

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.: 77007

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

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May 16 2019 12:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal

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

Appellants' Appendix to Opening Brief – Volume 6

(Docket 77007)

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1. Opposition to Motion for Summary Judgment (AA000390 – AA000482)

CERTIFICATE OF SERVICE

1. Electronic Service:

I hereby certify that on this date, the 16th day of May 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 6 (Docket 77007)** 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:

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SHARA BERRY

(m) The Board may appoint a committee of not less than three (3) members to conduct hearings on violations and to impose fines and other sanctions pursuant to this Section 14.2. If the hearing is held before a committee appointed by the Board, then the committee must, within seven (7) days after the conclusion of the hearing, make a written recommendation to the Board on what action the Board should take with respect to the violation. Upon receipt of the recommendation from the committee, the Board must act upon the recommendation.

12.3 Adoption of Rules: The Board of Directors may adopt reasonable Rules regarding the use and occupancy of Lots as it affects the Common Elements and the activities of Owners and Invitees.

ARTICLE 13 INSURANCE

13.1 Coverage: To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described in this Article will not be maintained, the Board of Directors shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners at their respective last known addresses.

13.2 Property Insurance Coverage:

(a) Coverage. Property insurance will cover:

(i) The Common Elements, and Improvements thereon, insuring against all risks of direct physical loss commonly insured against. Property insurance coverage specifically excludes the Lots for which an Owner is required to obtain insurance pursuant to Section 13.6 below.

(ii) All personal property owned by the Association.

(b) Amounts. The insurance will be for an amount (after application of any deductions) equal to one hundred percent (100%) of the actual replacement value of the covered items at the time the insurance is purchased and at each renewal date, excluding the cost of land, foundations, or excavations.

The Board of Directors is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the insured items, and the cost of such appraisals shall be a Common Expense.

(c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured.

(d) Other Provisions. Insurance policies required by this Section and to the extent available shall provide that:

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(i) Each Owner is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

(ii) The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner.

(iii) An act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner which covers the same risk covered by the policy, the Association's policy provides primary insurance.

(v) Losses must be adjusted with the Association.

(vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and otherwise to the Association, but, in any case, it is to be held in trust for each Owner and the Owner's mortgagee.

(vii) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, to each Owner and to each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(viii) The name of the insured shall be substantially as follows:

Rosemere Estates Property Owners Association for the use and benefit of the individual Owners.

(ix) Such policy of insurance shall contain a standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Property is located, and which appropriately names FNMA and FHLMC as an insured if FNMA and FHLMC is a holder or insurer of first mortgages on Residences within the Property.

13.3 Flood Insurance: If the Property or portions thereof are identified as being within a flood hazard area and if flood hazard insurance is available under the National Flood Insurance Program, the Association shall be required to acquire such insurance, as a Common Expense, in an amount not less than: (a) the maximum coverage available; or (b) one hundred percent (100%) of the replacement costs of all buildings and other property. The maximum deductible allowed with such policy shall be the lesser of five thousand dollars (\$5,000.00) or one percent (1%) of the face amount of coverage.

13.4 Liability Insurance: Liability insurance, including medical payments insurance, will be maintained as determined by the Board of Directors, but the minimum amount of insurance

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coverage per occurrence shall be One Million Dollars (\$1,000,000.00). This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association.

Insurance policies carried pursuant to this Section shall provide that:

- (a) Each Owner is an insured Person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;
- (b) The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner.
- (c) An act or omission by an Owner or the Association will not void the policy or be a condition to recovery under the policy.
- (d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.
- (e) Losses must be adjusted with the Association.
- (f) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and otherwise to the Association, but, in any case, it is to be held in trust for each Owner and the Owner's mortgage.
- (g) The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

13.5 Fidelity Bonds: A blanket fidelity bond shall be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the Manager at any time while the bond is in force. In no event shall the bond be for an amount less than the sum of three months' assessments plus reserve funds. The bond shall include a provision that calls for ten (10) days' written notice to the Association, each holder of a Security Interest in a Lot, and the insurance trustee, if any, before the bond can be canceled or substantially modified for any reason. The bond shall be in an amount equal to the maximum amount of funds in the custody and control of the Association when the bond is in effect. When either: (a) separate bank accounts for working funds and reserves are maintained and monthly checks are sent directly to the Association; (b) a management company maintains separate records and bank accounts for each reserve account of the Association; or (c) two Directors must sign any check written on the reserve account, then the fidelity bond may be in an amount equal to three months Common Expense Assessments on all Residences.

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13.6 **Owner Policies:** An Owner is required to obtain a separate insurance policy to provide coverage for the Owner's Lot. The amount of insurance coverage obtained must be sufficient to repair or replace any Residence or Improvements located on the Lot.

13.7 **Workers' Compensation Insurance:** The Board of Directors shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Nevada.

13.8 **Directors' and Officers' Liability Insurance:** The Board of Directors shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the directors and officers (including without limitation the members of the DRC) of the Association. This insurance will have limits determined by the Board of Directors.

13.9 **Other Insurance:** The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association and/or the Owners, and any insurance necessary to comply with minimum HUD requirements.

13.10 **Premiums:** Insurance premiums for insurance carried or to be carried by the Association shall be a Common Expense.

ARTICLE 14 DAMAGE TO OR DESTRUCTION OF PROPERTY

14.1 **Damage and Destruction to the Common Elements:** In the case of destruction of or damage to the Common Elements, including any Improvements thereon, by fire or other casualty, the Board shall have the following rights and privileges:

(a) **Liberty to Reconstruct.** If the cost to repair or replace the Common Elements, including any Improvements thereon, over and above all insurance proceeds, is less than Twenty Thousand Dollars (\$20,000.00), the Board may, without the consent of the Members, determine to repair or replace the damaged property with property substantially the same as those that were destroyed or damaged.

(b) **Decision to Reconstruct.** If the cost to repair or replace the Common Elements, over and above all insurance proceeds, is equal to or greater than Twenty Thousand Dollars (\$20,000.00) and the Board determines to rebuild any Common Elements destroyed or damaged in the form substantially the same as those that were destroyed or damaged, it shall prepare plans and obtain bids and shall submit the plans and bids to the Members for approval, which approval shall require the affirmative vote of a Supermajority of Members. The Board will modify the plans until the required vote is obtained or the restoration becomes subject to subsection (c) below. If approved, the Board shall cause the repairs or replacements to be done and assess the Members for the costs as a Special Assessment.

(c) **Decision Not to Reconstruct.** If the Board determines not to rebuild any Common Elements so destroyed or damaged or to build facilities substantially different from those that were destroyed or damaged, it shall submit its decision to the Members for their approval or disapproval, which approval shall require the consent of eighty percent (80%) of the Members entitled to vote. If the Members elect to approve the decision, the Board

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shall act accordingly; but if the Members do not approve the decision, the Board shall proceed to repair or rebuild the damaged or destroyed facility pursuant to subsections (a) or (b) above.

(d) Damage or Destruction by Owner. In the event any portion of the Common Elements is damaged or destroyed by an Owner or by Owner's Invitee(s), the Board may repair said damaged area. In the event the Board determines to repair said damage, the amount necessary for such repairs shall be paid by the Owner or Owner's Invitee, upon demand, to the Board. If said amounts are not immediately paid, they shall be deemed to be Assessments, and the Board may enforce collection of same in the same manner as provided in Article XII hereof for collection and enforcement of Assessments.

14.2 Replacement of Less Than Entire Property: The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Property.

14.3 Insurance Proceeds: The Trustee, or if there is no Trustee, then the Board of Directors of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Property has been completely repaired or restored, or unless the Property is terminated. In the event of a surplus after the Property has been completely repaired or restored, the proceeds shall be distributed to the Owners or the Eligible Mortgagees as their interests appear and in proportion to the liabilities of all the Lots for Common Expenses.

14.4 Certificates by Board of Directors: The Trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

- (a) Whether or not damaged or destroyed Property is to be repaired or restored; and
- (b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

14.5 Certificates by Title Insurance Companies: If payments are to be made to Owners or mortgagees, then the Board of Directors and the Trustee, if any, shall obtain and may rely on a title insurance company's certificate or a title insurance policy based on a search of the Records in the Office of the County Recorder, Clark County, Nevada, from the date of the Recording of the original Declaration, stating the names of the Owners and the mortgagees.

ARTICLE 15 CONDEMNATION

If part or all of the Property is taken by any Person or entity having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the Act. The Association shall represent the Owners in any such proceeding or negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof, by the condemning authority. Each Owner appoints the

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Association as attorney-in-fact for such purpose. The Association may appoint a trustee to act on behalf of the Association to carry out the Associations functions under this Article 15. Except as otherwise provided herein, in the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, to be held in trust for the Owners and their first mortgage holders, as their interests may appear.

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 Enforcement: The Association and any Owner shall have the right to enforce by any proceedings at law or in equity, each covenant, condition, restriction and reservation now or hereafter imposed by the provisions of the Governing Documents. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of the Governing Documents. Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation contained herein shall not be deemed a waiver or the right to do so thereafter.

(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.

(b) Pursuant to Article 10, Section 10.2(d) of this Declaration and the Act, in the event that the Association does not institute litigation or arbitration proceedings for the enforcement of the Governing Documents but retains counsel to enforce a violation of the Governing Documents, any attorneys' fees incurred by the Association for such enforcement shall be paid for by the Person responsible for the claimed violation of the Governing Documents.

16.2 Attorneys' Fees: In the event that the Association is required to commence a civil action, including arbitration, or otherwise engage legal counsel to enforce the provisions of this Declaration or any provisions contained in the Governing Documents, Association shall be entitled to recover from the Owner alleged to be in default of its obligations hereunder its court costs and reasonable attorneys' fees, regardless of who is claimed to be "prevailing party". In any claim arising out of any indemnity provision of this Declaration, in addition to the other recovery, the party entitled to indemnity shall also be entitled to recover its court costs and reasonable attorney's fees.

16.3 Captions: The captions contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision thereof.

16.4 Gender: The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of this Declaration so requires.

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16.5 Waiver: No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

16.6 Invalidity: The invalidity of any provision of this Declaration does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of this Declaration shall continue in full force and effect.

16.7 Conflict: This Declaration is intended to comply with the requirements of the Act applicable to common-interest communities and the Declaration shall be interpreted, if at all possible, so as to be consistent with the Act. If there is any conflict between this Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of any conflict between this Declaration and any of the Governing Documents, this Declaration shall control.

16.8 Notices: Any notice permitted or required to be given under the provisions of this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or a legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices, or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such Person to the Association.

16.9 Term: This Declaration, including all of the covenants, conditions and restrictions hereof, shall run with and bind the Property for a term of thirty (30) years from the date this Declaration is recorded. After such time, the covenants, conditions and restrictions contained herein, shall be automatically extended for successive periods of ten (10) years, unless an instrument is signed by the Owner(s) of at least eighty percent (80%) of the total number of Residences in the Property and recorded in the Office of the County Recorder, Clark County, Nevada, within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the terms of this Declaration, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

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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: GERRY ZORRIST
President

By: [Signature]
Its: SHERMAN L. KEARL
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 Zorrist, Sherman Kearl, 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



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EXHIBIT "A"

Legal Description of the Property:

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

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EXHIBIT "A"

LEGAL DESCRIPTION:

That portion of the northeast quarter (NE ¼) of the northeast quarter (NE ¼) of the southwest quarter (SW ¼) of section 3, township 21 south, range 60 east, M.D.B. & M., more particularly described as follows:

Beginning at the northeast corner of the northeast quarter (NE ¼) of the northeast quarter (NE ¼) of the southwest quarter (SW ¼) said section 3; thence south 03° 16' 36" east along the east line thereof a distance of 690.02 feet; thence south 88° 41' 45" west a distance of 336.77 feet north 03° 22' 26" west a distance of 691.45 feet to a point on the north line of the northeast quarter (NE ¼) of the northeast quarter (NE ¼) of the southwest quarter (SW ¼) of the aforementioned section 3; thence north 88° 55' 59" east along said north line a distance of 337.99 feet to the true point of beginning.

Containing 5.346 acres, more or less.

Total number of lots - 9 (nine)

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EXHIBIT “D”



CLERK OF THE COURT

1 **OGSJ**

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2 Nevada State Bar # 11592

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5 Attorneys for Plaintiff

6 **JOHN ALLEN LYTLE and**

TRUDI LEE LYTLE

7 as Trustees of the Lytle Trust

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'**
ASSOCIATION; and DOES 1 through 10,
15 inclusive,

16 Defendants.

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

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

17
18 PLEASE TAKE NOTICE that on April 1, 2013, the Court heard Plaintiffs JOHN ALLEN
19 LYTLE and TRUDI LYTLE, as TRUSTEES OF THE LYTLE TRUST's ("Plaintiff"), Motion for
20 Summary Judgment, and ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's (the
21 "Association") Motion for Summary Judgment. After considering the motions, oppositions and
22 replies thereto, the declarations, affidavits, and evidence submitted therewith, and hearing oral
23 argument thereon, the Court grants Plaintiffs JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, as
24 TRUSTEES OF THE LYTLE TRUST's Motion for Summary Judgment. The Court further denies
25 ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's Motion for Summary
26 Judgment.

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JUL 25 2013

Pursuant to NRCP 56(c), 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:

I. 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 Rosemere 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 "Lyttles"), purchased a Rosemere 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 Lyttles 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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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.

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28 ///

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.

II. 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.¹

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 ¹ “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.

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

7 16. In reviewing the language of the Original CC&Rs, the Court must strictly construe
8 the covenants thereto and any “doubt will be resolved in favor of the unrestricted use of the
9 property....” *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); *see also, e.g., South*
10 *Shore Homes Ass’n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst*
11 *Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordleon v.*
12 *Homeowners Ass’n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*,
13 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

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

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

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

26 ///

27 ///

28 ///

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

6 (Emphasis added.)

7 24. For the reasons set forth above, the Association's countermotion for summary
 8 judgment is without merit.

9 **III. JUDGMENT**

10 IT IS HEREBY ADJUDGED AND DECREED:

11 **A. Declaration**

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

16 **B. Injunctive Relief**

17 26. The Association is permanently enjoined from recording and enforcing the Amended
 18 CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number
 19 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court
 20 days after the date of Notice of Entry of this Order.

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

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

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

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

26 **E. Costs**

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

///

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 29 day of July, 2013.


MICHELLE LEAVITT, DISTRICT COURT JUDGE

Prepared and submitted by:

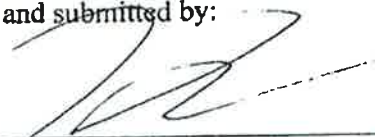

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Attorney for Plaintiff
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as Trustees of the Lytle Trust

EXHIBIT “E”



CLERK OF THE COURT

ORDR

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Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

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

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

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

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

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

3 24. Except as otherwise provided herein, Subdivider or any owner or
 4 owners of any of the lots shall have the right to enforce any or all of the
 5 provisions of the covenants, conditions, and restrictions upon any other
 6 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.

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

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

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

18 16.1(a) In the event the Association, or any Owner shall commence
 19 litigation or arbitration to enforce any of the covenants, conditions,
 20 restrictions or reservations contained in the Governing Documents, the
 prevailing party in such litigation or arbitration shall be entitled to
 21 costs of suit and such attorney's fees as the Court or arbitrator may
 adjudge reasonable and proper.

22 See Amended CC&Rs, § 16.1(a).

23 A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held
 24 unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406,
 25 935 P.2d 1154, 1162.

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27 ///

28 ///

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

3 1. Subject to the requirements set forth in subsection 2, if a declarant,
 4 community manager or any other person subject to this chapter fails to
 5 comply with any of its provisions or any provision of the declaration
 6 or bylaws, any person or class of persons suffering actual damages
 7 from the failure to comply may bring a civil action for damages or
 8 other appropriate relief. . .

9 4. The court may award reasonable attorney's fees to the prevailing
 10 party.

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

17 Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Brunzell v.*
 18 *Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349, 455 P.2d 31, 33. The Court considered all of the
 19 factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered
 20 and applied:

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

27 The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs'
 28 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.

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GIBBS GIDEN LOCHER TURNER SENET & WITBRODT

1 Therefore, the Court orders as follows:

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

4
5
6 IT IS SO ORDERED this 25 day of May, 2016.

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8 

9 HONORABLE MICHELLE LEAVITT

10 District Court Judge, Dept. XII

11 R-L

12
13 DATED: May 19, 2016

14 GIBBS GIDEN LOCHER TURNER
15 SENET & WITBRODT LLP

16 By: 

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Nevada State Bar # 11592

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Las Vegas, Nevada 89113-4059

Attorneys for Plaintiff

JOHN ALLEN LYTLE and TRUDI LEE LYTLE

EXHIBIT “F”



CLERK OF THE COURT

ORDR

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Bryan M. Gragg, Esq.
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Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

**ORDER AWARDING PLAINTIFFS
DAMAGES FOLLOWING PROVE-UP
HEARING**

On June 6, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion to Prove-Up Damages came on regularly for an evidentiary hearing, the Honorable Michelle Leavitt presiding. Plaintiffs were represented by counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association ("Defendant").

During the hearing, John Allen Lytle testified on behalf of Plaintiffs. The Court heard the testimony of Mr. Lytle and considered evidence submitted during his examination.

Having considered the testimony of Mr. Lytle and the exhibits admitted during the examination, the Court finds that Plaintiffs are entitled to damages as requested.

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1732647

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☒ Default Judgment
☐ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

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Therefore, the Court orders as follows:

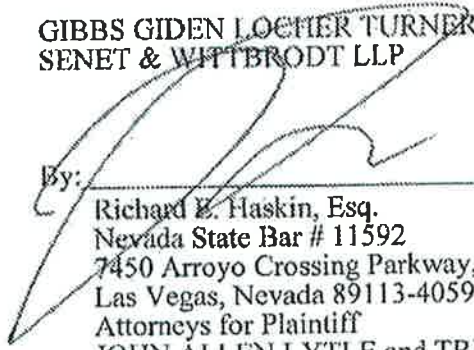
IT IS ORDERED that Plaintiffs are awarded damages in the amount of \$63,566.93.

IT IS SO ORDERED this 17 day of June, 2016.


HONORABLE MICHELLE LEAVITT
District Court Judge, Dept. XII
P-L

DATED: June 6, 2016

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

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7450 Arroyo Crossing Parkway, Suite 270
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Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

EXHIBIT “G”



CLERK OF THE COURT

ORDR

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Bryan M. Gragg, Esq.
Nevada State Bar # 13134

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Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

ORDER AWARDING COSTS

On February 29, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") filed a Verified Memorandum of Costs with this Court. Defendant Rosemere Estates Property Owners' Association ("Defendant") did not file any Motion to Re-tax Costs or other objection to the Verified Memorandum.

Having considered the Verified Memorandum of Costs, Plaintiffs, as the prevailing party in this action, are entitled to an award of costs as sought in the Verified Memorandum. Therefore, the Court orders as follows:

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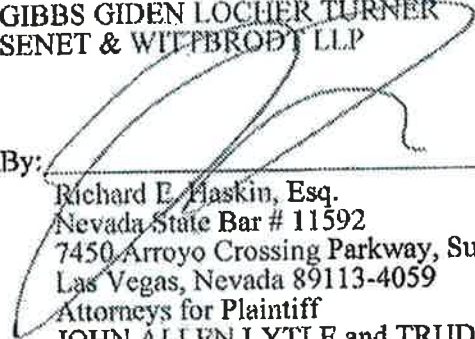
1 IT IS ORDERED that Plaintiffs' Verified Memorandum of Costs is approved by the Court,
2 and Plaintiffs are awarded \$599.00 in costs and disbursements.

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5 IT IS SO ORDERED this 22 day of July, 2016.

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8 
9 HONORABLE MICHELLE LEAVITT
10 District Court Judge, Dept. XII
11 R L

12 DATED: May 3, 2016

13 GIBBS GIDEN LOCHER TURNER
14 SENET & WITTBRODT LLP

15 By: 

16 Richard E. Haskin, Esq.
17 Nevada State Bar # 11592
18 7450 Arroyo Crossing Parkway, Suite 270
19 Las Vegas, Nevada 89113-4059
20 Attorneys for Plaintiff
21 JOHN ALLEN LYTLE and TRUDI LEE LYTLE
22
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26
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28

EXHIBIT “H”

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2 JASON D. SMITH, ESQ.
3 Nevada Bar No. 9691
4 JENNIFER LYNNE SANDERS, ESQ.
5 Nevada Bar No. 10980
6 SANTORO, DRIGGS, WALCH,
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8 400 South Fourth Street, Third Floor
9 Las Vegas, Nevada 89101
10 Telephone: 702/791-0308
11 Facsimile: 702/791-1912

12 *Attorneys for Respondent*

13 STATE OF NEVADA
14 DEPARTMENT OF BUSINESS AND INDUSTRY
15 REAL ESTATE DIVISION

16 JOHN ALLEN LYTLE and TRUDE LEE
17 LYTLE, as Trustees of the Lytle Trust.

Case No.: NRED Control No. 09-33

Claimant.

v.

18 ROSEMERIE ESTATES PROPERTY OWNERS
19 ASSOCIATION, a Nevada- non-profit
20 corporation; and DOES 1 through X, inclusive.

Respondent.

21 STIPULATED FACTS AND EXHIBITS

22 Claimant LYTLE TRUST, by and through its undersigned counsel of record, and
23 Respondent ROSEMERIE ESTATES PROPERTY OWNERS' ASSOCIATION ("REPOA"), by
24 and through its undersigned counsel, hereby stipulate and agree to the following facts and
25 exhibits:

26 1. The subject dispute involves a real estate development located approximately at
27 the corner of Rosemere Court and South Tenaya Way in Las Vegas, Nevada and commonly
28 referred to as Rosemere Estates (the "Development")

2. The original developer of the Development was an entity called Baughman &
Turner Pension Trust (the "Developer").

3. The Development comprises a total of nine (9) legal parcels, including Parcel Number 163-03-313-009 currently owned by the Claimant Lytle Trust (the "Lytle Property").

4. The nine (9) legal parcels comprising the Development were created by Developer recording a subdivision map dated December 16, 1993.

5. The Development was intended for development as a residential community including single-family homes.

6. On or about January 4, 1994, Developer recorded a certain Declaration of Covenants, Conditions and Restrictions, a true and correct copy of which is attached as **EXHIBIT I** hereto (the "Original CC and R's").

7. All lot owners of the Development took title to their lots subject to the Original CC and R's and are bound thereby.

8. The Original CC and R's contain the following express provisions and limitations:

(a) 1. Lots shall be used for private one-family residential purposes exclusively...

* * *

(b) 8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture...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...

* * *

(c) 19. Purchasers/Owners shall on an equal basis, assume responsibility to maintain any and all off-site improvements...

* * *

(d) 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, Fenaya and El Pargue 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.

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

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

7 * * *

8 (c) 24. Except as otherwise provided herein, Subdivider or any owner or
9 owners of any of the lots shall have the right to enforce any or all of the provisions of
10 the covenants, conditions and restrictions upon any other owner or owners. . .

11 * * *

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

16 9. The Original CC and R's do not contain an express amendment provision to either
17 allow for or prohibit amendments to the document.

18 10. No other governing document such as bylaws or articles of incorporation are
19 referenced or described in the Original CC and R's.

20 11. John Allen Lytle and Trudi Lee Lytle, individually and as joint tenants, acquired
21 title to the Lytle Property in the Development on or about November 15, 1996.

22 12. On November 25, 1996, the Developer sent a letter notifying the property owners
23 of the Rosemere Development that as of January 1, 1997, the Developer would terminate all
24 services relating to the common areas. A copy of the letter dated November 25, 1996 is attached
25 as **EXHIBIT 2** hereto.

26 13. On or about February 26, 1997, the REPOA incorporated with the Nevada
27 Secretary of State and did not state it was incorporated for the purpose of operating an
28 association pursuant to NRS Chapter 116. The Rosemere Estates Property Owners Association
Articles of Incorporation (the "Articles"), are attached as **EXHIBIT 3** hereto.

14. John Allen Lytle and Trudi Lee Lytle as individuals and Trustees of the Lytle
Trust conveyed title of the Lytle Property to the Lytle Trust on or about June 10, 1997.

1 15. The nine (9) lots in the Development were first sold and/or conveyed by the
2 Developer on or about the following dates:

3	163-03-313-008	05/19/1994
	163-03-313-001	07/28/1994
4	163-03-313-002	09/30/1994
	163-03-313-006	10/04/1994
5	163-03-313-007	03/07/1995
	163-03-313-005	08/25/1995
6	163-03-313-009	08/25/1995
	163-03-313-003	04/17/1996
7	163-03-313-004	07/08/1996

8 16. The Lytle Property remains undeveloped.

9 17. The Original CC and R's do not have any time restrictions for owners of parcels
10 in the Development to develop their single family residences in the Development.

11 18. All other properties in the Development are improved with a single family
12 residence.

13 19. John Allen Lytle, Trustee of the Lytle Trust, served as Secretary of the REPOA
14 board beginning in approximately September 13, 1999 and continuing until approximately 2001.

15 20. At no point in time since its formation has the REPOA board ever required audits
16 of its books and records.

17 21. At various times prior to 2004, the REPOA considered various versions of
18 amended and restated covenants, conditions, and restrictions for the Development.

19 22. Gerry Zobrist and Sherman Kearn have been President and Secretary respectively
20 of REPOA since approximately February 2004 through the current date.

21 23. On or about July 2, 2007 the REPOA board presented a new Declaration (the
22 "Amended Declaration"). A copy of the Amended Declaration is attached as **EXHIBIT 4**
23 hereto.

24 24. The Lytle Trust did not execute a document consenting to the Amended
25 Declaration.

26 25. The Amended Declaration was recorded on July 3, 2007 with the Clark County
27 Recorder's Office.

28

1 26. The "Binder" that was presented at REPOA's Annual Meeting of July 2, 2007
2 was prepared by Sherman Kearl, M.D.

3 27. The Articles of Incorporation dated June 6, 2007, which were included in the
4 "Binder," were reviewed by Gerry Zobrist prior to the Binder being presented at the Annual
5 Meeting of REPOA on July 2, 2007.

6 28. At no time prior to the adoption of the Bylaws by REPOA's Board of Directors at
7 its June 2007 Board of Directors Meeting which were included in the "Binder" did the REPOA
8 ever adopt any other bylaws.

9 29. At no time prior to the REPOA's Annual Meeting of July 2, 2007 were the
10 Bylaws submitted for review by all of the lot owners in the Development.

11 30. The Amended Declaration for the Development was part of the "Binder" that was
12 submitted for review by the lot owners of the Rosemere Estates Development at REPOA's
13 Annual Meeting of July 2, 2007.

14 31. At no time prior to the REPOA's Annual Meeting of July 2, 2007 was the
15 Amended Declaration for the Development submitted for review to all of the lot owners in the
16 Development.

17 32. The Articles of Incorporation dated June 6, 2007 were part of the "Binder" that
18 was presented for review by the lot owners of the Development at the Annual Meeting of July 2,
19 2007.

20 33. At no time prior to the REPOA's Annual Meeting of July 2, 2007 were the
21 Articles of Incorporation dated June 6, 2007 ever submitted for review to all of the lot owners of
22 the Development.

23 34. The Articles of Incorporation dated June 6, 2007 have not to date been submitted
24 to the State of Nevada Secretary of State for filing with the Secretary of State.

25 35. The document entitled "Waive and/or Amend" signed by Sherman Kearl, M.D. as
26 Secretary of the REPOA on June 11, 2007 was part of the "Binder" that was presented for review
27 to the lot owners of the Rosemere Estates Development at REPOA's Annual Meeting on July 2,
28 2007.

36. Sherman Kearl prepared the REPOA Newsletter of February 2004, a copy of which is attached as **EXHIBIT 5** hereto.

37. At the July 2, 2007 meeting, five (5) of the eight (8) lot owners present signed an "IN WITNESS HEREOF" notarized signature page indicating a vote in favor of the Amended Declaration.

38. On or about June, 2007, at a Board of Directors Meeting, the REPOA Board approved the Bylaws.

39. On or about July 18, 2007, counsel for Lytle Trust wrote a letter demanding among other things, removal of the Amended Declaration. A copy of the letter is attached as **EXHIBIT 6** hereto.

40. As early as November 9, 2007, Lytle Trust requested binding arbitration of this dispute.

41. On or about November 14, 2007, the Lytle Trust filed an Ombudsman Intervention Affidavit with the Office of the Ombudsman, asserting allegations against REPOA.

42. On or about May 13, 2008, the REPOA provided its written response to the allegations set forth in Case No. IS-07-1641.

43. On or about August 25, 2008, the State of Nevada Real Estate Division, Office of the Ombudsman sent written correspondence to The Lytle Trust, a copy of which is attached as **EXHIBIT 7** hereto.

44. On September 26, 2008, the Lytle Trust filed the present action.

Dated this 14 day of April, 2009.

Dated this 14th day of April, 2009.

**SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON**

THOMAS D. HARPER, LTD.

JASON D. SMITH, ESQ.
Nevada Bar No. 9691
JENNIFER LYNN SANDERS, ESQ.
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Attorney for Claimant

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SDW

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Attorneys for Respondent

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

JOHN ALLEN LYTLE and TRUDE LEE
LYTLE, as Trustees of the Lytle Trust,

Claimant,

v.

ROSEMERE ESTATES PROPERTY OWNERS
ASSOCIATION, a Nevada- non-profit
corporation; and DOES I through X, inclusive,

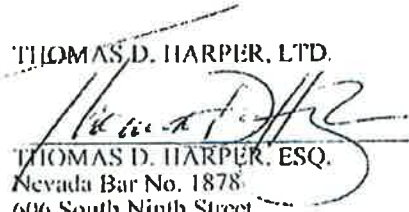
Respondent.

Case No: NRED Control No. 09-33

RECEIPT OF COPY OF STIPULATED FACTS AND EXHIBITS

RECEIPT OF COPY of the foregoing Stipulated Facts and Exhibits is hereby
acknowledged this 14th day of April, 2009.

THOMAS D. HARPER, LTD.


THOMAS D. HARPER, ESQ.
Nevada Bar No. 1878
606 South Ninth Street
Las Vegas, Nevada 89101
(702) 383-9744

Attorney for Claimant

EXHIBIT “I”

CIVIL COVER SHEET

A-10-631355-C

XXIV

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

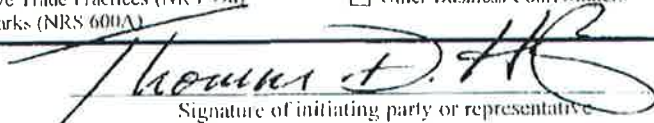
Plaintiff(s) (name/address/phone):	Lytle Trust	Defendant(s) (name/address/phone):	Rosemere Estates Property Owners Association
Attorney (name/address/phone):	Thomas D. Harper, Esq. 606 S. Ninth St. Las Vegas NV 89101	Attorney (name/address/phone):	

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property ☐ Landlord/Tenant ☐ Unlawful Detainer ☐ Title to Property ☐ Foreclosure ☐ Liens ☐ Quiet Title ☐ Specific Performance ☐ Condemnation/Eminent Domain ☐ Other Real Property ☐ Partition ☐ Planning/Zoning	Negligence ☐ Negligence - Auto ☐ Negligence - Medical/Dental ☐ Negligence - Premises Liability (Slip/Fall) ☐ Negligence - Other	Torts ☐ Product Liability ☐ Product Liability/Motor Vehicle ☐ Other Torts/Product Liability ☐ Intentional Misconduct ☐ Torts/Defamation (Libel/Slander) ☐ Interfere with Contract Rights ☐ Employment Torts (Wrongful termination) ☐ Other Torts ☐ Anti-trust ☐ Fraud/Misrepresentation ☐ Insurance ☐ Legal Tort ☐ Unfair Competition
Probate Estimated Estate Value: _____ ☐ Summary Administration ☐ General Administration ☐ Special Administration ☐ Set Aside Estates ☐ Trust/Conservatorships ☐ Individual Trustee ☐ Corporate Trustee ☐ Other Probate	Other Civil Filing Types ☐ Construction Defect ☐ Chapter 40 ☐ General ☐ Breach of Contract ☐ Building & Construction ☐ Insurance Carrier ☐ Commercial Instrument ☐ Other Contracts/Agmt/Judgment ☐ Collection of Actions ☐ Employment Contract ☐ Guarantee ☐ Sale Contract ☐ Uniform Commercial Code ☐ Civil Petition for Judicial Review ☐ Foreclosure Mediation ☐ Other Administrative Law ☐ Department of Motor Vehicles ☐ Worker's Compensation Appeal	
	☐ Appeal from Lower Court (also check applicable civil case box) ☐ Transfer from Justice Court ☐ Justice Court Civil Appeal ☐ Civil Writ ☐ Other Special Proceeding ☒ Other Civil Filing ☐ Compromise of Minor's Claim ☐ Conversion of Property ☐ Damage to Property ☐ Employment Security ☐ Enforcement of Judgment ☐ Foreign Judgment - Civil ☐ Other Personal Property ☐ Recovery of Property ☐ Stockholder Suit ☒ Other Civil Matters	

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only)

☐ NRS Chapters 78-88 ☐ Commodities (NRS 90) ☐ Securities (NRS 90)	☐ Investments (NRS 104 Art. 8) ☐ Deceptive Trade Practices (NRS 598) ☐ Trademarks (NRS 600A)	☐ Enhanced Case Mgmt-Business ☐ Other Business Court Matters
--	---	---

12/10/10
Date

 Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

1 COMP
2 THOMAS D. HARPER, LTD.
3 THOMAS D. HARPER, ESQ.
4 Nevada Bar No. 001878
5 606 South Ninth Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 383-9744
8 Fax: (702) 383-9765
9 Attorney for Plaintiff

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 -0-

A-10-631355-C

13 JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as
14 Trustees of the LYTLE TRUST,

CASE NO.
DEPT. NO. XXIV

15 Plaintiff,

COMPLAINT FOR TRIAL DE NOVO
PURSUANT TO NRS 38.330;
DECLARATORY RELIEF;
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF; AND MONEY
DAMAGES

16 v.

17 ROSEMERE ESTATES PROPERTY OWNERS
18 ASSOCIATION, a Nevada non-profit
19 corporation; and DOES I through X, inclusive,

20 Defendants.

Arbitration Exemption Claimed:
(Appeal from Arbitration;
Declaratory Relief Requested)

21 COMES NOW Plaintiff, LYTLE TRUST and its Trustees JOHN ALLEN LYTLE and TRUDI
22 LEE LYTLE and for its causes of action against Defendants complains, asserts and alleges as
23 follows:

24 GENERAL ALLEGATIONS

25 1. At all times herein mentioned, Plaintiff LYTLE TRUST (hereinafter "TRUST") was,
26 and still is, a Trust and the owner of that certain undeveloped residential property located at
27 1930 Rosemere Court, Las Vegas, Nevada 89117 hereinafter the "Property") and its Trustees
28 are JOHN ALLEN LYTLE and TRUDI LEE LYTLE who are husband and wife.

1 2. Defendant ROSMERE ESTATES PROPERTY OWNERS ASSOCIATION
2 (hereinafter "ASSOCIATION") is, and at all times herein mentioned was, a Nevada non profit
3 corporation qualified and operating in the County of Clark, State of Nevada.

4 3. The true names and capacities whether individual, corporate, associate or
5 otherwise of Defendants DOES, I through X, are unknown to Plaintiff TRUST, who therefore
6 sues said Defendants by such fictitious names. Plaintiff TRUST is informed and believes and
7 thereon alleges that each of the Defendants designated herein as a DOE is responsible in some
8 manner for the happenings and events referred to herein and caused damages legally and
9 proximately to Plaintiff TRUST as alleged herein. Plaintiff TRUST will ask leave of this Court
10 to amend this Complaint to insert the true names and capacities of said Defendants, DOES I
11 through X, when the same have been ascertained by Plaintiff TRUST.

12 4. At all times herein mentioned, the Defendant ASSOCIATION was and still is
13 comprised of nine (9) owners of single family lots all as more particularly described in the
14 original Declaration of Covenants, Conditions and Restrictions hereinafter the "Original CC
15 and R's") which was recorded on or about January 4, 1994 in Book Number 940104 as
16 Instrument Number 01241 in the Official Records, Clark County, Nevada and the Property is
17 located within the boundaries of the Association. A copy of the Original CC and R's of the
18 Defendant ASSOCIATION is attached hereto as Exhibit "1" and incorporated herein by
19 reference.

20 5. On or about July 2, 2007, the Board of Directors of the Defendant
21 ASSOCIATION amended the Original CC and R's by adopting Amended CC and R's which
22 was recorded on July 3, 2007 in Book Number 20070703 as Instrument Number 0001934 of
23 the Official Records, Clark County, Nevada hereinafter the "Amended CC and R's". A copy
24 of the Amended CC and R's is attached hereto as Exhibit "2" and incorporated herein by
25 reference.

26 6. On or about the time that the Board of Directors of the Defendant
27 ASSOCIATION adopted and recorded the Amended CC and R's, the Board of Directors of the
28 Defendant ASSOCIATION also adopted Bylaws of the Defendant ASSOCIATION. A copy of

1 the Bylaws of the Defendant ASSOCIATION is attached hereto as Exhibit "3" and incorporated
2 herein by reference.

3 7. The Amended CC and R's and Bylaws of the Defendant ASSOCIATION
4 significantly changed and increased the governance responsibilities of the Defendant
5 ASSOCIATION and its Board members by requiring the Defendant ASSOCIATION and its
6 Board members to comply with NRS Chapter 116, et seq.

7 8. Specifically, while the Original CC and R's made no references to the provisions
8 of NRS Chapter 116, et seq., the Amended CC and R's made several specific references to the
9 provisions of NRS Chapter 116, et seq. and the Recitals in the Amended CC and R's provide,
10 in pertinent part, as follows:

11 WHEREAS, The Board of Directors (the "Board") has made certain changes to
12 the Original Declaration in order to bring the same into compliance with the
provisions of Nevada Revised Statutes ("NRS") Chapter 116. . . .

13 9. Further, Article 16, Section 16.7 of the Amended CC and R's provide, in
14 pertinent part, as follows:

15 Conflict: This Declaration is intended to comply with the requirements of the
16 Act [i.e. NRS Chapter 116] applicable to common-interest communities and the
17 Declaration shall be interpreted, if at all possible, so as to be consistent with the
Act. If there is any conflict between this Declaration and the provisions of the
Act, the provisions of the Act shall control. . . .

18 10. The Plaintiff TRUST brought an Alternative Dispute Resolution (hereinafter
19 "ADR") action against the Defendant ASSOCIATION regarding the interpretation, application
20 and enforcement of the governing documents of the Defendant ASSOCIATION and
21 specifically the Amended CC and R's and Bylaws of the Defendant ASSOCIATION with the
22 Nevada Real Estate Division (hereinafter "NRED") as required by NRS 38.310 (hereinafter the
23 "NRED action").

24 11. Pursuant to a stipulation and/or agreement between the Plaintiff TRUST and the
25 Defendant ASSOCIATION in the NRED action, the parties to the NRED action agreed that the
26 Amended CC and R's and Bylaws of the Defendant ASSOCIATION was valid and enforceable
27 only for the purpose of the NRED action and because this is a trial de novo of the NRED action
28 the Plaintiff TRUST once again agrees for the purpose of this litigation only that the Amended

1 CC and R's and Bylaws of the Defendant ASSOCIATION are valid and enforceable.

2 12. The Plaintiff TRUST's claim against the Defendant ASSOCIATION was arbitrated
3 in the NRED action with the non-binding decision by the Arbitrator being issued on or about
4 November 18, 2010 and the Completion Certificate being issued by NRED on November 18,
5 2010. A true copy of the Completion Certificate issued on November 18, 2010 is attached
6 hereto as Exhibit "4" and incorporated herein by reference.

7 13. The decision issued by the Arbitrator in the NRED action was erroneous in that,
8 *inter alia*, it is contrary to Nevada law regarding the interpretation, application and
9 enforcement of the governing documents of the Defendant ASSOCIATION and is further
10 contrary to Nevada law regarding the governance responsibilities of the Defendant
11 ASSOCIATION under the said governing documents including the Amended CC and R's and
12 Bylaws.

13 14. Article 16, Section 16.1 of the Amended CC and R's provides that any member
14 of the Defendant ASSOCIATION shall have the right to enforce by any proceedings at law or
15 in equity, each covenant, condition and reservation imposed by the provisions of the
16 governing documents of the Defendant ASSOCIATION and that each such member of the
17 Defendant ASSOCIATION shall have a right of action against the Defendant ASSOCIATION
18 for any failure by the Defendant ASSOCIATION to comply with the provisions of the
19 governing documents of the Defendant ASSOCIATION.

20 15. Article 16, Section 16.1 of the Amended CC and R's further provides that in the
21 event any member of the Defendant ASSOCIATION shall commence litigation to enforce any
22 of the covenants, conditions, restrictions or reservations contained in the governing documents
23 that the prevailing party in such litigation shall be entitled to an award of reasonable attorney's
24 fees and legal costs.

25 **FIRST CLAIM FOR RELIEF**

26 **(Declaratory Relief – Breach of Amended CC and R's**
27 **and Bylaws and Violations of NRS §§116.3115 and 116.31085(2))**

28 16. Plaintiff TRUST repeats and realleges all allegations contained in its General

1 Allegations and incorporates the same as though fully set forth at length.

2 17. This claim for relief is brought pursuant to the provisions of NRS 30.010, et seq.
3 of the Uniform Declaratory Judgments Act in order to obtain a judgment declaring the rights,
4 duties and legal relations of the parties with regards to the facts and matters set forth herein.

5 18. Subsequent to the adoption and recordation of the Amended CC and R's, the
6 Defendant ASSOCIATION and its Board members breached and failed to comply with their
7 governance responsibilities under the governing documents of the Defendant ASSOCIATION
8 and violated provisions of NRS Chapter 116 which resulted in invalid assessments being
9 levied against the Plaintiff TRUST and two (2) invalid liens based on those assessments being
10 recorded by the Defendant ASSOCIATION on the Property, one on July 20, 2009 and a
11 second one on March 22, 2010.

12 19. The Defendant ASSOCIATION and its Board members breached and failed to
13 comply with their governance responsibilities under the Amended CC and R's and Bylaws of
14 the Defendant ASSOCIATION and violated provisions of NRS Chapter 116 in issuing
15 assessments to the Plaintiff TRUST and recording two (2) liens against the Property as follows:

16 A. By imposing invalid assessments that were not based on an annual budget in
17 violation of NRS 116.3115;

18 B. By imposing invalid assessments based on the breach by the Defendant
19 ASSOCIATION and its Board members to adopt a budget for the fiscal years 2009 and
20 2010 as required under Article 10, Section 10.4 of the Amended CC and R's and
21 Article VIII, Sections 8.1 and 8.2 of the Bylaws;

22 C. By failing to obtain bids for work to be performed on behalf of the Defendant
23 ASSOCIATION and to approve contracts on behalf of the Defendant ASSOCIATION
24 including the contract of the collection company who recorded the first lien on the
25 Property at a duly noticed Board meeting in violation of NRS 116.31085(2); and

26 D. By refusing to release the above referenced first lien on the Property even
27 though the Plaintiff TRUST bonded around the said lien and the Defendant
28 ASSOCIATION agreed that the said bond was good and sufficient to cover the

1 Defendant ASSOCIATION's lien on the Property.

2 20. Pursuant to the provisions of NRS 30.010 of the Uniform Declaratory Judgments
3 Act, this Court should declare the rights, duties and legal relations of the parties with regards
4 to the Amended CC and R's and the Bylaws of the Defendant ASSOCIATION as well the
5 above-referenced provisions of NRS Chapter 116, et seq. and in so doing declare that the
6 Defendant ASSOCIATION breached the Amended CC and R's and Bylaws and violated the
7 above-referenced provisions of NRS Chapter 116 and declare the assessments issued by the
8 Defendant ASSOCIATION as well as the liens recorded against the Property to be null and
9 void and/or expunged and released because of the bond posted by the Plaintiff TRUST which
10 was approved as a good and sufficient bond by the Defendant ASSOCIATION.

11 21. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
12 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
13 attorney's fees and costs of suit incurred herein.

14 **SECOND CLAIM FOR RELIEF**

15 **(Slander of Title)**

16 22. Plaintiff TRUST repeats and realleges all allegations contained in its General
17 Allegations and First Claim for Relief and incorporates the same as though fully set forth at
18 length.

19 23. The recordation by the Defendant ASSOCIATION of the first lien on the
20 Property on July 20, 2009 and its continued refusal to date to remove the lien on the Property
21 constitutes slander of title of that Property as the Defendant ASSOCIATION knew or should
22 have known that it had no right to issue assessments against the Plaintiff TRUST and knew or
23 should have known that the bond posted by the Plaintiff TRUST adequately covered the
24 Defendant ASSOCIATION's lien on the Property and therefore the Defendant ASSOCIATION
25 acted maliciously or in reckless disregard of the falsity of the lien by recording the lien on the
26 Property and refusing to remove the same up through the present date.

27 24. The recordation by the Defendant ASSOCIATION of the second lien on the
28 Property on March 22, 2010 constitutes slander of title of the Property as the Defendant

1 ASSOCIATION and its Board members knew or should have known that they had no legal
2 right to record the lien as the amount of lien had not been adjudicated by any court, arbitrator
3 or arbiter and therefore the Defendant ASSOCIATION and/or its Board members acted with
4 malice and/or with reckless disregard of the falsity of the lien.

5 25. Despite numerous demands made by the Plaintiff TRUST to the Defendant
6 ASSOCIATION to remove the first lien from the Property, the Defendant ASSOCIATION and
7 its Board members refused and continue to refuse to remove the lien which has resulted in the
8 Plaintiff TRUST suffering damages in the form of attorney's fees and legal costs incurred in
9 attempting to remove the first lien as a cloud on title to the Property.

10 26. Based on the slander of title by the Defendant ASSOCIATION on the Property,
11 this Court should award damages to the Plaintiff TRUST including, but not limited to,
12 attorney's fees and legal costs incurred by the Plaintiff TRUST in attempting to remove the first
13 lien as a cloud on title on the Property in an amount in excess of Ten Thousand Dollars
14 (\$10,000.00) and according to proof adduced at the time of the trial in this matter, together
15 with pre-judgment and post-judgment interest at the highest legal rate.

16 27. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
17 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
18 attorney's fees and costs of suit incurred herein.

19 **THIRD CLAIM FOR RELIEF**

20 **(Injunctive Relief)**

21 28. Plaintiff TRUST repeats and realleges all allegations contained in its General
22 Allegations and its First and Second Claims for Relief and incorporates the same as though
23 fully set forth at length.

24 29. The Defendant ASSOCIATION and its Board members have threatened and
25 continue to threaten to foreclose on the first lien that was invalidly and unlawfully recorded
26 on the Property on July 20, 2009.

27 30. The threat by the Defendant ASSOCIATION to foreclose on the said first lien
28 on the Property has caused and will continue to cause the Plaintiff TRUST immediate

1 irreparable harm in that the foreclosure of the lien will deprive the Plaintiff TRUST the unique
2 proprietary interest it has in the Property

3 31. The Plaintiff TRUST is entitled to a preliminary and permanent mandatory
4 injunction ordering the Defendant ASSOCIATION not to foreclose on the first lien recorded
5 on the Property on July 20, 2009 pending final resolution of the within litigation.

6 32. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
7 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
8 attorney's fees and costs of suit incurred herein.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Declaratory Relief – Breach of Amended CC and R's and Violations of NRS**
11 **§§116.31031, 116.31034, 116.31065, 116.3108, 116.31083, 116.31085, 116.31144**
12 **116.3115, 116.31151, 116.31152, and 116.3117)**

13 33. Plaintiff TRUST repeats and realleges all allegations contained in its General
14 Allegations and its First, Second and Third Claims for Relief and incorporates the same as
15 though fully set forth at length.

16 34. This claim for relief is brought pursuant to the provisions of NRS 30.010, et seq
17 of the Uniform Declaratory Judgments Act in order to obtain a judgment declaring the rights,
18 duties and legal relations of the parties with regards to the facts and matters set forth herein

19 35. Subsequent to the adoption and recordation by the Defendant ASSOCIATION
20 of the Amended CC and R's and Bylaws, the Defendant ASSOCIATION and its Board
21 members breached and failed to comply with several governance responsibilities under the
22 governing documents of the Defendant ASSOCIATION and violated various provisions of NRS
23 Chapter 116, et seq.

24 36. The Defendant ASSOCIATION and its Board members breached and failed to
25 comply with their governance responsibilities under the governing documents of the
26 Defendant ASSOCIATION and violated various provisions of NRS Chapter 116, et seq. as
27 follows:

28 A. By imposing invalid assessments against the Plaintiff TRUST because the
assessments were not based on an annual budget in violation of NRS 116.3115 and in

1 breach of Article 10, Section 10.4 of the Amended CC and R's and Article VIII, Sections
2 8.1 and 8.2 of the Bylaws requiring the preparation, distribution and adoption of
3 reserve and operating budgets for each fiscal year commencing in 2009 and thereafter;

4 B. By breaching Article 10, Section 10.4 of the Amended CC and R's and Article
5 VIII, Sections 8.1 and 8.2 of the Bylaws of the Defendant ASSOCIATION requiring the
6 preparation, distribution and adoption of reserve and operating budgets for each fiscal
7 year commencing 2009;

8 C. By breaching Article 12, Section 12.2 of the Amended CC and R's and violating
9 NRS 116.31031 by improperly suspending the membership privileges of the Plaintiff
10 TRUST in the Defendant ASSOCIATION;

11 D. By breaching Article 12, Section 12.2 of the Amended CC and R's and violating
12 NRS 116.31031 by improperly imposing fines on the Plaintiff TRUST without first
13 providing the Plaintiff TRUST with an opportunity to contest the fines;

14 E. By violating NRS 116.31085(2) by failing to conduct properly noticed Board
15 meetings to approve contracts entered into between the Defendant ASSOCIATION and
16 third parties/entities including, but not limited to, a collection company retained by the
17 Defendant ASSOCIATION;

18 F. By violating NRS 116.31151 by failing to establish a policy for the collection
19 of fees, fines, assessments or costs of whatever nature;

20 G. By violating NRS 116.31065(5) requiring the Defendant ASSOCIATION to
21 uniformly enforce the governing documents of the Defendant ASSOCIATION against
22 all members of the Defendant;

23 H. By violating NRS 116.31144 by failing to do an audit of the Defendant
24 ASSOCIATION's accounting practice and/or accounts by an accountant;

25 I. By violating NRS 116.31152 by failing to do a study of reserves and a reserve
26 budget by a duly qualified person authorized to do so under NRS 116.31152;

27 J. By failing to accurately and truthfully transcribe minutes of the membership and
28 board meetings of the Defendant ASSOCIATION including, but not limited to, the

1 Minutes from the July 2, 2007 meeting (which were falsified by creating three different
2 versions of the same);

3 K. By violating NRS 116.3108(7) by failing to audio record the Defendant
4 ASSOCIATION's meeting of July 27, 2010;

5 L. By violating NRS 116.31031 and NRS 116.31085 by failing to allow the Plaintiff
6 TRUST and its Trustees to attend meetings of the membership of the Defendant
7 ASSOCIATION or meetings of the executive board of the Defendant ASSOCIATION
8 and speak at such meetings;

9 M. By violating NRS 116.31034(2) by failing to allow either one of the Trustees of
10 the Plaintiff TRUST to serve as a member of the Board of the Defendant
11 ASSOCIATION;

12 N. By breaching Article 5, Section 5.1(a) of the Amended CC and R's that provides
13 that unless the rights of a member of the Defendant ASSOCIATION have been properly
14 suspended by the Defendant ASSOCIATION, a member may attend any meeting of the
15 Board of the Defendant ASSOCIATION and speak at any such meeting;

16 O. By breaching Article 5, Section 5.1(a) of the Amended CC and R's that provides
17 that the Board of the Defendant ASSOCIATION may only establish reasonable
18 limitations on the time that a member may speak at any meeting of the Defendant
19 ASSOCIATION;

20 P. By violating NRS 116.3117(1) by failing to make available to the Plaintiff TRUST
21 records and other papers of the Defendant ASSOCIATION including, but not limited to,
22 contracts entered into between the Defendant ASSOCIATION and legal counsel and
23 collection companies;

24 Q. By violating NRS 116.318(3), NRS 116.3108(4)(b) and NRS 116.31083(2)(a), (b)
25 and (b) by failing to provide proper notices and agendas to the Plaintiff TRUST of
26 membership and executive board meetings of the Defendant ASSOCIATION;

27 R. By violating NRS 116.31034(2) by allowing the term of office of a member of
28 an executive board to exceed three years;

1 S. By violating NRS 116.31034(4), (5)(a)(1) and (2) requiring notice to be given to
2 all members of the Defendant ASSOCIATION of their right to serve as a member of the
3 executive board of the Defendant ASSOCIATION; and

4 T. By breaching Article V, Section 5.1(b) of the Bylaws and violating NRS
5 116.31083(1) by failing to conduct executive board meetings not less than once every
6 one hundred days.

7 37. Pursuant to the provisions of NRS 30.010 of the Uniform Declaratory Judgments
8 Act, this Court should declare the rights, duties and legal relations of the parties with regards
9 to the Amended CC and R's of the Defendant ASSOCIATION and the above-referenced
10 provision of NRS Chapter 116, et seq. and in so doing declare that the Defendant
11 ASSOCIATION breached the Amended CC and R's and violated the above-referenced
12 provision of NRS Chapter 116, et seq. and order the Defendant ASSOCIATION immediately
13 comply with the Amended CC and R's and the provisions of NRS Chapter 116, et seq.
14 including the restoration of any rights the Plaintiff TRUST and its Trustees were denied as a
15 result of the Defendant ASSOCIATION's breach of the Amended CC and R's and violations
16 of NRS Chapter 116, et seq. and further to award any damages to the Plaintiff TRUST as a
17 result of the deprivation of the Plaintiff TRUST's rights under the governing documents
18 including, but not limited to, damages incurred as a result of the Defendant ASSOCIATION's
19 falsifying the minutes of the July 2, 2007 meeting.

20 38. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
21 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
22 attorney's fees and costs of suit incurred herein.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Declaratory Relief – Amended CC and R's)**

25 39. Plaintiff TRUST repeats and realleges all allegations contained in its General
26 Allegations and the First, Second, Third and Fourth Claims for Relief and incorporates the
27 same as though fully set forth at length.

28 40. This claim for relief is brought pursuant to the provisions of NRS 30.010, et seq.

1 of the Uniform Declaratory Judgments Act in order to obtain a judgment declaring the rights,
2 duties and legal relations of the parties with regards to the facts and matters set forth herein.

3 41. The Recitals in the Amended CC and R's provide that the Amended CC and R's
4 were adopted and recorded to bring the same into compliance with the provisions of NRS
5 Chapter 116.

6 42. Further, Article 16, Section 16.7 of the Amended CC and R's provide that the
7 Amended CC and R's were intended to comply with NRS Chapter 116 so as to be consistent
8 with NRS Chapter 116.

9 43. Subsequent to the adoption and recordation of the Amended CC and R's and
10 Bylaws of the Defendant ASSOCIATION, the Defendant ASSOCIATION and its Board
11 members have failed to comply with their governance responsibilities under the governing
12 documents of the Defendant ASSOCIATION and NRS Chapter 116, et seq. and as an excuse
13 for failing to comply with the said governing documents and NRS Chapter 116 the Defendant
14 ASSOCIATION claims that it is a "small planned community" pursuant to NRS 116.1203 and
15 is therefore subject only to NRS 116.1106 and NRS 116.1107.

16 44. The Defendant ASSOCIATION claims it was justified in believing it was a "small
17 planned community" pursuant to NRS 116.1203 because of a letter that was issued by NREID
18 and the Ombudsman's Office dated August 28, 2008 and addressed solely to the Trustees of
19 the Plaintiff TRUST.

20 45. The Plaintiff TRUST believes and therefore alleges that the Defendant
21 ASSOCIATION could not have relied upon the letter from NREID and the Ombudsman's
22 Office dated August 28, 2008 as it was not addressed to the Defendant ASSOCIATION and
23 came into the possession of the Defendant ASSOCIATION only as a result of the Plaintiff
24 TRUST's production of that letter in a prior ADR act.

25 46. Pursuant to the provisions of NRS 30.010 of the Uniform Declaratory Judgments
26 Act, this Court should declare the rights, duties and legal relations of the parties with regards
27 to the Amended CC and R's and of NRS Chapter 116, et seq. and in doing so declare that
28 pursuant to the Recitals of the Amended CC and R's and other provisions of the Amended CC

1 and R's that the Defendant ASSOCIATION must comply with all provisions of NRS Chapter
2 116, et seq. and that the Defendant ASSOCIATION cannot be considered a "small planned
3 community" based on the letter that was issued by NRIID and the Ombudsman's Office dated
4 August 28, 2008 and addressed solely to the Trustees of the Plaintiff TRUST.

5 47. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
6 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
7 attorney's fees and costs of suit incurred herein.

8 WHEREFORE, Plaintiff TRUST prays for Judgment against Defendants, and each of
9 them, as follows:

10 1. As and for the First Claim for Relief, that this Court grant declaratory relief to the
11 parties and declare the rights, duties and legal relations of the parties with regards to the
12 Amended CC and R's and Bylaws of the Defendant ASSOCIATION and the relevant provision
13 of NRS Chapter 116, et seq., and in so doing declare that the Defendant ASSOCIATION
14 breached the Amended CC and R's and Bylaws and violated the above-referenced provisions
15 of NRS Chapter 116 and declare the assessments issued by the Defendant ASSOCIATION as
16 well as the liens recorded against the Property to be null and void and/or expunged and
17 released because of the bond posted by the Plaintiff TRUST which was approved as a good
18 and sufficient bond by the Defendant ASSOCIATION;

19 2. As and for the Second Claim for Relief, that this Court award damages to the
20 Plaintiff TRUST including damages for attorney's fees incurred in attempting to remove the first
21 lien on the Property in an amount in excess of Ten Thousand Dollars (\$10,000.00) and
22 according to proof adduced at the time of the trial in this matter together with pre judgment
23 and post-judgment interest at the highest legal rate;

24 3. As and for the Third Claim for Relief, that the Defendant ASSOCIATION be
25 preliminarily and permanently restrained and enjoined from foreclosing on the first lien
26 recorded on the Property on July 20, 2007 pending formal resolution of this litigation;

27 4. As and for the Fourth Claim for Relief, that this Court grant declaratory relief to
28 the parties and declare the rights, duties and legal relations of the parties with regards to the

1 relevant provision of the Amended CC and R's and the relevant provisions of NRS Chapter
2 116, et seq., and in so doing declare that the Defendant ASSOCIATION breached the
3 Amended CC and R's and violated the above-referenced provision of NRS Chapter 116, et seq.
4 and order the Defendant ASSOCIATION immediately comply with the Amended CC and R's
5 and the provisions of NRS Chapter 116, et seq. including the restoration of any rights the
6 Plaintiff TRUST and its Trustees were denied as a result of the Defendant ASSOCIATION's
7 breach of the Amended CC and R's and violations of NRS Chapter 116, et seq. and further to
8 award any damages to the Plaintiff TRUST as a result of the deprivation of the Plaintiff TRUST's
9 rights under the governing documents including, but not limited to, damages incurred as a
10 result of the Defendant ASSOCIATION's falsifying the minutes of the July 2, 2007 meeting;

11 5. As and for the Fifth Claim for Relief, that this Court grant declaratory relief to the
12 parties and declare the rights, duties and legal relations of the parties with regards to the
13 Amended CC and R's, and in so doing declare that pursuant to the Recitals of the Amended
14 CC and R's and other provisions of the Amended CC and R's that the Defendant
15 ASSOCIATION must comply with all provisions of NRS Chapter 116, et seq. and that the
16 Defendant ASSOCIATION cannot be considered a "small planned community" based on the
17 letter that was issued by NREID and the Ombudsman's Office dated August 28, 2008 and
18 addressed solely to the Trustees of the Plaintiff TRUST;

19 6. An award of reasonable attorney's fees and costs of suit incurred herein; and

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

21 DATED this 10th day of December, 2010.

22 THOMAS D. HARPER, LTD.

23
24 By 
25 THOMAS D. HARPER, ESQ.
26 Nevada Bar No. 001878
27 606 South Ninth Street
28 Las Vegas NV 89101
Attorney for Plaintiff TRUST

1 VERIFICATION

2 STATE OF NEVADA

3 COUNTY OF CLARK

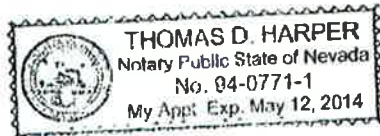
4 JOHN ALLEN LYTLE, under penalties of perjury, being first duly sworn, deposes and
5 says:

6 That he is the Trustee of the LYTLE TRUST and is familiar with the books and records
7 of said Trust; that he has read the foregoing Complaint, and knows the contents thereof; that
8 the same is true of his own knowledge except for those matters stated therein on information
9 and belief, and as to those matter he believes them to be true.

10 
11 JOHN ALLEN LYTLE

12 Subscribed and sworn to before me
13 this 10th day of December, 2010

14 
15 Notary Public



1 VERIFICATION

2 STATE OF NEVADA)

3 COUNTY OF CLARK)

4 TRUDI LEE LYTFE, under penalties of perjury, being first duly sworn, deposes and says:

5 That she is the Trustee of the LYTFE TRUST and is familiar with the books and records
6 of said Trust; that she has read the foregoing Complaint, and knows the contents thereof; that
7 the same is true of her own knowledge except for those matters stated therein on information
8 and belief, and as to those matter she believes them to be true.

9
10 *Trudi Lee Lytfe*
11 TRUDI LEE LYTFE

12 Subscribed and sworn to before me
13 this 10th day of December, 2010.

14 *Thomas D. Harper*
15 Notary Public

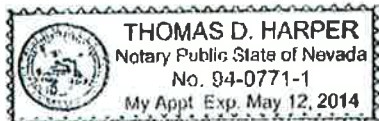


EXHIBIT “J”

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

NEOJ
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN W. REED
Nevada Bar No. 11695
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
Email: sanderson@leachjohnson.com
Email: reed@leachjohnson.com
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
Attorneys for Rosemere Estates Property
Owners Association

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, a Nevada non-
profit corporation; and DOES I thought X,
inclusive

Defendants.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, a Nevada non-
profit corporation; and DOES I thought X,
inclusive

Counterclaimant

vs.

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

Counterdefendant

Case No.: A-10-631355-C

Dept. No.: XXXII

NOTICE OF ENTRY ORDER
AWARDING ATTORNEYS' FEES AND
DAMAGES

Client Lytle v Rosemere
Matter No. 7384-002
Client correspondence ☐ Other correspondence ☐
Miscellaneous ☐
Other filing ☒ Pending ☐ Discovery ☐ Disclosures ☐
1 tab 1 tab

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

1 PLEASE TAKE NOTICE that on June 6, 2012, an Order Awarding Attorneys' Fees and
2 Damages was entered in the above-entitled action, a true and correct copy of which is attached
3 hereto

4 DATED this 8th day of June, 2012.

5 LEACH JOHNSON SONG & GRUCHOW

6
7 By: 

8 Sean L. Anderson
9 Nevada Bar No. 7259
10 Ryan W. Reed
11 Nevada Bar No. 11695
12 8945 West Russell Road, Suite 300
13 Las Vegas, Nevada 89148
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certified that on the 12th day of June, 2012, she served a true and correct copy of the foregoing, **NOTICE OF ENTRY ORDER AWARDING ATTORNEYS' FEES AND DAMAGES** by:

XXXX Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Las Vegas, Nevada

_____ Personal Delivery

_____ Facsimile

_____ Federal Express/Airborne Express/Other Overnight Delivery

_____ Las Vegas Messenger Service

addressed as follows:

Richard E. Haskin
GIBBS, GIDEN, LOCHER, TURNER & SENET LLP
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113
RHASKIN@GGLTS.COM
Attorney for Plaintiff


An Employee of LEACH JOHNSON SONG &
GRUCHOW


CLERK OF THE COURT

ORDER
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN W. REED
Nevada Bar No. 11695
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
Email: sanderson@leachjohnson.com
Email: rreed@leachjohnson.com
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
Attorneys for Rosemere Estates Property
Owners Association

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, a Nevada non-
profit corporation; and DOES I thought X,
inclusive

Defendants.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, a Nevada non-
profit corporation; and DOES I thought X,
inclusive

Counterclaimant

vs.

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

Counterdefendant

Case No.: A-10-631355-C

Dept. No.: XXXII

**ORDER AWARDING ATTORNEYS'
FEES AND DAMAGES**

On December 9, 2011, this Court entered its Order Granting
Defendants/Counterclaimant's Motion for Summary Judgment ("Order"). On December 15,
2011, Defendant/Counterclaimant Rosemere Estates Property Owners' Association (the
"Association") filed its Verified Memorandum of Costs. January 6, 2012, the Association filed

43-10-12P11:21 RCVD

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 -- Facsimile (702) 538-9113

1 its Motion to Confirm Arbitrator's Decision and Award and Motion for Fees and Costs. On
2 December 27, 2011, John Allen Lytle and Trudi Lytle, as Trustees of the Lytle Trust
3 (collectively "Lytle") filed their Motion for Relief from Judgment or Order pursuant to NRCP
4 60, to Alter or Amend Judgment, and Request for Sanctions Pursuant to E.C.C.R. 7.60, or in the
5 Alternative, Motion for Reconsideration, or in the Alternative, Motion for Leave to Amend or
6 Supplement Pursuant to N.R.C.P. 15. On January 17, 2012, the Association filed its Omnibus
7 Opposition to Lytle's Motion. On January 25, 2012 Lytle filed its Reply in Support of Motion
8 for Relief from Judgment or Order pursuant to NRCP 60, to Alter or Amend Judgment, and
9 Request for Sanctions Pursuant to E.C.C.R. 7.60, or in the Alternative, Motion for
10 Reconsideration, or in the Alternative, Motion for Leave to Amend or Supplement Pursuant to
11 N.R.C.P. 15. On January 27, 2012, Lytle filed its Opposition to Defendant's Motion to Confirm
12 Arbitrator's Decision and Award and Motion for Fees and Costs; and Plaintiff's Motion to
13 Strike.

14 The Association's Motion for Attorneys' Fees came on for hearing on February 6, 2012.
15 The Court granted the Association's Motion for Attorneys' Fees and denied the Motion to
16 Confirm. The Court further set a date for an evidentiary hearing regarding the amount of
17 attorneys' fees, costs and damages to be awarded to the Association. The Court further directed
18 the parties to submit supplemental pleadings. On February 28, 2012, the Association filed its
19 Supplemental Briefing in Support of Award of Attorneys' Fees, Costs and Damages. On April
20 12, 2012, Lytle filed its Opposition to Motion for Attorneys Fees, Costs and Damages. On April
21 20, 2012, the Association filed its Reply to Plaintiffs' Opposition to Supplemental in Support of
22 Award of Attorneys' Fees Costs and Damages.

23 The Evidentiary Hearing was held on April 27, 2012. Sean Anderson, of Leach Johnson
24 Song & Gruchow, appeared on behalf of the Association. Richard Haskin, of Gibbs, Giden,
25 Locher, Turner & Senel, appeared on behalf of Lytle. The Court, having considered all of the
26 pleadings and papers on file and considering the oral argument of counsel, finds and orders as
27 follows:

- 28 1. As the prevailing party in this action, the Association is entitled to recover its

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1 attorneys' fees and costs, pursuant to NRS 116.4117 and Section 16 of
2 the Appended Covenants, Conditions and Restrictions. @
3 2. The Association requested attorneys' fees and costs in the amount of \$89,483.65
4 and costs in the amount of \$1,130.77.
5 3. Lytle did not file a motion to relax costs.
6 4. The Court conducted an analysis of the requested fees and costs pursuant to
7 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) and, based on
8 that analysis, finds that the fees requested by the Association should be reduced by \$10,000. as
9 there is overlap in the billing records. @
10 5. The Court previously ruled that the special assessment liens recorded against the
11 Lytle Property were valid.
12 6. The principal aggregate amount of those liens is \$17,000 and, together with
13 interest, late fees and the costs of collection, the total amount of the lien is \$23,409.32.
14 Based on the foregoing,
15 IT IS HEREBY ADJUDGED ORDERED AND DECREED that the Association is
16 awarded its attorneys' fees in the amount of \$79,483.65 as against Lytle.
17 IT IS FURTHER ORDERED that the Association is awarded damages in the amount of
18 \$23,409.32 as against Lytle.
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LEACH JOHNSON SONG & GRUCHOW
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IT IS FURTHER ORDERED that the Association is awarded its costs in the amount of \$1,130.77 as against Lytle.

DATED this 22 day of May, 2012.


DISTRICT COURT JUDGE

Prepared and submitted by:

LEACH JOHNSON SONG & GRUCHOW

By: 

Sean L. Anderson
Nevada Bar No. 7259
Ryan W. Reed
Nevada Bar No. 11695
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

EXHIBIT “K”

Alan L. Johnson
CLERK OF THE COURT

ORDER
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN W. REED
Nevada Bar No. 11695
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Telephone: (702) 538-9074
Facsimile: (702) 538-9113
Attorneys for Rosemere Estates Property
Owners Association

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, a Nevada non-
profit corporation; and DOES I thought X,
inclusive

Defendants.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION, a Nevada non-
profit corporation; and DOES I thought X,
inclusive

Counterclaimant

vs.

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

Counterdefendant

Case No.: A-10-631355-C

Dept. No.: XXXII

SUPPLEMENTAL ORDER
AWARDING ATTORNEYS' FEES

LEACH JOHNSON SONG & GRUCHOW
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On December 9, 2011, this Court entered its Order Granting Defendants/Counterclaimant's Motion for Summary Judgment ("Order"). On December 15, 2011, Defendant/Counterclaimant Rosemere Estates Property Owners' Association (the "Association") filed its Verified Memorandum of Costs. January 6, 2012, the Association filed

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1 its Motion to Confirm Arbitrator's Decision and Award and Motion for Fees and Costs. On
2 December 27, 2011, John Allen Lytle and Trudi Lytle, as Trustees of the Lytle Trust
3 (collectively "Lytle") filed their Motion for Relief from Judgment or Order pursuant to NRCP
4 60, to Alter or Amend Judgment, and Request for Sanctions Pursuant to R.C.C.R. 7.60, or in the
5 Alternative, Motion for Reconsideration, or in the Alternative, Motion for Leave to Amend or
6 Supplement Pursuant to N.R.C.P. 15. On January 17, 2012, the Association filed its Omnibus
7 Opposition to Lytle's Motion. On January 25, 2012 Lytle filed its Reply in Support of Motion
8 for Relief from Judgment or Order pursuant to NRCP 60, to Alter or Amend Judgment, and
9 Request for Sanctions Pursuant to R.C.C.R. 7.60, or in the Alternative, Motion for
10 Reconsideration, or in the Alternative, Motion for Leave to Amend or Supplement Pursuant to
11 N.R.C.P. 15. On January 27, 2012, Lytle filed its Opposition to Defendant's Motion to Confirm
12 Arbitrator's Decision and Award and Motion for Fees and Costs; and Plaintiff's Motion to
13 Strike.

14 The Association's Motion for Attorneys' Fees came on for hearing on February 6, 2012.
15 The Court granted the Association's Motion for Attorneys' Fees and denied the Motion to
16 Confirm. The Court further set a date for an evidentiary hearing regarding the amount of
17 attorneys' fees, costs and damages to be awarded to the Association. The Court further directed
18 the parties to submit supplemental pleadings. On February 28, 2012, the Association filed its
19 Supplemental Briefing in Support of Award of Attorneys' Fees, Costs and Damages. On April
20 12, 2012, Lytle filed its Opposition to Motion for Attorneys Fees, Costs and Damages. On April
21 20, 2012, the Association filed its Reply to Plaintiffs' Opposition to Supplemental in Support of

25 Locher, Turner & Senet, appeared on behalf of Lytle. The Court, having considered all of the
26 pleadings and papers on file and considering the oral argument of counsel, found and ordered
27 that as the prevailing party in this action, the Association was entitled to recover its attorneys'
28 fees and costs pursuant to NRS 116.4117 and Section 16 of the Amended Covenants, Conditions

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1 and Restrictions.

2 The Court conducted an analysis of the requested fees and costs pursuant to *Brunzell v.*
3 *Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) and, based on that
4 analysis, reduced the Attorneys' fees requested by the Association by \$10,000, as there is an
5 overlap in the billing records, and awarded the Association the amount of \$79,433.65 against
6 Lytle.

7 The Court further determined that the Association was entitled to recover the attorneys'
8 fees and costs it incurred since the filing of the Motion for Attorneys' Fees on February 27,
9 2012. As such, on May 4, 2012, the Association filed its Supplemental Briefing in Support of
10 Award of Attorneys' Fees and Costs Post February 27, 2012. In this Motion, the Association
11 sought an award of \$8,098.45. On May 10, 2012, Lytle filed its Opposition to Defendant's
12 Supplemental Briefing in Support of Award of Attorneys' Fees and Costs Post February 27,
13 2012.

14 Having reviewed the Supplemental Briefing and Opposition, and following another
15 *Brunzell* analysis, the Court finds that the Association is entitled to an award of attorney's fees
16 and costs pursuant to Section 16 of the Amended Covenants, Conditions and Restrictions and
17 NRS 116.4117(6). Therefore, with regard to costs and attorney's fees incurred post-February 27,
18 2012:

19 **IT IS HEREBY ADJUDGED ORDERED AND DECREED** that the Association is
20 awarded attorneys' fees in the amount of \$7,068.00 as against Lytle.

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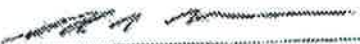
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LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 438-9074 - Facsimile (702) 237-9113

1 IT IS FURTHER ORDERED that the Association is further awarded its costs in the
2 amount of \$117.45 as against Lytle.

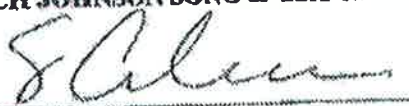
3 DATED this 10 day of August, 2012.

4
5 
6 HONORABLE ROB BARE
7 DISTRICT COURT JUDGE DEPT. XXXIII

8 ROB BARE
9 JUDGE, DISTRICT COURT, DEPARTMENT 32

10 Prepared and submitted by:

11 LEACH JOHNSON SONG & GRUCHOW

12 By: 

13 Sean L. Anderson
14 Nevada Bar No. 7259
15 Ryan W. Reed
16 Nevada Bar No. 11695
17 8945 West Russell Road, Suite 330
18 Las Vegas, Nevada 89148
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EXHIBIT “L”



CLERK OF THE COURT

1 **ORD**

Richard E. Haskin, Esq.

2 Nevada State Bar # 11592

3 **GIBBS GIDEN LOCHER TURNER**

4 **SENET & WITTBRODT LLP**

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144-0596

(702) 836-9800

Attorneys for Plaintiffs and Counterdefendants

JOHN ALLEN LYTLE and TRUDI LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS
ASSOCIATION, a Nevada non-profit corporation;
and DOES I through X, inclusive,

Defendants.

ROSEMERE ESTATES PROPERTY OWNERS
ASSOCIATION, a Nevada non-profit corporation;
and DOES I through X, inclusive,

Counterclaimants,

v.

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

Counterdefendants.

CASE NO. A-10-631355-C
Dept.: XXXII

**ORDER GRANTING PLAINTIFF JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S, AS TRUSTEES OF THE LYTLE
TRUST, MOTION FOR SUMMARY
JUDGMENT**

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NOV 10 2016

PLEASE TAKE NOTICE that on November 8, 2016, the Court heard Plaintiffs JOHN ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust (hereinafter "Plaintiff" or the "Lyttles") MOTION FOR SUMMARY JUDGMENT in the above-captioned matter, filed on September 14, 2016. After considering the First Amended Complaint, deemed filed by Order of this Court on June 1, 2016, the Motion for Summary Judgment, the Declaration of Trudi Lytle, and evidence submitted therewith, and hearing oral argument, and no opposition having been filed by Defendant and Counterclaimant ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION ("Defendant"), the Court grants Plaintiffs' Motion for Summary Judgment.

I. FINDINGS OF FACT

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

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

6. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lyttles"), purchased a Rosemere 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.

7. The Lyttles later transferred Plaintiff's Property to Plaintiff.

1 8. In another action by Plaintiff against the Association before this Court, the Court
2 found, as a matter of law, as follows:

3 a. The Association is a limited purpose association under NRS 116.1201 and not
4 a unit-owners' association, as that term is defined by Chapter 116. In making this finding,
5 the District Court specifically found: (1) "the Association did not have any powers beyond
6 those of the "property owners committee" designated in the Original CC&Rs—simply to care
7 for the landscaping and other common elements of Rosemere Estates as set forth in
8 Paragraph 21 of the Original CC&Rs;" (2) that the Association was "created for the limited
9 purpose of maintaining. . . "[t]he landscape of the common elements of a common interest
10 community. . .," and (3) the Association "cannot enforce "any restrictions concerning the use
11 of units by the units' owners . . ."

12 b. The Amended CC&Rs were not properly adopted or recorded, that the
13 Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect.

14 9. The Court's Judgment was affirmed by the Nevada Supreme Court, Docket No.
15 63942.

16 10. On September 15, 2008, at an Executive Board meeting of the Association, on a 5-3
17 vote, the membership voted to approve an Executive Board proposal that, first, each member of the
18 Association should be assessed \$10,000.00 "in conjunction with [Plaintiff's] actions" in bringing the
19 NRED 1 litigation and in pursuing litigation against Plaintiff for unarticulated and nebulous reasons,
20 and, second, that "the Association should bring foreclosure proceedings against any lots with
21 outstanding assessments due the Association."

22 11. On July 20, 2009, the Association, through a collection agency, NAS, caused to be
23 recorded a Notice of Delinquent Assessment Lien in the Clark County Recorder's Office in the
24 amount of \$12,500.00 (stated as including late fees, collection fees and interest in the amount of
25 \$2,379.00) against Plaintiff's property within Rosemere Estates. The July 20, 2009 lien shall be
26 referred to herein as the "First Lien."

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1 12. Plaintiff immediately objected to validity of the First Lien and assessments to the
2 Association and the collection agency because the validity of the Amended CC&Rs was the subject
3 of litigation and the fact that Plaintiff had bonded around the lien. Further, the assessment, at least in
4 substantial part, is for legal fees that Plaintiff would have to pay to sue itself. This lien remains
5 recorded against Plaintiff's Property.

6 13. Plaintiff never received notice of the assessment or notice of an intent to lien as
7 required by NRS 116.31162(1)(a), which requires a notice of the delinquent assessment stating the
8 amount of the assessment and additional costs. This must be mailed by the Association, or its agent,
9 to Plaintiff prior to recording any lien. And this was not done.

10 14. On or about November 19, 2009, the Association (through its collection agency)
11 notified Plaintiff that the payoff amount had increased to \$21,045.00. Lytle Decl., ¶ 26. Plaintiff
12 objected at every instance to the First Lien. *Id.* at ¶ 27.

13 15. After a Nevada Real Estate Division ("NRED") arbitration of the validity of the
14 Amended CC&RS, the arbitrator wrongfully ruled in favor of the Association and awarded the
15 Association \$45,000.00 in legal fees and \$7,255.19 in costs. Plaintiff immediately filed a trial de
16 novo in District Court, the NRED 1 case, and posted a supersedeas bond with the Clerk in the
17 amount of \$52,255.19, covering the foregoing fees and costs.

18 16. On November 18, 2009, the Association, through its attorney Gerry G. Zobrist, the
19 son of Board President Gerry Zobrist, recorded a Judgment dismissing the NRED 1 case against
20 Plaintiff's Property, which also included a \$52,255.19 attorney fee and cost award, against Plaintiffs'
21 Property. The recorded Judgment shall be referred to herein as the "Second Lien."

22 17. The Association recorded the Second Lien ten (10) days after Plaintiff posted a bond
23 to cover the \$52,255.19 monetary judgment which the Association deemed good and sufficient.

24 18. The purpose for recording the Second Lien (Judgment) was simply to slander title to
25 Plaintiff's Property. The NRED 1 dismissal and monetary award was overturned by the Nevada
26 Supreme Court on September 29, 2011 in Docket No. 54886.

27 19. The Second Lien was released on November 14, 2012.

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20. On or about November 19, 2009, the Association (through its collection agency) notified Plaintiff that the payoff amount on the First Lien had increased to \$21,045.00 and that the Association was going to foreclose on the property. The increase in the lien amount included a \$1,000.00 late fee, when only \$10.00 was permissible pursuant to the Amended CC&Rs. Also, the Association demanded a special assessment interest amount of \$900.00 at 12% interest per annum, when the allowable interest rate is 3.25% per NRS 99.040(1) on this date.

21. On or about March 16, 2010, Plaintiff filed a second arbitration action with NRED against the Association disputing the validity of the assessment and related penalties, interest and collection fees.

22. While the arbitration matter was pending and five (5) days after the Complaint was filed in this action, the Association recorded yet another lien against Plaintiff's property on March 22, 2010, in the amount of \$136,583.00, without any justification for doing so. The March 22, 2010 lien shall be referred to as the "Third Lien."

23. The Third Lien was released by the Association on September 27, 2010, only after Plaintiff discovered it had been recorded.

24. The Third Lien includes the amounts from the First and Second Liens, which already were recorded against Plaintiff's Property.

25. The three liens, which were all recorded at the same time, totaled \$209,883.19. The only amount that had been adjudicated was \$52,255.19, and there was a bond posted in that amount which was deemed, by the Association, as good and sufficient.

26. For the reasons set forth in this Order, the Association did not have a right to have any of these liens recorded against Plaintiff's Property.

II. CONCLUSIONS OF LAW

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. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(quoting NRCP 56(c)).

3. In Wood, the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary judgment jurisprudence, Id. at 1037, and adopted the summary judgment standard which had been articulated by the United States Supreme Court in its 1986 Trilogy: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Electrical Industrial Company v. Zenith Radio Corporation, 475 U.S. 574 (1986). The application of the standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts demonstrating existence of a genuine issue for trial." Wood, 121 p.3d at 1031. This obligation extends to every element of every claim made, and where there is a failure as to any element of a claim, summary judgment is proper. Barnettler v. Reno Air, Inc., 114 Nevada 441, 447, 956, P2d. 1382, 1386 (1998). In this case, the Association failed to oppose the Motion for Summary Judgment and failed to appear for the hearing thereon, which was a general failing to present any facts demonstrating the existence of a genuine issue for trial.

4. 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, p.3d at 1030 (quoting Celotex, 477 U.S. at 327). In Liberty Lobby, the U.S. Supreme Court noted that:

"Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Id. (quoting Liberty Lobby, 477 U.S. at 247-48)

B. Summary Judgment Is Proper As To Plaintiff's Declaratory Relief Cause of Action

5. 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.

1 6. The Lytles' Seventh Cause of Action seeks Declaratory Relief and assumes, therein,
2 that the Amended CC&Rs are void ab initio, as they indeed are.¹ See First Amended Complaint
3 ("FAC"), ¶¶ 32 – 39. Specifically, the Lytles seek this Court to declare that the Liens based on the
4 assessments at issue are invalid because they were based on the Amended CC&Rs, which were void
5 *ab initio* -- meaning that there was never any right prescribed by the Amended CC&Rs as they were
6 void from their inception and recording.

7 7. *Void ab initio* means that the documents are of no force and effect., i.e. it does not
8 legally exist. Washoe Medical Center v. Second Judicial Dist. Court of State of Nev., 122 Nev.
9 1298, 1304, 148 P.3d 790, 794 (2006); see also Black's Law Dictionary, 2d ed.. The phrase *ab initio*
10 comes from Latin and has the literal translation "from the start" or "from the beginning." If a court
11 declares something void ab initio, it typically means that the court's ruling applies from the very
12 beginning, from when the act occurred. In other words, the court declares the documents, in this
13 case, the Amended CC&Rs, invalid from the very inception.

14 8. Here, this Court has declared the Amended CC&Rs void *ab initio*, meaning that they
15 never had any force and effect. The liens in questions are all based on assessments that were levied
16 pursuant to the Amended CC&Rs. As a result, the assessments and resulting liens are invalid and
17 must be similarly declared void *ab initio*

18 **C. Summary Judgment Is Granted As To The Quiet Title Cause Of Action**

19 9. A plaintiff may bring a quiet title cause of action and must allege (1) the plaintiff has
20 an interest in real property, and (2) the defendant claims an interest adverse to that of plaintiff.
21 Twain Harte Homeowners Assn. v. Patterson, 239 Cal.Rptr. 316 (1987), South Shore Land Co. v.
22 Petersen, 38 Cal.Rptr. 392 (1964), Thornton v. Stevenson, 8 Cal.Rptr. 603 (1960).

23 10. The Plaintiff's Fourth Cause of Action is for Quiet Title and alleges that the liens
24 described herein "were recorded without any right and for invalid reasons as set forth herein, and the
25 lien presently recorded against the property impairs and clouds Plaintiff's title to Plaintiff's
26 Property."

27 ¹ Plaintiff believes that a determination as to the Seventh Cause of Action first, which alleges that the
28 liens are void ab initio and must be revoked because the District Court already has determined that
the Amended CC&Rs are void ab initio is the appropriate starting point for the Court's
determination of this matter.

11. "A cloud on title is described as any outstanding instrument, record, claim, or encumbrance which is actually invalid or inoperative but which may nevertheless impair the title to property." 53 Cal. Jur. 3d Quieting Title § 15. "Actions to determine the continuing validity of a restrictive covenant are normally brought either as an action for a declaratory judgment or an action to quiet title.

12. Where the action is one to quiet title, it is necessary to show that the plaintiff holds title to the property in question and that there is 'cloud' upon the title, or, in other words, that a hostile claim is outstanding. 27 Causes of Action 203, §§ 5, 25 (2012), see also Cortese v United States, 782 F.2d 845 (9th Cir Cal 1986); Garnick v Serewitch, 39 NJ Super 486, 121 A.2d 423 (1956); 65 Am. Jur. 2d, *Quieting Title and Determination of Adverse Claims* §§ 9-17; C.J.S., Quieting Title §§ 58-66.

13. As set forth above in this Order, the Amended CC&Rs and the liens based thereon are all void *ab initio*. The recording of the Amended CC&Rs and the liens all were a cloud on title, and summary judgment granting Plaintiff's Quiet Title cause of action is warranted and granted.

D. Summary Judgment Is Granted As To The Injunctive Relief Cause Of Action

14. Plaintiff's Fifth Cause of Action alleges that "Plaintiff is entitled to a preliminary and permanent mandatory injunction ordering the Association not to foreclose on the first lien recorded on Plaintiff's Property on July 20, 2009, pending final resolution of the within litigation."

15. As set forth above, all liens, including the first lien, are void *ab initio* and are illegitimate. Therefore, no foreclosure action may be pursued to enforce the liens, and summary judgment is proper as to Fifth Cause of Action for injunctive relief.

E. Summary Judgment Is Granted As To The Slander Of Title Cause Of Action

16. "Slander of title involves false and malicious communications that disparage a person's title in land and cause special damages." Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987).

17. An award of expenses, including attorneys' fees, incurred in removing a cloud on title is proper. Summa Corp. v. Greenspun, 98 Nev. 528, 532, 655 P.2d 513, 515 (1982).

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1 18. “Malice” has been defined as “knowledge that it [a statement] was false or with
2 reckless disregard of whether it was false or not.” New York Times Co. v. Sullivan, 376 U.S. 254,
3 279-80 (1964). Reckless disregard means that the publisher of the statement acted with a “ ‘high
4 degree of awareness of ... [the] probable falsity’ ” of the statement or had serious doubts as to the
5 publication's truth.” *Id.* at 280.

6 19. Plaintiff's Third Cause of Action alleges slander of title against the Association as a
7 result of the Association's recording the First and Second Liens.

8 20. The Association knew or should have known that it had no right to issue assessments
9 against Plaintiff and knew or should have known that the bond posted by Plaintiff adequately
10 covered the Association's lien on Plaintiff's Property and therefore the Association acted
11 maliciously or in reckless disregard of the falsity of the lien by recording the lien on the Property and
12 refusing to remove the same up through the present date.

13 21. Further, the recordation by the Association of the Third Lien constitutes slander of
14 title to Plaintiff's Property as the Association and its Board members knew or should have known
15 that they had no legal right to record the lien as the amount of lien had not been adjudicated by any
16 court, arbitrator or arbiter and therefore the Association and/or its Board members acted with malice
17 and/or with reckless disregard of the falsity of the lien.

18 22. This Court already found that the Association had no lawful right to record and
19 enforce the Amended CC&Rs. As such, the Amended CC&Rs were declared void *ab initio*.
20 Similarly, the First and Second Liens, and all other liens recorded against Plaintiff's Property are
21 void *ab initio* because they were born from the Amended CC&Rs. Thus, the falsity of the liens is
22 clearly established.

23 23. In addition to being false, the Association's actions were malicious because the
24 Association recorded the liens with reckless disregard for the integrity of those liens.

25 24. The July 2007 amendment meeting and the actions that preceded that meeting to
26 perpetrate the fraud of the Amended CC&Rs and post-meeting actions in recording the Amended
27 CC&Rs were fraudulent. The Association's Board, at that time, pushed the Amended CC&Rs
28 through an improperly noticed meeting wherein homeowners were provided with written

1 misrepresentations, insufficient time to consider and debate the proposed amendment, and then,
 2 despite all of these problems, the Association's Board still recorded the Amended CC&RS without
 3 the required unanimous consent. The process was reckless and malicious and aimed at the Lytles,
 4 who were the only undeveloped lot at the time, from building their dream home.

5 25. Once the Amended CC&Rs were improperly recorded, the Association, again acting
 6 in disregard for Plaintiff's rights, recorded liens against Plaintiff's Property and swiftly moved to
 7 foreclose against the First Lien.

8 26. As a result of the Association's actions, as set forth herein and as established by the
 9 record in Case No. A-09-593497-C, the Association's actions were malicious.

10 27. Therefore, summary judgment as to Plaintiff's Third Cause of Action for Slander of
 11 Title is appropriate.

12 **F. The Liens Are Invalid Because The Association Did Not Adopt An Annual Budget**

13 28. The Association's Board failed to adopt an annual budget in violation of NRS §
 14 116.3115. Assessments may not be imposed if they are not done so based on an annual budget
 15 prepared by the Board. NRS 116.3115, see also Bylaws, Sections 8.1 and 8.2.

16 29. The Association failed to adopt a budget in either 2009 or 2010, as required under
 17 Article 10, Section 10.4 of the Amended CC&Rs and Article VIII, Section 8.1 and 8.2 of the
 18 Bylaws.

19 30. As set forth in NRS 116.3115 and in the Association's own amended governing
 20 documents (since revoked but in place at the time of the assessments in question), an annual budget
 21 is required in order to impose assessments.

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**G. The Liens Are Invalid Because The Association Failed To Provide Requisite Notice
And A Hearing Prior To Levying The Assessments And Recording The Liens
Against The Property**

31. NRS 116.31162(1)(2) provides as follows:

1. Except as otherwise provided in subsection 5, 6 or 7, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

32. Plaintiff never received any required statutory notice from the Association or anyone acting on its behalf of the delinquent assessment and other sums allegedly due that served as the basis for the First Lien.

33. Thus, the First Lien, even if the basis for that lien were valid, which they are not, is procedurally defective.

H. The Association's Collection Agency Was Never Properly Authorized

34. NRS 116.31086 requires the Association to obtain three (3) bids before hiring a collection agent, in this case NAS.

35. No bids were collected, and no meeting took place during which NAS was appointed as the Association's collection agent.

36. Yet, despite not being lawfully engaged and authorized, NAS recorded the First Lien on the Lytle Property and pursued collection and foreclosure. This was improper.

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I. Plaintiff Suffered Damages

37. NRS 116.1183 provides as follows:

1. An executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has:

(a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association;

(b) Recommended the selection or replacement of an attorney, community manager or vendor; or

(c) Requested in good faith to review the books, records or other papers of the association.

2. In addition to any other remedy provided by law, upon a violation of this section, a unit's owner may bring a separate action to recover:

(a) Compensatory damages; and

(b) Attorney's fees and costs of bringing the separate action.

[Emphasis added].

38. Plaintiff presented adequate evidence that it suffered damages as a result of the Board's retaliatory actions.

39. Plaintiff planned to build a dream home in the community, and the actions taken by the Board were intentionally and directly targeted at Allen and Trudi Lytle in order to prevent them from ever moving into the community.

40. Once more, Plaintiff underwent financial hardship in posting the various bonds in order to appeal this action (and other actions).

41. This matter commenced with the unlawful amendment in July 2007 and did not conclude until the Supreme Court affirmed the District Court's ruling that the Association's conduct was, indeed, unlawful and in violation of the Lytles' rights as homeowners.

42. Finally, the Association suspended the Plaintiff's voting rights, the right to run for the Board, blocked Plaintiff's attendance at meetings, and suspended membership privileges, all without complying with Article 12, Section 1.2(d) of the Amended CC&Rs and NRS 116.31041(2).

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43. The Association's retaliatory actions cost the Lytles their dream home. These actions further entitle Plaintiff to attorneys' fees incurred in this action, the underlying arbitration, and appeal in this action.

J. Plaintiff Is Entitled To Punitive Damages

44. A wronged plaintiff may recover punitive damages in an action for slander of title. Summa Corp. v. Greenspun, 98 Nev. 528, 655 P.2d 513 (1982).

45. Once more, the plaintiff need not show that the land was adversely affected. Id. at 531. Actual damages in the form of costs to remove the cloud on title, such as attorneys' fees, is sufficient. Id.

46. The Association, through its Board, recorded three (3) improper and unlawful liens against Plaintiff's Property. Once more, each lien incorporated the prior lien amount, reaching a total of \$209,883.19, when the only amount that had been adjudicated was \$52,255.19, when there was a bond posted in that amount which was deemed, by the Association, as good and sufficient.

47. The Court finds that the Association did not have a right to have any of these liens recorded against Plaintiff's Property.

48. The totality of the liens made it impossible for Plaintiff to sell the Property, even though a good and sufficient bond had been deposited.

49. The Association's actions were taken in order to prevent the Lytles from building their dream home in the community.

50. Pursuant to the foregoing, Plaintiff is entitled to punitive damages in an amount to be determined after a prove-up hearing on damages.

K. Plaintiff Is Entitled To An Award Of Damages Equal To Its Costs And Attorneys'

Fees Incurred In Removing The Cloud On Title

51. A plaintiff can recover its costs and attorneys' fees as damages in an action for slander of title. See generally Summa Corp., 98 Nev. 528, 655 P.2d 513.

52. Plaintiff is directed to submit a memorandum of costs and application for attorneys' fees.

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1 **L. Summary Judgment Is Granted Against The Associations' Counterclaim**

2 53. The Association's Counterclaim merely seeks to enforce actions taken against the
3 Lyttles via the Amended CC&Rs, which are *void ab initio* as set forth herein. For the reasons set
4 forth herein and the legal authority cited, all fines, assessments and liens are void *ab initio* and
5 should be declared as such.

6 **III. JUDGMENT**

7 **IT IS HEREBY ADJUDGED AND DECREED:**

8 1. All liens recorded by the Association against Plaintiff's Property are invalid and have
9 no force and effect. This Order may be recorded in the Office of the Clark County Recorder's
10 Office by any party, and, once recorded, shall be sufficient notice of the same.

11 2. The Association is hereby ordered to release any and all liens recorded against the
12 Property within sixty (60) days of the date of service of this Order on the Association, including (a)
13 the Notice of Delinquent Assessment Lien, Book/Instr. No. 20090720-001631, and (b) the
14 Judgment, Book/Instr. No. 200911180005345.

15 3. The Association's Counterclaim is dismissed.

16 4. Plaintiff is the prevailing party in this action. Plaintiff is directed to prepare, file and
17 serve a Memorandum of Costs.

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1 5. Plaintiff is deemed the prevailing party in this action. Any motion for attorneys' fees
2 will be addressed separately by the Court.

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4 IT IS SO ORDERED this 14 day of November, 2016.

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6 
7 HONORABLE ROB BARE
8 District Court Judge, Dept. XXXII

9 ROB BARE
10 JUDGE, DISTRICT COURT, DEPARTMENT 32

11 DATED: November 10, 2016

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12 SENET & WITTBRODT LLP

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EXHIBIT “M”

**Attorneys for Plaintiffs
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE**

DISTRICT COURT
CLARK COUNTY, NEVADA

Counterdefendants.

Hearing Date: March 21, 2017
Hearing Time: 9:30 a.m.

On March 21, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for Attorneys' Fees came on regularly for hearing, the Honorable Rob Bare presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates Property Owners'

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Association ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance at the hearing. Having considered the Motion, the arguments of counsel, the pleadings and papers on file herein, and good cause appearing therefore, the Court finds:

1. As the prevailing parties, Plaintiffs are entitled to an award of attorney fees under the Original CC&Rs, the Amended CC&Rs and NRS § 116.4117.

2. 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.

3. Plaintiffs prevailed in this action, and the Court granted Plaintiffs' motion for summary judgment, in its entirety, declaring all of the liens against Plaintiffs' property were wrongfully recorded and slandered the Plaintiffs' property. Accordingly, Plaintiffs are entitled to an award of attorney fees, pursuant to the terms of the Original CC&Rs.

4. 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).

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1 5. A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs,
2 is held unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393,
3 405-406, 935 P.2d 1154, 1162.

4 6. Finally, Plaintiffs are also entitled to an award of attorney fees pursuant to NRS
5 116.4117. NRS 116.4117 provides as follows:

6 1. Subject to the requirements set forth in subsection 2, if a declarant,
7 community manager or any other person subject to this chapter fails to
8 comply with any of its provisions or any provision of the declaration
9 or bylaws, any person or class of persons suffering actual damages
10 from the failure to comply may bring a civil action for damages or
11 other appropriate relief. . .

12 4. The court may award reasonable attorney's fees to the prevailing
13 party.

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

20 8. Plaintiffs' attorneys' fees, as set forth in the Motion and the affidavits in support
21 thereof, satisfy the factors set forth in *Brunzell v. Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349,
22 455 P.2d 31, 33. The Court considered all of the factors and applied them to Plaintiffs' request for
23 attorneys' fees.

24 9. Specifically, the Court considered: (1) the qualities of the advocate, *i.e.* his ability,
25 training and experience; (2) the character of the work done, its difficulty, intricacy, importance, time
26 and skill required; (3) the work actually performed by the attorneys; and (4) the result, *i.e.* whether
27 the attorney was successful in achieving a result for the client.

28 10. 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, and concludes that each factor favors an award of the fees requested.

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