

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST,

Appellant ,

v.

SEPTEMBER TRUST, DATED MARCH  
23, 1972; GERRY R. ZOBRIST AND  
JOLIN G. ZOBRIST, AS TRUSTEES OF  
THE GERRY R. ZOBRIST AND JOLIN G.  
ZOBRIST FAMILY TRUST; RAYNALDO  
G. SANDOVAL AND JULIE MARIE  
SANDOVAL GEGEN, AS TRUSTEES OF  
THE RAYNALDO G. AND EVELYN A.  
SANDOVAL JOINT LIVING AND  
DEVOLUTION TRUST DATED MAY 27,  
1992; and DENNIS A. GEGEN AND  
JULIE S. GEGEN, HUSBAND AND  
WIFE, AS JOINT TENANTS,

Respondents .

**Supreme Court No.: 76198**

District Court Case No.: A-17-765372-C

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Elizabeth A. Brown  
Clerk of Supreme Court

**Appeal**

From the Eighth Judicial District Court, Clark County  
Honorable Mark Bailus

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**Appellants' Appendix to Opening Brief – Volume 3**

**(Docket 76198)**

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**RICHARD HASKIN**  
Nevada Bar No. 11592  
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*Attorneys for Appellants*

## TABLE OF CONTENTS

1. Declaration of Wesley J. Smith in Support of Motion for Summary Judgment (**AA000185 – AA000257**)

## **CERTIFICATE OF SERVICE**

### **1. Electronic Service:**

I hereby certify that on this date, the 15th day of January 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 3 (Docket 76198)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

Daniel T. Foley, Esq.  
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### **2. Traditional Service:**

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-----  
SHARA BERRY

1 11. In the First Abstract of Judgment, the Lytles specifically listed the parcel numbers  
2 of the Boulden Property and the Lamothe Property as properties to which the First Abstract of  
3 Judgment and Attorneys' Fees Judgment was to attach. Exhibit "5".

4 12. On September 2, 2016, the Lytles recorded with the Clark County Recorder's  
5 office their Second Abstract Judgment against the Rosemere LPA. This time the Lytles  
6 specifically listed the parcel number of the Lamothe Property as the property to which the  
7 Judgment was to attach. A copy of the Second Abstract of Judgment is attached hereto as  
8 Exhibit "6".  
9

10 13. On or about November 7, 2016, Mrs. Boulden entered into a purchase and sale  
11 agreement for the Boulden Property with a third party buyer (the "PSA #1"). See the  
12 Declaration of Marjorie Boulden attached hereto as Exhibit "7".

13 14. The buyer under the PSA #1 terminated Escrow on November 15, 2016 because  
14 of the recorded First Abstract of Judgment. Exhibit "7"

15 15. A second purchase and sale agreement to purchase the Boulden Property was  
16 executed on December 1, 2016 by a different third party buyer (the "PSA #2"). Exhibit "7".  
17

18 16. Plaintiffs' suit in this case contains four causes of action, Slander of Title, Quiet  
19 Title, Declaratory Relief and Injunctive Relief.

20 17. All of the facts set forth above are undisputed.

21 18. The Lytles previously filed with this Court a Request for the Court to take judicial  
22 notice of Exhibits 1 – 6 herein, to which Plaintiffs' counsel stipulated in open court on January  
23 17, 2017.  
24

25 **II.**  
**LEGAL ARGUMENT**

26  
27 **A. PURSUANT TO N.R.C.P. 56, SUMMARY JUDGMENT IS APPROPRIATE**  
**WHEN THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT**

1 N.R.C.P. 56 provides, in pertinent part, as follows:

2 (a) For claimant. A party seeking to recover upon a claim, counterclaim or  
3 crossclaim or to obtain a declaratory judgment may, at any time after the expiration of 20  
4 days from the commencement of the action or after service of a motion for summary  
5 judgment by the adverse party, move with or without supporting Affidavits for a summary  
6 judgment in the party's favor upon all or any part thereof . . . (c) Motions and proceedings  
7 thereon. The motion shall be served at least 10 days before the time fixed for the hearing. . .  
8 . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to  
9 interrogatories, and admissions on file, together with the affidavits, if any, show that there is  
10 no genuine issue as to any material fact and that the moving party is entitled to a judgment  
11 as a matter of law . . .

12 It is well established under N.R.C.P. 56 that when there remains no material issue of fact to  
13 be resolved and when it appears that the moving party is entitled to a judgment as a matter of law,  
14 Summary Judgment must be granted. Sawyer v. Sugarless Shops, 106 Nev. 265, 792 P.2d 14  
15 (1990); Hildahl v. Barnard, 106 Nev. 314, 792 P.2d 33 (1990); Leven v. Weatherstone  
16 Condominium Corp, 106 Nev. 307, 791 P.2d 450 (1990); and Wiltsie v. Baby Grand Corp., 105  
17 Nev. 291, 774 P.2d 432 (1989).

18 In the case at bar, all of the material facts and documents are undisputed. In fact  
19 at the hearing before this Court on January 19, 2017, counsel for both parties agreed that all  
20 material facts were agreed upon. Further, the Lytles' counsel submitted a Request for the Court  
21 to take Judicial Notice of Exhibits 1 – 6 herein and Plaintiffs' counsel stipulated to the same.

22 **B. THE SUMMARY JUDGMENT ORDER OBTAINED, AND DRAFTED, BY**  
23 **THE LYTLES' COUNSEL SPECIFICALLY DECLARED THAT THE**  
24 **ROSEMERE SUBDIVISION IS A LIMITED PURPOSE ASSOCIATION**  
25 **NOT GOVERNED BY NRS 116**

26 In the Rosemere PSA Litigation, the Lytles specifically sought and obtained declaratory  
27 relief to determine that the Rosemere PSA was a limited-purpose association and was not a full-  
28 fledged home owners association governed by NRS 116. See page 9, paragraph 19 of Exhibit  
29 "3".

1 In the Summary Judgment Order, prepared by the Lytles' counsel, the District Court held  
2 that the Rosemere LPA "is a limited purpose association under NRS116.1201, is not a Chapter  
3 116 'unit-owners' association,' and is relegated to only those specific duties and powers set forth  
4 in Paragraph 21 of the Original CC&Rs and NRS 116.1201." Exhibit "3" page 9, paragraph 19.

5 The specific duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS  
6 116.1201, do not in any way relate to or reference a right or ability on the part of a property  
7 owner within the Rosemere Estates Property Owners Association to record the Attorneys' Fee  
8 Judgment against the Plaintiffs' property. NRS 116.3117 does specifically provide for this broad  
9 attachment ability; however, NRS116 and NRS116.3117 do not apply to Rosemere Estates  
10 Property Owners Association pursuant to the specific language of NRS 116.1201.

11 The specific powers and duties of the Original CC&Rs and NRS 116.1201 are addressed  
12 more specifically below.

13  
14 **C. THE PLAINTIFFS ARE NOT PARTIES TO THE ROSEMERE LPA**  
15 **LITIGATION AND ARE NOT PARTIES, CREDITORS, OR OBLIGORS UNDER**  
16 **THE ATTORNEYS' FEES JUDGMENT**

17 As set forth above, the Plaintiffs were never parties in the Rosemere LPA Litigation.  
18 This fact is not in dispute. See Exhibit "2".

19 Also as set forth above, the Attorneys' Fees Judgment was issued in favor of the Lytles  
20 against only the Rosemere LPA. See Exhibit "5". There is no dispute that the Attorneys' Fee  
21 Judgment was not rendered against the Plaintiffs.

22 Finally, the Abstracts of Judgment recorded by the Lytles do not in any way name or  
23 refer to the Plaintiffs. Exhibits "5" and "6". The Lytles and their counsel simply attached cover  
24 pages to the Abstracts of Judgment that included the Plaintiffs parcel numbers.

25  
26 **D. THE CC&RS DO NOT CREATE ANY JOINT LIABILITY FOR THE**  
27 **PROPERTIES THAT ARE ENCUMBERED THEREBY, BUT INSTEAD THE**  
**CC&RS MANDATE EXACTLY THE OPPOSITE**

1 The CC&Rs of the Rosemere Subdivision specifically provide that in the event that any  
2 disputes arise between residents relating the CC&Rs that each resident has the right to initiate  
3 and prosecute their disputes **against each other**, not against the association. Paragraph 24 of the  
4 CC&R's provides:

5 Except as otherwise provided herein, Subdivider or any owner or owners of any  
6 of the lots **shall have the right to enforce any or all of the provisions of the**  
7 **covenants, conditions and restrictions upon any other owner or owners.** In  
8 order to enforce said provision or provisions, any appropriate judicial proceeding  
in law or in equity may be initiated and **prosecuted by any such lot owner or**  
**owners against any other owner or owners.** (emphasis added) Exhibit "1"

9  
10 The CC&Rs did not create an association that could enforce CC&Rs, represent home  
11 owners in actions to enforce CC&Rs, or make determinations regarding disputes. The CC&Rs  
12 instead specifically direct the owners to create a simple committee whose limited responsibilities  
13 relate only to landscaping, the perimeter wall, the entrance gate, and the private drive. See  
14 paragraph 21 of Exhibit "3". Nowhere in the CC&Rs is there any provision that even remotely  
15 hints that a judgment against one person or party may somehow be attached to non- parties'  
16 properties.  
17

18 The Lytles argue that because all 9 lots are subject to the CC&Rs that somehow any  
19 judgment against one party is enforceable against all property owners. This argument by the  
20 Lytles is a mere hopeful declaration made without any support. The Lytles point to language in  
21 the CC&RS that specifically provides that the CC&Rs are for the benefit of all 9 lots. It is true  
22 that the CC&Rs are applicable to each of the 9 lots; however, this is the most basic concept of all  
23 CC&Rs and one cannot possibly stretch "for the benefit of" to mean that non-parties to litigation  
24 are at risk if one property owner obtains a judgment against another. The Lytles' argument is  
25 nonsensical and without support. The subject language is a simple recital that states the obvious,  
26 i.e. the CC&Rs are for the benefit of the properties in the subdivision.  
27



1 The Lytles have also pointed to language in the CC&Rs that simply states that breaches  
2 of the CC&R's shall not defeat mortgages or deeds of trusts recorded against any properties.  
3 The Lytles' argument that this simple and necessary language that allows buyers of property to  
4 obtain loans to finance the purchases of their homes somehow allows a party who obtains a  
5 judgment against another to enforce that judgement against non-parties to the suit is an equally  
6 absurd interpretation and completely without support

7  
8 **E. NRS 116.3117 HAS NO APPLICATION WHATSOEVER TO THE ROSEMERE**  
9 **LPA AND CANNOT BE USED TO ATTACH THE ATTORNEYS' FEES**  
10 **JUDGMENT TO THE PLAINTIFFS' PROPERTY**

11 The only possible basis or support for the Lytles' position that the Attorneys' Fee  
12 Judgment can attach to the Plaintiffs' properties is NRS 116.3117. However, the Order Granting  
13 Summary Judgment, Exhibit "3" and NRS 116.1201(2)(a) specifically made NRS 116.3117  
14 inapplicable to the Rosemere LPA, the Lytles, and the Plaintiffs.

15 NRS 116.3117 provides that in the case of a judgment against a full-fledged home  
16 owners' association, to which NRS 116 is applicable, any judgment recorded against an NRS  
17 116 home owners' association attaches to all of the property owned by its members within the  
18 association. Again, the Lytles specifically sought and obtained the summary judgment declaring  
19 that the Rosemere LPA is **NOT** subject to NRS 116 or NRS 116.3117.

20 The Order obtained by the Lytles Granting Summary Judgment specifically provides:

21 The Association is a limited purpose association under NRS 116.1201, **is not a**  
22 **Chapter 16 "unit-owners association", and is relegated to only those specific**  
23 **duties and powers set forth in paragraph 21 of the Original CC&Rs and NRS**  
24 **116.1201.** (Emphasis added) Page 9, Paragraph 19 of Exhibit 3

25 NRS 116.1201(2) specifically provides that Chapter 116 does not apply to limited-  
26 purpose associations, with the exception of various types of agricultural and other associations  
27 that even the Lytles do not claim have any application here. Accordingly, if Chapter 116 does



1 not apply to the Rosemere LPA as judicially determined in the Rosemere LPA Litigation, then  
2 NRS 116.3117 has no application whatsoever regarding the Rosemere Homeowners'  
3 Association.

4 There are no "specific powers" set forth in 116.1201, referenced in the Paragraph 19 of  
5 the Summary Judgment Order that in any way relate to or intimate that judgments obtained  
6 against the Rosemere LPA could attach to all of the properties.

7  
8 **F. THE ABSTRACTS OF JUDGMENT ARE CLOUDS ON THE TITLES OF**  
9 **PLAINTIFFS' PROPERTY AND MUST BE ORDERED EXPUNGED**

10 By recording the Abstracts of Judgment and including the Plaintiffs' parcel numbers on  
11 the cover sheets, the Lytles have recorded liens against the Plaintiffs' property and therefore  
12 have clouded the titles to Plaintiffs' property. In re Contrevo, 123 Nev. 20, 153 P.3d 652 (2007).  
13 The Plaintiffs are unable to sell their properties due to the recordings and Mrs. Boulden has  
14 already lost one sale.

15 Based on the undisputed facts set forth above, this Court should, pursuant to NRS 40.010,  
16 declare the Lytles' recording of the Abstracts of Judgment against the Plaintiffs' property to be  
17 improper clouds on the titles and Order the Abstracts of stricken and expunged from the records  
18 of the Clark County Recorders' Office in order to remove the clouds on the titles to the  
19 Plaintiffs' Properties.

20  
21  
22 **G. THE ABSTRACTS OF JUDGMENT CONSTITUTE A SLANDER OF MS.**  
23 **BOULDEN'S TITLE**

24 Slander of title involves false and malicious communications, disparaging to one's title in  
25 land, and causing special damage. Executive Mgmt. V. Ticor Title Ins. Co. 114 Nev. 823, 963 P2d  
26 465 (1998); Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987). The Lytles knew at  
27 all relevant points in time that the Plaintiffs were not parties to the underlying case and the Lytles

1 knew that the defendant they sued in the underlying case was judicially declared to be a limited  
2 purpose association. Accordingly, the Lytles falsely and maliciously recorded the Abstracts of  
3 Judgment and thereby disparaged the Plaintiffs' property. In the case of Ms. Boulden, a sale of her  
4 property has been lost and another sale for \$10,000 less is in danger of being lost. Ms. Boulden has  
5 suffered special damages as a result of the loss of her sale.  
6

7 In addition to Ordering the Abstracts of Judgment stricken and expunged from the records  
8 of the Clark County Records' Office, this Court should find and Order that the Lytles slandered  
9 Ms. Boulden's property and award to her special damages in the form lost interest from her first  
10 proposed sale along with an award of attorneys' fees and costs.  
11

#### 12 **H. THE PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF**

13 The Nevada Supreme Court has ruled that the potential for loss of real property generally  
14 results in irreparable injury. Dixon v. Thatcher, 103 Nev. 414, 742 P.2d 1029 (1987). See also,  
15 Nevada Escrow Service, Inc. V. Crockett, 91 Nev. 201, 533 P.2d 201 (1975). Where the  
16 threatened damage is the loss of real property, the Nevada Supreme Court has held that an  
17 injunction is appropriate. Thirteen S. Ltd. v. Summit Vill., Inc., 109 Nev. 1218, 1220, 866 P.2d  
18 257, 259 (1993); Pickett v. Comanche Constr., Inc., 108Nev. 422, 426, 836 P.2d 42, 44 (1992).  
19 Clearly, the Plaintiffs are being irreparably harmed by the fact that the titles to their properties  
20 are clouded and in Ms. Boulden's case her title has been slandered.  
21

22 Plaintiffs respectfully request that this Court issue an injunction expunging and striking  
23 the two Abstracts of Judgment recorded against the Plaintiffs' property and restraining and  
24 enjoining the Lytles from taking any action in the future against the Plaintiffs or their properties  
25 based upon the Rosemere LPA Litigation or the Judgment for Attorneys' Fees.  
26

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Dated this 24<sup>th</sup> day of February 2017

**FOLEY & OAKES, PC**

**FOLEY<sup>28</sup>  
&  
OAKES**

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an  
3 employee of Foley & Oakes, PC, and that on the 24<sup>th</sup> day of February, 2017, I served the  
4 following document(s):

5 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

6 I served the above-named document(s) by the following means to the person s as listed  
7 below: [ x ] By Electronic Transmission through the Wiznet System:

8  
9 Richard E. Haskin, Esq.  
10 GIBBS, GIDEN, LOCHER, TURNER,  
11 SENET & WHITT BRODT, LLP  
12 1140 N. Town Center Drive, Suite 300  
13 Las Vegas, NV 89144

14 I declare under the penalty of perjury that the foregoing is true and correct.

15 /s/ Maren Foley  
16 An employee of FOLEY & OAKES  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# EXHIBIT 1

# EXHIBIT 1



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4<sup>th</sup> Day of July, 1974 by Burghman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 8 of Rosemere Court, a subdivision, recorded in Book 59 of Plats, Page 38, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land,

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as in said lots or PROPERTY or any part thereof that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.
2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.
3. No aerial transmission or reception of television or radio signals shall be maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.



4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.

5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.

6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.

7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.

8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.

9. Driveways for lots 1 and 9 must enter the cul-de-sac and not the entrance street.

10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.

11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.

12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.

13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.

14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose herein, drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the final grading of each lot in said parcel was completed by the Subdivider.



15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FFLA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all offsite improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lots in this subdivision shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

7 4 0 1 0 1 0 1 2 4 1

23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivisor or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees. In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

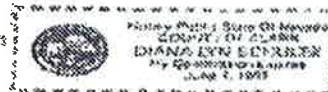
IN WITNESS WHEREOF, said Owner/Subdivisor Daughman & Turner Pension Trust of Nevada, has hereto affixed their signatures.

Date: 1/4/94 Stephen F. Turner  
Owner/Subdivisor/Trustee

Date: 1-4-94 Richard J. Daughman  
Owner/Subdivisor/Trustee

On this 4th day of JANUARY, 1994,  
before me, the undersigned, a Notary Public in  
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Daughman



(this area for official seal)

Diana Lynn Ecker  
Notary Public in and for said County and State

When Recorded Mail To:  
Daughman & Turner, Inc.  
1210 Blinn Street  
Las Vegas, NV 89102

\* of 4

CLARK COUNTY, NEVADA  
JOAN L. SMITH, RECORDER  
RECORDED AT REQUEST OF:  
DAUGHMAN & TURNER INC.  
21-01-94 14:23 PDR 4  
BOOK: 940136 WER 01801  
FEE: 10.00 RPT: 000

# EXHIBIT 2

# EXHIBIT 2



ORIGINAL

FILED

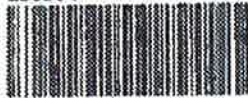
JUN 26 4 23 PM '09

*Earl D. Smith*  
CLERK OF THE COURT

1 COMP  
2 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP  
3 MICHAEL J. LEMCOOL, ESQ.  
4 Nevada Bar No. 07061  
5 3556 E. Russell Road, 2<sup>nd</sup> Floor  
6 Las Vegas, NV 89120  
7 Telephone: (702) 341-5200  
8 Facsimile: (702) 341-5300

Attorneys for Plaintiff, John Allen Lytle & Trudi Lee Lytle, as Trustees of the Lytle Trust

A-09-693497-C  
205801



DISTRICT COURT  
CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE & TRUDI LEE  
LYTLE, AS TRUSTEES  
OF THE LYTLE TRUST,

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION, and DOES 1  
through 10, inclusive

Defendants.

Case No.: A09593497

Dept. No.: XI

COMPLAINT FOR TRIAL DE  
NOVO PURSUANT TO NRS 38.330;  
DECLARATORY RELIEF; AND  
FOR A PERMANENT  
INJUNCTION

ARBITRATION EXEMPT  
(Appeal from Arbitration; Declaratory  
Relief Requested)

COMES NOW Plaintiff, the LYTLE TRUST, by and through its Trustees, John Allen Lytle and Trudi Lee Lytle, herein by and through their attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, by Michael J. Lemcool, Esq., and for its Complaint against ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (hereinafter, the "Association"), and DOES 1 through 10, inclusive, states unto this Court as follows:

1. That Plaintiff, the Lytle Trust, is the current owner of real property located in Clark County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of

Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada.

Said property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996. A true copy of said

-1-

COMPLAINT FOR TRIAL DE NOVO PURSUANT TO NRS 38.330

I:\V0755\20\0\ pleadings\Complaint-062609.wpd

RECEIVED

JUN 26 2009

CLERK OF THE COURT

AA000200

1 deed is attached hereto, and incorporated herein, as Exhibit "1".

2       2. That Defendant, the Association, at all times herein mentioned is comprised of  
3 nine (9) owners of single family lots all as more particularly described in the recorded  
4 Declaration of Covenants, Conditions and Restrictions ("CC&Rs") for the Association as  
5 recorded in the official records of the Clark County Nevada Recorder's office. Plaintiff is  
6 informed and believes, and based thereon alleges, that the original CC&Rs were recorded on  
7 January 4, 1994, before title to any lot within the Association was conveyed by deed, and are  
8 referenced in the deeds to all 9 properties located within the Association. A true copy of said  
9 recorded CC&Rs is attached hereto, and incorporated herein, as Exhibit "2". A true copy of said  
10 recorded map for Rosemere Court is attached hereto, and incorporated herein, as Exhibit "3".

11       3. The true names and capacities of Defendants sued herein as DOES 1-10,  
12 inclusive, and each of them, are presently unknown to Plaintiff, and, therefore, they are sued  
13 herein under fictitious names, and when the true names are discovered, Plaintiff will seek leave  
14 to amend this Complaint and proceedings herein to substitute the true names of said Defendants.  
15 Plaintiff is informed and believes and based thereon alleges that each of the Defendants  
16 designated herein as a DOE is negligent or responsible in some manner for the events herein  
17 referred to and negligently, carelessly, recklessly and in a manner that was grossly negligent and  
18 willful and wanton, caused damages proximately thereby to the Plaintiff as herein alleged.

19       4. That Plaintiff is, and at all times herein mentioned was, and continues to be, the  
20 record owner of the property located at 1930 Rosemere Court, Las Vegas, Nevada, which is  
21 located within the boundaries of the Association.

22       5. That since the Association is comprised of only 9 units, the Association is  
23 classified as a small planned community pursuant to NRS 116.1203, and is exempt from many of  
24 the provisions of NRS Chapter 116.

25       6. By the terms of the CC&Rs, and as a result of the mutuality of restrictive  
26 covenants running with the land for each of the 9 property owners, approval by 100% of the unit  
27 owner is required to amend the terms of the CC&Rs.

28       7. That on or about July 2, 2007, an Amended and Restated CC&Rs were proposed



1 to the members of the Association. The proposed amended CC&Rs increased the complexity,  
2 and size of the document, from 4 pages to 36 pages, and contained numerous additional  
3 restrictions upon the members.

4 8. That the proposed amended CC&Rs were not agreed to by all owners, in fact less  
5 than 67% thereof, with at least 3 owners specifically objecting to the proposed changes. A true  
6 copy of the consent signature page is attached hereto as Exhibit "4".

7 9. That despite the failure to obtain the required unanimous approval for changing  
8 the CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder  
9 for Clark County, Nevada, the Amended and Restated CC&Rs. A true copy of the Certificate of  
10 Officers used for recording said amended CC&Rs is attached hereto, and incorporated herein, as  
11 Exhibit "5".

12 10. That the Association has threatened to apply the amended CC&Rs and their  
13 restrictions against Plaintiff and its property, all to the detriment of Plaintiff.

14 11. That on or about September 26, 2008, Plaintiff brought a claim against the  
15 Association regarding the interpretation, application and enforcement of the Association's  
16 amended CC&Rs with the Nevada Real Estate Division ("NRED") as required by NRS 38.310.

17 12. That said dispute was arbitrated upon written stipulation of facts, documents, and  
18 briefs of the parties, with the non-binding decision by the Arbitrator issued on or about May 4,  
19 and June 1, 2009, and the Completion Certificate, required for filing this action, issued by the  
20 NRED on June 4, 2009. A true copy of the Completion Certificate issued June 4, 2009 is  
21 attached hereto, and incorporated herein, as Exhibit "6".

22 13. That said decision was erroneous in that, *inter alia*, it is contrary to Nevada law  
23 regarding covenants recorded against and running with the land, contrary to the terms of the  
24 originally recorded CC&Rs and, relied upon the authority to amend an Association's bylaws,  
25 pursuant to NRS 116.3102, as granting the Association the inherent authority to amend the  
26 CC&Rs upon a majority vote.

27 14. That there exists a controversy between Plaintiff and Defendant regarding the  
28 interpretation, application and enforcement of the Association's CC&Rs and the Association's

1 implementation of the amended CC&Rs, requiring a determination by this Court and entry of  
2 declaratory relief.

3 15. That prior to bringing the NRED claim, Plaintiff complained in good faith that the  
4 original governing CC&Rs did not allow for the adoption and recording of the amended CC&Rs  
5 upon less than 100% approval by the members.

6 16. That in retaliation for Plaintiff's good faith complaints, and in an effort to chill  
7 Plaintiff's rights to bring the NRED action, the Board of Directors held a special member's  
8 meeting on September 15, 2008, wherein an agenda item was to consider a civil action against  
9 Plaintiff relating to actions brought by Plaintiff against the Association.

10 17. That said retaliation conducted by the Board of Directors is prohibited by NRS  
11 116.31183.

12 18. That Plaintiff has suffered general damages including, but not limited to, damages  
13 for breach of the CC&Rs as a result of the actions by the Association and its Board of Directors  
14 in an amount in excess of Ten Thousand Dollars, the exact amount to be established at trial.

15 19. That Plaintiff has suffered special damages including, but not limited to, damages  
16 for breach of the CC&Rs, for the costs involved for the generation of construction plans,  
17 including architectural, engineering, and design, in an amount in excess of Ten Thousand  
18 Dollars, the exact amount to be established at trial.

19 20. That the original CC&Rs provide for the award of reasonable attorney fees and  
20 costs to a prevailing party.

21 WHEREFORE, Plaintiff prays that this Court:

22 A. Enter a Declaratory Judgment in favor of Plaintiff and against the Association  
23 finding and declaring that amended CC&Rs were not properly adopted by the members of the  
24 Association and are of no force and effect;

25 B. Enter a Permanent Injunction prohibiting the Association from amending the  
26 Association's CC&Rs without the approval of all property owners;

27 C. Award Plaintiff general and special damages in an amount in excess of Ten  
28 Thousand Dollars, the exact amount to be established at trial.



1 D. Award Plaintiff its attorney fees and costs for these entire proceedings in  
2 accordance with the CC&Rs and/or any applicable law; and,

3 E. Award Plaintiff such further or other relief as this Court finds is just and proper in  
4 the premises for a complete administration of justice.

5  
6 Dated this 26<sup>th</sup> day of June, 2009.

7  
8 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP

9  
10  
11 By: 

12 MICHAEL LEMCOOL, ESQ.  
13 Nevada Bar No. 07061  
14 3556 E. Russell Road, 2<sup>nd</sup> Floor  
15 Las Vegas, NV 89120  
16 (702) 341-5200

17 *Attorneys for Plaintiff, John Allen Lytle & Trudi Lee*  
18 *Lytle, as Trustees of the Lytle Trust*  
19  
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Legal Tabs Co. 1-800-322-9022

Recycled  Stock # EX-5-B

**EXHIBIT 1**

**AA000205**

APR 125.03

961115.02307  
APR 163-03-313-009

## GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Justin A. Englert, an unmarried woman

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby Grant, Bargain,  
Sell and Convey to J. Allen Lytle and Trudi L. Lytle, husband and wife  
as joint tenants

all that real property situated in the \_\_\_\_\_ County of Clark  
State of Nevada, bounded and described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof

- SUBJECT TO:
1. Taxes for the fiscal year 1996-97.
  2. Covenants, conditions, restrictions, rights, rights of way and easements now to record.

Together with all and singular the tenements, benefices and appurtenances thereto in anywise appertaining

Witness my hand and seal this \_\_\_\_\_ day of November, 1996

STATE OF NEVADA } ss.  
COUNTY OF Clark

Justin A. Englert  
Justin A. Englert

On November 6, 1996

Before

Justin A. Englert

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing and acknowledged that he (she or they) executed it.

Signature

[Signature]  
(Notary Public)

Witnessed by



J. MOORE  
Notary Public - Nevada  
Clark County  
My exp. exp. Oct. 1, 1998

RECORD NO:

24-10-2126 CTS

MAIL TAX STATEMENTS TO: Lytle 4705 Aladdin Lane  
Las Vegas, NV 89152-8601

2000 PRINTING (702) 270-2200  
Form 100

000816

AA000206



EXHIBIT "A"  
LEGAL DESCRIPTION

961115.02307

LOT NINE (9) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE  
IN BOOK 59, OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY  
RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH AND RESERVING THEREFROM AN EASEMENT FOR INGRESS AND  
EGRESS AND PUBLIC UTILITY EASEMENT AS SHOWN ON SAID MAP OF  
ROSEMERE COURT.

CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF:  
NEVADA TITLE COMPANY  
11-15-96 16:24 DB1 2  
BOOK 961115 OFFICIAL RECORDS  
FEE: 8.00 INST 82307  
RPT: 128.85

000017

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2

Legal Title Co. 1-800-322-3022

Recycled  Stock # EX-5-B

**EXHIBIT 2**

**AA000208**



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 14<sup>th</sup> Day of Jan., 1974 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 59 of Plats, Page 58, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.



4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.
5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.
6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.
7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.
8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.
9. Driveways for Lots 1 and 9 must enter the cul-de-sac and join the entrance street.
10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.
11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.
12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.
13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.
14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose hereof, "natural" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.



15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicles may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of houses on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and its related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.



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23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

Date: 1/4/94 Stephen F. Turner  
Owner/Subdivider/Trustee Stephen F. Turner  
Date: 1-4-94 Richard J. Baughman  
Owner/Subdivider/Trustee Richard J. Baughman

On this 4th day of JANUARY, 1994,  
before me, the undersigned, a Notary Public in  
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Baughman



(this area for official seal)

Diana Lyn Schultz  
Notary Public in and for said County and State

When Recorded Mail To:  
Baughman & Turner, Inc.  
1210 Hinson Street  
Las Vegas, NV 89102

4 of 4

CLARK COUNTY, NEVADA  
JOHN L. SWIFT, RECORDER  
RECORDED AT REQUEST OF:  
BAUGHMAN & TURNER, INC.  
81-04-94 14188 PER  
OFFICIAL RECORDS  
BOOK 448184 PAGE 01241  
FEE 10.00 10/11

AA000212

Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EX-8-B

**EXHIBIT 3**


**AA000213**





[illegible]

Legal Titles Co 1-800-322-3022

Recycled  Stock # EX-5-R

**EXHIBIT 4**

**AA000216**



IN WITNESS WHEREOF, the owners of record of lots 1 thru 9 of the Property, have affixed their signatures to the Rosemere Estates Property Owners Association AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND RESERVATIONS OR EASEMENTS:

1. 1860 Rosemere Ct. Ray/Evelyn Sandoval date: 7-2-07

2. 1830 Rosemere Ct. Jacquies/Linda Lamothe date: \_\_\_\_\_

3. 1831 Rosemere Ct. Jerry/Lou Hachn date: 7-2-07

4. 1861 Rosemere Ct. Sherman/Karen Kearn date: 7-2-07

5. 1901 Rosemere Ct. Gerry/Judy Zolyst date: 7-2-07

6. 1931 Rosemere Ct. Chris/Karen Korras date: 7-2-07

7. 1961 Rosemere Ct. Orville/Johnnie McCumber date: 7-2-07

8. 1960 Rosemere Ct. Carl Cantor/Marge Boulden date: \_\_\_\_\_

9. 1930 Rosemere Ct. Allen/Trudi Lytle date: \_\_\_\_\_

State of Nevada, County of Clark

On this 2nd of July, 2007, personally appeared before me, a Notary Public in and for the County of Clark, State of Nevada, duly Commissioned and sworn, the owners of lots 1 thru 9 as indicated, personally known (or proved) to me to be the persons whose names are subscribed to the above instrument, and who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.





Legal Table Co 1-800-322-3022

Recycled  Stock # EX-5-B

**EXHIBIT 5**

**AA000218**

**CERTIFICATE OF OFFICERS**

We, the undersigned, hereby certify as follows:

1. We are the duly elected and acting President and Secretary for ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation.
2. The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rosemere Estates, duly adopted by the members of the Association on July 2, 2007.
3. Members representing more than sixty-seven percent (67%) of the voting power of the Members of the Association voted in favor of the First Amendment.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of this 2nd day of July, 2007.  
June

ROSEMERE ESTATES PROPERTY  
OWNERS ASSOCIATION

By: [Signature]

Its: President

By: [Signature]

Its: Secretary

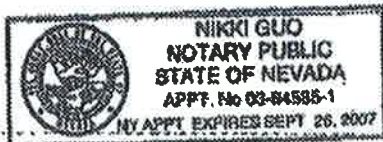
STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

On this 2 day of June, 2007, before me the undersigned Notary Public, in and for said County and State, personally appeared Gerry Zlot, Sherman Keat, known or proved to me to be the President of Rosemere Estates Property Owners Association, who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein provided.

[Signature]  
NOTARY PUBLIC



Legal Tams Co. 1-800-321-3022

Recycled  Stock # N-EX-5-45

**EXHIBIT 6**

**AA000220**





JIM GIBBONS  
Governor

LINDSAY WAITE  
Ombudsman

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION

OFFICE OF THE OMBUDSMAN FOR OWNERS IN  
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS  
CICombudsman@red.state.nv.us  
http://www.rsd.state.nv.us  
COMPLETION CERTIFICATE

DIANNE CORNWALL  
Director

GAIL J. ANDERSON  
Administrator

June 4, 2009

Thomas D. Harper, Esq.  
606 South Ninth Street  
Las Vegas, Nevada 89101

Jason D. Smith, Esq.  
400 South Fourth Street 300  
Las Vegas, Nevada 89101

Alternative Dispute Resolution (ADR) Control # 09-33 Non-Binding Arbitration  
Claimant(s): Lytle Trust, John Allen Lytle & Trude Lee Lytle, Trustees c/o Thomas D. Harper, Esq.  
Respondent(s): Rosemere Estates Property Owners' Association c/o Jason D. Smith, Esq.

This notarized document will serve as a certificate for the Claimant(s) certifying they have completed the Alternative Dispute Resolution process as required by NRS 38.


  
Gordon Milden  
Administrative Assistant III

cc: Ara H. Shinnian, Esq., Arbitrator

STATE OF NEVADA  
COUNTY OF CLARK

On June 4, 2009, Gordon Milden, who is personally known to me or proven to me to be the person whose name is subscribed to this instrument, appeared before me acknowledging that he executed same.



  
Victoria G. Broadbent  
Notary Public, State of Nevada

MY COMMISSION EXPIRES: 6/1/10

2501 E. Sahara Avenue, Suite 202 • Las Vegas, Nevada 89104-4137  
(702) 486-4480 • Fax (702) 486-4520 • Toll Free 1-877-829-9907

# EXHIBIT 3

# EXHIBIT 3



  
CLERK OF THE COURT

1 OGSJ  
2 Richard E. Haskin, Esq.  
3 Nevada State Bar # 11592  
4 **GIBBS GIDEN LOCHER TURNER**  
5 **SENET & WITTBRODT LLP**  
6 7450 Arroyo Crossing Parkway, Suite 270  
7 Las Vegas, Nevada 89113-4050  
8 (702) 836-9800

9 Attorneys for Plaintiff  
10 JOHN ALLEN LYTLE and  
11 TRUDI LEE LYTLE  
12 as Trustees of the Lytle Trust

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,  
16 as Trustees of the Lytle Trust,

17 Plaintiffs,

18 v.

19 ROSEMERE ESTATES PROPERTY OWNERS'  
20 ASSOCIATION; and DOES 1 through 10,  
21 inclusive,

22 Defendants.

CASE NO. A-09-593497-C  
Dept.: XII

**ORDER GRANTING PLAINTIFFS JOHN  
ALLEN LYTLE AND TRUDI LEE  
LYTLE'S MOTION FOR SUMMARY  
JUDGMENT**

23 PLEASE TAKE NOTICE that on April 1, 2013, the Court heard Plaintiff JOHN ALLEN  
24 LYTLE and TRUDI LYTLE, as TRUSTEES OF THE LYTLE TRUST's ("Plaintiff"), Motion for  
25 Summary Judgment, and ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's (the  
26 "Association") Motion for Summary Judgment. After considering the motions, oppositions and  
27 replies thereto, the declarations, affidavits, and evidence submitted therewith, and hearing oral  
28 argument thereon, the Court grants Plaintiff JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, as  
TRUSTEES OF THE LYTLE TRUST's Motion for Summary Judgment. The Court further denies  
ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's Motion for Summary  
Judgment.

///

///

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10/10/13

Pursuant to NRCP §6(e), the Court's findings with respect to the undisputed material facts and legal determinations on which the court granted summary judgment are set forth herein and as follows:

**FINDINGS OF UNDISPUTED MATERIAL FACTS**

1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemore Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs.")

2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

3. The Original CC&Rs create a "property owners' committee" with very limited maintenance duties over specific common area items (exterior walls and planters, entrance way and planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the Original CC&Rs.

4. The Original CC&Rs then grant each homeowner, and not any homeowners' association, the power to enforce the Original CC&Rs against one another.

5. Among other things, there are no rental or pet restrictions or construction deadline in the Original CC&Rs.

6. The Developer then sold the nine (9) undeveloped lots between May 1994 and July 1996.

7. The first of the lots was conveyed by the Developer under the Original CC&Rs on May 19, 1994.

8. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lytles"), purchased a Rosemore Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995.

9. The Lytles later transferred Plaintiff's Property to Plaintiff.

///

1           10. The Lytles purchased the property with the sole purpose of building a custom home  
2 thereon.

3           11. The primary reasons that the Lytles selected the property were the limited restrictions  
4 contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally  
5 defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

6           12. Further, the Lytles could not meet any restrictive deadline on construction, so  
7 Plaintiff purposefully selected in a community with no construction deadline.

8           13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff  
9 had developed preliminary plans that were approved by the Developer.

10           14. Sometime after Plaintiff purchased its property, a group of property owners formed  
11 the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of  
12 maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

13           15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of  
14 Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners'  
15 committee and named it "Rosemere Estates Property Owners Association."

16           16. The property owners recognized that the Association did not have powers granted to  
17 it other than those granted by the Original CC&Rs. For example, the Association had no power to  
18 assess, fine, issue rules and regulations, or undertake other actions commonly reserved for  
19 homeowners' associations.

20           17. In 1997, some of the property owners prepared and distributed a proposed set of  
21 amended CC&Rs, which proposed to empower the Association and drastically increase the scope of  
22 the Original CC&Rs.

23           18. The property owners determined that unanimous consent was required to amend the  
24 Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs  
25 were not adopted.

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28 ///

1           19. At a February 23, 2004 Association meeting, two Board members presented a set of  
2 proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within  
3 the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations,  
4 prohibitions against "unsightly articles," and other use restrictions and obligations.

5           20. The proposed amended CC&Rs were not unanimously approved at the February 23,  
6 2004 meeting and, therefore, not adopted.

7           21. Without warning, consultation or advisement to the Rosemere property owners, on or  
8 about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by  
9 the Board

10           22. This third set of proposed amended CC&Rs increased the complexity, scope, and size  
11 of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the  
12 property owners.

13           23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the  
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated  
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a  
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February  
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"  
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated  
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the  
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on  
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration  
22 and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions  
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24           24. The binders containing all of the foregoing documents were presented to each  
25 homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of  
26 Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for  
27 amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada  
28 Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed



1 to conform to NRS Chapter 116 "without complying with the procedural requirements generally  
2 applicable to the adoption of an amendment..." and (5) all of the changes made were under NRS  
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs  
5 and changed the very nature of property ownership within Rosemere Estates. The Amended  
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the  
7 powers, rights, and duties of the Association, a section entitled "Restrictions on Use, Alienation,  
8 and Occupancy," pet restrictions, parking restrictions, lease restrictions, the establishment of a  
9 Design Review Committee with unfettered discretion, and a new and expansive definition of  
10 "nuisance."

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,  
13 offensive, or unlawful by the Board of Directors may be  
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found  
16 off a leash to immediately be turned over to animal control, and any animal causing a "nuisance," a  
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days  
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would  
20 require Plaintiff to complete the construction of the custom home on the lot within a mere 60 days  
21 of receipt of approval from the proposed Design Review Committee—something never envisioned  
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff's property is the only Property subject to this restriction as Plaintiff's  
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined  
26 \$50.00 per day for failure to comply with this impossible deadline.

27 ///

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31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within the Board's discretion, (2) based on Design Review Guidelines that have never been published, and (3) not subject "to any objective standards of reasonableness."

32. After the Board presented the proposed Amended CC&Rs to the owners, together with the written misrepresentations set forth above, the Board did not provide the owners with a reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice. Rather, the Board insisted that the amendment was "a done deal."

33. Despite the misrepresentations introducing the governing documents, the vast expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that the amendment was a "done deal," the Board asked the property owners to sign documents acknowledging their approval, with a notary retained by the Board present to verify signatures.

34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007 meeting. In fact, only five of the property owners approved, with three property owners who refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not counted by the Board.

35. Despite the failure to obtain the required unanimous approval for amending the Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the office of the Recorder for Clark County, Nevada.

## 11. LEGAL DETERMINATIONS

### A. Summary Judgment Standard

1. Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP Rule 56(c).

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains]' and that the moving party is entitled to judgment as a matter of law." *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting NRCP 56(c).)

3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

**B. Plaintiff Is Entitled To Summary Judgment In Its Favor**

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

**C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116**

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

**Organization of unit-owners' association.**

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

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq.*

///

///

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1           9. There is a strong public policy in protecting property owners in common-interest  
2 communities against any alteration of the burdens of character of the community. Rest. 3d,  
3 Property - Servitudes, § 6.10, Comments.<sup>1</sup>

4           10. A buyer is said to have "record notice" of the recorded covenants, conditions and  
5 restrictions on the property, thus the mandate that the homeowners' association be formed prior to  
6 conveyance of the first unit in the community, together with the requirement that the CC&Rs be  
7 recorded. NRS 116.3101.

8           11. Here, no Chapter 116 unit-owners' association was formed because no association  
9 was organized prior to the date the first unit was conveyed. The Association was not formed until  
10 February 25, 1997, more than three years after Rosemere Estates was formed and the Original  
11 CC&Rs were recorded.

12           12. Further, the Association did not have any powers beyond those of the "property  
13 owners committee" designated in the Original CC&Rs—simply to care for the landscaping and  
14 other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

15           13. The Original CC&Rs provide for the creation of a "property owners' committee,"  
16 which is a "limited purpose association," as defined by the 1994 version of NRS 116.1201, then in  
17 effect. That provision provided that Chapter 116 did not apply to "Associations created for the  
18 limited purpose of maintaining . . . [t]he landscape of the common elements of a common interest  
19 community. . . ."

20           14. In 1997, Rosemere Estates' owners formed the Association for the express and  
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original  
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the  
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability  
24 insurance. The intent was never to form a unit-owners' association within the meaning of Chapter  
25 116.

26 ///

27  
28 <sup>1</sup> "Property owners in common-interest communities are protected against amendments that unfairly  
change the allocation of burdens in the community or change the character of the community." Rest.  
Law 3d, Property - Servitudes, § 6.10, Comments.



15. A limited purpose association cannot 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." NRS 116.1201(2)(a)(5). There is no question that Rosemere Estates was not "created for a rural agricultural residential common-interest community," hence the Association cannot enforce "any restrictions concerning the use of units by the units' owners...."

16. In reviewing the language of the Original CC&Rs, the Court must strictly construe the covenants thereto and any "doubt will be resolved in favor of the unrestricted use of the property...." *Dickstein v. Williams*, 93 Nev. 603, 608, 571 P.2d 1169 (1977); see also, e.g., *South Shore Homes Ass'n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordelon v. Homeowners Ass'n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*, 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

17. In keeping with this well-settled and general principle, the Court construes the Original CC&Rs pursuant to the plain meaning of the language therein. Nowhere is there reference in the Original CC&Rs to a "unit-owners' association" or "homeowners association." Rather, the Developer created a 116.1201 *limited purpose association* termed a "property owners' committee," and the Developer provided that committee with limited, rather than comprehensive, duties and powers.

18. Consistent with the absence of a governing body, e.g. unit-owners' association, delegated with the duty to enforce the Original CC&Rs, the Developer provided each homeowner the right to independently enforce the Original CC&Rs against one another.

19. The Association is a limited purpose association under NRS 116.1201, is not a Chapter 116 "unit-owners' association," and is relegated to only those specific duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS 116.1201.

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D. The CC&Rs Can Only Be Amended By Unanimous Consent of All Property Owners

20 Because Rosemere Estates is a limited purpose association under NRS 116.1201, NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not apply here.

21. The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land. Accordingly, under long-standing and well-established common law, the Original CC&Rs are binding, and not subject to amendment, absent a new conveyance properly executed by all Rosemere property owners and in conformance with all of the other legal requirements for a valid transfer of an interest in real property. In short, there can be no valid amendment of the Original CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

22. There has never been unanimous consent to amend the Original CC&Rs and there has never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically, unanimous consent was not received in 2007, when the invalid Amended CC&Rs were wrongfully recorded by the Association.

23. Even if the provisions related to amendment within Chapter 116 were to apply, the Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments that require unanimous unit owner approval (as opposed to majority or supermajority approval). In particular, a "change of use" always requires unanimous approval.

NRS 116.2117 provides, in pertinent part:

1. . . .the declaration, including any plats, 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, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

\* \* \*

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

5 (Emphasis added.)

6 24 For the reasons set forth above, the Association's counter-motion for summary judgment is without merit.

8 **III. JUDGMENT**

9 IT IS HEREBY ADJUDGED AND DECREED:

10 **A. Declaration**

11 25. Pursuant to the foregoing, this Court declares and orders that the Amended CC&Rs were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect. This Order, may be recorded in the Office of the Clark County Recorder's Office by any party and, once recorded, shall be sufficient notice of same.

15 **B. Injunctive Relief**

16 26. The Association is permanently enjoined from recording and enforcing the Amended CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court days after the date of Notice of Entry of this Order.

20 **C. Plaintiff's Monetary Damages**

21 27. Plaintiff's monetary damages are subject to a prove-up hearing, and Plaintiff is to submit a separate motion regarding the same.

23 **D. The Association's Motion For Summary Judgment**

24 28. The Association's Motion for Summary Judgment is denied.

25 **E. Costs**

26 29. Plaintiff is deemed the prevailing party in this action. Plaintiff is directed to prepare, file and serve a Memorandum of Costs.

28 ///




**F. Attorneys' Fees**

30. Plaintiff is deemed the prevailing party in this action. Any motion for attorney fees will be addressed separately by the Court.

Dated this 11 day of July, 2013.

  
MICHELLE LEAVITT, DISTRICT COURT JUDGE

Prepared and submitted by:

  
Richard E. Haskin, Esq.  
Gibbs, Giden, Locher, Turner, Senei & Wittbrodt LLP  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113  
Attorney for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE  
as Trustees of the Lytle Trust

# EXHIBIT 4

# EXHIBIT 4

  
CLERK OF THE COURT

1 **ORDER**

Richard E. Haskin, Esq.

2 Nevada State Bar # 11592

Bryan M. Gragg, Esq.

3 Nevada State Bar # 13134

**GIBBS GIDEN LOCHER TURNER**

4 **SENET & WITTBRODT LLP**

7450 Arroyo Crossing Parkway, Suite 270

5 Las Vegas, Nevada 89113-4059

(702) 836-9800

6 Attorneys for Plaintiff

7 **JOHN ALLEN LYTLE and**

**TRUDI LEE LYTLE**

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10  
11 **JOHN ALLEN LYTLE and TRUDI LEE LYTLE,**  
as Trustees of the Lytle Trust,

12 Plaintiffs,

13 v.

14 **ROSEMERE ESTATES PROPERTY OWNERS'**  
15 **ASSOCIATION; and DOES 1 through 10,**  
inclusive,

16 Defendants.

CASE NO. A-09-593497-C  
Dept.: XII

**ORDER ON PLAINTIFFS JOHN ALLEN  
LYTLE AND TRUDI LEE LYTLE'S  
MOTION FOR ATTORNEYS' FEES**

17  
18  
19 On May 2, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for  
20 Attorneys' Fees came on regularly for hearing, the Honorable Michelle Leavitt presiding. Plaintiffs  
21 appeared through counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt,  
22 LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association  
23 ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance  
24 at the hearing.

25 Having considered the moving papers, the affidavits and declarations filed concurrently  
26 therewith, and the exhibits attached thereto, the Court finds that as the prevailing party, Plaintiffs are  
27 entitled to an award of attorney fees under the Original CC&Rs, the Amended CC&Rs and NRS  
28 § 116.4117.

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The plain terms of the Original CC&Rs authorize an award of fees in favor of Plaintiffs. As the Original CC&Rs provide, in pertinent part:

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions, and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any lot owners or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

See Original CC&Rs, §§ 24, 25. Plaintiffs prevailed in enforcing the Original CC&Rs (by obtaining a declaration from this Court that the Amended CC&Rs are invalid and that Defendant did not have the powers it claimed to have) and prevailed in restraining the violation of the Original CC&Rs (by obtaining injunctive relief prohibiting Defendant from enforcing the Amended CC&Rs and requiring public notice of their revocation). Accordingly, Plaintiffs are entitled to an award of attorney fees, pursuant to the terms of the Original CC&Rs.

Further, the Amended CC&Rs also contain a mandatory fee shifting provision entitling Plaintiffs to an award of attorney fees. As provided in the Amended CC&Rs, Section 16.1(a):

16.1(a) In the event the Association, or any Owner shall commence litigation or arbitration to enforce any of the covenants, conditions, restrictions or reservations contained in the Governing Documents, the prevailing party in such litigation or arbitration shall be entitled to costs of suit and such attorney's fees as the Court or arbitrator may adjudge reasonable and proper.

See Amended CC&Rs, § 16.1(a).

A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406, 933 P.2d 1154, 1162.

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Finally, Plaintiff are also entitled to an award of attorney fees pursuant to NRS 116.4117. NRS 116.4117 provides as follows:

1. 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 may bring a civil action for damages or other appropriate relief. . .
4. The court may award reasonable attorney's fees to the prevailing party.

The term "damages" in the phrase "suffering actual damages" refers to damages in the general sense of specifically provable injury, loss, or harm rather than the specific sense of economic damages. Whether quantifiable as a monetary loss or not, Plaintiffs suffered an injury, loss or harm as a result of the Association's actions. Accordingly, under the statute they had the right to bring a civil action for damages or other appropriate relief and, having, prevailed thereon may be awarded their reasonable attorney fees as the prevailing party.

Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Brunzell v Golden Gate Nat'l Bank* (1969) 85 Nev. 348, 349, 455 P.2d 31, 33. The Court considered all of the factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered and applied:

1. The qualities of the advocate, i.e. his ability, training and experience;
2. The character of the work done, it's difficulty, intricacy, importance, time and skill required;
3. The work actually performed by the attorney;
4. The result, i.e. whether the attorney was successful in achieving a result of the client.

The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs' attorneys, as set forth in the various affidavits and declarations presented to this Court with the moving papers. The Court finds that Plaintiffs are entitled to an award of \$297,072.66 in attorneys' fees as the prevailing party in this action, having achieved the revocation of the Amended CC&Rs and removing the cloud on title to their property.

///

///

GIBBS GIDEN LOCHER TURNER SENEI & WITTBRODT

Therefore, the Court orders as follows:

IT IS ORDERED that Plaintiffs' Motion for Attorneys' Fees is granted, and Plaintiffs are awarded \$297,072.66 in attorneys' fees.

IT IS SO ORDERED this 25 day of May, 2016.



HONORABLE MICHELLE LEAVITT

District Court Judge, Dept. XII  
J.L.

DATED: May 19, 2016

GIBBS GIDEN LOCHER TURNER  
SENEI & WITTBRODT LLP

By: 

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7450 Aerdyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE



# EXHIBIT 5

# EXHIBIT 5

RECORDING REQUESTED BY

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

Richard E. Haskin, Esq.  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP  
7450 Arroyo Crossing Pkwy., Ste. 270  
Las Vegas, Nevada 89113

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Inet #: 20160818-0001198

Fees: \$15.00

N/C Fee: \$0.00

08/18/2016 11:51:34 AM

Receipt #: 2648915

Requestor:

NATIONWIDE LEGAL

Recorded By: AMI Pgs: 3

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CLARK COUNTY RECORDER

THIS SPACE FOR RECORDER'S USE

APN No.: 163-03-313-001

APN No.: 163-03-313-002 ←

APN No.: 163-03-313-003

APN No.: 163-03-313-004

APN No.: 163-03-313-005

APN No.: 163-03-313-006

APN No.: 163-03-313-007

APN No.: 163-03-313-008

## ABSTRACT OF JUDGMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

(Govt. Code 27361.6)

(Additional recording fee applies)

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Description: Clark, NV Document--Year, Date, DocID 2016, 818, 1198 Page: 1 of 3

Order: Judgment Comment:

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CLERK OF THE COURT

1 Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
2 Timothy P. Elson, Esq.  
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5 (702) 836-9800

6 Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
7 TRUDI LEE LYTLE

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,  
11 as Trustees of the Lytle Trust,

CASE NO. A-09-593497-C  
Dept.: XII

12 Plaintiff.

**ABSTRACT OF JUDGMENT**

13 v.

14 ROSEMERE ESTATES PROPERTY OWNERS'  
ASSOCIATION; and DOES 1 through 10,  
15 inclusive,

16 Defendants.

17  
18 In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was  
19 entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the  
20 Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS'  
21 ASSOCIATION ("Defendant").

22 On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the  
23 amount of \$297,072.66 in favor of Plaintiff and against Defendant.

24 On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages  
25 Following Prove-Up Hearing against Defendant in the amount of \$63,566.93.

26 Finally, on July 22, 2016, the District Court entered an Order Awarding Plaintiffs' Costs  
27 against Defendant in the amount of \$559.00.

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Pursuant to the foregoing, the total amount of the Judgment, plus attorneys' fees and costs is \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually until the Judgment is satisfied.


I certify that the foregoing is a correct abstract of the judgment rendered in the above action in my Court.

DATED: 8/15/10

  
DISTRICT COURT JUDGE  
R.L.

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By:   
Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE  
LYTLE

# EXHIBIT 6

# EXHIBIT 6

RECORDING REQUESTED BY  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

Richard E. Haskin, Esq.  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP  
7450 Arroyo Crossing Pkwy., Ste 270  
Las Vegas, Nevada 89113

(7)

Inet #: 20160902-0002684

Fee: \$19.00

N/C Fee: \$0.00

09/02/2018 04:13:56 PM

Receipt #: 2854037

Requestor:

NATIONWIDE LEGAL

Recorded By: ANH Pgs: 3

DEBBIE CONWAY

THIS SPACE FOR RECORDER'S USE ☐ CLARK COUNTY RECORDER

APN No.: 163-03-313-002

## ABSTRACT OF JUDGMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Govt. Code 27361.6)  
(Additional recording fee applies)

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*Adam L. Johnson*  
CLERK OF THE COURT

1 Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
2 Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
3 GIBBS GIDEN LOCHER TURNER  
SENET & WITTRODT LLP  
4 7450 Arroyo Crossing Parkway, Suite 170  
Las Vegas, Nevada 89113-4059  
5 (702) 836-9200

6 Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
7 TRUDI LEE LYTLE

8  
9 DISTRICT COURT  
CLARK COUNTY, NEVADA

10 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,  
11 as Trustees of the Lytle Trust,

CASE NO. A-09-593497-C  
Dept.: XII

12 Plaintiff,

ABSTRACT OF JUDGMENT

13 v.

14 ROSEMERIE ESTATES PROPERTY OWNERS'  
ASSOCIATION; and DOES 1 through 10,  
15 inclusive,

16 Defendants.

17  
18 In the District Court of Clark County, State of Nevada, on July 29, 2011, a Judgment was  
19 entered in favor of Plaintiff's JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the  
20 Lytle Trust ("Plaintiff") and against Defendant ROSEMERIE ESTATES PROPERTY OWNERS'  
21 ASSOCIATION ("Defendant").

22 On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the  
23 amount of \$297,072.66 in favor of Plaintiff and against Defendant.

24 On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages  
25 Following Prove-Up Hearing against Defendant in the amount of \$63,565.93.

26 Finally, on July 12, 2016, the District Court entered an Order Awarding Plaintiffs' Costs  
27 against Defendant in the amount of \$599.09.

28 //

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1300001 :



Pursuant to the foregoing, the total amount of the judgment, plus attorneys' fees and costs is \$381,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually until the judgment is satisfied.


I certify that the foregoing is a correct abstract of the judgment rendered in the above action in my Court.

DATED: 8/15/10

  
DISTRICT COURT JUDGE

Respectfully requested by:

GIBBS GIBBS LOCHER TURNER  
SENEZ & WITTBRODT LLP

By:   
Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE  
LYTLE

DECLARATION OF MARJORIE B. BOULDEN

I, Marjorie B Boulden, declare under penalty of perjury that the foregoing is true and correct:

1. I own the residence located at 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Residence").

2. On November 7, 2016, I entered into a purchase and sale agreement for the Residence with a third party buyer (the "PSA #1").

3. The buyer in the PSA #1 terminated the escrow November 15, 2016 because of the Abstract of Judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence.

4. On December 1, 2016, I entered into another purchase and sale agreement for the Residence with a different third party buyer (the "PSA #2").

5. The PSA #2 is scheduled to close escrow on January 20, 2017. The buyer in the PSA #2 has been informed of the \$361,238.59 judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence, and that buyer will not agree to pay an additional \$361,238.59 to acquire the Residence. In turn, I cannot agree to pay \$361,238.59 from the sale proceeds of the Residence to the Lytles.

6. The Lytles have effectively slandered and clouded the title to the Residence.

DATED this 16 day of January 2017

  
MARJORIE B. BOULDEN

# EXHIBIT 7

# EXHIBIT 7

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# EXHIBIT A

# EXHIBIT A



# COUNTER OFFER

NO. 3

ATTENTION: Alan W Osta (Agent) COMPANY: Realty Group Preferred (Name)

The ☐ Offer ☒ Counter Offer made by: ☐ Seller ☒ Buyer Robert & Yvonne Dismen (Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1920 Rosemary Ct Las Vegas  
dated: November 28th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Buyer may perform any and all inspections.
2. Home is being sold as is.
3. Seller will make no repairs or modifications as a result of any inspections.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1,2,3

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 5 ☐ AM ☒ PM on (month) December (day) 1st, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/30/2016

Authentication

Monique S Boulden, Trustee

☐ Buyer ☒ Seller Monique S Boulden, Trustee Signature

Time:                     

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

☒ accepts the Counter Offer;

☐ accepts the terms of this Counter Offer subject to the attached Counter Offer No.                     ; or

☐ rejects the Counter Offer.

Date: 12-1-16

☒ Buyer ☐ Seller Robert S Dismen Signature

Time: 10:30am

☒ Buyer ☐ Seller Yvonne A Dismen Signature

Counter Offer Rev. 5/12

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Instantaneous

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# COUNTER OFFER

NO. 2

ATTENTION: Kenneth Lehman COMPANY: Luxury Homes of Las Vegas  
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Marjorie B. Boulden Trust  
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 1960 ROSEHURST CT LAS VEGAS  
dated: November 28th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Seller agrees to extend the expiration date of Counter Offer 1 to coincide with the date of this counter offer #2.
2. Sales price to be \$550,000.00.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No.       

EXPIRATION: ☐ Buyer ☒ Seller must respond by: 5 ☐ AM ☒ PM on (month) November  
(day) 30th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☒ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/30/2016 ☒ Buyer ☐ Seller Robert A. Boudon Signature

Time: 2 P.M. ☒ Buyer ☐ Seller Trudine A. Boudon Signature

The undersigned ☐ Buyer ☒ Seller hereby:

☒ accepts the Counter Offer;  
☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. 3 or  
☐ rejects the Counter Offer.

Date: 11/30/2016 Authentication: Marjorie B. Boulden, Trustee  
☐ Buyer ☒ Seller Marjorie B. Boulden, Trustee Signature

Time:        ☐ Buyer ☐ Seller Signature

Counter Offer Rev. 3/12

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# COUNTER OFFER

NO. 1

ATTENTION: Alan W Cota COMPANY: Realty Group Preferred  
(Agent) (Name)

The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Robert & Yvonne Dismar  
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1960 Rosemary Ct Las Vegas  
dated: November 27th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Sales price shall be \$595,000.
2. Appraisal contingency shall be removed in 21 days.
3. Financing contingency shall be removed in 30 days.
4. Escrow and Title shall be Chicago Title - Kathe Stevens,

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 5 ☐ AM ☒ PM on (month) November,  
(day) 29th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/28/2016

Margaret B Boulden, Trustee  
☐ Buyer ☒ Seller Margaret B Boulden, Trustee Signature

Time:       

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

       accepts the Counter Offer;  
       accepts the terms of this Counter Offer subject to the attached Counter Offer No.       ; or  
       rejects the Counter Offer.

Date:       

☒ Buyer ☐ Seller Robert Z Dismar Signature

Time:       

☒ Buyer ☐ Seller Yvonne A Dismar Signature

Counter Offer Rev. 5/12

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## RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 11/27/16

Robert E. Dismen Yvonne A. Dismen ("Buyer"), hereby offers to purchase  
1960 ROSEBERRY CT ("Property"), within the  
 city or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,  
 Zip 89117, A.P.N. # 183-03-313-008 for the purchase price of \$ 550,000.00  
 ( Five Hundred Fifty Thousand dollars) ("Purchase Price") on the terms and conditions  
 contained herein; BUYER ☒ does OR ☐ does not intend to occupy the Property as a residence.

### Buyer's Offer

#### 1. FINANCIAL TERMS & CONDITIONS:

\$ 15,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer OR ☒ wired to Escrow. Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, OR ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada, punishable by up to four years in prison and a \$5,000 fine to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$                      B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date)                     . The additional deposit ☐ will OR ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$ 440,000.00 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:  
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)                     .

\$                      D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):  
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)                     .  
 Interest: ☐ Fixed rate,                      years OR ☐ Adjustable Rate,                      years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$                      E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.

\$ 95,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

\$ 550,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

#### 2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard financial credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Dismen Yvonne A. Dismen

BUYER(S) INITIALS: [Signature]

Property Address: 1960 ROSEBERRY CT

SELLER(S) INITIALS: [Signature]

Rev. 05/16

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Page 1 of 10

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Instantly [Signature]

applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

**B. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 30 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. If this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 45 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. If this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.

**D. CASH PURCHASE:** Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

**3. SALE OF OTHER PROPERTY:** This Agreement ☒ is not ~~OR~~ ☐ is contingent upon the sale (and closing) of another property which address is \_\_\_\_\_  
Said Property ☐ is ☐ is not currently listed ~~OR~~ ☐ is presently in escrow with \_\_\_\_\_  
Escrow Number: \_\_\_\_\_ Proposed Closing Date: \_\_\_\_\_

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

**4. FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliances(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s).

The following additional items of personal property: as presented in MLS Listing #1834412 on 11/19/16  
at 11:26a.m., built-in refrigerator.

### 5. ESCROW:

**A. OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Nevada Title Company title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Michelle Dowell ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Dixon Yvonne A. Dixon  
Property Address: 1960 ROMANUS CT

BUYER(S) INITIALS: [Signature]  
SELLER(S) INITIALS: [Signature]

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Page 2 of 10

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Instanoh: 100



1 the Escrow Number.

2  
3 **B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of  
4 this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

5  
6 **C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before:  
7 01/20/17 (date). If the designated date falls on a weekend or holiday, COE shall be the next business  
8 day.

9  
10 **D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW  
11 HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction  
12 and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this  
13 information to the Internal Revenue Service after COE in the manner prescribed by federal law.

14  
15 **6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and  
16 marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase  
17 price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate  
18 marketable title or its equivalent and shall be paid for as set forth in Section 2(A).

19  
20 **7. BUYER'S DUE DILIGENCE:** Buyer's obligation is not conditioned on the Buyer's Due Diligence as  
21 defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative,  
22 Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 15 calendar days from Acceptance (as  
23 defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence.  
24 Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's  
25 investigations and through the close of escrow.

26  
27 **A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such  
28 action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to,  
29 whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise  
30 affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or  
31 hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other  
32 concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/  
33 non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning,  
34 water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors  
35 or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors.  
36 Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at  
37 Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not  
38 apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross  
39 negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to  
40 consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools;  
41 proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire  
42 protection; other governmental services; existing and proposed transportation, construction and development; noise or odor  
43 from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection  
44 report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and  
45 telephone number of the inspector.

46  
47 **B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole  
48 discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence  
49 Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller,  
50 whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of  
51 further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in  
52 writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

53  
54 **C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential  
55 Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as  
56 provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

57 [Signature] Buyer's Initials [Signature] Buyer's Initials

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Dismann Yvonne A. Dismann

Property Address: 1560 ROSEBERRY CT

Rev. 03/16

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BUYER(S) INITIALS: [Signature]

SELLER(S) INITIALS: [Signature]

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