

**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 02:08 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
APPELLANTS' APPENDIX  
VOLUME 4

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

**APPELLANTS' APPENDIX - VOLUME 4**

GERBER LAW OFFICES, LLP  
TRAVIS W. GERBER  
Nevada State Bar No. 8083  
ZACHARY A. GERBER  
Nevada State Bar No. 13128  
491 4<sup>th</sup> Street  
Elko, Nevada 89801  
(775) 738-9258  
*Attorneys for Appellants*

**APPENDIX SUMMARY**  
**Alphabetical Order**

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

|   |                   |   |         |
|---|-------------------|---|---------|
| Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company (Exhibit)   | June 16, 1994     | 5 | 165-166 |
| Deed - Stephen G. Wright & Mavis S. Wright to RLEHOA (Exhibit)  | August 28, 2007   | 5 | 175-177 |
| Final Judgment  | February 26, 2018 | 5 | 132-142 |
| First Amended Complaint   | February 17, 2016 | 4 | 143-167 |
| Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company (Exhibit)   | December 15, 1989 | 5 | 161     |
| Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill (Exhibit)                         | February 12, 1990 | 5 | 162     |
| Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company (Exhibit)   | February 18, 2010 | 5 | 216-217 |
| Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim  | May 12, 2016      | 5 | 11-23   |
| Harold Wyatt and Mary Wyatt's Joinder in Artemis Exploration Company's Motions and Opposition   | October 17, 2016  | 5 | 24-103  |
| Harold Wyatt and Mary Wyatt's Reply to Ruby Lake Estates Homeowners Association's Response to Harry and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's Motions and Opposition | December 21, 2016 | 5 | 116-122 |
| Legislative Counsel Bureau Legal Opinion to Senator Townsend (Exhibit)  | April 27, 2006    | 5 | 168-172 |

|  |                    |   |         |
|--|--------------------|---|---------|
| Motion for Summary Judgment  | April 30, 2012     | 1 | 58-226  |
| Notice of Appeal   | March 6, 2018      | 5 | 149-151 |
| Notice of Entry of Final Judgment  | March 1, 2018      | 5 | 143-148 |
| Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment   | March 1, 2013      | 4 | 72-85   |
| Notice of Entry of Order Granting Defendant's Motion for Summary Judgment  | March 1, 2013      | 4 | 86-99   |
| NV S. Jour., 75th Sess. No. 120 (Exhibit)  | June 1, 2009       | 5 | 191-194 |
| Official Plat of Ruby Lake Estates (Exhibit)   | September 15, 1989 | 5 | 152-154 |
| Opposition to Defendant's Motion for Summary Judgment  | June 22, 2012      | 3 | 205-249 |
| Opposition to Plaintiff's Motion for Summary Judgment  | May 30, 2012       | 3 | 123-164 |
| Order Denying Plaintiff's Motion for Summary Judgment  | February 12, 2013  | 4 | 50-60   |
| Order Granting Defendant's Motion for Summary Judgment   | February 14, 2013  | 4 | 61-71   |
| Order: Joinder of Necessary Parties  | September 11, 2015 | 4 | 100-107 |
| Original Affidavits of Michael Wayne Mason and Shelly Renee Mason Previously filed as Exhibits to Ruby Lake Estates Homeowner's Association's Second Supplement to Exhibits to Motion for Summary Judgment | August 23, 2012    | 4 | 43-49   |
| Reply to Opposition to Plaintiff's Motion for Summary Judgment   | June 15, 2012      | 3 | 171-204 |
| Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions (Exhibit)   | October 25, 1989   | 5 | 155-160 |

|   |                   |         |                  |
|---|-------------------|---------|------------------|
| Ruby Lake Estates Homeowner's Association's Articles of Incorporation (Exhibit)   | January 18, 2006  | 5       | 173-174          |
| Ruby Lake Estates Homeowner's Association's Composite of Exhibits in Support of: (1) RLEHOA's Opposition to Plaintiff's Motion for Summary Judgment; and (2) RLEHOA's Motion for Summary Judgment | May 30, 2012      | 2,<br>3 | 38-250,<br>1-122 |
| Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment   | May 30, 2012      | 2       | 1-37             |
| Ruby Lake Estates Homeowner's Association's Reply to Plaintiff's Opposition to RLEHOA's Motion for Summary Judgment   | July 3, 2012      | 4       | 1-28             |
| Ruby Lake Estates Homeowners Association's Response to Harry and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's Motions and Opposition  | December 19, 2016 | 5       | 104-115          |
| Ruby Lake Estates Homeowner's Association's Second Supplement to Exhibits to Motion for Summary Judgment  | August 14, 2012   | 4       | 34-42            |
| Ruby Lake Estates Homeowner's Association's Supplement to Exhibits to Motion for Summary Judgment   | August 9, 2012    | 4       | 29-33            |
| Rural Living in Elko County-Things You Need to Know About Rural Living (Exhibit)  |                   | 5       | 218              |
| SB 261 (2009) (Exhibit)   | May 29, 2009      | 5       | 195-215          |
| Second Amended Complaint  | April 14, 2016    | 4       | 197-221          |

|  |                   |   |         |
|--|-------------------|---|---------|
| Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment  | February 26, 2018 | 5 | 123-131 |
| Stipulation and Order to File Second Amended Complaint, and Answer to Second Amended Complaint, Counterclaim and Cross-Claim Pursuant to Order RE: Joinder of Necessary Parties Entered September 11, 2015 | April 12, 2016    | 4 | 189-196 |

**APPENDIX SUMMARY**  
**Chronological Order**

| <b>Document</b>   | <b>Date</b>    | <b>Vol.</b> | <b>Joint Appendix<br/>“JA” Pg. Nos.</b> |
|---|----------------|-------------|---|
| Complaint   | March 2, 2012  | 1           | 1-26                                    |
| Acceptance of Service   | March 21, 2012 | 1           | 27                                      |
| Answer to Complaint and Counterclaim  | April 2, 2012  | 1           | 28-49                                   |
| Answer to Counterclaim  | April 16, 2012 | 1           | 50-57                                   |
| Motion for Summary Judgment   | April 30, 2012 | 1           | 58-226                                  |
| Ruby Lake Estates Homeowner’s Association’s Motion for Summary Judgment   | May 30, 2012   | 2           | 1-37                                    |
| Ruby Lake Estates Homeowner’s Association’s Composite of Exhibits in Support of: (1) RLEHOA’s Opposition to Plaintiff’s Motion for Summary Judgment; and (2) RLEHOA’s Motion for Summary Judgment | May 30, 2012   | 2,<br>3     | 38-250,<br>1-122                        |
| Opposition to Plaintiff’s Motion for Summary Judgment   | May 30, 2012   | 3           | 123-164                                 |
| Affidavit of Robert Wines   | May 31, 2012   | 3           | 165-170                                 |
| Reply to Opposition to Plaintiff’s Motion for Summary Judgment  | June 15, 2012  | 3           | 171-204                                 |
| Opposition to Defendant’s Motion for Summary Judgment   | June 22, 2012  | 3           | 205-249                                 |
| Ruby Lake Estates Homeowner’s Association’s Reply to Plaintiff’s Opposition to RLEHOA’s Motion for Summary Judgment   | July 3, 2012   | 4           | 1-28                                    |

|  |                    |   |         |
|--|--------------------|---|---------|
| Ruby Lake Estates Homeowner's Association's Supplement to Exhibits to Motion for Summary Judgment  | August 9, 2012     | 4 | 29-33   |
| Ruby Lake Estates Homeowner's Association's Second Supplement to Exhibits to Motion for Summary Judgment   | August 14, 2012    | 4 | 34-42   |
| Original Affidavits of Michael Wayne Mason and Shelly Renee Mason Previously filed as Exhibits to Ruby Lake Estates Homeowner's Association's Second Supplement to Exhibits to Motion for Summary Judgment | August 23, 2012    | 4 | 43-49   |
| Order Denying Plaintiff's Motion for Summary Judgment  | February 12, 2013  | 4 | 50-60   |
| Order Granting Defendant's Motion for Summary Judgment   | February 14, 2013  | 4 | 61-71   |
| Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment   | March 1, 2013      | 4 | 72-85   |
| Notice of Entry of Order Granting Defendant's Motion for Summary Judgment  | March 1, 2013      | 4 | 86-99   |
| Order: Joinder of Necessary Parties  | September 11, 2015 | 4 | 100-107 |
| Amended Stipulation and Order to Amend Complaint, Answer and Counterclaim Pursuant to Order RE: Joinder of Necessary Parties Entered September 11, 2015  | February 10, 2016  | 4 | 108-142 |
| First Amended Complaint  | February 17, 2016  | 4 | 143-167 |
| Answer to First Amended Complaint; Counterclaim and Cross-Claim  | March 11, 2016     | 4 | 168-188 |



|  |                   |   |         |
|--|-------------------|---|---------|
| Stipulation and Order to File Second Amended Complaint, and Answer to Second Amended Complaint, Counterclaim and Cross-Claim Pursuant to Order RE: Joinder of Necessary Parties Entered September 11, 2015 | April 12, 2016    | 4 | 189-196 |
| Second Amended Complaint   | April 14, 2016    | 4 | 197-221 |
| Answer to Second Amended Complaint; Counterclaim and Cross-Claim   | April 14, 2016    | 4 | 222-242 |
| Answer to Second Amended Counterclaim  | May 4, 2016       | 5 | 1-10    |
| Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim   | May 12, 2016      | 5 | 11-23   |
| Harold Wyatt and Mary Wyatt's Joinder in Artemis Exploration Company's Motions and Opposition  | October 17, 2016  | 5 | 24-103  |
| Ruby Lake Estates Homeowners Association's Response to Harry and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's Motions and Opposition   | December 19, 2016 | 5 | 104-115 |
| Harold Wyatt and Mary Wyatt's Reply to Ruby Lake Estates Homeowners Association's Response to Harry and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's Motions and Opposition            | December 21, 2016 | 5 | 116-122 |
| Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment  | February 26, 2018 | 5 | 123-131 |
| Final Judgment   | February 26, 2018 | 5 | 132-142 |
| Notice of Entry of Final Judgment  | March 1, 2018     | 5 | 143-148 |

|   |                    |   |         |
|---|--------------------|---|---------|
| Notice of Appeal  | March 6, 2018      | 5 | 149-151 |
| <b>EXHIBITS</b>   |                    |   |         |
| Official Plat of Ruby Lake Estates  | September 15, 1989 | 5 | 152-154 |
| Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions  | October 25, 1989   | 5 | 155-160 |
| Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company   | December 15, 1989  | 5 | 161     |
| Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill | February 12, 1990  | 5 | 162     |
| Deed Lot 4 Block F - Stephen G. Wright & Mavis S. Wright to Van Der Meer 1983 Trust   | February 15, 1990  | 5 | 163-164 |
| Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company   | June 16, 1994      | 5 | 165-166 |
| Deed Lot 5 Block F - Cattlemen's Title Guarantee Company to Mary E. Wyatt and Harold L. Wyatt   | December 12, 2001  | 5 | 167     |
| Legislative Counsel Bureau Legal Opinion to Senator Townsend  | April 27, 2006     | 5 | 168-172 |
| Ruby Lake Estates Homeowner's Association's Articles of Incorporation   | January 18, 2006   | 5 | 173-174 |
| Deed - Stephen G. Wright & Mavis S. Wright to RLEHOA  | August 28, 2007    | 5 | 175-177 |
| Attorney General's Opinion to Mendy K. Elliott  | August 11, 2008    | 5 | 178-190 |
| NV S. Jour., 75th Sess. No. 120   | June 1, 2009       | 5 | 191-194 |
| SB 261 (2009)   | May 29, 2009       | 5 | 195-215 |

|  |                   |   |         |
|--|-------------------|---|---------|
| Grant, Bargain & Sale Deed Lot 2<br>Block H - Adrian P. Preader &<br>Jackie R. Preader to Artemis<br>Exploration Company | February 18, 2010 | 5 | 216-217 |
| Rural Living in Elko County-Things<br>You Need to Know About Rural<br>Living   |                   | 5 | 218     |
| Arbitration Order  | February 7, 2012  | 5 | 219-222 |

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 JUL -5 P 12: 27

CLERK US DISTRICT COURT

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

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

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Plaintiff,

12 vs.

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

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

16 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
20 Nevada Corporation,

21 Counterdefendant.  
22 \_\_\_\_\_/

**RUBY LAKE ESTATES**  
**HOMEOWNER'S ASSOCIATION'S**  
**REPLY TO PLAINTIFF'S**  
**OPPOSITION TO RLEHOA'S**  
**MOTION FOR SUMMARY**  
**JUDGMENT**

23 Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION ("the Association" or  
24 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Gayle A. Kern, Esq. of KERN  
25 & ASSOCIATES, LTD., hereby submits its Reply to ARTEMIS EXPLORATION COMPANY's,  
26 ("Artemis" or "Plaintiff") Opposition to RLEHOA's Motion for Summary Judgment as to all claims made  
27 by Plaintiff. This Reply is made and based upon the accompanying memorandum of points and authorities,  
28 the attached exhibits, all papers and pleadings on file herein, and any oral argument the Court deems

4 AA000001

1 necessary. Due to Plaintiff's incorporation by reference of arguments made by Plaintiff in its Motion for  
2 Summary Judgment and Reply, RLEHOA incorporates by reference, as if set forth herein, all arguments and  
3 authorities set forth in its Opposition to Plaintiff's Motion for Summary Judgment ("Plaintiff's MSJ").  
4 Unless otherwise denoted, all Exhibits referenced herein are as previously provided to the Court by  
5 RLEHOA in its Composite of Exhibits in Support of: (1) RLEHOA's Opposition to Plaintiff's MSJ; and  
6 (2) RLEHOA's Motion for Summary Judgment. All additional referenced exhibits in support of: (1)  
7 RLEHOA's Opposition to Plaintiff's MSJ; (2) RLEHOA's Motion for Summary Judgment; and (3) this  
8 Reply, are attached hereto and Exhibit numbers are continued sequentially.

9 RLEHOA is entitled to summary judgment as to all claims asserted by Plaintiff on the grounds that  
10 (i) Plaintiff has "abandoned" the claims made in its Second and Third Claims for Relief; (ii) Plaintiff has  
11 failed to state a *prima facie* claim for declaratory relief; (iii) Plaintiff's claim for declaratory relief is time  
12 barred by NRS 11.190(3)(a); (iv) and, as a matter of law, Ruby Lake Estates is a common-interest  
13 community subject to the provisions of NRS Chapter 116.

14 **I.**  
15 **ARGUMENTS IN REPLY**

16 **A. Judgment Should be Entered in Favor of the Association on Plaintiff's Third  
17 Claim for Relief.**

18 In its Opposition, Plaintiff states, "Plaintiff hereby abandons its claim of fraud to expedite litigation."  
19 See Opposition, 3: 5-6, 11-12. Such statement, although procedurally incorrect, is unequivocal. Therefore,  
20 in lieu of Plaintiff filing a dismissal of its Third Claim for Relief, judgment should be immediately entered  
21 in favor of the Association as to Plaintiff's Third Claim For Relief (Fraud).

22 **B. Judgment Should be Entered in Favor of the Association on Plaintiff's Second  
23 Claim For Relief.**

24 In its Opposition, Plaintiff asserts that summary judgment should be entered in its favor on its First  
25 Claim for Relief (Declaratory Relief) and that damages as pled in its Second Claim for Relief should be  
26 determined at trial. However, Plaintiff's claim for damages, set forth in its Second Claim for Relief, is  
27 based solely upon the alleged "false representations" of RLEHOA. See Complaint, 5: 3-4. Plaintiff asserts  
28 no claim for damages other than those arising from the alleged "false representations" of RLEHOA. Plaintiff  
repeats its allegations regarding the alleged false representations in both its Second and Third Claims for

1 Relief. In essence, Plaintiff's Second and Third Claims for Relief are really only a single claim for relief  
2 based upon fraud or misrepresentation.

3 Having "abandoned" its claims based upon fraud and misrepresentation, by its own words, Plaintiff  
4 has no basis for recovery of monetary damages, whether punitive or general. Punitive damages are clearly  
5 precluded by NRS 116.4117(5). Accordingly, judgment should be immediately entered in favor of the  
6 Association on Plaintiff's Second Claim for Relief (Damages).

7 **C. Damages Are Not Available In Connection With a Claim for Declaratory Relief.**

8 The Nevada Supreme Court has held that attempts to obtain damages are not appropriate for  
9 declaratory relief actions. *Arnoff v. Katleman*, 75 Nev. 424, 345 P.2d 221 (1959), *Baldonado v. Wynn Las*  
10 *Vegas, LLC*, 124 Nev. 424, 345 P.2d 221 (1959). Plaintiff admits this fact. *See* Opposition, 2-3: 26-1. In  
11 *Aronoff*, the Nevada Supreme Court stated "...a declaratory judgment in essence does not carry with it the  
12 element of coercion as to either party. Rather, it determines their legal rights without undertaking to compel  
13 either party to pay money or to take some other action to satisfy such rights as are determined to exist by the  
14 declaratory judgment." *Aronoff*, 75 Nev. at 432, 345 P.2d at 225. Therefore, there is no basis for an award  
15 of general damages in connection with an action for declaratory relief.

16 **D. Plaintiff's Claim for Declaratory Relief is Time Barred by NRS 11.190(3)(a).**

17 Nevada law, NRS 11.190(3)(a), establishes a three (3) year period for "an action [based] upon a  
18 liability created by statute, other than a penalty or forfeiture." Throughout all of its pleadings filed in this  
19 action, Plaintiff repeatedly and adamantly asserts that Ruby Lakes Estates is not a common-interest  
20 community nor is RLEHOA a valid community association with mandatory assessment powers under NRS  
21 116.3115 and NRS 116.3102 because of the Association's alleged failure to comply with NRS 116.021 and  
22 NRS 116.3101. *See* Opposition, pg. 1-2: 27-1; pg. 30: 4-6; pg. 32-33: 18-8. *See also* Complaint, pg. 4, para.  
23 24 and para. 26, and Affidavit of Elizabeth Essington attached as Exhibit "B" to Plaintiff's Opposition, pg.  
24 4, para. 21:4-6. These arguments are legally incorrect. However, even if they were correct, Plaintiff's Claim  
25 for Declaratory Relief based upon the liability created by these statutes is time barred by NRS 11.190(3)(a).

26 The power of the Association to levy assessments is based upon statute, *i.e.*, NRS 116.3102, and the  
27 liability of Plaintiff to pay assessments is based upon statute, *i.e.*, NRS 116.3115. Plaintiff repeatedly asserts  
28 that it cannot be compelled to pay assessments based on the application of either of these statutes and that

1 the Association's application of NRS Chapter 116 is in error. Plaintiff is wrong. But even if Plaintiff were  
2 correct, NRS 11.190(3)(a) clearly provides a three-year statute for an action based upon a liability created  
3 by statute.

4 Plaintiff tries to avoid the application of NRS 11.190(3)(a) by arguing that its claim is based upon  
5 a contract or an instrument in writing, i.e., the CC&Rs. Quite the contrary, Plaintiff's fundamental assertions  
6 made throughout its pleadings are that there is nothing in the CC&Rs which provides for the formation of  
7 a community association and the payment of assessments, and therefore, RLEHOA has no basis for the  
8 collection of assessments and Plaintiff has no liability for the payment of assessments. Plaintiff specifically  
9 argues that "NRS 116.3102 does not allow RLEHOA to levy mandatory assessments against lot owners."  
10 See Opposition, 23:25-26. Plaintiff's concludes its Opposition with a request, "that a declaratory judgment  
11 be entered against Defendant . . . establishing that Defendant is not a valid common-interest community  
12 under Chapter 116 of the Nevada Revised Statutes." See Opposition 32:21-22. Plaintiff goes further and  
13 asks that "a declaratory judgment be entered declaring the Association invalid under NRS 116.3101(1). . .".  
14 *Id.* at 32:25-26. Finally, Plaintiff asks for a declaratory judgment that the Association be declared invalid  
15 under NRS 116.021. *Id.* at 33:5-6. These same requests for relief are repeated in paragraph 21 of Mrs.  
16 Essington's Affidavit. The issue presented to this Court, therefore, is a determination of the liability of  
17 Plaintiff arising under statute.

18 Plaintiff admits in its Opposition that its cause of action against the Association accrued when the  
19 Articles of Incorporation were filed on January 16, 2006. See Opposition, 4: 15-17. More than five (5)  
20 years elapsed from this date until Plaintiff filed its ADR Complaint on May 6, 2011. Furthermore, Plaintiff  
21 first paid assessments, as required by NRS 116.3115, almost five (5) years before it filed its ADR  
22 Complaint. On August 16, 2006, Mel Essington sent a letter to Lee Perks, President of the Association,  
23 "enclosing a check for \$150 to cover the 2006 dues for the Ruby Lakes Estates Homeowners Association."  
24 See Exhibit "26", RLE 027A; see also Exhibit "9" at RLE 027. The check was written on the account of  
25 "George M. Essington and Elizabeth Essington."

26 In order to try to escape the effect of the proper application of the statute of limitation that bars its  
27 claim arising under statutes, Plaintiff argues it did not discover the alleged violations of Chapter 116 until  
28 2009. Plaintiff's argument does not save its claim from being time barred by NRS 11.190(3)(a). All of

1 Plaintiff's arguments about a cause of action for fraud accruing when the aggrieved party discovers the fraud  
2 or mistake are completely inapplicable to NRS 11.190(3)(a). Neither NRS 11.190(1) nor NRS 11.190(3)(a)  
3 are based upon when facts are "discovered" and Plaintiff has "abandoned" its claims for fraud and  
4 misrepresentation against the Association.

5 The passage of almost five (5) years, from the time Plaintiff first paid assessments to RLEHOA and  
6 the time Plaintiff filed its ADR Complaint alleging it had no obligation to pay assessments pursuant to NRS  
7 116.3115 because of the Association's alleged failed to comply with NRS 116.021 and NRS 116.3101, is  
8 a clear bar to the bringing of this action. All of Plaintiff's claims for Declaratory Relief are time barred by  
9 NRS 11.190(3)(a) and judgment should be entered in favor of the Association on Plaintiff's First Claim for  
10 Relief (Declaratory Relief).

11 **E. Plaintiff Has Failed to State a Claim for Declaratory Relief; There is No**  
12 **Justiciable Controversy and Plaintiff's Claims are No Longer Ripe for**  
13 **Determination.**

14 **1. Plaintiff's Claims Present no Justiciable Controversy.**

15 Even if Plaintiff's claims were not time barred by NRS 11.190(3)(a), Plaintiff's claims fail to meet  
16 the fundamental elements of a cause of action for declaratory relief. Attached hereto as Exhibit "53" is the  
17 Affidavit of Stephen Wright, developer of the Ruby Lakes Estates subdivision and the original Declarant  
18 under the CC&Rs. Mr. Wright's Affidavit casts extreme doubt upon the truth and veracity of many of the  
19 factual the statements made by Plaintiff in its Motion for Summary Judgment, its Opposition to RLEHOA's  
20 Motion for Summary Judgment, and in its Reply, as well as many of the statements made by Elizabeth  
21 Essington in her Affidavit. The correctness of the information set forth in Mr. Wright's Affidavit is  
22 confirmed by Plaintiff's own words.

23 In a letter dated August 22, 2005, addressed to all lot owners, Mel Essington wrote:

24 "Dear Fellow Lakes Estates Property Owner:

25 I am writing to each of you concerning the need to revitalize the Ruby Lakes Estates property  
26 owners association. The organizer of the subdivision and property owners association, Mr.  
27 Steve Wright, has stepped aside and turned his duties and responsibilities over to the property  
28 owners as was described to each of us in the sales literature. [Emphasis added.]<sup>1</sup>

See Exhibit "11", RLE 021A-021D. This statement is an admission by Plaintiff that in 1994, or before the

---

<sup>1</sup> In a violation of Nev.R.Civ.P. 16.1, Plaintiff failed to provide copies of those documents.



1 time of its purchase of Lot G-6, Plaintiff knew that a property owners association would be formed and that  
2 the Association's responsibilities would be to maintain the roadways, culverts, cattle guards, and other  
3 community assets, as was described by Mr. Steve Wright. Mr. Wright's Affidavit confirms that he told  
4 potential purchasers of this obligation. Mr. Wright's affidavit states in pertinent part:

5           4. In conjunction with the sale of the lots, I routinely told purchasers that I would  
6 maintain the roadways and other common assets within the subdivision until such time that  
7 all lots within the subdivision were sold. Commercial lenders also required the roadways,  
8 culverts, and cattle guards within the roadways, as well as weed abatement on the surface and  
9 along the side of the roads, to be maintained. I was advised by legal counsel that commercial  
financial institutions were unwilling to loan money for lot purchases or home construction  
unless there was some obligation to maintain the roadways within the subdivision. See  
Exhibit "1" attached hereto, Letter dated November 19, 1999, to me from attorney Robert J.  
Wines.

10           5. In conjunction with the sale of the lots, I also routinely told purchasers that  
11 after all the lots were sold, it would be the collective responsibility of the homeowners,  
12 acting through a homeowners association, to maintain the roadways, culverts, cattle guards,  
signs and fencing. I told purchasers that assessments would need to be collected by the  
homeowners association from the lot owners in order to fulfill this responsibility.

13           6. It was always my understanding and intent that a homeowners association  
14 would be created at some future point in time to assume the obligation of road and asset  
15 maintenance after all lots were sold. I so informed prospective purchasers. The other assets  
16 that I had been maintaining and expected the homeowners association to continue to maintain  
17 after the last lot was sold, were the perimeter fences, culverts, cattle guards, and street signs.  
18 After the Ruby Lakes Estates Homeowners Association was formed in 2006, I offered to  
19 deed a small parcel of land to the Association as common area in order to provide a lot for  
a community dumpster or for what ever other use the Association desired to make of the lot;  
the Association accepted my offer. A second small lot had been previously deeded to the  
Ruby Valley Volunteer Fire Department in order to provide water for fire protection for the  
Ruby Lakes Estates as well as for any other purpose that the Volunteer Fire Department  
desired.

20           7. In accordance with my expressed intentions, prior to the filing of the Articles  
21 of Incorporation for the Ruby Lakes Estates Homeowners Association, the Architectural  
22 Review Committee ("ARC"), of which I was a member, served as the executive body of an  
23 informal association of lot owners which was referred to as the "Ruby Lakes Estates  
Landowners Association." The Ruby Lakes Estates Landowners Association did levy and  
collect assessments from lot owners on a regular basis for the purpose of maintaining the  
roadways, perimeter fences, culverts, cattle guards, entrance sign, and providing weed  
abatement.

24           8. It was always my intent by recording the CC&Rs that a community  
25 association would collect money from the homeowners for these purposes, as the obligation  
26 to maintain the roadways and other community assets rested with the lot owners. Elko  
27 County would not maintain the roads yet required that they be maintained. After I sold the  
28 final lot, in 1997, the Ruby Lakes Estates Landowners Association became responsible for  
road and asset maintenance and assessed a fee of \$100 for 1997. From 1997 to 2005, the  
Ruby Lake Estates Landowners Association made regular assessments for road maintenance,  
and weed abatement, and asset maintenance.

1 See Exhibit "53", attached hereto.

2 When the truthful facts are considered, there can be no justiciable controversy between the parties  
3 relating to the formation of a homeowners association and the obligation of that association to levy and  
4 collect assessments. Plaintiff admits in both the August 22, 2005 letter and in the Affidavit of Elizabeth  
5 Essington, that Plaintiff knew from the time it purchased Lot G-6, that a homeowners association would  
6 be formed. Plaintiff simply claims she thought the Association was "voluntary" and that no one was  
7 obligated to maintain the roads. This argument is non-sensical and demonstrates a complete lack of  
8 responsibility for the safety and welfare of the Ruby Lakes Estates community and the general public. The  
9 myriad of evidence provided by the Association in support of its Opposition to Plaintiff's MSJ, as well as  
10 in support of its own Motion for Summary Judgment and this Reply, as well as the Affidavit of Mr. Wright,  
11 show Mrs. Essington's statements to be untrue.

12 Furthermore, the Ruby Lakes Estates Fire Risk and Hazard Assessment report prepared as part of  
13 the Fire Plan for Elko County, shows Ruby Lakes Estates to be in the "High Hazard" category for fire risk.  
14 The report calls for fuels reduction treatment on a community basis and calls for the formation "of a local  
15 community based organization to provide leadership and be responsible for community wide fuels reduction  
16 and community fire safety." See Exhibit "65" at RLE 111G. No one other than a community association  
17 could perform these duties as well as enforce the individual owner's responsibility to perform fuels reduction  
18 on its lot. These rights are granted to the Association under NRS 116.310312. If the Association is declared  
19 invalid, who is going to make sure the roads are passable for fire crews and free of excess fire fuels?  
20 Obviously, not the Plaintiff or Mrs. Essington.

21 Plaintiff's arguments in its pleadings regarding the inapplicability of NRS Chapter 116 to the Ruby  
22 Lakes Estates community are analogous to the following hypothetical: Mrs. Essington buys a piece of  
23 property and for over five years, always drives 80 mph on the road leading to her property. The Nevada  
24 legislature then imposes a speed limit of 55 mph on the road. Mrs. Essington had no knowledge that a speed  
25 limit would be imposed when she purchased her property. Because she owned the property before the speed  
26 limit was imposed, she argues she does not have to comply with the speed limit. Mrs. Essington's  
27 construction of the law is incorrect and no amount of argument by Plaintiff can make it so.

28 Just as Plaintiff must comply with the speed limit or face the consequences, Plaintiff cannot avoid

1 the imposition and requirements of NRS Chapter 116 when the subdivision is clearly a common-interest  
2 community. Not only are there recorded CC&Rs as required by NRS 116.2101, there are common roadways  
3 and other assets within Ruby Lakes Estates which must be maintained for the benefit of the public and  
4 members of the community. Together with CC&Rs, these roadways and assets depicted on the Plat Map,  
5 are part of the declaration. *See* NRS 116.037, 116.2109(1). The evidence clearly shows that this obligation  
6 is imposed by Elko County and is recognized by a large majority of members of the RLEHOA. *See* Exhibit  
7 "53", Wright Affidavit, *see also* Exhibit "4", Wines Affidavit; Exhibit "5", RLE 120-121; Exhibit "10",  
8 Perks Affidavit; Exhibit "14", RLE 020-021; Exhibit "19" at RLE 022; Exhibit "20" at RLE 021E; Exhibit  
9 "28" at RLE 060; Exhibit "32" at RLE 078; Exhibit "35" at RLE 105B; Exhibit "65", RLE 111A-RLE 111I.  
10 Every budget and increased assessment since 2006 has been ratified by well over a majority of lot owners,  
11 including Plaintiff.

12       There can be no doubt that "Artemis/Mel -Beth Essington" knew from the time it (they) purchased  
13 Lot G-6, there were CC&Rs governing Ruby Lakes Estates, there was a recorded Plat Map as part of the  
14 Declaration, and that there were collective maintenance obligations for the roadways, culverts, cattle guards,  
15 signs and perimeter fencing created by those CC&Rs and the recorded Plat Map. The Plat Map was part of  
16 the Declaration and clearly included the roadways, as well as the fixtures located on the real property.  
17 Plaintiff's knowledge of these facts is again demonstrated by Mr. Essington's August 22, 2005 letter,  
18 which continues:

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

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

1           **association and move ahead with its intent.. . .** [Emphasis added.]

2   See Exhibit "11", RLE 021A-021D. Mr. Essington's obviously agrees with the Association's position that  
3   for the members of the community, acting through the Association, to not maintain the roads, contravenes  
4   the spirit and intent of Article I of the CC&Rs. Mr. Essington's statements undermine all of Plaintiff's  
5   arguments.

6           The Survey completed by "Artemis Exploration-Mel/Beth Essington after RLEHOA was  
7   incorporated in 2006, also conflicts with the arguments and statements made by Plaintiff in its Opposition.  
8   See Exhibit "48" at RLE 021F. The following statement and question was posed by the Association and  
9   answered by Artemis - Mel/Beth Essington:

10           While the Declaration of Reservations, Conditions and Restrictions does not specifically  
11           provide that property owners will be required to pay annual dues, it is implicit in the  
12           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.

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

14   "Artemis - Mel/Beth Essington" answered "Yes". See Exhibit "48" at RLE 021G. This evidence  
15   conclusively demonstrates that not only did the Essingtons know about and support the Association, they  
16   wanted and *expected* the Association to take care of the roads and were willing to pay assessments to the  
17   Association for that purpose. See also Exhibit "10", Perks Affidavit.

18           Mrs. Essington's statements that she thought the Association was "voluntary" and not governed by  
19   the provisions of NRS Chapter 116 is also contradicted by the evidence. In a letter addressed to "Mr. Lee  
20   Perks, President, Ruby Lake Homeowners Association," dated January 14, 2007. Mr. Essington wrote:

21           . . . As head of the homeowners Association you need to work to protect the value of the  
22           investments of all of the individual owners and be able to look beyond your own more  
23           restricted outlook. . . . I assume you are aware Nevada has found it necessary to create a  
24           commission to oversee the operation of the many HOA's [sic] in the state. I would also  
          assume you are aware that NRS 116, Section 10, 8(f) [sic] 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.

25   See Exhibit "25" at RLE 037-039.

26           Artemis was clearly aware of the applicability and requirements of NRS Chapter 116. This is  
27   forcefully demonstrated by Mr. Essington's letter to members of the Association on behalf of the owner of  
28

1 Lot G-6 dated October 13, 2008. Mr. Essington wrote:

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

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

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

28 See Exhibit "32" at RLE 078. Mrs. Essington thereafter paid the increased assessment as levied by the  
Board members, ratifying the authority of Mr. Essington, acting as Artemis' representative, to serve on the  
Board of Directors, and the ability of the Association to levy and collect assessments pursuant to NRS  
116.3115. See Exhibit "9" at RLE 081. Mr. Essington's communications, clearly made on behalf of Artemis,  
and Mrs. Essington's actions, completely undercut Plaintiff's arguments and false assertions in Mrs.  
Essington's affidavit<sup>2</sup> regarding the invalidity of the Association and the inapplicability of NRS Chapter 116.

Mr. Essington also signed a Declaration of Certification- Common-Interest Community Board  
Member - NRS 116.31034(9), after being elected to the Board as the representative of Artemis. He declared  
under penalty of perjury that he had read and understood "the governing documents of the association and  
the provisions of Chapter 116 of the Nevada Revised Statutes ("NRS") and the Nevada Administrative Code

---

<sup>2</sup> When there is a question as to the veracity of a witness, all of the assertions made may be  
disregarded. See, e.g., Nevada Pattern Jury Instructions 2.07.

1 ("NAC"). See Exhibit "27", RLE 053. Plaintiff's assertions that it believed the Association to be  
2 "voluntary" and without authority to compel the payment of assessments, is completely without merit.

3 The evidence cannot be denied, ignored or falsely presented. Plaintiff has failed to state a *prima*  
4 *facie* cause of action for declaratory relief against the Association. There is no justiciable controversy  
5 between the parties. Plaintiff is bound by its own actions and admissions. All of the assessments for Lot G-6  
6 were paid by the Essingtons in an amount less than \$800 from 2006 to 2009.

7 Prior to the time the building which Mrs. Essington does not like was built, Plaintiff expounded upon  
8 the virtues and benefits of the Association, urged its formation and functions, regularly paid the assessments  
9 levied by the Association, and knew the Association was responsible for maintenance of the roadways and  
10 other community assets. For Mrs. Essington to attempt to disavow the actions of her husband, taken over  
11 a period of fifteen (15) years, with her full knowledge and consent, stretches the bounds of credibility and  
12 any reliance upon her veracity. In her deposition, Mrs. Essington admitted that Mr. Essington was the agent  
13 of Artemis. Specifically, she stated:

14 Q: Did you ever tell him that he did not have authority to represent Artemis Exploration  
15 at any association meeting? Answer: "No."

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

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

21 A: Correct. The architectural review committee is- it's in the CC&Rs.  
22 *Id* at 92:17-21.

23 There is absolutely no credible evidence and no legal or factual basis for Plaintiff to challenge the  
24 overwhelming amount of evidence which demonstrates there is *no justiciable controversy* between the  
25 parties regarding the formation of the Association and the applicability of NRS Chapter 116. There is no  
26 legal or equitable basis for Plaintiff's claims for a declaratory judgment that the Association is "invalid".  
27 There can be no other conclusion; this action is specious and without merit. Plaintiff's actions and false  
28 assertions fail to support this action.

2. ***Plaintiff's Claims Are No Longer Ripe for Determination.***

Closely related to the requirements that the controversy be presently justiciable is the requirement that the issue be "ripe" for judicial determination. The Nevada Supreme Court has noted, "[R]ipeness focuses on the timing of the action rather than on the party bringing the action . . . The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review. . . ." *Herbst Gaming v. Secretary of State*, 122 Nev. 877, 887, 141 P.3d 1224, 1230-1231 (2006), citing *T.R. v. State*, 119 Nev. 646, 561 80 P.3d 1276, 1279-80 (2003).

Again, there can be no dispute; the evidence is overwhelming. Plaintiff clearly knew that an association would necessarily be formed to assume the responsibilities of the developer in maintaining the roadways, culverts, cattle guards, fencing signs and perform weed abatement. Plaintiff was made aware of this in 1994, as evidence by Mr. Essington's statements. Plaintiff was also aware that the developer, Stephen Wright, informally established the Ruby Lakes Estates Landowners Association in 1997 after he sold the last lot in the subdivision. *See* Exhibit "11", RLE 021A-021D. This informal owners association levied and collected assessments for purposes of maintaining these assets from 1997 through 2005. *See* Exhibit "53", Wright Affidavit.

Plaintiff was also aware that Articles of Incorporation for the RLEHOA were filed in January 2006. *See* Exhibit "4", Wines' Affidavit. The Essingtons were prepared to file Articles of Incorporation for an association if Articles of Incorporation for RLEHOA were not filed by Mr. Perks. *See* Exhibit "16", RLE 143. Plaintiff's knowledge about the applicability and requirements of NRS Chapter 116 is also evident and cannot be denied. *See* Exhibit "25", RLE 037-039; Exhibit "32" at RLE 078.

For the past fifteen (15) years, the Ruby Lakes Estates community has functioned as a community association. Since 1999 when Chapter 116 became applicable to RLEHOA, any lot(s) sold has carried with it an implicit, if not express, representation that there is a community association governed by the provisions of NRS Chapter 116 responsible for maintaining the roadways and other common assets of the community.

///

///

///

1 Since Chapter 116 is a consumer protection statute<sup>3</sup>, to deny the existence of the Association after twelve  
2 (12) years takes away substantial homeowner benefits and protections. If not the Association, who is going  
3 to maintain the roadways, culverts, cattle guards, signs, fencing and the common area of the Association?  
4 Plaintiff's answer, "No one is responsible for this maintenance," is irresponsible and just plain wrong.

5 Such a position is unsupported by the overwhelming evidence that Elko County does require these  
6 road ways, cattle guards, and culverts to be maintained by the Association for public health and safety  
7 reasons. *See, e.g.*, Exhibit "65", the Ruby Lakes Estates Fire Risk and Hazard Assessment prepared by the  
8 Elko County Fire Department. If the roads are not maintained by a community association, then the County  
9 requires a road maintenance agreement be executed and a community improvement district be formed. The  
10 evidence of this fact is clear. *See* Exhibit "53", Wright Affidavit; *see also*, Exhibit "55", RLE 019E-019P.  
11 If the roads are not maintained and cleared of weeds, then the fire danger is increased and access to homes  
12 in the event of fire is compromised. It is also clear that the homeowners, including Plaintiff, knowingly  
13 assumed these responsibilities through the Association rather than pay for the increased costs of maintenance  
14 assessed as increased real property taxes.

15 In *Colby v Colby*, 78 Nev. 150, 369 P.2d. 1019 (1962), the Nevada Supreme Court held that an action  
16 seeking a declaration of the marital status of the parties was no longer ripe when an action for declaratory  
17 relief was commenced almost five (5) years after the divorce decree was entered. Similar facts exist here.  
18 The Articles were filed on January 6, 2006 and Plaintiff paid its first assessment to the Association in August  
19 2006. Plaintiff's ADR Complaint seeking to have the Association declared invalid for allegedly failing to  
20 comply with NRS 116.021 and NRS 116.3101, was filed more than five (5) years after the Articles of  
21 Incorporation for RLEHOA were filed, and 4 ½ years after Plaintiff first paid an assessment to the  
22 Association. The statute of limitations has run on Plaintiff's cause of action for declaratory relief which is  
23 based upon a statutory liability, i.e., the obligation to pay assessments under NRS 116.3115. The issues  
24 presented by Plaintiff, even if legally sound, which they are not, are no longer ripe for determination.

25 Declaratory relief is discretionary with the court. *El Capital Club v. Fireman's Fund Ins. Co.*, 89

---

26  
27 <sup>3</sup> The comments of the drafters to the Uniform Common Interest Ownership Act include the  
28 suggested model act be adopted by states, as Nevada did, in order to provide standards to protect  
consumers.



1 Nev. 65, 506 P.2d 426 (1973). In exercising its equitable discretion, the court should always consider the  
2 harm and possible unintended consequences of its decision. The evidence establishes that well over a  
3 majority of homeowners support the Association and want the protections provided by NRS Chapter 116.  
4 Plaintiff's own words support this statement: "I have discussed the situation with Mr. Perks as well as some  
5 of the other owners and believe he and nearly all of the other owners agree we need to reorganize the  
6 association and move ahead with its intent." See Exhibit "11", RLE 021A. The significant passage of time  
7 and the injury which will result to the homeowners and the general public if the Association is declared in  
8 valid cannot be ignored. The issues presented by Plaintiff are no longer ripe for judicial determination.  
9 Plaintiff has failed to meet the fundamental elements of a claim for declaratory relief.

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

12 Plaintiff's assertion that RLEHOA "presents no covenant, law or argument to justify its validity" is  
13 simply wrong and flies in the face of the provisions of NRS Chapter 116 and the intent of the Nevada  
14 legislature in adopting the Common-Interest-Community Association Act, and in 1999, making that Act  
15 applicable to communities created prior to 1992.

16 Plaintiff's continued arguments that Ruby Lakes Estates is not a common-interest community and  
17 that RLEHOA is not a valid community association are based on nonsensical assertions. Plaintiff asserts  
18 that RLEHOA failed to comply with statutes which were not in effect when the subdivision was created  
19 through the recording of the Plat Map and CC&Rs. Plaintiff asserts NRS 116.021, as amended in 2009, and  
20 NRS 116.3101, were not followed, therefore there is no Association. This simply makes no sense at all.  
21 Contrary to Plaintiff's assertions regarding NRS 116.3101, there is no provision within NRS Chapter 116  
22 that is a codification of common law and Plaintiff presents no authority for this argument. Additionally,  
23 Plaintiff's reliance upon the *Cauglin Ranch* and *Lakeland Property Owners Assn'* decisions is completely  
24 misplaced and misconstrues the applicability of those decisions to the instant facts.

25 Every judge, arbitrator and ombudsman who has examined this case and considered Plaintiff's  
26 arguments, has come to the same conclusion: Ruby Lakes Estates is a common-interest community and is  
27 required to comply with the provisions of NRS Chapter 116. Plaintiff's own statements concur with this  
28 conclusion. See, e.g., Exhibit "32" at RLE 078.

1 Plaintiff's criticisms and characterization of the Ombudsman's Opinion as well as Judge Leonard  
2 Gang's Arbitration Decision and Award is without merit and unnecessary. Leonard Gang is a retired District  
3 Court Judge and during a lengthy arbitration hearing that was fully briefed by the parties, he sat patiently and  
4 listened to every argument advanced by Plaintiff, including all that have been made by Plaintiff in this action.  
5 There can be little doubt, Judge Gang read all documents presented to him by Plaintiff, including the CC&Rs.  
6 Judge Gang is a competent, impartial and diligent jurist. The fact the Judge Gang chose not to provide  
7 lengthy findings of fact and conclusions of law in his arbitration Decision and Award, does not mean that he  
8 did not thoroughly review and thoughtfully consider all documents and arguments presented by Plaintiff.  
9 Plaintiff's criticism of Judge Gang's Decision and Award is unprofessional and unwarranted.

10 Plaintiff also has no basis for criticizing the Ombudsman's Opinion. Again, Plaintiff made all of its  
11 arguments and submitted its evidence to the Ombudsman's office. Contrary to Plaintiff's assertions, the  
12 Ombudsman did take action; it just did not take the action Plaintiff wanted. That is because Plaintiff's  
13 arguments lack legal merit in light of the facts that Ruby Lakes Estates is a common-interest community, by  
14 definition.

15 ***1. The Caughlin Ranch and Lakeland Property Owners Decisions Are***  
16 ***Inapplicable.***

17 Ruby Lakes Estates is a common-interest community governed by the provisions of NRS Chapter 116  
18 *because of legislative mandate*, not because of any attempt by the members of the Association to add, change  
19 or enforce a covenant in the CC&Rs. Plaintiff has obviously done a 180 degree turn in its position, as  
20 numerous communications from Mr. Essington, written during the past seven (7) years, clearly recognize the  
21 validity of the Association and the applicability of NRS Chapter 116. The Association was properly formed  
22 and is a presently existing and valid community Association charged with the power and responsibilities  
23 given to it by NRS Chapter 116, regardless of the provisions of the CC&Rs. The *Caughlin Ranch* and  
24 *Lakeland Property Owners* decisions are simply inapplicable to the instant facts.

25 The analogy previously given regarding the enactment of a 55 mph speed limit on a road on which  
26 the Plaintiff/Essingtons historically drove 80 mph, is particularly appropriate. Just as Plaintiff/Essingtons  
27 would be required to comply with the newly enacted speed limit which they had no previous notice of,  
28 Plaintiff/Essingtons are required to recognize and comply with the provisions of NRS Chapter 116 when the

1 community clearly meets the statutory definition of a common interest community. It's the law. Artemis and  
2 the Essingtons cannot simply choose to ignore the provisions of NRS Chapter 116, just as they could not  
3 ignore the speed limit, imposed by law, after they purchased the property.

4           2.       ***NRS 116.021, as amended in 2009, is Irrelevant. RLEHOA is a Common-***  
5                   ***Interest Community By Definition.***

6           Citing the 2009 amendments to NRS 116.021, Plaintiff asserts that RLEHOA does not meet the  
7 definition of a common-interest community for purposes of the application of NRS Chapter 116, because the  
8 real estate of the community must be "described in a declaration." Plaintiff's arguments fail for a number  
9 of reasons.

10           First, the real estate of the community is described in the declaration; the Plat Map is part of the  
11 Declaration. NRS 116.2109. The Plat Map clearly describes the lots, including the lot deeded to the  
12 Association in 2007<sup>4</sup> as common area by the Declarant, as well as the roadways. In 1999, when NRS  
13 Chapter 116 was made applicable to the Ruby Lakes Estates as a community created prior to 1992, the Ruby  
14 Lakes Estates subdivision met the statutory definition of a common interest community, not because there  
15 were just CC&Rs, of which Plaintiff was aware,<sup>5</sup> but because there was real estate in the form of roadways  
16 which the homeowners were required to maintain<sup>6</sup>. These roadways are described in the Plat Map and the  
17 Plat Map is part of the Declaration, *as a matter of law*.

18           The definition of "common-interest community" as provided by NRS 116.021, as it existed in 1999,  
19 not as revised in a 2009 amendment, is the relevant statute which must be considered. In 1999, "common-

---

20  
21           <sup>4</sup> Prior to January 2006 when the Articles of Incorporation were filed, there was no legal entity  
22 capable of holding title to the Association's common area.

23           <sup>5</sup> Even though Mrs. Essington states otherwise, Plaintiff was charged with knowledge of the  
24 CC&Rs when it purchased Lot G-6. The CC&Rs were shown as an encumbrance on the Policy of Title  
25 Insurance. See Exhibit "3", 00021-00027. The numerous communications of Mr. Essington also  
26 demonstrate Plaintiff's knowledge of the CC&Rs and the obligations of the owners to maintain the  
27 roads.

28           <sup>6</sup> Contrary to Plaintiff's arguments, RLEHOA has never asserted that Ruby Lakes Estates meets  
the definition of a common-interest community simply because there are recorded CC&Rs. Plaintiff's  
arguments to the contrary are without merit and irrelevant, as are its discussions of the Opinion of the  
Attorney General and the 2009 Amendments to NRS 116.021. NRS 116.2101 does require the  
recording of a declaration as a foundational requirement of a common-interest community association.

1 interest community" was defined as "real estate with respect to which a person, by virtue of his ownership  
2 of a unit, is obligated to pay for . . . other than that unit." See NRS 116.021 (substituted in revision for NRS  
3 116.110323) as enacted in 1991 pursuant to Assembly Bill 221. The roadways and fixtures attached to the  
4 property described in the Plat Map, are that real estate, not just the CC&Rs. In 1999, "Real estate" was  
5 defined in NRS 116.110378 as:

6 . . . any leasehold or other estate or *interest in, over, or under the land*, including structures,  
7 fixtures and other improvements and interests that by custom, usage or law pass with a  
conveyance of land though not described in the contract of sale or instrument of conveyance...  
[Emphasis added.]

8 The same definition was in effect in 2006 as NRS 116.081 when the Articles of the Association were filed.

9 The statements of Stephen Wright regarding the maintenance obligations of the homeowners, as well  
10 as the fact that the roadways were never accepted for maintenance by Elko County, yet are required to be  
11 maintained, put the Ruby Lakes Estates community squarely within the definition of a common-interest  
12 community. This was the position of counsel, Robert Wines, and his opinion has been confirmed by both the  
13 Ombudsman's Office and Judge Leonard Gang. See Exhibits "4", "47" and "49".

14 Contrary to every argument advanced by Plaintiff, NRS 116.021, as amended in 2009, is completely  
15 inapplicable to Ruby Lakes Estates, just as it is inapplicable to any other common-interest community whose  
16 declaration of covenants, conditions and restrictions was recorded prior to the effective date of the  
17 amendment. The 2009 amendment to NRS 116.021, was intended to require common-interest communities  
18 created *after* the statute's effective date, to specifically describe the real property in the declaration. The  
19 amendment has no effect upon common-interest communities, like Ruby Lakes Estates, that do include the  
20 real estate in the plat, *a part of the declaration*, or ones created prior to 1992. All of Plaintiff's discussion  
21 of the legislative intent regarding the 2009 amendment is irrelevant and does not change the applicability of  
22 Chapter 116.

23 Furthermore, the 2009 amendment made to NRS 116.021 was obviously intended only to address  
24 communities that had no maintenance responsibilities for real estate. It certainly was not intended to create  
25 a situation where roads would be completely abandoned with no maintenance, creating dangerous fire and  
26 safety conditions for the public and members of the community who depend on those roads. The Ruby Lakes  
27 Estates Fire Risk and Hazard Assessment report makes this danger quite clear. See Exhibit "65".  
28

1 Plaintiff's arguments also fail because even if the Court were to construe the CC&Rs as not describing  
2 the real estate, as a matter of law, the CC&Rs of Ruby Lakes Estates are *not required* to describe the real  
3 estate. Plaintiff simply does not understand, or chooses to ignore, the provisions of NRS 116.1201(3)(b).  
4 This statute specifically provides that the provisions of "this Chapter do not: . . . (b) Require a common-  
5 interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to  
6 116.2122, inclusive;. . ." NRS 116.2105 specifies the contents of the Declaration. However, as a pre-1992  
7 community, RLEHOA is not required to comply with these requirements. In essence, there is no requirement  
8 that the CC&Rs contain a description of the real estate included in the common-interest community. *See*  
9 NRS 116.2105(1)(c). This is especially true where the real estate was depicted in the Declaration, the plat.  
10 Furthermore, as to pre-1992 communities, there is no requirement that the Declaration contain a description  
11 of "any real estate that is or must become common elements." NRS 116.2105(1)(f).<sup>7</sup>

12 The provision of NRS 116.021 is not an affirmative obligation; it is a definition. The affirmative  
13 obligation to describe the real estate is found in NRS 116.2105(1)(c) and such requirement is not applicable  
14 to a pre-1992 Association. In fact, the 2009 change to the definition of a common-interest community is not  
15 applied to any Association formed before January 1, 2010. It can't be. If Artemis was correct, there would  
16 be ever changing requirements for what constitutes a common- interest community; one year a community  
17 would qualify and the next it would not? Such a result would be absurd.

18 Plaintiff's argument that RLEHOA is not a common-interest community because it fails to meet the  
19 definition of a common-interest community as such definition exists as of January 1, 2010, is simply wrong  
20 and fails, *as a matter of law*. RLEHOA met the definition in 1992 and 1999 and that is the foundational  
21 requirement.

22 **3. Plaintiff's Arguments Regarding NRS 116.3101 Also Fail, As A Matter of Law.**

23 Citing NRS 116.3101, Plaintiff asserts that "RLEHOA is an invalid association [because] RLEHOA  
24 was not organized before the 'first unit in the common-interest community [was] conveyed'." *See* Opposition  
25 16:24-26. Plaintiff's arguments regarding the applicability of NRS 116.3101 defy logic and legal reasoning.

26 NRS 116.3101 is clearly not applicable to Ruby Lakes Estates as a pre-1992 community. How could  
27

---

28 <sup>7</sup> However, as noted, RLEHOA's Declaration does include the real estate as depicted in the plat.

1 a common-interest community be compelled to comply with a provision that was not in effect when its Plat  
2 Map and CC&Rs were recorded and the common-interest community was created? Plaintiff's reasoning  
3 defies logic. Interestingly, Plaintiff asserts that NRS Chapter 116 is not applicable to Ruby Lakes Estates,  
4 while at the same time Plaintiff asserts that Chapter 116 required the formation of the entity in 1989 - two  
5 years before Chapter 116 even existed, and ten (10) years before Chapter 116 was made applicable to Ruby  
6 Lakes Estates. As with its contention the roads should not be maintained by the Association, this argument  
7 is nonsensical.

8       Once again Plaintiff's arguments ignore the fact that some eight years after enacting NRS Chapter  
9 116, the Nevada legislature made certain provisions of NRS Chapter 116 retroactively applicable to pre-1992  
10 communities. This was because the Legislature wanted *all* communities in which there was a collective  
11 responsibility for payment of "real estate", other than the individual units, to have the protections afforded  
12 by NRS Chapter 116. This is made clear by NRS 116.1201(1). Plaintiff certainly availed itself of the rights  
13 and protections afforded by NRS Chapter 116 by having Mr. Essington serve as a Board member of the  
14 Association for over four (4) years, attend annual meetings from 1997 through 2009, conduct compliance  
15 inspections, direct the preparation of Reserve Studies, prepare and approve budgets, levy and collect  
16 assessments, and otherwise govern and direct the actions of the community association. *See* Exhibits "10",  
17 "11", "12", "13", "27", "28", "29", "30", "31", "32", "35", "36", "48", "57", "58", "59", "60", "61", "62", "63"  
18 and "64".

19       Plaintiff's interpretation of NRS 116.3101(1) would mean that a community created prior to 1992  
20 could never form an Association. Such a construction is directly contrary to NRS 116.1201(1) and  
21 NRS 116.3101(3)(a). Plaintiff's construction of the statutes is non-sensical and would mean that a  
22 requirement that was not even in existence in 1992 would forever be a bar to filing of the articles of a  
23 community association. Once the legislature decided that Chapter 116 would apply to *all* common-interest  
24 communities within the state, including pre 1992-communities, the practical effect must be that the  
25 community take those steps to form an entity if one had not been formed before.

26       Further, NRS 116.3101 does not state that absent formation at the time of conveyance of the first unit,  
27 the ability or requirement to form an Association is forever lost. In this case, the provisions of NRS Chapter  
28 116 were not even in effect as to Ruby Lake Estates until 1999. Notwithstanding that fact, in accordance with

1 his expressed intent, in 1997 Mr. Wright formed the Ruby Lakes Estates Landowners Association and the  
2 community thereafter functioned as a common-interest community adopting budgets, collecting assessments,  
3 and maintaining the roadways and other common assets.

4 Further, under the Plaintiff's analysis, a developer who failed to file Articles of Incorporation for a  
5 community association could avoid the obligations of Chapter 116 in perpetuity. Such a result would be  
6 nonsensical and clearly contrary to the legislative intent to make the protections and requirements of Chapter  
7 116 applicable to members of all common-interest communities.

8 Plaintiff's statement that NRS 116.3101 is a "codification of common law" is in error and Plaintiff  
9 cites no authority for this statement. There is virtually nothing in NRS Chapter 116 that is a codification of  
10 common law. Moreover, while creative, Plaintiff's argument that "a covenant to create a homeowner's  
11 association must exist before the first lot conveyance" within the CC&Rs, is also wrong. Again, Plaintiff  
12 cites no legal authority for such a statement.

13 Ruby Lakes Estates met the definition of a common-interest community both in 1992 when NRS  
14 Chapter 116 went into effect, and in 1999, when NRS Chapter 116 was made applicable to pre-1992  
15 communities. Therefore, compliance with NRS Chapter 116 *is mandated by law*, and the powers and duties  
16 of the Association are created by statute, not necessarily by expressed covenant contained in the CC&Rs.  
17 Unlike Nevada, neither Arizona nor North Carolina have adopted the Uniform Common-Interest Ownership  
18 Act, and the decisions in *Dreamland Villa Cmty. Club, Inc., v. Raimy*, 224 Ariz. 42, 226 P.3d 411 (2010),  
19 and *Armstrong v. Ledges Homeowners Ass'n, Inc.* 360 N.C. 547 (2006), cited by Plaintiff, are inapplicable  
20 to the case at bar.

21 Once a community meets the definition of a common-interest community, the requirements and  
22 protections of NRS Chapter 116 apply, regardless of the provisions of the Declaration. This is black letter  
23 law. NRS 116.1206(1)(a)(b) specifically provides:

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

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

(b) Is superseded by the provisions of this chapter, regardless of whether the provision  
contained in the declaration, bylaw or other governing document became effective before the

1 enactment of the provisions of this chapter that is being violated.

2 In sum, there is nothing in Nevada law which precludes the filing of articles of incorporation for a  
3 community association at any time, even after the first conveyance of a unit by the Declarant. This is  
4 especially true where there is the clear necessity of a community association for purposes of maintaining  
5 common roadways and other common elements, and when the members of the community have been  
6 conducting themselves as a members' association for purposes of levying assessments and maintaining the  
7 common areas for many years.

8 **4. Assessments Have Been Properly Levied by the Association as Required by**  
9 **NRS 116.3115.**

10 Plaintiff's assertion that "NRS 116.3102 does not allow RLEHOA to levy mandatory assessments  
11 against lot owners", is clearly wrong. To the contrary, NRS 116.3102 (1)(b) *requires* RLEHOA to adopt  
12 budgets and collect assessments for common expenses from the units owners. Furthermore, NRS 116.3115  
13 governs the mandatory imposition of assessments. This statute even confirms the propriety of the declarant,  
14 Stephen Wright, paying all common expenses before the association makes an assessment. *See* NRS  
15 116.3115(1). Furthermore, Plaintiff's argument that Mrs. Essington thought assessments were completely  
16 "voluntary", is undermined by the provisions of NRS 116.3115 which *requires* assessments to be assessed  
17 against all owners. "Voluntary" assessments are prohibited. Plaintiff's claims as to Mrs. Essington's belief  
18 that assessments were "voluntary" are not credible by reason of Plaintiff's own assertions and actions  
19 regarding the application of NRS Chapter 116. *See, e.g.,* Exhibit "16", Exhibit "27", Exhibit "31", and  
20 Exhibit "32".

21 **G. The Statements Made by Elizabeth Essington In Her Affidavit Are Contravened**  
22 **by Admissible Evidence.**

23 As demonstrated by the uncontroverted evidence submitted by the Association in support of its  
24 Motion for Summary Judgment, its Opposition to Plaintiff's MSJ, and this Reply, many of the statements  
25 made by Elizabeth Essington in her Affidavit are simply not true.<sup>8</sup> Much of this evidence was created by  
26 Plaintiff's agent, Mel Essington. Furthermore, Mrs. Essington's Affidavit is fundamentally suspect given the

---

27 <sup>8</sup> As noted above, the Court could reject the Affidavit in its entirety. *See* Nevada Pattern Jury  
28 Instructions 2.07.



1 fact it was not made in connection with Plaintiff's MSJ but rather, given only after RLEHOA pointed out in  
2 its Opposition, that Plaintiff's Motion for Summary Judgment must be denied for failure to meet the  
3 requirements of NRCP 56(e).

4 What follows is a brief analysis of the statements made by Mrs. Essington's in her Affidavit, as  
5 contradicted by the undisputed evidence.

6 **Statement No. 3.** Mrs. Essington's statement regarding her lack of knowledge of the CC&Rs at the  
7 time of purchase of Lot G-6, is contradicted by the terms and conditions of the Real Estate Purchase  
8 Agreement executed by Artemis for Lot G-6, as well as the Deed given to Artemis by the Wrights. *See*  
9 Exhibit "54" 00014-00020. Artemis' Purchase Agreement states that title to Lot G-6 will be conveyed  
10 subject to "conditions, covenants, easements, encumbrances, exceptions, reservations, restrictions, rights, and  
11 rights of way of record." *Id.* at 00014. The Deed states that title is conveyed "subject to covenants,  
12 conditions, restrictions, exceptions and reservations, easements, encumbrances, leases or licenses, rights and  
13 rights of way of record, if any." *Id.* at 00019. Finally, Artemis' Policy of Title Insurance specifically  
14 references the recorded CC&Rs for Ruby Lakes Estates as Exception No. 10. *See* Exhibit "3" at 00027. There  
15 is no truth to Mrs. Essington's statement she had no knowledge of the CC&Rs.<sup>9</sup>

16 **Statement No. 4:** Mrs. Essington states: "There was never any mention or disclosure by Stephen or  
17 Mavis Wright, nor any documentation that would support the creation of a common interest community then  
18 or at any time in the future." This statement is also contradicted by the Affidavit testimony of Stephen  
19 Wright. *See* Exhibit "53". More importantly, it is shown to be false by the 2005 statement of Mel Essington  
20 that the intent of Mr. Wright to create an association was contained in the sales literature. *See* Exhibit "11"  
21 at RLE 021A. Despite numerous requests, Mrs. Essington has refused to produce any records for Artemis  
22 supporting its purchase of Lot G-6, including the sales literature referenced by Mr. Essington. This is a  
23 violation of NRCP 16.1 as is Plaintiff's failure to produce the "variance" Plaintiff claims was part of her  
24 Purchase Agreement. *See* Exhibit "75".

25 **Statement No. 5:** Despite Mrs. Essington's statement that "in 2006, Mel retired and began living  
26

---

27 <sup>9</sup> She even obtained a waiver or variance from enforcement of the CC&Rs. *See* Exhibit "75". If  
28 there were no CC&Rs, why on earth would she need a waiver or variance? Of course, the answer is that  
Mrs. Essington is not to be believed.

1 with me at my residence in Ruby Lakes Estates," Mr. Essington was obviously involved and knowledgeable  
2 about the 1994 purchase of Lot G-6. This knowledge is evidenced by his August 5, 2005 letter in which he  
3 encouraged all homeowners to revitalize the association in order to carry out the responsibilities of  
4 maintenance as set forth in the CC&Rs and in the "sales literature." See Exhibit "11", RLE 021A-021D.  
5 Mr. Essington was also involved enough with the Association to get himself nominated and elected to the  
6 Board of Directors in 2007.

7 **Statement No. 7.** Mrs. Essington's assertion that she never attended any homeowner meeting is  
8 irrelevant to the facts and the law. The evidence of Mr. Essington's actions and statements is overwhelming  
9 and not disputed by Plaintiff or Mrs. Essington. Mr. Essington was the authorized agent of Artemis. Mrs.  
10 Essington admitted this in her deposition. See Exhibit "8" at 78:11-14; 92:17-21. Therefore, there is no  
11 question presented regarding the agency of Mr. Essington to act on behalf of Artemis. All of his statements  
12 and actions must be attributed to Plaintiff. These statements and actions clearly undermine all of Plaintiff's  
13 claims for declaratory relief.

14 **Statement No. 8:** Mrs. Essington's statement that she "believed that a voluntary association may be  
15 appropriate if people wanted to contribute to road maintenance," is less than credible given the fact that in  
16 2005, she and her husband prepared Articles of Incorporation for a community association. See Exhibit "16",  
17 RLE 143. Mrs. Essington's statement is also undermined by the fact James Copenhaver, who represented  
18 both of the Essingtons, threatened to file these Articles of Incorporation if the other members did not file  
19 Articles. See Exhibit "4", Wines' Affidavit. The fact that Mr. Copenhaver represented both Mr. and Mrs.  
20 Essington is confirmed by Mrs. Essington's deposition testimony. See Exhibit "8", 12:5-6, 13:20-22; 18:12-  
21 14; 81:10-11. Mr. Essington also confirmed that Mr. Copenhaver represented both he and Mrs. Essington.  
22 See Exhibit "22", 11: 8-12, 15-17. These admissions are directly contrary to the statements made by Plaintiff  
23 in its Reply to RLEHOA's Opposition to Plaintiff's MSJ. See Artemis' Reply, 23:21-28.

24 Finally, the fact that the Association was not "voluntary" but mandated by NRS Chapter 116, is  
25 undercut by numerous communications sent by Mel Essington. Mrs. Essington's "belief" regarding these  
26 matters is completely irrelevant. Plaintiff is bound by the acts and admissions of its agent, Mel Essington.  
27 See, for example, Exhibit "11", RLE 021A-021D; Exhibit "27", RLE 053; Exhibit "29", RLE 076; Exhibit  
28 "31", RLE 076A; Exhibit "32", RLE 078-080.

1       **Statement No. 14.** Mrs. Essington's statements regarding what she was orally told by the  
2 Ombudsman's office is clearly inadmissible hearsay and cannot be considered as evidence of the truth of the  
3 matters asserted therein. *See* NRS 51.035. Moreover, such alleged oral statements are directly contrary to  
4 what was written by the Ombudsman. *See* Exhibit "49".

5       **Statement No. 16:** Again, Mrs. Essington deliberately misstates the contents of Mr. Wines' June  
6 18, 2010, letter to the Ombudsman's Office of the Nevada Real Estate Division. *See* Exhibit "5". In no  
7 portion of the letter does Mr. Wines state "his opinion that the Architectural Review Committee" was  
8 obligated to maintain the 'public (roads)' within the subdivision. No mention of the Architectural Review  
9 Committee is made in the letter. Mr. Wines' letter clearly states, in part,

10       "Based upon my discussions with Steve, particularly that Elko County had required him to  
11 prepare and record Covenants, Conditions and Restrictions (CCR's) before they would  
12 approve the Subdivision Map, because the County had accepted the roads within the  
13 Subdivision for Public Use, but not for Public Maintenance, it was determined that the entity  
14 would have to comply with NRS Chapter 116. The CCR's [sic] contained a requirement that  
an organization be created to not only review architectural plans, but also to 'promulgate and  
adopt reasonable rules and regulations in order to carry out its purpose.' The CCR's [sic] also  
obligate the entity to 'maintain' the subdivision."

15       **Statement No. 17.** Contrary to Mrs. Essington's implications, Mel Essington never voluntarily  
16 withdrew as a Board member. Mr. Essington was asked to resign because he refused to provide written  
17 evidence of his authority to act on behalf of Artemis and Artemis had not paid its assessments. *See* Exhibit  
18 "2", RLE 118, 131. Therefore, in accordance with the Bylaws which Mr. Essington approved as the purported  
19 owner of Lot G-6, Artemis was ineligible to have its representative serve on the Board of Directors. *See*  
20 Exhibit "23". RLE 007-010; 00040-00043. *See also* Exhibit "12", at RLE 024; Exhibit "67", RLE 117D-  
117E.

21       **Statement No. 19.** In speaking about the notice Plaintiff received regarding its "Delinquent  
22 Assessment Lien", Plaintiff fails to acknowledge that she was given notice of the Association's statutory lien  
23 for unpaid assessments and its collection policy long before Artemis/the Essingtons stopped paying  
24 assessments. In a letter sent to all homeowners in August 2006 following the Annual Meeting of Members  
25 which Mr. Essington attended, she was so advised. The letter, attached as Exhibit "55", RLE 029(1)-029(2),  
26 states in pertinent part:

27       "The Association will enforce unpaid charges by commencing a collection action,  
28 obtaining a judgment as a lien and doing an execution sale against any delinquent lot. You

1 should be aware that any costs, charges or fees incurred for enforcing the indebtedness will  
2 be assessed to the lot owner. It would be unfair to make the other lot owners pay the costs  
association with the collection of fees."

3 See Exhibit "55", RLE 029(1)-029(2).

4 **Statement No. 20.** Mrs. Essington's statements about the oral complaints of other homeowners  
5 is clearly inadmissible hearsay and cannot be used as proof of the matters asserted therein. See NRS 51.035.

6 The Court should disregard the entire Affidavit testimony of Mrs. Essington offered in support of  
7 Plaintiff's Motion for Summary Judgment and Plaintiff's Reply. When the credibility of a witness has  
8 legitimately been called into question, the Court may disregard the entire testimony of that witness or any  
9 portion of the testimony that is not proved by other evidence. See Nevada Pattern Jury Instructions 2.07. The  
10 evidence produced, including Mrs. Essington's deposition testimony given under penalty of perjury,  
11 contradicts virtually all of Mrs. Essington's Affidavit testimony.

12 **II.**  
13 **CONCLUSION**

14 Based upon the uncontested facts and the application of those facts to the law, the Association is  
15 entitled to summary judgment as to each, every and all of Plaintiff's claims for relief. Artemis fails to assert  
16 any claim that is meritorious. The Association urges the Court to reject the Plaintiff's claims to abandon the  
17 needed road maintenance and avoid the dangerous situation that would be created by lack of such  
18 maintenance. The owners within Ruby Lake Estates should be assured of the continued maintenance of all  
19 common elements to insure a safe community.

20 DATED this 3<sup>rd</sup> day of July, 2012.

21 KERN & ASSOCIATES, LTD.

22 

23 GAYLE A. KERN, ESQ.

24 NEVADA BAR #1620

25 5421 Kietzke Lane, Suite 200

26 RENO, NEVADA 89511

27 Telephone: 775-324-5930

28 Fax: 775-324-6173

Email: [gaylekern@kernltd.com](mailto: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.,  
3 and that on this day I served the foregoing document described as follows:

4 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S  
5 REPLY TO PLAINTIFF'S OPPOSITION TO RLEHOA'S  
6 MOTION FOR SUMMARY JUDGMENT

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 mailing  
8 in the United States Mail, at Reno, Nevada, first class mail, postage paid, following ordinary  
business practices, addressed to:

9                      Via facsimile transmission

10                      Personal delivery, upon:

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

12  
13 Travis Gerber, Esq.  
Gerber Law Offices, LLP  
14 491 4<sup>th</sup> Street  
Elko, NV 89801

15 DATED this 3<sup>rd</sup> day of July, 2012.

16 *Teresa A. Gearhart*  
17 TERESA A. GEARHART  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## INDEX OF EXHIBITS

| EXHIBIT NO. | DESCRIPTION   | BATES NO.               |
|-------------|---|-------------------------|
| 53          | Affidavit of Stephen Wright dated June 28, 2012                             |                         |
| 54          | Real Estate Purchase Agreement dated July 26, 1993, and Deed to Artemis     | 00014 - 00020           |
| 55          | Letter from Robert J. Wines, Esq. to Steve Wright dated November 19, 1999   | RLE 019E - RLE 019P     |
| 56          | RLEHOA letter to members dated August 21, 2006                              | RLE 029(1) - RLE 029(2) |
| 57          | RLEHOA Sign in Sheet for August 9, 2008 Members' Meeting                    | RLE 061A - RLE 061C     |
| 58          | RLEHOA Board of Directors Meeting Minutes, October 17, 2008                 | RLE 080A - RLE 080D     |
| 59          | RLEHOA Board of Directors Meeting Minutes, January 16, 2009                 | RLE 081A - RLE 081D     |
| 60          | RLEHOA Board of Directors Meeting Minutes, April 17, 2009                   | RLE 081E - RLE 081G     |
| 61          | RLEHOA Board of Directors Meeting Minutes, July 17, 2009                    | RLE 101A - RLE 101C     |
| 62          | RLEHOA Sign in Sheet for August 8, 2009 Members' Meeting                    | RLE 105E - RLE 105G     |
| 63          | RLEHOA Board of Directors Meeting Minutes, October 16, 2009                 | RLE 105H - RLE 105J     |
| 64          | RLEHOA Board of Directors Meeting Minutes, January 15, 2010                 | RLE 111J - RLE 111L     |
| 65          | Ruby Lake Estates Fire Risk and Hazard Assessment                           | RLE 111A - RLE 111I     |
| 66          | RLEHOA Board of Directors Meeting Minutes, April 16, 2010                   | RLE 117A - RLE 117C     |
| 67          | RLEHOA Board of Directors Meeting Minutes, April 16, 2010 (Special Meeting) | RLE 117D - RLE 117E     |
| 68          | RLEHOA Board of Directors Meeting Minutes, July 16, 2010                    | RLE 128B - RLE 128D     |

| EXHIBIT NO. | DESCRIPTION  | BATES NO.              |
|-------------|--|------------------------|
| 69          | RLEHOA Board of Directors Meeting Minutes,<br>October 15, 2010   | RLE 133A - RLE<br>133C |
| 70          | RLEHOA Board of Directors Meeting Minutes,<br>January 21, 2011   | RLE 134C - RLE<br>134E |
| 71          | RLEHOA Board of Directors Meeting Minutes,<br>April 22, 2011   | RLE 145A - RLE<br>145D |
| 72          | RLEHOA Board of Directors Meeting Minutes,<br>July 15, 2011  | RLE 145E - RLE<br>145G |
| 73          | RLEHOA Board of Directors Meeting Minutes,<br>October 14, 2011   | RLE 145H - RLE<br>145J |
| 74          | RLEHOA Board of Directors Meeting Minutes,<br>January 22, 2012   | RLE 145K - RLE<br>145M |
| 75          | Artemis Exploration Co.'s Request for Variance<br>dated July 12, 1993; MSW, Inc.'s Acceptance of<br>Variance dated July 29, 1993 | RLE 006A - RLE<br>006B |

FILED

2012 AUG -9 PM 1:43

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY *KJ*

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.

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  
10 Nevada Corporation,

11 Plaintiff,

12 vs.

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

15 Defendants.

16 RUBY LAKE ESTATES HOMEOWNER'S  
17 ASSOCIATION,

18 Counterclaimant,

19 vs.

20 ARTEMIS EXPLORATION COMPANY, a  
21 Nevada Corporation,

22 Counterdefendant.

23 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S  
24 SUPPLEMENT TO EXHIBITS TO MOTION FOR SUMMARY JUDGMENT

25 Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION ("the Association" or  
26 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Gayle A. Kern, Esq. of KERN &  
27 ASSOCIATES, LTD., hereby supplements exhibits to its Motion for Summary Judgment as follows:

28 Exhibit No. 76

Invoice for and payment of Road Work dated July 26, 2012  
Bates No. RLE 146

4 AA000029



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

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](mailto:gaylekern@kernltd.com)

Attorneys for Ruby Lake Estates Homeowners Association

CERTIFICATE OF SERVICE

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

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S  
SUPPLEMENT TO EXHIBITS TO MOTION FOR SUMMARY JUDGMENT

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

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

         Via facsimile transmission

         Personal delivery, upon:

         United Parcel Service, Next Day Air, addressed to:

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

DATED this 20<sup>th</sup> day of July, 2012.

  
TERESA A. GEARHART

EXHIBIT “76”

EXHIBIT “76”

CANYON CONSTRUCTION CO.  
P.O. BOX 2030  
ELKO, NV 89803  
775 738-2210

## Invoice 12-515-1

|  |  |
|--|--|
| Billed to:<br>RUBY LAKE ESTATES HOMEOWNERS<br>785 EAST GREG ST. #103<br>SPARKS, NV 89431 | Job: 12-515<br>RUBY LAKE ESTATES<br>GRAVEL ROAD WORK<br><br>FAX 775 356 6122 |
|--|--|

|                             |                |                  |
|-----------------------------|----------------|------------------|
| Invoice #: 12-515-1         | Date: 07/26/12 | Customer P.O. #: |
| Payment Terms: UPON RECEIPT | Salesperson:   |                  |
| Customer Code:              |                |                  |

Remarks:

| Quantity  | Description            | Unit | Unit Price | Amount   |
|-----------|------------------------|------|------------|----------|
| 10.000    | MOB/DEMOB: BLADE       | HR   | 142.00     | 1,420.00 |
| 5.000     | MOB/DEMOB: WATER TRUCK | HR   | 105.00     | 525.00   |
| 24.000    | 140G BLADE             | HR   | 122.00     | 2,928.00 |
| 24.000    | WATER TRUCK            | HR   | 105.00     | 2,520.00 |
| 1.000     | 8% FUEL SURCHARGE      | LS   | 443.58     | 443.58   |
| 1.000     | 10% MARKUP             | LS   | 783.85     | 783.85   |
| Subtotal: |                        |      |            | 8,620.23 |
| Total:    |                        |      |            | 8,620.23 |

RUBY LAKE ESTATES  
HOMEOWNERS ASSOCIATION

1103

Bank of America 94-72  
1224

PAY AMOUNT OF Eight thousand six hundred twenty three DOLLARS

PAY TO THE ORDER OF Canyon Construction

DATE 7/26/12 DESCRIPTION Roads CK NO 1103 CHECK AMOUNT 8620.23

P.O. Box 2030  
Elko, NV 89803

1103

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 AUG 14 PM 12: 01

ELKO CO DISTRICT COURT

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

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  
10 Nevada Corporation,

11 Plaintiff,

12 vs.

13 RUBY LAKE ESTATES HOMEOWNER'S  
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  
22 **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S**  
**SECOND SUPPLEMENT TO EXHIBITS TO MOTION FOR SUMMARY JUDGMENT**

23 Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION ("the Association" or  
24 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Gayle A. Kern, Esq. of KERN &  
25 ASSOCIATES, LTD., hereby supplements the exhibits to its Motion for Summary Judgment as follows:

26 Exhibit No. 77 Affidavit of Michael Wayne Mason;

27 Exhibit No. 78 Affidavit of Shelly Renee Mason.

28  
4 AA000034

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

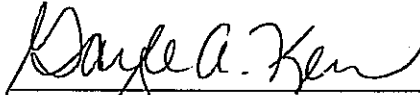
**AFFIRMATION**

**Pursuant to NRS 239B.030**

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

DATED this 13 day of August, 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](mailto:gaylekern@kernltd.com)

Attorneys for Ruby Lake Estates Homeowners Association

**CERTIFICATE OF SERVICE**

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

**RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S  
SECOND SUPPLEMENT TO EXHIBITS TO MOTION FOR SUMMARY JUDGMENT**

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

X

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

                     Via facsimile transmission

                     Personal delivery, upon:

                     United Parcel Service, Next Day Air, addressed to:

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

DATED this 13<sup>th</sup> day of August, 2012.

*Teresa A. Gearhart*  
TERESA A. GEARHART

EXHIBIT “77”

EXHIBIT “77”



1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

11 vs.

**AFFIDAVIT OF MICHAEL WAYNE  
MASON**

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 STATE OF NEVADA

23 COUNTY OF CLARK

} ss:  
}

24 That your Affiant, Michael Wayne Mason, is an adult over the age of eighteen (18) years, is not  
25 acting under any impairment or disability, and if called to testify, could and would testify competently to  
26 the matters set forth herein.

27 1. I am the owner of Lot D-6 in Ruby Lake Estates, according to the Official Plat thereof,  
28 recorded September 15, 1989 in the Official Records of Elko County, Nevada as File No. 281674. I

1 purchased my first lot in Ruby Lake Estates in 2003.

2 2. On August 11, 2007, my wife and I attended the Board of Directors' and Annual Owners  
3 Meeting for members of the Ruby Lakes Estates Homeowners Association. Elizabeth Essington was  
4 present at this meeting, seated next to her husband, Mel Essington.

5 3. I distinctly recall Elizabeth Essington attending this meeting because her husband made  
6 derogatory comments about me in front of all members. My wife and I had placed a trailer upon Lot D-6  
7 pending our construction of a residence. Mr. Essington was upset about trailers being placed upon any  
8 properties in Ruby Lakes Estates and referred to me as "trailer trash" in front of all members of the  
9 Association who were present at the meeting. When he made this comment, I turned to look at Mel  
10 Essington and specifically remember seeing Elizabeth Essington seated next to her husband.

11 I, Michael Wayne Mason do hereby swear under penalty of perjury that the matters set forth herein  
12 are true and correct to the best of my knowledge and belief.

13 DATED: August 10, 2012

Michael Wayne Mason  
Michael Wayne Mason

15 SUBSCRIBED AND SWORN to before me  
16 this 10 day of August 2012.



17 Tracey E Haslem  
18 NOTARY PUBLIC

EXHIBIT “78”

EXHIBIT “78”

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.

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,

**AFFIDAVIT OF SHELLY RENEE MASON**

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 STATE OF NEVADA }

23 COUNTY OF CLARK }

ss:

24 That your Affiant, Shelly Renee Mason, is an adult over the age of eighteen (18) years, is not acting  
25 under any impairment or disability, and if called to testify, could and would testify competently to the  
26 matters set forth herein.

27 1. I am the owner of Lot D-6 in Ruby Lake Estates, according to the Official Plat thereof,  
28 recorded September 15, 1989 in the Official Records of Elko County, Nevada as File No. 281674. I

1 purchased my first lot in Ruby Lake Estates in 2003.

2 2. On August 11, 2007, my husband and I attended the Board of Directors' and Annual Owners  
3 Meeting for members of the Ruby Lakes Estates Homeowners Association. Elizabeth Essington was  
4 present at this meeting, seated next to her husband, Mel Essington.

5 3. I distinctly recall Elizabeth Essington attending this meeting because her husband made  
6 derogatory comments about my husband in front of all members. My husband and I had placed a trailer  
7 upon Lot D-6 pending our construction of a residence. Mr. Essington was upset about trailers being placed  
8 upon any properties in Ruby Lakes Estates and referred to my husband as "trailer trash" in front of all  
9 members of the Association who were present at the meeting. When he made this comment, I turned to look  
10 at Mel Essington and specifically remember seeing Elizabeth Essington seated next to her husband.

11 I, Shelly Renee SHELLY RENEE Mason do hereby swear under penalty of perjury that the matters  
12 set forth herein are true and correct to the best of my knowledge and belief.

13 DATED: August 10, 2012

Shelly Renee Mason  
Shelly Renee Mason

14  
15 SUBSCRIBED AND SWORN to before me

16 this 10 day of August 2012.

17 Tracey E. Haslem  
18 NOTARY PUBLIC



FILED

2012 AUG 23 AM 10:23  
ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY *fy*

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.

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  
10 Nevada Corporation,

11 Plaintiff,

12 vs.

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

15 Defendants.

16 RUBY LAKE ESTATES HOMEOWNER'S  
17 ASSOCIATION,

18 Counterclaimant,

19 vs.

20 ARTEMIS EXPLORATION COMPANY, a  
21 Nevada Corporation,

22 Counterdefendant.

23 **ORIGINAL AFFIDAVITS OF MICHAEL WAYNE MASON AND SHELLY RENEE MASON**  
24 **PREVIOUSLY FILED AS EXHIBITS TO RUBY LAKE ESTATES HOMEOWNER'S**  
25 **ASSOCIATION'S SECOND SUPPLEMENT TO EXHIBITS TO**  
26 **MOTION FOR SUMMARY JUDGMENT**

27 Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION ("the Association" or  
28 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Gayle A. Kern, Esq. of KERN &  
ASSOCIATES, LTD., hereby files the original Affidavits of Michael Wayne Mason and Shelly Renee Mason  
filed on August 14, 2012, as supplemental Exhibit Nos. 77 and 78 to its Motion for Summary Judgment.

///

4 AA000043

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2

3  
4

5

6

7

8

9

1

0

1

**CERTIFICATE OF SERVICE**

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

**ORIGINAL AFFIDAVITS OF MICHAEL WAYNE MASON AND SHELLY RENEE MASON  
PREVIOUSLY FILED AS EXHIBITS TO RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION'S SECOND SUPPLEMENT TO EXHIBITS TO  
MOTION FOR SUMMARY JUDGMENT**

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

X

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

                     Via facsimile transmission

                     Personal delivery, upon:

                     United Parcel Service, Next Day Air, addressed to:

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

DATED this 21<sup>st</sup> day of August, 2012.

  
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.

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.

**AFFIDAVIT OF MICHAEL WAYNE  
MASON**

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 STATE OF NEVADA )  
23 COUNTY OF CLARK ) ss:

24 That your Affiant, Michael Wayne Mason, is an adult over the age of eighteen (18) years, is not  
25 acting under any impairment or disability, and if called to testify, could and would testify competently to  
26 the matters set forth herein.

27 1. I am the owner of Lot D-6 in Ruby Lake Estates, according to the Official Plat thereof,  
28 recorded September 15, 1989 in the Official Records of Elko County, Nevada as File No. 281674. I

1 purchased my first lot in Ruby Lake Estates in 2003.

2 2. On August 11, 2007, my wife and I attended the Board of Directors' and Annual Owners  
3 Meeting for members of the Ruby Lakes Estates Homeowners Association. Elizabeth Essington was  
4 present at this meeting, seated next to her husband, Mel Essington.

5 3. I distinctly recall Elizabeth Essington attending this meeting because her husband made  
6 derogatory comments about me in front of all members. My wife and I had placed a trailer upon Lot D-6  
7 pending our construction of a residence. Mr. Essington was upset about trailers being placed upon any  
8 properties in Ruby Lakes Estates and referred to me as "trailer trash" in front of all members of the  
9 Association who were present at the meeting. When he made this comment, I turned to look at Mel  
10 Essington and specifically remember seeing Elizabeth Essington seated next to her husband.

11 I, Michael Wayne Mason do hereby swear under penalty of perjury that the matters set forth herein  
12 are true and correct to the best of my knowledge and belief.

13 DATED: August 10, 2012

Michael Wayne Mason  
Michael Wayne Mason

15 SUBSCRIBED AND SWORN to before me  
16 this 10 day of August 2012.



17 Tracey E Haslem  
18 NOTARY PUBLIC

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.

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 SHELLY RENEE MASON

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 CLARK )

24 That your Affiant, Shelly Renee Mason, is an adult over the age of eighteen (18) years, is not acting  
25 under any impairment or disability, and if called to testify, could and would testify competently to the  
26 matters set forth herein.

27 1. I am the owner of Lot D-6 in Ruby Lake Estates, according to the Official Plat thereof,  
28 recorded September 15, 1989 in the Official Records of Elko County, Nevada as File No. 281674. I

1 purchased my first lot in Ruby Lake Estates in 2003.

2 2. On August 11, 2007, my husband and I attended the Board of Directors' and Annual Owners  
3 Meeting for members of the Ruby Lakes Estates Homeowners Association. Elizabeth Essington was  
4 present at this meeting, seated next to her husband, Mel Essington.

5 3. I distinctly recall Elizabeth Essington attending this meeting because her husband made  
6 derogatory comments about my husband in front of all members. My husband and I had placed a trailer  
7 upon Lot D-6 pending our construction of a residence. Mr. Essington was upset about trailers being placed  
8 upon any properties in Ruby Lakes Estates and referred to my husband as "trailer trash" in front of all  
9 members of the Association who were present at the meeting. When he made this comment, I turned to look  
10 at Mel Essington and specifically remember seeing Elizabeth Essington seated next to her husband.

11 I, Shelly Renee SHELLY RENEE Mason do hereby swear under penalty of perjury that the matters  
12 set forth herein are true and correct to the best of my knowledge and belief.

13 DATED: August 10, 2012

Shelly Renee Mason  
Shelly Renee Mason

15 SUBSCRIBED AND SWORN to before me

16 this 10 day of August 2012.

17 Tracey E. Haslem  
18 NOTARY PUBLIC



1 Case No. CV-C-12-175

2 Dept. No. 2

FILED  
2013 FEB 12 PM 3:23  
ELKO CO DISTRICT COURT

CLERK DEPUTY 

3  
4  
5  
6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO  
8

9 ARTEMIS EXPLORATION COMPANY,  
10 a Nevada Corporation,

11 Plaintiff,

12 v.

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

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

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

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

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

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

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

25 **1. Law of Summary Judgment**

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

///

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

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

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

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

15 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and  
16 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the  
17 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729  
18 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).  
19 "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn  
20 from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving  
21 the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451  
22 (1985).

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

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

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

7 **2. Undisputed Material Facts**

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

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

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

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

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

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

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

27 Article I of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 subdivision, including Artemis.

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

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

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

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

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

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

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

1     **3.     Analysis**

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

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

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

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

23     ///

24             

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ///

25 ///

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

1   **4.   Order**

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

4                   DATED this 12 day of February, 2013.

5  
6                   

7   The Honorable Alvin R. Kacin  
8   District Judge/Department 2  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 CERTIFICATE OF MAILING

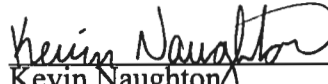
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District  
3 Judge, Fourth Judicial District Court, Department 2, and that on this 12 day of February, 2013,  
served by the following method of service:

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

7 a true copy of the foregoing document addressed to:

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

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

13   
14 Kevin Naughton

VC

Case No. CV-C-12-175

Dept. No. 2

*[Handwritten signature]*

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

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Plaintiff,

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

v.

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

Defendants.

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

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

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

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

///

///

///



1     **1.     Law of Summary Judgment**

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

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

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

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

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

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

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

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

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

11 **2. Undisputed Material Facts**

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

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

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

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

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

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

28 ///

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

4 Article I of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

1 under the CC&Rs.

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

7 **3. Analysis**

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

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

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

23 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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




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

5 **4. Order**

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

8  
9 DATED this 14 day of February, 2013.

10  
11   
12 The Honorable Alvin R. Kacin  
13 District Judge/Department 2  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

1 CERTIFICATE OF MAILING

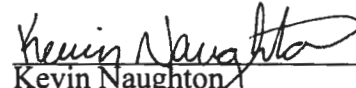
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District  
3 Judge, Fourth Judicial District Court, Department 2, and that on this 14 day of February, 2013,  
served by the following method of service:

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

7 a true copy of the foregoing document addressed to:

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

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

13   
14 Kevin Naughton  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORIGINAL

FILED

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

2013 MAR -1 PM 2:51

ELKO CO DISTRICT COU.

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA. *AK*

6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

**NOTICE OF ENTRY OF ORDER DENYING  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT**

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

13 Defendants.  
14

15 RUBY LAKE ESTATES HOMEOWNER'S  
16 ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
20 Nevada Corporation,

21 Counterdefendant.  
22

23 PLEASE TAKE NOTICE that on February 12, 2013, an Order Denying Plaintiff's Motion  
24 for Summary Judgment was entered by the Court. A copy of the Order Denying Plaintiff's Motion  
25 for Summary Judgment is attached hereto.  
26  
27  
28

///

///

///

///

///

///

4 AA000072

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

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

**NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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

- X   Placing an original or true copy thereof in a sealed envelope place for collection and mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid, following ordinary business practices, addressed to:
- Via facsimile transmission
- Via e-mail.
- Personal delivery, upon:
- United Parcel Service, Next Day Air, addressed to:

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

DATED this 20<sup>th</sup> day of February, 2013.

  
TERESA A. GEARHART

FILED

2013 FEB 12 PM 3:23

ELKO CO DISTRICT COURT

LEARN DEPUTY

Case No. CV-C-12-175

Dept. No. 2

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

ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

Plaintiff,

v.

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

Defendants.

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

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

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

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

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

**1. Law of Summary Judgment**

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

///

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

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

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

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

15 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and  
16 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the  
17 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729  
18 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).  
19 "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn  
20 from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving  
21 the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451  
22 (1985).

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

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

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

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

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

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

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

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

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

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

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

27 Article I of the CC&Rs provides:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subdivision, including Artemis.

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

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

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

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

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

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

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

1     **3.     Analysis**

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

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

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

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

23     ///

24             

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ///


25 ///

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

#### 4. Order

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

DATED this 12 day of February, 2013.

  
The Honorable Alvin R. Kacin  
District Judge/Department 2

1 CERTIFICATE OF MAILING

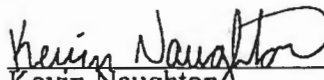
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District  
3 Judge, Fourth Judicial District Court, Department 2, and that on this 12 day of February, 2013,  
served by the following method of service:

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

7 a true copy of the foregoing document addressed to:

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

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

13   
14 Kevin Naughton



ORIGINAL

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

FILED

2013 MAR -1 PM 2:51

ELKO CO DISTRICT COURT

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a  
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

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

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

13 Defendants.

14 RUBY LAKE ESTATES HOMEOWNER'S  
15 ASSOCIATION,

16 Counterclaimant,

17 vs.

18 ARTEMIS EXPLORATION COMPANY, a  
19 Nevada Corporation,

20 Counterdefendant.

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

24 ///

25 ///

26 ///

27 ///

28 ///

4 AA000086

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

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

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

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

- ☒ Placing an original or true copy thereof in a sealed envelope place for collection and mailing in the United States Mail, at Reno, Nevada, first class mail, postage paid, following ordinary business practices, addressed to:
- ☐ Via facsimile transmission
- ☐ Via e-mail.
- ☐ Personal delivery, upon:
- ☐ United Parcel Service, Next Day Air, addressed to:

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


DATED this 20<sup>th</sup> day of February, 2013.

  
TERESA A. GEARHART

FILED

2013 FEB 14 PM 2:35

ELKO CO DISTRICT COURT

DEPUTY 

1 Case No. CV-C-12-175

2 Dept. No. 2

3  
4  
5  
6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO  
8

9 ARTEMIS EXPLORATION COMPANY,  
10 a Nevada Corporation,

11 Plaintiff,

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

12 v.

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

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

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

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

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

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

27 ///

28 ///

///

1     **1.     Law of Summary Judgment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

4 Article I of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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



1 under the CC&Rs.

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

7 **3. Analysis**

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

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

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

23 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

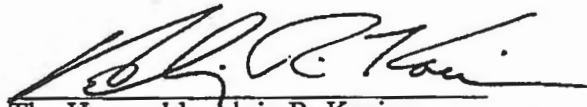
10 Upon the HOA's incorporation, the CC&Rs provided assurance to those who purchased property  
11 within Ruby Lakes Estates that there are legally enforceable standards and requirements with which  
12 neighboring homes must comport, making it foreseeable that the subdivision would continue to have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

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

5 **4. Order**

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

8  
9 DATED this 14 day of February, 2013.

10  
11   
12 The Honorable Alvin R. Kacin  
13 District Judge/Department 2  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

CERTIFICATE OF MAILING

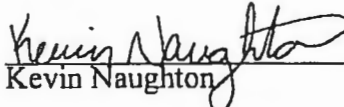
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District Judge, Fourth Judicial District Court, Department 2, and that on this 14 day of February, 2013, served by the following method of service:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Regular US Mail | <input type="checkbox"/> Overnight UPS                    |
| <input type="checkbox"/> Certified US Mail          | <input type="checkbox"/> Overnight Federal Express        |
| <input type="checkbox"/> Registered US Mail         | <input type="checkbox"/> Fax to # _____                   |
| <input type="checkbox"/> Overnight US Mail          | <input type="checkbox"/> Hand Delivery                    |
| <input type="checkbox"/> Personal Service           | <input checked="" type="checkbox"/> Box in Clerk's Office |

a true copy of the foregoing document addressed to:

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

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

  
Kevin Naughton

1 Case No. CV-C-12-175

2 Dept. No. 2

FILED

2015 SEP 11 PM 2:36

ELKO CO DISTRICT CLERK

CLERK DEPUTY KA

3  
4  
5  
6 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
7 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO  
8

9 ARTEMIS EXPLORATION COMPANY,  
10 a Nevada Corporation,

11 Plaintiff,

12 vs.

**ORDER RE: JOINDER OF NECESSARY  
PARTIES**

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

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

17 This is a dispute between a property owner and its homeowners association, the Ruby Lake  
18 Estates Homeowners Association (hereinafter, "the HOA").

19 On July 1, 2015, the Court held a hearing on an order to show cause. At the hearing, the parties  
20 were permitted to show any cause they had as to why all other owners of Ruby Lake Estates lots should  
21 not be made parties to this action. See NRCP 21 (parties may be dropped or added by order of court on  
22 motion of any party or of its own initiative at any stage of action and on such terms as are just); Crowley  
23 v. Duffrin, 109 Nev. 597, 603 (1993) (misjoinder or nonjoinder of county and Second Judicial District  
24 Court as parties to attorney's declaratory judgment action did not justify entry of summary judgment  
25 against attorney on claim for declaratory judgment; district court should have allowed attorney to amend  
26 complaint to join or delete party or parties, or effectuated amendment sua sponte); NRCP 19.

27 In advance of the hearing, the Court advised the parties it was prepared to rule on cross-motions  
28 for summary judgment on all of the counterclaims, including one for a declaration that the HOA is a  
valid homeowner's association under NRS Chapter 81 and NRS Chapter 116. However, the Court also

1 expressed concern that the HOA's claim for declaratory relief is not ripe for decision because other lot  
2 owners have not been added as necessary parties to this action pursuant to NRS 30.130, which broadly  
3 reads in relevant part: "When declaratory relief is sought, all persons shall be made parties who have or  
4 claim any interest which would be affected by the declaration, and no declaration shall prejudice the  
5 rights of persons not parties to the proceeding."

6 At the hearing, the HOA expressed no concern that a declaratory judgment in this action would  
7 not bind lot owners not made parties to this action. Incredibly, the HOA also expressed little concern  
8 that nonjoinder would leave open the possibility of separate litigation between it and other disgruntled  
9 lot owners. The HOA essentially argued that NRS 38.310 trumps NRS 30.130, and precludes  
10 application of the latter statute. The Court disagrees.

11 NRS 38.310(1) provides, in relevant part, that no civil action based upon a claim relating to  
12 "[t]he interpretation, application or enforcement of any covenants, conditions or restrictions applicable  
13 to residential property or any bylaws, rules or regulations adopted by an association" may be commenced  
14 in a Nevada court unless, among other things, it "has been submitted to mediation or, if the parties agree,  
15 has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive[.]" For the  
16 purposes of this statute, "[c]ivil action includes an action for money damages or equitable relief." NRS  
17 38.300(3). "Civil action" does not include "an action in equity for injunctive relief in which there is an  
18 immediate threat of irreparable harm, or an action relating to the title to residential property." Id.  
19 "Residential property" includes "real estate within a planned community subject to the provisions of  
20 chapter 116 of NRS[.]" one of the things the HOA must have the Court declare exists in this case to  
21 prevail on its claim for declaratory relief.

22 A plain reading of NRS 38.310 leads the Court to conclude that the HOA's counterclaim for  
23 declaratory relief is not related to the "interpretation, application or enforcement" of covenants,  
24 conditions or restrictions (hereinafter "CC&Rs") applicable to Ruby Lake Estates lots, or any bylaws,  
25 rules or regulations adopted by the HOA. Instead, the HOA has brought the counterclaim to have its  
26 very existence declared valid, a declaration necessary for the survival of its other claims that appear  
27 related to the "interpretation, application or enforcement" of the Ruby Lake Estates CC&Rs. In fact, the  
28 HOA has pled under the counterclaim simply that "[a] real controversy exists between the parties hereto



1 concerning whether it is a lawfully formed and validly existing non-profit common interest community  
2 association in good standing, organized for the purposes of administering and enforcing the CC&Rs and  
3 exercising all powers of a community association granted under the provisions of Nevada law, including  
4 Chapters 81 and 116 of the Nevada Revised Statutes.”

5 As the Court has previously noted, Ruby Lake Estates lot owners other than  
6 Plaintiff/Counterdefendant Artemis Exploration Company would certainly be affected if the HOA  
7 receives summary judgment on the counterclaim for declaratory relief. Further, as also previously noted,  
8 disposition of that counterclaim is the starting point for disposing of the others on motion for summary  
9 judgment. Artemis has not shown any cause why all other owners of Ruby Lake Estates lots should not  
10 be made parties. The Court will not ignore law that was not brought to its attention earlier by the parties  
11 for the sake of expediency, especially when it can declare the rights of all interested parties in this action  
12 and avoid future litigation that further burdens the judicial system. To the extent the HOA is concerned  
13 that its other counterclaims are related to the “interpretation, application or enforcement” of CC&Rs  
14 applicable to Ruby Lake Estates lots or any bylaws, rules or regulations adopted by the HOA, those  
15 counterclaims “may be severed and proceeded with separately” from the one for declaratory relief.  
16 NRCP 21. To the extent the HOA might argue that joinder of other lot owners is not appropriate  
17 because one, some, or all may not be interested in obtaining or defending against all relief demanded, the  
18 Court would not be persuaded. See NRCP 20(a) (under rule regarding permissive joinder of parties,  
19 plaintiff or defendant need not be interested in obtaining or defending against all relief demanded, and  
20 judgment may be given for one or more of plaintiffs according to their respective rights to relief, and  
21 against one or more defendants according to their respective liabilities).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

**For all of the foregoing reasons, the Court hereby enters the following orders:**

1. The parties described as “customers” in Exhibit A, which is attached hereto and incorporated by reference, are joined as parties as to the first claim for relief in the complaint and the sixth claim for relief in the counterclaim. NRCP 19(a).
2. If the parties cannot agree on their alignment, the Court shall align the parties on appropriate motion.

DATED this 11 day of September, 2015.

The Honorable Alvin R. Kacin  
District Judge/Department 2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

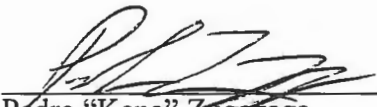
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District Judge, Fourth Judicial District Court, Department 2, and that on this 11 day of September, 2015, served by the following method of service:

|   |   |
|---|---|
| <input checked="" type="checkbox"/> Regular US Mail | <input type="checkbox"/> Overnight UPS                    |
| <input type="checkbox"/> Certified US Mail          | <input type="checkbox"/> Overnight Federal Express        |
| <input type="checkbox"/> Registered US Mail         | <input type="checkbox"/> Fax to # _____                   |
| <input type="checkbox"/> Overnight US Mail          | <input type="checkbox"/> Hand Delivery                    |
| <input type="checkbox"/> Personal Service           | <input checked="" type="checkbox"/> Box in Clerk's Office |

a true copy of the foregoing document addressed to:

Travis Gerber, Esq.  
*Attorney for Plaintiff*  
[Box in Clerk's Office]

Gayle Kern, Esq.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89801  
*Attorney for Defendant*  
[Regular US Mail]

  
\_\_\_\_\_  
Pedro "Kepa" Zugazaga

# Exhibit A

# Exhibit A

# Ruby Lake Estates Customer Contact List

June 23, 2015

| Customer                      | Bill to                                  | Primary Contact            |
|-------------------------------|--|----------------------------|
| A-1 - WEST                    | STEPHEN WEST 4188 FOOTHILL DR WINNE      | STEPHEN WEST               |
| A-2 - DIBONA                  | DOMINIC & EVELYN DIBONA 1000 NORTH R/    | DOMINIC & EVELYN DIBONA    |
| B-1 - BRENNAN                 | MICHAEL & MARNIE BRENNAN 3055 LYON L/    | MICHAEL & MARNIE BRENNAN   |
| B-2 - RICHARD BECKERITE       | RICHARD BECKERDITE D-2 3260 SUNRISE D    | MAURO & THERESA LOPEZ      |
| B-3 - DIBONA                  | DOMINIC DIBONA 1000 NORTH RANDALL RD     | DOMINIC DIBONA             |
| B-4 - NOBLE                   | BILL & CHERYL NOBLE B-4 HC 60 BOX 735 R  | BILL & CHERYL NOBLE        |
| B-5 - NOBLE                   | BILL & CHERYL NOBLE B-5 HC 60 BOX 735 R  | BILL & CHERYL NOBLE        |
| B-6 - NOBLE                   | BILL & CHERYL NOBLE B-6 HC 60 BOX 735 R  | BILL & CHERYL NOBLE        |
| B-7 - MOTES                   | AARON MOTES 493 W KEATS AVE FRESNO, CA   | 93704-2506                 |
| C-1 - HARMON                  | BILL & TERI HARMON C-1 HC 60 BOX 725 RU  | BILL & TERI HARMON         |
| C-10 - PERKS                  | LEROY & NORA PERKS 3030 BRENDA WAY (     | LEROY & NORA PERKS         |
| C-2 - LA CHICA                | JUAN & VICTORIA LA CHICA C-2 6557 PARK I | JUAN & VICTORIA LA CHICA   |
| C-3 - KEIFE                   | BRAD KEIFE 2975 LAKESHORE DR CARSON      | BRAD KEIFE                 |
| C-4 - SEVEN K PROPERTIES      | SEVEN K PROPERTIES C/O MIKE KEIFE 490(   | SEVEN K PROPERTIES         |
| C-5 - CECCHI                  | MIKE & KRIS CECCHI C-5 10890 OSAGE ROA   | MIKE & KRIS CECCHI         |
| C-6 - CECCHI                  | MICHAEL & KRIS CECCHI 10890 OSAGE ROA    | MICHAEL & KRIS CECCHI      |
| C-7 - CIRONE                  | WAYNE & ILA CIRONE 5775 WHITMAN ST W/    | WAYNE & ILA CIRONE         |
| C-8 - PERKS LEROY & NORA      | LEROY & NORA PERKS 3030 BRENDA WAY I     | LEROY & NORA PERKS         |
| C-9 - PERKS                   | LEROY & NORA PERKS 3030 BRENDA WAY (     | LEROY & NORA PERKS         |
| D-1 - KEIFE                   | BRAD KEIFE 2975 LAKESHORE DR CARSON      | BRAD KEIFE                 |
| D-2 - YOHEY/STAFFORD          | YOHEY / STAFFORD 9610 MATTERHORN BL\     | AARON YOHEY                |
| D-3 - LUCAS                   | PAUL LUCAS 205 PROSPECTOR ROAD DAYT      | PAUL LUCAS                 |
| D-4 - MILLER                  | DAVE MILLER P O BOX 10833 RENO, NV       | 895 DAVE MILLER            |
| D-5 - TAYLOR, JIM             | JAMES TAYLOR 6716 SHEFFIELD SRIVE LAS    | JAMES TAYLOR               |
| D-6 - MASON                   | MIKE & SHELLY MASON 6630 RACEL ST LAS    | MIKE & SHELLY MASON        |
| E-1 - SARGENT                 | JIMMY & ELLEN SARGENT P O BOX 226 INDI   | JIMMY & ELLEN SARGENT      |
| E-2 - HEALY                   | JACK & YVETTE HEALY 4255 PARTRIDGE LA    | JACK & YVETTE HEALY        |
| E-3 - HARMON                  | BO HARMON E-3 902 SPRING VALLEY PKWY     | BO HARMON                  |
| E-4 - GOWAN                   | MICHAEL "DAVE" & MARY ANN GOWAN (E-4)    | DAVE & MARY ANN            |
| E-5 - FRANK                   | PHIL & DOROTHY FRANK P O BOX 617 INDIA   | PHIL & DOROTHY FRANK       |
| E-6 - HERNANDEZ               | JOE & PAULA HERNANDEZ 4293 MARKHAM I     | JOE & PAULA HERNANDEZ      |
| F-1 - LA CHICA                | JUAN & VICTORIA LA CHICA F-1 6557 PARK I | JUAN & VICTORIA LA CHICA   |
| F-2 - MCINTYRE                | DENNIS & VALERI MCINTYRE 1530 SOUTHVI    | DENNIS & VALERI MCINTYRE   |
| F-3 - HECKMAN                 | ROBERT & NATHAN HECKMAN 108 COTTON       | ROBERT & NATHAN HECKMAN    |
| F-4 - VANDER MEER             | JAMES VANDER MEER 354 CHAPLIN COVE /     | JAMES VANDE MEER           |
| F-5 - WYATT                   | HAROLD & MARY WYATT F-5 5965 N DAPPLE    | HAROLD & MARY WYATT        |
| G-1 - CLARK, ROBERT           | ROBERT CLARK 4521 GENTRY LANE CARSC      | ROBERT CLARK               |
| G-2 - TEITLEBAUM              | BETH TEITLEBAUM 5445 WINTERGREEN LAI     | BETH TEITLEBAUM            |
| G-3 - SPILSBURY               | DANIEL & DELAINE SPILSBURY G-3 P O BOX   | DANIEL & DELAINE SPILSBURY |
| G-4 - HUBERT                  | TERRY & BONNIE HUBERT 1470 BRENDA W/     | TERRY & BONNIE HUBERT      |
| G-5 - LA CHICA                | JUAN & VICTORIA LA CHICA G-5 6557 PARK I | JUAN & VICTORIA LA CHICA   |
| G-6 - ARTEMIS                 | ARTEMIS EXPLORATION G-6 HC 60 BOX 760    | ARTEMIS EXPLORATION        |
| H-1 - ROGERS, RUSSELL & SUSAN | RUSSELL & SUSAN ROGERS PO BOX 15083(     | RUSSELL & SUSAN ROGERS     |
| H-2 - ARTEMIS EXPLORATION     | ARTEMIS EXPLORATION H2 HC 60 BOX 760 I   | ARTEMIS EXPLORATION        |
| H-3 - ROA                     | ROCKY ROA HC 60 BOX 755 RUBY VALLEY, I   | ROCKY ROA                  |

8:16 PM  
06/23/15

**Ruby Lake Estates**  
**Customer Contact List**

June 23, 2015

| Customer                        | Bill to  | Primary Contact             |
|---------------------------------|--|-----------------------------|
| H-4 - PATTERSON                 | BEVERLY PATTERSON 1740 ROBINSON AVE                        | BEVERLY PATTERSON           |
| H-5 - CUNNINGHAM                | DENNIS CUNNINGHAM 285 POMPE RENO, NI                       | DENNIS CUNNINGHAM           |
| H-6 - CUNNINGHAM                | DENNIS CUNNINGHAM 285 POMPE WAY REI                        | DENNIS & DARLENE CUNNINGHAM |
| H-7 - MANZONIE                  | RILEY MANZONIE H-7 371 MOUNTAIN CITY HWY UNIT #13 ELKO, nv | 89801-9516                  |
| H-8 - MCINTYRE, DENNIS & VALERI | DENNIS & VALERI MCINTYRE 1530 SOUTHVI                      | DENNIS & VALERI MCINTYRE    |
| H-9 - NORWOOD                   | DAVID NORWOOD 16045 WATSON ROAD GL                         | DAVID NORWOOD               |

1 CASE NO. CV-C-12-175

2 DEPT. NO. 2

FILED  
2016 FEB 10 PM 2:24

ELKO CO DISTRICT CLERK

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7  
8 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

9 Plaintiff,

10 vs.

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

AMENDED STIPULATION AND  
ORDER TO AMEND COMPLAINT,  
ANSWER AND COUNTERCLAIM  
PURSUANT TO ORDER RE: JOINDER  
OF NECESSARY PARTIES ENTERED  
SEPTEMBER 11, 2015

1 ROGERS AND SUSAN ROGERS AND  
2 ROCKY ROA, AND DOES I-X,  
3 Defendants.

---

4  
5 RUBY LAKE ESTATES HOMEOWNER'S  
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Counterdefendant.

---

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

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



1 WYATT; ROBERT CLARK; BETH  
2 TEITLEBAUM; DANIEL SPILSBURY AND  
3 DELAINE SPILSBURY; TERRY HUBERT  
4 AND BONNIE HUBERT; RUSSELL  
ROGERS AND SUSAN ROGERS AND  
ROCKY ROA, and DOES I-X,

5 Cross-Defendants.  
6 \_\_\_\_\_/

7  
8 Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY ("Artemis"), and  
9 Defendant/Counterclaimant/Cross Claimant RUBY LAKE ESTATES HOMEOWNER'S  
10 ASSOCIATION ("Ruby Lake Estates"), by and through their respective, undersigned counsel,  
11 hereby ***STIPULATE AND AGREE***, in order to comply with the Court's Order Re: Joinder of  
12 Necessary Parties ("Joinder Order"), as follows:  
13

14 1. On March 2, 2012, Artemis filed its Complaint against Ruby Lake Estates in the  
15 above referenced matter with claims for declaratory relief, damages, and fraud.

16 2. On April 2, 2012, Ruby Lake Estates filed its Answer and Counterclaim against  
17 Artemis, generally denying the allegations of Artemis's Complaint and asserting various  
18 counterclaims, including the Sixth Claim for Relief for declaratory relief. Both Artemis's claim for  
19 declaratory relief and Ruby Lake Estates counterclaim for declaratory relief sought a determination  
20 by this Court of whether Ruby Lake Estates constitutes a validly existing common interest  
21 community under NRS Chapter 116.  
22

23 3. Following briefing by Artemis and Ruby Lake Estates on cross Motions for  
24 Summary Judgment on Artemis's declaratory relief claim, the Court entered Orders on February 12,  
25 2013, and February 14, 2013, denying Artemis' Motion for Summary Judgment and granting Ruby  
26 Lake Estates's Motion for Summary Judgment, respectively. In its Orders, the Court ruled as a  
27 matter of law that Ruby Lake Estates is a validly existing common interest community under NRS  
28

Chapter 116, valid at its inception. No ruling from the Court was required on Artemis's claims for damages and fraud, as Artemis agreed not to pursue those claims.

4. On June 6, 2013, the Court entered its Judgment on Arbitration Award and Award of Attorney's Fees and Costs in favor of Ruby Lake Estates.

5. Since that time and following Artemis's appeal to the Nevada Supreme Court, which was voluntarily dismissed due to lack of a final judgment, Artemis and Ruby Lake Estates filed cross Motions for Summary Judgment on Ruby Lake Estates's remaining counterclaims, including the Sixth Claim for Relief for declaratory relief. Following briefing of the cross-motions and Artemis's Motion for the Relief from Judgment or Order (NRCP 60(b)), argument was heard by the Court on May 28, 2014. On May 1, 2015, the Court, before issuing a ruling on the pending cross Motions for Summary Judgment on Ruby Lake Estates's counterclaims, entered an Order for a hearing for the parties to show cause why all other lot owners within Ruby Lake Estates should not be joined as parties to Artemis's claim for declaratory relief and Ruby Lake Estates's counterclaim for declaratory relief.

6. On July 1, 2015, the Court held a hearing on the Order to show cause. Thereafter, on September 11, 2015, the Court entered its Joinder Order, ordering the parties to join all Ruby Lake Estates lot owners as necessary parties to Artemis's declaratory relief claim in its Complaint, and to Ruby Lake Estates's Sixth Claim for Relief in its counterclaims.

7. Based upon the foregoing facts, Artemis and Ruby Lake Estates ***STIPULATE AND AGREE*** that, upon approval of this Stipulation by the Court, Artemis shall file a First Amended Complaint, attached hereto as Exhibit "A", which joins all lot owners of Ruby Lake Estates as Defendants to its claim for declaratory relief. The First Amended Complaint shall not include claims for damages or fraud, and be limited to the declaratory relief claim.

1           8.     It is further **STIPULATED AND AGREED** that in response to the filing of the First  
2 Amended Complaint, Ruby Lake Estates shall file its Answer to First Amended Complaint,  
3 Counterclaims, and Cross-Claim ("Answer to First Amended Complaint "), attached hereto as  
4 Exhibit "B". The Answer to First Amended Complaint shall include in its Sixth Claim for  
5 declaratory relief a Cross-claim against all lot owners as Cross-defendants. No other cross-claims  
6 will be asserted against the other lot owners.  
7

8           9.     It is further **STIPULATED AND AGREED** that Artemis and Ruby Lake Estates will  
9 work in conjunction to advise all lot owners of the Court's Joinder Order and effect service of  
10 process of the First Amended Complaint and Answer to First Amended Complaint in accord with  
11 the Nevada Rules of Civil Procedure. After the 20 days under NRCp 4(d) has run for each of the  
12 joined lot owners to file their responsive pleadings as Defendants and Cross-Defendants to  
13 Artemis's First Amended Complaint and Ruby Lake Estates's Sixth Claim for declaratory relief,  
14 respectively, defaults will be entered for those lot owners who do not appear. As to any lot owners  
15 who do appear, further ruling from the Court may be required to determine if and when such  
16 owners must file any response to the pending motions for summary judgment on Ruby Lake  
17 Estates's declaratory relief claim and, if such occurs, a date by which further reply may be filed in  
18 order for the Court to issue its ruling.  
19  
20

21           10.    Finally, it is further **STIPULATED AND AGREED** that the First Amended  
22 Complaint, Answer to First Amended Complaint, this Stipulation, and the joinder of the other lot  
23 owners as Defendants and Cross-defendants in accord with the Court's Joinder Order shall not  
24 nullify, abrogate, change, affect, amend, impact, reverse, alter, and/or replace any of the motions,  
25 rulings, the law of the case, and/or Orders which have been filed and/or entered by the Court in this  
26 matter to date. The parties **STIPULATE AND AGREE** that the filing of the First Amended  
27  
28

1 Complaint, the Answer to First Amended Complaint, and this Stipulation is for the limited purpose  
2 of compliance with the Court's Joinder Order, and for no other purpose.  
3  
4

5 **AFFIRMATION**

6 **(Pursuant to NRS 239B.030)**

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

9 DATED this 14<sup>th</sup> day of January, 2016.

DATED this 19<sup>th</sup> day January, 2016.

10 KERN & ASSOCIATES, LTD.

GERBER LAW OFFICE, LLP

11   
12 GAYLE A. KERN, ESQ.

  
13 TRAVIS GERBER, ESQ.

14 NEVADA BAR #1620

NEVADA BAR #8083

15 KAREN M. AYARBE, ESQ.

ZACHARY GERBER, ESQ.

16 NEVADA BAR #3358

NEVADA BAR #13128

5421 Kietzke Lane, Suite 200

491 4<sup>th</sup> Street

17 RENO, NEVADA 89511

ELKO, NEVADA 89801

Telephone: 775-324-5930

Telephone: 775-738-9258

18 Fax: 775-324-6173

Fax: 775-738-8198

Email: gaylekern@kernltd.com

Email: twg@gerberlegal.com

Email: karenayarbe@kernltd.com

Email: zag@gerberlegal.com

19 Attorneys for Ruby Lake Estates Homeowner's  
20 Association

Attorneys for Artemis Exploration Company

21  
22 *IT IS SO ORDERED this 10 day of February, 2016.*

23 *save and except for*  
24 *the first sentence*  
25 *of stipulation 10.*

26   
27 DISTRICT COURT JUDGE  
28

# **EXHIBIT A**

# **EXHIBIT A**

1 CASE NO. CV-C-12-175

2 DEPT. 2

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

5

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

7 IN AND FOR THE COUNTY OF ELKO

8

9 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

10 Plaintiff,

11 vs.

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

27 Defendants.

28

**FIRST AMENDED COMPLAINT**

GERBER LAW OFFICES, LLP

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

4 AA000115

1 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

2 Counterclaimant,

3 vs.

4 ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

5 Counterdefendant.  
6

7 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

8 Cross-Claimant,

9 vs.

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

22 Cross-Defendants.  
23

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

26 **JURISDICTION**

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

GERBER LAW OFFICES, LLP

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

4 AA000116

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

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

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

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

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

## COMMON FACTS

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6                                    **PRAYER FOR RELIEF**

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

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

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

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

15        DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

16                                    **GERBER LAW OFFICES, LLP**

17  
18                                    BY:

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

DATED: \_\_\_\_\_, 2016.

MADISON JOHNSON

# **EXHIBIT B**

# **EXHIBIT B**

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7  
8 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

9 Plaintiff,

10 vs.

ANSWER TO FIRST AMENDED  
COMPLAINT; COUNTERCLAIM  
AND CROSS-CLAIM

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

1 ROGERS AND SUSAN ROGERS AND  
2 ROCKY ROA, AND DOES I-X,  
3 Defendants.

4  
5 RUBY LAKE ESTATES HOMEOWNER'S  
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Counterdefendant.

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

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

1 WYATT; ROBERT CLARK; BETH  
2 TEITLEBAUM; DANIEL SPILSBURY AND  
3 DELAINE SPILSBURY; TERRY HUBERT  
4 AND BONNIE HUBERT; RUSSELL  
ROGERS AND SUSAN ROGERS AND  
ROCKY ROA, and DOES I-X,

5 Cross-Defendants.

6 \_\_\_\_\_ /  
7 Defendant Ruby Lake Estates Homeowner's Association ("Ruby Lake"), by and through its  
8 attorneys, Kern & Associates, Ltd. answers the Plaintiff's Complaint, and counterclaims and cross-  
9 claims as follows:

10 **JURISDICTION**

11  
12 1. Answering paragraph 1 of Plaintiff's Complaint, Ruby Lake, on information and  
13 belief admits the allegations contained in paragraph 1.

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

17  
18 3. Answering paragraph 3 of Plaintiff's Complaint, Ruby Lake has no information who  
19 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there  
20 is a deed recorded on March 9, 2010.

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

25  
26 5. Answering paragraph 5 of Plaintiff's Complaint, Ruby Lake admits the allegations in  
27 paragraph 5.

28 ///



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

## COMMON FACTS

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

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

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

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

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

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

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

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

3       15.     Answering paragraph 15 of Plaintiff's Complaint, Ruby Lake denies each and every  
4 allegation contained in paragraph 15. Ruby Lake admits that in accordance with Nevada law and  
5 the governing documents of Ruby Lake, assessments were properly made and collected to pay for  
6 the common expenses of the common-interest community.  
7

8       16.     Answering paragraph 16 of Plaintiff's Complaint, Ruby Lake denies the allegations  
9 regarding action by the Architectural Review Committee. Ruby Lake admits Beth Essington had  
10 communications. Ruby Lake denies each and every remaining allegation contained in paragraph 16.  
11

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

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

19       19.     Answering paragraph 19 of Plaintiff's Complaint, Ruby Lake asserts Artemis  
20 Exploration Company wrongfully refused to pay lawful assessments. Ruby Lake denies each and  
21 every remaining allegation contained in paragraph 19.  
22

23       20.     Answering paragraph 20 of Plaintiff's Complaint, Ruby Lake asserts that the  
24 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
25 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
26 allegations are denied.  
27

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

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

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

#### 10 **FIRST CLAIM FOR RELIEF**

##### 11 **(Declaratory Judgment)**

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

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

19 25. Answering paragraph 25 of Plaintiff's Complaint, Ruby Lake asserts that the statute  
20 speaks for itself.  
21

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

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

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

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

3 **FIRST AFFIRMATIVE DEFENSE**

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

7 **SECOND AFFIRMATIVE DEFENSE**

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

11 **THIRD AFFIRMATIVE DEFENSE**

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

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Ruby Lake acted in good faith.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred by the doctrine of collateral estoppel.  
17

18 **SIXTH AFFIRMATIVE DEFENSE**

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

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Ruby Lake acted in accordance with statutory authority and is privileged and protected by  
22 applicable Nevada law, the governing documents of Ruby Lake and Chapter 116 of the Nevada  
23 Revised Statutes.  
24

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Ruby Lake has been required to retain Kern & Associates, Ltd. to represent it in this matter  
27 and is entitled to attorney's fees and costs.  
28

**NINTH AFFIRMATIVE DEFENSE**

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

3 **TENTH AFFIRMATIVE DEFENSE**

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

7 **ELEVENTH AFFIRMATIVE DEFENSE**

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

9 **TWELFTH AFFIRMATIVE DEFENSE**

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

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

- 17
- 18 1. That Plaintiff takes nothing by reason of its Complaint;
  - 19 2. That the Complaint be dismissed;
  - 20 3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a  
21 reasonable attorneys' fee, for costs of suit; and
  - 22 4. For such other and further relief as may be just and proper in the premises.  
23

24 **COUNTERCLAIM AND CROSS-CLAIM**

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

27 **GENERAL ALLEGATIONS**  
28

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

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

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

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

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

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

12           7.     Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot  
13 2, Block H of Ruby Lake Estates on March 9, 2010, and that both Lot 6 and Lot 2 ("Lots") are  
14 subject to the terms, conditions and restrictions set forth in the CC&Rs.

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

17           9.     Prior to the filing of the Articles of Incorporation, the ARC served as the governing  
18 body of the Association.

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

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

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

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

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

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

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

16          17.     Mel Essington seconded the adoption of the Bylaws and was an active participant in  
17 the business affairs of the Association.  
18

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

21          19.     Mel Essington represented his authority to act and all members of the Association  
22 relied on such representation.  
23

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

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

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

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

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

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

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

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



1 .... As head of the homeowners association you need to work to protect  
2 the value of the investments of all of the individual owners and be able to look  
3 beyond your own more restricted outlook. ... I assume you are aware Nevada has  
4 found it necessary to create a commission to oversee the operation of the many  
5 HOA's [sic] in the state. I would also assume you are aware that NRS 116,  
6 Section 10, 8(f) now requires that the HOA records including financial records be  
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.

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

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

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

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

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

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

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

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

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

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

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

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

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

5           32.     In 2009 a dispute arose between the Essingtons and the ARC regarding the  
6 construction within the Ruby Lake Estates subdivision of a large building used to house machinery  
7 and other equipment.  
8

9           33.     The ARC and Board took the position that such a structure was permitted and the  
10 Essingtons disputed this position.  
11

12           34.     In response to the approval of the large building, Mr. and Mrs. Essington then began  
13 to assert that the RLEHOA was not validly formed and had no authority to levy or collect  
14 assessments.  
15

16           35.     Artemis ceased paying its assessments, all of which had been approved by Mr.  
17 Essington as a Board member.  
18

19           36.     Invoices generated in the ordinary course of business for the Association were sent  
20 to the Essingtons.  
21

22           37.     On or about December 18, 2009, Mrs. Essington filed an Intervention Affidavit with  
23 the Office of the Ombudsman, Department of Business and Industry, Real Estate Division, seeking  
24 a determination that RLEHOA was an invalid community association.  
25

26           38.     On July 1, 2010, the Ombudsman's Office completed its review and issued its  
27 opinion, finding "that this Association is required to comply with the laws pertaining to  
28 homeowners associations, specifically, NRS 116 and related laws and regulations."  
29

30           39.     Artemis continued to fail to pay its assessments and the Board of Directors took  
31 appropriate action to collect the delinquent assessments.  
32

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

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

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

7           43.     Mr. Essington subsequently resigned from the Board of Directors per letter dated  
8 January 6, 2011.  
9

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

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

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

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

18           47.     Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
19 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby  
20 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.  
21

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

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

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

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

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

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

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

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

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

11       55. Artemis should pay all damages sustained.

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

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

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

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

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

26       60. The Award entered should be confirmed and adopted.

27       ///

28       ///

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

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

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

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

64. Artemis should pay all damages sustained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19       6.     That Ruby Lake be awarded its costs;

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

21       8.     Such other and further relief as the Court deems just and proper in the premises.  
22

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

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



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

2                               **AFFIRMATION**

3                               **Pursuant to NRS 239B.030**

4           The undersigned does hereby affirm that the preceding document filed in the above-entitled  
5  
6 case does not contain the social security number of any person.

7                       DATED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

8   KERN & ASSOCIATES, LTD.

9  
10  
11   \_\_\_\_\_  
12   GAYLE A. KERN, ESQ.  
13   NEVADA BAR #1620  
14   KAREN M. AYARBE, ESQ.  
15   NEVADA BAR #3358  
16   5421 Kietzke Lane, Suite 200  
17   RENO, NEVADA 89511  
18   Telephone: 775-324-5930  
19   Fax: 775-324-6173  
20   Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)  
21   Attorneys for Ruby Lake Estates Homeowner's  
22   Association  
23  
24  
25  
26  
27  
28

1 CASE NO. CV-C-12-175

2 DEPT. 2

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

FILED

2016 FEB 17 PM 3:26

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  
9 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

10 Plaintiff,

11 vs.

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

27 Defendants.

28

**FIRST AMENDED COMPLAINT**

GERBER LAW OFFICES, LLP

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

4 AA000143

1 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

2 Counterclaimant,

3 vs.

4 ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

5 Counterdefendant.  
6 \_\_\_\_\_/

7 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

8 Cross-Claimant,

9 vs.

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

22 Cross-Defendants.  
23 \_\_\_\_\_/

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

26 **JURISDICTION**

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

GERBER LAW OFFICES, LLP

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

4 AA000144

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

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

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

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

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

## 14 || COMMON FACTS

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

16 8. The parcel map that created the Ruby Lake Estates subdivision was recorded in the office  
17 of the Recorder of Elko County, State of Nevada, on September 15, 1989, as File No. 281674 and  
18 281674 A. See copies attached hereto as Exhibit A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **PRAYER FOR RELIEF**

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

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

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

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

15 DATED this 16<sup>th</sup> day of February 2016.

16 GERBER LAW OFFICES, LLP

17  
18 BY:

  
19 TRAVIS W. GERBER, ESQ.

20 State Bar No. 8083

ZACHARY A. GERBER, ESQ.

21 State Bar No. 13128

491 4<sup>th</sup> Street

22 Elko, Nevada 89801

(775) 738-9258

23 ATTORNEYS FOR PLAINTIFF

ARTEMIS EXPLORATION

24 COMPANY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE BY MAIL**

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

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

DATED: February 17, 2016.

  
MADISON JOHNSON



**EXHIBIT A**

**EXHIBIT A**

# RUBY LAKE ESTATES ELKO COUNTY, NEVADA

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

NOTARY PUBLIC  
STATE OF NEVADA  
My Comm. Expires 12/31/89  
Notary Seal

FILED 201674  
JUL 16 1989  
ELKO COUNTY, NEVADA  
RECEIVED

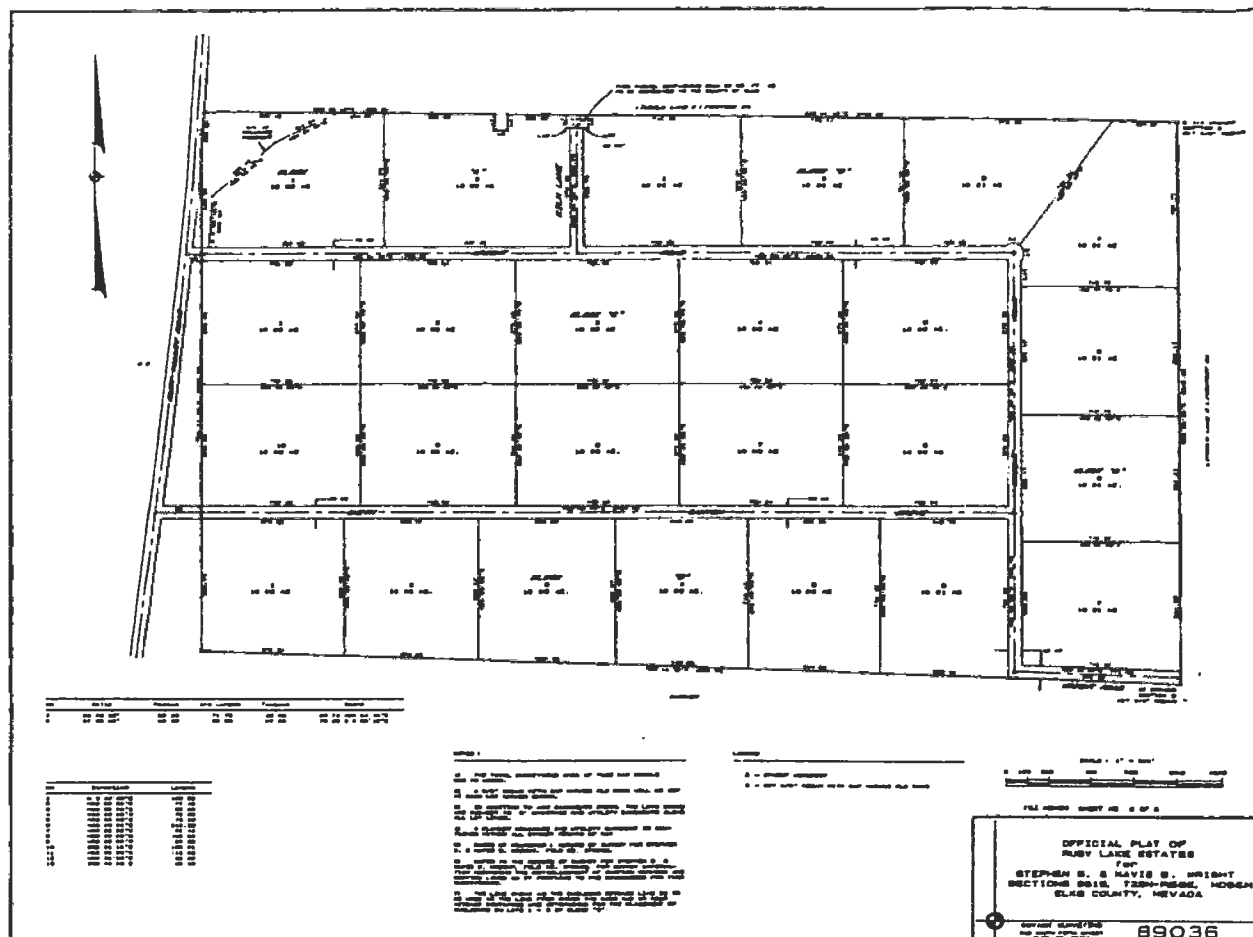
OFFICIAL PLAT OF  
RUBY LAKE ESTATES  
FOR  
STEPHEN S. & MARIE S. WRIGHT  
SECTIONS 26&28, T20N-R06E, N00E  
ELKO COUNTY, NEVADA  
89036  
SHEET 1 OF 3

CHANCE NUMBER  
Sheet 1 of 3

CHANCE NUMBER  
123

CHANCE NUMBER  
123

CHANCE NUMBER  
123

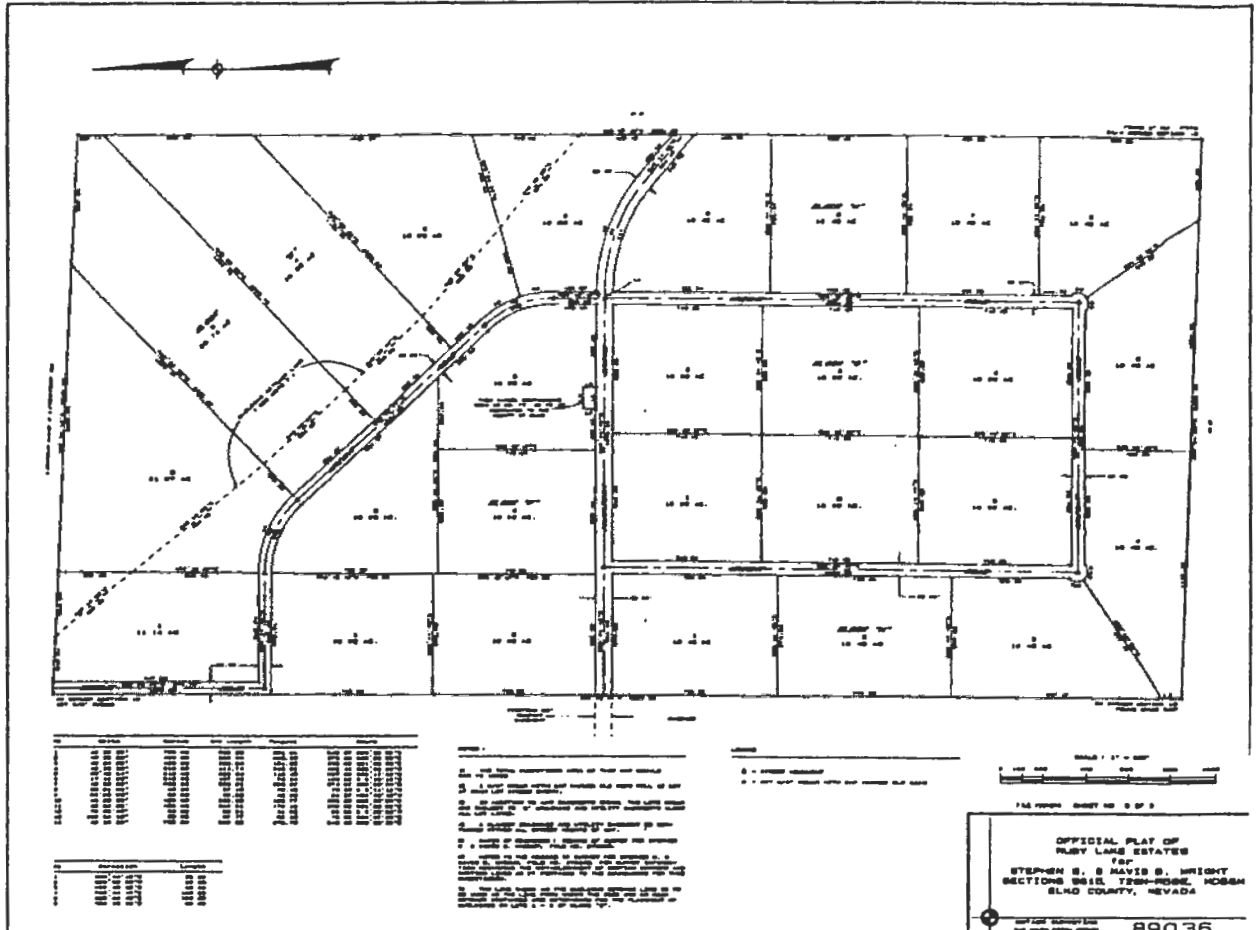


CHARTER NUMBER  
Sect. 1-1

CHARTER NUMBER

CHARTER NUMBER

CHARTER NUMBER



**EXHIBIT B**

**EXHIBIT B**

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

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

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

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

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

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

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

## ARTICLE II

### ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

## ARTICLE III

### CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright  
Ruby Valley, NV 89833

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

#### ARTICLE IV VARIANCES

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

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

#### ARTICLE V VIOLATION AND ENFORCEMENT

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

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:

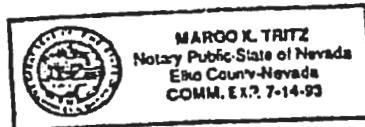
Stephen G. Wright  
STEPHEN G. WRIGHT

Mavis S. Wright  
MAVIS S. WRIGHT

STATE OF Nevada )  
COUNTY OF Elko ) ss.

On Sept. 16, 1989, personally appeared before me, a Notary Public,  
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the  
above instrument.

Maroo K. Tritz  
NOTARY PUBLIC



INDEXED :

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

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

283750

4 AA000160

**EXHIBIT C**

**EXHIBIT C**

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

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

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

December 9, 2009

Elizabeth Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

Dear Mrs. Essington,

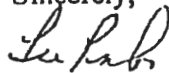
I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

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

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

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

Sincerely,



Lee Perks  
President RLEHA

Cc: RLEHA Board members  
Robert Wines, Esq.

**EXHIBIT D**

**EXHIBIT D**

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

# Invoice

| Date       | Invoice # |
|------------|-----------|
| 12/16/2010 | 321       |

|   |
|---|
| Bill To   |
| ROCKY ROA<br>HC 60 BOX 755<br>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       | 226.95 |
| <b>Payment Due By:</b><br><b>January 31, 2011</b>            |                        |              |        |
| PLEASE REMIT TO: 765 E. GREG ST #103<br>SPARKS, NEVADA 89431 |                        | <b>Total</b> | \$226  |
| 4 AA000165   |                        |              |        |



# EXHIBIT E

# EXHIBIT E

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

January 4, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

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

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

Dear Homeowner(s):

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

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

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

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

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

Sincerely,

*Carolyn Swanson*  
Carolyn Swanson  
Angius & Terry Collections, LLC

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

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

4 AA000167

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

FILED

2016 MAR 11 A 9:42

4TH JUDICIAL DISTRICT COURT

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7  
8 ARTEMIS EXPLORATION COMPANY, a  
9 Nevada Corporation,

10 Plaintiff,

11 vs.

ANSWER TO FIRST AMENDED  
COMPLAINT; COUNTERCLAIM  
AND CROSS-CLAIM

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

1 ROGERS AND SUSAN ROGERS AND  
2 ROCKY ROA, AND DOES I-X,  
3 Defendants.

4  
5 RUBY LAKE ESTATES HOMEOWNER'S  
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Counterdefendant.

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

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

1 WYATT; ROBERT CLARK; BETH  
2 TEITLEBAUM; DANIEL SPILSBURY AND  
3 DELAINE SPILSBURY; TERRY HUBERT  
4 AND BONNIE HUBERT; RUSSELL  
ROGERS AND SUSAN ROGERS AND  
ROCKY ROA, and DOES I-X,

5 Cross-Defendants.  
6 \_\_\_\_\_/

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

10 **JURISDICTION**

11  
12 1. Answering paragraph 1 of Plaintiff's Complaint, Ruby Lake, on information and  
13 belief admits the allegations contained in paragraph 1.

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

17  
18 3. Answering paragraph 3 of Plaintiff's Complaint, Ruby Lake has no information who  
19 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there  
20 is a deed recorded on March 9, 2010.

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

25  
26 5. Answering paragraph 5 of Plaintiff's Complaint, Ruby Lake admits the allegations in  
27 paragraph 5.

28 ///

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

## COMMON FACTS

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

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

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

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

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

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

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

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

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

7           16.     Answering paragraph 16 of Plaintiff's Complaint, Ruby Lake denies the allegations  
8 regarding action by the Architectural Review Committee. Ruby Lake admits Beth Essington had  
9 communications. Ruby Lake denies each and every remaining allegation contained in paragraph 16.  
10

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

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

19           19.     Answering paragraph 19 of Plaintiff's Complaint, Ruby Lake asserts Artemis  
20 Exploration Company wrongfully refused to pay lawful assessments. Ruby Lake denies each and  
21 every remaining allegation contained in paragraph 19.  
22

23           20.     Answering paragraph 20 of Plaintiff's Complaint, Ruby Lake asserts that the  
24 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
25 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
26 allegations are denied.  
27

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

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

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

### 10 **FIRST CLAIM FOR RELIEF**

#### 11 **(Declaratory Judgment)**

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

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

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

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

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

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



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

3 **FIRST AFFIRMATIVE DEFENSE**  
4

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

7 **SECOND AFFIRMATIVE DEFENSE**

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

11 **THIRD AFFIRMATIVE DEFENSE**

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

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Ruby Lake acted in good faith.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred by the doctrine of collateral estoppel.  
17

18 **SIXTH AFFIRMATIVE DEFENSE**

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

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Ruby Lake acted in accordance with statutory authority and is privileged and protected by  
22 applicable Nevada law, the governing documents of Ruby Lake and Chapter 116 of the Nevada  
23 Revised Statutes.  
24

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Ruby Lake has been required to retain Kern & Associates, Ltd. to represent it in this matter  
27 and is entitled to attorney's fees and costs.  
28

**NINTH AFFIRMATIVE DEFENSE**

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

3 **TENTH AFFIRMATIVE DEFENSE**

4  
5 Plaintiff's Complaint must be summarily dismissed for failure to comply with NRS  
6 38.330(5).

7 **ELEVENTH AFFIRMATIVE DEFENSE**

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

9 **TWELFTH AFFIRMATIVE DEFENSE**

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

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

- 17  
18 1. That Plaintiff takes nothing by reason of its Complaint;  
19 2. That the Complaint be dismissed;  
20 3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a  
21 reasonable attorneys' fee, for costs of suit; and  
22 4. For such other and further relief as may be just and proper in the premises.  
23

24 **COUNTERCLAIM AND CROSS-CLAIM**

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

27 **GENERAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

4  
5           13.    An overview of the history and establishment of the Association was provided to its  
6 members in a letter from Lee Perks, President of RLEHOA, on June 28, 2010 ("June 28, 2010  
7 Letter").

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

10  
11           15.    In 2005, Mel Essington prepared Articles of Incorporation for filing with the Nevada  
12 Secretary of State listing himself and Elizabeth Essington as the incorporators and officers of the  
13 Association.

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

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

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

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

23  
24           20.    Artemis is fully bound by his representations and actions. During his tenure on the  
25 Board as Artemis' representative, Mr. Essington wrote letters to the members of RLEHOA urging  
26 them to "revitalize the Ruby Lakes Estates property owners association", as well as confirming the  
27 existence of the HOA, the applicability of NRS Chapter 116, and the ability and responsibility of  
28

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

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

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

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

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

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

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

1 .... As head of the homeowners association you need to work to protect  
2 the value of the investments of all of the individual owners and be able to look  
3 beyond your own more restricted outlook. ... I assume you are aware Nevada has  
4 found it necessary to create a commission to oversee the operation of the many  
5 HOA's [sic] in the state. I would also assume you are aware that NRS 116,  
6 Section 10, 8(f) now requires that the HOA records including financial records be  
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.

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

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

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

20  
21 The Ruby Lakes Estates is a common-interest ownership community as defined  
22 by State statute. The Community has been established by proper recording of the  
23 CCR's [sic] with the county and the Homeowners Association (HOA) through  
24 filing with the Secretary of State. Within the State of Nevada the community and  
25 the HOA are governed primarily by Chapter 116 of the Nevada Revised Statutes.  
The statutes, among many other things, establish guidelines, regulations, and  
requirements for the operation and management of the HOA. They also establish  
both the rights and obligations of the individual owners. ...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 55. Artemis should pay all damages sustained.

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

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

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

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

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

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

///

///

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

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

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

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

64. Artemis should pay all damages sustained.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19           6.       That Ruby Lake be awarded its costs;

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

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

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

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

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

## AFFIRMATION

**Pursuant to NRS 239B.030**

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

DATED this 8<sup>th</sup> day of March, 2016.

KERN & ASSOCIATES, LTD.

James M. Lipke

GAYLE A. KERN, ESQ.

NEVADA BAR #1620

KAREN M. AYARBE, ESQ.

NEVADA BAR #3358

5421 Kietzke Lane, Suite 200

RENO, NEVADA 89511

Telephone: 775-324-5930

Fax: 775-324-6173

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

Attorneys for Ruby Lake Estates Homeowner's Association

1 **CERTIFICATE OF SERVICE**

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

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

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

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

11            Via facsimile transmission

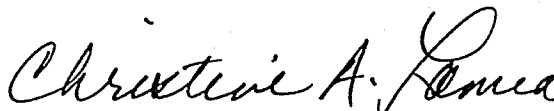
12            Via e-mail

13            Personal delivery, upon:

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

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

19 DATED this 8<sup>th</sup> day of March, 2016.

20  
21   
22 CHRISTINE A. LAMIA  
23  
24  
25  
26  
27  
28

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

FILED

2016 APR 12 PM 4:12

ELKO CO DISTRICT COURT

CLERK DEPUTY

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7  
8 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

9 Plaintiff,

10 vs.

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

STIPULATION AND ORDER TO FILE  
SECOND AMENDED COMPLAINT,  
AND ANSWER TO SECOND  
AMENDED COMPLAINT,  
COUNTERCLAIM AND CROSS-  
CLAIM PURSUANT TO ORDER RE:  
JOINDER OF NECESSARY PARTIES  
ENTERED SEPTEMBER 11, 2015



1 ROA; BEVERLY PATTERSON; DENNIS  
2 CUNNINGHAM; RILEY MANZONIE;  
3 DAVID NORWOOD; and DOES I-X,

4 Defendants.  
5 \_\_\_\_\_/

6 RUBY LAKE ESTATES HOMEOWNER'S  
7 ASSOCIATION,

8 Counterclaimant,

9 vs.

10 ARTEMIS EXPLORATION COMPANY, a  
11 Nevada Corporation,

12 Counterdefendant.  
13 \_\_\_\_\_/

14 RUBY LAKE ESTATES HOMEOWNER'S  
15 ASSOCIATION,

16 Cross-Claimant,

17 vs.

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

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

11  
12 Cross-Defendants.  
13  
14

15 Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY ("Artemis"), and  
16 Defendant/Counterclaimant/Cross Claimant RUBY LAKE ESTATES HOMEOWNER'S  
17 ASSOCIATION ("Ruby Lake Estates"), by and through their respective, undersigned counsel,  
18 hereby ***STIPULATE AND AGREE***, in order to comply with the Court's Order Re: Joinder of  
19 Necessary Parties ("Joinder Order"), as follows:

20 1. That Artemis shall file its Second Amended Complaint which shall contain the revised  
21 caption attached hereto as Exhibit "A";

22 2. That Ruby Lake Estates shall file its Answer to Second Amended Complaint,  
23 Counterclaim and Cross-claim which shall also contain the revised caption attached hereto as  
24 Exhibit "A";

25 3. That the reason for the filing of the Second Amended Complaint and Answer to  
26 Second Amended Complaint, Counterclaim and Cross-claim, with the revised caption, is because  
27 four property owners were inadvertently omitted from the caption as Defendants and Cross  
28 Defendants in the First Amended Complaint filed by Artemis and in Ruby Lake Estates's Answer  
thereto. The additional property owners added to the Second Amended Complaint and Answer to  
Second Amended Complaint, Counterclaim and Cross-claim as Defendants and Cross Defendants

are: BEVERLY PATTERSON, DENNIS CUNNINGHAM, RILEY MANZONIE, and DAVID  
NORWOOD. With the exception of naming these four additional Defendants and Cross  
Defendants, there are no other changes in the Second Amended Complaint or the Answer to Second  
Amended Complaint, Counterclaim and Cross-claim


4. The parties **STIPULATE AND AGREE** that the filing of the Second Amended  
Complaint, the Answer to Second Amended Complaint, Counterclaim and Cross-claim, and this  
Stipulation is for the limited purpose of compliance with the Court's Joinder Order.

**AFFIRMATION**  
**(Pursuant to NRS 239B.030)**

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


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

KERN & ASSOCIATES, LTD.

  
GAYLE A. KERN, ESQ.  
NEVADA BAR #1620  
KAREN M. AYARBE, ESQ.  
NEVADA BAR #3358  
5421 Kietzke Lane, Suite 200  
RENO, NEVADA 89511  
Telephone: 775-324-5930  
Fax: 775-324-6173  
Email: gaylekern@kernltd.com  
Email: karenayarbe@kernltd.com  
Attorneys for Ruby Lake Estates Homeowner's  
Association

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

GERBER LAW OFFICE, LLP

  
TRAVIS GERBER, ESQ.  
NEVADA BAR #8083  
ZACHARY GERBER, ESQ.  
NEVADA BAR #13128  
491 4<sup>th</sup> Street  
ELKO, NEVADA 89801  
Telephone: 775-738-9258  
Fax: 775-738-8198  
Email: twg@gerberlegal.com  
Email: zag@gerberlegal.com  
Attorneys for Artemis Exploration Company

IT IS SO ORDERED this 12<sup>th</sup> day of April, 2016.

/S/ ALVIN R KACIN  
DISTRICT COURT JUDGE

# EXHIBIT "A"

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

3  
4  
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF ELKO

7  
8 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

9 Plaintiff,

10 vs.

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

1 ROGERS AND SUSAN ROGERS; ROCKY  
2 ROA; BEVERLY PATTERSON; DENNIS  
3 CUNNINGHAM; RILEY MANZONIE;  
DAVID NORWOOD; AND DOES I-X,  
Defendants.

---

5  
6 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Counterdefendant.

---

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

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

1 NATHAN HECKMAN; JAMES VANDER  
2 MEER; HAROLD WYATT AND MARY  
3 WYATT; ROBERT CLARK; BETH  
4 TEITLEBAUM; DANIEL SPILSBURY AND  
5 DELAINE SPILSBURY; TERRY HUBERT  
6 AND BONNIE HUBERT; RUSSELL  
7 ROGERS AND SUSAN ROGERS; ROCKY  
8 ROA; BEVERLY PATTERSON; DENNIS  
9 CUNNINGHAM; RILEY MANZONIE;  
10 DAVID NORWOOD; and DOES I-X,  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Cross-Defendants.

---

1 CASE NO. CV-C-12-175

2 DEPT. 2

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

FILED

2016 APR 14 PM 4:00

ELKO CO DISTRICT COURT

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

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

8  
9 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

10 Plaintiff,

11 vs.

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

**SECOND AMENDED COMPLAINT**

27 Defendants.  
28 \_\_\_\_\_/

GERBER LAW OFFICES, LLP

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

4 AA000197



1 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

2 Counterclaimant,

3 vs.

4 ARTEMIS EXPLORATION COMPANY,  
a Nevada Corporation,

5 Counterdefendant.  
6

7 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

8 Cross-Claimant,

9 vs.

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

22 Cross-Defendants.  
23

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

26 **JURISDICTION**

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

GERBER LAW OFFICES, LLP

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

4 AA000198



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **PRAYER FOR RELIEF**

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

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

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

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

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

16 **GERBER LAW OFFICES, LLP**

17  
18 BY:

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

Madison Johnson  
MADISON JOHNSON

# EXHIBIT A

# RUBY LAKE ESTATES ELKO COUNTY, NEVADA

**NOTARY PUBLIC**  
I, John A. Howard, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, State of Nevada.  
Witness my hand and seal this 23rd day of June, 1989.  
John A. Howard  
Notary Public, Elko, Nevada

**NOTARY PUBLIC**  
I, John A. Howard, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, State of Nevada.  
Witness my hand and seal this 23rd day of June, 1989.  
John A. Howard  
Notary Public, Elko, Nevada

**NOTARY PUBLIC**  
I, John A. Howard, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, State of Nevada.  
Witness my hand and seal this 23rd day of June, 1989.  
John A. Howard  
Notary Public, Elko, Nevada

**NOTARY PUBLIC**  
I, John A. Howard, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, State of Nevada.  
Witness my hand and seal this 23rd day of June, 1989.  
John A. Howard  
Notary Public, Elko, Nevada

FILED IN  
201674  
PAGE 1 OF 3  
DATE  
1989 JUN 23  
J. A. Howard  
Notary Public, Elko, Nevada

OFFICIAL PLAT OF  
RUBY LAKE ESTATES  
FOR  
STEPHEN B. & MARIE B. WRIGHT  
SECTION 36-10, T8N-10E-10W, R10E-10N  
ELKO COUNTY, NEVADA  
89036  
SHEET 1 OF 3

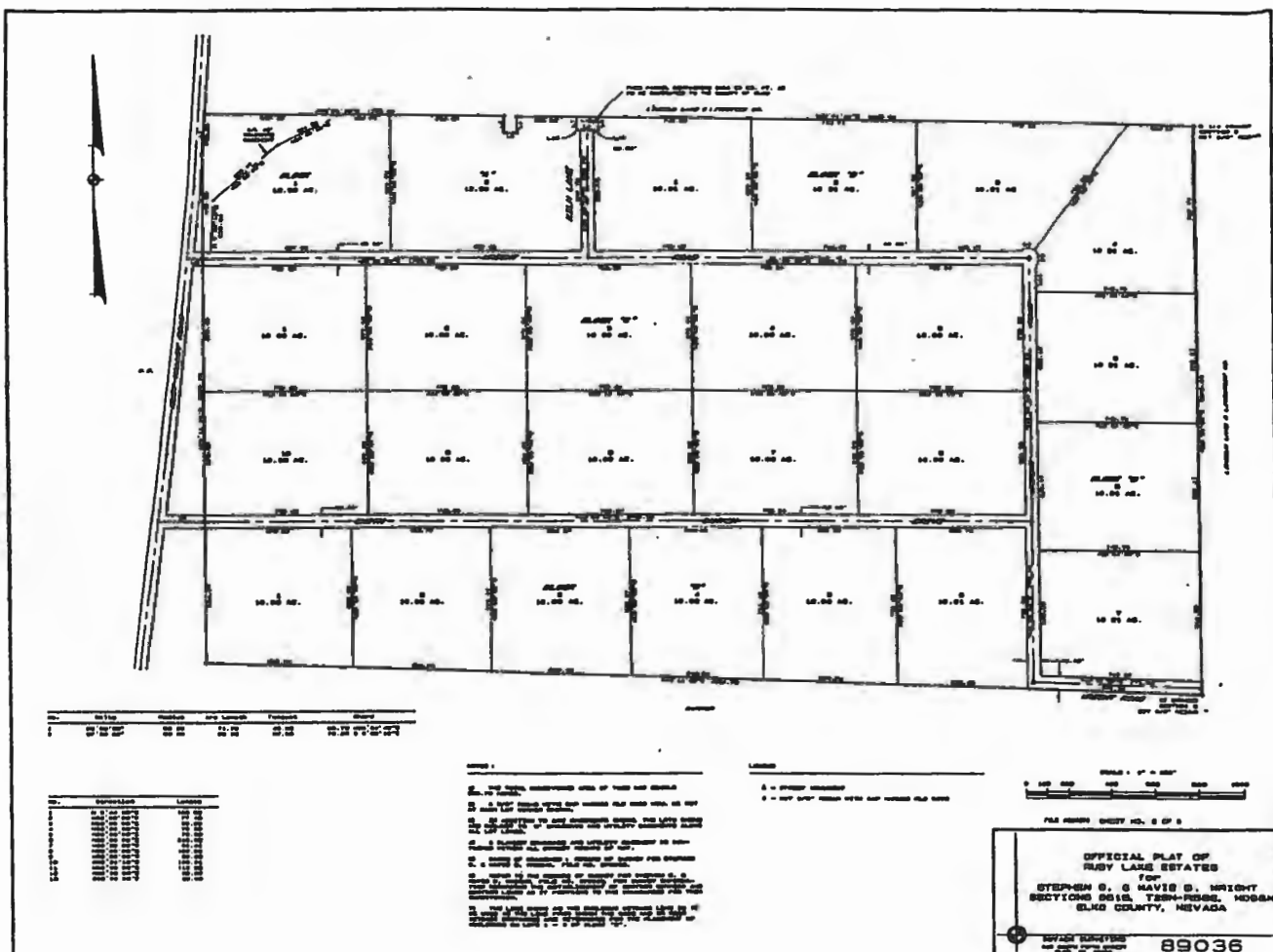


DRAWING NUMBER  
Sheet 2 of 3

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

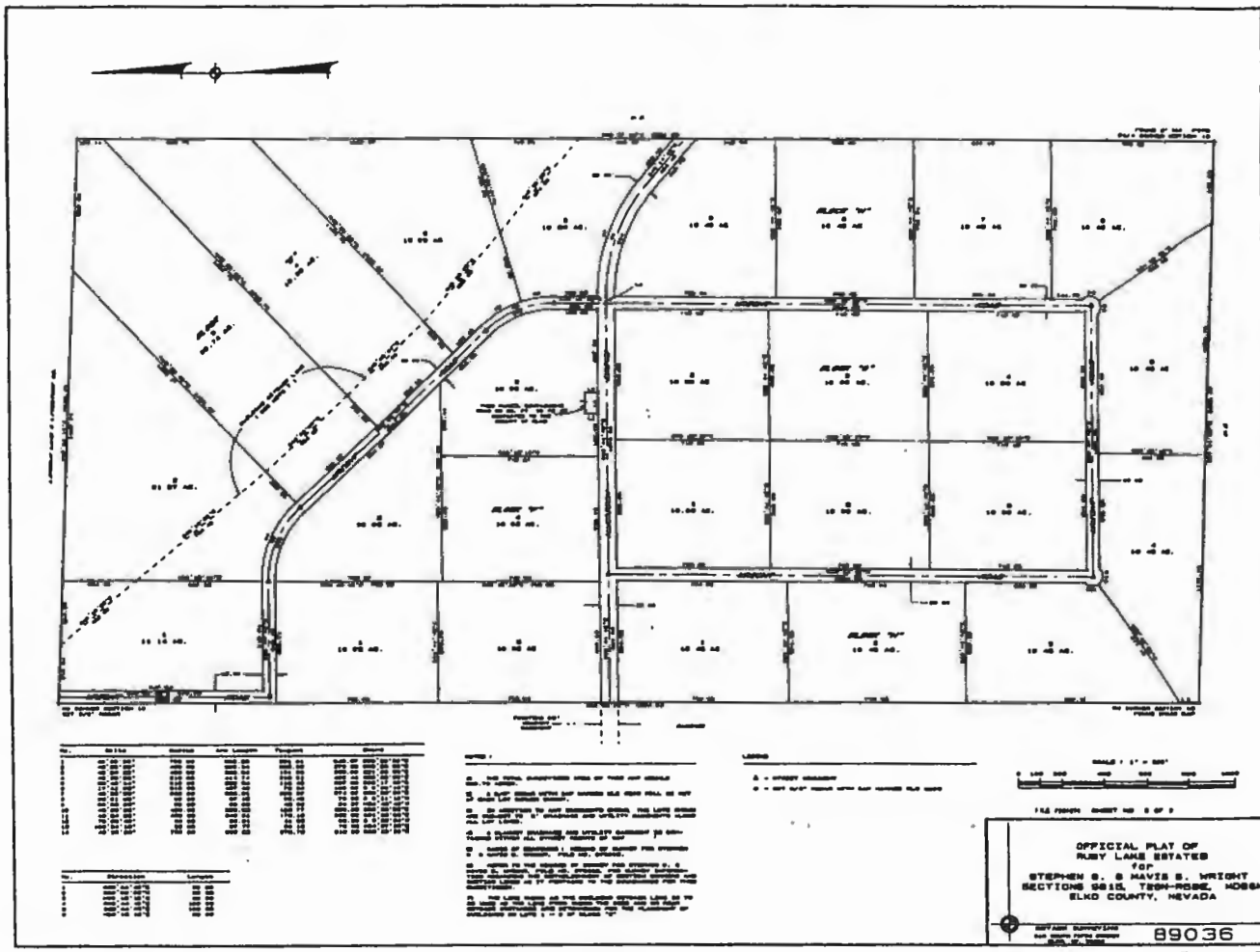


DRAWING NUMBER  
Sheet 3 of 3

SECTION NUMBER

SECTION NUMBER

DRAWING NUMBER



# EXHIBIT B

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

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

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

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

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

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

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

## ARTICLE II

### ARCHITECTURAL REVIEW COMMITTEE

There shall be an Architectural Review Committee which shall consist of Stephen G. Wright, or his nominee, until such time as 30% of the lots are transferred, at which time DECLARANT shall appoint a committee consisting of DECLARANT and not less than two other owners of lots for the general purpose of providing for the maintenance of a high standard of architectural design, color and landscaping harmony and to preserve and enhance aesthetic qualities and high standards of construction in the development and maintenance of the subdivision.

The DECLARANT shall have the power to fill any vacancies in the Architectural Review Committee, as they may occur from time to time, and may appoint his own successor or temporary nominee.

The Committee shall determine whether or not the reservations, restrictions, covenants, and conditions, are being complied with and may promulgate and adopt reasonable rules and regulations in order to carry out its purpose. The Committee shall, in all respects, except when, in its sound discretion, good planning would otherwise dictate, be controlled by the conditions set forth herein.

The Committee shall be guided by the general purpose of maintaining an aesthetically pleasing development of a residential or vacation community in the aforesaid subdivision in conformity with these conditions.

## ARTICLE III

### CONDITIONS

The following conditions are imposed upon and apply to each and every lot contained within the aforesaid real property:

A. Commercial lot: One lot shall be designated as a Commercial lot and shall be intended for all reasonable commercial uses consistent with a convenience store, gasoline sales, laundromat, etc., which shall be:

B. Prohibition against re-division: None of the lots contained within the Subdivision as finally authorized by the County of Elko shall be redivided in any manner whatsoever.

C. Single dwellings: All of the lots shall contain a single dwelling in conformity with these conditions, with the exception of temporarily parked recreational vehicles belonging to owners of lots or guests of lot owners. No such temporary guest vehicle may remain on any lot, except for purposes of storage, for longer than six weeks.

D. Building authorization: No construction of any name or nature, including alteration of a structure already built, or original construction, or fence construction, shall be commenced until and unless the plans therefore, including designation of floor areas, external design, structural

details, materials list, elevations, and ground location and plot plan, as may apply, have been first delivered to and approved in writing by the Architectural Review Committee. All construction shall be in conformance with the requirements of the Uniform Building Code, Uniform Plumbing Code, National Electrical Code, and Uniform Fire Code as currently published. All premanufactured, modular or other housing which is not built or constructed on-site must be approved by the Nevada Division of Manufactured Housing or such other Nevada agency or division having jurisdiction over the same. All mobile or modular housing shall be first approved by the Architectural Review Committee and age and external condition shall be factors in the Committee's decision as to whether or not the same may be placed upon any lot. The proposed plans shall be submitted in duplicate to the Architectural Review Committee at the address specified below, or as may be changed from time to time, which amended address will be recorded with the Elko County Recorder.

Steve and Mavis Wright  
Ruby Valley, NV 89833

The Committee shall then either accept or reject the plan, or give a conditional acceptance thereof, indicating the conditions, in writing, within thirty (30) days of submission. Any approved plan shall be adhered to by the lot owner. The Committee shall retain one set of plans.

**E. Setbacks:** No structure shall be erected, altered, placed or permitted to remain on any building plot in this subdivision nearer than 50 feet to the front lot line, nor nearer than 20 feet to any side street line, nor nearer than 20 feet to any side lot line, and no nearer than 30 feet to any rear line of said plot.

**F. Materials and Components:** All residential dwellings constructed on the lots shall be subject to the following material restrictions:

(1) Exterior material shall be either block or brick veneer or horizontal or vertical siding and no unfinished plywood siding shall be used and no roof may be constructed of plywood or shake shingles;

(2) Manufactured housing with painted metal exteriors, provided the same are in reasonably good condition and appearance, shall be acceptable subject to the Committee's review.

**G. Advertising:** Except as the same pertains to the Commercial lot provided herein, no advertising sign, billboard, or other advertising media or structure of any name or nature shall be erected on or allowed within the boundary of any lot, save and except temporary signs for political candidates and neat and attractive notices offering the property for sale or indicating the contractor's name.

H. Animals and pets: No livestock of any name or nature will be permitted within the subdivision save and except domestic animals such as dogs, cats, or other household pets and up to four head of livestock (except during hunting and fishing season, at which time there may be more than two horses which may not be kept longer than a 45-day period), which animals may only be kept provided that they are not bred or maintained for any commercial purposes and any kennels or fences constructed for the same must be constructed of substantial materials which will prevent escape of such animals from the lot of their owner. All dogs must be kept on their owners' lot except when attended.

I. Temporary buildings: Except as provided above, temporary buildings of any name or nature shall not be erected or placed upon any lot to be used for human habitation, including but not limited to tents, shacks, or metal buildings.

J. Occupancy of residential dwellings: No residential dwelling shall be occupied or used for the purpose for which it is built as a residence until the same shall have been substantially completed and a certificate of occupancy has been issued by the Architectural Review Committee.

K. Use of premises: No person or entity shall make any use of any premises on any lot except as a single family residential or vacation dwelling and in conformity with these conditions and in compliance with all County ordinances, if any. No commercial enterprises shall be conducted within or upon any lot in the subdivision.

L. Garbage and refuse: No garbage, trash, refuse, junk, weeds or other obnoxious or offensive items or materials shall be permitted to accumulate on any of the lots and the owner of each lot shall cause all such materials and items to be disposed of by and in accordance with accepted sanitary and safety practices.

M. Nuisances: No obnoxious or offensive activity shall be carried on upon any lot nor shall anything be done upon any lot which shall be or may become an annoyance or a nuisance to the general neighborhood, including but not limited to fireworks displays, storage of disabled vehicles, machinery or machinery parts, boxes, bags, trash, dead animals or empty or filled containers. All trash must be taken to a County or City dump. No vehicles may be stored on any streets and no unlighted 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:

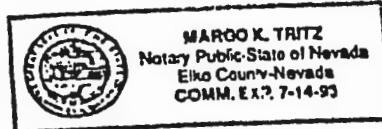
Stephen G. Wright  
STEPHEN G. WRIGHT

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 :

FEE 10<sup>00</sup> FILE # 283750  
FILED FOR RECORD  
AT REQUEST OF  
Marnel + Hansen  
89 OCT 25 AIO:43

RECORDED BY 702 287  
JERRY D. REYNOLDS  
ELKO CO. RECORDER

# EXHIBIT C

# ***RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION***

765 EAST GREG ST #103  
SPARKS, NEVADA 89431  
(remit to)

687 6th Street, Suite 1  
Elko, Nevada 89801  
(correspondence)

December 9, 2009

Elizabeth Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

Dear Mrs. Essington,

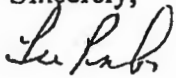
I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

- 1) The HOA was formed by the developer Steve Wright when he subdivided the properties originally. The formation of a committee was required in the original documents. Your property deed lists the CC&R's so you signed originally for this and agreed to a committee. This is your original signature and agreement. State law is very clear about this.
- 2) Steve Wright had the authority to appoint a committee to manage the CC&R's. Steve Wright had a meeting which I was appointed president, Mike Cecchi, VP, Dennis McIntyre sec/tres, Bill Harmon and Bill Noble, directors.
- 3) Once this happened I began researching the requirements of handling the committee and money required to operate. Federal law required that we obtain a Federal Id number to operate. (Steve Wright could operate under his existing). To do this we had to have a fictitious name and non profit status. This led to having an official name and registration.
- 4) To continue through our research we found out we are required per NRS 116 that insurance and council are required. We have done that.
- 5) We added to the architectural committee to lighten the load of the volunteers, which we researched and is legal. This is now our Executive committee.
- 6) There is no implied obligation or absence of legal documentation; it is there clearly in your deed.

Under the developers requirements Steve Wright did turn over the committee to the homeowners. He had the right to appoint. Steve Wright did not need any particular lot owner's permission to do this, it was strictly his choice. Now we are following the NRS

statues and administration code though the direction of our council Bob Wines. I hope this helps you understand your obligations.

Sincerely,



Lee Perks  
President RLEHA

Cc: RLEHA Board members  
Robert Wines, Esq.

# EXHIBIT D

Ruby Lake Estates

687 6th Street Ste 1  
Elko, NV 89801

# Invoice

| Date       | Invoice # |
|------------|-----------|
| 12/16/2010 | 321       |

|   |
|---|
| Bill To   |
| ROCKY ROA<br>HC 60 BOX 755<br>RUBY VALLEY, NV 89833 |

Payment remit to:  
Ruby Lake Estates C/O L. A Perks  
765 East Greg Street, Suite 103  
Sparks, Nevada 89431

| P.O. No. | Terms    | Project |
|----------|----------|---------|
|          | 1/1/2011 |         |

| Quantity   | Description            | Rate                       | Amount |
|--|------------------------|----------------------------|--------|
| 1  | 2011 YEARLY ASSESSMENT | 226.99                     | 226.99 |
| <b>Payment Due By:</b><br><br><b>January 31, 2011</b>        |                        |                            |        |
| PLEASE REMIT TO: 765 E. GREG ST #103<br>SPARKS, NEVADA 89431 |                        | <b>Total</b><br>4 AA000219 | \$226  |

# EXHIBIT E

**ANGIUS  
& TERRY  
COLLECTIONS  
LLC**

A Division of ANGIUS & TERRY LLP  
ATTORNEYS

January 4, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

Artemis Exploration Company  
HC 60 Box 755  
Ruby Valley, NV 89833

Re: Ruby Lake Estates / 2010-3298  
Artemis Exploration Company  
3817 Indian Springs Drive  
Ruby Valley, NV 89833

Dear Homeowner(s):

Angius & Terry Collections, LLC ("ATC") represents Ruby Lake Estates ("Association"), and has been directed to act on your delinquent account with respect to the above-referenced property ("Property"). This is our NOTICE OF INTENT TO RECORD A NOTICE OF DELINQUENT ASSESSMENT LIEN ("Demand").

As of the date of this Demand, there is a total of \$662.92 owing and unpaid to the Association. Please ensure that all amounts due to the Association, plus all additional amounts which become due and payable to the Association including recoverable fees and costs be paid, in full, and physically received in our office on or before 5:00 P.M. on 2/4/2011. Payment should be made payable to Angius & Terry Collections, LLC. Call our office, at least 48 hours prior to your deadline date, at (702) 255-1124 or (877) 781-8885 to obtain the correct payment amount as the total amount owed is subject to change. Please note, that should a reinstatement amount be provided by our office prior to our receiving notification of a change in the Association's assessments, you will be responsible for the account balance that reflects the change in the Association's assessment. Should you elect to ignore this Demand, a Notice of Delinquent Assessment Lien will be prepared and forwarded to the County Recorder's office and additional collections fees and costs will be added to your account.

If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above. You should direct all communications relating to this demand to the above-referenced office.

Please note all payments must be in the form of a cashier's check or money order. Personal check's and cash will not be accepted.

This is a serious matter and your immediate attention is imperative. Should you have any questions, please contact our office at (702) 255-1124 or (877) 781-8885.

Sincerely,

  
Carolyn Swanson  
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

4 AA000221



FILED

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

2016 APR 14 PM 4: 32

ELKO CO DISTRICT COURT

4 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

CLERK \_\_\_\_\_ DEPUTY \_\_\_\_\_

5 IN AND FOR THE COUNTY OF ELKO

6 ARTEMIS EXPLORATION COMPANY, a  
7 Nevada Corporation,

8 Plaintiff,

9 vs.

ANSWER TO SECOND AMENDED  
COMPLAINT; COUNTERCLAIM  
AND CROSS-CLAIM

10 RUBY LAKE ESTATES HOMEOWNER'S  
11 ASSOCIATION, STEPHEN WEST;  
12 DOMINIC DIBONA; EVELYN  
13 DIBONA; MICHAEL BRENNAN AND  
14 MARNIE BRENNAN; RICHARD  
15 BECKERDITE; BILL NOBLE AND  
16 CHERYL NOBLE; AARON MOTES; BILL  
17 HARMON AND TERI HARMON; LEROY  
18 PERKS AND NORA PERKS; JUAN LA  
19 CHICA AND VICTORIA LA CHICA; BRAD  
20 KEIFE; SEVEN K PROPERTIES; MIKE  
21 CECCHI AND KRIS CECCHI; WAYNE  
22 CIRONE AND ILA CIRONE; CONNIE  
23 STAFFORD; AARON YOHEY; PAUL  
24 LUCAS; DAVE MILLER; JAMES TAYLOR;  
25 MIKE MASON AND SHELLY MASON;  
26 JIMMY SARGENT AND ELLEN  
27 SARGENT; JACK HEALY AND YVETTE  
28 HEALEY; BO HARMON; MICHAEL  
GOWAN AND MARY ANN GOWAN; PHIL  
FRANK AND DOROTHY FRANK; JOE  
HERNANDEZ AND PAULA HERNANDEZ;  
DENNIS MCINTYRE AND VALERI  
MCINTYRE; ROBERT HECKMAN  
AND NATHAN HECKMAN; JAMES  
VANDER MEER; HAROLD WYATT AND  
MARY WYATT; ROBERT CLARK; BETH  
TEITLEBAUM; DANIEL SPILSBURY AND  
DELAINE SPILSBURY; TERRY HUBERT  
AND BONNIE HUBERT; RUSSELL  
ROGERS AND SUSAN ROGERS; ROCKY  
ROA; BEVERLY PATTERSON; DENNIS

1 CUNNINGHAM; RILEY MANZONIE;  
2 DAVID NORWOOD; and DOES I-X,  
3 Defendants.

---

4  
5 RUBY LAKE ESTATES HOMEOWNER'S  
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Counterdefendant.

---

12 RUBY LAKE ESTATES HOMEOWNER'S  
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

16 STEPHEN WEST; DOMINIC DIBONA;  
17 EVELYN DIBONA; MICHAEL BRENNAN  
18 AND MARNIE BRENNAN; RICHARD  
19 BECKERDITE; BILL NOBLE AND  
20 CHERYL NOBLE; AARON MOTES; BILL  
21 HARMON AND TERI HARMON; LEROY  
22 PERKS AND NORA PERKS; JUAN LA  
23 CHICA AND VICTORIA LA CHICA; BRAD  
24 KEIFE; SEVEN K PROPERTIES; MIKE  
25 CECCHI AND KRIS CECCHI; WAYNE  
26 CIRONE AND ILA CIRONE; CONNIE  
27 STAFFORD; AARON YOHEY; PAUL  
28 LUCAS; DAVE MILLER; JAMES TAYLOR;  
MIKE MASON AND SHELLY MASON;  
JIMMY SARGENT AND ELLEN  
SARGENT; JACK HEALY AND YVETTE  
HEALEY; BO HARMON; MICHAEL  
GOWAN AND MARY ANN GOWAN; PHIL  
FRANK AND DOROTHY FRANK; JOE  
HERNANDEZ AND PAULA HERNANDEZ;  
DENNIS MCINTYRE AND VALERI  
MCINTYRE; ROBERT HECKMAN AND  
NATHAN HECKMAN; JAMES VANDER  
MEER; HAROLD WYATT AND MARY

1 WYATT; ROBERT CLARK; BETH  
2 TEITLEBAUM; DANIEL SPILSBURY AND  
3 DELAINE SPILSBURY; TERRY HUBERT  
4 AND BONNIE HUBERT; RUSSELL  
5 ROGERS AND SUSAN ROGERS; ROCKY  
6 ROA; BEVERLY PATTERSON; DENNIS  
7 CUNNINGHAM, RILEY MANZONIE;  
8 DAVID NORWOOD; and DOES I-X,

9 Cross-Defendants.  
10 /

11 Defendant Ruby Lake Estates Homeowner's Association ("Ruby Lake"), by and through its  
12 attorneys, Kern & Associates, Ltd. answers the Plaintiff's Complaint, and counterclaims and cross-  
13 claims as follows:

14 **JURISDICTION**

15 1. Answering paragraph 1 of Plaintiff's Complaint, Ruby Lake, on information and  
16 belief admits the allegations contained in paragraph 1.

17 2. Answering paragraph 2 of Plaintiff's Complaint, Ruby Lake has no information who  
18 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there  
19 is a deed recorded on June 21, 1994.

20 3. Answering paragraph 3 of Plaintiff's Complaint, Ruby Lake has no information who  
21 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there  
22 is a deed recorded on March 9, 2010.

23 4. Answering paragraph 4 of Plaintiff's Complaint, Ruby Lake admits that it is a  
24 nonprofit corporation incorporated and validly existing under the laws of the State of Nevada. Ruby  
25 Lake asserts Nevada law does not provide for a corporation to "register" and based thereon denies  
26 the same.

27 5. Answering paragraph 5 of Plaintiff's Complaint, Ruby Lake admits the allegations in  
28 paragraph 5.

1 ///

2 6. Answering paragraph 6 of Plaintiff's Complaint, Ruby Lake admits the allegations in  
3 paragraph 6.  
4

5 **COMMON FACTS**

6 7. Answering paragraph 7 of Plaintiff's Complaint, Ruby Lake incorporates by  
7 reference each and every answer contained in paragraphs 1 through 6 stated above.

8 8. Answering paragraph 8 of Plaintiff's Complaint, Ruby Lake asserts that the  
9 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
10 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
11 allegations are denied.  
12

13 9. Answering paragraph 9 of Plaintiff's Complaint, Ruby Lake asserts that the  
14 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
15 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
16 allegations are denied.  
17

18 10. Answering paragraph 10 of Plaintiff's Complaint, Ruby Lake denies each and every  
19 allegation contained in paragraph 10.

20 11. Answering paragraph 11 of Plaintiff's Complaint, Ruby Lake asserts the Declaration  
21 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary  
22 allegations.  
23

24 12. Answering paragraph 12 of Plaintiff's Complaint, Ruby Lake asserts the Declaration  
25 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary  
26 allegations.  
27

28 13. Answering paragraph 13 of Plaintiff's Complaint, Ruby Lake denies each and every  
allegation contained in paragraph 13.

1           14.     Answering paragraph 14 of Plaintiff's Complaint, Ruby Lake denies each and every  
2 allegation contained in paragraph 14.

3           15.     Answering paragraph 15 of Plaintiff's Complaint, Ruby Lake denies each and every  
4 allegation contained in paragraph 15. Ruby Lake admits that in accordance with Nevada law and  
5 the governing documents of Ruby Lake, assessments were properly made and collected to pay for  
6 the common expenses of the common-interest community.

7           16.     Answering paragraph 16 of Plaintiff's Complaint, Ruby Lake denies the allegations  
8 regarding action by the Architectural Review Committee. Ruby Lake admits Beth Essington had  
9 communications. Ruby Lake denies each and every remaining allegation contained in paragraph 16.  
10

11           17.     Answering paragraph 17 of Plaintiff's Complaint, Ruby Lake asserts that the  
12 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
13 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
14 allegations are denied.  
15

16           18.     Answering paragraph 18 of Plaintiff's Complaint, Ruby Lake denies each and every  
17 allegation contained in paragraph 18.  
18

19           19.     Answering paragraph 19 of Plaintiff's Complaint, Ruby Lake asserts Artemis  
20 Exploration Company wrongfully refused to pay lawful assessments. Ruby Lake denies each and  
21 every remaining allegation contained in paragraph 19.  
22

23           20.     Answering paragraph 20 of Plaintiff's Complaint, Ruby Lake asserts that the  
24 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
25 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
26 allegations are denied.  
27

28           21.     Answering paragraph 21 of Plaintiff's Complaint, Ruby Lake asserts that the  
document speaks for itself, no answer is required as to its content, but to the extent it is determined

1 an answer is required any contrary allegations are denied. As to any remaining allegations, those  
2 allegations are denied.

3 22. Answering paragraph 22 of Plaintiff's Complaint, Ruby Lake asserts that the  
4 document speaks for itself, no answer is required as to its content, but to the extent it is determined  
5 an answer is required any contrary allegations are denied. As to any and all remaining allegations  
6 regarding other property owners of Ruby Lake, such allegations are vague, ambiguous, overbroad,  
7 not reasonably limited as to scope and time, and/or potentially pertain to confidential information  
8 and, as such, no answer is required and/or those allegations are denied.  
9

### 10 **FIRST CLAIM FOR RELIEF**

#### 11 **(Declaratory Judgment)**

12 23. Answering paragraph 23 of Plaintiff's Complaint, Ruby Lake incorporates by  
13 reference each and every answer contained in paragraphs 1 through 22 stated above.  
14

15 24. Answering paragraph 24 of Plaintiff's Complaint, Ruby Lake is without knowledge  
16 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24,  
17 and based thereon denies the same.  
18

19 25. Answering paragraph 25 of Plaintiff's Complaint, Ruby Lake asserts that the statute  
20 speaks for itself.

21 26. Answering paragraph 26 of Plaintiff's Complaint, Ruby Lake denies each and every  
22 allegation contained in paragraph 26.  
23

24 27. Answering paragraph 27 of Plaintiff's Complaint, Ruby Lake denies each and every  
25 allegation contained in paragraph 27.

26 28. Answering paragraph 28 of Plaintiff's Complaint, Ruby Lake is without knowledge  
27 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28,  
28 and based thereon denies the same.

1 AS FOR SEPARATE AND AFFIRMATIVE DEFENSES, RUBY LAKE ALLEGES AND  
2 AVERS AS FOLLOWS:

3 **FIRST AFFIRMATIVE DEFENSE**

4 Plaintiff's Complaint fails to state a claim upon which relief may be validly granted against  
5 Ruby Lake.  
6

7 **SECOND AFFIRMATIVE DEFENSE**

8 At all times herein mentioned, Ruby Lake performed its duties in good faith and in a manner  
9 in which any ordinarily prudent homeowners association would use.  
10

11 **THIRD AFFIRMATIVE DEFENSE**

12 Plaintiff is estopped from asserting any claims against Ruby Lake.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Ruby Lake acted in good faith.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred by the doctrine of collateral estoppel.  
17

18 **SIXTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims are barred by its own bad faith and unlawful conduct.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 Ruby Lake acted in accordance with statutory authority and is privileged and protected by  
22 applicable Nevada law, the governing documents of Ruby Lake and Chapter 116 of the Nevada  
23 Revised Statutes.  
24

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 Ruby Lake has been required to retain Kern & Associates, Ltd. to represent it in this matter  
27 and is entitled to attorney's fees and costs.  
28

**NINTH AFFIRMATIVE DEFENSE**

1 Plaintiff failed to arbitrate all of the issues raised in its complaint and such issues are  
2 therefore barred pursuant to the provisions of NRS 38.300 to 38.260, inclusive.

3 **TENTH AFFIRMATIVE DEFENSE**

4 Plaintiff's Complaint must be summarily dismissed for failure to comply with NRS  
5 38.330(5).  
6

7 **ELEVENTH AFFIRMATIVE DEFENSE**

8 Plaintiff's Complaint is barred by the applicable statute of limitations.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time of  
11 the filing of Ruby Lake's answer, all possible affirmative defenses may not have been alleged  
12 inasmuch as insufficient facts and other relevant information is unknown at this time. Ruby Lake  
13 reserves the right to amend this answer to allege additional affirmative defenses if subsequent  
14 investigation warrants the same.  
15

16 **WHEREFORE**, Ruby Lake prays as follows  
17

- 18 1. That Plaintiff takes nothing by reason of its Complaint;
- 19 2. That the Complaint be dismissed;
- 20 3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a  
21 reasonable attorneys' fee, for costs of suit; and
- 22 4. For such other and further relief as may be just and proper in the premises.  
23

24 **COUNTERCLAIM AND CROSS-CLAIM**

25 As and for its counterclaims against Artemis Exploration Company ("Artemis"), and cross-  
26 claim against all Cross-Defendants, Ruby Lake alleges as follows:  
27

28 **GENERAL ALLEGATIONS**



1           1.     Ruby Lake is organized as a non-profit corporation and operating as a common-  
2 interest community association and existing by virtue of the laws of the State of Nevada.

3           2.     Artemis is a Nevada corporation ("Artemis" or "Claimant"), whose President,  
4 Secretary, Treasurer and sole director is Elizabeth E. Essington.  
5

6           3.     Mrs. Essington's husband is George "Mel" Essington.

7           4.     Cross Defendants are property owners within Ruby Lake.

8           5.     For over sixteen years (1994-2010), Mr. and Mrs. Essington implicitly and expressly  
9 represented that Mr. Essington had the capacity and authority to act on behalf of Artemis.  
10

11          6.     There are recorded certain Reservations, Conditions and Restrictions for Ruby Lake  
12 Estates ("CC&Rs"). The CC&Rs were recorded on October 25, 1989, in the Office of the Elko  
13 County Recorder in Book 703, Page 287.

14          7.     Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot  
15 2, Block H of Ruby Lake Estates on March 9, 2010, and that both Lot 6 and Lot 2 ("Lots") are  
16 subject to the terms, conditions and restrictions set forth in the CC&Rs.  
17

18          8.     Articles of Incorporation for RLEHOA were filed with the Nevada Secretary of State  
19 on January 16, 2006.

20          9.     Prior to the filing of the Articles of Incorporation, the ARC served as the governing  
21 body of the Association.  
22

23          10.    Newsletters and written communications were regularly sent to the members of the  
24 Association, including Mr. and Mrs. Essington, and meetings were held by the Board of Directors.

25          11.    Assessments were levied in order to pay for the maintenance of the community roads  
26 and other common elements.  
27  
28

1           12.     Mr. and Mrs. Essington, representing they were the owners of Lot 6 of Block G  
2 individually, regularly paid the assessments, as levied by the ARC and Board of Directors from  
3 time to time.

4           13.     An overview of the history and establishment of the Association was provided to its  
5 members in a letter from Lee Perks, President of RLEHOA, on June 28, 2010 ("June 28, 2010  
6 Letter").

7           14.     The June 28, 2010 Letter makes clear that Elizabeth and Mel Essington were the  
8 owners who demanded in 2005 that an Association be formed and an Association Board elected.  
9

10          15.     In 2005, Mel Essington prepared Articles of Incorporation for filing with the Nevada  
11 Secretary of State listing himself and Elizabeth Essington as the incorporators and officers of the  
12 Association.

13          16.     The Articles of Incorporation were filed by Lee Perks on January 16, 2006, and the  
14 Association adopted its By-Laws on August 12, 2006.  
15

16          17.     Mel Essington seconded the adoption of the Bylaws and was an active participant in  
17 the business affairs of the Association.  
18

19          18.     Both prior to the filing of the Articles, as well as for more than five years thereafter,  
20 Mel Essington served on the Board of Directors.

21          19.     Mel Essington represented his authority to act and all members of the Association  
22 relied on such representation.  
23

24          20.     Artemis is fully bound by his representations and actions. During his tenure on the  
25 Board as Artemis' representative, Mr. Essington wrote letters to the members of RLEHOA urging  
26 them to "revitalize the Ruby Lakes Estates property owners association", as well as confirming the  
27 existence of the HOA, the applicability of NRS Chapter 116, and the ability and responsibility of  
28

1 the RLEHOA to levy and collect assessments. See RLE 021A-021D; RLE 0044- 048; RLE 053;  
2 RLE 077-080; RLE 083.

3 21. Both before and during his tenure on the Board of Directors, Mel Essington was  
4 aware of the various common elements of the Association, including the roads, signs and perimeter  
5 fencing, which the Association was, and is, required to maintain.  
6

7 22. In his August 22, 2005 letter to all owners of lots within Ruby Lake, Mr. Essington  
8 states in part:

9 Each of us purchased lots in the subdivision with the knowledge,  
10 understanding, and acceptance of the Covenants, Conditions, and Restriction's  
11 (CCR's) [sic] that attended our property deeds. The CCR's [sic] were designed to  
12 work for the good of the owners, assure the aesthetic qualities of the subdivision,  
13 protect the value of our investments, and the beauty of Ruby Valley. The  
14 association also has the capability of providing services for the subdivision that  
15 might otherwise elude the individual owners. Those services include: assisting in  
16 acquiring telephone service, periodic road maintenance, coordinating with County  
17 officials on planning issues,... and getting regular snow removal on the CCC  
18 road, organizing an annual meeting and BBQ, and publishing an annual news  
19 letter. The effectiveness of the CCR's [sic] and the association is the  
20 responsibility of the owners as expressed through the association; ...

21 Mr. Leroy Perks and others recognized and accepted the responsibility  
22 past [sic] on by Mr. Wright several years ago when they organized the association  
23 and worked towards achieving progress toward its stated goals. . . I am proposing  
24 to organize an election of association officers that will be motivated and dedicated  
25 to making and keeping the association the effective representational and oversight  
26 organization it was intended to be..."

27 23. An election was thereafter held and directors of the Association were elected by the  
28 members.

24 24. Mr. Essington, on behalf of Artemis, continued to acknowledge the existence of the  
25 Association, the applicability of NRS Chapter 116, and the ability of the Association to levy and  
26 collect assessments for maintenance of the common elements. In a letter addressed to "Mr. Lee  
27 Perks, President, Ruby Lake Homeowners Association," dated January 14, 2007, Mr. Essington  
28 wrote:

.... As head of the homeowners association you need to work to protect the value of the investments of all of the individual owners and be able to look beyond your own more restricted outlook. ... I assume you are aware Nevada has found it necessary to create a commission to oversee the operation of the many HOA's [sic] in the state. I would also assume you are aware that NRS 116, Section 10, 8(f) now requires that the HOA records including financial records be located within sixty miles of the physical location of the community for inspection purposes. I presume that Mr. Wines will fulfill that function for the Association.

25. In an e-mail communication dated September 12, 2008, Artemis again acknowledges the need for assessments as well as the applicability of NAC 116 [sic]:

Again NAC 116 [sic] stresses the obligation for uniformly enforcing the provisions of the governing documents of the Association. We're way behind on compliance in this area and need to discuss how we are going to achieve compliance. The document states the board needs to formerly [sic] establish the Association's fiscal year on page 35. This is mere housekeeping but needs to be done.

26. Mr. Essington then followed up with an e-mail communication to his fellow board members covering a letter, which he wrote. Mr. Essington wanted his letter sent to all members of RLEHOA. In this letter, Mr. Essington again acknowledges the Association and the applicability of NRS Chapter 116, as well as the common elements of the Association, and the Association's duty and responsibility to maintain the same. Finally, Mr. Essington clearly acknowledges the Association's right and obligation to levy and collect assessments:

The Ruby Lakes Estates is a common-interest ownership community as defined by State statute. The Community has been established by proper recording of the CCR's [sic] with the county and the Homeowners Association (HOA) through filing with the Secretary of State. Within the State of Nevada the community and the HOA are governed primarily by Chapter 116 of the Nevada Revised Statutes. The statutes, among many other things, establish guidelines, regulations, and requirements for the operation and management of the HOA. They also establish both the rights and obligations of the individual owners. ...

Under section 3107 [NRS 116.3107] of the statutes, 'the association is responsible for maintenance, repair and replacement of the common elements, and each unit's owner is responsible for maintenance, repair and replacement of his unit'. The common elements in the Ruby Lakes Estates include two small land parcels and several access roads. The two land parcels are comprised of the lot on the north

1 end of Kiln road and the parcel containing the well, pump, and water truck fill  
2 point on the CCC road near its intersection with the Overland road.

3 Under the statutes both the HOA and each individual unit owner share  
4 responsibility and liability for the common elements. It is the expressed  
5 responsibility of the HOA executive board to insure sufficient maintenance of the  
6 common elements in this instance the community roads. Our roads are open to the  
7 public and carry responsibility and liability. Accepted surface road maintenance  
8 standards include shoulder and drainage features as well as the road surface.  
9 Because community roads have not received any maintenance for 8 years the  
10 shoulders have become weed and brush infested, and some sections lack adequate  
11 drainage. Obviously, it is past time to reestablish minimal road maintenance  
12 requirements. The HOA's budget does not currently permit meeting a contractor's  
13 fee to perform such maintenance. Hence, a temporary annual fee increase is  
14 necessary to raise those funds. It is anticipated that once the maintenance work is  
15 completed the fees may be reduced to their former level.

16 27. Mrs. Essington thereafter paid the increased assessment as levied by the Board  
17 members, including Mr. Essington ratifying the authority of Mr. Essington as representative of  
18 Artemis.

19 28. On June 20, 2010, Mr. Essington wrote a letter to his fellow homeowners in which  
20 he again acknowledged the existence and powers of the RLEHOA, including the power to levy  
21 assessments:

22 ... Membership in an HOA conveys considerable latitude, discretion, and  
23 authority over your deed and individual property rights to its officers and board.  
24 That level of authority has a similar affect within the HOA as law in society.  
25 Indeed elected HOA officials are considered under State Statute to be the same as  
26 elected State officials. The HOA officers and Board can at their sole discretion  
27 establish and set annual dues, fees, fines, rules including their enforcement, enter  
28 into financial obligations, and made errors in judgment subject to financial  
penalties that affect all of the landowners equally. ...

29 29. Mr. Essington was active in the Association from the time Lot 6 of Block G was  
30 purchased by Artemis in 1994 and served on the RLEHOA Board of Directors from August of  
2007, when he was initially elected until 2011.

31 30. During the time that Mr. Essington was on the Board, he was also a member of the  
32 ARC.

1           31. On behalf of Artemis, Mr. Essington regularly voiced his opinions regarding the  
2 enforcement and interpretation of the CC&Rs; he voted to approve the Reserve Study and regularly  
3 voted to approve all budgets, levy assessments, and increase assessments from time to time.

4           32. In 2009 a dispute arose between the Essingtons and the ARC regarding the  
5 construction within the Ruby Lake Estates subdivision of a large building used to house machinery  
6 and other equipment.

7           33. The ARC and Board took the position that such a structure was permitted and the  
8 Essingtons disputed this position.

9           34. In response to the approval of the large building, Mr. and Mrs. Essington then began  
10 to assert that the RLEHOA was not validly formed and had no authority to levy or collect  
11 assessments.

12           35. Artemis ceased paying its assessments, all of which had been approved by Mr.  
13 Essington as a Board member.

14           36. Invoices generated in the ordinary course of business for the Association were sent  
15 to the Essingtons.

16           37. On or about December 18, 2009, Mrs. Essington filed an Intervention Affidavit with  
17 the Office of the Ombudsman, Department of Business and Industry, Real Estate Division, seeking  
18 a determination that RLEHOA was an invalid community association.

19           38. On July 1, 2010, the Ombudsman's Office completed its review and issued its  
20 opinion, finding "that this Association is required to comply with the laws pertaining to  
21 homeowners associations, specifically, NRS 116 and related laws and regulations."

22           39. Artemis continued to fail to pay its assessments and the Board of Directors took  
23 appropriate action to collect the delinquent assessments.

1           40.     In April of 2010, for the first time, Artemis asserted that Mr. Essington was not an  
2 officer, director, shareholder, or other authorized representative of Artemis.

3           41.     The position taken in April of 2010 was directly contrary to the position taken by  
4 Artemis for nearly a decade.

5           42.     Artemis was asked to pay its delinquent assessments and Mr. Essington was asked to  
6 provide proof that he was an officer, director or other authorized representative of Artemis.

7           43.     Mr. Essington subsequently resigned from the Board of Directors per letter dated  
8 January 6, 2011.  
9

10  
11                               **FIRST CLAIM FOR RELIEF**  
12                               **(Breach of Contract and Breach of Statutory Duties – Against Artemis)**

13           44.     Ruby Lake incorporates paragraphs 1 through 43 as if set forth in full herein.

14           45.     Artemis wrongfully and in violation of Chapter 116 and the governing documents of  
15 Ruby Lake caused Ruby Lake to incur expenses that it would not have incurred but for Artemis'  
16 wrongful and unlawful conduct.

17           46.     Artemis incurred damages in excess of \$10,000.00.

18           47.     Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
19 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby  
20 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.  
21

22                               **SECOND CLAIM FOR RELIEF**  
23                               **(Negligence – Against Artemis)**

24           48.     Ruby Lake incorporates paragraphs 1 through 47 as if set forth in full herein.

25           49.     Artemis owed a duty to exercise due care in its actions in connection with Ruby  
26 Lake.  
27

28           50.     Artemis was negligent in its actions with Ruby Lake.

1        51. As a proximate cause of Artemis' negligence, Ruby Lake incurred damages in  
2 excess of \$10,000.00.

3        52. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
4 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby  
5 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.  
6

7                                    **THIRD CLAIM FOR RELIEF**  
8                                    **(Violations – Against Artemis)**

9        53. Ruby Lake incorporates paragraphs 1 through 52 as if set forth in full herein.

10       54. Artemis' actions were, and continue to be, violations of the governing documents.

11       55. Artemis should pay all damages sustained.

12       56. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to  
13 attorney's fees and costs in accordance with NRS 18.010, the governing documents of Ruby Lake,  
14 Chapters 116 and 38 of the Nevada Revised Statutes.  
15

16                                    **FOURTH CLAIM FOR RELIEF**  
17                                    **(Confirmation of Award of Attorneys Fees and Costs – Against Artemis)**

18       57. Ruby Lake incorporates by reference the allegations of paragraphs 1 through 56 as  
19 though fully set forth herein.

20       58. An Award was entered in favor of Ruby Lake on the substantive portion of the  
21 arbitration proceeding NRED Claim 11-82, a copy of which is attached as Exhibit "1".  
22

23       59. An Award for attorney's fees in the amount of \$22,092.00 and costs in the amount of  
24 \$4,718.67 was in favor of Ruby Lake in the non-binding arbitration proceeding NRED Claim 11-  
25 82, a copy of which is attached as Exhibit "1".

26       60. The Award entered should be confirmed and adopted.  
27  
28

///

///



**FIFTH CLAIM FOR RELIEF**  
**(Damages - Attorneys Fees – Against Artemis)**

61. Ruby Lake incorporates paragraphs 1 through 60 as if set forth in full herein.

62. Counter-Defendant's actions resulted in Ruby Lake incurring attorney's fees as damages.

63. Pursuant to NRS 38.330(7), Ruby Lake should be awarded all attorney's fees and costs incurred in the defense and prosecution of this action as well as all of those attorney's fees and costs incurred in the arbitration proceeding NRED Claim 11-82.

64. Artemis should pay all damages sustained.

65. Ruby Lake was required to retain Kern & Associates, Ltd., and is entitled to attorney's fees and costs in accordance with Sandy Valley Associates v. Sky Ranch Estates Owners Association, 117 Nev.Adv.Rep. 78, 35 P.3d 964 (2001); NRS 18.010, the Governing Documents of Ruby Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

66. All attorney's fees and costs were and will be incurred as a direct and proximate result of the Counter-Defendant's violations of the Governing Documents of Ruby Lake.

**SIXTH CLAIM FOR RELIEF**  
**(Declaratory Relief - Chapter 30 of the Nevada Revised Statutes – Against Artemis and Cross-Defendants)**

67. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 66 of its Counterclaim as though fully set forth herein.

68. A real controversy exists between the parties hereto concerning whether it is a lawfully formed and validly existing non-profit common interest community association in good standing, organized for the purposes of administering and enforcing the CC&Rs and exercising all powers of a community association granted under the provisions of Nevada law, including Chapters

1 81 and 116 of the Nevada Revised Statutes. An order should be entered resolving this controversy  
2 in favor of Ruby Lake.

3  
4 **SEVENTH CLAIM FOR RELIEF**  
**(Preliminary and Permanent Injunction – Against Artemis)**

5 69. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 68 of its  
6 Counterclaim as though fully set forth herein.

7  
8 70. Counter-Defendant's behavior in the past shows that it will continue to interfere with  
9 business of Ruby Lake.

10 71. Counter-Defendant's behavior poses a serious, substantial and irreparable harm to  
11 the lawful actions of Ruby Lake.

12 72. Ruby Lake has no adequate remedy at law or otherwise for the harm or damage done  
13 and threatened to be done.

14  
15 73. The only remedy that will allow Ruby Lake to maintain peace and quiet and comply  
16 with the statutory and recorded obligations of a common-interest community is a restraining order  
17 from this Court.

18  
19 74. Ruby Lake will suffer irreparable harm unless Counter-Defendant is ordered by this  
20 Court to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake  
21 and its members.

22 75. On a final hearing, a permanent injunction enjoining and ordering the Counter-  
23 Defendants to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby  
24 Lake and its members.

25  
26 76. On a final hearing, a permanent injunction enjoining and ordering the Counter-  
27 Defendants to refrain from taking any action to interfere with Ruby Lake and its lawful  
28 requirements under the law as a common-interest community.

1           WHEREFORE, Ruby Lake prays for judgment against Artemis Exploration Company, as  
2 follows;

3           1.       That Ruby Lake recover special and general damages in an amount in excess of  
4 \$10,000.00;

5  
6           2.       That Ruby Lake is a lawfully formed and validly existing non-profit common-  
7 interest community association in good standing, organized for the purposes of administering and  
8 enforcing the CC&Rs and exercising all powers of a community association granted under the  
9 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

10  
11          3.       For a permanent injunction enjoining and ordering the Counter-Defendants to refrain  
12 from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members;

13          4.       For a permanent injunction enjoining and ordering the Counter-Defendants to refrain  
14 from taking any action to interfere with Ruby Lake and its lawful requirements under the law as a  
15 common-interest community;

16  
17          5.       For a judgment confirming the Awards entered by the Arbitrator in the arbitration  
18 proceeding NRED Claim 11-82 in favor of Ruby Lake;

19          6.       That Ruby Lake be awarded its costs;

20          7.       That Ruby Lake be awarded its attorney's fees;

21          8.       Such other and further relief as the Court deems just and proper in the premises.

22  
23          WHEREFORE, Ruby Lake prays for judgment against Cross-Defendants, and each of them,  
24 as follows:

25          1.       That Ruby Lake is a lawfully formed and validly existing non-profit common-  
26 interest community association in good standing, organized for the purposes of administering and  
27 enforcing the CC&Rs and exercising all powers of a community association granted under the  
28 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

1           2.       Such other and further relief as the Court deems just and proper in the premises.

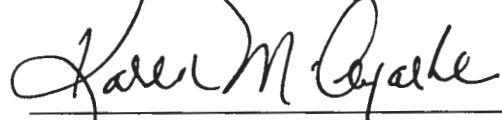
2                               **AFFIRMATION**

3                               **Pursuant to NRS 239B.030**

4           The undersigned does hereby affirm that the preceding document filed in the above-entitled  
5  
6 case does not contain the social security number of any person.

7                               DATED this 4<sup>th</sup> day of April, 2016.

8   KERN & ASSOCIATES, LTD.

9   

10    GAYLE A. KERN, ESQ.

11    NEVADA BAR #1620

12    KAREN M. AYARBE, ESQ.

13    NEVADA BAR #3358

14    5421 Kietzke Lane, Suite 200

15    RENO, NEVADA 89511

16    Telephone: 775-324-5930

17    Fax: 775-324-6173

18    Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)

19    Attorneys for Ruby Lake Estates Homeowner's  
20    Association

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &  
3 Associates, Ltd., and that on this day I served the foregoing document described as follows:  
4

5 ***ANSWER TO SECOND AMENDED COMPLAINT;***  
6 ***COUNTERCLAIM AND CROSS-CLAIM***

7 on the parties set forth below, at the addresses listed below by:

8 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope place for collection  
9 and mailing in the United States Mail, at Reno, Nevada, first class mail, postage  
10 paid, following ordinary business practices, addressed to:

11 \_\_\_\_\_ Via facsimile transmission

12 \_\_\_\_\_ Via e-mail

13 \_\_\_\_\_ Personal delivery, upon:

14 X \_\_\_\_\_ United Parcel Service, Next Day Air, addressed to:

15  
16 Travis Gerber, Esq.  
17 Gerber Law Offices, LLP  
18 491 4<sup>th</sup> Street  
Elko, NV 89801

19 DATED this 5<sup>th</sup> day of April, 2016.

20  
21   
22  
23  
24  
25  
26  
27  
28