IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY, A Nevada Corporation; HAROLD WYATT; AND MARY WYATT, Appellants, vs. RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, Respondent.	No. 75323 APPELLANTS' APPENDIX VOLUME 5 - Pgs. 104-222 Appeal from Fourth Judicial District Court, Division 2 Case No. CV-C-12-175

APPELLANTS' APPENDIX - VOLUME 5 - Pgs. 104-222

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CASE NO. CV-C-12-175

DEPT. NO. I

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

v.

RUBY LAKES ESTATES HOMEOWNER'S ASSOCIATION, et. al.,

Defendants.

_____/

RUBY LAKE ESTATES HOMWOENR'S ASSOCIATION,

Counterclaimant,

v.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant,

_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,

v.

STEPHEN WEST; et. al.,

Cross-Defendants.

_____/

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION'S RESPONSE TO HARRY AND MARY WYATT'S ERRATA AND JOINDER IN ARTEMIS EXPLORATION COMPANY'S:

MOTION AND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER DENYING PLAINTIFF'S AND GRATNING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT; and

OPPOSITION TO RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMS.

Defendant/Counterclaimant/Cross-Claimant Ruby Lake Estates Homeowner's Association (the "Association"), a Nevada non-profit corporation, by and through its counsel Kern & Associates, Ltd., hereby submits its Response to Harold and Mary Wyatt's Joinder and Errata to Plaintiff/Counterdefendant Artemis Exploration Company's ("Artemis") Motion and Reply in Support of Motion for Summary Judgment on Defendant's Remaining Counterclaims ("Artemis's MSJ on Counterclaims"); Artemis's Motion and Reply in Support of Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims ("Motion for Leave"); Artemis's Motion and Reply in Support of Motion for Reconsideration of Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment ("Motion for Reconsideration"); and Artemis's Opposition to the Association's Motion for Summary Judgment on Counterclaims ("Association's MSJ on Counterclaims") (and, collectively, "Motions"). This Response is made and based upon the accompanying memorandum of points and authorities, all papers, pleadings, and exhibits on file herein, and any argument deemed necessary by the Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Harold and Mary Wyatt (the "Wyatts") have been joined as Defendants to Artemis's Complaint for declaratory relief and the Association's Crossclaim for Declaratory Relief per this Court's September 11, 2015 Order Re: Joinder. The legal issue in the competing claims for declaratory relief is whether the Association is an NRS Chapter 116 association, valid at its inception. As the Court is aware, following discovery, extensive briefing, and oral argument, summary judgment was granted to the Association on Artemis's Complaint for declaratory relief in the Court's February 14, 2013 Order Granting the Association's Motion for Summary Judgment ("Order Granting MSJ"). After spending "...hour upon hour studying the memoranda of points and authorities and exhibits on

file in this case...", this Court concluded that the Association "...was entitled to exercise all of the powers vested in it by NRS Chapter 116, including the collection of assessments for common expenses...Valid at its inception, the HOA continues to be so today." (Order Granting MSJ, p. 6, ll. 8-9, and 17-22. *See also* Order Denying Artemis MSJ.[1]) Judgment was entered in favor of the Association on Artemis's Complaint on June 6, 2013. The Association's remaining Counterclaims, however, were still pending before the Court.

After an appeal to the Nevada Supreme Court was dismissed on jurisdictional grounds, the parties filed cross Motions for Summary Judgment ("Cross-Motions") on the Association's remaining Counterclaims, and Artemis filed a Motion for Relief from Judgment or Order NRCP 60(b) ("Motion for Relief"). The Cross-Motions and Motion for Relief were fully briefed, and oral argument was held by the Court on May 28, 2014.

On April 14, 2015, the Court entered its Order granting Artemis's Motion for Relief on the grounds that it lacked subject matter jurisdiction to enter judgment and confirm the NRS Chapter 38 arbitration award under NRS 38.243. The Court indicated in its Order that it would dispose of the Cross Motions on the Association's remaining counterclaims in separate orders. Subsequently, the Court entered its May 1, 2015 Order Setting Show Cause Hearing Re: Joinder of Necessary Parties ("Show Cause Order") on whether other owners within the Association should be joined as necessary parties to the Association's counterclaim for declaratory relief. The Show Cause Order required that a roster of the Association's membership be presented for the Court's review, but no other briefing was ordered.[2]

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[1] *See* Order Denying Motion for Summary Judgment, entered February 12, 2013 ("Order Denying Artemis MSJ").

[2] Nonetheless, Artemis filed, as one document, a sixteen (16) page Motion for Leave to file Supplement to Motion for Summary Judgment on the remaining Counterclaims and Motion for Reconsideration on the issue of whether the Association is a Chapter 116 Association, upon which issue the Association has clearly prevailed. The Motion for Leave seeks the Court's permission to file additional briefs on the Cross Motions which were briefed and argued in May 2014. The Motion for Reconsideration (though no leave to file said Motion was granted) asked this Court to reconsider its Orders Granting MSJ in favor of the Association and denying Artemis's Cross Motion entered, now, nearly four years ago in February 2013. The Association has opposed the Motion for Leave and Motion for Reconsideration.

The Show Cause hearing was held before the Court on July 1, 2015. At the hearing, Artemis's Motion for Leave to Supplement and Motion for Reconsideration of the Court's prior Orders granting the Association summary judgment on Artemis's declaratory relief claim and corresponding denial of Artemis's countermotion were, to counsel's recollection, briefly addressed. Though a written order was not entered by the Court on those motions, it is undersigned counsel's best recollection that the Court seemed disinclined to grant them.

On September 11, 2015, the Court issued its written order that all remaining property owners of the Association be joined in Artemis's declaratory relief claim and the Association's declaratory relief counterclaim, and indicated that ruling on the Cross-Motions on the remaining counterclaims would be deferred until joinder of all the property owners to the declaratory relief claims had been accomplished.

Through the efforts of both counsel for Artemis and the Association, such joinder has now been completed, and the case is ready for decision by the Court on the Cross-Motions on the remaining counterclaims against Artemis, as well as its declaratory relief cross claim against the joined cross defendant property owners, including the Wyatts.

The Wyatts, through Artemis counsel, have now filed their Joinder and Errata to Artemis's prior MSJ on Counterclaims, Artemis's Motion for Leave, Artemis's Motion for Reconsideration, and Artemis's Opposition to the Association's MSJ on Counterclaims. The briefing on all of these Motions has been completed, argument heard, and the additional property owners joined as ordered by the Court. The counter Motions for Summary Judgment filed by the Association and Artemis on the Association's remaining Counterclaims are ready for decision by the Court. To the extent any new arguments are raised by the Wyatts in their Joinder and/or the Court somehow decides to reconsider any of its prior rulings in this case, including its Orders in February 2013 granting summary judgment in the Association's favor, the Association requests that it be provided an

opportunity to oppose any supplement filed on the Association's remaining Counterclaims, and/or be provided an opportunity to file an opposition to any statutory construction arguments made (though statutory construction has already been argued) before the Court issues its ruling.

The Association also incorporates by reference herein its own motions, replies, and oppositions with respect to the Motions identified in the Wyatt's Joinder as follows.

II.

STATEMENT OF FACTS

The Association incorporates by reference as if set forth in full its Statements of Facts from its Motion and Reply in Support of Motion for Summary Judgment on Counterclaims, filed on or about January 22, 2014, and February 24, 2014, respectively; its Opposition to Artemis's Motion for Summary Judgment on Defendant's Remaining Counterclaims filed January 10, 2014; and its June 22, 2015 Oppositions to Artemis's Motion for Leave and Artemis's Motion for Reconsideration.

III.

LEGAL ARGUMENT

As has already been established through the briefing and argument of the Cross-Motions for Summary Judgment pending on the Association's counterclaims, the Association is entitled to judgment as a matter of law as to all of its counterclaims against Artemis and the cross claim for declaratory relief against the Wyatts, i.e. the Association is a Chapter 116 association, valid at its inception as a matter of law. Moreover, any request to supplement prior briefing or for reconsideration of the Court's prior rulings should be formally denied.

For the Court's convenience and to avoid more repetition, the Association also incorporates by reference its legal arguments, as if set forth in full, from its Motion and Reply in Support of Motion for Summary Judgment on Counterclaims, filed on or about January 22, 2014, and February 24, 2104, respectively; its Opposition to Artemis's Motion for Summary Judgment on Defendant's Remaining

Counterclaims filed January 10, 2014; and its June 22, 2015 Oppositions to Artemis's Motion for Leave and Artemis's Motion for Reconsideration.

Those arguments are summarized as follows.

A. The Association is a NRS Chapter 116 Association, valid at its inception. Therefore, the Association is entitled to summary judgment on its Counterclaims as a matter of law against Artemis, and against the Wyatts on the declaratory relief Cross claim.

The Association is entitled to summary judgment against Artemis on its remaining counterclaims and cross claim against the Wyatts. Artemis acknowledges as such in its Cross-Motion for Summary Judgment on the remaining counterclaims, and further admits that "...no issues of material fact exist and the Court has already entered its Order Granting Defendant's Motion for Judgment [on Artemis's declaratory relief claims[3]], ***which decided the factual and legal issues in this case...***" See Artemis Cross-Motion, p. 8, 11. 25-28. (Emphasis added.) The Court used the same analysis in granting the Association's Motion for Summary Judgment while simultaneously denying Artemis's counter Motion for Summary Judgment – thereby extinguishing any claim by Artemis (as well as the joined Wyatts) and resulting in the Association as the prevailing party.

As such, the very basis of the dispute over interpretation and enforceability of the CC&Rs, application of NRS Chapter 116, imposition and collection of assessment under Chapter 116, and Artemis's delinquent assessments has already been resolved in favor of the Association. Nonetheless, Artemis ironically, if not illogically, has asserted that it is entitled to summary judgment on the remaining counterclaims. The Court's February 2013 Order Granting the Association's Motion for Summary Judgment against Artemis, however, constitutes the law of the case and compels an order granting the Association's Cross-Motion on its remaining counterclaims, as well as the cross claim for declaratory relief against the Wyatts. And as to the Seventh Claim for Relief for

[3] Artemis abandoned its fraud and damages claims in its Opposition to the Association's Motion for Summary Judgment.

Preliminary/Permanent Injunction, the Association is entitled to maintain this claim until a hearing is held consolidating the preliminary and permanent injunction issues.

For the foregoing reasons, and as more fully set forth in the Association's prior briefing, the Court should enter summary judgment in its favor and against Artemis on the Association's First through Sixth Claims for Relief, and against the Wyatts on the cross claim for declaratory relief. It has already been established as a matter law that Artemis violated the CC&Rs and NRS Chapter 116 by failing to pay its delinquent assessments. Accordingly, an order should also issue allowing the Association to proceed with non-judicial foreclosure of its lien in accord with NRS 116.3116 *et seq.* to collect its delinquent assessments and fees and costs incurred (including attorney's fees).

B. The Motion for Leave and Motion for Reconsideration Should be Denied.

No leave of Court was obtained for Artemis to file a Motion for Reconsideration as required by Nevada's District Court Rules. Artemis, through counsel who now has filed the instant Joinder on behalf of the Wyatts, has also already conceded in the pending Cross-Motions for Summary Judgment that there are no issues of material fact relative to the Association's declaratory relief counterclaim.

More particularly, Artemis admits in its Cross-Motion for Summary Judgment filed November 25, 2013, the following:

> ***...As no issues of material fact exist and the Court has already entered its Order Granting [the Association's] Motion for Summary Judgment, which decided the legal and factual issues in this case, summary judgment is ripe to be granted as to*** [the Association's] counterclaims, as discussed below...
>
> ***...[The Association's] sixth counterclaim for declaratory relief is a moot claim because this Court has already ruled in favor of [the Association] in the [February 14, 2013] Order Granting [the Association's] Motion for Summary Judgment.*** Therefore, this Court has rendered summary judgment and disposed of the issue contained within this counterclaim.

See Artemis Motion, p. 8, ll. 26-28; and p. 13, ll. 1-5. (***Emphasis added.***) That the Wyatts now file a Joinder through Artemis's same counsel does not change this fact, or compel a different conclusion by the Court.

Finally, there is no basis under Nevada law for reconsideration. No "substantially different" evidence has been presented, this Court's February 2013 Orders are not "clearly erroneous", and this matter does not constitute one of the "rare instances" where rehearing/reconsideration should be granted. To conclude otherwise would be inconsistent with Nevada law, protract this litigation, and require the further expenditure of time and cost to the parties and the resources of the Court.

Under Nevada law, a court may only "...reconsider a previously decided issue if ***substantially different evidence is subsequently introduced or the decision is clearly erroneous.***" *Masonry and Tile Contractors Ass'n v Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citations omitted; ***emphasis added***). Moreover, ***"[o]nly in very rare instances*** in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached ***should a motion for rehearing be granted."*** *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244,246 (1976) (***emphasis added***).

Artemis asserted, as the Wyatts now apparently do in their Joinder, the Court should reconsider its February 2013 summary judgment orders and find that the Association is not a "common interest community" under the definition of NRS 116.021, as amended during the 2009 legislative session, because there are no common elements. Both the Motion for Leave and Motion for Reconsideration, however, constitute nothing more than re-argument and/or re-characterization of the statutory construction arguments and legislative history already presented to and ruled upon by

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this Court concerning the 2009 amendments "clarifying" the definition of a "common interest community" under NRS 116.021.

Significantly, and by way of example, the 2009 amendments to NRS 116.021 were addressed in Artemis's Motion for Summary Judgment filed April 30, 2012, and in its June 22, 2012 Opposition to the Association's Counter Motion for Summary Judgment. Indeed, Artemis specifically argued and requested that declaratory judgment be entered "declaring the Association invalid under NRS 116.021 because the Ruby Lakes Estates subdivision does not have any common areas...and therefore does not meet the definition of common interest community under NRS 116.021." (April 30, 2012 Motion for Summary Judgment, p. 2, ll. 3-7.) Artemis addressed the 2009 amendments to NRS 116.021, criticized the Attorney General's 2008 opinion throughout its April 30, 2012 Motion, and included the virtually identical references to legislative history and the remarks of Senator Schneider via the Nevada Senate Journal already included in the record but attached again as Exhibit "C" to the Motion for Leave and Motion for Reconsideration.

In its June 22, 2012 Opposition to the Association's Motion for Summary Judgment, Artemis again argued legislative "intent" regarding the 2009 amendments to NRS 116.021, relied upon the same documents, and requested that the Association be declared invalid under NRS 116.021 for lack of common elements. (*See* June 22, 2012 Opposition, p. 33, ll. 5-10.)

This Court's eleven page, February 2013 Orders are not "clearly erroneous". This Court set forth its well-reasoned analysis and conclusions, with supporting reference to the record, for its determination as a matter of law that the Association is a validly formed common interest community under NRS Chapter 116. This Court specifically considered and rejected the "nonsensical substantive arguments" of Artemis in its February 2013 Orders. (*See* Order Granting MSJ, p. 6, ll. 10-13.) One such "nonsensical" argument (and which Artemis, admittedly, wants to reargue) pertains to NRS 116.3101(1) and the assertion of the Association's invalidity because owners were not bound by any

"covenant to pay dues or participate in an [HOA] prior to conveyance..." The Court, however, in footnote 6 of its February 2013 Orders specifically indicates its reliance on the Association's "effective" rebuttal of this argument. Artemis simply did not, and does not still, like the Court's conclusions.

Despite assertions of "newly discovered binding legal precedent" on statutory construction and "retroactive" application, no citation to any new Nevada authority handed down since the Court's February 2013 Orders is made. That there was an alleged failure to "discover", argue and present authority, which Artemis now erroneously claims to be "binding precedent", does not constitute a proper basis for reconsideration of this Court's February 2013 Orders, or supplemental briefing on the pending Cross-Motions, even with the Joinder of the Wyatts.

III.

CONLCUSION

Based upon the foregoing, the Association respectfully requests that summary judgment be entered in favor of the Association as to its remaining Counterclaims, Claims for Relief One through Six, against Artemis, and also against the Wyatts on the Cross claim for declaratory relief. Consistent with the law of the case pursuant to this Court's prior Orders entered in February 2013, the Association is a NRS Chapter 116 association, valid at its inception. Therefore, the Association's pending Motion for Summary Judgment should be granted, and Artemis's and the Wyatts', by joinder, Motion for Summary Judgment be denied. The Association should also be granted leave to proceed with non-judicial foreclosure of its lien in accord with NRS 116.3116 *et seq.* to collect its delinquent assessments and fees and costs incurred (including attorney's fees).

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It is further requested, consistent with the above, that the Court deny the Motion for Leave and Motion for Reconsideration. If the Court does determine its February 2013 Orders somehow warrant reconsideration or supplemental briefing is allowed, it is requested that the Court set a briefing schedule to allow the Association an opportunity to respond accordingly.

DATED this 13th day of December, 2016.

KERN & ASSOCIATES, LTD.

KAREN M. AYARBE, ESQ.
Attorneys for Ruby Lake Estates Homeowner's 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 HOMEOWNERS ASSOCIATION'S RESPONSE TO HARRY AND MARY WYATT'S ERRATA AND JOINDER IN ARTEMIS EXPLORATION COMPANY'S:

MOTION AND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER DENYING PLAINTIFF'S AND GRATNING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT; and

OPPOSITION TO RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMS.

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 4th Street
Elko, NV 89801

DATED this 14TH day of December, 2016.

Christine A. Lamia

Employee of Kern & Associates, Ltd.

CASE NO. CV-C-12-175

DEPT. 1

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, et. al.,

Defendants.

/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant.

/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,

vs.

STEPHEN WEST; et. al.,

Cross-Defendants.

/

HAROLD AND MARY WYATT'S REPLY TO RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION'S RESPONSE TO HAROLD AND MARY WYATT'S ERRATA AND JOINDER IN ARTEMIS EXPLORATION COMPANY'S:

MOTION AND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER DENYING PLAINTIFF'S AND GRANTING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT; AND

OPPOSITION TO RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMS

GERBER LAW OFFICES, LLP
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COMES NOW, Defendants/Cross-Defendants, **HAROLD WYATT AND MARY WYATT** (hereinafter "WYATT"), by and through GERBER LAW OFFICES, LLP, and hereby file *Harold and Mary Wyatt's Reply to Ruby Lake Estates Homeowners Association's Response to Harold and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's: Motion and Reply in Support of Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment; and Opposition to Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims* ("Pending Motions, Opposition, and Replies") based upon the Points and Authorities attached hereto.

DATED this 21st day of December, 2016.

GERBER LAW OFFICES, LLP

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

This Court should grant leave to reconsider its previously decided Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment, which were entered on February 14, 2013 ("MSJ Orders"), because "the decision is clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). The Wyatt's respectfully request that after the Court grants leave to reconsider the Orders, that the Court make a single ruling on the declaratory relief claim, counterclaim, and cross claim that RLEHOA is not a valid homeowners association.

Ruby Lakes Estates Homeowners Association ("RLEHOA") contends in its Response that this Court should reaffirm the MSJ Orders by not reconsidering the Orders and by making the same Orders in the pending Counterclaim and Cross Claim because the MSJ Orders were not clearly erroneous. (RLEHOA's Response 8.) However, there are sufficient legal and factual issues that have been presented to this Court in Artemis's pending motions and the Wyatts' Joinder that show that based on a review of the "entire evidence [this Court may be] left with the definite and firm conviction that a mistake has been committed." *Unionamerica Mortg. & Equity Trust v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 1147 (1948)). Rulings in the MSJ Orders that are clearly erroneous include the following.

First, the Court's MSJ Orders found, in a footnote, that Ruby Lake Estates subdivision is a common interest community because there are common elements within Ruby Lake Estates "such as gates." (MSJ Orders 10 ft. 4.) This finding is clearly erroneous because no evidence has been provided by any party of any common fixtures such as "gates." The Ruby Lake Estates plat map does not show any "gates" and the Ruby Lake Estates' CC&Rs do not reference any common elements or obligate any unit owner to pay for a share of any common elements such as "gates."

Second, the Court's MSJ Orders found that NRS 116.3101(1) should not be applied to RLEHOA. The only explanation given was that if Artermis's argument that RLEHOA had to be organized before the first lot was conveyed pursuant to NRS 116.3101(1) "held water a valid homeowners association for a common interest community that existed before 1992 could never be formed." (MSJ Orders 6: ft. 1.) This conclusion is clearly erroneous because no authority supports the Court's Order disregarding NRS 116.3101(1) and the Court presented no authority in support of its conclusion. NRS 116.3101(1) does apply to all homeowners associations, including RLEHOA, and the law is clear that a homeowners association–including an association created prior to 1992–is only valid if it was organized prior to the first lot's conveyance. In this case, the first lot was conveyed in 1989. Thus, RLEHOA was invalidly organized in 2006, nearly two decades after the first lot's conveyance, and in violation of NRS 116.3101(1).

Third, the Court's MSJ Orders determined that the 2009 clarifying amendment to NRS 116.021 does not apply to Ruby Lake Estates, and therefore Ruby Lake Estates is a common interest community solely because it has a Declaration, which Declaration was construed to be "real estate." (MSJ Orders 7:1-9.) This determination is clearly erroneous because the Supreme Court of Nevada has ruled that a legislative amendment meant to clarify rather than change a statute should be applied retroactively. *Castillo v. State*, 110 Nev. 535, 541, 874 P.2d 1252, 1256-57 (1994), *disapproved of, on other grounds, by Wood v. State*, 111 Nev. 428, 892 P.2d 944 (1995). The legislature was clear that the 2009 amendment "clarified" NRS 116.021 so that a Declaration or CC&Rs alone do not "create a common-interest community." (OWNERS AND OWNERSHIP-COMMON INTEREST OWNERSHIP, 2009 Nevada Laws Ch. 357 (S.B. 261) attached hereto as Exhibit "C" p. 1.)

Fourth, the Court's MSJ Orders included a factual statement that Mr. Essington had participated in RLEHOA and ruled that RLEHOA was a valid homeowners association pursuant to NRS 116 based upon the reasons set forth in the MSJ Orders, which would include the factual statement. (MSJ Orders 4-5, 10.) A determination that RLEHOA is a valid homeowners association based, in part, upon participation by an individual is clearly erroneous because other lot owners, including the Wyatts, did not participate in RLEHOA's formation or operations.

Fifth, the Court's MSJ Orders relied heavily on an "unofficial 2008 Nevada Attorney General's Opinion" as "a faithful interpretation of the text of the statutes at issue." (MSJ Orders 7:18-28.) Relying on the AGO's interpretation of NRS 116.021 is clearly erroneous because the Court should have relied on the legislature's intent when the Court interpreted pre-2009 NRS 116.021. The AGO's interpretation of the pre-2009 NRS 116.021 was contrary to the findings of the 2006 Legislative Counsel Bureau Legal Opinion, which proves that pre-2009 NRS 116.021 was ambiguous because there were multiple interpretations from two organizations that were "reasonably informed" on the issue. *McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 649 (1986) (citing *Robert E. v. Justice Court of Reno Twp., Washoe Cnty.*, 99 Nev. 443, 445 (1983)). Given that pre-2009 NRS 116.021 was ambiguous, the Court should have relied upon the legislature's intent in interpreting the statute rather than the AGO's interpretation and authority. *Id.*, 102 Nev. at 650 (citing *City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257, 661 P.2d 879, 880 (1983).

Sixth, the Court's MSJ Orders "decline[ed]" to rely on the "legislative history" in interpreting NRS 116.021 and cited to Antonin Scalia and Bryan A. Garner's *Reading Law: The Interpretation of Legal Texts* as authority for its decision to not rely on the legislative history. (MSJ Orders 7 ft. 3.) The decision to not review the legislative history is clearly erroneous because "[t]he leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute. This intent will prevail over the literal sense of the words." *McKay*, 102 Nev. at 650 (citing *City of Las Vegas*, 99 Nev. at 257.

IV. CONCLUSION

Pursuant to the points and authorities stated above, Harold and Mary Wyatt Join in Artemis Exploration Company's Pending Motions, Opposition, and Replies as to the Declaratory Judgment claim and cross-claim, and reassert their request that the Court rule on the pending motions and:

1) Grant Artemis Exploration Company's Motion for Summary Judgment on Defendant's Remaining Counterclaims, and find that Ruby Lake Estates Homeowner's Association ("RLEHOA") is not a valid, mandatary homeowner's association and is not located within a common interest community;

2) Grant Artemis Exploration Company's Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims, and allow leave to supplement the Motion for Summary Judgment on Defendant's Remaining Counterclaims;

3) Grant Artemis Exploration Company's Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment, and allow leave to reconsider the Court's Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment;

4) Deny Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims, and find that RLEHOA is not a valid, mandatary homeowner's association and is not located within a common interest community; and

5) Enter Summary Judgment regarding RLEHOA's cross-claim in accordance with this Court's Summary Judgment ruling on RLEHOA's identical declaratory judgment counter-claim.

DATED this 21st day of December, 2016.

GERBER LAW OFFICES, LLP

By: _____
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ATTORNEY FOR
DEFENDANT/CROSS-CLAIMANT

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on the 21 day of December, 2016, I deposited for mailing, postage prepaid, at Elko, Nevada a true and correct copy of the foregoing *Harold and Mary Wyatt's Reply to Ruby Lake Estates Homeowners Association's Response to Harold and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's: Motion and Reply in Support of Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment; and Opposition to Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims* addressed as follows:

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

Madison Wallock
MADISON WALLOCK

CASE NO. CV-C-12-175

DEPT. ~~1~~ 2

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

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, *et. al.*,

Defendants.

_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant.

_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,

vs.

STEPHEN WEST; et. al.,

Cross-Defendants.

_____/

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

FILED

2018 FEB 26 AM 9:29

CLERK OF DISTRICT COURT

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

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

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

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

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

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

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

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

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

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

///

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

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

DATED this 16th day of February, 2018.

KERN & ASSOCIATES, LTD.

GAYLE A. KERN, ESQ.
NEVADA BAR #1620
KAREN M. AYARBE, ESQ.
NEVADA BAR #3358
5421 Kietzke Lane, Suite 200
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Email: gaylekern@kernltd.com
Email: karenayarbe@kernltd.com
Attorneys for Defendant Ruby Lake Estates Homeowner's Association

DATED this 20th day February, 2018.

GERBER LAW OFFICE, LLP

TRAVIS GERBER, ESQ.
NEVADA BAR #8083
ZACHARY GERBER, ESQ.
NEVADA BAR #13128
491 4th Street
ELKO, NEVADA 89801
Telephone: 775-738-9258
Fax: 775-738-8198
Email: twg@gerberlegal.com
Email: zag@gerberlegal.com
Attorneys for Plaintiff Artemis Exploration Company and Defendants Harold and Mary Wyatt

ORDER

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

DISTRICT COURT JUDGE

EXHIBIT "A"

CASE NO. CV-C-12-175

DEPT. NO. I

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.
_____/

FINAL JUDGMENT

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

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

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

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

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

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

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

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

DATED this ___ day of _____, 2018.

_____
DISTRICT COURT JUDGE

CASE NO. CV-C-12-175

DEPT. NO. 2

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

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK____ DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

_____/

FINAL JUDGMENT

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

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

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

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

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

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

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

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

DATED this 26 day of February, 2018.

/S/ ALVIN R KACIN

DISTRICT COURT JUDGE

CASE NO. CV-C-12-175

DEPT. 2

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

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

BY _____ DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, *et. al.*,

Defendants.

_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant.

_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,

vs.

STEPHEN WEST; et. al.,

Cross-Defendants.

_____/

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

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

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

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

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

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

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

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

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

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

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

///

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

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

DATED this 16th day of February, 2018.

KERN & ASSOCIATES, LTD.

GAYLE A. KERN, ESQ.
NEVADA BAR #1620
KAREN M. AYARBE, ESQ.
NEVADA BAR #3358
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Email: gaylekern@kernltd.com
Email: karenayarbe@kernltd.com
Attorneys for Defendant Ruby Lake Estates Homeowner's Association

DATED this 20th day February, 2018.

GERBER LAW OFFICE, LLP

TRAVIS GERBER, ESQ.
NEVADA BAR #8083
ZACHARY GERBER, ESQ.
NEVADA BAR #13128
491 4th Street
ELKO, NEVADA 89801
Telephone: 775-738-9258
Fax: 775-738-8198
Email: twg@gerberlegal.com
Email: zag@gerberlegal.com
Attorneys for Plaintiff Artemis Exploration Company and Defendants Harold and Mary Wyatt

ORDER

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

DISTRICT COURT JUDGE

EXHIBIT "A"

CASE NO. CV-C-12-175

DEPT. NO. I

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

_____/

FINAL JUDGMENT

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

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

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

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

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

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

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

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

DATED this ___ day of _____, 2018.

_____
DISTRICT COURT JUDGE

CASE NO. CV-C-12-175

DEPT. 2

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

FILED

2018 MAR -1 PM 2:47

ELKO DISTRICT COURT

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada corporation,

Plaintiff,

vs.

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

Defendants.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada corporation,

Counterdefendant.

---/

NOTICE OF ENTRY OF FINAL JUDGMENT

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

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

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

///

DATED this 27th day of February, 2018.

GERBER LAW OFFICES, LLP

By: _____
TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR
PLAINTIFF/COUNTERDEFENDANT

CERTIFICATE OF SERVICE

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

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

Madison Wallock
MADISON WALLOCK

Exhibit 'A'

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK ____ DEPUTY

CASE NO. CV-C-12-175

DEPT. NO. 2

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

_____/

FINAL JUDGMENT

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

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

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

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

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

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

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

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

DATED this 26 day of February, 2018.

/S/ ALVIN R KACIN

DISTRICT COURT JUDGE

CASE NO. CV-C-12-175

DEPT. 2

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

/

NOTICE OF APPEAL

GERBER LAW OFFICES, LLP
491 4th Street
Elko, Nevada 89801

NOTICE OF APPEAL

Notice is hereby given that ARTEMIS EXPLORATION COMPANY, a Nevada corporation, Plaintiff, and MARY WYATT and HAROLD WYATT, Defendants, above named, hereby join in an appeal to the Supreme Court of Nevada from the District Court's Final Judgment entered in this action on the 26th day of February, 2018.

Dated this 6th day of March, 2018.

GERBER LAW OFFICES, LLP

By: _____
TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR PLAINTIFF, and DEFENDANTS HAROLD AND MARY WYATT

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on the 6th day of March, 2018, I deposited for mailing, postage prepaid, at Elko, Nevada, a true and correct copy of the foregoing *Notice of Appeal* addressed as follows:

Gayle A. Kern, Esq.
KERN & ASSOCIATES, LTD.
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511

Madison Wallock
Employee of Gerber Law Offices, LLP

RUBY LAKE ESTATES
ELKO COUNTY, NEVADA

OWNERS CERTIFICATE

KNOWN OF ALL MEN BY THESE PRESENT THAT, STEPHEN G. & MAVIS S. WRIGHT, BEING THE OWNERS OF THOSE PARCELS AS SHOWN ON THIS PLAT, DO HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP AND OFFER FOR DEDICATION ALL OF THE STREETS AND EASEMENTS FOR PUBLIC ACCESS AND PUBLIC UTILITY PURPOSES AS DESIGNATED HEREON. IN WITNESS WE, THE OWNERS, SET OUR HANDS ON THE DATE SHOWN.

Stephen G. Wright — June 28, 1989
STEPHEN G. WRIGHT — DATE

Mavis S. Wright — June 28 1989
MAVIS S. WRIGHT — DATE

STATE OF NEVADA)
) SS.
COUNTY OF ELKO)

ON THE 28th DAY OF June, 1989, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, STEPHEN G. & MAVIS S. WRIGHT, KNOWN TO ME TO BE THE OWNERS IN AND WHOM EXECUTED THE FOREGOING INSTRUMENT, AND THEY DULY ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FREELY AND VOLUNTARILY FOR THE USES AND PURPOSES THEREIN MENTIONED.

Linda L. Reynolds
NOTARY PUBLIC IN AND FOR ELKO COUNTY, NEVADA

LINDA L. REYNOLDS
Notary Public State of Nevada
Elko County-Nevada
Comm. Exp. 5-8-1992

APPROVAL - ELKO COUNTY PLANNING COMMISSION

AT A REGULAR MEETING OF THE ELKO COUNTY PLANNING COMMISSION, STATE OF NEVADA, HELD ON THE 22nd DAY OF May, 1989, A TENTATIVE PLAT OF THIS SUBDIVISION WAS APPROVED PURSUANT TO N.R.S 278.330 AND THIS FINAL PLAT SUBSTANTIALLY COMPLIES WITH SAID TENTATIVE PLAT AND ALL CONDITIONS PURSUANT THERETO HAVE BEEN MET.

Jason Klein — 6/28/89
CHAIRMAN — DATE

APPROVAL - ELKO COUNTY BOARD OF COMMISSIONERS

AT A REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF ELKO COUNTY, STATE OF NEVADA, HELD ON THE 5th DAY OF July, 1989, THIS PLAT WAS APPROVED AS A FINAL PLAT PURSUANT TO N.R.S. 278.380. 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.

Ernie Hall — 7-5-89
CHAIRMAN — DATE

Karen Dasgupta — 7-5-89
CLERK : ATTEST — DATE

COUNTY TREASURER'S CERTIFICATE

I, CEASAR SALICCHI, CERTIFY THAT THERE ARE NO LIENS AGAINST ANY OF THE LAND AS SHOWN HEREON FOR UNPAID STATE, COUNTY, CITY OR LOCAL TAXES OR SPECIAL ASSESSMENTS, EXCEPT THOSE NOT YET PAYABLE.

Ceasar E Salicchi — 6-28-1989
ELKO COUNTY TREASURER — DATE

DIVISION OF WATER RESOURCES CERTIFICATE

THIS FINAL PLAT IS APPROVED BY THE STATE OF NEVADA DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY, SUBJECT TO REVIEW OF APPROVAL ON FILE IN THIS OFFICE.

Hugh A. Ricci — 23JUN89
DIVISION OF WATER RESOURCES — DATE

HEALTH DIVISION CERTIFICATE

THIS FINAL PLAT IS APPROVED BY THE HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES CONCERNING SEWAGE DISPOSAL, WATER POLLUTION, WATER QUALITY, AND WATER SUPPLY FACILITIES IN ACCORDANCE WITH THE NEVADA REVISED STATUTES. THIS APPROVAL PREDICATES INDIVIDUAL WATER SUPPLY AND INDIVIDUAL SEWAGE DISPOSAL.

Joseph L. Nebe — 7/13/89
DIVISION OF HEALTH — DATE

APPROVAL - PUBLIC UTILITIES

THE PUBLIC UTILITY EASEMENTS, AS DESIGNATED HEREON, ARE APPROVED BY THE RESPECTIVE UTILITIES EXECUTING BELOW.

6-27-89
WELLS RURAL ELECTRIC CO. — DATE

6-28-89
C.P. NATIONAL, INC. — DATE

SURVEYOR'S CERTIFICATE

I, ROBERT E. MORLEY, A REGISTERED LAND SURVEYOR IN THE STATE OF NEVADA, CERTIFY THAT :

1. THIS IS A TRUE AND ACCURATE REPRESENTATION OF THE LANDS SURVEYED UNDER MY SUPERVISION AT THE INSTANCE OF STEPHEN G. & MAVIS S. WRIGHT.
2. THE LANDS SURVEYED LIE WITHIN SECTION 9, T28N - R58E, MDB & M., AND THE SURVEY WAS COMPLETED ON APRIL 5, 1989.
3. THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES.
4. THE MONUMENTS WILL BE OF THE CHARACTER SHOWN AND OCCUPY THE POSITIONS INDICATED BY DECEMBER 31, 1990 AND THAT AN APPROPRIATE PERFORMANCE BOND HAS BEEN OR WILL BE POSTED WITH THE GOVERNING BODY TO ASSURE THEIR INSTALLATION.

ROBERT E. MORLEY — 6/28/89
DATE — ROBERT E. MORLEY
R.L.S. 6203

COUNTY ENGINEER'S CERTIFICATE

I, MICHAEL E. MURPHY, ~~COUNTY~~ Director of ENGINEER FOR THE COUNTY OF ELKO, NEVADA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS FINAL PLAT AND FIND IT SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE PLAT WITH ALL APPROVED ALTERATIONS, AND THAT ALL PROVISIONS OF NRS 278.010 TO 278.630, INCLUSIVE, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE PLAT HAVE BEEN COMPLIED WITH, AND THAT I AM SATISFIED THAT THIS PLAT IS TECHNICALLY CORRECT.

Michael E. Murphy — 7-18-89
~~COUNTY ENGINEER~~ Acting Director of Engineering — DATE

FILING DATA

FILE NO. 281674

FILED AT THE REQUEST OF BOYACK SURVEYING.

DATE SEPT. 15, 1989

TIME 10:27 A.M.

INDEXED

SEAL AFFIXED

James D. Reynolds
ELKO COUNTY RECORDER
JERRY D. REYNOLDS.

SHEET NO. 1 OF 3

SHEET 1 OF 3

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

BOYACK SURVEYING
515 SOUTH FIFTH STREET
ELKO, NV. 89801

89036

C,C&R'S BK 703 PG 287

RUBY LAKE EST

SHEET 1 OF 3

5 AA000152

DRAWING NUMBER
Sheet 2 of 3

DRAWING NUMBER

DRAWING NUMBER

DRAWING NUMBER

No.	Delta	Radius	Arc Length	Tangent	Chord
1	82°09'58"	50.00	71.70	43.59	65.72 N86°04'48"E
2	97°50'02"	50.00	85.38	57.35	75.38 S 3°55'12"E

No.	Direction	Length
1	N 3°44'39"E	188.50
2	N00°00'00"W	77.48
3	N90°00'00"E	60.00
4	N00°00'00"W	76.80
5	N90°00'00"E	75.69
6	N90°00'00"E	215.62
7	N00°00'00"W	61.41
8	N90°00'00"E	100.00
9	N00°00'00"W	60.28
10	S89°21'10"E	100.01
11	N00°00'00"E	113.83
12	N90°00'00"E	20.00
13	S90°00'00"E	20.00

NOTES :

1) THE TOTAL SUBDIVIDED AREA OF THIS MAP EQUALS 590.78 ACRES.

2) A 5/8" REBAR WITH CAP MARKED RLS 6203 WILL BE SET AT EACH LOT CORNER SHOWN.

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

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

5) BASIS OF BEARINGS : RECORD OF SURVEY FOR STEPHEN G. & MAVIS S. WRIGHT, FILE NO. 275003.

6) REFER TO THE RECORD OF SURVEY FOR STEPHEN G. & MAVIS S. WRIGHT, FILE NO. 275003, FOR SURVEY INFORMATION REGARDING THE ESTABLISHMENT OF SECTION CORNERS AND SECTION LINES AS IT PERTAINS TO THE BOUNDARIES FOR THIS SUBDIVISION.

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

LEGEND

▲ = STREET MONUMENT

● = SET 5/8" REBAR WITH CAP MARKED RLS 6203

SCALE : 1" = 200'

0 100 200 400 600 800 1000

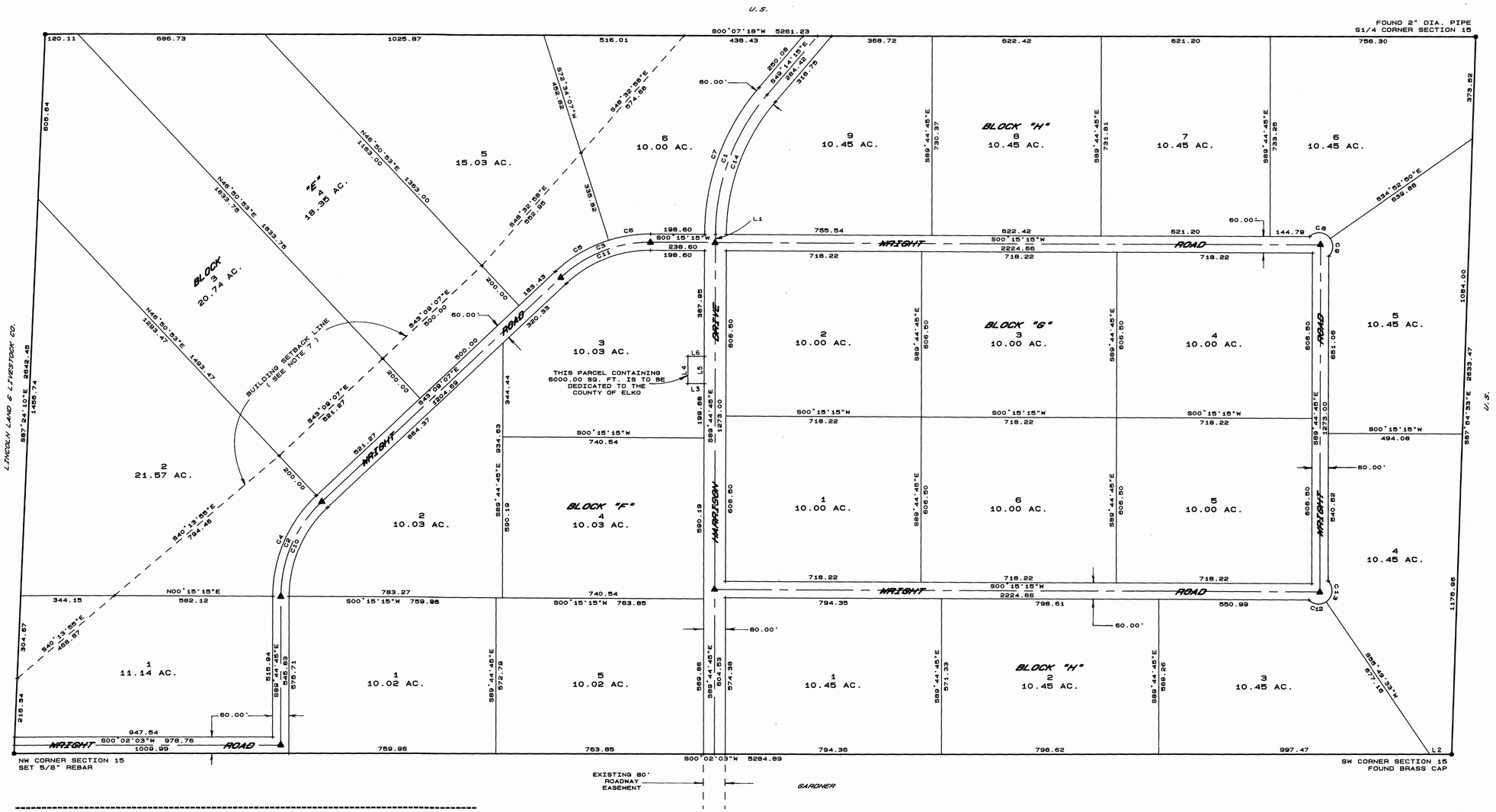
FILE #281674 SHEET NO. 2 OF 3

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

BOYACK SURVEYING
515 SOUTH FIFTH STREET
ELKO, NV. 89801

89036

SHEET 2 OF 3



No.	Delta	Radius	Arc Length	Tangent	Chord
1	40°30'30"	790.00	558.53	291.51	546.97 S69°29'30"E
2	46°35'38"	480.00	390.34	206.69	379.68 S66°26'56"E
3	43°24'22"	480.00	363.64	191.05	355.00 S21°26'56"E
4	46°35'38"	510.00	414.74	219.61	403.41 S66°26'56"E
5	25°43'14"	510.00	228.94	116.43	227.03 S30°17'30"E
6	17°41'08"	510.00	157.42	79.34	156.80 S 8°35'19"E
7	40°30'30"	830.00	586.81	306.27	574.67 S69°29'30"E
8	99°51'55"	50.00	87.15	59.45	76.53 S 5°11'12"W
9	80°08'05"	50.00	69.93	42.06	64.37 N84°48'48"W
10	46°35'38"	450.00	365.95	193.77	355.95 S66°26'56"E
11	43°24'22"	450.00	340.91	179.10	332.82 S21°26'56"E
12	79°25'42"	50.00	69.31	41.53	63.90 S 5°32'24"W
13	100°34'18"	50.00	87.77	60.19	76.92 S84°27'36"E
14	40°30'30"	750.00	530.25	276.75	519.28 S69°29'30"E

No.	Direction	Length
1	S89°44'45"E	30.00
2	S00°02'03"W	60.63
3	N00°15'15"E	60.00
4	S89°44'45"E	100.00
5	S89°44'45"E	100.00
6	N00°15'15"E	60.00

NOTES :

1) THE TOTAL SUBDIVIDED AREA OF THIS MAP EQUALS 590.78 ACRES.

2) A 5/8" REBAR WITH CAP MARKED RLS 6203 WILL BE SET AT EACH LOT CORNER SHOWN.

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

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

LEGEND

▲ = STREET MONUMENT

● = SET 5/8" REBAR WITH CAP MARKED RLS 6203

SCALE : 1" = 200'

0 100 200 400 600 800 1000

FILE #281674 SHEET NO. 3 OF 3

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

BOYACK SURVEYING
515 SOUTH FIFTH STREET
ELKO, NV. 89801

89036

RUBY LAKE ESTATES

DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 12 day of , 1989, by Stephen G. Wright and Mavis S Wright, hereinafter collectively referred to as "DECLARANT".

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

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

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

ARTICLE I

GENERAL PURPOSE OF RESERVATIONS AND RESTRICTIONS

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

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

ARTICLE III

CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright
Ruby Valley, NV 89833

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

VARIANCES

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

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

ARTICLE V

VIOLATION AND ENFORCEMENT

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

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

DECLARANT:

Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. Wright
MAVIS S. WRIGHT

STATE OF Nevada)
)SS.
COUNTY OF Elko)

On 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.

Maroo K. Tritz
NOTARY PUBLIC

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

INDEXED

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

00011

283750

BOOK 703 PAGE 292

ELKO COUNTY

Order No. _____

Escrow No. _____

WHEN RECORDED, MAIL TO:

Cattlemen's Title Guarantee
P.O. Box 4100
Scottsdale, AZ 85261

Space above this line for recorder's use

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

STEPHEN G. WRIGHT AND MAVIS S. WRIGHT, HUSBAND AND WIFE

do(es) hereby GRANT, BARGAIN and SELL to

CATTLEMEN'S TITLE GUARANTEE COMPANY, as Trustee, a Nevada corporation

the real property situate in the County of Elko, State of Nevada, described as follows:

Lot 2, Block A;
Lots 1 through 7, inclusive, Block B;
Lots 1 through 10, inclusive, Block C;
Lots 1 through 6, inclusive, Block D;
Lots 1 through 6, inclusive, Block E;
Lots 1, 2, 3 and 5, Block F;
Lots 1 through 6, inclusive, Block G;
Lots 1 through 9, inclusive, Block H;

all in the Ruby Lake Estates Subdivision, as per map thereof filed for record in the Office of the Elko County Recorder on September 15, 1989, as File No. 281674.

41502

07-03A-02 thru 07-03A-34
07-03A-36 thru 07-03A-51

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated December 15, 1989.

Stephen G. Wright

Mavis S. Wright

STATE OF NEVADA)
: ss.
County of Elko)

On December 15, 1989 personally appeared before me, a Notary Public, Stephen G. Wright and Mavis S. Wright

who acknowledged that they executed the above instrument.

Notary Public

SHIRLEY MENSINK
Notary Public - State of Nevada
Elko County, Nevada
My appointment expires Nov. 12, 1990

288249

FEE $5.00 FILE #
FILED FOR RECORD
AT REQUEST OF
First American Title Co. Of Nev.
'90 FEB 20 P1:32

RECORDED BK 713 PG 852
JERRY D. REYNOLDS
ELKO CO. RECORDER

INDEXED

1748 (2/71)

BOOK 713 PAGE 852

288249

Order No. _____

Escrow No. 45063

288642

FEE 5.00 FILE #

FILED FOR RECORD
AT REQUEST OF

First American Title Co. of Nev.
90 MAR -1 PM 1:38

INDEXED

RECORDED BK 714 PG 737
JERRY D. REYNOLDS
ELKO CO. RECORDER

WHEN RECORDED, MAIL TO:

Robert E. Morley
515 So. Fifth St.
Elko, NV 89801

AP#07-03A-01-6

Space above this line for recorder's use

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

STEPHEN G. WRIGHT and MAVIS S. WRIGHT, husband and wife

do(es) hereby GRANT, BARGAIN and SELL to

ROBERT E. MORLEY and DEBORAH L. MORLEY, husband and wife, as Community Property with Rights of Survivorship, as to an undivided 1/2 interest; DUANE V. MERRILL and SALLY E. MERRILL, husband and wife, as Community Property with Rights of Survivorship**** the real property situate in the County of , State of Nevada, described as follows:

Lot 1, Block A in the Ruby Lake Estates Subdivision, as per mpa thereof filed for record in the Office of the Elko County Recorder on September 15, 1989, as File No. 281674.

EXCEPTING THEREFROM , all the oil and gas, sodium, and potassium and all the geothermal steam and associated geothermal resources lying in and under said land as reserved by the United States of America in Patent recorded July 22, 1988, in Book 629 of Official Records at Page 305, Elko County, Nevada.

****as to an undivided 1/2 interest, as Tenants in Common.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated February 12, 1990.

Stephen G. Wright

Mavis S. Wright

STATE OF NEVADA)
: ss.
County of Elko)

On February 13, 1990 personally appeared before me, a Notary Public, Stephen G. Wright and Mavis S. Wright

who acknowledged that t he y executed the above instrument.

Notary Public

SHIRLEY MENSINK
Notary Public - State of Nevada
Elko County, Nevada
My appointment expires Nov. 12, 1990

D748 (2/90)

288642 BOOK 714 PAGE 737

4/5063.5 RL

D E E D

THIS INDENTURE, made this 15th day of February, 1990, by and between STEPHEN G. WRIGHT and MAVIS S. WRIGHT, husband and wife, parties of the first part, and JAMES L. VAN DER MEER, Trustee of the VAN DER MEER 1983 TRUST dated January 20, 1983, party of the second part;

W I T N E S S E T H:

That the parties of the first part, for and in consideration of the sum of TEN DOLLARS ($10.00), lawful money of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain and sell unto the party of the second part, and to his successors and assigns, forever, all that certain property situate in the County of Elko, State of Nevada, more particularly described as follows:

> Lot 4 in Block F in the RUBY LAKE ESTATES SUBDIVISION, as per map thereof filed for record in the Office of the Elko County Recorder on September 15, 1989, as File No. 281674.
>
> EXCEPTING THEREFROM, all the oil and gas, sodium and potassium and all the geothermal steam and associated geothermal resources lying in and under said land as reserved by the United States of America in Patent recorded July 22, 1988, in Book 629 of Official Records at Page 305, Elko County, Nevada.
>
> TOGETHER with any and all buildings and improvements situate thereon.
>
> TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

ROSS P. EARDLEY
ATTORNEY AT LAW
469 IDAHO STREET - P. O. BOX 391
ELKO, NEVADA 89801
(702) 738-4046

TO HAVE AND TO HOLD said premises, together with the appurtenances, unto the party of the second part, and to his successors and assigns, forever.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands the day and year first above written.

STEPHEN G. WRIGHT

MAVIS S. WRIGHT

STATE OF NEVADA)
: SS.
COUNTY OF ELKO)

On this 15th day of February, 1990, personally appeared before me, a notary public, STEPHEN G. WRIGHT and MAVIS S. WRIGHT, personally known (or proved) to me to be the persons whose names are subscribed to the above instrument, who acknowledged that they executed the instrument.

BETSY SORENSEN
Notary Public-State of Nevada
Elko County-Nevada
Appt. Exp. August 3, 1993

NOTARY PUBLIC

INDEXED

Grantee's Address:
11010 S. La Cienega
Las Vegas, Nevada 89123

APN 07-03A-35-4

FEE 6.00 FILE # 288641
FILED FOR RECORD
AT REQUEST OF
First American Title Co. Of Nev.
'90 MAR -1 P1:38

RECORDED BK 714 PG 735
JERRY D. REYNOLDS
ELKO CO. RECORDER

420306 :TO

Documentary Transfer Tax $ 15.60

☒ Computed on full value of property conveyed

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

Under penalty of perjury

CATTLEMEN'S TITLE GUARANTEE COMPANY

By _____

Signature of declarant or agent determining tax-firm name

RLE-1010

Deed

THIS INDENTURE, made this 16th day of June 19 94 by and between CATTLEMEN'S TITLE GUARANTEE COMPANY (as Trustee), a Nevada Corporation, hereinafter referred to as Grantor, and

ARTEMIS EXPLORATION COMPANY

hereinafter referred to as Grantee(s)

whose address is

P.O. Box 363
Ely, Nevada 89301

WITNESSETH

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

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

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

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

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

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

00019

CATTLEMEN'S TITLE GUARANTEE COMPANY,
as Trustee

BY: _____

STATE OF Arizona)
) SS

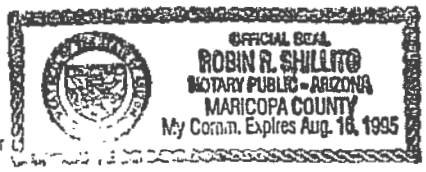
On June 16, 1994 _____,
personally appeared before me, Notary Public,

Johanna K. Kobli

who acknowledged that ____S he executed the above instrument.

Robin R. Shillito

NOTARY PUBLIC



FORM NJT

FEE 7.00 FILE # 354630
FILED FOR RECORD
AT REQUEST OF
First American Title Co. Of Nev.
'94 JUN 21 P1:37
INDEXED

RECORDED IN 860 625
JERRY D. REYNOLDS
ELKO CO RECORDER

354630 BOOK 860 PAGE 625

477530

Documentary Transfer Tax $ 22.75

☒ Computed on full value of property conveyed

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

Under penalty of perjury

CATTLEMEN'S TITLE GUARANTEE COMPANY

By Kathryn Carnahan

Signature of declarant or agent determining tax-firm name

Account No. 01650010010 (RLE-001)

Joint Tenancy Deed

THIS INDENTURE, made this 12TH DAY OF DECEMBER, 2001, by and between CATTLEMEN'S TITLE GUARANTEE (as Trustee), a Nevada Corporation, hereinafter referred to as Grantor, and

MARY E. WYATT AND HAROLD L. WYATT, HUSBAND AND WIFE; HERB C. OTT AND EDDIE R. SOLLEE

5965 NO. DAPPLE GRAY RD.
LAS VEGAS, NV 89129

hereinafter referred to as Grantees, whose address is MAIL TAX BILLS TO: MARY E. & HAROLD L. WYATT, HERB C. OTT AND EDDIE R. SOLLEE, 5965 NO. DAPPLE GRAY RD., LAS VEGAS, NV 89129

WITNESSETH:

For valuable consideration received, Grantor does by these presents grant, bargain and sell unto said Grantees as joint tenants with rights of survivorship and not as tenants in common, and their assigns and the heirs and assigns of the survivor forever, all that certain real property situate in the County of ELKO, State of NEVADA that is described as follows:

APN# 007-03A-036

LOT 5, BLOCK "F", RUBY LAKE ESTATES, UNIT I

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

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

TO HAVE AND TO HOLD said premises together with the appurtenances, unto Grantees as joint tenants with rights of survivorship and not as tenants in common and their assigns and the heirs and assigns of the survivor forever.

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

CATTLEMEN'S TITLE GUARANTEE COMPANY, as Trustee

BY: Kathryn Carnahan
Kathryn Carnahan

TITLE: Trust Officer

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On December 12, 2001, personally appeared before me, a Notary Public, Kathryn Carnahan who acknowledged that she executed the above instrument.

Norma J. Ponczak
NOTARY PUBLIC

OFFICIAL SEAL
NORMA J. PONCZAK
Notary Public - State of Arizona
MARICOPA COUNTY
My comm. Expires Jan 24, 2005

FORM JT-L

INDEXED
00 477530
FEE 14 FILE# REQUEST OF
Cattlemens Title Guarantee
01 DEC 17 PM 1:48
BK 1 PG 43039
JERRY D. REYNOLDS
ELKO CO. RECORDER

1 43039

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

LORNE J. MALKIEWICH, Director
(775) 684-6800

LEGISLATIVE COMMISSION (775) 684-6800
BARBARA E. BUCKLEY, Assemblywoman, Chair
Lorne J. Malkiewich, Director, Secretary

INTERIM FINANCE COMMITTEE (775) 684-6821
WILLIAM J. RAGGIO, Senator, Chairman
Gary L. Ghiggeri, Fiscal Analyst
Mark W. Stevens, Fiscal Analyst

PAUL V. TOWNSEND, Legislative Auditor (775) 684-6815
DONALD O. WILLIAMS, Research Director (775) 684-6825
BRENDA J. ERDOES, Legislative Counsel (775) 684-6830

April 27, 2006

Senator Randolph J. Townsend
P.O. Box 20923
Reno, NV 89515-0923

Dear Senator Townsend:

You have asked this office to discuss the criteria to be used in determining whether a real estate development constitutes a "common-interest community" and whether the real estate development must comply with the requirements of the Uniform Common-Interest Ownership Act as set forth in chapter 116 of the Nevada Revised Statutes ("NRS"), including, without limitation, the requirements to register with the Ombudsman for Owners in Common-Interest Communities and to pay fees to the Administrator of the Real Estate Division. You have also specifically inquired about the status of the Hidden Valley Homeowners Association and asked us to determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator.

To answer your questions, we will first discuss the criteria to be used in determining whether a real estate development constitutes a "common-interest community." Next, we will examine the statutory provisions governing the applicability of chapter 116 of NRS to certain types of common-interest communities. Finally, we will address the status of the Hidden Valley Homeowners Association and discuss whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator.

I. Definition of "Common-Interest Community"

As a preliminary matter, in determining whether a real estate development is subject to the provisions of chapter 116 of NRS, we turn first to the statutory definition of "common-interest community" to ascertain whether the real estate development falls within the ambit of the

definition. Pursuant to NRS 116.021, "common-interest community" means "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021 (emphasis added). Thus, if ownership of a unit within a particular real estate development obligates a person to pay for real estate other than the person's specific unit, such as being required to pay assessments for the maintenance of a community pool, a walking trail or another common element, then the real estate development falls within the ambit of the definition of "common-interest community." Conversely, if ownership of a unit within a particular real estate development does not obligate a person to pay for real estate other than the person's specific unit, then the real estate development does not fall within the ambit of the definition of "common-interest community" and is not subject to the provisions of chapter 116 of NRS.

II. Applicability of Chapter 116 of NRS

If a real estate development does fall within the ambit of the definition of "common-interest community," we turn then to the statutory provisions governing the applicability of chapter 116 of NRS to certain types of common-interest communities. Subsection 1 of NRS 116.1201 sets forth the broad general rule that "[e]xcept as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State." Subsection 2 of NRS 116.1201 then sets forth several exceptions to the broad general rule that chapter 116 of NRS applies to all common-interest communities created within this State.

For example, chapter 116 of NRS does not apply to "[a] planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community." NRS 116.1201(2)(b). Chapter 116 of NRS also does not apply to "[c]ommon-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101." NRS 116.1201(2)(c). Additionally, chapter 116 of NRS does not apply to "[a] common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing." NRS 116.1201(2)(d). Also, except as otherwise provided in chapter 116 of NRS, the chapter does not apply to time shares governed by the provisions of chapter 119A of NRS. NRS 116.1201(2)(e). Finally, chapter 116 of NRS does not apply to a "limited-purpose association,"[1] except that a limited-

[1] Pursuant to subsection 6 of NRS 116.1201, "limited-purpose association" means an association that:
(a) Is created for the limited purpose of maintaining:
(1) The landscape of the common elements of a common-interest community;
(2) Facilities for flood control; or
(3) A rural agricultural residential common-interest community; and

purpose association is required to register with the Ombudsman, pay fees to the Administrator and comply with certain specific provisions of chapter 116 of NRS, and a limited-purpose association is prohibited from enforcing any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community. NRS 116.1201(2)(a).

Furthermore, NRS 116.1203 contains a limited exception, for certain small planned communities, to the general rule that chapter 116 of NRS applies to all common-interest communities created within this State. Subsection 1 of NRS 116.1203 states that "[e]xcept as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.[2] Subsection 2 of NRS 116.1203 provides that planned communities with 6 or more units are still subject to certain provisions in chapter 116 of NRS pertaining to the organization, powers and duties of unit owners' associations and executive boards of such associations.

III. Hidden Valley Homeowners Association

You have also specifically inquired about the status of the Hidden Valley Homeowners Association and asked us to determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator. Based on the information provided to our office, we understand that the Hidden Valley Homeowners Association is a nonprofit cooperative corporation that does not own or maintain any buildings or common elements. For this reason, homeowners are not obligated to pay any assessments or other fees. Homeowners who are interested in receiving a monthly newsletter or attending various social events organized by the Hidden Valley Homeowners Association pay an annual membership fee of $25, but homeowners who are not interested in such benefits are not required to pay the annual membership fee.

To determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, we turn first to the statutory definition of "common-interest community" and examine the plain language of the statute. *See* Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 1168 (2000) ("Our objective in construing statutes is to give effect to the legislature's intent. In so doing, we first look to the plain language of the statute.") (citation omitted).

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

[2] NRS 116.1106 pertains to the applicability of local ordinances, regulations and building codes, while NRS 116.1107 pertains to the use of eminent domain.

As stated previously, "common-interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021 (emphasis added). However, as set forth above, the homeowners in Hidden Valley are not obligated to pay, by virtue of their ownership of property, for any real estate other than their own property. Thus, based upon the plain language of NRS 116.021, the Hidden Valley Homeowners Association is not a "common-interest community" as defined by the statute. For this reason, it is the opinion of this office that the Hidden Valley Homeowners Association is not required to comply with the provisions of the Uniform Common-Interest Ownership Act as set forth in chapter 116 of NRS, including, without limitation, registering with the Ombudsman for Owners in Common-Interest Communities and paying fees to the Administrator of the Real Estate Division.

We would note that some of the confusion with respect to this issue has probably arisen solely because the name of the association, "Hidden Valley Homeowners Association," tends to suggest that the Hidden Valley Homeowners Association is operating as a unit-owners' association pursuant to chapter 116 of NRS. In reality, the name is a misnomer, as the Hidden Valley Homeowners Association is actually functioning as something more akin to a neighborhood social club. We would also note that the Legislature has attempted to address the issue of the appropriate naming of unit-owners' associations by providing that a unit-owners' association must "[c]ontain in its name the words 'common-interest community,' 'community association,' 'master association,' 'homeowners' association' or 'unit-owners' association'". NRS 116.3101(3)(c). The Legislature has also enacted for each type of business entity provisions which prohibit the Secretary of State from accepting for filing any documents of organization[3], or any amendment to those documents of organization, if the name of the entity contains the words "common-interest community," "community association," "master association," "unit-owners' association" or "homeowners' association" unless the Administrator certifies that the entity has registered with the Ombudsman and paid the required fees to the Administrator. *See*, NRS 78.045, 81.055, 81.205, 81.445, 82.106, 86.171, 87.540, 88.320 and 88.6065.

Thus, when a new entity that intends to operate as a unit-owners' association is formed, the name of the entity will make it readily apparent that the entity is, indeed, a unit-owners' association. Conversely, when a new entity that will not actually operate as a unit-owners' association attempts to form and selects its name, if that name suggests that the entity will be operating as a unit-owners' association, the entity will not be allowed to file its organizational documents with the Secretary of State unless it first registers with the Ombudsman and pays fees to the Administrator. Consequently, a neighborhood social club which is similar to the Hidden Valley Homeowners Association and which will not operate as a unit-owners' association will never mistakenly include "homeowners' association" in its name or choose another name that tends to suggest that the organization is operating as a unit-owners' association. Therefore, the statutory provisions enacted by the Legislature should assist in avoiding the creation of needless

[3] Documents of organization would include such documents as articles of incorporation, articles of association, articles of organization, certificates of registration, certificates of limited partnership and certificates of trust.

confusion, in the future, about the applicability of chapter 116 of NRS to new entities. However, with respect to the names of entities that were already formed before the enactment of those statutory provisions, such as the Hidden Valley Homeowners Association, those statutory provisions will not have any effect as to those preexisting entities unless the entities seek to amend their documents of organization, in which case the Secretary of State will prevent them from doing so.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By _____
Kelly E. Lee
Principal Deputy Legislative Counsel

By _____
Bradley A. Wilkinson
Chief Deputy Legislative Counsel

cc: Scott Young
KEL:dtm
Ref No. 0603021202
File No. OP_Townsend06032185445

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

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

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Association:	RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION
2. Resident Agent Name and Street Address: (must be a Nevada address where Process may be served)	LEE PERKS Name 765 E. GREG STREET, #103 — SPARKS — NEVADA — 89431 Physical Street Address — City — Zip Code Additional Mailing Address — City — State — Zip Code
3. Term: (may be perpetual)	
4. Names & Addresses of Board of Directors/Trustees: (attach additional pages if there are more than 3)	1. LEE PERKS Name 765 E. GREG STREET, #103 — SPARKS — NV — 89431 Address — City — State — Zip Code 2. BILL HARMON Name HC 60, BOX 725 — RUBY VALLEY — NV — 89833 Address — City — State — Zip Code 3. MIKE CECCHI Name 10890 Osage Rd — RENO — NV — 89506 Address — City — State — Zip Code
5. Membership Fee: (must be completed)	The Membership fee is $ yearly fee per member. Each member signing the articles has paid the fee and their interests and rights are equal
6. Purpose: (must be completed)	The purpose of this Association shall be: Maintain roadways and enforce restrictive covenants
7. Names, Addresses and Signatures of Subscribers: (attach additional pages if there are more than 3 subscribers must be subscribed by the original associates or members)	LEE PERKS — Signature: [signature] Name 765 E. GREG STREET, #103 — SPARKS — NV — 89431 Address — City — State — Zip Code DENNIS McINTYRE — Signature: [signature] Name 1536 SouthView Dr. Sparks NV 89436 — SPARKS — NV — 89436 Address — City — State — Zip Code MIKE CECCHI — Signature: [signature] Name 10890 Osage Rd — RENO — NV — 89506 Address — City — State — Zip Code
8. Certificate of Acceptance of Appointment of Resident Agent	I hereby accept appointment as Resident Agent for the above named Association. [signature] — 10-27-2005 Authorized Signature of R.A. or On Behalf of R.A. Company — Date

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

Nevada Secretary of State Form NRS 81.170-2003
Revised on 01/10/03

4. CONTINUED

DENNIS McINTYRE
1530 SOUTHVIEW DR
SPARKS, NV 89436

BILL NOBLE
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DOC # 580650
08/31/2007 11:37 AM
Official Record
Requested By
ROBERT J. WINES PROF. CORP.
Elko County – NV
Jerry D. Reynolds – Recorder
Page 1 of 3 Fee: $16.00
Recorded By: NR RPTT: $3.90

APN: 007-03A-053

Send tax statement to:

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

GRANT, BARGAIN AND SALE DEED

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

WITNESSETH:

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

See Exhibit "A" attached hereto and incorporated herein.

TOGETHER WITH any and all buildings and improvements situate thereon.

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

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

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

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

STEPHEN G. WRIGHT

MAVIS S. WRIGHT

STATE OF NEVADA)
) SS.
COUNTY OF ELKO)

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

NOTARY PUBLIC STATE OF NEVADA
County of Elko
JOLYNE SMITH
Appt No 03-83941-8
My Appt Expires June 6, 2011

NOTARY PUBLIC

EXHIBIT "A"

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

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

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

Thence South, 61.41 feet to corner number 3;

Thence East, 100.00 feet to corner number 4;

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

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

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

August 11, 2008

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

Dear Ms. Elliott:

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

QUESTION ONE

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

ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Taxation v. DaimlerChrysler Services North America, LLC, 121 Nev. 541, 548, 119 P.3d 135, 139 (2005). As explicitly defined in NRS 116, a planned community is not required to have "common elements," or to have physical property, such as land, structures, fixtures, or improvements, in addition to the individual units, in order to be defined as a common-interest community pursuant to NRS 116. 021.

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

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

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

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

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

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

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

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

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

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

A.B. 396 (2007) was not signed into law, therefore, the definitions of "common-interest community," "planned community," and "real estate" continue in effect as originally adopted by the NCCUSL and by the Nevada Legislature. Pursuant to the law as it currently exists, a common-interest community can exist in the absence of any "common elements," commonly owned land, structures, fixtures, or improvements.

CONCLUSION TO QUESTION ONE

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

QUESTION TWO

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

CONCLUSION TO QUESTION TWO

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

QUESTION THREE

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

ANALYSIS

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

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

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

CONCLUSION TO QUESTION THREE

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

QUESTION FOUR

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

ANALYSIS

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

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

CONCLUSION TO QUESTION FOUR

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

QUESTION FIVE

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

CONCLUSION TO QUESTION FIVE

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

QUESTION SIX

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

ANALYSIS

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

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

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

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

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

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

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

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

CONCLUSION TO QUESTION SIX

Common-interest communities created before and after January 1, 1992, are required to comply with NRS 116.31155 and NRS 116.31158, with the narrow exception contained in NRS 1201(2)(d), for common-interest communities in counties with a population of less than 50,000 which have less than half of their units being used for residential purposes.

QUESTION SEVEN

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

ANALYSIS

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

NRS 116.31155(1) provides, in pertinent part:

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

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

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

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

validly organized

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

– consent of assoc.

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

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

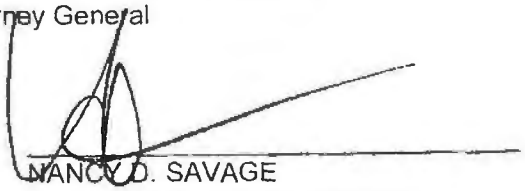
Although the decision in *Evergreen* addressed the issue of expenses for maintenance of common area, the basis for the court's holding, pursuant to the Restatement of Property, is broader and clearly extends beyond expenses related to common area, to "funds necessary to carry out the functions of a common-interest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

CONCLUSION TO QUESTION SEVEN

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

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

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

NDS/EFB

NV S. Jour., 75th Sess. No. 120

Nevada Senate Journal, Seventy-Fifth Session, One Hundred and Twentieth Legislative Day

Monday, June 1, 2009
Nevada Senate
Seventy-Fifth Session, 2009

Senate called to order at 12:39 p.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Dear Lord, every day since February we have carved out a few moments to invite You to be part of the process or government. It was You who elected these women and men to serve. It was You who gave them the talents to do their jobs. Thank You for the wisdom for the tasks given to them. They have left family, friends and businesses to do the work that needs to be done to bring prosperity to the districts they represent.

Today we also give thanks to our Secretary of the Senate and all her faithful staff. Without their help the time these Senators have taken in committees would not be recorded or made available.

We have now come to the close of this Seventy-Fifth Session. As we go back to our homes, much work has been done. Some times there have been differences of opinions on bills proposed. Bring healing to things said or done that have hurt others. Help them to walk the way of surrender to Your will, guided by Your wisdom. Show them the spiritual foundations of our heritage that they may conserve and protect them. Draw them close to You and to one another in humility and service. To You who is the real leader of government we give thanks.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 31, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day failed to sustain the Governor's veto of Senate Bills Nos. 195, 319, 363, 394 of the 75th Session.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 942 to Assembly Bill No. 482; Senate Amendment No. 639 to Assembly Bill No. 503; Senate Amendments Nos. 970, 971 to Assembly Bill No. 521.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 995 to Assembly Concurrent Resolution No. 30.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Kirkpatrick, Anderson and Settelmeyer as a Conference Committee concerning Senate Bill No. 242, Assembly Amendment No. 978.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Smith, Kirkpatrick and Hardy as a Conference Committee concerning Assembly Bill No. 223.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Horne, McClain and Carpenter as a Conference Committee concerning Assembly Bill No. 385.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Senate Bill No. 55; Senate Bill No. 68; Senate Bill No. 119; Senate Bill No. 332; Senate Bill No. 411; Assembly Bill No. 84; Assembly Bill No. 320.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly
ASSEMBLY CHAMBER, Carson City, June 1, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolutions Nos. 19, 26.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Assembly Bill No. 140.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Mr. President:

The Conference Committee concerning Senate Bill No. 182, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 947 of the Assembly be concurred in. It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 25, which is attached to and hereby made a part of this report.

Conference Amendment.

"SUMMARY--Makes various changes relating to common-interest communities. (BDR 10-795)"

"AN ACT relating to common-interest communities; clarifying various provisions of existing law relating to certain provisions of governing documents that violate statutory provisions, elections and the authority of an association to levy certain assessments under certain circumstances; revising certain provisions governing the authority of an association to impose fines under certain circumstances, making various other changes to the provisions governing common-interest communities; providing penalties; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 3 of this bill provides that a person who knowingly, willfully and with the intent to fraudulently alter the outcome of

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2010, for all other purposes.

3. Sections 1 to 38, inclusive, 40, 41 and 42 of this act become effective on October 1, 2009.

MICHAEL SCHNEIDER	TICK SEGERBLOM
TERRY CARE	RUBEN KIHUEN
MIKE MCGINNESS	JOHN HAMBRICK
Senate Conference Committee	*Assembly Conference Committee*

Senator Schneider moved that the Senate adopt the report of the Conference Committee concerning Senate Bill No. 182.

Remarks by Senator Schneider.

Senator Schneider requested that his remarks be entered in the Journal.

I want to thank my colleagues in the Legislature for enacting Senate Bill 182. I have championed the reforms contained in this bill for many years. They will help restore the balance between the rights of individual citizens living in common-interest communities and the governmental structures we as legislators have created and to a certain extent, imposed on average homeowners, sometimes to their detriment. I want to repeat the language of the preamble to the bill as introduced because it summarizes all the important reasons we are enacting this bill:

WHEREAS, The Nevada Legislature previously deemed it important to set forth its intent regarding the creation and proper functioning of planned communities; and

WHEREAS, The Nevada Legislature previously noted that planned communities are a dominant method of residential development in the State of Nevada; and

WHEREAS, The Nevada Legislature previously noted that planned communities are developed for the purposes of preserving neighborhood continuity and creating desirable places to reside; and

WHEREAS, The Nevada Legislature previously noted that planned communities are governed by specific rules and regulations and by unit-owners' associations; and

WHEREAS, The Nevada Legislature previously noted that a unit owners' association is the form of self-government closest to the people; and

WHEREAS, The Nevada Legislature previously declared that all forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution; and

WHEREAS, The Nevada Legislature previously noted that some unit-owners' associations in this State have a history of abuse of power; and

WHEREAS, The Nevada Legislature previously noted that unit owners' associations have power over one of the most important aspects of a person's life, his residence; and

WHEREAS, The Nevada Legislature previously noted that homeowners invest financially and emotionally in their homes; and

WHEREAS, The Nevada Legislature previously declared that homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly interference with their property rights; and

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

WHEREAS, The Nevada Legislature deems it necessary and important to reiterate and endorse both the intent and the concerns previously expressed by the Nevada Legislature; and

WHEREAS, The establishment of planned communities is required by many local governments as a condition of granting necessary building permits for residential housing; and

WHEREAS, The form of self-government of a unit-owners' association includes legislative, executive and quasi-judicial powers and functions; now, therefore,

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

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

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

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

Motion carried by a constitutional majority.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Carlton moved that the Conference Committee Reports on Senate Bill No. 269; Assembly Bill No. 454 be taken from Unfinished Business and placed on Unfinished Business on the fourth agenda

Remarks by Senator Carlton.

Senate Bill No. 261–Senator Care

CHAPTER.....

AN ACT relating to common-interest ownership; revising the provisions governing the applicability of the Uniform Common-Interest Ownership Act; making various other changes relating to common-interest ownership; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill makes various changes relating to common-interest ownership to: (1) incorporate certain revisions to the Uniform Common-Interest Ownership Act promulgated by the Uniform Law Commission; and (2) eliminate references to the preparation of certain plans regarding certain common-interest communities and condominium hotels.

Sections 2, 3, 6 and 9 of this bill provide that the provisions of the Uniform Act only apply to a nonresidential condominium if the declaration so provides.

Sections 4 and 7 of this bill clarify the applicability of the Uniform Act by revising the definition of "common-interest community" to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) clarify that certain agreements to share expenses do not create a common-interest community. (NRS 116.021)

Sections 8 and 10-26 of this bill eliminate references to the preparation of certain plans for certain common-interest communities and condominium hotels. (NRS 116.089, 116.1206, 116.2105, 116.2109, 116.211, 116.2112, 116.2113, 116.2114, 116.2117, 116.345, 116.4103, 116.4109, 116B.225, 116B.295, 116B.350, 116B.365, 116B.760)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. ***"Nonresidential condominium" means a condominium in which all units are restricted exclusively to nonresidential use.***

Sec. 3. ***1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:***

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and NRS 116.3116 to 116.31168, inclusive, apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to the condominium.

2. If this entire chapter applies to a nonresidential condominium, the declaration may also require, subject to NRS 116.1112, that:

(a) Notwithstanding NRS 116.3105, any management, maintenance operations or employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Notwithstanding NRS 116.1104 and subsection 2 of NRS 116.311, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

Sec. 4. *1. An agreement between the associations for two or more common-interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in the agreement or declarations does not create a separate common-interest community. If the declarants of the common-interest communities are affiliates, the agreement may not unreasonably allocate the costs among those common-interest communities.*

2. An agreement between an association and the owner of real estate that is not part of a common-interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in the agreement, does not create a separate common-interest community. However, the assessments against the units in the common-interest community required by the agreement must be included in the periodic budget for the common-interest community, and the agreement must be disclosed in all public offering statements and resale certificates required by this chapter.

3. An agreement between the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, road, driveway or well or other similar use does not create a common-interest community unless the owners otherwise agree.

4. As used in this section, "party wall" means any wall or fence constructed along the common boundary line between parcels. The term does not include any shared building structure systems, including, without limitation, foundations, walls and roof structures.

Sec. 5. (Deleted by amendment.)

Sec. 6. NRS 116.003 is hereby amended to read as follows:

116.003 As used in this chapter and in the declaration and bylaws of an association, unless the context otherwise requires, the words and terms defined in NRS 116.005 to 116.095, inclusive, ***and section 2 of this act*** have the meanings ascribed to them in those sections.

Sec. 7. NRS 116.021 is hereby amended to read as follows:

116.021 ***1.*** "Common-interest community" means real estate ***described in a declaration*** with respect to which a person, by virtue of ~~[his]~~ ***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 ~~[than that unit. "Ownership]~~ ***real estate described in that declaration.***

2. The term does not include an agreement described in section 4 of this act.

3. For purposes of this section, "ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

Sec. 8. NRS 116.089 is hereby amended to read as follows:

116.089 "Special declarant's rights" means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats ~~[and plans]~~ or in the declaration (NRS 116.2109) or, in a cooperative, to complete improvements described in the public offering statement pursuant to subsection 2 of NRS 116.4103;
2. Exercise any developmental right (NRS 116.211);
3. Maintain sales offices, management offices, signs advertising the common-interest community and models (NRS 116.2115);
4. Use easements through the common elements for the purpose of making improvements within the common-interest community or within real estate which may be added to the common-interest community (NRS 116.2116);
5. Make the common-interest community subject to a master association (NRS 116.212);
6. Merge or consolidate a common-interest community with another common-interest community of the same form of ownership (NRS 116.2121); or
7. Appoint or remove any officer of the association or any master association or any member of an executive board during any period of declarant's control (NRS 116.31032).

Sec. 9. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

(II) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter ***or a part of this chapter*** does apply to that planned community ~~.~~ ***pursuant to section 3 of this act.*** This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) Prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 10. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

2. In the case of amendments to the declaration, bylaws or plats ~~[and plans]~~ of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats ~~[and plans]~~ authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 11. NRS 116.2105 is hereby amended to read as follows:

116.2105 1. The declaration must contain:

(a) The names of the common-interest community and the association and a statement that the common-interest community is either a condominium, cooperative or planned community;

(b) The name of every county in which any part of the common-interest community is situated;

(c) A sufficient description of the real estate included in the common-interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats , ~~[or plans,]~~ of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in subsections 2 and 4 of NRS 116.2102, as provided in paragraph (g) of subsection 2 of NRS 116.2109 and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to developmental rights, that may be allocated subsequently as limited

common elements, other than limited common elements specified in subsections 2 and 4 of NRS 116.2102, together with a statement that they may be so allocated;

(h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time within which each of those rights must be exercised;

(i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and

(2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in NRS 116.2107;

(l) Any restrictions:

(1) On use, occupancy and alienation of the units; and

(2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community;

(m) The file number and book or other information to show where easements and licenses are recorded appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and

(n) All matters required by NRS 116.2106 to 116.2109, inclusive, 116.2115 and 116.2116 and 116.31032.

2. The declaration may contain any other matters the declarant considers appropriate.

Sec. 12. NRS 116.2109 is hereby amended to read as follows:

116.2109 1. Plats ~~[and plans]~~ are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat ~~[and plan]~~ must be clear and legible and

contain a certification that the plat ~~[or plan]~~ contains all information required by this section.

2. Each plat must comply with the provisions of chapter 278 of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;

(b) A sufficient description of the real estate;

(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the common-interest community;

(e) The location and dimensions ***, with reference to an established datum,*** of any vertical unit boundaries and that unit's identifying number;

(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on ~~[plans]~~ ***plats*** recorded pursuant to subsection ~~[4]~~ ***3*** and that unit's identifying number; and

(g) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in subsections 2 and 4 of NRS 116.2102.

3. ~~[To the extent not shown or projected on the]~~ ***The*** plats ~~[, plans of the units]~~ must show or project any units in which the declarant has reserved the right to create additional units or common elements (paragraph (h) of subsection 1 of NRS 116.2105), identified appropriately.

4. Unless the declaration provides otherwise, ***when*** the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part ~~[and]~~ ***, the elevations*** need not be depicted on the plats . ~~[and plans of the units.]~~

5. ~~[A declarant shall also provide a plan of development for the common-interest community with its initial phase of development. The declarant shall revise the plan of development with each subsequent phase. The plan of development may show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development must also show or project:~~

~~(a) The location and dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;~~

~~(b) A sufficient description of any real estate subject to developmental rights, labeled to identify the rights applicable to each parcel; and~~

~~(c) A sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate."~~

~~6.]~~ Upon exercising any developmental right, the declarant shall record new or amended plats necessary to conform to the requirements of subsection 2 . ~~[and provide new or amended plans of the units and a new or amended plan of development or new certifications of those plans if the plans otherwise conform to the requirements of subsections 3 and 5.~~

~~7.]~~ *6.* Each plat must be certified by ~~[an independent]~~ *a* professional land surveyor. ~~[The plans of the units must be certified by an independent professional engineer or architect. If the plan of development is not certified by an independent professional land surveyor or an independent professional engineer or architect, it must be acknowledged by the declarant.]~~

Sec. 13. NRS 116.211 is hereby amended to read as follows:

116.211 1. To exercise any developmental right reserved under paragraph (h) of subsection 1 of NRS 116.2105, the declarant shall prepare, execute and record an amendment to the declaration (NRS 116.2117) and in a condominium or planned community comply with NRS 116.2109. The declarant is the owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection 2, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by NRS 116.2108.

2. Developmental rights may be reserved within any real estate added to the common-interest community if the amendment adding that real estate includes all matters required by NRS 116.2105 or 116.2106, as the case may be, and, in a condominium or planned community, the plats ~~[and plans]~~ include all matters required by NRS 116.2109. This provision does not extend the time limit on the

exercise of developmental rights imposed by the declaration pursuant to paragraph (h) of subsection 1 of NRS 116.2105.

3. Whenever a declarant exercises a developmental right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must convey it to the association or reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (NRS 116.1107); and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

4. If the declaration provides, pursuant to paragraph (h) of subsection 1 of NRS 116.2105, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 14. NRS 116.2112 is hereby amended to read as follows:

116.2112 1. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those units' owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

2. The association:

(a) In a condominium or planned community shall prepare and record plats ~~[or plans]~~ necessary to show the altered boundaries

between adjoining units, and their dimensions and identifying numbers; and

(b) In a cooperative shall prepare and record amendments to the declaration ~~[, including any plans,]~~ necessary to show or describe the altered boundaries between adjoining units, and their dimensions and identifying numbers.

Sec. 15. NRS 116.2113 is hereby amended to read as follows:

116.2113 1. If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, upon application of the unit's owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including in a condominium or planned community the plats , ~~[and plans,]~~ subdividing that unit.

2. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

Sec. 16. NRS 116.2114 is hereby amended to read as follows:

116.2114 The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit's owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats ~~[and plans]~~ or, in a cooperative, to any representation in the public offering statement.

Sec. 17. NRS 116.2117 is hereby amended to read as follows:

116.2117 1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection ~~[6]~~ ***5*** of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, subsection 4 of NRS 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsection 4, the declaration, including any plats , ~~[and plans,]~~ may be amended only

by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. Every amendment to the declaration must be recorded in every county in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the units' owners affected and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 18. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat ~~[or plan]~~ of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 19. NRS 116.4103 is hereby amended to read as follows:

116.4103 1. Except as otherwise provided in NRS 116.41035, a public offering statement must set forth or fully and accurately disclose each of the following:

(a) The name and principal address of the declarant and of the common-interest community, and a statement that the common-interest community is either a condominium, cooperative or planned community.

(b) A general description of the common-interest community, including to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common-interest community.

(c) The estimated number of units in the common-interest community.

(d) Copies of the declaration, bylaws, and any rules or regulations of the association, but a plat ~~[or plan]~~ is not required.

(e) A current year-to-date financial statement, including the most recent audited or reviewed financial statement, and the projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association. The budget must include, without limitation:

(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to NRS 116.3115; and

(2) The projected monthly assessment for common expenses for each type of unit, including the amount established as reserves pursuant to NRS 116.3115.

(f) A description of any services or subsidies being provided by the declarant or an affiliate of the declarant, not reflected in the budget.

(g) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(h) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(i) A statement that unless the purchaser or his agent has personally inspected the unit, the purchaser may cancel, by written notice, his contract for purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract must contain a provision to that effect.

(j) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common-interest community of which a declarant has actual knowledge.

(k) Any current or expected fees or charges to be paid by units' owners for the use of the common elements and other facilities related to the common-interest community.

(l) The information statement set forth in NRS 116.41095.

2. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

Sec. 20. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats , ~~[and plans,]~~ the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152; and

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 21. (Deleted by amendment.)

Sec. 22. NRS 116B.225 is hereby amended to read as follows:

116B.225 "Special declarant's rights" means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats ~~[and plans]~~ or in the declaration;

2. Exercise any developmental right;

3. Maintain sales offices, management offices and signs advertising the condominium hotel and models, provided, however, that the declarant is not required to reserve the right to maintain such offices or signs within the hotel unit or shared components or within any unit owned by the declarant;

4. Use easements through the common elements, shared components or hotel unit for the purpose of making improvements within the condominium hotel;

5. Merge or consolidate a condominium hotel with another condominium hotel; or

6. Appoint or remove any officer of the association or any member of an executive board during any period of declarant's control.

Sec. 23. NRS 116B.295 is hereby amended to read as follows:

116B.295 1. Any provision contained in a declaration, bylaw or other governing document of a condominium hotel that violates the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

2. In the case of amendments to a declaration, bylaws or plats ~~[and plans]~~ of any condominium hotel created before January 1, 2008:

(a) If the result accomplished by the amendment was permitted before January 1, 2008, the amendment may be made in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter and was not permitted by law before January 1, 2008, the amendment may be made under this chapter.

Sec. 24. NRS 116B.350 is hereby amended to read as follows:

116B.350 1. Plats ~~[and plans]~~ are a part of the declaration and are required for all condominium hotels. Each plat ~~[and plan]~~ must be clear and legible and contain a certification that the plat ~~[or plan]~~ contains all information required by this section.

2. Each plat must comply with the provisions of chapter 278 of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;

(b) A sufficient description of the real estate;

(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the condominium hotel;

(e) The location and dimensions with reference to an established datum of any vertical residential unit boundaries and that unit's identifying number;

(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on ~~[plans]~~ ***plats*** recorded pursuant to subsection 4 and that unit's identifying number;

(g) The location and dimensions of the units, shared components and common elements; and

(h) The location and dimensions of limited common elements, if any, including porches, balconies and patios.

3. Each plat must be certified by ~~[an independent]~~ ***a*** professional land surveyor. ~~[The plans of the units must be certified by an independent professional engineer or architect.~~

~~4. Plats and plans need not show the location and dimensions of the units' boundaries and their limited common elements if:~~

~~(a) The plat shows the location and dimensions of all buildings containing or comprising the units; and~~

~~(b) The declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements, if any, allocated to those units.~~

~~5. To the extent not shown or projected on the]~~

4. The plats ~~[, plans of the units]~~ must show or project any units in which the declarant has reserved the right to create additional units or common elements, or portions of the shared components or hotel unit, identified appropriately.

~~[6.]~~ ***5.*** Unless the declaration provides otherwise, ***when*** the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part ~~[and]~~ ***, the elevations*** need not be depicted on the plats . ~~[and plans of the units.]~~

~~[7.]~~ ***6.*** Upon exercising any developmental right, the declarant shall prepare, execute and record new or amended plats necessary to conform to the requirements of this section.

Sec. 25. NRS 116B.365 is hereby amended to read as follows:

116B.365 The existing physical boundaries of a residential unit or a hotel unit are its legal boundaries, rather than the boundaries

derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit's owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats. ~~[and plans.]~~

Sec. 26. NRS 116B.760 is hereby amended to read as follows:

116B.760 1. Except in the case of a sale in which delivery of a public offering statement is required, a unit's owner or his authorized agent shall furnish to a purchaser a resale package containing all of the following:

(a) A copy of this chapter, the declaration, other than any plats , ~~[and plans,]~~ the bylaws, the rules or regulations of the association and the hotel unit owner and the information statement required by NRS 116B.765;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by this chapter;

(d) A current year-to-date statement of the shared expenses charged to the units and the projected budget for the shared expenses, either within or as an exhibit to the public offering statement. The budget must include, without limitation:

(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to this chapter;

(2) The projected monthly shared expenses for each type of unit, including the amount established as reserves pursuant to this chapter;

(e) A description of any other payments, fees and charges that may be charged by the hotel unit owner, including those that may be charged in order to offset the increased burden placed on the shared components as a result of use of residential units as transient rentals; and

(f) A statement of any unsatisfied judgments or pending legal actions against the association or the hotel unit owner which affect the shared components and the status of any pending legal actions relating to the condominium hotel of which the unit's owner has actual knowledge.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the residential unit owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the residential unit owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the residential unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the residential unit owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a residential unit owner or his authorized agent, the hotel unit owner shall furnish all of the following to the residential unit owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the residential unit owner to comply with paragraphs (b) and (d) of subsection 1.

4. If the hotel unit owner furnishes the documents and certificate pursuant to subsection 3:

(a) The residential unit owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the residential unit owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the hotel unit owner and included in the documents and certificate.

(b) The hotel unit owner may charge the residential unit owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that the hotel unit owner may charge for preparing the certificate.

(c) The hotel unit owner may charge the residential unit owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the hotel unit owner may not charge the residential unit owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a residential unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the hotel unit owner. If the hotel unit owner fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a residential unit owner or his authorized agent, or upon the request of a purchaser to whom the hotel unit owner has provided a resale package pursuant to this section or his authorized agent, the hotel unit owner shall make the entire study of the reserves of the association or the shared components reasonably available for the residential unit owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or the hotel unit owner or some other suitable location within the county where the condominium hotel is situated or, if it is situated in more than one county, within one of those counties.

DOC # 623994
03/08/2010 03:51 PM
Official Record
Requested By
JAMES M. COPENHAVER
Elko County – NV
Jerry D. Reynolds – Recorder
Page 1 of 2 Fee: $15.00
Recorded By: NR RPTT: $117.00

APN: 007-03A-044

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

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

GRANT, BARGAIN & SALE DEED

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

APN: 007-03A-044

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

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

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

TOGETHER WITH any buildings or improvements located thereon.

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

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

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

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

SIGNED this 18 day of February, 2010.

GRANTORS:

Adrian P Preader

ADRIAN P. PREADER

Jackie R. Preader

JACKIE R. PREADER

State of Idaho
County of Twin Falls

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

Mark Lebsack

NOTARY PUBLIC

MARK LEBSACK NOTARY PUBLIC STATE OF IDAHO

State of Idaho
County of Twin Falls

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

Mark Lebsack

NOTARY PUBLIC

MARK LEBSACK NOTARY PUBLIC STATE OF IDAHO

Rural Living in Elko County

Things You Need To Know About Rural Living

Access

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

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

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

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

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

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

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

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

LEONARD I. GANG
ATTORNEY AT LAW
ARTIBRATION * MEDIATION

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Fax: (775) 593-2765
Email: leonardgang@gmail.com

February 7, 2012

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

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

Re: Artemis Exploration Company v. Ruby Lake Estates Architectural Review Committee & Ruby Lake Estates Homeowner's Association & Leroy Perks & Valerie McIntyre & Dennis McIntyre & Michael Cecchi
ADR Control No. 11-82

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

FACTS

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

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

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

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

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

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

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

DISCUSSION

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

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

DECISION

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

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

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

ORDER

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

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

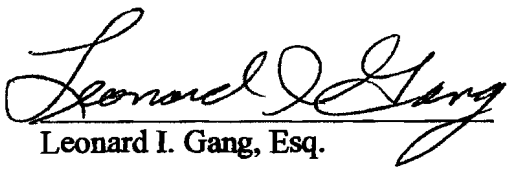
3. Claimant is not entitled to punitive damages as a matter of law and no evidence was presented that would warrant such an award.

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

IT IS SO ORDERED.

Dated this 7th day of February, 2012.

ARBITRATOR,



Leonard I. Gang, Esq.

LIG:rg

CERTIFICATE OF MAILING

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

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

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

Roberta Gang
ROBERTA GANG

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Respondent.

No. 75323

APPELLANTS' APPENDIX
VOLUME 5

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

APPELLANTS' APPENDIX - VOLUME 5

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

APPENDIX SUMMARY
Alphabetical Order

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

Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company (Exhibit)	June 16, 1994	5	165-166
Deed - Stephen G. Wright & Mavis S. Wright to RLEHOA (Exhibit)	August 28, 2007	5	175-177
Final Judgment	February 26, 2018	5	132-142
First Amended Complaint	February 17, 2016	4	143-167
Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company (Exhibit)	December 15, 1989	5	161
Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill (Exhibit)	February 12, 1990	5	162
Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company (Exhibit)	February 18, 2010	5	216-217
Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim	May 12, 2016	5	11-23
Harold Wyatt and Mary Wyatt's Joinder in Artemis Exploration Company's Motions and Opposition	October 17, 2016	5	24-103
Harold Wyatt and Mary Wyatt's Reply to Ruby Lake Estates Homeowners Association's Response to Harry and Mary Wyatt's Errata and Joinder in Artemis Exploration Company's Motions and Opposition	December 21, 2016	5	116-122
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, 3	38-250, 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

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Arbitration Order	February 7, 2012	5	219-222

CASE NO. CV-C-12-175

DEPT. NO. 1

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

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2016 MAY -4 PM 3:39
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CLERK ____ DEPUTY ____

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

/

ANSWER TO SECOND AMENDED COUNTERCLAIM

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

GERBER LAW OFFICES, LLP
491 4th Street
Elko, Nevada 89801
Ph. (775) 738-9258

vs.

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Counterdefendant.
_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,

vs.

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

Cross-Defendants.

_____/

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. ARTEMIS denies the allegations contained in Paragraph 19.

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

21. ARTEMIS denies the allegations contained in Paragraph 21.

22. ARTEMIS admits the allegations contained in Paragraph 22.

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

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

25. ARTEMIS denies the allegations contained in Paragraph 25.

26. ARTEMIS admits that Mel Essington sent correspondence which correspondence speaks for itself. ARTEMIS denies the remaining allegations contained in Paragraph 26.

27. ARTEMIS admits that Mel Essington paid assessments as levied by Ruby Lake Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph 27.

28. ARTEMIS admits that Mel Essington sent correspondence to other lot owners within Ruby Lake Estates which correspondence speaks for itself. ARTEMIS denies the remaining allegations contained in Paragraph 28.

29. ARTEMIS admits that Mel Essington served as a board member of Ruby Lake Estates Homeowner's Association beginning in or around August of 2007, but denies the remaining allegations contained in Paragraph 29.

30. ARTEMIS denies the allegations contained in Paragraph 30.

31. ARTEMIS admits that Mel Essington initially participated in the activities of the Ruby Lake Estates Homeowner's Association as a board member, but lacks information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 31.

32. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size of the structure, but denies the remaining allegations contained in Paragraph 32.

33. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size of the structure and that the structure was approved by the board of Ruby Lake Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph 33.

34. ARTEMIS denies the allegations contained in Paragraph 34.

35. ARTEMIS admits that it ceased paying assessments, but denies the remaining allegations contained in Paragraph 35.

36. ARTEMIS admits that invoices were sent to ARTEMIS by Ruby Lake Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph 36.

37. ARTEMIS admits the allegations contained in Paragraph 37.

38. ARTEMIS admits the Ombudsman's Office issued an opinion dated July 1, 2012, in which it declined to take any action. The Ombudsman stated in its letter, ". . . we are not, as you

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

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

40. ARTEMIS denies the allegations contained in Paragraph 40.

41. ARTEMIS denies the allegations contained in Paragraph 41.

42. ARTEMIS denies the allegations contained in Paragraph 42.

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

44. Paragraph 44 does not require any response.

45. ARTEMIS denies the allegations contained in Paragraph 45.

46. ARTEMIS denies the allegations contained in Paragraph 46.

47. ARTEMIS denies the allegations contained in Paragraph 47.

48. Paragraph 48 does not require any response.

49. ARTEMIS denies the allegations contained in Paragraph 49.

50. ARTEMIS denies the allegations contained in Paragraph 50.

51. ARTEMIS denies the allegations contained in Paragraph 51.

52. ARTEMIS denies the allegations contained in Paragraph 52.

53. Paragraph 53 does not require any response.

54. ARTEMIS denies the allegations contained in Paragraph 54.

55. ARTEMIS denies the allegations contained in Paragraph 55.

56. ARTEMIS denies the allegations contained in Paragraph 56.

57. Paragraph 57 does not require any response.

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

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

60. ARTEMIS denies the allegations contained in Paragraph 60.

61. Paragraph 61 does not require any response.

62. ARTEMIS denies the allegations contained in Paragraph 62.

63. ARTEMIS denies the allegations contained in Paragraph 63.

64. ARTEMIS denies the allegations contained in Paragraph 64.

65. ARTEMIS denies the allegations contained in Paragraph 65.

66. ARTEMIS denies the allegations contained in Paragraph 66.

67. Paragraph 67 does not require any response.

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

69. Paragraph 69 does not require any response.

70. ARTEMIS denies the allegations contained in Paragraph 70.

71. ARTEMIS denies the allegations contained in Paragraph 71.

72. ARTEMIS denies the allegations contained in Paragraph 72.

73. ARTEMIS denies the allegations contained in Paragraph 73.

74. ARTEMIS denies the allegations contained in Paragraph 74.

75. ARTEMIS denies the allegations contained in Paragraph 75.

76. ARTEMIS denies the allegations contained in Paragraph 76.

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant failed to join a third party.

SEVENTH AFFIRMATIVE DEFENSE

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

PRAYER FOR RELIEF

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

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

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

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

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

5 For exemplary or punitive damages; and

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

DATED this 4th day of May, 2016.

GERBER LAW OFFICES, LLP

BY: _____
TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR PLAINTIFF
ARTEMIS EXPLORATION
COMPANY

CERTIFICATE OF SERVICE BY MAIL

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

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

Dated this 4 day of May, 2016.

madison johnson
MADISON JOHNSON

CASE NO. CV-C-12-175

DEPT. NO. 1

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

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IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

/

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

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

GERBER LAW OFFICES, LLP
491 4th Street
Elko, Nevada 89801
Ph. (775) 738-9258

vs.

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Counterdefendant.
_____/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,
vs.

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

Cross-Defendants.
_____/

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

Answer to Second Amended Complaint

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

2. LOT OWNERS admit the allegations contained in Paragraph 2 of the Complaint.

3. LOT OWNERS admit the allegations contained in Paragraph 3 of the Complaint.

4. LOT OWNERS admit the allegations contained in Paragraph 4 of the Complaint.

5. LOT OWNERS admit the allegations contained in Paragraph 5 of the Complaint.

6. LOT OWNERS admit the allegations contained in Paragraph 6 of the Complaint.

7. LOT OWNERS restate and incorporate each prior allegation as if set forth fully herein.

8. LOT OWNERS admit the allegations contained in Paragraph 8 of the Complaint.

9. LOT OWNERS admit the allegations contained in Paragraph 9 of the Complaint.

10. LOT OWNERS admit the allegations contained in Paragraph 10 of the Complaint.

11. LOT OWNERS admit the allegations contained in Paragraph 11 of the Complaint.

12. LOT OWNERS admit the allegations contained in Paragraph 12 of the Complaint.

13. LOT OWNERS admit the allegations contained in Paragraph 13 of the Complaint.

14. LOT OWNERS admit the allegations contained in Paragraph 14 of the Complaint.

15. LOT OWNERS admit the allegations contained in Paragraph 15 of the Complaint.

16. LOT OWNERS admit the allegations contained in Paragraph 16 of the Complaint.

17. LOT OWNERS admit the allegations contained in Paragraph 17 of the Complaint.

18. LOT OWNERS admit the allegations contained in Paragraph 18 of the Complaint.

19. LOT OWNERS admit the allegations contained in Paragraph 19 of the Complaint.

20. LOT OWNERS admit the allegations contained in Paragraph 20 of the Complaint.

21. LOT OWNERS admit the allegations contained in Paragraph 21 of the Complaint.

22. LOT OWNERS admit the allegations contained in Paragraph 22 of the Complaint.

23. LOT OWNERS restate and incorporate each prior allegation as if set forth fully herein.

24. LOT OWNERS admit the allegations contained in Paragraph 24 of the Complaint.

25. LOT OWNERS admit the allegations contained in Paragraph 25 of the Complaint.

26. LOT OWNERS admit the allegations contained in Paragraph 26 of the Complaint.

27. LOT OWNERS admit the allegations contained in Paragraph 27 of the Complaint.

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

Answer to Second Amended Cross-Claim

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

54. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

55. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

56. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

57. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

58. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

59. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

60. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-Claim.

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

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

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

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

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

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

67. Paragraph 67 does not require any response.

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

The Crossclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

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

PRAYER FOR RELIEF

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

1. That Defendant/Crossclaimant take nothing by way of its Crossclaim filed herein;

2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association is not located within a common-interest community and is not authorized under the Ruby Lake Estates Declaration, Restrictions and Covenants to compel the payment of dues or assessments, or to otherwise compel property owners within the Ruby Lake Estates to participate in the activities of the Ruby Lake Estates Homeowner's Association; and

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

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DATED this 12th day of May, 2016.

GERBER LAW OFFICES, LLP

BY: _____

TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR CROSS-DEFENDANTS

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 *Answer to Second Amended Complaint and Cross-Claim*, addressed to the following:

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

Dated this 12 day of May, 2016.

MADISON JOHNSON

CASE NO. CV-C-12-175

DEPT. 1

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

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Plaintiff,

vs.

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

/

HAROLD AND MARY WYATT'S JOINDER IN ARTEMIS EXPLORATION COMPANY'S:

MOTION AND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENT TO MOTION FOR SUMMARY JUDGMENT ON DEFENDANT'S REMAINING COUNTERCLAIMS;

MOTION AND REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF ORDER DENYING PLAINTIFF'S AND GRANTING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT; AND

OPPOSITION TO RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIMS

GERBER LAW OFFICES, LLP
491 4th Street
Elko, Nevada 89801
Ph. (775) 738-9258

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Counterclaimant,

vs.

ARTEMIS EXPLORATION COMPANY, a Nevada Corporation,

Counterdefendant.

/

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

Cross-Claimant,

vs.

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

Cross-Defendants.

/

COMES NOW, Defendants/Cross-Defendants, **HAROLD WYATT AND MARY WYATT** (hereinafter "WYATT"), by and through GERBER LAW OFFICES, LLP, and hereby file *Harold and Mary Wyatt's Joinder in Artemis Exploration Company's: Motion and Reply in Support of Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment; and Opposition to Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims* ("Pending Motions, Opposition, and Replies") based upon the Points and Authorities attached hereto.

DATED this 17th day of October, 2016.

GERBER LAW OFFICES, LLP

By: _____
TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEY FOR PLAINTIFF/
COUNTERDEFENDANT

NOTICE OF JOINDER TO MOTIONS

Pursuant to 4JDCR 11(5)(b)(2), a hearing on this joinder to motions is not requested.

DATED this 17th day of October, 2016.

By: _____
TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEYS FOR DEFENDANT

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Harold and Mary Wyatt, as recently joined Defendants and Cross-Defendants to this action, join in Artemis Exploration Company's pending Motions, Opposition, and Replies as to the Declaratory Judgment claim and cross-claim, and respectfully request that the Court rule on the pending motions and:

1) Grant Artemis Exploration Company's Motion for Summary Judgment on Defendant's Remaining Counterclaims, and find that Ruby Lake Estates Homeowner's Association ("RLEHOA") is not a valid, mandatary homeowner's association and is not located within a common interest community;

2) Grant Artemis Exploration Company's Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims, and allow leave to supplement the Motion for Summary Judgment on Defendant's Remaining Counterclaims;

3) Grant Artemis Exploration Company's Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment, and allow leave to reconsider the Court's Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment;

4) Deny Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims, and find that RLEHOA is not a valid, mandatary homeowner's association and is not located within a common interest community; and

5) Enter Summary Judgment regarding RLEHOA's cross-claim in accordance with this Court's Summary Judgment ruling on RLEHOA's identical declaratory judgment counter-claim.

Three declaratory judgment claims are pending before this Court, which are identical except as to the parties that are involved in each claim. Each of the three claims requests that this Court declare whether RLEHOA is a valid homeowner's association and whether Ruby Lake Estates is a common-interest community. Each claim and the parties that are involved, are as follows: 1)

Artemis's claim against all Defendants; 2) RLEHOA's counterclaim against Artemis; and 3) RLEHOA's newly asserted cross-claim against all newly joined lot owners. Given that the declaratory judgment claims are identical, ruling on one of the declaratory judgment claims would in-turn be dispositive of the other declaratory judgment claims, including the newly asserted Cross-Claim.

This Court previously entered summary judgment on Artemis's declaratory judgment claim in its Summary Judgment Orders; however, RLEHOA's counterclaim was not disposed of and RLEHOA's newly asserted cross-claim has not been ruled on by this Court. Furthermore, the Wyatts, as newly joined parties, have not had an opportunity to brief the Court on their arguments proving that RLEHOA is an invalid homeowner's association and not located within a common-interest community. For these reasons, the Wyatts request, in this Joinder as did Artemis in its Motions and Opposition, that the Court grant leave to reconsider the findings in the Court's Summary Judgment Orders, and request that the Court specifically rule on all of the declaratory judgment claims at one time because each claim is dispositive as to the other declaratory judgment claims–including the newly asserted Cross-Claim. This will allow the Court to make identical findings of fact and law as to all three declaratory judgment claims. Once all claims are resolved, Final Judgment may be entered.

II. FACTS

1. Ruby Lake Estates is a rural subdivision of 51 lots. The Plat Map for Ruby Lake Estates was recorded on September 15, 1989, as file No. 281674, and all roads within the subdivision were dedicated to the County of Elko, as stated on the Plat Map.

2. The Declaration of Restrictions and Covenants of Ruby Lake Estates subdivision ("CC&Rs") was recorded on October 25, 1989.

3. The date the first lots in Ruby Lake Estates were conveyed was on December 15, 1989, when forty-nine (49) of the fifty-one (51) lots were conveyed by deed from the Declarants, Stephen G. Wright and Mavis S. Wright, to Cattleman's Title Guarantee Company. On February 15, 1990, Declarants conveyed the remaining two (2) lots, by deed, to Van Der Meer, Morley and Merrill. Thus, all fifty-one (51) lots in Ruby Lake Estates were deeded and conveyed by February 15, 1990.

4. NRS 116 was codified in 1991 and became effective law in 1992.

5. In 1992, NRS 116.110323 defined a common-interest community as follows:

> "Common-interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit.

6. Artemis purchased Lot 6 of Block G of Ruby Lake Estates on June 21, 1994.

7. In 1999, the Legislature amended NRS 116.1201 in order to apply NRS 116 to all common-interest communities.

8. On December 12, 2001, Harold and Mary Wyatt purchased Lot 5 of Block F in Ruby Lake Estates. (Wyatt Deed Document No. 477530 attached hereto as Exhibit "A.")

9. In 2003, NRS 116.110323, was substituted, with identical wording, and became NRS 116.021.

10. In 2006, the Legislative Counsel Bureau issued a legal opinion interpreting NRS 116.021 to mean that a subdivision with CC&Rs, alone, does not constitute a "common-interest community." (Legislative Counsel Bureau legal opinion, attached hereto as Exhibit "B.")

11. In 2006, Ruby Lake Estates Homeowner's Association ("RLEHOA") was organized by a group of lot owners, 17 years after all Ruby Lake Estates subdivision was created and all lots were conveyed. There is no evidence that the Wyatts ever participated in or approved the organization of RLEHOA.

12. In 2008, an unofficial Nevada Attorney General Opinion was issued interpreting NRS 116.021 to mean that a subdivision with CC&Rs, alone, may constitute a "common-interest community."

13. In 2009, the Legislature expressly clarified and amended NRS 116.021 as follows:

> 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.
>
> 2. The term does not include an agreement described in NRS 116.1209.
>
> 3. For purposes of this section, "ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

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14. Senate Bill 261, which enacted the 2009 NRS 116.021 amendment, states:

> Sections 4 and 7 of this bill clarify the applicability of the Uniform Act by revising the definition of "common-interest community" to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) clarify that certain agreements to share expenses do not create a common-interest community. (NRS 116.021).

(OWNERS AND OWNERSHIP-COMMON INTEREST OWNERSHIP, 2009 Nevada Laws Ch. 357 (S.B. 261) attached hereto as Exhibit "C" p. 1.)

14. Senator Schneider, in the legislative history of 2009 Amendments to NRS Chapter 116, stated:

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

(NV S. Jour., 75th Sess. No. 120 (June 1, 2009) attached hereto as Exhibit "D" p. 33.)

15. Initially, the Nevada Real Estate Division, adopted the Attorney General's unofficial opinion, but then "agreed to drop its assertions" when the legislature, that disagreed with the Attorney General opinion, clarified the statute. (*Id.*)

16. On March 9, 2010, Artemis acquired Lot 2 of Block H of Ruby Lake Estates from a previous lot owner.

III. LEGAL ARGUMENT

The Wyatts join in Artemis's Pending Motions, Opposition, and Replies in regards to the Declaratory Judgment claim and cross-claim, and respectfully request that the Court rule that RLEHOA is not a valid homeowner's association and is not located within a common interest community, and grant leave to reconsider the Court's Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment, for the following reasons:

///

A. Ruby Lake Estates is not a common-interest community because lot owners are not obligated to pay for common elements under NRS 116.021.

NRS 116.021(1) states:

> 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.

This statute defines a common-interest community as a community that has real estate that is common to all of the lot owners in the community and for which all the lot owners share the expense.

This Court found that Ruby Lake Estates is a common-interest community in its Orders Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment ("Summary Judgment Orders"), for two reasons: 1) Ruby Lake Estates recorded CC&Rs that were interpreted as being "real estate" (Summary Judgment Orders 6:13-22); and 2) Ruby Lake Estates' "plat contains 'common elements' as the term is currently defined in NRS 116.017, including fixtures such as gates." (*Id.* 9: n. 4.)

Ruby Lake Estates is not a common-interest community because there are no common elements. First, CC&Rs are not common elements as explained more fully in Sub-Section C below.

Second, there are no common elements in Ruby Lake Estates. No evidence has been provided by any party of any common fixtures, including "gates." The Ruby Lake Estates plat map does not show any "gates" and the Ruby Lake Estates' CC&Rs do not reference any common elements or obligate any unit owner to pay for a share of any common elements.

Third, when the Wyatts purchased their lot in 2001, the Wyatts were not put on notice that their lot was located within a common-interest community, nor was there any requirement that obligated them to pay for a share of any common elements.

Therefore, the Wyatts respectfully request that the Court find that Ruby Lake Estates is not a common-interest community because unit owners are not obligated to pay a share of any common elements or real estate pursuant to NRS 116.021(1).

///

B. RLEHOA is not a valid homeowner's association because it was not organized prior to the first lot's conveyance pursuant to NRS 116.3101(1).

NRS 116.3101(1) states:

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

This statute requires that a homeowner's association must be organized prior to the first unit's conveyance.

This Court found, in its Summary Judgment Orders, that RLEHOA is a valid homeowners' association despite being organized after the conveyance of the first Ruby Lake Estates lot. The Court disregarded NRS 116.3101(1) by explaining that "if this argument [that RLEHOA had to be organized before the first lot was conveyed] held water a valid homeowners association for a common interest community that existed before 1992 could never be formed." (Summary Judgment Orders 6: ft. 1.)

First, no authority supports the Court's Order disregarding NRS 116.3101(1). The law is clear that a homeowner's association–including an association created prior to 1992–is only valid if it was organized prior to the first lot's conveyance. In this case, the first lost was conveyed in 1989 and the Wyatts purchased their lot in 2001. Thus, RLEHOA was invalidly organized in 2006, nearly two decades after the first lot's conveyance, and in violation of NRS 116.3101(1). In order for RLEHOA to be valid, its organization must have occurred prior to the first lot's conveyance in 1989; however, that organization never occurred.

Second, it is black letter law that an encumbrance cannot be imposed on real estate without notice. *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 267, 849 P.2d 310, 312 (1993) (quoting *Lakeland Property Owners Ass'n v. Larson*, 121 Ill.App.3d 805, 77 Ill.Dec. 68, 74, 459 N.E.2d 1164, 1170 (1984) ("a grantee can only be bound by what he had notice of, not the secret intentions of the grantor"). For this reason, NRS 116.3101 codified this notice requirement that a homeowner's association must be organized no later than the conveyance of the first lot. In this case and when the Wyatt's purchased their lot in 2001, a homeowner's association had not been organized prior to the conveyance of the first lot; therefore, there was no notice of a homeowner's association and, under NRS 116.3101(1), a homeowner's association was precluded from ever being organized.

Therefore, the Wyatts respectfully request that the Court find that RLEHOA is not a valid homeowner's association under NRS 116.3101(1) because RLEHOA was organized after the first lot's and the Wyatts' lot's conveyance.

C. The 2009 NRS 116.021 amendment applies retroactively, and precludes Ruby Lake Estates from being a common-interest community.

The 2009 NRS 116.021 amendment applies retroactively, and precludes Ruby Lake Estates from being a common-interest community because the 2009 amendment was expressly meant to clarify rather than change the statute.

A legislative amendment meant to clarify rather than change a statute should be applied retroactively. *Castillo v. State*, 110 Nev. 535, 541, 874 P.2d 1252, 1256-57 (1994), *disapproved of, on other grounds, by Wood v. State*, 111 Nev. 428, 892 P.2d 944 (1995); *Fernandez v. Fernandez*, 126 Nev. ----, ---- n. 6, 222 P.3d 1031, 1035 n. 6 (2010) (citing Norman J. Singer and J.D. Shambie Singer, 1A Sutherland Statutory Construction § 22.34 (7th ed. 2009)); *Gilman v. Nevada State Bd. of Veterinary Med. Examiners*, 120 Nev. 263, 275, 89 P.3d 1000, 1008 (2004) *disapproved of, on other grounds, by Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. Adv. Op. 27, 327 P.3d 487 (2014); *State Drywall, Inc. v. Rhodes Design & Dev.*, 122 Nev. 111, 115, 127 P.3d 1082, 1085 (2006).

Sutherland Statutory Construction, which was cited by the Supreme Court of Nevada as authority for retroactive effect of clarifying amendments, states, "Where an amendment clarifies existing law but does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive, especially where the amendment is enacted during a controversy over the meaning of the law." 1A Sutherland Statutory Construction § 22:34 (7th ed.). Sutherland notes that at least eight states-California, Connecticut, Missouri, Nevada, Oklahoma, Pennsylvania, Texas, Washington-and federal courts apply this same rule. *Id.* at Ft. 6 (citing *In re Prior*, 176 B.R. 485 (Bankr. S.D. Ill. 1995); *Negrette v. California State Lottery Com.*, 21 Cal. App. 4th 1739 (1st Dist. 1994); *Edelstein v. Department of Public Health and Addiction Services*, 240 Conn. 658 (1997); *Webster County Abstract Co., Inc. v. Atkison*, 328 S.W.3d 434 (Mo. Ct. App. S.D. 2010); *Fernandez*, 222 P.3d at 1035; *Polymer Fabricating, Inc. v. Employers Workers' Compensation*

Ass'n, 1998 OK 113 (Okla. 1998); *Triffin v. Dillabough*, 552 Pa. 550 (1998); *Holmes v. Williams*, 355 S.W.3d 215 (Tex. App. Houston 1st Dist. 2011)).

Nevada's legislature expressly stated that it was clarifying NRS 116.021 in its 2009 amendment. Senate Bill 261 states:

> Sections 4 and 7 of this bill ***clarify*** the applicability of the Uniform Act by revising the definition of "common-interest community" to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) ***clarify*** that certain agreements to share expenses do not create a common-interest community. (NRS 116.021).

(Exhibit "C" p. 1) [emphasis added].

Furthermore, Senator Schneider, in the legislative history of 2009 amendments to NRS chapter 116, was explicit in stating that the 2009 amendment was meant to clarify and not change the law:

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

(Exhibit "D" p. 33) [emphasis added].

The legislature's 2009 amendment clarified NRS 116.021 to mean that a subdivision is not a common-interest community because it has CC&Rs, or, in other words, CC&Rs are not "real estate."

Despite the clarifying amendment, this Court disregarded the 2009 amendment and ruled in its Summary Judgment Orders that Ruby Lake Estates' recorded CC&Rs are "real estate"; therefore, finding that Ruby Lake Estates is a common-interest community. (Summary Judgment Orders 6:13-22.)

Ruby Lake Estates is not a common-interest community because the 2009 amendment applies retroactively, and Ruby Lake Estate's CC&Rs are not "real estate."

Furthermore, the rules of statutory interpretation require that an ambiguous statute, such as the pre-2009 NRS 116.021, should be interpreted by ascertaining the intent of the legislature. With its 2009 clarifying amendment, the legislature made absolutely clear that its intent is not to define CC&Rs as "real estate." Therefore, the findings in this Court's Summary Judgment Orders were in error.

"Where a statute is capable of being understood in two or more senses by reasonably informed persons, the statute is ambiguous." *McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 649 (1986) (citing *Robert E. v. Justice Court of Reno Twp., Washoe Cnty.*, 99 Nev. 443, 445 (1983)). "The leading rule of statutory construction is to ascertain the intent of the legislature in enacting the statute. This intent will prevail over the literal sense of the words." *McKay v. Bd. of Sup'rs of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986) (citing *City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257, 661 P.2d 879, 880 (1983); *See also Harris Associates v. Clark Cnty. Sch. Dist.*, 119 Nev. 638, 642 (2003); *Harvey v. Dist. Ct.*, 117 Nev. 754, 770, 32 P.3d 1263, 1274 (2001)) [internal citations removed].

The statute was ambiguous because the two–arguably–most important organizations outside of the judiciary that have an influence on Nevada's Courts' findings understood pre-2009 NRS 116.021 in two senses. *McKay*, 102 Nev. at 649. In 2006, a Legislative Counsel Bureau legal opinion (Exhibit "B") came to a divergent conclusion as a later, 2008 unofficial opinion written by a member of the Attorney General's office, which this Court cited and relied upon in its Summary Judgment Orders. Additionally, the Nevada Real Estate Division, adopted the Attorney General's unofficial opinion, but then "agreed to drop its assertions" when the legislature, that disagreed with the Attorney General opinion, clarified the statute. (Exhibit "D" p. 33.)

Given the ambiguity in the pre-2009 statute that is evidenced by the above explained divergent opinions, the legislature specifically expressed its opinion on pre-2009 NRS 116.021 by expressly clarifying the statute and expressing its reasoning in the legislative history. (Exhibit "C" p. 1; Exhibit "D" p. 33.)

Therefore, the Wyatts respectfully request that the Court apply the 2009 amendment to NRS 116.021 and find that Ruby Lake Estates is not a common-interest community even with recorded CC&Rs.

IV. CONCLUSION

Pursuant to the points and authorities stated above, Harold and Mary Wyatt Join in Artemis Exploration Company's Pending Motions, Opposition, and Replies as to the Declaratory Judgment claim and cross-claim, and respectfully request that the Court rule on the pending motions and:

1) Grant Artemis Exploration Company's Motion for Summary Judgment on Defendant's Remaining Counterclaims, and find that Ruby Lake Estates Homeowner's Association ("RLEHOA") is not a valid, mandatary homeowner's association and is not located within a common interest community;

2) Grant Artemis Exploration Company's Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims, and allow leave to supplement the Motion for Summary Judgment on Defendant's Remaining Counterclaims;

3) Grant Artemis Exploration Company's Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment, and allow leave to reconsider the Court's Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment;

4) Deny Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims, and find that RLEHOA is not a valid, mandatary homeowner's association and is not located within a common interest community; and

5) Enter Summary Judgment regarding RLEHOA's cross-claim in accordance with this Court's Summary Judgment ruling on RLEHOA's identical declaratory judgment counter-claim.

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DATED this 17th day of October, 2016.

GERBER LAW OFFICES, LLP

By: _____
TRAVIS W. GERBER, ESQ.
Nevada State Bar No. 8083
ZACHARY A. GERBER, ESQ.
Nevada State Bar No. 13128
491 4th Street
Elko, Nevada 89801
(775) 738-9258
ATTORNEY FOR
DEFENDANT/CROSS-CLAIMANT

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of GERBER LAW OFFICES, LLP, and that on the 17 day of October, 2016, I deposited for mailing, postage prepaid, at Elko, Nevada a true and correct copy of the foregoing *Harold and Mary Wyatt's Joinder in Artemis Exploration Company's: Motion and Reply in Support of Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Leave to File Supplement to Motion for Summary Judgment on Defendant's Remaining Counterclaims; Motion and Reply in Support of Motion for Reconsideration of Order Denying Plaintiff's and Granting Defendant's Motions for Summary Judgment; and Opposition to Ruby Lake Estates Homeowner's Association's Motion for Summary Judgment on Counterclaims* addressed as follows:

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

Madison Wallock
MADISON WALLOCK

EXHIBIT A

EXHIBIT A

477530

Documentary Transfer Tax $ 22.75

☒ Computed on full value of property conveyed

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

Under penalty of perjury

CATTLEMEN'S TITLE GUARANTEE COMPANY

By Kathryn Carnahan

Signature of declarant or agent determining tax-firm name

Account No. 01650010010 (RLE-001)

Joint Tenancy Deed

THIS INDENTURE, made this 12TH DAY OF DECEMBER, ~~A.D.~~ 2001, by and between CATTLEMEN'S TITLE GUARANTEE (as Trustee), a Nevada Corporation, hereinafter referred to as Grantor, and

MARY E. WYATT AND HAROLD L. WYATT, HUSBAND AND WIFE; HERB C. OTT AND EDDIE R. SOLLEE

5965 NO. DAPPLE GRAY RD.
LAS VEGAS, NV 89129

hereinafter referred to as Grantees, whose address is
MAIL TAX BILLS TO: MARY E. & HAROLD L. WYATT, HERB C. OTT AND EDDIE R. SOLLEE, 5965 NO. DAPPLE GRAY RD., LAS VEGAS, NV 89129

WITNESSETH:

For valuable consideration received, Grantor does by these presents grant, bargain and sell unto said Grantees as joint tenants with rights of survivorship and not as tenants in common, and their assigns and the heirs and assigns of the survivor forever, all that certain real property situate in the County of ELKO, State of NEVADA that is described as follows:

APN# 007-03A-036

LOT 5, BLOCK "F", RUBY LAKE ESTATES, UNIT I

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

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

TO HAVE AND TO HOLD said premises together with the appurtenances, unto Grantees as joint tenants with rights of survivorship and not as tenants in common and their assigns and the heirs and assigns of the survivor forever.

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

CATTLEMEN'S TITLE GUARANTEE COMPANY,
as Trustee

BY: Kathryn Carnahan
Kathryn Carnahan
TITLE: Trust Officer

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On December 12, 2001, personally appeared before me, a Notary Public, Kathryn Carnahan who acknowledged that ~~she~~ he executed the above instrument.

Norma J. Ponczak
NOTARY PUBLIC

NORMA J. PONCZAK
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires

FORM JT-L

INDEXED
00 477530
FEE 14 FILE#
REQUEST OF
Cattlemens Title Guarantee
01 DEC 17 PM 1:48
BK 1 PG 43039
JERRY D. REYNOLDS
ELKO CO. RECORDER

EXHIBIT B

EXHIBIT B

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

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LEGISLATIVE COMMISSION (775) 684-6800
BARBARA E. BUCKLEY, Assemblywoman, Chair
Lorne J. Malkiewich, Director, Secretary

INTERIM FINANCE COMMITTEE (775) 684-6821
WILLIAM J. RAGGIO, Senator, Chairman
Gary L. Ghiggeri, Fiscal Analyst
Mark W. Stevens, Fiscal Analyst

PAUL V. TOWNSEND, Legislative Auditor (775) 684-6815
DONALD O. WILLIAMS, Research Director (775) 684-6825
BRENDA J. ERDOES, Legislative Counsel (775) 684-6830

April 27, 2006

Senator Randolph J. Townsend
P.O. Box 20923
Reno, NV 89515-0923

Dear Senator Townsend:

You have asked this office to discuss the criteria to be used in determining whether a real estate development constitutes a "common-interest community" and whether the real estate development must comply with the requirements of the Uniform Common-Interest Ownership Act as set forth in chapter 116 of the Nevada Revised Statutes ("NRS"), including, without limitation, the requirements to register with the Ombudsman for Owners in Common-Interest Communities and to pay fees to the Administrator of the Real Estate Division. You have also specifically inquired about the status of the Hidden Valley Homeowners Association and asked us to determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator.

To answer your questions, we will first discuss the criteria to be used in determining whether a real estate development constitutes a "common-interest community." Next, we will examine the statutory provisions governing the applicability of chapter 116 of NRS to certain types of common-interest communities. Finally, we will address the status of the Hidden Valley Homeowners Association and discuss whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator.

I. Definition of "Common-Interest Community"

As a preliminary matter, in determining whether a real estate development is subject to the provisions of chapter 116 of NRS, we turn first to the statutory definition of "common-interest community" to ascertain whether the real estate development falls within the ambit of the

definition. Pursuant to NRS 116.021, "common-interest community" means "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021 (emphasis added). Thus, if ownership of a unit within a particular real estate development obligates a person to pay for real estate other than the person's specific unit, such as being required to pay assessments for the maintenance of a community pool, a walking trail or another common element, then the real estate development falls within the ambit of the definition of "common-interest community." Conversely, if ownership of a unit within a particular real estate development does not obligate a person to pay for real estate other than the person's specific unit, then the real estate development does not fall within the ambit of the definition of "common-interest community" and is not subject to the provisions of chapter 116 of NRS.

II. Applicability of Chapter 116 of NRS

If a real estate development does fall within the ambit of the definition of "common-interest community," we turn then to the statutory provisions governing the applicability of chapter 116 of NRS to certain types of common-interest communities. Subsection 1 of NRS 116.1201 sets forth the broad general rule that "[e]xcept as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State." Subsection 2 of NRS 116.1201 then sets forth several exceptions to the broad general rule that chapter 116 of NRS applies to all common-interest communities created within this State.

For example, chapter 116 of NRS does not apply to "[a] planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter does apply to that planned community." NRS 116.1201(2)(b). Chapter 116 of NRS also does not apply to "[c]ommon-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101." NRS 116.1201(2)(c). Additionally, chapter 116 of NRS does not apply to "[a] common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing." NRS 116.1201(2)(d). Also, except as otherwise provided in chapter 116 of NRS, the chapter does not apply to time shares governed by the provisions of chapter 119A of NRS. NRS 116.1201(2)(e). Finally, chapter 116 of NRS does not apply to a "limited-purpose association,"[1] except that a limited-

[1] Pursuant to subsection 6 of NRS 116.1201, "limited-purpose association" means an association that:
(a) Is created for the limited purpose of maintaining:
(1) The landscape of the common elements of a common-interest community;
(2) Facilities for flood control; or
(3) A rural agricultural residential common-interest community; and

purpose association is required to register with the Ombudsman, pay fees to the Administrator and comply with certain specific provisions of chapter 116 of NRS, and a limited-purpose association is prohibited from enforcing any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community. NRS 116.1201(2)(a).

Furthermore, NRS 116.1203 contains a limited exception, for certain small planned communities, to the general rule that chapter 116 of NRS applies to all common-interest communities created within this State. Subsection 1 of NRS 116.1203 states that "[e]xcept as otherwise provided in subsection 2, if a planned community contains no more than 12 units and is not subject to any developmental rights, it is subject only to NRS 116.1106 and 116.1107 unless the declaration provides that this entire chapter is applicable.[2] Subsection 2 of NRS 116.1203 provides that planned communities with 6 or more units are still subject to certain provisions in chapter 116 of NRS pertaining to the organization, powers and duties of unit owners' associations and executive boards of such associations.

III. Hidden Valley Homeowners Association

You have also specifically inquired about the status of the Hidden Valley Homeowners Association and asked us to determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, including, without limitation, registering with the Ombudsman and paying fees to the Administrator. Based on the information provided to our office, we understand that the Hidden Valley Homeowners Association is a nonprofit cooperative corporation that does not own or maintain any buildings or common elements. For this reason, homeowners are not obligated to pay any assessments or other fees. Homeowners who are interested in receiving a monthly newsletter or attending various social events organized by the Hidden Valley Homeowners Association pay an annual membership fee of $25, but homeowners who are not interested in such benefits are not required to pay the annual membership fee.

To determine whether the Hidden Valley Homeowners Association is a "common-interest community" that is required to comply with the provisions of chapter 116 of NRS, we turn first to the statutory definition of "common-interest community" and examine the plain language of the statute. *See* Salas v. Allstate Rent-A-Car, Inc., 116 Nev. 1165, 1168 (2000) ("Our objective in construing statutes is to give effect to the legislature's intent. In so doing, we first look to the plain language of the statute.") (citation omitted).

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

[2] NRS 116.1106 pertains to the applicability of local ordinances, regulations and building codes, while NRS 116.1107 pertains to the use of eminent domain.

As stated previously, "common-interest community" is defined as "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." NRS 116.021 (emphasis added). However, as set forth above, the homeowners in Hidden Valley are not obligated to pay, by virtue of their ownership of property, for any real estate other than their own property. Thus, based upon the plain language of NRS 116.021, the Hidden Valley Homeowners Association is not a "common-interest community" as defined by the statute. For this reason, it is the opinion of this office that the Hidden Valley Homeowners Association is not required to comply with the provisions of the Uniform Common-Interest Ownership Act as set forth in chapter 116 of NRS, including, without limitation, registering with the Ombudsman for Owners in Common-Interest Communities and paying fees to the Administrator of the Real Estate Division.

We would note that some of the confusion with respect to this issue has probably arisen solely because the name of the association, "Hidden Valley Homeowners Association," tends to suggest that the Hidden Valley Homeowners Association is operating as a unit-owners' association pursuant to chapter 116 of NRS. In reality, the name is a misnomer, as the Hidden Valley Homeowners Association is actually functioning as something more akin to a neighborhood social club. We would also note that the Legislature has attempted to address the issue of the appropriate naming of unit-owners' associations by providing that a unit-owners' association must "[c]ontain in its name the words 'common-interest community,' 'community association,' 'master association,' 'homeowners' association' or 'unit-owners' association'". NRS 116.3101(3)(c). The Legislature has also enacted for each type of business entity provisions which prohibit the Secretary of State from accepting for filing any documents of organization[3], or any amendment to those documents of organization, if the name of the entity contains the words "common-interest community," "community association," "master association," "unit-owners' association" or "homeowners' association" unless the Administrator certifies that the entity has registered with the Ombudsman and paid the required fees to the Administrator. *See*, NRS 78.045, 81.055, 81.205, 81.445, 82.106, 86.171, 87.540, 88.320 and 88.6065.

Thus, when a new entity that intends to operate as a unit-owners' association is formed, the name of the entity will make it readily apparent that the entity is, indeed, a unit-owners' association. Conversely, when a new entity that will not actually operate as a unit-owners' association attempts to form and selects its name, if that name suggests that the entity will be operating as a unit-owners' association, the entity will not be allowed to file its organizational documents with the Secretary of State unless it first registers with the Ombudsman and pays fees to the Administrator. Consequently, a neighborhood social club which is similar to the Hidden Valley Homeowners Association and which will not operate as a unit-owners' association will never mistakenly include "homeowners' association" in its name or choose another name that tends to suggest that the organization is operating as a unit-owners' association. Therefore, the statutory provisions enacted by the Legislature should assist in avoiding the creation of needless

[3] Documents of organization would include such documents as articles of incorporation, articles of association, articles of organization, certificates of registration, certificates of limited partnership and certificates of trust.

confusion, in the future, about the applicability of chapter 116 of NRS to new entities. However, with respect to the names of entities that were already formed before the enactment of those statutory provisions, such as the Hidden Valley Homeowners Association, those statutory provisions will not have any effect as to those preexisting entities unless the entities seek to amend their documents of organization, in which case the Secretary of State will prevent them from doing so.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel
By _____
Kelly E. Lee
Principal Deputy Legislative Counsel

By _____
Bradley A. Wilkinson
Chief Deputy Legislative Counsel

cc: Scott Young
KEL:dtm
Ref No. 0603021208
File No. OP_Townsend06032185445

EXHIBIT C

EXHIBIT C

Senate Bill No. 261–Senator Care

CHAPTER.....

AN ACT relating to common-interest ownership; revising the provisions governing the applicability of the Uniform Common-Interest Ownership Act; making various other changes relating to common-interest ownership; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill makes various changes relating to common-interest ownership to: (1) incorporate certain revisions to the Uniform Common-Interest Ownership Act promulgated by the Uniform Law Commission; and (2) eliminate references to the preparation of certain plans regarding certain common-interest communities and condominium hotels.

Sections 2, 3, 6 and 9 of this bill provide that the provisions of the Uniform Act only apply to a nonresidential condominium if the declaration so provides.

Sections 4 and 7 of this bill clarify the applicability of the Uniform Act by revising the definition of "common-interest community" to: (1) reflect the revisions promulgated by the Uniform Law Commission; and (2) clarify that certain agreements to share expenses do not create a common-interest community. (NRS 116.021)

Sections 8 and 10-26 of this bill eliminate references to the preparation of certain plans for certain common-interest communities and condominium hotels. (NRS 116.089, 116.1206, 116.2105, 116.2109, 116.211, 116.2112, 116.2113, 116.2114, 116.2117, 116.345, 116.4103, 116.4109, 116B.225, 116B.295, 116B.350, 116B.365, 116B.760)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. ***"Nonresidential condominium" means a condominium in which all units are restricted exclusively to nonresidential use.***

Sec. 3. ***1. The provisions of this chapter do not apply to a nonresidential condominium except to the extent that the declaration for the nonresidential condominium provides that:***

(a) This entire chapter applies to the condominium;

(b) Only the provisions of NRS 116.001 to 116.2122, inclusive, and NRS 116.3116 to 116.31168, inclusive, apply to the condominium; or

(c) Only the provisions of NRS 116.3116 to 116.31168, inclusive, apply to the condominium.

2. If this entire chapter applies to a nonresidential condominium, the declaration may also require, subject to NRS 116.1112, that:

(a) Notwithstanding NRS 116.3105, any management, maintenance operations or employment contract, lease of recreational or parking areas or facilities and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(b) Notwithstanding NRS 116.1104 and subsection 2 of NRS 116.311, purchasers of units must execute proxies, powers of attorney or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

Sec. 4. *1. An agreement between the associations for two or more common-interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in the agreement or declarations does not create a separate common-interest community. If the declarants of the common-interest communities are affiliates, the agreement may not unreasonably allocate the costs among those common-interest communities.*

2. An agreement between an association and the owner of real estate that is not part of a common-interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in the agreement, does not create a separate common-interest community. However, the assessments against the units in the common-interest community required by the agreement must be included in the periodic budget for the common-interest community, and the agreement must be disclosed in all public offering statements and resale certificates required by this chapter.

3. An agreement between the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, road, driveway or well or other similar use does not create a common-interest community unless the owners otherwise agree.

4. As used in this section, "party wall" means any wall or fence constructed along the common boundary line between parcels. The term does not include any shared building structure systems, including, without limitation, foundations, walls and roof structures.

Sec. 5. (Deleted by amendment.)

Sec. 6. NRS 116.003 is hereby amended to read as follows:

116.003 As used in this chapter and in the declaration and bylaws of an association, unless the context otherwise requires, the words and terms defined in NRS 116.005 to 116.095, inclusive, ***and section 2 of this act*** have the meanings ascribed to them in those sections.

Sec. 7. NRS 116.021 is hereby amended to read as follows:

116.021 ***1.*** "Common-interest community" means real estate ***described in a declaration*** with respect to which a person, by virtue of ~~[this]~~ ***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 ~~[than that unit. "Ownership]~~ ***real estate described in that declaration.***

2. The term does not include an agreement described in section 4 of this act.

3. For purposes of this section, "ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including options to renew.

Sec. 8. NRS 116.089 is hereby amended to read as follows:

116.089 "Special declarant's rights" means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats ~~[and plans]~~ or in the declaration (NRS 116.2109) or, in a cooperative, to complete improvements described in the public offering statement pursuant to subsection 2 of NRS 116.4103;
2. Exercise any developmental right (NRS 116.211);
3. Maintain sales offices, management offices, signs advertising the common-interest community and models (NRS 116.2115);
4. Use easements through the common elements for the purpose of making improvements within the common-interest community or within real estate which may be added to the common-interest community (NRS 116.2116);
5. Make the common-interest community subject to a master association (NRS 116.212);
6. Merge or consolidate a common-interest community with another common-interest community of the same form of ownership (NRS 116.2121); or
7. Appoint or remove any officer of the association or any master association or any member of an executive board during any period of declarant's control (NRS 116.31032).

Sec. 9. NRS 116.1201 is hereby amended to read as follows:

116.1201 1. Except as otherwise provided in this section and NRS 116.1203, this chapter applies to all common-interest communities created within this State.

2. This chapter does not apply to:

(a) A limited-purpose association, except that a limited-purpose association:

(1) Shall pay the fees required pursuant to NRS 116.31155;

(2) Shall register with the Ombudsman pursuant to NRS 116.31158;

(3) Shall comply with the provisions of:

(I) NRS 116.31038, 116.31083 and 116.31152; and

(II) NRS 116.31075, if the limited-purpose association is created for a rural agricultural residential common-interest community;

(4) Shall comply with the provisions of NRS 116.4101 to 116.412, inclusive, as required by the regulations adopted by the Commission pursuant to paragraph (b) of subsection 5; and

(5) Shall not enforce any restrictions concerning the use of units by the units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

(b) A planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that this chapter ***or a part of this chapter*** does apply to that planned community ~~[.]~~ ***pursuant to section 3 of this act.*** This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted only if the declaration so provides or if the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

(c) Common-interest communities or units located outside of this State, but the provisions of NRS 116.4102 to 116.4108, inclusive, apply to all contracts for the disposition thereof signed in this State by any party unless exempt under subsection 2 of NRS 116.4101.

(d) A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 50,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units' owners otherwise elect in writing.

(e) Except as otherwise provided in this chapter, time shares governed by the provisions of chapter 119A of NRS.

3. The provisions of this chapter do not:

(a) Prohibit a common-interest community created before January 1, 1992, from providing for separate classes of voting for the units' owners;

(b) Require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122, inclusive;

(c) Invalidate any assessments that were imposed on or before October 1, 1999, by a common-interest community created before January 1, 1992; or

(d) Prohibit a common-interest community created before January 1, 1992, or a common-interest community described in NRS 116.31105 from providing for a representative form of government.

4. The provisions of chapters 117 and 278A of NRS do not apply to common-interest communities.

5. The Commission shall establish, by regulation:

(a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter; and

(b) The extent to which a limited-purpose association must comply with the provisions of NRS 116.4101 to 116.412, inclusive.

6. As used in this section, "limited-purpose association" means an association that:

(a) Is created for the limited purpose of maintaining:

(1) The landscape of the common elements of a common-interest community;

(2) Facilities for flood control; or

(3) A rural agricultural residential common-interest community; and

(b) Is not authorized by its governing documents to enforce any restrictions concerning the use of units by units' owners, unless the limited-purpose association is created for a rural agricultural residential common-interest community.

Sec. 10. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

2. In the case of amendments to the declaration, bylaws or plats ~~[and plans]~~ of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats ~~[and plans]~~ authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 11. NRS 116.2105 is hereby amended to read as follows:

116.2105 1. The declaration must contain:

(a) The names of the common-interest community and the association and a statement that the common-interest community is either a condominium, cooperative or planned community;

(b) The name of every county in which any part of the common-interest community is situated;

(c) A sufficient description of the real estate included in the common-interest community;

(d) A statement of the maximum number of units that the declarant reserves the right to create;

(e) In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats , ~~[or plans,]~~ of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(f) A description of any limited common elements, other than those specified in subsections 2 and 4 of NRS 116.2102, as provided in paragraph (g) of subsection 2 of NRS 116.2109 and, in a planned community, any real estate that is or must become common elements;

(g) A description of any real estate, except real estate subject to developmental rights, that may be allocated subsequently as limited

common elements, other than limited common elements specified in subsections 2 and 4 of NRS 116.2102, together with a statement that they may be so allocated;

(h) A description of any developmental rights and other special declarant's rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time within which each of those rights must be exercised;

(i) If any developmental right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:

(1) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each developmental right or a statement that no assurances are made in those regards; and

(2) A statement whether, if any developmental right is exercised in any portion of the real estate subject to that developmental right, that developmental right must be exercised in all or in any other portion of the remainder of that real estate;

(j) Any other conditions or limitations under which the rights described in paragraph (h) may be exercised or will lapse;

(k) An allocation to each unit of the allocated interests in the manner described in NRS 116.2107;

(l) Any restrictions:

(1) On use, occupancy and alienation of the units; and

(2) On the amount for which a unit may be sold or on the amount that may be received by a unit's owner on sale, condemnation or casualty to the unit or to the common-interest community, or on termination of the common-interest community;

(m) The file number and book or other information to show where easements and licenses are recorded appurtenant to or included in the common-interest community or to which any portion of the common-interest community is or may become subject by virtue of a reservation in the declaration; and

(n) All matters required by NRS 116.2106 to 116.2109, inclusive, 116.2115 and 116.2116 and 116.31032.

2. The declaration may contain any other matters the declarant considers appropriate.

Sec. 12. NRS 116.2109 is hereby amended to read as follows:

116.2109 1. Plats ~~[and plans]~~ are a part of the declaration, and are required for all common-interest communities except cooperatives. Each plat ~~[and plan]~~ must be clear and legible and

contain a certification that the plat ~~[or plan]~~ contains all information required by this section.

2. Each plat must comply with the provisions of chapter 278 of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;

(b) A sufficient description of the real estate;

(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the common-interest community;

(e) The location and dimensions , ***with reference to an established datum,*** of any vertical unit boundaries and that unit's identifying number;

(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on ~~[plans]~~ ***plats*** recorded pursuant to subsection ~~[4]~~ *3* and that unit's identifying number; and

(g) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in subsections 2 and 4 of NRS 116.2102.

3. ~~[To the extent not shown or projected on the]~~ ***The*** plats ~~[, plans of the units]~~ must show or project any units in which the declarant has reserved the right to create additional units or common elements (paragraph (h) of subsection 1 of NRS 116.2105), identified appropriately.

4. Unless the declaration provides otherwise, ***when*** the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part ~~[and]~~ , ***the elevations*** need not be depicted on the plats . ~~[and plans of the units.]~~

5. ~~[A declarant shall also provide a plan of development for the common-interest community with its initial phase of development. The declarant shall revise the plan of development with each subsequent phase. The plan of development may show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common-interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT." The plan of development must also show or project:~~

~~(a) The location and dimensions of all real estate not subject to developmental rights, or subject only to the developmental right to withdraw, and the location and dimensions of all existing improvements within that real estate;~~

~~(b) A sufficient description of any real estate subject to developmental rights, labeled to identify the rights applicable to each parcel; and~~

~~(c) A sufficient description of any real estate in which the units' owners will own only an estate for years, labeled as "leasehold real estate."~~

~~6.~~] Upon exercising any developmental right, the declarant shall record new or amended plats necessary to conform to the requirements of subsection 2 . ~~[and provide new or amended plans of the units and a new or amended plan of development or new certifications of those plans if the plans otherwise conform to the requirements of subsections 3 and 5.~~

~~7.~~] *6.* Each plat must be certified by ~~[an independent]~~ *a* professional land surveyor. ~~[The plans of the units must be certified by an independent professional engineer or architect. If the plan of development is not certified by an independent professional land surveyor or an independent professional engineer or architect, it must be acknowledged by the declarant.]~~

Sec. 13. NRS 116.211 is hereby amended to read as follows:

116.211 1. To exercise any developmental right reserved under paragraph (h) of subsection 1 of NRS 116.2105, the declarant shall prepare, execute and record an amendment to the declaration (NRS 116.2117) and in a condominium or planned community comply with NRS 116.2109. The declarant is the owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection 2, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by NRS 116.2108.

2. Developmental rights may be reserved within any real estate added to the common-interest community if the amendment adding that real estate includes all matters required by NRS 116.2105 or 116.2106, as the case may be, and, in a condominium or planned community, the plats ~~[and plans]~~ include all matters required by NRS 116.2109. This provision does not extend the time limit on the

exercise of developmental rights imposed by the declaration pursuant to paragraph (h) of subsection 1 of NRS 116.2105.

3. Whenever a declarant exercises a developmental right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must convey it to the association or reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain (NRS 116.1107); and

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

4. If the declaration provides, pursuant to paragraph (h) of subsection 1 of NRS 116.2105, that all or a portion of the real estate is subject to a right of withdrawal:

(a) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(b) If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

Sec. 14. NRS 116.2112 is hereby amended to read as follows:

116.2112 1. Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those units' owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

2. The association:

(a) In a condominium or planned community shall prepare and record plats ~~[or plans]~~ necessary to show the altered boundaries

between adjoining units, and their dimensions and identifying numbers; and

(b) In a cooperative shall prepare and record amendments to the declaration ~~[, including any plans,]~~ necessary to show or describe the altered boundaries between adjoining units, and their dimensions and identifying numbers.

Sec. 15. NRS 116.2113 is hereby amended to read as follows:

116.2113 1. If the declaration expressly so permits, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration and other provisions of law, upon application of the unit's owner to subdivide a unit, the association shall prepare, execute and record an amendment to the declaration, including in a condominium or planned community the plats , ~~[and plans,]~~ subdividing that unit.

2. The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

Sec. 16. NRS 116.2114 is hereby amended to read as follows:

116.2114 The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit's owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats ~~[and plans]~~ or, in a cooperative, to any representation in the public offering statement.

Sec. 17. NRS 116.2117 is hereby amended to read as follows:

116.2117 1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection ~~[6]~~ ***5*** of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, subsection 4 of NRS 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsection 4, the declaration, including any plats , ~~[and plans,]~~ may be amended only

by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

3. Every amendment to the declaration must be recorded in every county in which any portion of the common-interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to NRS 116.2112, must be indexed in the grantee's index in the name of the common-interest community and the association and in the grantor's index in the name of the parties executing the amendment.

4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, the allocated interests of a unit or the uses to which any unit is restricted, in the absence of unanimous consent of the units' owners affected and the consent of a majority of the owners of the remaining units.

5. Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 18. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat ~~[or plan]~~ of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 19. NRS 116.4103 is hereby amended to read as follows:

116.4103 1. Except as otherwise provided in NRS 116.41035, a public offering statement must set forth or fully and accurately disclose each of the following:

(a) The name and principal address of the declarant and of the common-interest community, and a statement that the common-interest community is either a condominium, cooperative or planned community.

(b) A general description of the common-interest community, including to the extent possible, the types, number and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates including in the common-interest community.

(c) The estimated number of units in the common-interest community.

(d) Copies of the declaration, bylaws, and any rules or regulations of the association, but a plat ~~[or plan]~~ is not required.

(e) A current year-to-date financial statement, including the most recent audited or reviewed financial statement, and the projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association. The budget must include, without limitation:

(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to NRS 116.3115; and

(2) The projected monthly assessment for common expenses for each type of unit, including the amount established as reserves pursuant to NRS 116.3115.

(f) A description of any services or subsidies being provided by the declarant or an affiliate of the declarant, not reflected in the budget.

(g) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(h) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages.

(i) A statement that unless the purchaser or his agent has personally inspected the unit, the purchaser may cancel, by written notice, his contract for purchase until midnight of the fifth calendar day following the date of execution of the contract, and the contract must contain a provision to that effect.

(j) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common-interest community of which a declarant has actual knowledge.

(k) Any current or expected fees or charges to be paid by units' owners for the use of the common elements and other facilities related to the common-interest community.

(l) The information statement set forth in NRS 116.41095.

2. A declarant is not required to revise a public offering statement more than once each calendar quarter, if the following warning is given prominence in the statement: "THIS PUBLIC OFFERING STATEMENT IS CURRENT AS OF (insert a specified date). RECENT DEVELOPMENTS REGARDING (here refer to particular provisions of NRS 116.4103 and 116.4105) MAY NOT BE REFLECTED IN THIS STATEMENT."

Sec. 20. NRS 116.4109 is hereby amended to read as follows:

116.4109 1. Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under subsection 2 of NRS 116.4101, a unit's owner or his authorized agent shall furnish to a purchaser a resale package containing all of the following:

(a) A copy of the declaration, other than any plats , ~~[and plans,]~~ the bylaws, the rules or regulations of the association and the information statement required by NRS 116.41095;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by NRS 116.31152 and which must include, without limitation, a summary of the information described in paragraphs (a) to (e), inclusive, of subsection 3 of NRS 116.31152; and

(d) A statement of any unsatisfied judgments or pending legal actions against the association and the status of any pending legal actions relating to the common-interest community of which the unit's owner has actual knowledge.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the unit's owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the unit's owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the unit's owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a unit's owner or his authorized agent, the association shall furnish all of the following to the unit's owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the unit's owner to comply with paragraphs (b) and (d) of subsection 1.

4. If the association furnishes the documents and certificate pursuant to subsection 3:

(a) The unit's owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the unit's owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the association and included in the documents and certificate.

(b) The association may charge the unit's owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for preparing the certificate.

(c) The association may charge the unit's owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the association may not charge the unit's owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the association. If the association fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a unit's owner or his authorized agent, or upon the request of a purchaser to whom the unit's owner has provided a resale package pursuant to this section or his authorized agent, the association shall make the entire study of the reserves of the association which is required by NRS 116.31152 reasonably available for the unit's owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties.

Sec. 21. (Deleted by amendment.)

Sec. 22. NRS 116B.225 is hereby amended to read as follows:

116B.225 "Special declarant's rights" means rights reserved for the benefit of a declarant to:

1. Complete improvements indicated on plats [~~and plans~~] or in the declaration;

2. Exercise any developmental right;

3. Maintain sales offices, management offices and signs advertising the condominium hotel and models, provided, however, that the declarant is not required to reserve the right to maintain such offices or signs within the hotel unit or shared components or within any unit owned by the declarant;

4. Use easements through the common elements, shared components or hotel unit for the purpose of making improvements within the condominium hotel;

5. Merge or consolidate a condominium hotel with another condominium hotel; or

6. Appoint or remove any officer of the association or any member of an executive board during any period of declarant's control.

Sec. 23. NRS 116B.295 is hereby amended to read as follows:

116B.295 1. Any provision contained in a declaration, bylaw or other governing document of a condominium hotel that violates the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

2. In the case of amendments to a declaration, bylaws or plats [~~and plans~~] of any condominium hotel created before January 1, 2008:

(a) If the result accomplished by the amendment was permitted before January 1, 2008, the amendment may be made in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter and was not permitted by law before January 1, 2008, the amendment may be made under this chapter.

Sec. 24. NRS 116B.350 is hereby amended to read as follows:

116B.350 1. Plats [~~and plans~~] are a part of the declaration and are required for all condominium hotels. Each plat [~~and plan~~] must be clear and legible and contain a certification that the plat [~~or plan~~] contains all information required by this section.

2. Each plat must comply with the provisions of chapter 278 of NRS and show:

(a) The name and a survey of the area which is the subject of the plat;

(b) A sufficient description of the real estate;

(c) The extent of any encroachments by or upon any portion of the property which is the subject of the plat;

(d) The location and dimensions of all easements having a specific location and dimension which serve or burden any portion of the condominium hotel;

(e) The location and dimensions with reference to an established datum of any vertical residential unit boundaries and that unit's identifying number;

(f) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on ~~[plans]~~ ***plats*** recorded pursuant to subsection 4 and that unit's identifying number;

(g) The location and dimensions of the units, shared components and common elements; and

(h) The location and dimensions of limited common elements, if any, including porches, balconies and patios.

3. Each plat must be certified by ~~[an independent]~~ ***a*** professional land surveyor. ~~[The plans of the units must be certified by an independent professional engineer or architect.~~

~~4. Plats and plans need not show the location and dimensions of the units' boundaries and their limited common elements if:~~

~~(a) The plat shows the location and dimensions of all buildings containing or comprising the units; and~~

~~(b) The declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements, if any, allocated to those units.~~

~~5. To the extent not shown or projected on the]~~

4. ***The*** plats ~~[, plans of the units]~~ must show or project any units in which the declarant has reserved the right to create additional units or common elements, or portions of the shared components or hotel unit, identified appropriately.

~~[6.]~~ ***5.*** Unless the declaration provides otherwise, ***when*** the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part ~~[and]~~ ***, the elevations*** need not be depicted on the plats . ~~[and plans of the units.]~~

~~[7.]~~ ***6.*** Upon exercising any developmental right, the declarant shall prepare, execute and record new or amended plats necessary to conform to the requirements of this section.

Sec. 25. NRS 116B.365 is hereby amended to read as follows:

116B.365 The existing physical boundaries of a residential unit or a hotel unit are its legal boundaries, rather than the boundaries

derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit's owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats. ~~[and plans.]~~

Sec. 26. NRS 116B.760 is hereby amended to read as follows:

116B.760 1. Except in the case of a sale in which delivery of a public offering statement is required, a unit's owner or his authorized agent shall furnish to a purchaser a resale package containing all of the following:

(a) A copy of this chapter, the declaration, other than any plats , ~~[and plans,]~~ the bylaws, the rules or regulations of the association and the hotel unit owner and the information statement required by NRS 116B.765;

(b) A statement setting forth the amount of the monthly assessment for common expenses and any unpaid assessment of any kind currently due from the selling unit's owner;

(c) A copy of the current operating budget of the association and current year-to-date financial statement for the association, which must include a summary of the reserves of the association required by this chapter;

(d) A current year-to-date statement of the shared expenses charged to the units and the projected budget for the shared expenses, either within or as an exhibit to the public offering statement. The budget must include, without limitation:

(1) A statement of the amount included in the budget as reserves for repairs, replacement and restoration pursuant to this chapter;

(2) The projected monthly shared expenses for each type of unit, including the amount established as reserves pursuant to this chapter;

(e) A description of any other payments, fees and charges that may be charged by the hotel unit owner, including those that may be charged in order to offset the increased burden placed on the shared components as a result of use of residential units as transient rentals; and

(f) A statement of any unsatisfied judgments or pending legal actions against the association or the hotel unit owner which affect the shared components and the status of any pending legal actions relating to the condominium hotel of which the unit's owner has actual knowledge.

2. The purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package described in subsection 1, and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to this subsection, he must hand deliver the notice of cancellation to the residential unit owner or his authorized agent or mail the notice of cancellation by prepaid United States mail to the residential unit owner or his authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the residential unit, the purchaser is not entitled to:

(a) Cancel the contract pursuant to this subsection; or

(b) Damages, rescission or other relief based solely on the ground that the residential unit owner or his authorized agent failed to furnish the resale package, or any portion thereof, as required by this section.

3. Within 10 days after receipt of a written request by a residential unit owner or his authorized agent, the hotel unit owner shall furnish all of the following to the residential unit owner or his authorized agent for inclusion in the resale package:

(a) Copies of the documents required pursuant to paragraphs (a) and (c) of subsection 1; and

(b) A certificate containing the information necessary to enable the residential unit owner to comply with paragraphs (b) and (d) of subsection 1.

4. If the hotel unit owner furnishes the documents and certificate pursuant to subsection 3:

(a) The residential unit owner or his authorized agent shall include the documents and certificate in the resale package provided to the purchaser, and neither the residential unit owner nor his authorized agent is liable to the purchaser for any erroneous information provided by the hotel unit owner and included in the documents and certificate.

(b) The hotel unit owner may charge the residential unit owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to subsection 3. Such a fee must be based on the actual cost the association incurs to fulfill the requirements of this section in preparing the certificate. The Commission shall adopt regulations establishing the maximum amount of the fee that the hotel unit owner may charge for preparing the certificate.

(c) The hotel unit owner may charge the residential unit owner a reasonable fee, not to exceed 25 cents per page, to cover the cost of copying the other documents furnished pursuant to subsection 3.

(d) Except for the fees allowed pursuant to paragraphs (b) and (c), the hotel unit owner may not charge the residential unit owner any other fees for preparing or furnishing the documents and certificate pursuant to subsection 3.

5. Neither a purchaser nor the purchaser's interest in a residential unit is liable for any unpaid assessment or fee greater than the amount set forth in the documents and certificate prepared by the hotel unit owner. If the hotel unit owner fails to furnish the documents and certificate within the 10 days allowed by this section, the seller is not liable for the delinquent assessment.

6. Upon the request of a residential unit owner or his authorized agent, or upon the request of a purchaser to whom the hotel unit owner has provided a resale package pursuant to this section or his authorized agent, the hotel unit owner shall make the entire study of the reserves of the association or the shared components reasonably available for the residential unit owner, purchaser or authorized agent to inspect, examine, photocopy and audit. The study must be made available at the business office of the association or the hotel unit owner or some other suitable location within the county where the condominium hotel is situated or, if it is situated in more than one county, within one of those counties.

EXHIBIT D

EXHIBIT D

NV S. Jour., 75th Sess. No. 120

Nevada Senate Journal, Seventy-Fifth Session, One Hundred and Twentieth Legislative Day

Monday, June 1, 2009
Nevada Senate
Seventy-Fifth Session, 2009

Senate called to order at 12:39 p.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Dear Lord, every day since February we have carved out a few moments to invite You to be part of the process or government. It was You who elected these women and men to serve. It was You who gave them the talents to do their jobs. Thank You for the wisdom for the tasks given to them. They have left family, friends and businesses to do the work that needs to be done to bring prosperity to the districts they represent.

Today we also give thanks to our Secretary of the Senate and all her faithful staff. Without their help the time these Senators have taken in committees would not be recorded or made available.

We have now come to the close of this Seventy-Fifth Session. As we go back to our homes, much work has been done. Some times there have been differences of opinions on bills proposed. Bring healing to things said or done that have hurt others. Help them to walk the way of surrender to Your will, guided by Your wisdom. Show them the spiritual foundations of our heritage that they may conserve and protect them. Draw them close to You and to one another in humility and service. To You who is the real leader of government we give thanks.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 31, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day failed to sustain the Governor's veto of Senate Bills Nos. 195, 319, 363, 394 of the 75th Session.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 942 to Assembly Bill No. 482; Senate Amendment No. 639 to Assembly Bill No. 503; Senate Amendments Nos. 970, 971 to Assembly Bill No. 521.

Also, I have the honor to inform your honorable body that the Assembly on this day concurred in the Senate Amendment No. 995 to Assembly Concurrent Resolution No. 30.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Kirkpatrick, Anderson and Settelmeyer as a Conference Committee concerning Senate Bill No. 242, Assembly Amendment No. 978.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Smith, Kirkpatrick and Hardy as a Conference Committee concerning Assembly Bill No. 223.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Horne, McClain and Carpenter as a Conference Committee concerning Assembly Bill No. 385.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Senate Bill No. 55; Senate Bill No. 68; Senate Bill No. 119; Senate Bill No. 332; Senate Bill No. 411; Assembly Bill No. 84; Assembly Bill No. 320.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly
ASSEMBLY CHAMBER, Carson City, June 1, 2009

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Senate Concurrent Resolutions Nos. 19, 26.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the report of the Conference Committee concerning Assembly Bill No. 140.

DIANE M. KEETCH
Assistant Chief Clerk of the Assembly

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Mr. President:

The Conference Committee concerning Senate Bill No. 182, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that Amendment No. 947 of the Assembly be concurred in. It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 25, which is attached to and hereby made a part of this report.

Conference Amendment.

"SUMMARY--Makes various changes relating to common-interest communities. (BDR 10-795)"

"AN ACT relating to common-interest communities; clarifying various provisions of existing law relating to certain provisions of governing documents that violate statutory provisions, elections and the authority of an association to levy certain assessments under certain circumstances; revising certain provisions governing the authority of an association to impose fines under certain circumstances; making various other changes to the provisions governing common-interest communities; providing penalties; and providing other matters properly relating thereto."

Legislative Counsel's Digest:

Section 3 of this bill provides that a person who knowingly, willfully and with the intent to fraudulently alter the outcome of

the election of a member to the executive board of an association or other votes of the units' owners engages in certain acts pertaining to the ballot or the casting of votes in such election is guilty of a category D felony. (NRS 116.31034) Existing law prohibits a community manager, an officer or a member of the executive board from accepting or soliciting compensation that would influence him or appear to be a conflict of interest. (NRS 116.31185) Section 4 of this bill provides that a community manager or member of the executive board who asks for or receives compensation to influence his vote, opinion or action upon any official matter is guilty of a category D felony. Section 4 also provides that a person who offers or gives any gratuity, compensation or reward, or makes a promise thereof, to a community manager or member of the executive board in exchange for a vote, opinion or action on any official matter is guilty of a category D felony.

Existing law requires each agency to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency, and the Department of Business and Industry, which includes the Real Estate Division, has accordingly adopted regulations for such petitions. (NRS 233B.120; NAC 232.020) However, the Real Estate Division has not adopted any regulations pertaining to such petitions. Section 5 of this bill enacts a specific statutory provision requiring the Real Estate Division to adopt regulations pertaining to such petitions.

Existing law contains provisions concerning units or common elements of an association that are acquired by eminent domain. (NRS 116.1107) Section 7 of this bill clarifies that existing law does not authorize an association to exercise the power of eminent domain. Section 8 of this bill clarifies that any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of chapter 116 of NRS is superseded by the provisions of chapter 116 of NRS, regardless of whether the provision became effective before the enactment of the statutory provision being violated. (NRS 116.1206)

Section 8.5 of this bill provides that an association may not charge a fee for entry into the common-interest community against a person providing services to a unit, a unit's owner or a tenant of a unit's owner or against a visitor, guest or invitee of a unit's owner or a tenant of a unit's owner. (NRS 116.2111)

Section 9 of this bill revises existing law to limit an association's power to include certain provisions in certain contracts involving the association. (NRS 116.3102)

Existing law authorizes an executive board to impose fines under certain circumstances. (NRS 116.31031) Section 12 of this bill limits the imposition of fines against a unit's owner for violations of the governing documents by a tenant or an invitee of the unit's owner or the tenant.

Sections 13, 14 and 16 of this bill revise provisions relating to certain elections and meetings of an association by: (1) requiring members of the executive board to be units' owners; (2) providing that officers of an association are not required to be units' owners, unless the governing documents provide otherwise; (3) providing certain rights for candidates for election to an executive board; (4) reducing the votes necessary for removal of a member of an executive board; (5) prohibiting an association from interfering with the collection of signatures for a special meeting or removal election; and (6) providing immunity from criminal or civil liability for an association, its officers, employees and agents for the disclosure or publication of certain information pursuant to certain duties required of the association or its officers, employees and agents. *Section 14 also provides that punitive damages may not be recovered against the members of the executive board or the officers of an association for acts or omissions that occur in their capacity as members or officers.* (NRS 116.31034, 116.31036, 116.3108)

Section 15 of this bill clarifies existing law concerning the respective duties of an association and the units' owners regarding the maintenance, repair and replacement of the common elements and the units. (NRS 116.3107)

Sections 17-19 of this bill revise provisions relating to board meetings and hearings by: (1) requiring that meetings of the executive board be audio recorded and available in a certain manner; (2) requiring that certain written complaints be placed on the agenda; and (3) providing due process protections to units' owners at certain hearings. (NRS 116.31083, 116.31085, 116.31087) Section 17 also revises existing law to allow public comments to be made at both the beginning and the end of a meeting. (NRS 116.31083)

Existing law provides that an association has the statutory obligation to: (1) fund adequately its reserves; (2) include in its annual budget a statement concerning its reserves and whether it will be necessary to impose any special assessments; and (3) review its study of the reserves on an annual basis and make any appropriate adjustments necessary to ensure that the reserves are always funded adequately. (NRS 116.3115, 116.31151, 116.31152) Section 21 of this bill clarifies existing law by explicitly stating that notwithstanding any provision of the governing documents to the contrary, the executive board may, without seeking or obtaining the approval of units' owners, impose any necessary and reasonable assessments to establish adequate reserves. This section also provides that any such assessments imposed must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.

Section 22 of this bill authorizes the filing of a civil action to recover certain fees, administrative penalties and interest that were imposed erroneously. (NRS 116.31155)

Existing law provides that an executive board of an association must, upon written request of a unit's owner, make available certain records and papers of the association, except for certain personnel records, records of other units' owners or contracts between the association and an attorney. (NRS 116.31175) Section 23.5 of this bill removes from the exemptions for the production of records those records which pertain to a contract between the association and an attorney.

Sections 24, 26 and 28 of this bill provide certain additional rights to units' owners by: (1) increasing the scope and definition of prohibited retaliatory action; (2) authorizing the exhibition of certain political signs in certain areas; and (3) mandating notice before interruption of utility service to a unit's owner. (NRS 116.31183, 116.325, 116.345)

Section 25 of this bill expands the prohibition against certain contracts between an association and a member of the executive board or officer to include contracts involving financing. (NRS 116.31187) Section 27 of this bill: (1) provides that existing law concerning drought tolerant landscaping must be construed broadly; and (2) clarifies the definition of "drought tolerant landscaping." (NRS 116.330) Section 29 of this bill provides that if a community manager fails or refuses to comply with the governing documents of the association or the provisions of chapter 116 of NRS, any person or class of persons may bring a civil action for damages or other relief. (NRS 116.4117)

Section 30 of this bill increases the membership of the Commission by adding two members who are units' owners but who are not required to have served as members of an executive board. (NRS 116.600) Section 31 of this bill revises provisions relating to the Commission's duties by providing for the use of training officers to perform certain duties. (NRS 116.605)

Section 36 of this bill clarifies that if the Commission or hearing officer orders an audit of an association, the audit is conducted at the expense of the association. (NRS 116.790)

Existing law provides that a written affidavit, supporting documentation and information compiled as the result of an investigation of an alleged violation are confidential unless and until a formal complaint is filed. (NRS 116.757, 116A.270) Sections 33 and 37 of this bill clarify existing law to provide that such confidential information must not be disclosed to any person, including a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed.

Section 39 of this bill provides that the Commission must adopt regulations requiring an applicant for a certificate as a community manager or the applicant's employer to post a bond. *Section 39 also provides for the issuance of temporary certificates for community managers for a period of 1 year under certain circumstances.* (NRS 116A.410)

Section 40 of this bill revises existing law to provide that upon selection or appointment of an arbitrator, the arbitrator must provide certain information concerning the procedures of the arbitration and applicable law to each party to the arbitration, and each party must return to the arbitrator an acknowledgment of the information provided by the arbitrator. (NRS 38.330)

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 116 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *1. A person shall not knowingly, willfully and with the intent to fraudulently alter the true outcome of an election of a member of the executive board or any other vote of the units' owners engage in, attempt to engage in, or conspire with another person to engage in, any of the following acts:*

(a) Changing or falsifying a voter's ballot so that the ballot does not reflect the voter's true ballot.

(b) Forging or falsely signing a voter's ballot.

(c) Fraudulently casting a vote for himself or for another person that the person is not authorized to cast.

(d) Rejecting, failing to count, destroying, defacing or otherwise invalidating the valid ballot of another voter.

(e) Submitting a counterfeit ballot.

2. A person who violates this section is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 4. *1. Except as otherwise provided in subsection 3, a community manager or member of the executive board who asks for or receives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that his vote, opinion or action upon any matter then pending or which may be brought before him in his capacity as a community manager or member of the executive board, will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

2. Except as otherwise provided in subsection 3, a person who offers or gives, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, upon an agreement or understanding that the vote, opinion or action of a community manager or member of the executive board upon any matter then pending or which may be brought before the community manager or member of the executive board in his capacity as a community manager or member of the executive board will be influenced thereby, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. The provisions of this section do not prohibit:

(a) An employee of a declarant or an affiliate of a declarant who is a member of an executive board from asking for or receiving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, from the declarant or affiliate.

(b) A declarant or an affiliate of a declarant whose employee is a member of an executive board from offering or giving, directly or indirectly, any compensation, gratuity or reward, or any promise thereof, to the employee who is a member of the executive board.

(c) A community manager from asking for or receiving, directly or indirectly, or an employer of a community manager from offering or giving, directly or indirectly, any compensation for work performed by the community manager pursuant to the laws of this State.

Sec. 5. *1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:*

(a) Any provision of this chapter or chapter 116A or 116B of NRS;

(b) Any regulation adopted by the Commission, the Administrator or the Division; or

(c) Any decision of the Commission, the Administrator or the Division or any of its sections.

2. Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.

3. A petition filed pursuant to this section must:

(a) Set forth the name and address of the petitioner; and

(b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.

4. A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.

5. The Division shall:

(a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and

(b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.

Sec. 6. (Deleted by amendment.)

Sec. 7. NRS 116.1107 is hereby amended to read as follows:

116.1107 1. If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit's owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit's owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

2. Except as otherwise provided in subsection 1, if part of a unit is acquired by eminent domain, the award must compensate the unit's owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:

(a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and

(b) The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

3. If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

4. The judicial decree must be recorded in every county in which any portion of the common-interest community is located.

5. The provisions of this section do not authorize an association to exercise the power of eminent domain pursuant to chapter 37 of NRS, and an association may not exercise the power of eminent domain, as provided in NRS 37.0097.

Sec. 8. NRS 116.1206 is hereby amended to read as follows:

116.1206 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter ~~[shall]~~ :

(a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other

governing document is not required to be amended to conform to those provisions.

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

2. In the case of amendments to the declaration, bylaws or plats and plans of any common-interest community created before January 1, 1992:

(a) If the result accomplished by the amendment was permitted by law before January 1, 1992, the amendment may be made either in accordance with that law, in which case that law applies to that amendment, or it may be made under this chapter; and

(b) If the result accomplished by the amendment is permitted by this chapter, and was not permitted by law before January 1, 1992, the amendment may be made under this chapter.

3. An amendment to the declaration, bylaws or plats and plans authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of chapter 117 or 278A of NRS and with the procedures and requirements specified by those instruments. If an amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

Sec. 8.5. NRS 116.2111 is hereby amended to read as follows:

116.2111 1. Except as otherwise provided in this section and subject to the provisions of the declaration and other provisions of law, a unit's owner:

(a) May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common-interest community, without permission of the association; and

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common-interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

2. An association may not:

(a) Unreasonably restrict, prohibit or otherwise impede the lawful rights of a unit's owner to have reasonable access to his unit.

(b) *Charge any fee for a person to enter the common-interest community to provide services to a unit, a unit's owner or a tenant of a unit's owner or for any visitor to the common-interest community or invitee of a unit's owner or a tenant of a unit's owner to enter the common-interest community.*

(c) Unreasonably restrict, prohibit or withhold approval for a unit's owner to add to a unit:

(1) Improvements such as ramps, railings or elevators that are necessary to improve access to the unit for any occupant of the unit who has a disability;

(2) Additional locks to improve the security of the unit;

(3) Shutters to improve the security of the unit or to reduce the costs of energy for the unit; or

(4) A system that uses wind energy to reduce the costs of energy for the unit if the boundaries of the unit encompass 2 acres or more within the common-interest community.

~~[(c)]~~ *(d)* With regard to approving or disapproving any improvement or alteration made to a unit, act in violation of any state or federal law.

3. Any improvement or alteration made pursuant to subsection 2 that is visible from any other portion of the common-interest community must be installed, constructed or added in accordance with the procedures set forth in the governing documents of the association and must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

4. A unit's owner may not add to the unit a system that uses wind energy as described in subparagraph 4 of paragraph ~~[(b)]~~ *(c)* of subsection 2 unless he first obtains the written consent of each owner of property within 300 feet of any boundary of the unit.

Sec. 9. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in subsection 2, and subject to the provisions of the declaration, the association may do any or all of the following:

(a) Adopt and amend bylaws, rules and regulations.

(b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from the units' owners.

(c) Hire and discharge managing agents and other employees, agents and independent contractors.

(d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

(e) Make contracts and incur liabilities. *Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.*

(f) Regulate the use, maintenance, repair, replacement and modification of common elements.

(g) Cause additional improvements to be made as a part of the common elements.

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) Grant easements, leases, licenses and concessions through or over the common elements.

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners.

(k) Impose charges for late payment of assessments.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of

unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance.

(p) Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) Exercise any other powers conferred by the declaration or bylaws.

(r) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) Direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) Exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. NRS 116.31031 is hereby amended to read as follows:

116.31031 1. Except as otherwise provided in this section, if a unit's owner or a tenant or ~~[guest]~~ *an invitee* of a unit's owner *or a tenant* violates any provision of the governing documents of an association, the executive board may, if the governing documents so provide:

(a) Prohibit, for a reasonable time, the unit's owner or the tenant or ~~[guest]~~ *the invitee* of the unit's owner *or the tenant* from:

(1) Voting on matters related to the common-interest community.

(2) Using the common elements. The provisions of this subparagraph do not prohibit the unit's owner or the tenant or ~~[guest]~~ *the invitee* of the unit's owner *or the tenant* from using any vehicular or pedestrian ingress or egress to go to or from the unit, including any area used for parking.

(b) Impose a fine against the unit's owner or the tenant or ~~[guest]~~ *the invitee* of the unit's owner *or the tenant* for each violation, except that a fine may not be imposed for a violation that is the subject of a construction penalty pursuant to NRS 116.310305. If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of

the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed $100 for each violation or a total amount of $1,000, whichever is less. The limitations on the amount of the fine do not apply to any interest, charges or costs that may be collected by the association pursuant to this section if the fine becomes past due.

2. The executive board may not impose a fine pursuant to subsection 1 against a unit's owner for a violation of any provision of the governing documents of an association committed by an invitee of the unit's owner or the tenant unless the unit's owner:

(a) Participated in or authorized the violation;

(b) Had prior notice of the violation; or

(c) Had an opportunity to stop the violation and failed to do so.

3. The executive board may not impose a fine pursuant to subsection 1 unless:

(a) Not less than 30 days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the violation; and

(b) Within a reasonable time after the discovery of the violation, the person against whom the fine will be imposed has been provided with:

(1) Written notice specifying the details of the violation, the amount of the fine, and the date, time and location for a hearing on the violation; and

(2) A reasonable opportunity to contest the violation at the hearing.

~~[3.]~~ *4.* The executive board must schedule the date, time and location for the hearing on the violation so that the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing.

~~[4.]~~ *5.* The executive board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed:

(a) Pays the fine;

(b) Executes a written waiver of the right to the hearing; or

(c) Fails to appear at the hearing after being provided with proper notice of the hearing.

~~[5.]~~ *6.* If a fine is imposed pursuant to subsection 1 and the violation is not cured within 14 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

~~[6.]~~ *7.* If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

~~[7.]~~ *8.* The provisions of this section establish the minimum procedural requirements that the executive board must follow before it may impose a fine. The provisions of this section do not preempt any provisions of the governing documents that provide greater procedural protections.

~~[8.]~~ 9. Any past due fine:

(a) Bears interest at the rate established by the association, not to exceed the legal rate per annum.

(b) May include any costs of collecting the past due fine at a rate established by the association. If the past due fine is for a violation that does not threaten the health, safety or welfare of the residents of the common-interest community, the rate established by the association for the costs of collecting the past due fine:

(1) May not exceed $20, if the outstanding balance is less than $200.

(2) May not exceed $50, if the outstanding balance is $200 or more, but is less than $500.

(3) May not exceed $100, if the outstanding balance is $500 or more, but is less than $1,000.

(4) May not exceed $250, if the outstanding balance is $1,000 or more, but is less than $5,000.

(5) May not exceed $500, if the outstanding balance is $5,000 or more.

(c) May include any costs incurred by the association during a civil action to enforce the payment of the past due fine.

~~[9.]~~ *10.* As used in this section:

(a) "Costs of collecting" includes, without limitation, any collection fee, filing fee, recording fee, referral fee, fee for postage or delivery, and any other fee or cost that an association may reasonably charge to the unit's owner for the collection of a past due fine. The term does not include any costs incurred by an association during a civil action to enforce the payment of a past due fine.

(b) "Outstanding balance" means the amount of a past due fine that remains unpaid before any interest, charges for late payment or costs of collecting the past due fine are added.

Sec. 12.5. NRS 116.310315 is hereby amended to read as follows:

116.310315 If an association has imposed a fine against a unit's owner or a tenant or ~~[guest]~~ *an invitee* of a unit's owner *or a tenant* pursuant to NRS 116.31031 for violations of the governing documents of the association, the association:

1. Shall, in the books and records of the association, account for the fine separately from any assessment, fee or other charge; and

2. Shall not apply, in whole or in part, any payment made by the unit's owner for any assessment, fee or other charge toward the payment of the outstanding balance of the fine or any costs of collecting the fine, unless the unit's owner provides written authorization which directs the association to apply the payment made by the unit's owner in such a manner.

Sec. 13. NRS 116.31034 is hereby amended to read as follows:

116.31034 1. Except as otherwise provided in subsection 5 of NRS 116.212, not later than the termination of any period of declarant's control, the units' owners shall elect an executive board of at least three members, ~~[at least a majority]~~ *all* of whom must be units' owners. ~~[Unless the governing documents provide otherwise, the remaining members of the executive board do not have to be units' owners.]~~ The executive board shall elect the officers of the association. *Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners.* The members of the executive board and the officers of the association shall take office upon election.

2. The term of office of a member of the executive board may not exceed 2 years, except for members who are appointed by the declarant. Unless the governing documents provide otherwise, there is no limitation on the number of terms that a person may serve as a member of the executive board.

3. The governing documents of the association must provide for terms of office that are staggered in such a manner that, to the extent possible, an equal number of members of the executive board are elected at each election. The provisions of this subsection do not apply to:

(a) Members of the executive board who are appointed by the declarant; and

(b) Members of the executive board who serve a term of 1 year or less.

4. Not less than 30 days before the preparation of a ballot for the election of members of the executive board, the secretary or other officer specified in the bylaws of the association shall cause notice to be given to each unit's owner of his eligibility to serve as a member of the executive board. Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot along with the names of the nominees selected by the members of the executive board or a nominating committee established by the association.

5. Each person whose name is placed on the ballot as a candidate for a member of the executive board must:

(a) Make a good faith effort to disclose any financial, business, professional or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve as a member of the executive board; and

(b) Disclose whether the candidate is a member in good standing. For the purposes of this paragraph, a candidate shall not be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

→ The candidate must make all disclosures required pursuant to this subsection in writing to the association with his candidacy information. The association shall distribute the disclosures to each member of the association with the ballot in the manner established in the bylaws of the association.

6. Unless a person is appointed by the declarant:

(a) A person may not be a member of the executive board or an officer of the association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for that association.

(b) A person may not be a member of the executive board of a master association or an officer of that master association if the person, his spouse or his parent or child, by blood, marriage or adoption, performs the duties of a community manager for:

(1) That master association; or

(2) Any association that is subject to the governing documents of that master association.

7. An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, he shall file proof in the records of the association that:

(a) He is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

(b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

8. The election of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the election of any member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) A quorum is not required for the election of any member of the executive board.

(d) Only the secret written ballots that are returned to the association may be counted to determine the outcome of the election.

(e) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(f) The incumbent members of the executive board and each person whose name is placed on the ballot as a candidate for a member of the executive board may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

9. *An association shall not adopt any rule or regulation that has the effect of prohibiting or unreasonably interfering with a candidate in his campaign for election as a member of the executive board, except that his campaign may be limited to 90 days before the date that ballots are required to be returned to the association. A candidate may request that the secretary or other officer specified in the bylaws of the association send, 30 days before the date of the election and at the association's expense, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner a candidate informational statement. The candidate informational statement:*

(a) Must be no longer than a single, typed page;

(b) Must not contain any defamatory, libelous or profane information; and

(c) May be sent with the secret ballot mailed pursuant to subsection 8 or in a separate mailing.

→ The association and its directors, officers, employees and agents are immune from criminal or civil liability for any act or omission which arises out of the publication or disclosure of any information related to any person and which occurs in the course of carrying out any duties required pursuant to this subsection.

10. Each member of the executive board shall, within 90 days after his appointment or election, certify in writing to the association, on a form prescribed by the Administrator, that he has read and understands the governing documents of the association and the provisions of this chapter to the best of his ability. The Administrator may require the association to submit a copy of the certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158.

Sec. 14. NRS 116.31036 is hereby amended to read as follows:

116.31036 1. Notwithstanding any provision of the declaration or bylaws to the contrary, any member of the executive board, other than a member appointed by the declarant, may be removed from the executive board, with or without cause, if at a removal election held pursuant to this section ~~[the]~~ :

(a) The number of votes cast ~~[in favor of removal]~~ constitutes ~~[:~~

~~(a) At]~~ *at* least 35 percent of the total number of voting members of the association; and

(b) At least a majority of all votes cast in that removal election ~~[.]~~ *are cast in favor of removal.*

2. The removal of any member of the executive board must be conducted by secret written ballot unless the declaration of the association provides that voting rights may be exercised by delegates or representatives as set forth in NRS 116.31105. If the removal of a member of the executive board is conducted by secret written ballot:

(a) The secretary or other officer specified in the bylaws of the association shall cause a secret ballot and a return envelope to be sent, prepaid by United States mail, to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner.

(b) Each unit's owner must be provided with at least 15 days after the date the secret written ballot is mailed to the unit's owner to return the secret written ballot to the association.

(c) Only the secret written ballots that are returned to the association may be counted to determine the outcome.

(d) The secret written ballots must be opened and counted at a meeting of the association. A quorum is not required to be present when the secret written ballots are opened and counted at the meeting.

(e) The incumbent members of the executive board, including, without limitation, the member who is subject to the removal, may not possess, be given access to or participate in the opening or counting of the secret written ballots that are returned to the association before those secret written ballots have been opened and counted at a meeting of the association.

3. If a member of an executive board is named as a respondent or sued for liability for actions undertaken in his role as a member of the board, the association shall indemnify him for his losses or claims, and undertake all costs of defense, unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the association is no longer liable for the cost of defense, and may recover costs already expended from the member of the executive board who so acted. Members of the executive board are not personally liable to the victims of crimes occurring on the property. Punitive damages may not be recovered against ~~[the]~~ :

(a) The association ~~[.] [, but may be recovered from persons whose activity gave rise to the damages.]~~ ;

(b) The members of the executive board for acts or omissions that occur in their official capacity as members of the executive board; or

(c) The officers of the association for acts or omissions that occur in their capacity as officers of the association.

4. The provisions of this section do not prohibit the Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive.

Sec. 15. NRS 116.3107 is hereby amended to read as follows:

116.3107 1. Except to the extent provided by the declaration, subsection 2 and NRS 116.31135, the association ~~[is responsible]~~ *has the duty to provide* for *the* maintenance, repair and replacement of the common elements, and each unit's owner ~~[is responsible]~~ *has the duty to provide* for *the* maintenance, repair and replacement of his unit. Each unit's owner shall afford to the association and the other units' owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit's owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

2. In addition to the liability that a declarant as a unit's owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to developmental rights. No other unit's owner and no other portion of the common-interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to developmental rights inures to the declarant.

3. In a planned community, if all developmental rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

Sec. 16. NRS 116.3108 is hereby amended to read as follows:

116.3108 1. A meeting of the units' owners must be held at least once each year. If the governing documents do not designate an annual meeting date of the units' owners, a meeting of the units' owners must be held 1 year after the date of the last

meeting of the units' owners. If the units' owners have not held a meeting for 1 year, a meeting of the units' owners must be held on the following March 1.

2. Special meetings of the units' owners may be called by the president, by a majority of the executive board or by units' owners constituting at least 10 percent, or any lower percentage specified in the bylaws, of the total number of voting members of the association. The same number of units' owners may also call a removal election pursuant to NRS 116.31036. To call a special meeting or a removal election, the units' owners must submit a written petition which is signed by the required percentage of the total number of voting members of the association pursuant to this section and which is mailed, return receipt requested, or served by a process server to the executive board or the community manager for the association. If the petition calls for a special meeting, the executive board shall set the date for the special meeting so that the special meeting is held not less than 15 days or more than 60 days after the date on which the petition is received. If the petition calls for a removal election and:

(a) The voting rights of the units' owners will be exercised by delegates or representatives as set forth in NRS 116.31105, the executive board shall set the date for the removal election so that the removal election is held not less than 15 days or more than 60 days after the date on which the petition is received; or

(b) The voting rights of the units' owners will be exercised through the use of secret written ballots pursuant to NRS 116.31036, the secret written ballots for the removal election must be sent in the manner required by NRS 116.31036 not less than 15 days or more than 60 days after the date on which the petition is received, and the executive board shall set the date for the meeting to open and count the secret written ballots so that the meeting is held not more than 15 days after the deadline for returning the secret written ballots.

→ *The association shall not adopt any rule or regulation which prevents or unreasonably interferes with the collection of the required percentage of signatures for a petition pursuant to this subsection.*

3. Not less than 15 days or more than 60 days in advance of any meeting of the units' owners, the secretary or other officer specified in the bylaws shall cause notice of the meeting to be hand-delivered, sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner or, if the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner. The notice of the meeting must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

4. The agenda for a meeting of the units' owners must consist of:

(a) A clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the declaration or bylaws, any fees or assessments to be imposed or increased by the association, any budgetary changes and any proposal to remove an officer of the association or member of the executive board.

(b) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items. In an emergency, the units' owners may take action on an item which is not listed on the agenda as an item on which action may be taken.

(c) A period devoted to comments by units' owners and discussion of those comments. Except in emergencies, no action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to paragraph (b).

5. If the association adopts a policy imposing fines for any violations of the governing documents of the association, the secretary or other officer specified in the bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit's owner, a

schedule of the fines that may be imposed for those violations.

6. The secretary or other officer specified in the bylaws shall cause minutes to be recorded or otherwise taken at each meeting of the units' owners. Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the units' owners. A copy of the minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

7. Except as otherwise provided in subsection 8, the minutes of each meeting of the units' owners must include:

(a) The date, time and place of the meeting;

(b) The substance of all matters proposed, discussed or decided at the meeting; and

(c) The substance of remarks made by any unit's owner at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

8. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of a meeting of the units' owners.

9. The association shall maintain the minutes of each meeting of the units' owners until the common-interest community is terminated.

10. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the units' owners if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the other units' owners who are in attendance at the meeting.

11. The units' owners may approve, at the annual meeting of the units' owners, the minutes of the prior annual meeting of the units' owners and the minutes of any prior special meetings of the units' owners. A quorum is not required to be present when the units' owners approve the minutes.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 3 or 4.

Sec. 17. NRS 116.31083 is hereby amended to read as follows:

116.31083 1. A meeting of the executive board must be held at least once every 90 days.

2. Except in an emergency or unless the bylaws of an association require a longer period of notice, the secretary or other officer specified in the bylaws of the association shall, not less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to be given to the units' owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each unit within the common-interest community or to any other mailing address designated in writing by the unit's owner;

(b) If the association offers to send notice by electronic mail, sent by electronic mail at the request of the unit's owner to an electronic mail address designated in writing by the unit's owner; or

(c) Published in a newsletter or other similar publication that is circulated to each unit's owner.

3. In an emergency, the secretary or other officer specified in the bylaws of the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each unit within the common-interest community. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each unit within the common-interest community or posted in a prominent place or places within the common elements of the association.

4. The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date on which and the locations where copies of the agenda may be conveniently obtained by the units' owners. The notice must include notification of the right of a unit's owner to:

(a) Have a copy of the *audio recording, the* minutes or a summary of the minutes of the meeting provided to the unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

(b) Speak to the association or executive board, unless the executive board is meeting in executive session.

5. The agenda of the meeting of the executive board must comply with the provisions of subsection 4 of NRS 116.3108. ~~[The]~~ *A* period required to be devoted to comments by the units' owners and discussion of those comments must be scheduled for *both* the beginning *and the end* of each meeting. *During the period devoted to comments by the units' owners and discussion of those comments at the beginning of each meeting, comments by the units' owners and discussion of those comments must be limited to items listed on the agenda.* In an emergency, the executive board may take action on an item which is not listed on the agenda as an item on which action may be taken.

6. At least once every 90 days, unless the declaration or bylaws of the association impose more stringent standards, the executive board shall review, at a minimum, the following financial information at one of its meetings:

(a) A current year-to-date financial statement of the association;

(b) A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts;

(c) A current reconciliation of the operating account of the association;

(d) A current reconciliation of the reserve account of the association;

(e) The latest account statements prepared by the financial institutions in which the accounts of the association are maintained; and

(f) The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party.

7. The secretary or other officer specified in the bylaws shall cause *each meeting of the executive board to be audio recorded and the* minutes to be recorded or otherwise taken at each meeting of the executive board ~~[.]~~ *, but if the executive board is meeting in executive session, the meeting must not be audio recorded.* Not more than 30 days after each such meeting, the secretary or other officer specified in the bylaws shall cause the *audio recording of the meeting, the* minutes ~~[or]~~ *of the meeting and* a summary of the minutes of the ~~[meetings]~~ *meeting* to be made available to the units' owners. A copy of the *audio recording, the* minutes or a summary of the minutes must be provided to any unit's owner upon request and, if required by the executive board, upon payment to the association of the cost of providing the copy to the unit's owner.

8. Except as otherwise provided in subsection 9 and NRS 116.31085, the minutes of each meeting of the executive board must include:

(a) The date, time and place of the meeting;

(b) Those members of the executive board who were present and those members who were absent at the meeting;

(c) The substance of all matters proposed, discussed or decided at the meeting;

(d) A record of each member's vote on any matter decided by vote at the meeting; and

(e) The substance of remarks made by any unit's owner who addresses the executive board at the meeting if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

9. The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings.

10. The association shall maintain the minutes of each meeting of the executive board until the common-interest community is terminated.

11. A unit's owner may record on audiotape or any other means of sound reproduction a meeting of the executive board, unless the executive board is meeting in executive session, if the unit's owner, before recording the meeting, provides notice of his intent to record the meeting to the members of the executive board and the other units' owners who are in attendance at the meeting.

12. As used in this section, "emergency" means any occurrence or combination of occurrences that:

(a) Could not have been reasonably foreseen;

(b) Affects the health, welfare and safety of the units' owners or residents of the common-interest community;

(c) Requires the immediate attention of, and possible action by, the executive board; and

(d) Makes it impracticable to comply with the provisions of subsection 2 or 5.

Sec. 18. NRS 116.31085 is hereby amended to read as follows:

116.31085 1. Except as otherwise provided in this section, a unit's owner may attend any meeting of the units' owners or of the executive board and speak at any such meeting. The executive board may establish reasonable limitations on the time a unit's owner may speak at such a meeting.

2. An executive board may not meet in executive session to enter into, renew, modify, terminate or take any other action regarding a contract. ~~[, unless it is a contract between the association and an attorney.]~~

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive. ~~[, or to enter into, renew, modify, terminate or take any other action regarding a contract between the association and the attorney.]~~

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

4. An executive board shall meet in executive session to hold a hearing on an alleged violation of the governing documents unless the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board. If the person who may be sanctioned for the alleged violation requests in writing that an open hearing be conducted, the person:

(a) Is entitled to attend all portions of the hearing related to the alleged violation, including, without limitation, the presentation of evidence and the testimony of witnesses; ~~[and]~~

(b) *Is entitled to due process, as set forth in the standards adopted by regulation by the Commission, which must include, without limitation, the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the hearing panel; and*

(c) Is not entitled to attend the deliberations of the executive board.

5. *The provisions of subsection 4 establish the minimum protections that the executive board must provide before it may make a decision. The provisions of subsection 4 do not preempt any provisions of the governing documents that provide greater protections.*

6. Except as otherwise provided in this subsection, any matter discussed by the executive board when it meets in executive session must be generally noted in the minutes of the meeting of the executive board. The executive board shall maintain minutes of any decision made pursuant to subsection 4 concerning an alleged violation and, upon request, provide a copy of the decision to the person who was subject to being sanctioned at the hearing or to his designated representative.

~~[6.]~~ *7.* Except as otherwise provided in subsection 4, a unit's owner is not entitled to attend or speak at a meeting of the executive board held in executive session.

Sec. 19. NRS 116.31087 is hereby amended to read as follows:

116.31087 1. If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall ~~[, if action is required by the executive board,]~~ *, upon the written request of the unit's owner,* place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

2. Not later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner that, if ~~[action is required by the executive board,]~~ *the unit's owner submits a written request that the subject of the complaint be placed on the agenda of the next regularly scheduled meeting of the executive board,* the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board.

Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 116.3115 is hereby amended to read as follows:

116.3115 1. Until the association makes an assessment for common expenses, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151. Unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves required by paragraph (b) of subsection 2.

2. Except for assessments under subsections 4 to 7, inclusive:

(a) All common expenses, including the reserves, must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

(b) The association shall establish adequate reserves, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance. The association may comply with the provisions of this paragraph through a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements over a period of years if the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair,

replacement and restoration of the major components of the common elements are necessary. *Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves pursuant to this paragraph, including, without limitation, to establish or carry out a funding plan, the executive board may, without seeking or obtaining the approval of the units' owners, impose any necessary and reasonable assessments against the units in the common-interest community. Any such assessments imposed by the executive board must be based on the study of the reserves of the association conducted pursuant to NRS 116.31152.*

3. Any past due assessment for common expenses or installment thereof bears interest at the rate established by the association not exceeding 18 percent per year.

4. To the extent required by the declaration:

(a) Any common expense associated with the maintenance, repair, restoration or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

(c) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

5. Assessments to pay a judgment against the association may be made only against the units in the common-interest community at the time the judgment was entered, in proportion to their liabilities for common expenses.

6. If any common expense is caused by the misconduct of any unit's owner, the association may assess that expense exclusively against his unit.

7. The association of a common-interest community created before January 1, 1992, is not required to make an assessment against a vacant lot located within the community that is owned by the declarant.

8. If liabilities for common expenses are reallocated, assessments for common expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities.

9. The association shall provide written notice to each unit's owner of a meeting at which an assessment for a capital improvement is to be considered or action is to be taken on such an assessment at least 21 calendar days before the date of the meeting.

Sec. 22. NRS 116.31155 is hereby amended to read as follows:

116.31155 1. Except as otherwise provided in subsection 2, an association shall:

(a) If the association is required to pay the fee imposed by NRS 78.150, 82.193, 86.263, 87.541, 87A.560 or 88.591, pay to the Administrator a fee established by regulation of the Administrator for every unit in the association used for residential use.

(b) If the association is organized as a trust or partnership, or as any other authorized business entity, pay to the Administrator a fee established by regulation of the Administrator for each unit in the association.

2. If an association is subject to the governing documents of a master association, the master association shall pay the fees required pursuant to this section for each unit in the association that is subject to the governing documents of the master association, unless the governing documents of the master association provide otherwise. The provisions of this subsection do not relieve any association that is subject to the governing documents of a master association from its ultimate responsibility to pay the fees required pursuant to this section to the Administrator if they are not paid by the master association.

3. The fees required to be paid pursuant to this section must be:

(a) Paid at such times as are established by the Division.

(b) Deposited with the State Treasurer for credit to the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630.

(c) Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed $3 per unit.

4. The Division shall impose an administrative penalty against an association or master association that violates the provisions of this section by failing to pay the fees owed by the association or master association within the times established by the Division. The administrative penalty that is imposed for each violation must equal 10 percent of the amount of the fees owed by the association or master association or $500, whichever amount is less. The amount of the unpaid fees owed by the association or master association bears interest at the rate set forth in NRS 99.040 from the date the fees are due until the date the fees are paid in full.

5. A unit's owner may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to both an association and a master association.

6. An association that is subject to the governing documents of a master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by the master association.

7. A master association may not be required to pay any portion of the fees or any administrative penalties or interest required to be paid pursuant to this section to the extent they have already been paid by an association that is subject to the governing documents of the master association.

8. Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

9. Any person, association or master association which has been requested or required to pay any fees, administrative penalties or interest pursuant to this section and which believes that such fees, administrative penalties or interest has been imposed in error may, without exhausting any available administrative remedies, bring an action in a court of competent jurisdiction to recover:

(a) Any amount paid in error for any fees, administrative penalties or interest during the immediately preceding 3 years;

(b) Interest on the amount paid in error at the rate set forth in NRS 99.040; and

(c) Reasonable costs and attorney's fees.

Sec. 23. (Deleted by amendment.)

Sec. 23.5. NRS 116.31175 is hereby amended to read as follows:

116.31175 1. Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review during the regular working hours of the association, including, without limitation, all contracts to which the association is a party and all records filed with a court relating to a civil or criminal action to which the association is a party. The provisions of this subsection do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours

worked and the salaries and benefits of those employees; *and*

(b) The records of the association relating to another unit's owner, except for those records described in subsection 2. ~~[; and~~

~~(c) A contract between the association and an attorney.]~~

2. The executive board of an association shall maintain a general record concerning each violation of the governing documents, other than a violation involving a failure to pay an assessment, for which the executive board has imposed a fine, a construction penalty or any other sanction. The general record:

(a) Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine or construction penalty, the general record must specify the amount of the fine or construction penalty.

(b) Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the unit, if any, that is associated with the violation.

(c) Must be maintained in an organized and convenient filing system or data system that allows a unit's owner to search and review the general records concerning violations of the governing documents.

3. If the executive board refuses to allow a unit's owner to review the books, records or other papers of the association, the Ombudsman may:

(a) On behalf of the unit's owner and upon written request, review the books, records or other papers of the association during the regular working hours of the association; and

(b) If he is denied access to the books, records or other papers, request the Commission, or any member thereof acting on behalf of the Commission, to issue a subpoena for their production.

4. The books, records and other papers of an association must be maintained for at least 10 years. The provisions of this subsection do not apply to:

(a) The minutes of a meeting of the units' owners which must be maintained in accordance with NRS 116.3108; or

(b) The minutes of a meeting of the executive board which must be maintained in accordance with NRS 116.31083.

5. The executive board shall not require a unit's owner to pay an amount in excess of $10 per hour to review any books, records, contracts or other papers of the association pursuant to the provisions of this section.

Sec. 24. NRS 116.31183 is hereby amended to read as follows:

116.31183 An executive board, a member of an executive board , *a community manager* or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

2. Recommended the selection or replacement of an attorney, community manager or vendor; or

~~[2.]~~ *3.* Requested in good faith to review the books, records or other papers of the association.

Sec. 25. NRS 116.31187 is hereby amended to read as follows:

116.31187 1. Except as otherwise provided in this section, a member of an executive board or an officer of an association shall not:

(a) On or after October 1, 2003, enter into a contract or renew a contract with the association to provide *financing,* goods or services to the association; or

(b) Otherwise accept any commission, personal profit or compensation of any kind from the association for providing *financing,* goods or services to the association.

2. The provisions of this section do not prohibit a declarant, an affiliate of a declarant or an officer, employee or agent of a declarant or an affiliate of a declarant from:

(a) Receiving any commission, personal profit or compensation from the association, the declarant or an affiliate of the declarant for any *financing,* goods or services furnished to the association;

(b) Entering into contracts with the association, the declarant or affiliate of the declarant; or

(c) Serving as a member of the executive board or as an officer of the association.

Sec. 26. NRS 116.325 is hereby amended to read as follows:

116.325 1. The executive board shall not and the governing documents must not prohibit a unit's owner or an occupant of a unit from exhibiting ~~[a political sign]~~ *one or more political signs* within such physical portion of the common-interest community as that owner or occupant has a right to occupy and use exclusively ~~[if the political sign is]~~ *, subject to the following conditions:*

(a) All political signs exhibited must not *be* larger than 24 inches by 36 inches.

(b) If the unit is occupied by a tenant, the unit's owner may not exhibit any political sign unless the tenant consents, in writing, to the exhibition of the political sign.

(c) All political signs exhibited are subject to any applicable provisions of law governing the posting of political signs.

(d) A unit's owner or an occupant of a unit may exhibit as many political signs as desired, but may not exhibit more than one political sign for each candidate, political party or ballot question.

2. The provisions of this section establish the minimum rights of a unit's owner or an occupant of a unit to exhibit ~~[a]~~ political ~~[sign.]~~ *signs.* The provisions of this section do not preempt any provisions of the governing documents that provide greater rights and do not require the governing documents or the executive board to impose any restrictions on the exhibition of political signs other than those established by other provisions of law.

3. As used in this section, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question ~~[.]~~ *in any federal, state or local election or any election of an association.*

Sec. 27. NRS 116.330 is hereby amended to read as follows:

116.330 1. The executive board shall not and the governing documents must not prohibit a unit's owner from installing or maintaining drought tolerant landscaping within such physical portion of the common-interest community as that owner has a right to occupy and use exclusively, *including, without limitation, the front yard or back yard of the unit's owner,* except that:

(a) Before installing drought tolerant landscaping, the unit's owner must submit a detailed description or plans for the drought tolerant landscaping for architectural review and approval in accordance with the procedures, if any, set forth in the governing documents of the association; and

(b) The drought tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community.

→ The provisions of this subsection must be construed liberally in favor of effectuating the purpose of encouraging the use of drought tolerant landscaping, and the executive board shall not and the governing documents must not unreasonably deny or

withhold approval for the installation of drought tolerant landscaping or unreasonably determine that the drought tolerant landscaping is not compatible with the style of the common-interest community.

2. Installation of drought tolerant landscaping within any common element or conversion of traditional landscaping or cultivated vegetation, such as turf grass, to drought tolerant landscaping within any common element shall not be deemed to be a change of use of the common element unless:

(a) The common element has been designated as a park, open play space or golf course on a recorded plat map; or

(b) The traditional landscaping or cultivated vegetation is required by a governing body under the terms of any applicable zoning ordinance, permit or approval or as a condition of approval of any final subdivision map.

3. As used in this section, "drought tolerant landscaping" means landscaping which conserves water, protects the environment and is adaptable to local conditions. *The term includes, without limitation, the use of mulches such as decorative rock and artificial turf.*

Sec. 28. NRS 116.345 is hereby amended to read as follows:

116.345 1. An association of a planned community may not restrict, prohibit or otherwise impede the lawful residential use of any property that is within or encompassed by the boundaries of the planned community and that is not designated as part of the planned community.

2. Except as otherwise provided in this subsection, an association may not restrict the access of a person to any of his property. An association may restrict access to and from a unit within a planned community if the right to restrict such access was included in the declaration or in a separate recorded instrument at the time that the owner of the unit acquired title to the unit. The provisions of this subsection do not prohibit an association from charging the owner of the property a reasonable and nondiscriminatory fee to operate or maintain a gate or other similar device designed to control access to the planned community that would otherwise impede ingress or egress to the property.

3. An association may not expand, construct or situate a building or structure that is not part of any plat or plan of the planned community if the expansion, construction or situation of the building or structure was not previously disclosed to the units' owners of the planned community unless the association obtains the written consent of a majority of the units' owners and residents of the planned community who own property or reside within 500 feet of the proposed location of the building or structure.

4. *An association may not interrupt any utility service furnished to a unit's owner or a tenant of a unit's owner except for the nonpayment of utility charges when due. The interruption of any utility service pursuant to this subsection must be performed in a manner which is consistent with all laws, regulations and governing documents relating to the interruption of any utility service. An association shall in every case send a written notice of its intent to interrupt any utility service to the unit's owner or the tenant of the unit's owner at least 10 days before the association interrupts any utility service.*

5. The provisions of this section do not abrogate any easement, restrictive covenant, decision of a court, agreement of a party or any contract, governing document or declaration of covenants, conditions and restrictions, or any other decision, rule or regulation that a local governing body or other entity that makes decisions concerning land use or planning is authorized to make or enact that exists before October 1, 1999, including, without limitation, a zoning ordinance, permit or approval process or any other requirement of a local government or other entity that makes decisions concerning land use or planning.

Sec. 29. NRS 116.4117 is hereby amended to read as follows:

116.4117 1. ~~[If]~~ *Subject to the requirements set forth in subsection 2, if* a declarant , *community manager* or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply ~~[has a claim]~~ *may bring a civil action* for *damages or other* appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for

damages ~~[caused by]~~ *or other appropriate relief for* a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

(a) By the association against:

(1) A declarant; ~~[or]~~

(2) *A community manager; or*

(3) A unit's owner.

(b) By a unit's owner against:

(1) The association;

(2) A declarant; or

(3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

3. ~~[Punitive]~~ *Except as otherwise provided in NRS 116.31036, punitive* damages may be awarded for a willful and material failure to comply with *any provision of* this chapter if the failure is established by clear and convincing evidence.

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

5. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

Sec. 30. NRS 116.600 is hereby amended to read as follows:

116.600 1. The Commission for Common-Interest Communities and Condominium Hotels is hereby created.

2. The Commission consists of ~~[five]~~ *seven* members appointed by the Governor. The Governor shall appoint to the Commission:

(a) One member who is a unit's owner residing in this State and who has served as a member of an executive board in this State;

(b) *Two members who are units' owners residing in this State but who are not required to have served as members of an executive board;*

(c) One member who is in the business of developing common-interest communities in this State;

~~[(c)]~~ *(d)* One member who holds a certificate;

~~[(d)]~~ *(e)* One member who is a certified public accountant licensed to practice in this State pursuant to the provisions of chapter 628 of NRS; and

~~[(e)]~~ *(f)* One member who is an attorney licensed to practice in this State.

3. Each member of the Commission must be a resident of this State. At least ~~[three]~~ *four* members of the Commission must be residents of a county whose population is 400,000 or more.

4. Each member of the Commission must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of

his appointment.

5. After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified under this section to replace the member for the remainder of the unexpired term.

6. While engaged in the business of the Commission, each member is entitled to receive:

(a) A salary of not more than $80 per day, as established by the Commission; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 31. NRS 116.605 is hereby amended to read as follows:

116.605 1. The Division shall *employ one or more training officers who are qualified by training and experience to* provide ~~[or arrange to have provided]~~ to each member of the Commission courses of instruction concerning rules of procedure and substantive law appropriate for members of the Commission. *Such courses of instruction may be made available to the staff of the Division as well as to community managers.*

2. The training officer shall:

(a) Prepare and make available a manual containing the policies and procedures to be followed by executive boards and community managers; and

(b) Perform any other duties as directed by the Division.

3. Each member of the Commission must attend the courses of instruction *described in subsection 1* not later than 6 months after the date that the member is first appointed to the Commission.

Sec. 32. NRS 116.675 is hereby amended to read as follows:

116.675 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 33. NRS 116.757 is hereby amended to read as follows:

116.757 1. Except as otherwise provided in this section and NRS 239.0115, a written affidavit filed with the Division pursuant to NRS 116.760, all documents and other information filed with the written affidavit and all documents and other information compiled as a result of an investigation conducted to determine whether to file a formal complaint with the

Commission are confidential. *The Division shall not disclose any information that is confidential pursuant to this subsection, in whole or in part, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 2 and the disclosure is required pursuant to subsection 2.*

2. A formal complaint filed *by the Administrator* with the Commission and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline or take other administrative action pursuant to NRS 116.745 to 116.795, inclusive, are public records.

Sec. 34. (Deleted by amendment.)

Sec. 35. (Deleted by amendment.)

Sec. 36. NRS 116.790 is hereby amended to read as follows:

116.790 1. If the Commission or a hearing panel, after notice and hearing, finds that the executive board or any person acting on behalf of the association has committed a violation, the Commission or the hearing panel may take any or all of the following actions:

(a) Order an audit of the association ~~.~~, *at the expense of the association.*

(b) Require the executive board to hire a community manager who holds a certificate.

2. The Commission, or the Division with the approval of the Commission, may apply to a court of competent jurisdiction for the appointment of a receiver for an association if, after notice and a hearing, the Commission or a hearing officer finds that any of the following violations occurred:

(a) The executive board, or any member thereof, has been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;

(b) The executive board, or any member thereof, has been guilty of misfeasance, malfeasance or nonfeasance; or

(c) The assets of the association are in danger of waste or loss through attachment, foreclosure, litigation or otherwise.

3. In any application for the appointment of a receiver pursuant to this section, notice of a temporary appointment of a receiver may be given to the association alone, by process as in the case of an application for a temporary restraining order or injunction. The hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists, appoint one or more receivers pursuant to this section to carry out the business of the association. The members of the executive board who have not been guilty of negligence or active breach of duty must be preferred in making the appointment.

5. The powers of any receiver appointed pursuant to this section may be continued as long as the court deems necessary and proper. At any time, for sufficient cause, the court may order the receivership terminated.

6. Any receiver appointed pursuant to this section has, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether or not the association is insolvent. Such powers include, without limitation, the powers to:

(a) Take charge of the estate and effects of the association;

(b) Appoint an agent or agents;

(c) Collect any debts and property due and belonging to the association and prosecute and defend, in the name of the association, or otherwise, any civil action as may be necessary or proper for the purposes of collecting debts and property;

(d) Perform any other act in accordance with the governing documents of the association and this chapter that may be necessary for the association to carry out its obligations; and

(e) By injunction, restrain the association from exercising any of its powers or doing business in any way except by and through a receiver appointed by the court.

Sec. 37. NRS 116A.270 is hereby amended to read as follows:

116A.270 1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Division alleging a violation of this chapter or chapter 116 or 116B of NRS, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential. ~~[and may be disclosed]~~

2. The Division shall not disclose any information that is confidential pursuant to subsection 1, in whole or in part ~~[only]~~ *, to any person, including, without limitation, a person who is the subject of an investigation or complaint, unless and until a formal complaint is filed pursuant to subsection 3 and the disclosure is required pursuant to subsection 3, except that the Division may disclose the information described in subsection 1* as necessary in the course of administering this chapter or to a licensing board or agency or any other governmental agency, including, without limitation, a law enforcement agency, that is investigating a person who holds a certificate or permit issued pursuant to this chapter.

~~[2.]~~ *3.* The *formal* complaint or other charging documents filed *by the Administrator* with the Commission to initiate disciplinary action and all documents and other information considered by the Commission or a hearing panel when determining whether to impose discipline are public records.

Sec. 38. NRS 116A.300 is hereby amended to read as follows:

116A.300 1. The Commission may appoint one or more hearing panels. Each hearing panel must consist of one or more independent hearing officers. *An independent hearing officer may be, without limitation, a member of the Commission or an employee of the Commission.*

2. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter.

3. While acting under the authority of the Commission, a hearing panel and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Commission and its members.

4. A final order of a hearing panel:

(a) May be appealed to the Commission if, not later than 20 days after the date that the final order is issued by the hearing panel, any party aggrieved by the final order files a written notice of appeal with the Commission.

(b) Must be reviewed and approved by the Commission if, not later than 40 days after the date that the final order is issued by the hearing panel, the Division, upon the direction of the Chairman of the Commission, provides written notice to all parties of the intention of the Commission to review the final order.

Sec. 39. NRS 116A.410 is hereby amended to read as follows:

116A.410 1. The Commission shall by regulation provide for the issuance by the Division of certificates. The regulations:

(a) Must establish the qualifications for the issuance of such a certificate, including, without limitation, the education and experience required to obtain such a certificate. *The regulations must include, without limitation, provisions that:*

(1) Provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Holds a professional designation in the field of management of a common-interest community from a nationally recognized organization;

(II) Provides evidence that the person has been engaged in the management of a common-interest community for at least 5 years; and

(III) Has not been the subject of any disciplinary action in another state in connection with the management of a common-interest community.

(2) Except as otherwise provided in subparagraph (3), provide for the issuance of a temporary certificate for a 1-year period to a person who:

(I) Receives an offer of employment as a community manager from an association or its agent; and

(II) Has management experience determined to be sufficient by the executive board of the association or its agent making the offer in sub-subparagraph (I). The executive board or its agent must have sole discretion to make the determination required in this sub-subparagraph.

(3) Require a temporary certificate described in subparagraph (2) to expire before the end of the 1-year period if the certificate holder ceases to be employed by the association, or its agent, which offered him employment as described in subparagraph (2).

(4) Require a person who is issued a temporary certificate as described in subparagraph (1) or (2) to successfully complete not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act within the 1-year period.

(5) Provide for the issuance of a certificate at the conclusion of the 1-year period if the person:

(I) Has successfully completed not less than 18 hours of instruction relating to the Uniform Common-Interest Ownership Act; and

(II) Has not been the subject of any disciplinary action pursuant to this chapter or chapter 116 of NRS or any regulations adopted pursuant thereto.

(6) Provide that a temporary certificate described in subparagraph (1) or (2), and a certificate described in subparagraph (5):

(I) Must authorize the person who is issued a temporary certificate described in subparagraph (1) or (2) or certificate described in subparagraph (5) to act in all respects as a community manager and exercise all powers available to any other community manager without regard to experience; and

(II) Must not be treated as a limited, restricted or provisional form of a certificate.

(b) *Must require an applicant or the employer of the applicant to post a bond in a form and in an amount established by regulation. The Commission shall, by regulation, adopt a sliding scale for the amount of the bond that is based upon the amount of money that applicants are expected to control. In adopting the regulations establishing the form and sliding scale for the amount of a bond required to be posted pursuant to this paragraph, the Commission shall consider the availability and cost of such bonds.*

(c) May require applicants to pass an examination in order to obtain a certificate ~~[.]~~ *other than a temporary certificate described in paragraph (a).* If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs which are necessary for the administration of the examination.

~~[(c)]~~ *(d)* May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.

~~[(d)]~~ *(e)* Must establish the grounds for initiating disciplinary action against a person to whom a certificate has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a certificate and for the suspension or revocation of a certificate.

~~[(e)]~~ *(f)* Must establish rules of practice and procedure for conducting disciplinary hearings.

2. The Division may collect a fee for the issuance of a certificate in an amount not to exceed the administrative costs of issuing the certificate.

3. As used in this section, "management experience" means experience in a position in business or government, including, without limitation, in the military:

(a) In which the person holding the position was required, as part of holding the position, to engage in one or more management activities, including, without limitation, supervision of personnel, development of budgets or financial plans, protection of assets, logistics, management of human resources, development or training of personnel, public relations, or protection or maintenance of facilities; and

(b) Without regard to whether the person holding the position has any experience managing or otherwise working for an association.

Sec. 40. NRS 38.330 is hereby amended to read as follows:

38.330 1. If all parties named in a written claim filed pursuant to NRS 38.320 agree to have the claim submitted for mediation, the parties shall reduce the agreement to writing and shall select a mediator from the list of mediators maintained by the Division pursuant to NRS 38.340. Any mediator selected must be available within the geographic area. If the parties fail to agree upon a mediator, the Division shall appoint a mediator from the list of mediators maintained by the Division. Any mediator appointed must be available within the geographic area. Unless otherwise provided by an agreement of the parties, mediation must be completed within 60 days after the parties agree to mediation. Any agreement obtained through mediation conducted pursuant to this section must, within 20 days after the conclusion of mediation, be reduced to writing by the mediator and a copy thereof provided to each party. The agreement may be enforced as any other written agreement. Except as otherwise provided in this section, the parties are responsible for all costs of mediation conducted pursuant to this section.

2. If all the parties named in the claim do not agree to mediation, the parties shall select an arbitrator from the list of arbitrators maintained by the Division pursuant to NRS 38.340. Any arbitrator selected must be available within the geographic area. If the parties fail to agree upon an arbitrator, the Division shall appoint an arbitrator from the list maintained by the Division. Any arbitrator appointed must be available within the geographic area. Upon appointing an arbitrator, the Division shall provide the name of the arbitrator to each party. *An arbitrator shall, not later than 5 days after his selection or appointment pursuant to this subsection, provide to the parties an informational statement relating to the arbitration of a claim pursuant to this section. The written informational statement:*

(a) Must be written in plain English;

(b) Must explain the procedures and applicable law relating to the arbitration of a claim conducted pursuant to this section, including, without limitation, the procedures, timelines and applicable law relating to confirmation of an award pursuant to NRS 38.239, vacation of an award pursuant to NRS 38.241, judgment on an award pursuant to NRS 38.243, and any applicable statute or court rule governing the award of attorney's fees or costs to any party; and

(c) Must be accompanied by a separate form acknowledging that the party has received and read the informational statement, which must be returned to the arbitrator by the party not later than 10 days after receipt of the informational statement.

3. The Division may provide for the payment of the fees for a mediator or an arbitrator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

(a) The Commission for Common-Interest Communities and Condominium Hotels approves the payment; and

(b) There is money available in the account for this purpose.

4. Except as otherwise provided in this section and except where inconsistent with the provisions of NRS 38.300 to 38.360, inclusive, the arbitration of a claim pursuant to this section must be conducted in accordance with the provisions of NRS 38.231, 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association, the arbitrator may issue an order prohibiting the action upon which the claim is based. An award must be made within 30 days after the conclusion of arbitration, unless a shorter period is agreed upon by the parties to the arbitration.

5. If all the parties have agreed to nonbinding arbitration, any party to the *nonbinding* arbitration may, within 30 days after a decision and award have been served upon the parties, commence a civil action in the proper court concerning the claim which was submitted for arbitration. Any complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been arbitrated pursuant to the provisions of NRS 38.300 to 38.360, inclusive. If such an action is not commenced within that period, any party to the arbitration may, within 1 year after the service of the award, apply to the proper court for a confirmation of the award pursuant to NRS 38.239.

6. If all the parties agree in writing to binding arbitration, the arbitration must be conducted in accordance with the provisions of this chapter. An award procured pursuant to such *binding* arbitration may be vacated and a rehearing granted upon application of a party pursuant to the provisions of NRS 38.241.

7. If, after the conclusion of *binding* arbitration, a party:

(a) Applies to have an award vacated and a rehearing granted pursuant to NRS 38.241; or

(b) Commences a civil action based upon any claim which was the subject of arbitration,

→ the party shall, if he fails to obtain a more favorable award or judgment than that which was obtained in the initial *binding* arbitration, pay all costs and reasonable attorney's fees incurred by the opposing party after the application for a rehearing was made or after the complaint in the civil action was filed.

8. Upon request by a party, the Division shall provide a statement to the party indicating the amount of the fees for a mediator or an arbitrator selected or appointed pursuant to this section.

9. As used in this section, "geographic area" means an area within 150 miles from any residential property or association which is the subject of a written claim submitted pursuant to NRS 38.320.

Sec. 41. The Governor shall appoint to the Commission for Common-Interest Communities and Condominium Hotels pursuant to NRS 116.600, as amended by section 30 of this act:

1. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2010; and

2. One member who is a unit's owner residing in this State whose term begins on October 1, 2009, and expires on October 1, 2011.

Sec. 42. The manual described in subsection 2 of NRS 116.605, as amended by section 31 of this act, must be prepared and made available by October 1, 2010.

Sec. 43. 1. This section becomes effective upon passage and approval.

2. Section 39 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2010, for all other purposes.

3. Sections 1 to 38, inclusive, 40, 41 and 42 of this act become effective on October 1, 2009.

MICHAEL SCHNEIDER	TICK SEGERBLOM
TERRY CARE	RUBEN KIHUEN
MIKE MCGINNESS	JOHN HAMBRICK
Senate Conference Committee	*Assembly Conference Committee*

Senator Schneider moved that the Senate adopt the report of the Conference Committee concerning Senate Bill No. 182.

Remarks by Senator Schneider.

Senator Schneider requested that his remarks be entered in the Journal.

I want to thank my colleagues in the Legislature for enacting Senate Bill 182. I have championed the reforms contained in this bill for many years. They will help restore the balance between the rights of individual citizens living in common-interest communities and the governmental structures we as legislators have created and to a certain extent, imposed on average homeowners, sometimes to their detriment. I want to repeat the language of the preamble to the bill as introduced because it summarizes all the important reasons we are enacting this bill:

WHEREAS, The Nevada Legislature previously deemed it important to set forth its intent regarding the creation and proper functioning of planned communities; and

WHEREAS, The Nevada Legislature previously noted that planned communities are a dominant method of residential development in the State of Nevada; and

WHEREAS, The Nevada Legislature previously noted that planned communities are developed for the purposes of preserving neighborhood continuity and creating desirable places to reside; and

WHEREAS, The Nevada Legislature previously noted that planned communities are governed by specific rules and regulations and by unit-owners' associations; and

WHEREAS, The Nevada Legislature previously noted that a unit owners' association is the form of self-government closest to the people; and

WHEREAS, The Nevada Legislature previously declared that all forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution; and

WHEREAS, The Nevada Legislature previously noted that some unit-owners' associations in this State have a history of abuse of power; and

WHEREAS, The Nevada Legislature previously noted that unit owners' associations have power over one of the most important aspects of a person's life, his residence; and

WHEREAS, The Nevada Legislature previously noted that homeowners invest financially and emotionally in their homes; and

WHEREAS, The Nevada Legislature previously declared that homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly interference with their property rights; and

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

WHEREAS, The Nevada Legislature deems it necessary and important to reiterate and endorse both the intent and the concerns previously expressed by the Nevada Legislature; and

WHEREAS, The establishment of planned communities is required by many local governments as a condition of granting necessary building permits for residential housing; and

WHEREAS, The form of self-government of a unit-owners' association includes legislative, executive and quasi-judicial powers and functions; now, therefore,

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

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

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

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

Motion carried by a constitutional majority.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Carlton moved that the Conference Committee Reports on Senate Bill No. 269; Assembly Bill No. 454 be taken from Unfinished Business and placed on Unfinished Business on the fourth agenda.

Remarks by Senator Carlton.