Lake Estates' CC & Rs.

12

13 **C. RLEHOA'S MANDATORY ASSESSMENTS AGAINST RUBY LAKE**
14 **ESTATES LOT OWNERS ARE UNWARRANTED.**

15 Ruby Lake Estates' CC & Rs do not provide for dues or assessments in any provision. Thus,
16 Artemis and other lot owners could not be put on notice of any mandatory assessments when they
17 purchased their lots, and NRS 116.3102 does not allow RLEHOA to levy mandatory assessments
18 against lot owners.

19 Defendant argues that the Supreme Court of Nevada's *Caughlin Club* is inapplicable to the
20 case at hand. Defendant's position is unsustainable. *Caughlin Club* concerns a subdivision with CC
21 & Rs recorded in 1984, and the issue of whether mandatory assessments levied against a lot owner
22 were valid. *Caughlin Club*, 109 Nev. at 265, 268. There, as well as here, the mandatory assessments
23 are invalid because the lot owners were not put on notice by the CC & Rs when they purchased their
24 lots. *Id.*

25 Defendant argues that because Ruby Lake Estates was formed before 1992 and RLEHOA was
26 formed after 1999 that this precludes RLEHOA from notifying lot owners of affirmative covenants
27 they would be required to keep at the time they purchased their lots. (36). This is not so. The
28

1 developer of Ruby Lake Estates could have organized a homeowner's association in 1989 when he
2 recorded the CC & Rs, but did not do so.

3 Senator Schneider explained the purpose of NRS 116 as the Nevada State Senate passed
4 Senate Bill 182:

5 "I want to repeat the language of the preamble to the bill as introduced because
6 it summarizes all the important reasons we are enacting this bill:

7

8 WHEREAS, The Nevada Legislature previously noted that some unit-owners'
9 associations in this State have a history of abuse of power; and

10

11 WHEREAS, The Nevada Legislature previously noted that unit owners'
12 associations have power over one of the most important aspects of a person's
13 life, his residence; and

14

15 WHEREAS, The Nevada Legislature previously noted that homeowners invest
16 financially and emotionally in their homes; and

17

18 WHEREAS, The Nevada Legislature previously declared that homeowners
19 have the right to reside in a community without fear of illegal, unfair,
20 unnecessary, unduly burdensome or costly interference with their property
21 rights; and

22

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

25

26 Thank you again for understanding the nature and importance of what we are
27 doing with this bill. It is my sincere hope that this measure will allow citizens
28 of Nevada to live secure in their rights in their homes in a manner consistent

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1 with their constitutional rights. If any court has occasion to interpret the
2 provisions of this bill or indeed of any provision in Chapter 116 or 116A of
3 the Nevada Revised Statutes, let the court be guided by these principles I have
4 just reviewed with you." Nevada Senate Journal, Seventy-Fifth Session, One
5 Hundred and Twentieth Legislative Day, Nevada Senate Journal, 75th Sess.
6 No. 120. (Attached as Exhibit V to Plaintiff's Motion for Summary Judgment).

7 The preamble coupled with Senator Schneider's statements prove that the legislature was
8 concerned about associations abusing power when NRS 116 was enacted. With this in mind, it would
9 be absurd to think that the legislature would intend for NRS 116 to allow associations to levy
10 mandatory assessments against lot owners when no provision in the CC & Rs put the owners on
11 notice of assessments when they purchased their lots. Defendant's position is oppressive and
12 fraudulent; lot owners must first be made aware of affirmative covenants before the lot owner can be
13 obliged to a covenant.

14 In addition to *Caughlin Club*, Illinois' *Lakeland* decision, 121 Ill. App. 3d 805 (1984),
15 Arizona's *Dreamland Villa* decision, 224 Ariz. 42, and North Carolina's decision in *Armstrong v.*
16 *Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547 (2006), all stand for the proposition that a lot owner
17 must be made aware of mandatory assessments before conveyance in order for an affirmative
18 covenant to become binding. Defendant simply ignores and rejects these cases because they involve
19 subdivision's covenants, conditions and restrictions, and not the "mandates of Chapter 116." It is
20 unreasonable to think that the legislature would reject case law - even its own case law from the
21 Supreme Court of Nevada - and allow homeowner's associations to arbitrarily levy assessments
22 against lot owners after the lot owner purchased a lot without any notice of a dues assessment. This
23 was clearly not the intent of the legislature, as expressly stated in the Act's preamble cited above.

24 The long-standing law of covenants also rejects Defendant's interpretation of associations'
25 powers to levy assessments against lot owners. "[T]he fundamental rule is that the intention of the
26 parties governs" construction of real covenants. *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d
27 235, 238 (1967). Thus, if lot owners never had notice of an affirmative covenant at the time they
28 purchased their lots, the covenant cannot later be imposed. Further, when there is ambiguity,

1 "covenants are strictly construed in favor of the free use of land." *Armstrong*, 360 N.C. at 551.
2 Consequently, the law of covenants looks to the parties' intentions when they entered into the
3 covenants, and if there is any ambiguity, the law errs in favor of the free use of land.
4

5 **D. RLEHOA IS NOT A VALID ASSOCIATION JUST BECAUSE ARTEMIS OR**
6 **OTHER LOT PAID DUES OR PARTICIPATED IN THE ASSOCIATION.**

7 Defendant attempts to detract from the central issue of whether Ruby Lake Estates is a valid
8 common-interest community and whether RLEHOA is a valid association, by chronicling Artemis'
9 and other lot owners' response to the incorporation of RLEHOA. Defendant spends around fifty
10 percent of its Opposition documenting these dealings in an attempt to bind Elizabeth Essington,
11 President of Artemis, to a non-existent covenant by virtue of her husband's independent participation
12 in the newly-formed association.

13 In reply to Defendant's Opposition, the Affidavit of Elizabeth Essington is attached hereto
14 as Exhibit A and states:

15 1. I am the President of Artemis Exploration Company, the Plaintiff in this action. I am the
16 sole officer, director, and shareholder of Artemis Exploration Company ("Artemis").

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

19 3. When Artemis purchased Lot 6, Block G, of the Ruby Lake Estates, I specifically asked
20 Stephen and Mavis Wright, the developers, whether there were any restrictive covenants in the
21 subdivision because I wanted to store some cargo trailers on the property. Mavis Wright replied in
22 a letter dated July 22, 1993, "To the best of my knowledge and belief, there are no covenants,
23 encumbrances or restrictions on the property described in the contract between MSW, Inc., and
24 Artemis Company and the taxes are paid up-to-date." (See Exhibit B attached hereto).

25 4. There was never any mention or disclosure by Stephen or Mavis Wright, nor any
26 documentation that would support the creation of a common interest community then or at anytime
27 in the future.
28

1 5. In 2005, I constructed my primary residence on Lot 6, Block G, of the Ruby Lake Estates
2 and began residing there. Previously, I had been residing in Ely, Nevada. My husband, Mel
3 Essington had been working as a mining engineer for the U.S. Park Service for the previous 20 +
4 years and resided in Death Valley, Nevada. In 2006, Mel retired and began living with me at my
5 residence in the Ruby Lake Estates.

6 6. We met with Lee Perks at his home on one occasion in Ruby Valley, but he was under the
7 influence of alcohol. I did not associate with Lee Perks after that visit.

8 7. I did not attend any meetings regarding the homeowner's association. The Affidavit of Lee
9 Perks stating, "Mrs. Essington sometimes attended," is false. (See Defendant's Composite of
10 Exhibits, Exhibit 10, ¶15).

11 8. I never believed that Ruby Lake Estates was subject to a homeowner's association. I
12 believed that a voluntary association may be appropriate if people wanted to contribute to road
13 maintenance. It is my understanding that dues were initially being collected on a voluntary basis.

14 9. My husband, Mel, was initially in favor of a committee or homeowner's association and
15 he was nominated and served on the board of directors.

16 10. I did not participate in the homeowner's association for several reasons:

17 a) I did not believe that the Declarations allowed for the creation of an obligatory
18 homeowner's association;

19 b) The association was being run out of Washoe County by Lee Perks and the money
20 was being solicited and collected by Lee Perks at his Sparks, Nevada, address;

21 c) Dues were increasing each year, and for all the money collected, road maintenance
22 was not being performed. The roads were graded only one time; and

23 d) I believed that dues should only be collected on a voluntary basis.

24 11. I initially paid dues, but I refused to pay dues after I discovered that the homeowner's
25 association was invalid and lacked the authority to compel the payment of dues.

26 12. I was told that the incorporators had researched statutes and that the Association was
27 valid. I therefore wrote a letter to Lee Perks, President of the Ruby Lake Estates Homeowner's
28 Association on December 4, 2009, and requested that he and Bob Wines, Esq., the association's

1 attorney, explain to me "how the Ruby Lake Estates Homeowner's Association was formed." In my
2 letter I stated:

3 ". . . My research indicates a HOA is normally formed first by the developer
4 and it is attached to the deed before the land/home is sold or alternatively
5 some form of legally binding affidavit from all of the home owners is
6 required. To my knowledge this has not be [sic] done in the case of the Ruby
7 Lake Estates.

8
9 Further, my research leads me to question the actual manner in which the
10 HOA was actually formed. Was there an acceptable written record of how
11 many and specifically which verified land owners attended and voted at the
12 meeting at which the HOA was supposed to have been formed? I did not
13 attend the meeting and do not know. Did each of the verified land owners at
14 the organizational meeting sign any legitimate document or documents
15 acknowledging they were legally signing away their individual rights thus
16 binding and obligating their land and homes to the HOA and implied authority
17 of the Executive Board? I certainly have not." (See Defendant's Composite
18 of Exhibits, Exhibit 39).

19 13. I did not receive any response from Mr. Wines to my letter questioning the association's
20 legitimacy. Lee Perks, President of Ruby Lake Estates Homeowner's Association, replied in a letter
21 dated December 9, 2009, explaining, "We added to the architectural committee to lighten the load of
22 the volunteers, which we researched and is legal. This is now our executive committee." (See
23 Defendant's Composite of Exhibits, Exhibit 41). His letter did not provide any research or legal
24 authority to answer my questions.

25 14. On December 18, 2009, I submitted an Ombudsman Intervention Affidavit requesting that
26 the Ombudsman of the Real Estate Division review the matter and to declare the Ruby Lake Estates
27 Homeowner's Association "invalid and non-binding on the several homeowners." The Ombudsman's
28 office informed me 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.

15. My attorney, Richard Harris, Esq., also sent a letter on June 9, 2010, to Bob Wines, Esq., attorney for the Ruby Lake Homeowner's Association requesting an opinion as the legitimacy of the association. (See Defendant's Composite of Exhibits, Exhibit 40).

16. On June 18, 2010, Bob Wines, Esq., wrote a letter to the Nevada Real Estate Division stating his opinion that the Architectural Review Committee was obligated to maintain the "public (roads)" within the subdivision. (See Defendant's Composite of Exhibits, Exhibit 5). No legal authority was cited in the letter.

17. When Mel Essington learned that the Ruby Lake Estates Homeowner's Association was invalid, he withdrew as a board member. Mel wrote a letter to the property owners on June 20, 2010, stating his opinion that, ". . . it is increasing apparent the Ruby Lake Estates HOA may have been improperly established under state statutes." (See Defendant's Composite of Exhibits, Exhibit 33).

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.

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.

20. Other property owners of the Ruby Lake Estates have complained to me that they also do not want to participate in a homeowner's association. Some of them are intimidated and are afraid of liens attaching to their property, and therefore they pay the dues under threat of liens.

21. Artemis 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.

1 Other than pay dues from her personal account, which she believed should be voluntary,
2 Elizabeth Essington, the sole officer, director and shareholder of Artemis, did not participate in any
3 meetings of the homeowner's association or give her consent to its creation.

4 Elizabeth's husband, Mel Essington, was initially in favor of the association and served on
5 the board of directors. It was later acknowledged by Lee Perks, President of Ruby Lake Estates
6 Homeowner's Association, that Mel Essington was merely a resident of the subdivision and not a lot
7 owner. On April 19, 2010, Mr. Perks sent Mr. Essington a letter stating:

8 "Your status on the board has recently become a little confusing. Our by-laws
9 require that an officer of RLEHOA is a property owner or represents a
10 property owner. To remain an officer of the RLEHOA you need to show proof
11 that you are an officer/director of Artemis Exploration Company of have been
12 legally appointed in writing to represent that corporation. . . . If not we will
13 interpret this as your resignation and will immediately appoint a replacement."

14 (See Defendant's Composite of Exhibits, Exhibit 2).

15
16 Mr. Essington therefore resigned and was removed from the Board because he had no legal
17 authority to represent Artemis. Mel Essington wrote a letter to the property owners on June 20, 2010,
18 stating his opinion that, ". . . it is increasing apparent the Ruby Lake Estates HOA may have been
19 improperly established under state statutes." (See Defendant's Composite of Exhibits, Exhibit 33).
20 (See also Affidavit of Elizebeth Essington attached hereto as Exhibit A).

21 Artemis and its sole officer, Elizabeth Essington, did not participate in the homeowner's
22 association. This is confirmed by the documentation provided by Defendant, none of which was
23 signed or prepared by Elizabeth Essington. To further demonstrate this point, on June 18, 2010, Bob
24 Wines, Esq., sent a letter to the Real Estate Division in which he mentions "Mel Essington" and
25 "James Copenhaver, the attorney for Mel Essington" but no mention of Artemis or Elizabeth
26 Essington. Mr. Wines was clear that he was referring only to Mr. Essington participation with the
27 homeowner's association and not to Elizabeth Essington or to Artemis. (See Defendant's Composite
28 of Exhibits, Exhibit 5).

1 As presented more fully in Plaintiff's Motion for Summary Judgment, the lot owner in
2 *Caughlin Club* was not bound by the mandatory assessments levied against him simply because he
3 initially paid the assessments. *Caughlin Club*, 109 Nev. at 267. Further, the court in *Armstrong*
4 reasoned that even though some lot owners paid invalid assessments by "mistake" and others
5 "voluntarily" took on more responsibilities in the Association, the lot owners were not bound by
6 covenants that were not in the original declaration. *Armstrong*, 360 N.C. 547 at 557. The court
7 further explained, "Although individual lot owners may voluntarily undertake additional
8 responsibilities that are not set forth in the declaration, or undertake additional responsibilities by
9 mistake, lot owners are not contractually bound to perform or continue to perform such tasks." *Id.* at
10 557.

11 Defendant admits evidence in its Opposition that Artemis and other lot owners were presented
12 with legal opinions, and were told that there was "no choice" but to levy dues and participate in
13 RLEHOA. (9). As mentioned, the attorney hired by some of lot owners, "suggested" and gave his
14 "opinion" that lot owners should form RLEHOA. (5, 7). In a 2006 newsletter, the organizers
15 explained that they had "no choice but to start Ruby Lakes Estates Landowner dues" that year. (9).
16 Thus, RLEHOA influenced lot owners and others to pay dues to the RLEHOA; yet, this does not
17 estop Artemis or any other lot owner from demanding that RLEHOA cease levying assessments, cease
18 threatening liens, and cease asserting that membership is compulsory.

19
20 **E. CONCLUSION**

21 Based on the foregoing, Artemis requests that a declaratory judgment be entered against
22 Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, establishing that Defendant
23 is not a valid common-interest community under Chapter 116 of the Nevada Revised Statutes.
24 Specifically, a declaratory judgment should be entered on Plaintiffs First Claim for Relief
25 (Declaratory Judgment) under the following rules of law:

- 26 1) A declaratory judgment should be entered declaring the Association invalid under
27 NRS 116.3101(1) because the lots of Ruby Lake Estates subdivision were not bound
28 by any covenant to pay dues or participate in a homeowner's association prior to the

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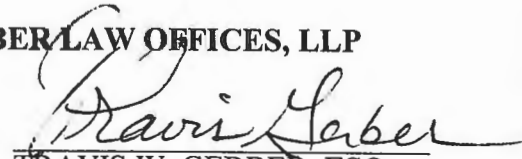
1 conveyance of the lots. In *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109
2 Nev. 264 (1993), the Supreme Court of Nevada ruled that a lot owner could not be
3 placed under new obligations it did not have notice of prior to the purchase of its lot.
4 *Caughlin Club*, 109 Nev. 264, 268 (1993); and

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

10
11 DATED this 14th day of June, 2012.

12 **GERBER LAW OFFICES, LLP**

13 BY:



14 TRAVIS W. GERBER, ESQ.

15 State Bar No. 8083

16 491 4th Street

17 Elko, Nevada 89801

18 (775) 738-9258

19 ATTORNEYS FOR PLAINTIFF

20 ARTEMIS EXPLORATION

21 COMPANY

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

DATED: June , 2012.

Candace Phillips

EXHIBIT

A

1
2
3 **AFFIDAVIT OF ELIZABETH ESSINGTON**

4 STATE OF NEVADA)
 : ss.
5 COUNTY OF ELKO)

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20 association.

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27 improperly established under state statutes.”
28

1 18. Ruby Lake Estates Homeowner's Association continues to send delinquent account
2 statements to Artemis Exploration Company, and other property owners similarly situated, threatening
3 collections and legal action.

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

8 20. Other property owners of the Ruby Lake Estates have complained to me that they also do
9 not want to participate in a homeowner's association. Some of them are intimidated and are afraid
10 of liens attaching to their property, and therefore they pay the dues under threat of liens.

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

14
15 
16 ELIZABETH ESSINGTON, President
ARTEMIS EXPLORATION COMPANY

17 Subscribed and sworn to before me
18 this 14 day of June, 2012.

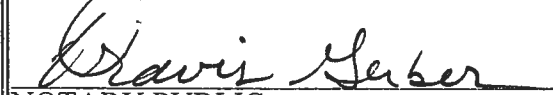
19 
20 NOTARY PUBLIC
21
22
23
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25
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27
28

EXHIBIT B

ACT

3500 NORTH FIFTH
P. O. BOX 1229
ELKO, NEVADA 89501
(702) 738-2922

July 22, 1993

ARTEMIS COMPANY
P.O. BOX 363
ELY, NV 89301

Dear Mr. George and Elizabeth:

Enclosed is a disclosure statement sign by Mrs. Wright, an officer of MSW, Inc. We hope this will serve you purpose.

Thank you for you inquiry on this matter.

Sincerely

Elaine Stevenson

Enclosure

3 AA000203
00012

TO WHOM IT MAY CONCERN:

TO THE BEST OF MY KNOWLEDGE AND BELIEF, there are no covenants, encumbrances or reservation on the property described in the contract between MSW, Inc. and ARTEMIS COMPANY and the taxes are paid up-to-date. Furthermore, that paragraph 17 on page 5 of said contract will be executed.

DATED this 22nd day of JULY, 1993

Mavis Wright
Mavis Wright for MSW, Inc.

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

FILED

2012 JUN 22 P 3:15

ELKO DISTRICT COURT

CLERK DEPUTY KA

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

9
10 **ARTEMIS EXPLORATION COMPANY,**
11 **a Nevada Corporation,**

12 **Plaintiff,**

13 **vs.**

OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

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

16 **Defendants.**
17 _____/

18 Plaintiff, ARTEMIS EXPLORATION COMPANY (hereinafter "ARTEMIS"), hereby files
19 its Opposition to Defendant's Motion for Summary Judgment filed by RUBY LAKE ESTATES
20 HOMEOWNER'S ASSOCIATION.

21 In its Motion for Summary Judgment, Ruby Lake Estates Homeowner's Association
22 ("RLEHOA") presents no covenant, law, or argument to justify its validity. Summary judgment
23 should not be granted in favor of RLEHOA because RLEHOA was organized 17 years after the
24 conveyance of lots, and without any recorded covenants authorizing an association, the acquisition
25 or maintenance of common elements, or the assessment of dues.

26 The central issue in this case is the question of whether Ruby Lake Estates subdivision is a
27 common-interest community and whether Ruby Lake Estates Homeowners Association ("RLEHOA")
28 is a valid association with the power to levy mandatory assessments against lot owners. RLEHOA
is not a common-interest community nor is it a valid association with mandatory assessment powers

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3 AA000205

1 under NRS 116.021 and 116.3101. Notwithstanding the clear language of the law, Defendant seeks
2 to avoid these specific statutes while at the same time arguing that NRS Chapter 116 is the applicable
3 law. (Defendant's Motion for Summary Judgment 5, 25, 27). Further, RLEHOA could never qualify
4 as a common-interest community or a valid association because lot owners and their land is not under
5 covenant for the creation of a homeowner's association, mandatory membership, dues, or
6 assessments. *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268 (1993);
7 *Thirteen S. Ltd. v. Summit Vill., Inc.*, 109 Nev. 1218, 1219 (1993). Therefore, Defendant's motion
8 for summary judgment must be denied, as a matter of law, because RLEHOA is illegitimate and lacks
9 authority to levy dues and assessments against lot owners.

10 The Declaration of Ruby Lake Estates recorded in 1989 speaks for itself. It contains no
11 reference or notice whatsoever of an association, common elements, common interest community,
12 dues, or assessments. It simply contains no covenant that allows for the creation of a homeowner's
13 association with mandatory membership, dues and assessments. See Declaration attached hereto as
14 Exhibit A.

15 The issues presented in Defendant's Motion for Summary Judgment regarding the validity of
16 RLEHOA are the same as those presented in Plaintiff's Motion for Summary Judgment, therefore
17 Plaintiff has included portions of its Motion for Summary Judgment and Reply in this Opposition,
18 and further incorporates all of the arguments presented in Plaintiff's Motion for Summary Judgment
19 and Reply as if fully presented herein.

20 **A. CLAIMS FOR DECLARATORY RELIEF ARE JUSTICIABLE AND RIPE**

21 Defendant asserts that "[t]here is no justiciable controversy between the parties" and that the
22 "claims are no longer ripe" because "Plaintiff is bound by its own actions and admissions."
23 (Defendant's Motion for Summary Judgment 13). A justiciable controversy clearly exists between
24 Artemis, a lot owner, and RLEHOA because Artemis is being subjected to compulsory membership
25 in an association and assessments by RLEHOA to which Artemis objects.

26 Further, declaratory relief can be granted by summary judgment and Artemis' cause of action
27 for damages can be determined at trial. Defendant only cites authority that stands for the proposition
28

1 that monetary damages cannot be obtained through a claim for declaratory relief alone. In this case,
2 Artemis has made a claim for declaratory relief and a separate cause of action for damages.

3 **B. PLAINTIFF ABANDONS ITS CLAIM FOR FRAUD IN ORDER TO EXPEDITE**
4 **LITIGATION**

5 Plaintiff hereby abandons its claim of fraud to expedite litigation. Although evidence of fraud
6 and intentional misrepresentation exists as a basis for a fraud claim, Plaintiff's main objective is to
7 have RLEHOA declared invalid as a common interest community and to stop the association from
8 demanding and collecting assessments under threat of liens and collection activity. Furthermore, it
9 is likely that RLEHOA will exhaust the \$40,000 or more dues that it has collected from residents
10 leaving little or no recovery for Artemis or any other lot owners that may bring suit for damages or
11 reimbursement. Therefore, Artemis abandons its claim for fraud as damage award would likely not
12 be recoverable from RLEHOA in any significant way.

13 In the Deposition of Elizabeth Essington, Defendant's counsel asked, "What acts of
14 oppression do you claim the association did? Essington answered, "What acts of oppression? I
15 would say that putting – starting this homeowner's association was wrong. That they knew what they
16 were doing." (Defendant's Composite of Exhibits, Exhibit "8", p. 34, 15-19). Therefore, Defendant's
17 assertion that its sending invoices and threatening liens is the "sole and only factual basis for
18 Plaintiff's claim that the Association acted with malice, oppression, or fraud" is incorrect. Plaintiff
19 alleges that Defendant and its officers knew what they were doing was wrong when they organized
20 the association without valid authority, and that their acts were oppressive.

21 In several paragraphs, Defendant asserts that there was some "epiphany" to create Plaintiff's
22 claim in opposition to the formation of a homeowner's association. As described in her deposition,
23 Elizabeth Essington states that she reviewed the CC & Rs for Ruby Lake Estates and there was no
24 provision for a homeowner's association. She also states in her Affidavit, "I never believed that Ruby
25 Lake Estates was subject to a homeowner's association." (Exhibit "B" attached). Although her
26 husband, Mel Essington participated at meetings and was nominated to the board, Elizabeth Essington
27 did not participate or attend any meetings of the RLEHOA. (See Affidavit of Elizabeth Essington
28 attached hereto as Exhibit "B").

1 Although the Association was put on notice that it lacks legitimacy, and although the
2 Association is defending the action, the Association knew and should have known that its actions
3 were not authorized by covenant or law and the compulsory collection of dues, including the threats
4 of liens and collection action, was oppressive and fraudulent to the individual lot owners, including
5 Artemis. Nonetheless, to expedite this case and allow Summary Judgment to resolve the issues of the
6 case, Plaintiff hereby voluntarily abandons its claim for Fraud.

7 **C. PLAINTIFF'S CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS**

8 Plaintiff's claims are not barred by Nevada's Statute of Limitations as found in NRS 11.190.
9 Defendant asserts, "NRS 11.190 provides for specific time frames when various causes of action must
10 be commenced." (Defendant's Motion for Summary Judgment 20). NRS 11.190 is the applicable law
11 in this case.

12 The applicable Statute of Limitations is six (6) years when the case is an "action upon a
13 contract, obligation or liability founded upon an instrument in writing." NRS 11.190(1)(b). In this
14 case, the action is based on the Declaration of Ruby Lake Estates, an instrument in writing, and the
15 action and damages accrued when Ruby Lake Estates Homeowner's Association incorporated itself
16 in 2006 and began compelling lot owners to pay dues and assessment which constituted a breach of
17 the original terms of the Declaration of Ruby Lake Estates.

18 Although Plaintiff has abandoned its cause of action for fraud for expediency, "an action for
19 relief on the ground of fraud or mistake . . . shall be deemed to accrue upon the discovery by the
20 aggrieved party of the facts constituting the fraud or mistake. NRS 11.190(3)(d). In this case, Artemis
21 began investigating whether the Association was properly organized on December 4, 2009 (see letter
22 from Elizabeth Essington to RLEHOA dated December 4, 2009 in Defendant's Composite of
23 Exhibits, Exhibit "39"), which is less than three years from May 6, 2011 when Artemis filed its
24 Alternative Dispute Resolution Claim with the Nevada Real Estate Division.

25 NRS 38.350 specifically provides that the statute of limitations is tolled when a complainant
26 submits a claim to the Nevada Real Estate division prior to filing suit:

27 Statute of limitations tolled. Any statute of limitations applicable to a claim
28 described in NRS 38.310 is tolled from the time the claim is submitted for

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3 AA000208

1 mediation or arbitration pursuant to NRS 38.320 until the conclusion of
2 mediation or arbitration of the claim and the period for vacating the award has
3 expired.

4 NRS 38.350.

5 Plaintiff filed its Complaint in the Fourth Judicial District Court on March 2, 2012, and
6 therefore was timely filed within the statute of limitations for actions upon a written instrument (six
7 years) and within the statute of limitations for fraud (three years).

8 Defendant asserts that Plaintiff "should [have] know[n]" that RLEHOA was invalid in 2006,
9 and therefore the issue is time barred. (Defendant's Motion for Summary Judgment 19). Yet, the
10 statute requires the fraud to be "discovered" for the statute of limitations to begin to run. Artemis did
11 not begin to question and discover the misrepresentation and fraud until December 4, 2009, when
12 Elizebeth Essington, its President, began inquiring into the legitimacy of the association. (See again,
13 Defendant's Composite of Exhibits, Exhibit "39").

14 Further, Defendant's argument about a "perceived" or "alleged amendment" to the CC&Rs
15 is fallacious. (Defendant's Motion for Summary Judgment 21-22). Plaintiff has never argued that
16 Defendant amended or attempted to amend the CC&Rs, and Defendant provides no evidence that
17 such an amendment or argument was ever made or attempted. The Declaration of Ruby Lake Estates
18 remains in its present form and content as recorded in 1989.

19 Defendant only makes the argument about amendments in attempt to discount the Supreme
20 Court of Nevada's decision in *Caughlin*. *Caughlin*, 109 Nev. at 264. *Caughlin* is directly applicable
21 to the issues at hand because it is a 1993 case that involves a pre-1992 subdivision. There, the
22 association recorded CC&Rs before any lot owners purchased lots. *Id.* The CC&Rs put lot owners
23 on notice of an association with mandatory membership, and put residential lot owners on notice that
24 the association could levy mandatory assessments against them. *Id.* After the lots were purchased,
25 the association amended its CC&Rs in order to require a commercial lot owner to pay the
26 assessments. *Id.* The Supreme Court of Nevada ruled that the levied assessments against the
27 commercial lot owner were invalid because the commercial lot owner was not put on notice of the
28 assessments when he purchased his lot. *Id.*

1 Defendant argues that *Caughlin* does not apply here because the association in *Caughlin*
2 amended its CC&Rs to require the commercial lot owner to pay assessments, where here there was
3 no amendment. (Defendant's Motion for Summary Judgment 20-21). This is a poor interpretation of
4 *Caughlin*. The holding in *Caughlin* was that a lot owner could not be placed under new obligations
5 the lot owner did not have notice of prior to the purchase of its lot. *Caughlin Club*, 109 Nev. 264,
6 268 (1993). Defendant does not offer any case law or authority that rebuts the Supreme Court of
7 Nevada's holding in *Caughlin* and its direct applicability to this case.

8 The Supreme Court of Nevada ruled that the lot owner in *Caughlin* did not have to pay the
9 assessments because he was not put on notice of the assessments when he purchased the lots—not
10 because an amendment was made. *Caughlin*, 109 Nev. at 268. In other words, there was no reference
11 to assessments against commercial lot owners in the CC&Rs, so the commercial lot owner could not
12 be forced to pay mandatory assessments. *Id.* As evidence of this reasoning, the Court cited *Lakeland*
13 and explained that Nevada was adopting the reasoning in the Illinois decision. *Id.* In *Lakeland*, the
14 court explained, "[A] grantee can only be bound by what he had notice of, not the secret intentions
15 of the grantor." *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805 (1984).

16 Here, none of the lot owners were put on notice when they purchased their lots that they would
17 be subject to future dues and assessments. The Declaration of Ruby Lake Estates does not contain
18 any provision for dues or assessments. The Declaration only contains CC&Rs for the maintenance
19 of its building and architectural standards, not for the maintenance of roads or any common elements.
20 Indeed, there is no reference to roads or *any* common elements in the Declaration, and therefore Ruby
21 Lake Estates does not meet the definition of a common-interest community under NRS 116.021.

22
23 **D. RUBY LAKES ESTATES IS NOT A COMMON INTEREST COMMUNITY UNDER**
24 **NRS 116.021 BECAUSE LOT OWNERS ARE NOT OBLIGATED TO PAY FOR THE**
25 **COUNTY ROADS OR ANY COMMON ELEMENTS.**

26 Ruby Lake Estates does not meet the definition of a valid common-interest community as
27 defined in NRS 116.021. The subdivision's Declaration, plat map, and deed do not include any
28

1 covenants which require Artemis to pay for any common elements within the community, nor does
2 the Declaration describe any common elements for which dues or assessments would be required.

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

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

10 Ruby Lake Estates is not a "common-interest community" because it does not have any
11 common elements, and no common elements or expenses are described in its Declaration. Indeed,
12 the Declaration has no mention or covenant for any taxes, insurance premiums, maintenance or
13 improvement of common elements, services, real estate, or any expenses whatsoever. (See
14 Declaration attached hereto as Exhibit A).

15 For Ruby Lake Estates to be a common-interest community, its lot owners would have to be
16 "obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement
17 of, or services or other expenses related to, common elements, other units or other real estate
18 described in that declaration." Nev. Rev. Stat. Ann. § 116.021. NRS 116.021 cannot be met because
19 the lot owners of Ruby Lake Estates were not obligated to pay for any common elements within Ruby
20 Lake Estates, nor were they put on notice by the Declaration that they must do so.

21 Defendant contends that the roads, ditches, culverts, signs, perimeter fencing, and gates are
22 common elements. There is no affirmative covenant to maintain county roads or even any mention
23 of roads in the Declaration of Reservations, Conditions and Restrictions of Ruby Lake Estates.
24 Further, Defendant asserts that the roads are shown on the plat map, but admits that the roads were
25 dedicated to the county and were intended as public right of ways. Although the county rejected
26 maintenance of the roads, Defendant admits throughout its Opposition to Plaintiff's MSJ that there
27 were several options for road maintenance other than the formation of an association. (See
28 Defendant's Opposition 7, 9, 29). Therefore, the fact that the CC & Rs do not mention an association

1 or mandatory assessments to care for the roads, the lot owners do not have an obligation to pay for
2 the maintenance of the county roads. Ruby Lake Estates does not have any common elements and
3 does not meet the definition of a common-interest community. NRS 116.021. Defendant has
4 presented no evidence that the lot owners were "**obligated to pay**" for road maintenance as required
5 under NRS 116.021.

6 Defendant refers to Article I of Ruby Lake's Estates' Declaration of Reservations, Conditions
7 and Restrictions, which is its only reference to the recorded covenants. Article I states that the
8 purpose of the CC & Rs is to provide for "development and maintenance of an aesthetically pleasing
9 and harmonious community of residential dwellings for the purpose of preserving a high quality of
10 use and appearance and maintaining the value of each and every lot and parcel of said property. All
11 divisions of said real property are hereafter referred to as 'lots.' " (Declaration of Reservations,
12 Conditions and Restrictions). Defendant construes this purpose to mean that for "safety" reasons, lot
13 owners are obligated to pay for "maintenance" of county roads and other "common elements" that do
14 not exist in the Declaration. This is a far stretch of the language.

15 The Declaration of Reservations, Conditions and Restrictions does not refer to maintenance
16 of county roads, nor does it put lot owners on notice that they would be obligated to join an
17 association and pay mandatory assessments to care for the county roads. First, the provision refers
18 to "lots," and expressly states that it will refer to "lots" throughout the rest of the provisions. (CC &
19 Rs). In so doing, the provision never mentions that it is referring to the maintenance of "roads" or
20 any "common elements"

21 Secondly, the CC & Rs must be "construe[d] . . . as a whole" in ascertaining the intent of the
22 provision, just as courts do with other contracts. *Ringle v. Bruton*, 120 Nev. 82, 93, 86 P.3d 1032,
23 1039 (2004).

24 The Declarations of Ruby Lake Estates created an Architectural Review Committee which is
25 governed by the terms recorded in the Declaration. (See Declaration of Reservations, Conditions and
26 Restrictions attached hereto as Exhibit A). The Architectural Review Committee's responsibilities
27 are to review architectural plans to maintain code compliance, and to insure that the specified CC &
28 Rs are enforced. Specifically, two provisions in the CC & Rs are "N. Due Diligence in Construction"

1 and "O. Maintenance of Lot Grade." *Id.* Obviously, provision "O" refers to "Maintenance of Lot
2 Grade[s]", not maintenance of county roads, because maintenance of lot grades is the only
3 "maintenance" mentioned in the CC & Rs other than the maintenance of aesthetic and architectural
4 qualities intended by the specific CC & R restrictions. Maintenance of county roads is never
5 mentioned in the CC & Rs, and an interpretation of "road maintenance" can not be sustained under
6 a reading of Article I in the absence of any mention of roadways. *Id.*

7 Again, roads were never mentioned in any provision of the CC & Rs. The Declaration of
8 Reservations, Conditions and Restrictions of Ruby Lake Estates specifically provided for an
9 Architectural Review Committee to ensure that building codes were followed and that specific
10 restrictions were maintained within the subdivision to maintain an aesthetically pleasing subdivision.
11 Road maintenance was not among the *aesthetic* and *architectural* considerations intended by the
12 Declaration of Reservations, Conditions and Restrictions that were recorded for Ruby Lake Estates
13 in 1989. The subdivision was a rural subdivision and no provision was made for road maintenance.

14 Third, case law in Nevada rejects anything not expressly written in the CC & Rs. The Nevada
15 Supreme Court adopted and agreed "with the reasoning of the Illinois Appellate Court in *Lakeland*
16 *Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805 (1984)." *Caughlin Ranch Homeowners Ass'n*
17 *v. Caughlin Club*, 109 Nev. 264, 268 (1993). In *Lakeland*, the court explained, "[W]hile it may have
18 been wise and proper for the developer to include such a covenant because assessments of this nature
19 serve an important function to insure that owners of individual lots may enjoy the use of their
20 easements and maintain the value of their property (see *Boyle v. Lake Forest Property Owners*
21 *Association, Inc.* (S.D.Ala.1982), 538 F.Supp. 765, 770), the developer failed to so include a
22 provision and defendant purchased the property without notice that such a provision may later be
23 imposed upon him." Further, in *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557
24 (2006), the Supreme Court of North Carolina held that "[c]ovenants are strictly construed in favor of
25 free use of land," and courts are " 'not inclined' to read covenants into deeds when the parties have
26 left them out." *Armstrong v. Ledges Homeowners Ass'n, Inc.*, 360 N.C. 547, 557 (2006) (See *Wise*,
27 357 N.C. at 407, 584 S.E.2d at 739-40; quoting *Hege*, 241 N.C. at 249, 84 S.E.2d at 899).
28 Additionally, as stated before, "[A] grantee can only be bound by what he had notice of, not the secret

1 intentions of the grantor. *Lakeland*, 121 Ill. App. 3d 805, 812 (1984) (See *Cimino v. Dill* (1982), 108
2 Ill.App.3d 782, 785, 64 Ill. Dec. 315, 439 N.E.2d 980). Therefore, because the CC & Rs do not
3 obligate lot owners to pay for maintenance of county roads, the covenant cannot now be added.

4 Lastly, Defendant's citing of Article I is the only time that Defendant specifically cites to the
5 CC & Rs of Ruby Lake Estates. Defendant does not cite to any other wording of the CC & Rs
6 because no provision in the CC & Rs refers to county roads, nor does any other provision make lot
7 owners "obligated to pay" for the county roads or any other common element. Nev. Rev. Stat. Ann.
8 § 116.021. Nothing in the plat map or the CC & Rs puts any lot owners on notice that they would
9 later be obligated to pay for the roads through an association with mandatory membership.

10 Defendant contends that the "roadways [sic], ditches [sic], culverts, signs, perimeter fencing,
11 gates, and [a] parcel of property" "are common-elements of the Ruby Lake Estates community."
12 (Defendant's Opposition 25, 32). Yet, Ruby Lake Estates Homeowner's Association was not formed
13 until 2006 and did not own any of these items from the time Ruby Lake Estates was subdivided in
14 1989 to the time all of the lots were originally conveyed in 1997. The only property that Defendant
15 owns is the small parcel of land that it acquired in 2007. That parcel was specifically designed "TO
16 BE DEDICATED TO THE COUNTY OF ELKO" on the parcel map. (See Parcel Map attached as
17 Exhibit "A" to Plaintiff's Motion for Summary Judgment). The parcel was never intended to be a
18 common element. To date, the parcel serves no common function, and further, Defendant cannot
19 show *any* evidence of conveyance or title to RLEHOA of the road signs, fencing or cattleguards that
20 are located in the dedicated public right of ways, or on private lots or adjoining range land.

21 Further, none of the original lot owners were put on notice that they would be required to pay
22 for any assessments when they purchased their parcels. Now, RLEHOA, which was created in 2006,
23 argues that RLEHOA somehow acquired these items, that it is now RLEHOA's sole responsibility
24 to care for these items, and by virtue of this self-appointed responsibility, RLEHOA is free to levy
25 assessments against Ruby Lake Estates' lot owners. This reasoning flies in the face of the Nevada
26 Supreme Court's decision to adopt *Lakeland Property Owners Ass'n v. Larson* as governing case law
27 in this situation. *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 268 (1993).
28 In *Lakeland*, the court found, "A grantee can only be bound by what he had notice of." *Lakeland*

1 *Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805 (1984). Plaintiff did not have notice of any
2 requirement to pay for common elements within Ruby Lake Estates when it purchased its lots, and
3 therefore cannot be required to be a member of RLEHOA or pay its demand for assessments.

4 Furthermore, defendant still has presented no evidence that lot owners within Ruby Lake
5 Estates are "obligated to pay" for maintenance of the county roads, ditches, culverts, signs, perimeter
6 fencing, and gates. The first time Defendant mentions someone other than the lot owners themselves
7 or their attorney's suggestion that lot owners should knock down weeds or grade the roads was in the
8 year 2000 - three years after all of the lots within Ruby Lake Estates were sold. In February 2000,
9 a newsletter was sent between the lot owners, which mentioned "a meeting with the local fire dept."
10 (Defendant's Opposition 7). In that meeting "it was suggested that Ruby Valley Estates owners
11 should keep the roads graded and free of weeds to provide fire breaks and fire truck access."
12 (Defendant's Opposition 7) [emphasis added]. It was only "suggested" that maintenance should be
13 done. The lot owners were not "obligated to pay" for the maintenance of the county roads. Also, the
14 lot owners' newsletter did not even explain who "suggested" that the roads should be maintained.

15 Later, in 2006, members of the RLEHOA board sent a letter to lot owners, which stated that
16 "[t]he Fire Department has requested that we keep the roads graded and free of weeds." (Defendant's
17 Opposition 9) [emphasis added]. Again, the Defendant has not presented any evidence that the lot
18 owners are obligated to pay for maintenance of the county roads. However emphatically the
19 defendant refers to "the Elko County requirement that the roads be graded and kept free of weeds,"
20 no evidence has been presented that proves that lot owners are obligated to pay for the maintenance
21 of the county roads. (9). This requirement does not exist.

22 Surprisingly, Defendant offers alternatives to requiring lot owners to join an association to
23 care for the county roads. In the February 2000 newsletter that was sent to the lot owners, it was
24 suggested that "a road maintenance agreement" could be entered into. (Defendant's Opposition 9).
25 In the June 2006 newsletter sent to the lot owners, it was mentioned that "Elko County [could] step[]
26 in" (Defendant's Opposition 9). Defendant also asserts that the association was created rather
27 than taking the alternative "action to form a road maintenance agreement or a community
28 improvement district." (Defendant's Opposition 9). Further, defendant explained that the road

1 maintenance could "be fulfilled by either the Association or through a publicly formed improvement
2 district." (Defendant's Opposition 29). Compounding all of these options is the obvious fact that for
3 seventeen years no association was formed to care for the county roads. No action was ever taken by
4 anyone (other than RLEHOA) to obligate lot owners to pay for the maintenance of county roads for
5 over two decades. Yet, RLEHOA, in 2006, took it upon itself to force lot owners to join Ruby Lake
6 Estates and pay mandatory assessments to pay for the roads. This never was and is not now an
7 obligation of the lot owners.

8 Defendant also presents evidence that obligating members to pay for the roads through
9 mandatory assessments to RLEHOA began only as an "opinion." (Defendant's Opposition 5).
10 Defendant explained that in 1999 - two years after all the lots were sold - its attorney "stated his
11 opinion that the lot owners should form a homeowner's association . . . in order to provide for the
12 maintenance of the roadways, weed abatement, culverts, and other elements" (5). After the
13 attorney's "suggest[ion]," lot owners argued in the February 2000 newsletter that they "would much
14 rather be in control of [the county] roads than allow the County to maintain and charge [them] for
15 [the] service." (Defendant's Opposition 7). This was clearly a false choice, because there is no
16 evidence that the County was requiring maintenance. In the June 2006 newsletter, the RLEHOA
17 board asserted their argument that requiring mandatory dues would be "much more cost effective to
18 handle this management" of the county roads. (Defendant's Opposition 9). Further, the board also
19 makes an impassioned plea that the lot owners "have no choice but to start Ruby Lakes Estates
20 Landowner dues" that same year. (Defendant's Opposition 9). Such a plea is clearly only an opinion
21 in the face of all of the options that were given. The plea was also likely used to make lot owners
22 believe that they were obligated to pay for the maintenance of the county roads through RLEHOA.
23 Such a proposition is fallacious.

24 Consequently, Ruby Lake Estates is not a common-interest community under NRS 116.021,
25 because lot owners are not "obligated to pay" for the maintenance of the county roads. No provision
26 of the CC & Rs or plat map put lot owners on notice that they would be obligated to pay an
27 association for maintenance of county roads. Defendant has only presented a newsletter as evidence
28 that a meeting with the local fire department occurred wherein it was "suggested" that roads be

1 maintained. (Defendant's Opposition 7). Defendant also presents several other options to requiring
2 mandatory assessments to care for the roads. Further, the lot owners were not "obligated to pay" the
3 assessments for seventeen years, until RLEHOA took it upon itself to require mandatory assessments
4 by telling the lot owner that they "have no choice." Thus, Ruby Lake Estates is not a common-interest
5 community under NRS 116.021 because lot owners are not "obligated to pay" for the maintenance
6 of the county roads.

7 **1. CC & RS ARE NOT COMMON ELEMENTS UNDER NRS 116.021.**

8 Defendant argues, "Ruby Lake Estates meets the historical definition of a common interest
9 community" and that it is not bound by NRS 116.021, including the 2009 amendments enacted by the
10 Nevada State Legislature to specifically clarify the definition of a common interest community.
11 (Defendant's Opposition 24- 25). Defendant contends that the "historic definition" interprets the mere
12 existence of any CC & R's to be "real estate," and therefore if a subdivision created before 1992 has
13 any CC & R's then it is a common-interest community. (Defendant's Opposition 25). However,
14 Defendant admits that this notion was rejected by the Nevada legislature in 2009. (Defendant's
15 Opposition 25). In fact, the Nevada legislature made clear in 2009 that CC & R's were never
16 considered "real estate" under NRS 116.021.

17 The legislature has explained that the "intent" of the "historic definition" (Senate Bill 182) "is
18 the same" as NRS 116.021 in its current form (Senate Bill 261). Nevada Senate Journal, Seventy-Fifth
19 Session, One Hundred and Twentieth Legislative Day, Nevada Senate Journal, 75th Sess. No. 120.
20 (See Exhibit V attached to Plaintiff's Motion for Summary Judgment). The language of NRS 116.021
21 was specifically amended in 2009 to "clarify" Senate Bill 182, and "to most emphatically reject the
22 erroneous interpretation placed on that section by the Real Estate Division and the Attorney General's
23 Office." *Id.*

24 Prior to the 2009 amendment, the Real Estate Division took the position that a
25 common-interest community's distinguishing factor was its CC & R's, and that CC&R's - in and of
26 themselves - were common elements. In 2008, the Attorney General's Office wrote an Opinion,
27 which agreed with this interpretation. *Id.* When the legislature confronted the Real Estate Division
28 about its interpretation, the Real Estate Division "agreed to drop its assertions . . . only if NRS

1 116.021 [was] clarified." Thus, the legislature's 2009 amendments were adopted only to "clarify,"
2 and "was not intended to effect any change in existing law." *Id.* Thus, NRS 116.021, either
3 historically as NRS 116.110323 or with its 2009 amendments, has always had the same meaning.
4 This meaning is that "[t]he distinguishing factor in a common-interest community (CIC) is ownership
5 of common areas, not the existence of covenants, conditions and restrictions (CC&Rs)." *Id.*
6 Defendant has produced no evidence that rebuts the legislature's intent in NRS 116.021, and yet it is
7 still arguing the merits of the Real Estate Division and Attorney General's former Opinion even
8 though the legislature emphatically rejected and declared the Attorney General's Opinion erroneous.

9 Thus, Defendant's interpretation that Ruby Lake Estates subdivision is a common-interest
10 community because it has CC & Rs is "erroneous." *Id.* Nonetheless, Defendant maintains this view
11 in spite of reason and continues to cite to the refuted "Nevada Attorney General in her Opinion dated
12 August 11, 2008" as authority. (25). This interpretation was "most emphatically rejected" and never
13 was the correct interpretation of NRS 116.021 according to the state legislature. Therefore, Ruby
14 Lake Estates is not a common-interest community simply because it has CC & Rs.

15 Further, the only case that Defendant cites in claiming that Ruby Lake Estates is a
16 common-interest community is not applicable to the facts in this case. (Defendant's Motion for
17 Summary Judgment 24-25). Defendant cites to *Thirteen South Ltd. v. Summit Village Inc.*, 109 Nev.
18 1218 (1993), where a buyer in a tax sale attempted to take its lot free and clear of the express
19 covenants found in the CC & Rs for the subdivision. *Thirteen S. Ltd.*, 109 Nev. at 1219. The
20 Supreme Court of Nevada ruled that the affirmative covenants existed at the time of purchase, that
21 the buyer was put on notice of the covenants, and that the covenants passed with the sale. *Id.* In this
22 case, the issue is not whether CC & Rs burden the lots, but whether the CC & Rs contain an express
23 provision allowing for the organization of a homeowner's association, the acquisition and
24 maintenance of common elements, and the assessment of dues.

25 *Thirteen S. Ltd.* demonstrates how the Supreme Court of Nevada determines whether
26 affirmative covenants burden a lot, and whether the lot owner is required to be a member of an HOA
27 and pay assessments. In that case, the Court explained, "The CC & Rs created the Association to
28 manage the subdivision, and required, inter alia, that lot owners pay assessments to the Association

1 for the repair and maintenance of common areas, for the cost of recreational facilities, and for
2 insurance premiums and other services, such as trash and snow removal. The CC & Rs also allowed
3 the Association to levy a lien on a burdened lot to secure the payment of delinquent Association
4 assessments, and they authorized judicial and extra-judicial sale to satisfy such liens." *Thirteen S.*
5 *Ltd.*, 109 Nev. at 1219. Thus, the Supreme Court of Nevada determined that the Association and its
6 mandatory assessments were valid as to lot owners within the subdivision, because the CC & Rs
7 expressly provided for such. In the present case, CC & Rs exist to create an Architectural Review
8 Committee to maintain building codes and aesthetic standards, no provisions in the CC & Rs require
9 Artemis or any other lot owner to join an association or to pay mandatory assessments.

10
11 **2. A PARCEL OF PROPERTY DEEDED TO RLEHOA EIGHTEEN YEARS**
12 **AFTER RUBY LAKE ESTATES' CC & RS WERE RECORDED, DOES NOT**
13 **MAKE RUBY LAKE ESTATES A COMMON-INTEREST COMMUNITY**
14 **UNDER NRS 116.021.**

15 Defendant argues that the fact that RLEHOA had a parcel of real property deeded to it on
16 August 31, 2007 is evidence that there are common areas belonging to Ruby Lake Estates subdivision.
17 First, Defendant confuses Ruby Lake Estates subdivision and RLEHOA. Ruby Lake Estates
18 subdivision does not now and never has owned common property. Ruby Lake Estates subdivision
19 is a subdivision of land comprised of 51 individually owned lots. The lots were owned by the
20 developer, then deeded to individual owners. The parcel of real property that RLEHOA acquired in
21 2007 was deeded from the developer to RLEHOA, not to Ruby Lake Estates subdivision. The
22 roadways and right of ways were dedicated to the county. (Admitted in Defendant's Opposition, 29).
23 The Ruby Lake Estates subdivision has never contained or owned any common areas.

24 Secondly, Defendant admits "the developer may have originally contemplated dedicating [the
25 parcel of real property] to the County." (Defendant's Opposition 31). "May have" is incorrect. The
26 developer expressly stated on the parcel map that "THIS PARCEL CONTAINING [square footage]
27 IS TO BE DEDICATED TO THE COUNTY OF ELKO." Yet, in 2007 the lot was deeded by the
28 developer to RLEHOA in contravention of the original intent! This language did not put lot owners

1 on notice when they purchased their lots between 1989 and 1997 that they would later be required to
2 maintain the taxes and expenses of this parcel and other self-proclaimed common elements of a future
3 undisclosed "Association." Thus, lot owners cannot be "obligated to pay" for a lot deeded to a newly-
4 conceived association a decade after all of the lots were conveyed.

5 Further, this conveyance in no way makes Ruby Lake Estates a common interest community
6 under NRS 116.021. A ruling to the contrary would mean that the developer in this case could
7 subdivide land with no mention of common elements in its CC & Rs, then seventeen years later –
8 after all the lots are sold – a faction of lot owners could form an arbitrary association, and a year later
9 the association could acquire a piece of property and claim that the subdivision is a now a
10 common-interest community because lot owners are obligated to pay for the parcel's maintenance.
11 This is absolutely absurd reasoning, and goes against settled property law that states that "a grantee
12 can only be bound by what he had notice of, not the secret intentions of the grantor. *Lakeland*, 121
13 Ill. App. 3d at 812 (1984). In this case, there is not even any evidence to suggest that the developers
14 intended to create a common interest community. To the contrary, the developers clearly specified
15 the ownership of each parcel of land and did not require lot owners to maintain the roads or anything
16 else. Thus, Ruby Lake Estates does not own any common property, and the fact that RLEHOA had
17 a "small parcel" deeded to it in 2007 (which was expressly intended to be dedicated to Elko County)
18 does not make Ruby Lake Estates a common-interest community under NRS 116.021.

19
20 **E. RLEHOA IS AN INVALID ASSOCIATION.**

21 To create a valid HOA, "[a] unit-owners' association must be organized no later than the date
22 the first unit in the common-interest community is conveyed. Nev. Rev. Stat. Ann. § 116.3101. Ruby
23 Lake Estates began selling lots in 1989 and sold the last lot in 1997. RLEHOA was not formed until
24 2006. Thus, RLEHOA is an invalid association because Ruby Lake Estates is not a common-interest
25 community, as presented above, and RLEHOA was not organized before "the first unit in the
26 common-interest community [was] conveyed." *Id.*

1 Defendant adamantly argues that RLEHOA is "subject to the provisions of NRS Chapter 116"
2 throughout the Motion for Summary Judgment. (Defendant's Motion for Summary Judgment 24).
3 It also argues that "[i]n 1999, the Nevada legislature made common-interest communities created by
4 plat and declaration prior to 1992, subject to NRS Chapter 116." (Defendant's Motion for Summary
5 Judgment 24). Further, Defendant argues multiple times that NRS 116.3101(3)(a) applies to the
6 formation of RLEHOA. (Defendant's Opposition 5, 27, 32, 33). Yet, when it comes to NRS
7 116.3101(1), Defendant strangely argues that the provision does not apply because NRS 116.3101(1)
8 only suggests a time "when the unit-owner's association *should* be organized" (Defendant's
9 Motion for Summary Judgment 27) [emphasis in the original]. Surprisingly, Defendant states, "NRS
10 116.3101 does not preclude the formation of the unit-owners association after conveyance of the first
11 unit." (Defendant's Motion for Summary Judgment 27). And the most shocking statement, "In sum,
12 there is nothing in Nevada law which precludes the filing of articles of incorporation at any time,
13 especially where there is the clear necessity of a community association" (Defendant's Motion
14 for Summary Judgment 28).

15 Defendant's argument could not be more wrong. NRS 116.3101 states that an association
16 "must be" organized before any lots are conveyed. The provision gives no exceptions as Defendant
17 asserts. Defendant presents no authority to support or define what would constitute its made-up
18 standard of "clear necessity." Weeds? Ungraded roads? Rusty signs and cattle guards? Such an
19 interpretation would necessitate that every subdivision in Nevada adopt an association. Clearly,
20 Defendant's position is without support.

21 Defendant attempts to back up its interpretation of NRS 116.3101 by stating that "[e]ven
22 today, there are instances where a homeowner's association is not formed until well after the
23 conveyance of the first lot by the developer." (Defendant's Motion for Summary Judgment 28).
24 Defendant appears to be blurring the issue by using the word "formed" rather than the word
25 "organized" which is used in the statute. NRS 116.3101. Defendant appears to be arguing that an
26 association may be "formed" or incorporated with the Secretary of State after lots are conveyed. First,
27 defendant provides no evidence of this assertion. Second, there can be no dispute that the statute
28 requires that an association be "organized" by express provisions in the CC&Rs prior to the

1 conveyance of the first lot by the developer. In other words, a covenant to create a homeowner's
2 association must exist before the first lot conveyance, otherwise there is no recorded covenant to
3 create a common interest community. Here, no covenant to organize a homeowner's association or
4 common interest community is found in the Declarations of Ruby Lake Estates.

5 The Declaration of Ruby Lake Estates recorded in 1989 speaks for itself. It contains no
6 reference or notice whatsoever to an association, common elements, common interest community,
7 dues, or assessments. It simply contains no covenant that allows for the creation of a homeowner's
8 association with mandatory membership, dues and assessments. See Declaration attached hereto as
9 Exhibit A.

10 NRS 116.3101 is a codification of common law. Mandatory membership in an association
11 or the duty to pay dues or assessments is an affirmative covenant. "Affirmative covenants impose
12 affirmative duties on landowners, such as an obligation to pay annual or special assessments for the
13 upkeep of common areas and amenities in a common interest community. Because covenants
14 originate in contract, the primary purpose of a court when interpreting a covenant is to give effect to
15 the original intent of the parties; however, covenants are strictly construed in favor of the free use of
16 land whenever strict construction does not contradict the plain and obvious purpose of the contracting
17 parties." *Armstrong*, 360 N.C. 557 (Citing *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d 235, 238
18 (1967)). Further, a lot buyer "can only be bound by what he had notice of, not the secret intentions
19 of the grantor." *Lakeland*, 121 Ill. App. 3d 805, 812 (1984).

20 Thus, for an affirmative covenant to be valid against the purchaser of a lot, the purchaser must
21 have had notice in writing of the affirmative covenant at the time of sale. This is black letter law in
22 Nevada. NRS 111.315 requires the "Recording of conveyances and instruments" to afford "Notice
23 to third persons," to wit: "Every conveyance of real property, and every instrument of writing setting
24 forth an agreement to convey any real property, or whereby any real property may be affected, proved,
25 acknowledged and certified in the manner prescribed in this chapter, to operate as notice to third
26 persons, shall be recorded in the office of the recorder of the county in which the real property is
27 situated . . . but shall be valid and binding between the parties thereto without such record. NRS
28 111.315 Furthermore, the statute of frauds voids agreements not in writing if the agreement is for

1 any "interest in lands" or is for an "agreement that, by the terms, is not to be performed within 1 year
2 from the making thereof." NRS 111.210 and NRS 111.220.

3 Defendant states, "Citing NRS 116.3101, Plaintiff argues that the Association could never be
4 formed, because it was required to be "organized no later than the date the first unit in the
5 common-interest community is conveyed." [sic] Once again this would mean that a pre-1992
6 Association could never be formed because a requirement that was not even in existence was not met
7 and would be a bar forever. Once the legislature decided that Chapter 116 would apply to pre-1992
8 communities, the practical effect must be that the community take those steps to form an entity if one
9 had not been formed before." (Defendant's Motion for Summary Judgment 27). Defendant again
10 obfuscates the law. Defendant argues that NRS 116.3101 does not apply to RLEHOA because NRS
11 116 was not codified until 1992. However, Defendant argues two paragraphs later that NRS 116
12 became applicable to Ruby Lake Estates in 1999; yet, defendant still contends that NRS 116.3101
13 does not apply to RLEHOA because otherwise "it could never be formed" because of the timing of
14 the law and Ruby Lake Estates creation. (Defendant's Motion for Summary Judgment 27).

15 As stated, Defendant makes it unclear whether NRS 116.3101 or the common law applies to
16 the required time for RLEHOA to be formed. Indeed, both NRS 116.3101 and the common law
17 apply. NRS 116.3101 and the common law require that a homeowner's association must be
18 "organized", or in other words, created by written covenant in the recorded documents, before any
19 lots are conveyed. NRS 116.3101 is a codification of the common law, because under the common
20 law Artemis and other lot owners would have had to be put on notice if they were to be bound by any
21 affirmative covenants when they purchased their lots. *Dreamland Villa*, 224 Ariz. at 49. In this case,
22 they were not bound by any covenant to pay dues, maintain any common elements, or to participate
23 in an association.

24 Artemis does not contend that the "Association could never be formed . . ." as the Defendant
25 asserts. (Defendant's Motion for Summary Judgment 27). Artemis only claims what NRS 116.3101
26 and the common law state: that the Association must have been organized by express covenants
27 before any of the lots were conveyed.

28

1 RLEHOA is simply an invalid association because no association was created by the
2 Declaration of Ruby Lake Estates that was recorded in 1989. RLEHOA was conceived in the minds
3 of its incorporators, not in any recorded covenant or document. RLEHOA was formed seventeen
4 years after the first Ruby Lake Estates lot was conveyed and nine years after all of the lots were
5 conveyed. The organization of RLEHOA is in direct violation of NRS 116.3101 and common law.

6 As noted above, *Thirteen S. Ltd.* is a case wherein the Supreme Court of Nevada determined
7 that membership in an association was mandatory after a tax sale because the association was
8 organized by a recorded covenant and the buyer had notice. *Thirteen S. Ltd.*, 109 Nev. at 1219. In that
9 case, the Court explained that the CC& Rs of record specifically required lot owners to be members
10 of the association and to pay assessments. *Id.* Thus, the lot owners were put on notice of the
11 affirmative covenants when they purchased their lots, and were bound by the covenant they entered
12 into.

13 Conversely, the Supreme Court of Arizona in *Dreamland Villa Cmty. Club, Inc. v. Raimy*
14 struck down a requirement of mandatory membership in an association when membership was not
15 contemplated by lot owners when they purchased their lots. *Dreamland Villa*, 224 Ariz. 42, 49 (Ct.
16 App. 2010). After citing to the Supreme Court of Nevada's *Caughlin*, the court ruled that because
17 the community's declaration did not put lot owners on notice that there would be mandatory
18 membership in the association, the affirmative covenant imposed was invalid. *Id.*

19 Here, Artemis and other lot owners were not aware of any affirmative covenants that required
20 mandatory membership in an association or dues assessments when they purchased their lots. Thus,
21 RLEHOA is an invalid association because the lot owners did not agree to the affirmative covenant
22 when they purchased their lots.

23 Further, RLEHOA was created fourteen years after NRS 116 was codified (1991), and seven
24 years after Defendant claims NRS 116 began to apply to Ruby Lake Estates (1999). So, it is
25 surprising that Defendant admits, "The members of the ARC were advised and recognized they were
26 required to comply with NRS Chapter 116 in 1999. They did not get around to filing the Articles of
27 Incorporation until 2006" (Defendant's Opposition 28). It is interesting that Defendant believes
28 RLEHOA could spring into existence and organize "at any time" merely because Ruby Lakes Estates

1 was subdivided before 1992 when NRS 116 was enacted. (Defendant's Motion for Summary
2 Judgment 28). The common law concerning affirmative covenants does not allow for this
3 interpretation, nor does NRS 116. The lackadaisical nature of the filing is evidence that RLEHOA
4 was never intended to be created in 1989, when the first lots were being sold, or anytime thereafter.
5 Organizing a homeowner's association 17 years after all the lots were sold is in direct violation of
6 NRS 116.3101, the common law, and of Ruby Lake Estates' CC & Rs.

7
8 **F. THE ARBITRATION OPINION WAS INCORRECT.**

9 Defendant cites the Arbitrator's Opinion in Defendant's Motion for Summary Judgment and
10 includes the Arbitrator's Opinion in Defendant's Composite of Exhibits as Exhibit "47". The
11 Arbitrator found in favor of the homeowner's association on all issues at arbitration. The Arbitrator's
12 Opinion, however, makes no reference or indication that the Arbitrator read or interpreted the
13 Declaration of Ruby Lake Estates subdivision, which is the controlling document in this case. The
14 Arbitrator merely rests his Opinion on the grounds that:

- 15 1) "[RLEHOA] filed its Articles of Incorporation on January 18, 2006."
16 2) "Artemis filed an Intervention Affidavit with the Real Estate Division on December 18,
17 2009" and "the Ombudsman of the Real Estate Division opined as follows: 'For these reasons, we are
18 not, as you requested going to declare the Ruby Lake Estates Homeowner's Association in valid. In
19 other words, it is our view that the Association is required to comply with the laws pertaining to
20 homeowner's associations, specifically NRS 116 and related law and regulations.'" (See Arbitrator's
21 Opinion, Defendant's Composite of Exhibits, Exhibit "47"; and Ombudsman's Opinion Letter dated
22 July 1, 2010, Defendant's Composite of Exhibits, Exhibit "49").

23 In his Opinion, the Arbitrator rested his Opinion on the Real Estate Division Ombudsman's
24 opinion letter dated July 1, 2010 and followed it exactly, finding, "RLEHOA continues to comply
25 with the laws and regulations pertaining to homeowner's associations as the Real Estate
26 Ombudsman's Office opined it should. . . ." (See Arbitrator's Opinion included in Defendant's
27 Composite of Exhibits, Exhibit "47").

1 Although the Opinion broadly states that “[Artemis] asserts a myriad of reasons why, in its
2 opinion the RLEHOA is not valid,” the Opinion stops short of discussing or identifying the reasons.

3 The Opinion states that there is “overwhelming evidence that RLEHOA is a valid HOA,” The
4 “overwhelming evidence” that the Arbitrator cites is: 1) the HOA owns property within the
5 subdivision, it maintains roads, signs, gates, culverts and fencing;” and 2) “It is incorporated as
6 required by law.” The Arbitrator was convinced that the association was valid merely because it was
7 “incorporated” with the state and because it “owns property.”

8 The Opinion accepts RLEHOA’s arguments at face value and looks no further to question how
9 the roads or any common elements were ever transferred or conveyed to RLEHOA for ownership or
10 maintenance? Moreover, the parcel of property that RLEHOA owns was acquired in 2007; and more
11 importantly, the Arbitrator fails to realize that it was not “described” in the Declaration as required
12 by NRS 116.021, or that the parcel was specifically intended “TO BE DEDICATED TO THE
13 COUNTY OF ELKO” as stated on the Parcel Map.

14 The Real Estate Division Ombudsman’s letter dated July 1, 2010 stating that “we are not
15 going to declare the association invalid,” is a statement of non-action. The Real Estate Division is
16 not a court and lacks jurisdiction to declare or determine the validity of an association. The
17 Arbitrator’s Opinion was merely conclusory and was greatly influenced by the July 1, 2010 opinion
18 letter from the Ombudsman. The Arbitrator failed to consider the central issue of whether the
19 Declaration provided for an association or whether the Declaration included a covenant for
20 compulsory dues and assessments.

21 Moreover, the Arbitrator did not explain how Ruby Lake Estates subdivision fits within the
22 definition of a common-interest community. Indeed, the Arbitrator did not cite to NRS Chapter
23 116.021, nor did the Opinion indicate any awareness that the legislature amended and clarified the
24 definition of a common-interest community in 2009. The legislature amended the statute to clarify
25 that any obligation to pay dues or join an association must be expressly stated “*in the Declaration.*”
26 NRS 116, as amended in 2009. The enactment of NRS 116 codified the common law of covenants
27 which requires that covenants be in writing and that lot owners have notice of covenants prior to
28 conveyance.

1
2 NRS 38.310(1)(a) requires that no civil action based upon a claim relating to “(a) The
3 interpretation, application or enforcement of any covenants, conditions or restrictions applicable to
4 residential property . . . may be commenced in any court in this State unless the action has been
5 submitted to mediation or arbitration. . . .” NRS 38.310(1)(a). When an action is submitted to the
6 Real Estate Division, the parties have the option to choose mediation, arbitration, or non-binding
7 arbitration. NRS 38.330. In this case, both parties agreed to non-binding arbitration. The findings
8 of the arbitration are non-binding and either party may commence an action in court concerning the
9 claim that was submitted for arbitration. Plaintiff has filed this action in District Court, which is the
10 appropriate jurisdiction to decide matters relating to real estate within Elko County. The standard of
11 review for the District Court is a *de novo* review of the Declaration and evidence presented.

12 If the Court were to accept RLHOA’s argument that it may form a common-interest
13 community and levy dues without any covenant or basis in the Declaration of Ruby Lake Estates, then
14 it would open the door for other rural subdivisions in Elko County, such as Ryndon, Osino, Last
15 Chance Ranchos, and others to form arbitrary associations without covenants that provide for such.
16 Under NRS 116.3101, a lot cannot be bound by any covenant to pay dues or participate in a
17 homeowner’s association unless the covenant existed prior to the conveyance of the lots. The court
18 should find that an association that is formed without covenants providing for such is merely
19 voluntarily and lacks the authority of any covenant or law to laden its neighbors with new dues and
20 regulations.

21 **G. RLEHOA'S MANDATORY ASSESSMENTS AGAINST RUBY LAKE ESTATES LOT**
22 **OWNERS ARE INVALID UNDER EXISTING LAW AND PRECEDENT.**

23 Ruby Lake Estates' CC & Rs do not provide for dues or assessments in any provision. Thus,
24 Artemis and other lot owners could not be put on notice of any mandatory assessments when they
25 purchased their lots, and NRS 116.3102 does not allow RLEHOA to levy mandatory assessments
26 against lot owners.

27 Defendant argues that the Supreme Court of Nevada's *Caughlin* is inapplicable to the case at
28 hand. Defendant’s position is unsustainable. *Caughlin* concerns a subdivision with CC & Rs

1 recorded in 1984, and the issue of whether mandatory assessments levied against a lot owner were
2 valid. *Caughlin*, 109 Nev. at 265, 268. There, as well as here, the mandatory assessments are invalid
3 because the lot owners were not put on notice by the CC & Rs when they purchased their lots. *Id.*

4 Defendant argues that because Ruby Lake Estates was formed before 1992 and RLEHOA was
5 formed after 1999 that this precludes RLEHOA from notifying lot owners of affirmative covenants
6 they would be required to keep at the time they purchased their lots. (Defendant's Opposition 36).
7 This is not so. The developer of Ruby Lake Estates could have organized a homeowner's association
8 in 1989 when he recorded the CC & Rs, but did not do so.

9 Senator Schneider explained the purpose of NRS 116 as the Nevada State Senate passed
10 Senate Bill 182:

11 I want to repeat the language of the preamble to the bill as introduced because
12 it summarizes all the important reasons we are enacting this bill:

13
14 WHEREAS, The Nevada Legislature previously noted that some unit-owners'
15 associations in this State have a history of abuse of power; and

16
17 WHEREAS, The Nevada Legislature previously noted that unit owners'
18 associations have power over one of the most important aspects of a person's
19 life, his residence; and

20
21 WHEREAS, The Nevada Legislature previously noted that homeowners invest
22 financially and emotionally in their homes; and

23
24 WHEREAS, The Nevada Legislature previously declared that homeowners
25 have the right to reside in a community without fear of illegal, unfair,
26 unnecessary, unduly burdensome or costly interference with their property
27 rights; and
28

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

3
4 Thank you again for understanding the nature and importance of what we are
5 doing with this bill. It is my sincere hope that this measure will allow citizens
6 of Nevada to live secure in their rights in their homes in a manner consistent
7 with their constitutional rights. If any court has occasion to interpret the
8 provisions of this bill or indeed of any provision in Chapter 116 or 116A of
9 the Nevada Revised Statutes, let the court be guided by these principles I have
10 just reviewed with you.

11 Nevada Senate Journal, Seventy-Fifth Session, One Hundred and Twentieth Legislative Day, Nevada
12 Senate Journal, 75th Sess. No. 120. (Attached as Exhibit V to Plaintiff's Motion for Summary
13 Judgment).

14 The preamble coupled with Senator Schneider's statements prove that the legislature was
15 concerned about associations abusing power when NRS 116 was enacted. With this in mind, it would
16 be absurd to think that the legislature would intend for NRS 116 to allow associations to levy
17 mandatory assessments against lot owners when no provision in the CC & Rs put the owners on
18 notice of assessments when they purchased their lots. Defendant's position is oppressive and
19 fraudulent; lot owners must first be made aware of affirmative covenants before the lot owner can be
20 obliged to a covenant.

21 In addition to *Caughlin*, Illinois' *Lakeland* decision, 121 Ill. App. 3d 805 (1984), Arizona's
22 *Dreamland Villa* decision, 224 Ariz. 42, and North Carolina's decision in *Armstrong v. Ledges*
23 *Homeowners Ass'n, Inc.*, 360 N.C. 547 (2006), all stand for the proposition that a lot owner must be
24 made aware of mandatory assessments before conveyance in order for an affirmative covenant to
25 become binding. Defendant simply ignores and rejects these cases because they involve subdivision's
26 covenants, conditions and restrictions, and not the "mandates of Chapter 116." It is unreasonable to
27 think that the legislature would reject case law - even its own case law from the Supreme Court of
28 Nevada - and allow homeowner's associations to arbitrarily levy assessments against lot owners after

1 the lot owner purchased a lot without any notice of a dues assessment. This was clearly not the intent
2 of the legislature, as expressly stated in the Act's preamble cited above.

3 The long-standing law of covenants also rejects Defendant's interpretation of associations'
4 powers to levy assessments against lot owners. "[T]he fundamental rule is that the intention of the
5 parties governs" construction of real covenants. *Long v. Branham*, 271 N.C. 264, 268, 156 S.E.2d
6 235, 238 (1967). Thus, if lot owners never had notice of an affirmative covenant at the time they
7 purchased their lots, the covenant cannot later be imposed. Further, when there is ambiguity,
8 "covenants are strictly construed in favor of the free use of land." *Armstrong*, 360 N.C. at 551.
9 Consequently, the law of covenants looks to the parties' intentions when they entered into the
10 covenants, and if there is any ambiguity, the law errs in favor of the free use of land.

11
12 **H. RLEHOA IS NOT A VALID ASSOCIATION JUST BECAUSE RESIDENTS HAVE**
13 **PAID DUES OR PARTICIPATED IN THE ASSOCIATION.**

14 Defendant attempts to detract from the central issue of whether Ruby Lake Estates is a valid
15 common-interest community and whether RLEHOA is a valid association, by chronicling Mel
16 Essington, Elizabeth Essington, and other residents' response to the incorporation of RLEHOA.
17 Defendant spends much of its Motion for Summary Judgment documenting these dealings in an
18 attempt to bind Elizabeth Essington, President of Artemis, to a non-existent covenant by virtue of her
19 husband's independent participation in the newly-formed association.

20 In reply to Defendant's Opposition, a copy of the Affidavit of Elizabeth Essington is attached
21 hereto as Exhibit B and states:

22 1. I am the President of Artemis Exploration Company, the Plaintiff in this action. I am the
23 sole officer, director, and shareholder of Artemis Exploration Company ("Artemis").

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

26 3. When Artemis purchased Lot 6, Block G, of the Ruby Lake Estates, I specifically asked
27 Stephen and Mavis Wright, the developers, whether there were any restrictive covenants in the
28 subdivision because I wanted to store some cargo trailers on the property. Mavis Wright replied in

1 a letter dated July 22, 1993, "To the best of my knowledge and belief, there are no covenants,
2 encumbrances or restrictions on the property described in the contract between MSW, Inc., and
3 Artemis Company and the taxes are paid up-to-date." (See Exhibit B attached to Plaintiff's MSJ).

4 4. There was never any mention or disclosure by Stephen or Mavis Wright, nor any
5 documentation that would support the creation of a common interest community then or at anytime
6 in the future.

7 5. In 2005, I constructed my primary residence on Lot 6, Block G, of the Ruby Lake Estates
8 and began residing there. Previously, I had been residing in Ely, Nevada. My husband, Mel
9 Essington had been working as a mining engineer for the U.S. Park Service for the previous 20 +
10 years and resided in Death Valley, Nevada. In 2006, Mel retired and began living with me at my
11 residence in the Ruby Lake Estates.

12 6. We met with Lee Perks at his home on one occasion in Ruby Valley, but he was under the
13 influence of alcohol. I did not associate with Lee Perks after that visit.

14 7. I did not attend any meetings regarding the homeowner's association. The Affidavit of Lee
15 Perks stating, "Mrs. Essington sometimes attended," is false. (See Defendant's Composite of
16 Exhibits, Exhibit 10, ¶15).

17 8. I never believed that Ruby Lake Estates was subject to a homeowner's association. I
18 believed that a voluntary association may be appropriate if people wanted to contribute to road
19 maintenance. It is my understanding that dues were initially being collected on a voluntary basis.

20 9. My husband, Mel, was initially in favor of a committee or homeowner's association and
21 he was nominated and served on the board of directors.

22 10. I did not participate in the homeowner's association for several reasons:

23 a) I did not believe that the Declarations allowed for the creation of an obligatory
24 homeowner's association;

25 b) The association was being run out of Washoe County by Lee Perks and the money
26 was being solicited and collected by Lee Perks at his Sparks, Nevada, address;

27 c) Dues were increasing each year, and for all the money collected, road maintenance
28 was not being performed. The roads were graded only one time; and

1 d) I believed that dues should only be collected on a voluntary basis.

2 11. I initially paid dues, but I refused to pay dues after I discovered that the homeowner's
3 association was invalid and lacked the authority to compel the payment of dues.

4 12. I was told that the incorporators had researched statutes and that the Association was
5 valid. I therefore wrote a letter to Lee Perks, President of the Ruby Lake Estates Homeowner's
6 Association on December 4, 2009, and requested that he and Bob Wines, Esq., the association's
7 attorney, explain to me "how the Ruby Lake Estates Homeowner's Association was formed." In my
8 letter I stated:

9 ". . . My research indicates a HOA is normally formed first by the developer
10 and it is attached to the deed before the land/home is sold or alternatively
11 some form of legally binding affidavit from all of the home owners is
12 required. To my knowledge this has not be [sic] done in the case of the Ruby
13 Lake Estates.

14
15 Further, my research leads me to question the actual manner in which the
16 HOA was actually formed. Was there an acceptable written record of how
17 many and specifically which verified land owners attended and voted at the
18 meeting at which the HOA was supposed to have been formed? I did not
19 attend the meeting and do not know. Did each of the verified land owners at
20 the organizational meeting sign any legitimate document or documents
21 acknowledging they were legally signing away their individual rights thus
22 binding and obligating their land and homes to the HOA and implied authority
23 of the Executive Board? I certainly have not." (See Defendant's Composite
24 of Exhibits, Exhibit 39).

25 13. I did not receive any response from Mr. Wines to my letter questioning the association's
26 legitimacy. Lee Perks, President of Ruby Lake Estates Homeowner's Association, replied in a letter
27 dated December 9, 2009, explaining, "We added to the architectural committee to lighten the load of
28 the volunteers, which we researched and is legal. This is now our executive committee." (See

1 Defendant's Composite of Exhibits, Exhibit 41). His letter did not provide any research or legal
2 authority to answer my questions.

3 14. On December 18, 2009, I submitted an Ombudsman Intervention Affidavit requesting that
4 the Ombudsman of the Real Estate Division review the matter and to declare the Ruby Lake Estates
5 Homeowner's Association "invalid and non-binding on the several homeowners." The Ombudsman's
6 office informed me by telephone that there are only two ways that an HOA can be formed in Nevada:
7 1) by the developer recording a declaration that creates an HOA prior to conveying the lots (NRS
8 116.3101(1)); or 2) by written consent of 100% of the individual owners after the lots were sold.

9 15. My attorney, Richard Harris, Esq., also sent a letter on June 9, 2010, to Bob Wines, Esq.,
10 attorney for the Ruby Lake Homeowner's Association requesting an opinion as the legitimacy of the
11 association. (See Defendant's Composite of Exhibits, Exhibit 40).

12 16. On June 18, 2010, Bob Wines, Esq., wrote a letter to the Nevada Real Estate Division
13 stating his opinion that the Architectural Review Committee was obligated to maintain the "public
14 (roads)" within the subdivision. (See Defendant's Composite of Exhibits, Exhibit 5). No legal
15 authority was cited in the letter.

16 17. When Mel Essington learned that the Ruby Lake Estates Homeowner's Association was
17 invalid, he withdrew as a board member. Mel wrote a letter to the property owners on June 20, 2010,
18 stating his opinion that, "... it is increasing apparent the Ruby Lake Estates HOA may have been
19 improperly established under state statutes." (See Defendant's Composite of Exhibits, Exhibit 33).

20 18. Ruby Lake Estates Homeowner's Association continues to send delinquent account
21 statements to Artemis Exploration Company, and other property owners similarly situated, threatening
22 collections and legal action.

23 19. On or about January 3, 2011, Ruby Lake Estates Homeowner's Association engaged
24 Angius & Terry Collections, LLC, a collection agency, to send a notice to Artemis Exploration
25 Company threatening that a "Delinquent Assessment Lien" would be placed on the property of
26 Artemis Exploration Company if the purported dues and assessments were not paid.

1 20. Other property owners of the Ruby Lake Estates have complained to me that they also do
2 not want to participate in a homeowner's association. Some of them are intimidated and are afraid
3 of liens attaching to their property, and therefore they pay the dues under threat of liens.

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

7
8 Other than pay dues from her personal account, which she believed should be voluntary,
9 Elizabeth Essington, the sole officer, director and shareholder of Artemis, did not participate in any
10 meetings of the homeowner's association or give her consent to its creation.

11 Elizabeth's husband, Mel Essington, was initially in favor of the association and served on
12 the board of directors. It was later acknowledged by Lee Perks, President of Ruby Lake Estates
13 Homeowner's Association, that Mel Essington was merely a resident of the subdivision and not a lot
14 owner. On April 19, 2010, Mr. Perks sent Mr. Essington a letter stating:

15 "Your status on the board has recently become a little confusing. Our by-laws
16 require that an officer of RLEHOA is a property owner or represents a
17 property owner. To remain an officer of the RLEHOA you need to show proof
18 that you are an officer/director of Artemis Exploration Company of have been
19 legally appointed in writing to represent that corporation. . . . If not we will
20 interpret this as your resignation and will immediately appoint a replacement."

21 (See Defendant's Composite of Exhibits, Exhibit 2).

22
23 Mr. Essington was therefore noticed by this letter effective April 19, 2010 that he would be
24 removed from the Board because he had no legal authority to represent Artemis. Mel Essington
25 wrote a letter to the property owners on June 20, 2010, stating his opinion that, "... it is increasing
26 apparent the Ruby Lake Estates HOA may have been improperly established under state statutes."
27 (See Defendant's Composite of Exhibits, Exhibit 33). (See also Affidavit of Elizabeth Essington
28 attached hereto as Exhibit B).

1 Artemis and its sole officer, Elizabeth Essington, did not participate in the homeowner's
2 association. This is confirmed by the documentation and all of the Exhibits provided by Defendant.
3 To further demonstrate this point, on June 18, 2010, Bob Wines, Esq., sent a letter to the Real Estate
4 Division in which he mentions "Mel Essington" and "James Copenhaver, the attorney for Mel
5 Essington" but no mention of Artemis or Elizabeth Essington. Mr. Wines was clear that he was
6 referring only to Mr. Essington's participation with the homeowner's association and not to Elizabeth
7 Essington or to Artemis. (See Defendant's Composite of Exhibits, Exhibit 5).

8 Defendant spends a great deal of time writing about Mel Essington and his involvement with
9 the RLEHOA, but Defendant cannot cite a single document or exhibit that was prepared or signed by
10 Elizabeth Essington other than two personal checks. (See Defendant's Composite of Exhibits,
11 Exhibit "9"). Moreover, the personal check that Elizabeth signed was from her personal account and
12 was not paid on account of Artemis. Elizabeth stated in her Affidavit, "I believed that a voluntary
13 association may be appropriate if people wanted to contribute to road maintenance. It is my
14 understanding that dues were initially being collected on a voluntary basis." (See Affidavit attached
15 hereto as Exhibit "B").

16 As presented more fully in Plaintiff's Motion for Summary Judgment, the lot owner in
17 *Caughlin Club* was not bound by the mandatory assessments levied against him simply because he
18 initially paid the assessments. *Caughlin Club*, 109 Nev. at 267. Further, the court in *Armstrong*
19 reasoned that even though some lot owners paid invalid assessments by "mistake" and others
20 "voluntarily" took on more responsibilities in the Association, the lot owners were not bound by
21 covenants that were not in the original declaration. *Armstrong*, 360 N.C. 547 at 557. The court
22 further explained, "Although individual lot owners may voluntarily undertake additional
23 responsibilities that are not set forth in the declaration, or undertake additional responsibilities by
24 mistake, lot owners are not contractually bound to perform or continue to perform such tasks." *Id.* at
25 557.

26 Defendant admits evidence in its Opposition that Artemis and other lot owners were presented
27 with legal opinions, and were told that there was "no choice" but to levy dues and participate in
28

1 RLEHOA. (9). As mentioned, the attorney hired by some of lot owners, "suggested" and gave his
2 "opinion" that lot owners should form RLEHOA. (5, 7). In a 2006 newsletter, the organizers
3 explained that they had "no choice but to start Ruby Lakes Estates Landowner dues" that year. (9).
4 Thus, RLEHOA influenced lot owners and others to pay dues to the RLEHOA; yet, this does not
5 estop Artemis or any other lot owner from demanding that RLEHOA cease levying assessments, cease
6 threatening liens, and cease asserting that membership is compulsory.

7

8 **I. ARTEMIS SHOULD BE AWARDED ITS COURT COSTS AND ATTORNEY'S FEES.**

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

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

16

17 **J. CONCLUSION**

18 Based on the foregoing, Artemis requests that Defendant's Motion for Summary Judgment
19 be denied and that Plaintiff's Motion for Summary Judgment be granted, and that a declaratory
20 judgment be entered against Defendant, RUBY LAKE ESTATES HOMEOWNER'S
21 ASSOCIATION, establishing that Defendant is not a valid common-interest community under
22 Chapter 116 of the Nevada Revised Statutes. Specifically, Defendant's Motion for Summary
23 Judgment should be denied and a declaratory judgment should be entered on Plaintiffs First Claim
24 for Relief (Declaratory Judgment) under the following rules of law:

- 25 1) Defendant's Motion for Summary Judgment should be denied and a declaratory
26 judgment should be entered declaring the Association invalid under NRS 116.3101(1)
27 because the lots of Ruby Lake Estates subdivision were not bound by any covenant
28 to pay dues or participate in a homeowner's association prior to the conveyance of the

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491 4th Street
Elko, Nevada 89801
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3 AA000236

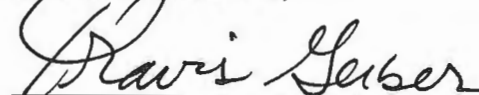
lots. In *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264 (1993), the Supreme Court of Nevada ruled that a lot owner could not be placed under new obligations it did not have notice of prior to the purchase of its lot. *Caughlin Club*, 109 Nev. 264, 268 (1993); and

- 2) Defendant's Motion for Summary Judgment should be denied and 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.

DATED this 21st day of June, 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

GERBER LAW OFFICES, LLP

491 4th Street

Elko, Nevada 89801

Ph (775) 738-9258

3 AA000237

1 **CERTIFICATE OF SERVICE BY MAIL**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES,
3 LLP, and that on this date I deposited for mailing, at Elko, Nevada, by regular U.S. mail, a true copy
4 of the foregoing Reply to Opposition to Plaintiff's Motion for Summary Judgment, addressed to the
5 following:

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

10 DATED: June 22, 2012.

11 Candace Phillips
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EXHIBIT

A

RUBY LAKE ESTATES
DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 62 day of Sept, 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

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

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

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

ARTICLE I
GENERAL PURPOSE OF
RESERVATIONS AND RESTRICTIONS

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

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

ARTICLE III

CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright
Ruby Valley, NV 89833

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

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

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

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

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

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

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

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

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

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

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

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

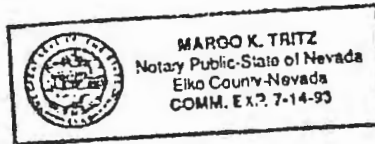
Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. Wright
MAVIS S. WRIGHT

STATE OF Nevada)
COUNTY OF Elko)SS.

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

Margo K. Tritz
NOTARY PUBLIC



INDEXED :

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FILED FOR RECORD
AT REQUEST OF

Marnett Hansen

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

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3 AA009245
BOOK 703 PAGE 292

EXHIBIT

B

1
2 **AFFIDAVIT OF ELIZABETH ESSINGTON**

3 STATE OF NEVADA)
 : ss.
4 COUNTY OF ELKO)

5 1. I am the President of Artemis Exploration Company, the Plaintiff in this action. I am the
6 sole officer, director, and shareholder of Artemis Exploration Company ("Artemis").

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6

7 13. I did not receive any response from Mr. Wines to my letter questioning the association's
8 legitimacy. Lee Perks, President of Ruby Lake Estates Homeowner's Association, replied in a letter
9 dated December 9, 2009, explaining, "We added to the architectural committee to lighten the load of
10 the volunteers, which we researched and is legal. This is now our executive committee." His letter
11 did not provide any research or legal authority to answer my questions.

12 14. On December 18, 2009, I submitted an Ombudsman Intervention Affidavit requesting that
13 the Ombudsman of the Real Estate Division review the matter and to declare the Ruby Lake Estates
14 Homeowner's Association "invalid and non-binding on the several homeowners." The Ombudsman's
15 office informed me by telephone that there are only two ways that an HOA can be formed in Nevada:
16 1) by the developer recording a declaration that creates an HOA prior to conveying the lots (NRS
17 116.3101(1)); or 2) by written consent of 100% of the individual owners after the lots were sold.

18 15. My attorney, Richard Harris, Esq., also sent a letter on June 9, 2010, to Bob Wines, Esq.,
19 attorney for the Ruby Lake Homeowner's Association requesting an opinion as the legitimacy of the
20 association.

21 16. On June 18, 2010, Bob Wines, Esq., wrote a letter to the Nevada Real Estate Division
22 stating his opinion that the Architectural Review Committee was obligated to maintain the "public
23 (roads)" within the subdivision. No legal authority was cited in the letter.

24 17. When Mel Essington learned that the Ruby Lake Estates Homeowner's Association was
25 invalid, he withdrew as a board member. Mel wrote a letter to the property owners on June 20, 2010,
26 stating his opinion that, "... it is increasing apparent the Ruby Lake Estates HOA may have been
27 improperly established under state statutes.”
28