

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY,
A NEVADA CORPORATION,

No. 77721

Appellant,

APPELLANT'S APPENDIX
VOLUME 1

vs.

RUBY LAKE ESTATES
HOMEOWNERS ASSOCIATION,

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

Respondent.

APPELLANT'S APPENDIX - VOLUME 1 - Pgs. 146 - 244

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1 CASE NO. CV-C-12-175

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4TH JUDICIAL DISTRICT COURT

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

6 IN AND FOR THE COUNTY OF ELKO

7
8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

10 Plaintiff,

11 vs.

ANSWER TO FIRST AMENDED
COMPLAINT; COUNTERCLAIM
AND CROSS-CLAIM

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

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

4
5 RUBY LAKE ESTATES HOMEOWNER'S
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada Corporation,

11 Counterdefendant.

12 RUBY LAKE ESTATES HOMEOWNER'S
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

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

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

5 Cross-Defendants.
6 _____/

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

10 **JURISDICTION**
11

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

14 2. Answering paragraph 2 of Plaintiff's Complaint, Ruby Lake has no information who
15 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there
16 is a deed recorded on June 21, 1994.
17

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

21 4. Answering paragraph 4 of Plaintiff's Complaint, Ruby Lake admits that it is a
22 nonprofit corporation incorporated and validly existing under the laws of the State of Nevada. Ruby
23 Lake asserts Nevada law does not provide for a corporation to "register" and based thereon denies
24 the same.
25

26 5. Answering paragraph 5 of Plaintiff's Complaint, Ruby Lake admits the allegations in
27 paragraph 5.
28

///

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

3
4 COMMON FACTS

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

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

11
12 9. Answering paragraph 9 of Plaintiff's Complaint, Ruby Lake asserts that the
13 document speaks for itself, no answer is required as to its content, but to the extent it is determined
14 an answer is required any contrary allegations are denied. As to any remaining allegations, those
15 allegations are denied.

16
17 10. Answering paragraph 10 of Plaintiff's Complaint, Ruby Lake denies each and every
18 allegation contained in paragraph 10.

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

22
23 12. Answering paragraph 12 of Plaintiff's Complaint, Ruby Lake asserts the Declaration
24 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary
25 allegations.

26 13. Answering paragraph 13 of Plaintiff's Complaint, Ruby Lake denies each and every
27 allegation contained in paragraph 13.
28

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

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

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

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

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

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

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

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

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

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

10
11 **FIRST CLAIM FOR RELIEF**

12 **(Declaratory Judgment)**

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

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

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

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

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

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

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

3 **FIRST AFFIRMATIVE DEFENSE**
4

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

7 **SECOND AFFIRMATIVE DEFENSE**

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

11 **THIRD AFFIRMATIVE DEFENSE**

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

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Ruby Lake acted in good faith.

15 **FIFTH AFFIRMATIVE DEFENSE**

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

18 **SIXTH AFFIRMATIVE DEFENSE**

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

20 **SEVENTH AFFIRMATIVE DEFENSE**

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

25 **EIGHTH AFFIRMATIVE DEFENSE**

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

NINTH AFFIRMATIVE DEFENSE

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

3
4 **TENTH AFFIRMATIVE DEFENSE**

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

7 **ELEVENTH AFFIRMATIVE DEFENSE**

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

9 **TWELFTH AFFIRMATIVE DEFENSE**

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

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

- 17
18 1. That Plaintiff takes nothing by reason of its Complaint;
19 2. That the Complaint be dismissed;
20 3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a
21 reasonable attorneys' fee, for costs of suit; and

- 22
23 4. For such other and further relief as may be just and proper in the premises.

24 **COUNTERCLAIM AND CROSS-CLAIM**

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

27 **GENERAL ALLEGATIONS**
28

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

3 2. Artemis is a Nevada corporation ("Artemis" or "Claimant"), whose President,
4 Secretary, Treasurer and sole director is Elizabeth E. Essington.
5

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

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

8 5. For over sixteen years (1994-2010), Mr. and Mrs. Essington implicitly and expressly
9 represented that Mr. Essington had the capacity and authority to act on behalf of Artemis.
10

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

14 7. Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot
15 2, Block H of Ruby Lake Estates on March 9, 2010, and that both Lot 6 and Lot 2 ("Lots") are
16 subject to the terms, conditions and restrictions set forth in the CC&Rs.
17

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

20 9. Prior to the filing of the Articles of Incorporation, the ARC served as the governing
21 body of the Association.
22

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

25 11. Assessments were levied in order to pay for the maintenance of the community roads
26 and other common elements.
27
28

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

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

8 14. The June 28, 2010 Letter makes clear that Elizabeth and Mel Essington were the
9 owners who demanded in 2005 that an Association be formed and an Association Board elected.
10

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

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

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

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

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

23
24 20. Artemis is fully bound by his representations and actions. During his tenure on the
25 Board as Artemis' representative, Mr. Essington wrote letters to the members of RLEHOA urging
26 them to "revitalize the Ruby Lakes Estates property owners association", as well as confirming the
27 existence of the HOA, the applicability of NRS Chapter 116, and the ability and responsibility of
28

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

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

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

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

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

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

23 24. Mr. Essington, on behalf of Artemis, continued to acknowledge the existence of the
24 Association, the applicability of NRS Chapter 116, and the ability of the Association to levy and
25 collect assessments for maintenance of the common elements. In a letter addressed to "Mr. Lee
26 Perks, President, Ruby Lake Homeowners Association," dated January 14, 2007, Mr. Essington
27 wrote:
28

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

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

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

14 26. Mr. Essington then followed up with an e-mail communication to his fellow board
15 members covering a letter, which he wrote. Mr. Essington wanted his letter sent to all members of
16 RLEHOA. In this letter, Mr. Essington again acknowledges the Association and the applicability of
17 NRS Chapter 116, as well as the common elements of the Association, and the Association's duty
18 and responsibility to maintain the same. Finally, Mr. Essington clearly acknowledges the
19 Association's right and obligation to levy and collect assessments:
20

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

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

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

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

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

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

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

29 29. Mr. Essington was active in the Association from the time Lot 6 of Block G was
30 purchased by Artemis in 1994 and served on the RLEHOA Board of Directors from August of
31 2007, when he was initially elected until 2011.

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

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

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

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

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

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

17 36. Invoices generated in the ordinary course of business for the Association were sent
18 to the Essingtons.

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

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

27 39. Artemis continued to fail to pay its assessments and the Board of Directors took
28 appropriate action to collect the delinquent assessments.

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

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

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

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

9
10
11 **FIRST CLAIM FOR RELIEF**
12 **(Breach of Contract and Breach of Statutory Duties – Against Artemis)**

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

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

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

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

21
22 **SECOND CLAIM FOR RELIEF**
23 **(Negligence – Against Artemis)**

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

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

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

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

3
4 52. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to
5 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby
6 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

7 **THIRD CLAIM FOR RELIEF**
8 **(Violations – Against Artemis)**

9 53. Ruby Lake incorporates paragraphs 1 through 52 as if set forth in full herein.

10 54. Artemis' actions were, and continue to be, violations of the governing documents.

11 55. Artemis should pay all damages sustained.

12 56. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to
13 attorney's fees and costs in accordance with NRS 18.010, the governing documents of Ruby Lake,
14 Chapters 116 and 38 of the Nevada Revised Statutes.

15 **FOURTH CLAIM FOR RELIEF**
16 **(Confirmation of Award of Attorneys Fees and Costs – Against Artemis)**

17
18 57. Ruby Lake incorporates by reference the allegations of paragraphs 1 through 56 as
19 though fully set forth herein.

20 58. An Award was entered in favor of Ruby Lake on the substantive portion of the
21 arbitration proceeding NRED Claim 11-82, a copy of which is attached as Exhibit "1".

22 59. An Award for attorney's fees in the amount of \$22,092.00 and costs in the amount of
23 \$4,718.67 was in favor of Ruby Lake in the non-binding arbitration proceeding NRED Claim 11-
24 82, a copy of which is attached as Exhibit "1".

25 60. The Award entered should be confirmed and adopted.

26
27 ///

28 ///

FIFTH CLAIM FOR RELIEF
(Damages - Attorneys Fees – Against Artemis)

61. Ruby Lake incorporates paragraphs 1 through 60 as if set forth in full herein.

62. Counter-Defendant's actions resulted in Ruby Lake incurring attorney's fees as damages.

63. Pursuant to NRS 38.330(7), Ruby Lake should be awarded all attorney's fees and costs incurred in the defense and prosecution of this action as well as all of those attorney's fees and costs incurred in the arbitration proceeding NRED Claim 11-82.

64. Artemis should pay all damages sustained.

65. Ruby Lake was required to retain Kern & Associates, Ltd., and is entitled to attorney's fees and costs in accordance with Sandy Valley Associates v. Sky Ranch Estates Owners Association, 117 Nev.Adv.Rep. 78, 35 P.3d 964 (2001); NRS 18.010, the Governing Documents of Ruby Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

66. All attorney's fees and costs were and will be incurred as a direct and proximate result of the Counter-Defendant's violations of the Governing Documents of Ruby Lake.

SIXTH CLAIM FOR RELIEF
(Declaratory Relief - Chapter 30 of the Nevada Revised Statutes – Against Artemis and Cross-Defendants)

67. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 66 of its Counterclaim as though fully set forth herein.

68. A real controversy exists between the parties hereto concerning whether it is a lawfully formed and validly existing non-profit common interest community association in good standing, organized for the purposes of administering and enforcing the CC&Rs and exercising all powers of a community association granted under the provisions of Nevada law, including Chapters

1 81 and 116 of the Nevada Revised Statutes. An order should be entered resolving this controversy
2 in favor of Ruby Lake.

3
4 **SEVENTH CLAIM FOR RELIEF**
(Preliminary and Permanent Injunction – Against Artemis)

5 69. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 68 of its
6 Counterclaim as though fully set forth herein.

7
8 70. Counter-Defendant's behavior in the past shows that it will continue to interfere with
9 business of Ruby Lake.

10 71. Counter-Defendant's behavior poses a serious, substantial and irreparable harm to
11 the lawful actions of Ruby Lake.

12 72. Ruby Lake has no adequate remedy at law or otherwise for the harm or damage done
13 and threatened to be done.

14
15 73. The only remedy that will allow Ruby Lake to maintain peace and quiet and comply
16 with the statutory and recorded obligations of a common-interest community is a restraining order
17 from this Court.

18 74. Ruby Lake will suffer irreparable harm unless Counter-Defendant is ordered by this
19 Court to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake
20 and its members.

21
22 75. On a final hearing, a permanent injunction enjoining and ordering the Counter-
23 Defendants to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby
24 Lake and its members.

25 76. On a final hearing, a permanent injunction enjoining and ordering the Counter-
26 Defendants to refrain from taking any action to interfere with Ruby Lake and its lawful
27 requirements under the law as a common-interest community.
28

1 WHEREFORE, Ruby Lake prays for judgment against Artemis Exploration Company, as
2 follows;

3 1. That Ruby Lake recover special and general damages in an amount in excess of
4 \$10,000.00;

5
6 2. That Ruby Lake is a lawfully formed and validly existing non-profit common-
7 interest community association in good standing, organized for the purposes of administering and
8 enforcing the CC&Rs and exercising all powers of a community association granted under the
9 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

10
11 3. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain
12 from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members;

13 4. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain
14 from taking any action to interfere with Ruby Lake and its lawful requirements under the law as a
15 common-interest community;

16
17 5. For a judgment confirming the Awards entered by the Arbitrator in the arbitration
18 proceeding NRED Claim 11-82 in favor of Ruby Lake;

19 6. That Ruby Lake be awarded its costs;

20 7. That Ruby Lake be awarded its attorney's fees;

21 8. Such other and further relief as the Court deems just and proper in the premises.

22
23 WHEREFORE, Ruby Lake prays for judgment against Cross-Defendants, and each of them,
24 as follows:

25 1. That Ruby Lake is a lawfully formed and validly existing non-profit common-
26 interest community association in good standing, organized for the purposes of administering and
27 enforcing the CC&Rs and exercising all powers of a community association granted under the
28 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

2. Such other and further relief as the Court deems just and proper in the premises.

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 8th day of March, 2016.

KERN & ASSOCIATES, LTD.

James M. Caputo

GAYLE A. KERN, ESQ.

NEVADA BAR #1620

KAREN M. AYARBE, ESQ.

NEVADA BAR #3358

5421 Kietzke Lane, Suite 200

RENO, NEVADA 89511

Telephone: 775-324-5930

Fax: 775-324-6173

Email: gaylekern@kernltd.com

Attorneys for Ruby Lake Estates Homeowner's Association

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &
3 Associates, Ltd., and that on this day I served the foregoing document described as follows:
4

5 *ANSWER TO FIRST AMENDED COMPLAINT;*
6 *COUNTERCLAIM AND CROSS-CLAIM*

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

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

11 Via facsimile transmission

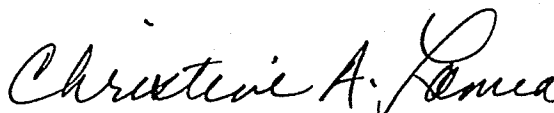
12 Via e-mail

13 Personal delivery, upon:

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

15
16 Travis Gerber, Esq.
17 Gerber Law Offices, LLP
18 491 4th Street
Elko, NV 89801

19 DATED this 8th day of March, 2016.

20
21 
22 CHRISTINE A. LAMIA
23
24
25
26
27
28

1 CASE NO. CV-C-12-175

2 DEPT. 2

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

FILED

2016 APR 14 PM 4:00

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

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

8
9 ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

10 Plaintiff,

11 vs.

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

SECOND AMENDED COMPLAINT

27 Defendants.
28

GERBER LAW OFFICES, LLP

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

1 AA000167

1 RUBY LAKE ESTATES HOMEOWNER'S
2 ASSOCIATION,

3 Counterclaimant,

4 vs.

5 ARTEMIS EXPLORATION COMPANY,
6 a Nevada Corporation,

7 Counterdefendant.

8 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

9 Cross-Claimant,

10 vs.

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

Cross-Defendants.

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

JURISDICTION

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

GERBER LAW OFFICES, LLP

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

1 AA000168

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

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

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

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

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

COMMON FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **PRAYER FOR RELIEF**

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

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


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

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

15 DATED this 14~~th~~ day of April, 2016.

16 **GERBER LAW OFFICES, LLP**

17
18 BY:



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

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CERTIFICATE OF SERVICE BY MAIL

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

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

DATED: April 14, 2016.

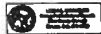

MADISON JOHNSON

EXHIBIT A

RUBY LAKE ESTATES ELKO COUNTY, NEVADA

NOTARY PUBLIC
I, John A. Givens, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, Nevada.

NOTARY PUBLIC
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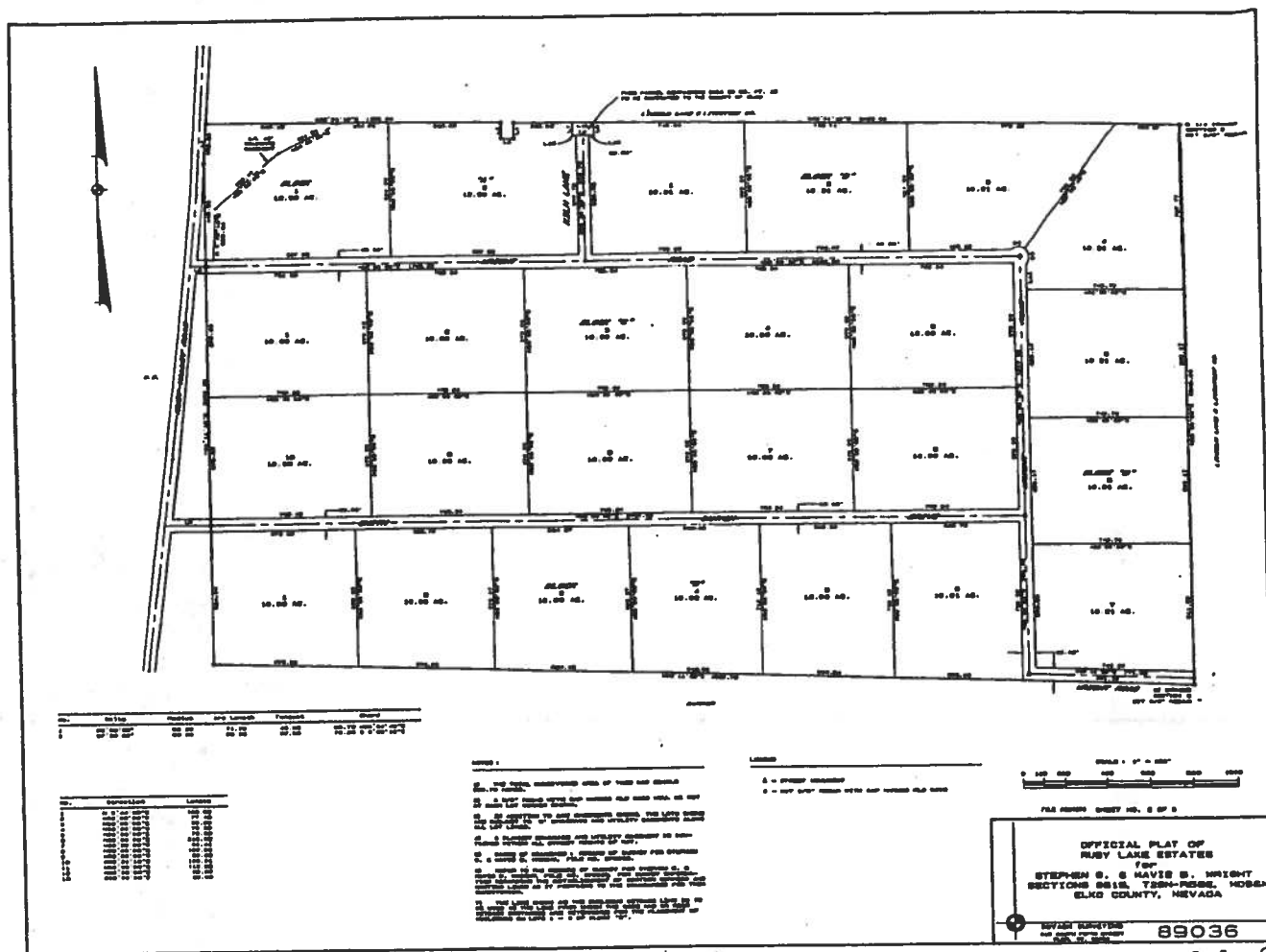
NOTARY PUBLIC
I, John A. Givens, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, Nevada.

NOTARY PUBLIC
I, John A. Givens, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of the County of Elko, Nevada.

FILED IN
201674
PAGE 1 OF 3
DATE
1987
BY

SHEET 1 OF 3
OFFICIAL COPY OF
RUBY LAKE ESTATES
FOR
STEPHEN S. & DAVID S. WRIGHT
SECTIONS 36&37, T4N-36E, R10E
ELKO COUNTY, NEVADA
89036
SHEET 1 OF 3

ISSUES TO BE COVERED



DRAWING NUMBER
Sheet 3 of 5

DRAWING NUMBER

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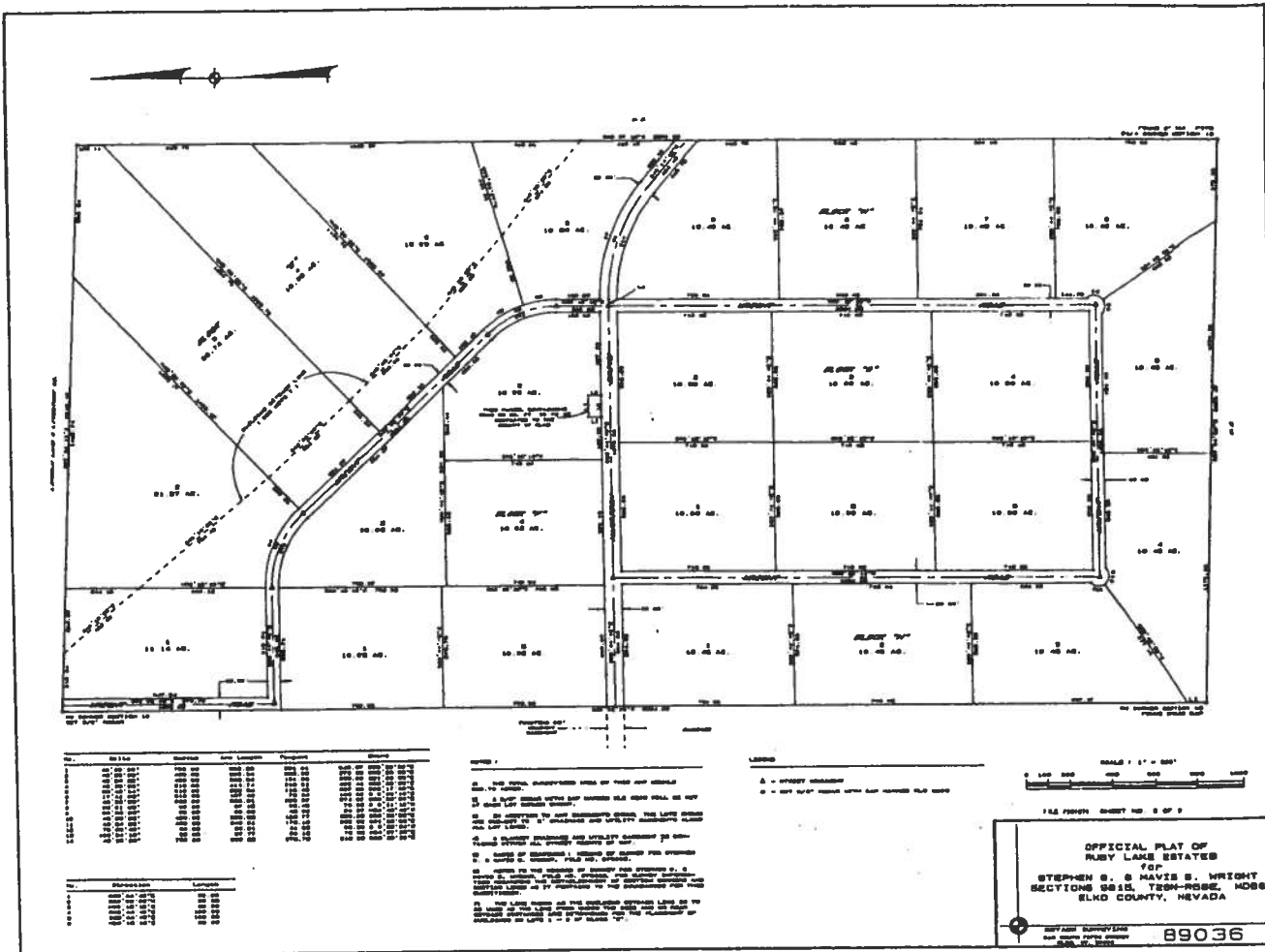


EXHIBIT B

RUBY LAKE ESTATES
DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 6 day of Sept, 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

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

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

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

ARTICLE I

**GENERAL PURPOSE OF
RESERVATIONS AND RESTRICTIONS**

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

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

ARTICLE III

CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright
Ruby Valley, NV 89833

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV VARIANCES

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

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

ARTICLE V VIOLATION AND ENFORCEMENT

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

4-

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

DECLARANT:

Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. Wright
MAVIS S. WRIGHT

STATE OF Nevada)
COUNTY OF Elko) ss.

On Sept. 10, 1989, personally appeared before me, a Notary Public,
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the
above instrument.

Margo K. Fritz
NOTARY PUBLIC



INDEXED :

FEE 10⁰⁰ FILE # 283750
FILED FOR RECORD
AT REQUEST OF
Marnel + Hansen
89 OCT 25 AIO 43

RECORDED BY 702 287
JERRY D. REYNOLDS
ELKO CO. RECORDER

1 AA000184

283750

EXHIBIT C

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

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

December 9, 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

Dear Mrs. Essington,

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

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

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

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

Sincerely,



Lee Perks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

EXHIBIT D

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	321

Bill To
ROCKY ROA HC 60 BOX 755 RUBY VALLEY, NV 89833

Payment remit to:
Ruby Lake Estates C/O L. A Perks
765 East Greg Street, Suite 103
Sparks, Nevada 89431

P.O. No.	Terms	Project
	1/1/2011	

Quantity	Description	Rate	Amount
1	2011 YEARLY ASSESSMENT	226.99	226.99
Payment Due By: January 31, 2011			
PLEASE REMIT TO: 765 E. GREG ST #103 SPARKS, NEVADA 89431			Total 1 AA000189 \$226

EXHIBIT E

**ANGIUS
& TERRY
COLLECTIONS
LLC**
A Division of ANGIUS & TERRY LLP
ATTORNEYS

January 4, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

Artemis Exploration Company
HC 60 Box 755
Ruby Valley, NV 89833

Re: Ruby Lake Estates / 2010-3298
Artemis Exploration Company
3817 Indian Springs Drive
Ruby Valley, NV 89833

Dear Homeowner(s):

Angius & Terry Collections, LLC ("ATC") represents Ruby Lake Estates ("Association"), and has been directed to act on your delinquent account with respect to the above-referenced property ("Property"). This is our **NOTICE OF INTENT TO RECORD A NOTICE OF DELINQUENT ASSESSMENT LIEN ("Demand")**.

As of the date of this Demand, there is a total of \$662.92 owing and unpaid to the Association. Please ensure that all amounts due to the Association, plus all additional amounts which become due and payable to the Association including recoverable fees and costs be paid, in full, and physically received in our office on or before 5:00 P.M. on 2/4/2011. Payment should be made payable to Angius & Terry Collections, LLC. Call our office, at least 48 hours prior to your deadline date, at (702) 255-1124 or (877) 781-8885 to obtain the correct payment amount as the total amount owed is subject to change. Please note, that should a reinstatement amount be provided by our office prior to our receiving notification of a change in the Association's assessments, you will be responsible for the account balance that reflects the change in the Association's assessment. Should you elect to ignore this Demand, a Notice of Delinquent Assessment Lien will be prepared and forwarded to the County Recorder's office and additional collections fees and costs will be added to your account.

If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above. You should direct all communications relating to this demand to the above-referenced office.

Please note all payments must be in the form of a cashier's check or money order. Personal check's and cash will not be accepted.

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

Sincerely,

Carolyn Swanson
Carolyn Swanson
Angius & Terry Collections, LLC

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

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

1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304

tel 877.781.8885 fax 877.781.8886

ATCollections.com

1 AA000191

FILED

CASE NO. CV-C-12-175

DEPT. NO. I

2016 APR 14 PM 4:32

ELKO CO DISTRICT COURT

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

CLERK _____ DEPUTY _____ *Per*

IN AND FOR THE COUNTY OF ELKO

ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

Plaintiff,

vs.

ANSWER TO SECOND AMENDED
COMPLAINT; COUNTERCLAIM
AND CROSS-CLAIM

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

1 CUNNINGHAM; RILEY MANZONIE;
2 DAVID NORWOOD; and DOES I-X,
3 Defendants.

4
5 RUBY LAKE ESTATES HOMEOWNER'S
6 ASSOCIATION,

7 Counterclaimant,

8 vs.

9 ARTEMIS EXPLORATION COMPANY, a
10 Nevada Corporation,

11 Counterdefendant.

12 RUBY LAKE ESTATES HOMEOWNER'S
13 ASSOCIATION,

14 Cross-Claimant,

15 vs.

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

1 WYATT; ROBERT CLARK; BETH
2 TEITLEBAUM; DANIEL SPILSBURY AND
3 DELAINE SPILSBURY; TERRY HUBERT
4 AND BONNIE HUBERT; RUSSELL
5 ROGERS AND SUSAN ROGERS; ROCKY
6 ROA; BEVERLY PATTERSON; DENNIS
7 CUNNINGHAM, RILEY MANZONIE;
8 DAVID NORWOOD; and DOES I-X,

9 Cross-Defendants.
10 /

11 Defendant Ruby Lake Estates Homeowner's Association ("Ruby Lake"), by and through its
12 attorneys, Kern & Associates, Ltd. answers the Plaintiff's Complaint, and counterclaims and cross-
13 claims as follows:

14 **JURISDICTION**

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

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

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

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

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

1 ///

2 6. Answering paragraph 6 of Plaintiff's Complaint, Ruby Lake admits the allegations in
3 paragraph 6.
4

5 **COMMON FACTS**

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

8 8. Answering paragraph 8 of Plaintiff's Complaint, Ruby Lake asserts that the
9 document speaks for itself, no answer is required as to its content, but to the extent it is determined
10 an answer is required any contrary allegations are denied. As to any remaining allegations, those
11 allegations are denied.
12

13 9. Answering paragraph 9 of Plaintiff's Complaint, Ruby Lake asserts that the
14 document speaks for itself, no answer is required as to its content, but to the extent it is determined
15 an answer is required any contrary allegations are denied. As to any remaining allegations, those
16 allegations are denied.
17

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

20 11. Answering paragraph 11 of Plaintiff's Complaint, Ruby Lake asserts the Declaration
21 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary
22 allegations.
23

24 12. Answering paragraph 12 of Plaintiff's Complaint, Ruby Lake asserts the Declaration
25 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary
26 allegations.
27

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

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

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

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

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

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

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

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

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

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

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

10 **FIRST CLAIM FOR RELIEF**

11 **(Declaratory Judgment)**

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

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

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

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

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

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

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

3 **FIRST AFFIRMATIVE DEFENSE**

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

7 **SECOND AFFIRMATIVE DEFENSE**

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

11 **THIRD AFFIRMATIVE DEFENSE**

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

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Ruby Lake acted in good faith.

15 **FIFTH AFFIRMATIVE DEFENSE**

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

18 **SIXTH AFFIRMATIVE DEFENSE**

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

20 **SEVENTH AFFIRMATIVE DEFENSE**

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

25 **EIGHTH AFFIRMATIVE DEFENSE**

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

NINTH AFFIRMATIVE DEFENSE

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

3
4 **TENTH AFFIRMATIVE DEFENSE**

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

7 **ELEVENTH AFFIRMATIVE DEFENSE**

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

9 **TWELFTH AFFIRMATIVE DEFENSE**

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

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

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

24 **COUNTERCLAIM AND CROSS-CLAIM**

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

27 **GENERAL ALLEGATIONS**
28

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

3 2. Artemis is a Nevada corporation ("Artemis" or "Claimant"), whose President,
4 Secretary, Treasurer and sole director is Elizabeth E. Essington.
5

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

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

8 5. For over sixteen years (1994-2010), Mr. and Mrs. Essington implicitly and expressly
9 represented that Mr. Essington had the capacity and authority to act on behalf of Artemis.
10

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

14 7. Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot
15 2, Block H of Ruby Lake Estates on March 9, 2010, and that both Lot 6 and Lot 2 ("Lots") are
16 subject to the terms, conditions and restrictions set forth in the CC&Rs.
17

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

20 9. Prior to the filing of the Articles of Incorporation, the ARC served as the governing
21 body of the Association.
22

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

25 11. Assessments were levied in order to pay for the maintenance of the community roads
26 and other common elements.
27
28

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

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

8 14. The June 28, 2010 Letter makes clear that Elizabeth and Mel Essington were the
9 owners who demanded in 2005 that an Association be formed and an Association Board elected.
10

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

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

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

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

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

23
24 20. Artemis is fully bound by his representations and actions. During his tenure on the
25 Board as Artemis' representative, Mr. Essington wrote letters to the members of RLEHOA urging
26 them to "revitalize the Ruby Lakes Estates property owners association", as well as confirming the
27 existence of the HOA, the applicability of NRS Chapter 116, and the ability and responsibility of
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 29. Mr. Essington was active in the Association from the time Lot 6 of Block G was
30 purchased by Artemis in 1994 and served on the RLEHOA Board of Directors from August of
31 2007, when he was initially elected until 2011.

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

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

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

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

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

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

17 36. Invoices generated in the ordinary course of business for the Association were sent
18 to the Essingtons.

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

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

26 39. Artemis continued to fail to pay its assessments and the Board of Directors took
27 appropriate action to collect the delinquent assessments.
28

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

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

5 42. Artemis was asked to pay its delinquent assessments and Mr. Essington was asked to
6 provide proof that he was an officer, director or other authorized representative of Artemis.
7

8 43. Mr. Essington subsequently resigned from the Board of Directors per letter dated
9 January 6, 2011.
10

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

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

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

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

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

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

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

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

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

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

3 52. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to
4 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby
5 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.
6

7 **THIRD CLAIM FOR RELIEF**
8 **(Violations – Against Artemis)**

9 53. Ruby Lake incorporates paragraphs 1 through 52 as if set forth in full herein.

10 54. Artemis' actions were, and continue to be, violations of the governing documents.

11 55. Artemis should pay all damages sustained.

12 56. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to
13 attorney's fees and costs in accordance with NRS 18.010, the governing documents of Ruby Lake,
14 Chapters 116 and 38 of the Nevada Revised Statutes.
15

16 **FOURTH CLAIM FOR RELIEF**
17 **(Confirmation of Award of Attorneys Fees and Costs – Against Artemis)**

18 57. Ruby Lake incorporates by reference the allegations of paragraphs 1 through 56 as
19 though fully set forth herein.

20 58. An Award was entered in favor of Ruby Lake on the substantive portion of the
21 arbitration proceeding NRED Claim 11-82, a copy of which is attached as Exhibit "1".
22

23 59. An Award for attorney's fees in the amount of \$22,092.00 and costs in the amount of
24 \$4,718.67 was in favor of Ruby Lake in the non-binding arbitration proceeding NRED Claim 11-
25 82, a copy of which is attached as Exhibit "1".

26 60. The Award entered should be confirmed and adopted.

27 ///

28 ///

FIFTH CLAIM FOR RELIEF
(Damages - Attorneys Fees – Against Artemis)

61. Ruby Lake incorporates paragraphs 1 through 60 as if set forth in full herein.

62. Counter-Defendant's actions resulted in Ruby Lake incurring attorney's fees as damages.

63. Pursuant to NRS 38.330(7), Ruby Lake should be awarded all attorney's fees and costs incurred in the defense and prosecution of this action as well as all of those attorney's fees and costs incurred in the arbitration proceeding NRED Claim 11-82.

64. Artemis should pay all damages sustained.

65. Ruby Lake was required to retain Kern & Associates, Ltd., and is entitled to attorney's fees and costs in accordance with Sandy Valley Associates v. Sky Ranch Estates Owners Association, 117 Nev.Adv.Rep. 78, 35 P.3d 964 (2001); NRS 18.010, the Governing Documents of Ruby Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

66. All attorney's fees and costs were and will be incurred as a direct and proximate result of the Counter-Defendant's violations of the Governing Documents of Ruby Lake.

SIXTH CLAIM FOR RELIEF
(Declaratory Relief - Chapter 30 of the Nevada Revised Statutes – Against Artemis and Cross-Defendants)

67. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 66 of its Counterclaim as though fully set forth herein.

68. A real controversy exists between the parties hereto concerning whether it is a lawfully formed and validly existing non-profit common interest community association in good standing, organized for the purposes of administering and enforcing the CC&Rs and exercising all powers of a community association granted under the provisions of Nevada law, including Chapters

1 81 and 116 of the Nevada Revised Statutes. An order should be entered resolving this controversy
2 in favor of Ruby Lake.

3
4 **SEVENTH CLAIM FOR RELIEF**
(Preliminary and Permanent Injunction – Against Artemis)

5 69. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 68 of its
6 Counterclaim as though fully set forth herein.

7
8 70. Counter-Defendant's behavior in the past shows that it will continue to interfere with
9 business of Ruby Lake.

10 71. Counter-Defendant's behavior poses a serious, substantial and irreparable harm to
11 the lawful actions of Ruby Lake.

12 72. Ruby Lake has no adequate remedy at law or otherwise for the harm or damage done
13 and threatened to be done.

14
15 73. The only remedy that will allow Ruby Lake to maintain peace and quiet and comply
16 with the statutory and recorded obligations of a common-interest community is a restraining order
17 from this Court.

18 74. Ruby Lake will suffer irreparable harm unless Counter-Defendant is ordered by this
19 Court to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake
20 and its members.

21
22 75. On a final hearing, a permanent injunction enjoining and ordering the Counter-
23 Defendants to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby
24 Lake and its members.

25 76. On a final hearing, a permanent injunction enjoining and ordering the Counter-
26 Defendants to refrain from taking any action to interfere with Ruby Lake and its lawful
27 requirements under the law as a common-interest community.
28

1 WHEREFORE, Ruby Lake prays for judgment against Artemis Exploration Company, as
2 follows;

3 1. That Ruby Lake recover special and general damages in an amount in excess of
4 \$10,000.00;

5
6 2. That Ruby Lake is a lawfully formed and validly existing non-profit common-
7 interest community association in good standing, organized for the purposes of administering and
8 enforcing the CC&Rs and exercising all powers of a community association granted under the
9 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

10
11 3. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain
12 from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members;

13 4. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain
14 from taking any action to interfere with Ruby Lake and its lawful requirements under the law as a
15 common-interest community;

16
17 5. For a judgment confirming the Awards entered by the Arbitrator in the arbitration
18 proceeding NRED Claim 11-82 in favor of Ruby Lake;

19 6. That Ruby Lake be awarded its costs;

20 7. That Ruby Lake be awarded its attorney's fees;

21 8. Such other and further relief as the Court deems just and proper in the premises.

22
23 WHEREFORE, Ruby Lake prays for judgment against Cross-Defendants, and each of them,
24 as follows:

25 1. That Ruby Lake is a lawfully formed and validly existing non-profit common-
26 interest community association in good standing, organized for the purposes of administering and
27 enforcing the CC&Rs and exercising all powers of a community association granted under the
28 provisions of Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

2. Such other and further relief as the Court deems just and proper in the premises.

AFFIRMATION

Pursuant to NRS 239B.030

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

DATED this 7 day of February, 2016

KERN & ASSOCIATES, LTD.

Karen M. Boylke

GAYLE A. KERN, ESQ.

NEVADA BAR #1620

KAREN M. AYARBE, ESQ.

NEVADA BAR #3358

5421 Kietzke Lane, Suite 200

RENO, NEVADA 89511

Telephone: 775-324-5930

Fax: 775-324-6173

Email: gaylekern@kernltd.com

Attorneys for Ruby Lake Estates Homeowner's Association

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of Kern &
3 Associates, Ltd., and that on this day I served the foregoing document described as follows:
4

5 ***ANSWER TO SECOND AMENDED COMPLAINT;***
6 ***COUNTERCLAIM AND CROSS-CLAIM***

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

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

11 _____ Via facsimile transmission

12 _____ Via e-mail

13 _____ Personal delivery, upon:

14 X _____ United Parcel Service, Next Day Air, addressed to:

15
16 Travis Gerber, Esq.
17 Gerber Law Offices, LLP
18 491 4th Street
Elko, NV 89801

19 DATED this 5th day of April, 2016.

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21 
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28

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

FILED
2016 MAY -4 PM 3:39
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *RL*

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

Plaintiff,

10 vs.

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

Defendants.

26 RUBY LAKE ESTATES HOMEOWNER'S
27 ASSOCIATION,

Counterclaimant,

**ANSWER TO SECOND
AMENDED COUNTERCLAIM**

GERBER LAW OFFICES, LLP

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

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vs.

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Counterdefendant.

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

Cross-Claimant,

vs.

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

Cross-Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

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

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

8 16. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles of
9 Incorporation for RLEHOA were filed with the Nevada Secretary of State by Lee Perks on January
10 18, 2006. ARTEMIS is without sufficient information to form a belief as to the truth of the remaining
11 allegations contained in Paragraph 16 of the Counterclaim.

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

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

17 19. ARTEMIS denies the allegations contained in Paragraph 19.

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

21 21. ARTEMIS denies the allegations contained in Paragraph 21.

22 22. ARTEMIS admits the allegations contained in Paragraph 22.

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

26 24. ARTEMIS admits that Mel Essington authored a letter to Lee Perks dated January 14,
27 2007, and that said letter speaks for itself. ARTEMIS denies the remaining allegations contained in
28 Paragraph 24.

1 25. ARTEMIS denies the allegations contained in Paragraph 25.

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

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

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

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

12 30. ARTEMIS denies the allegations contained in Paragraph 30.

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

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

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

21 34. ARTEMIS denies the allegations contained in Paragraph 34.

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

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

26 37. ARTEMIS admits the allegations contained in Paragraph 37.

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

GERBER LAW OFFICES, LLP

491 4th Street
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1 AA000217

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

5 39. ARTEMIS admits that it stopped paying assessments when it discovered that the
6 homeowner's association was not valid, but denies the remaining allegations contained in Paragraph
7 39.

8 40. ARTEMIS denies the allegations contained in Paragraph 40.

9 41. ARTEMIS denies the allegations contained in Paragraph 41.

10 42. ARTEMIS denies the allegations contained in Paragraph 42.

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

13 44. Paragraph 44 does not require any response.

14 45. ARTEMIS denies the allegations contained in Paragraph 45.

15 46. ARTEMIS denies the allegations contained in Paragraph 46.

16 47. ARTEMIS denies the allegations contained in Paragraph 47.

17 48. Paragraph 48 does not require any response.

18 49. ARTEMIS denies the allegations contained in Paragraph 49.

19 50. ARTEMIS denies the allegations contained in Paragraph 50.

20 51. ARTEMIS denies the allegations contained in Paragraph 51.

21 52. ARTEMIS denies the allegations contained in Paragraph 52.

22 53. Paragraph 53 does not require any response.

23 54. ARTEMIS denies the allegations contained in Paragraph 54.

24 55. ARTEMIS denies the allegations contained in Paragraph 55.

25 56. ARTEMIS denies the allegations contained in Paragraph 56.

26 57. Paragraph 57 does not require any response.

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

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

3 60. ARTEMIS denies the allegations contained in Paragraph 60.

4 61. Paragraph 61 does not require any response.

5 62. ARTEMIS denies the allegations contained in Paragraph 62.

6 63. ARTEMIS denies the allegations contained in Paragraph 63.

7 64. ARTEMIS denies the allegations contained in Paragraph 64.

8 65. ARTEMIS denies the allegations contained in Paragraph 65.

9 66. ARTEMIS denies the allegations contained in Paragraph 66.

10 67. Paragraph 67 does not require any response.

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

14 69. Paragraph 69 does not require any response.

15 70. ARTEMIS denies the allegations contained in Paragraph 70.

16 71. ARTEMIS denies the allegations contained in Paragraph 71.

17 72. ARTEMIS denies the allegations contained in Paragraph 72.

18 73. ARTEMIS denies the allegations contained in Paragraph 73.

19 74. ARTEMIS denies the allegations contained in Paragraph 74.

20 75. ARTEMIS denies the allegations contained in Paragraph 75.

21 76. ARTEMIS denies the allegations contained in Paragraph 76.

22 **AFFIRMATIVE DEFENSES**

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

24 **FIRST AFFIRMATIVE DEFENSE**

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

26 **SECOND AFFIRMATIVE DEFENSE**

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

1 THIRD AFFIRMATIVE DEFENSE

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

5 FOURTH AFFIRMATIVE DEFENSE

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

8 FIFTH AFFIRMATIVE DEFENSE

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

10 SIXTH AFFIRMATIVE DEFENSE

11 Counterclaimant failed to join a third party.

12 SEVENTH AFFIRMATIVE DEFENSE

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

18 PRAYER FOR RELIEF

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


- 21 1. That Defendant/Counterclaimant take nothing by way of its Counterclaim filed herein;
22 2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association
23 is not authorized under the Ruby Lake Estates Declaration, Restrictions and Covenants to compel the
24 payment of dues or assessments, or to otherwise compel property owners within the Ruby Lake
25 Estates to participate in the activities of the Ruby Lake Estates Homeowner's Association;
26 3. For an award of restitution and damages against Defendant, including but not limited to
27 the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's
28 Association;

- 1 4. For Plaintiff's reasonable attorney fees and costs of suit;
2 5 For exemplary or punitive damages; and
3 6. For such other and further relief as the Court may deem just and proper.

4 DATED this 4th day of May, 2016.

5 **GERBER LAW OFFICES, LLP**

6 BY:


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

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CERTIFICATE OF SERVICE BY MAIL

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

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

Dated this 4 day of May, 2016.


MADISON JOHNSON

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

FILED
2016 MAY 12 PM 4:35
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY Q

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

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

Plaintiff,

10 vs.

11 RUBY LAKE ESTATES HOMEOWNER'S
12 ASSOCIATION, STEPHEN WEST; DOMINIC
13 DIBONA; EVELYN DIBONA; MICHAEL
14 BRENNAN AND MARNIE BRENNAN; RICHARD
15 BECKERDITE; BILL NOBLE AND CHERYL NOBLE;
16 AARON MOTE; BILL HARMON AND TERI HARMON;
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19 PROPERTIES; MIKE CECCHI AND KRIS CECCHI;
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21 STAFFORD; AARON YOHEY; PAUL LUCAS;
22 DAVE MILLER; JAMES TAYLOR; MIKE MASON
23 AND SHELLY MASON; JIMMY SARGENT AND
24 ELLEN SARGENT; JACK HEALY AND YVETTE
25 HEALY; BO HARMON; MICHAEL GOWAN AND
26 MARY ANN GOWAN; PHIL FRANK AND DOROTHY
27 FRANK; JOE HERNANDEZ AND PAULA HERNANDEZ;
28 DENNIS MCINTYRE AND VALERI MCINTYRE;
ROBERT HECKMAN AND NATHAN HECKMAN;
JAMES VANDER MEER; HAROLD WYATT AND
MARY WYATT; ROBERT CLARK; BETH TEITTEBAUM;
DANIEL SPILSBURY AND DELAINE SPILSBURY;
TERRY HUBERT AND BONNIE HUBERT; RUSSELL
ROGERS AND SUSAN ROGERS; ROCKY ROA;
BEVERLY PATTERSON; DENNIS CUNNINGHAM;
RILEY MANZONIE; DAVID NORWOOD; and DOES I-X,

Defendants.

26 RUBY LAKE ESTATES HOMEOWNER'S
27 ASSOCIATION,

Counterclaimant,

HAROLD WYATT AND
MARY WYATT'S
ANSWER TO SECOND
AMENDED COMPLAINT AND
CROSS-CLAIM

GERBER LAW OFFICES, LLP

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vs.

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Counterdefendant.

RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

Cross-Claimant,

vs.

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

Cross-Defendants.

Defendants/Cross-Defendants, HAROLD WYATT AND MARY WYATT (hereinafter "LOT
OWNERS"), hereby file their Answer to the Second Amended Complaint, filed by Plaintiff
ARTEMIS EXPLORATION COMPANY ("ARTEMIS") on April 14, 2016, and Second Amended
Cross-Claim, filed by Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION
("RLEHOA") on April 14, 2016:

Answer to Second Amended Complaint

1. LOT OWNERS admit the allegations contained in Paragraph 1 of the Complaint.
2. LOT OWNERS admit the allegations contained in Paragraph 2 of the Complaint.
3. LOT OWNERS admit the allegations contained in Paragraph 3 of the Complaint.
4. LOT OWNERS admit the allegations contained in Paragraph 4 of the Complaint.
5. LOT OWNERS admit the allegations contained in Paragraph 5 of the Complaint.
6. LOT OWNERS admit the allegations contained in Paragraph 6 of the Complaint.
7. LOT OWNERS restate and incorporate each prior allegation as if set forth fully herein.
8. LOT OWNERS admit the allegations contained in Paragraph 8 of the Complaint.
9. LOT OWNERS admit the allegations contained in Paragraph 9 of the Complaint.
10. LOT OWNERS admit the allegations contained in Paragraph 10 of the Complaint.
11. LOT OWNERS admit the allegations contained in Paragraph 11 of the Complaint.
12. LOT OWNERS admit the allegations contained in Paragraph 12 of the Complaint.
13. LOT OWNERS admit the allegations contained in Paragraph 13 of the Complaint.
14. LOT OWNERS admit the allegations contained in Paragraph 14 of the Complaint.
15. LOT OWNERS admit the allegations contained in Paragraph 15 of the Complaint.
16. LOT OWNERS admit the allegations contained in Paragraph 16 of the Complaint.
17. LOT OWNERS admit the allegations contained in Paragraph 17 of the Complaint.
18. LOT OWNERS admit the allegations contained in Paragraph 18 of the Complaint.
19. LOT OWNERS admit the allegations contained in Paragraph 19 of the Complaint.
20. LOT OWNERS admit the allegations contained in Paragraph 20 of the Complaint.
21. LOT OWNERS admit the allegations contained in Paragraph 21 of the Complaint.
22. LOT OWNERS admit the allegations contained in Paragraph 22 of the Complaint.
23. LOT OWNERS restate and incorporate each prior allegation as if set forth fully herein.
24. LOT OWNERS admit the allegations contained in Paragraph 24 of the Complaint.
25. LOT OWNERS admit the allegations contained in Paragraph 25 of the Complaint.
26. LOT OWNERS admit the allegations contained in Paragraph 26 of the Complaint.
27. LOT OWNERS admit the allegations contained in Paragraph 27 of the Complaint.

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1 28. LOT OWNERS admit the allegations contained in Paragraph 28 of the Complaint.

2
3 **Answer to Second Amended Cross-Claim**

4 1. LOT OWNERS admit that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION
5 registered itself as a domestic non-profit cooperative association in the State of Nevada on or about
6 January 18, 2006, but deny that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION is a
7 common-interest community association under the laws of the State of Nevada.

8 2. LOT OWNERS admit the allegations contained in Paragraph 2 of the Crossclaim.

9 3. LOT OWNERS admit the allegations contained in Paragraph 3 of the Crossclaim.

10 4. LOT OWNERS admit the allegations contained in Paragraph 4 of the Crossclaim.

11 5. LOT OWNERS are without sufficient information to form a belief as to the truth of the
12 allegations contained in Paragraph 5 of the Crossclaim, and therefore deny the allegations contained
13 in Paragraph 5 of the Crossclaim.

14 6. LOT OWNERS admit the allegations contained in Paragraph 6 of the Crossclaim.

15 7. LOT OWNERS admit the allegations contained in Paragraph 7 of the Crossclaim.

16 8. LOT OWNERS admit, based on records from the Nevada Secretary of State, that Articles
17 of Incorporation for RLEHOA were filed with the Nevada Secretary of State on January 18, 2006, and
18 deny the remaining allegations contained in Paragraph 8 of the Crossclaim.

19 9. LOT OWNERS deny the allegations contained in Paragraph 9 of the Crossclaim.

20 10. LOT OWNERS admit that newsletters and written communications have been sent to
21 property owners located within Ruby Lake Estates subdivision and that meetings were held by the
22 Board of Directors of the RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, but deny the
23 remaining allegations contained in Paragraph 10 of the Crossclaim.

24 11. LOT OWNERS admit that the RUBY LAKE ESTATES HOMEOWNER'S
25 ASSOCIATION has attempted to levy assessments against the property owners within the Ruby Lake
26 Estates subdivision, but deny the remaining allegations contained in Paragraph 11 including a denial
27 that there are any common elements within the subdivision or that RUBY LAKE ESTATES
28 HOMEOWNER'S ASSOCIATION has any authority to make assessments.

1 12. LOT OWNERS are without sufficient information to form a belief as to the truth of the
2 allegations contained in Paragraph 12 of the Crossclaim, and therefore deny the allegations contained
3 in Paragraph 12 of the Crossclaim.

4 13. LOT OWNERS admit that Lee Perks, President of RUBY LAKE ESTATES
5 HOMEOWNER'S ASSOCIATION, authored a letter dated June 28, 2010, but deny the remaining
6 allegations contained in Paragraph 13 of the Crossclaim.

7 14. LOT OWNERS are without sufficient information to form a belief as to the truth of the
8 allegations contained in Paragraph 14 of the Crossclaim, and therefore deny the allegations contained
9 in Paragraph 14 of the Crossclaim.

10 15. LOT OWNERS admit that a form for Articles of Incorporation was filled out listing Mel
11 and Elizabeth Essington as incorporators and officers, but deny that said form was filed and deny the
12 remaining allegations contained in Paragraph 15 of the Crossclaim.

13 16. LOT OWNERS admit, based on records from the Nevada Secretary of State, that Articles
14 of Incorporation for RLEHOA were filed with the Nevada Secretary of State by Lee Perks on January
15 18, 2006. LOT OWNERS are without sufficient information to form a belief as to the truth of the
16 remaining allegations contained in Paragraph 16 of the Crossclaim.

17 17. LOT OWNERS are without sufficient information to form a belief as to the truth of the
18 allegations contained in Paragraph 17 of the Crossclaim, and therefore deny the allegations contained
19 in Paragraph 17 of the Crossclaim.

20 18. LOT OWNERS are without sufficient information to form a belief as to the truth of the
21 allegations contained in Paragraph 18 of the Crossclaim, and therefore deny the allegations contained
22 in Paragraph 18 of the Crossclaim.

23 19. LOT OWNERS deny the allegations contained in Paragraph 19.

24 20. LOT OWNERS are without sufficient information to form a belief as to the truth of the
25 allegations contained in Paragraph 20 of the Crossclaim, and therefore deny the allegations contained
26 in Paragraph 20 of the Crossclaim.

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1 21. LOT OWNERS are without sufficient information to form a belief as to the truth of the
2 allegations contained in Paragraph 21 of the Crossclaim, and therefore deny the allegations contained
3 in Paragraph 21 of the Crossclaim.

4 22. LOT OWNERS are without sufficient information to form a belief as to the truth of the
5 allegations contained in Paragraph 22 of the Crossclaim, and therefore deny the allegations contained
6 in Paragraph 22 of the Crossclaim.

7 23. LOT OWNERS admit that Ruby Lake Estates Homeowner's Association is a voluntary
8 association that elected a board of directors, but deny any other inference or allegations contained in
9 Paragraph 23.

10 24. LOT OWNERS are without sufficient information to form a belief as to the truth of the
11 allegations contained in Paragraph 24 of the Crossclaim, and therefore deny the allegations contained
12 in Paragraph 24 of the Crossclaim.

13 25. LOT OWNERS are without sufficient information to form a belief as to the truth of the
14 allegations contained in Paragraph 25 of the Crossclaim, and therefore deny the allegations contained
15 in Paragraph 25 of the Crossclaim.

16 26. LOT OWNERS are without sufficient information to form a belief as to the truth of the
17 allegations contained in Paragraph 26 of the Crossclaim, and therefore deny the allegations contained
18 in Paragraph 26 of the Crossclaim.

19 27. LOT OWNERS are without sufficient information to form a belief as to the truth of the
20 allegations contained in Paragraph 27 of the Crossclaim, and therefore deny the allegations contained
21 in Paragraph 27 of the Crossclaim.

22 28. LOT OWNERS are without sufficient information to form a belief as to the truth of the
23 allegations contained in Paragraph 28 of the Crossclaim, and therefore deny the allegations contained
24 in Paragraph 28 of the Crossclaim.

25 29. LOT OWNERS are without sufficient information to form a belief as to the truth of the
26 allegations contained in Paragraph 29 of the Crossclaim, and therefore deny the allegations contained
27 in Paragraph 29 of the Crossclaim.

28 30. LOT OWNERS deny the allegations contained in Paragraph 30.

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1 31. LOT OWNERS are without sufficient information to form a belief as to the truth of the
2 allegations contained in Paragraph 31 of the Crossclaim, and therefore deny the allegations contained
3 in Paragraph 31 of the Crossclaim.

4 32. LOT OWNERS admit that there were concerns regarding the size of the structure, but
5 deny the remaining allegations contained in Paragraph 32.

6 33. LOT OWNERS admit that there were concerns regarding the size of the structure and
7 that the structure was approved by the board of Ruby Lake Estates Homeowner's Association, but
8 deny the remaining allegations contained in Paragraph 33.

9 34. LOT OWNERS are without sufficient information to form a belief as to the truth of the
10 allegations contained in Paragraph 34 of the Crossclaim, and therefore deny the allegations contained
11 in Paragraph 34 of the Crossclaim.

12 35. LOT OWNERS are without sufficient information to form a belief as to the truth of the
13 allegations contained in Paragraph 35 of the Crossclaim, and therefore deny the allegations contained
14 in Paragraph 35 of the Crossclaim.

15 36. LOT OWNERS are without sufficient information to form a belief as to the truth of the
16 allegations contained in Paragraph 36 of the Crossclaim, and therefore deny the allegations contained
17 in Paragraph 36 of the Crossclaim.

18 37. LOT OWNERS admit the allegations contained in Paragraph 37.

19 38. LOT OWNERS admit the Ombudsman's Office issued an opinion dated July 1, 2012, in
20 which it declined to take any action. The Ombudsman stated in its letter, "... we are not, as you
21 requested, going to declare that the Ruby Lake Estates Homeowners Association is invalid." The
22 Ombudsman did not declare the Association valid, but concluded, "... in our view this Association
23 is required to comply with the law pertaining to homeowners associations, specifically, NRS 116 and
24 related laws and regulations."

25 39. LOT OWNERS are without sufficient information to form a belief as to the truth of the
26 allegations contained in Paragraph 39 of the Crossclaim, and therefore deny the allegations contained
27 in Paragraph 39 of the Crossclaim.
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1 40. LOT OWNERS are without sufficient information to form a belief as to the truth of the
2 allegations contained in Paragraph 40 of the Crossclaim, and therefore deny the allegations contained
3 in Paragraph 40 of the Crossclaim.

4 41. LOT OWNERS are without sufficient information to form a belief as to the truth of the
5 allegations contained in Paragraph 41 of the Crossclaim, and therefore deny the allegations contained
6 in Paragraph 41 of the Crossclaim.

7 42. LOT OWNERS are without sufficient information to form a belief as to the truth of the
8 allegations contained in Paragraph 42 of the Crossclaim, and therefore deny the allegations contained
9 in Paragraph 42 of the Crossclaim.

10 43. LOT OWNERS are without sufficient information to form a belief as to the truth of the
11 allegations contained in Paragraph 43 of the Crossclaim, and therefore deny the allegations contained
12 in Paragraph 43 of the Crossclaim.

13 44. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-
14 Claim.

15 45. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-
16 Claim.

17 46. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-
18 Claim.

19 47. The First Claim for Relief is asserted against Artemis only, and is not part of the Cross-
20 Claim.

21 48. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-
22 Claim.

23 49. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-
24 Claim.

25 50. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-
26 Claim.

27 51. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-
28 Claim.

1 52. The Second Claim for Relief is asserted against Artemis only, and is not part of the Cross-
2 Claim.
3 53. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-
4 Claim.
5 54. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-
6 Claim.
7 55. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-
8 Claim.
9 56. The Third Claim for Relief is asserted against Artemis only, and is not part of the Cross-
10 Claim.
11 57. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
12 Claim.
13 58. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
14 Claim.
15 59. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
16 Claim.
17 60. The Fourth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
18 Claim.
19 61. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
20 Claim.
21 62. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
22 Claim.
23 63. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
24 Claim.
25 64. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
26 Claim.
27 65. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
28 Claim.

1 66. The Fifth Claim for Relief is asserted against Artemis only, and is not part of the Cross-
2 Claim.

3 67. Paragraph 67 does not require any response.

4 68. LOT OWNERS admit that a real controversy exists regarding the validity of Ruby Lake
5 Estates Homeowner's Association as a common-interest community under NRS 116, and deny the
6 remaining allegations contained in Paragraph 68.

7 69. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
8 Cross-Claim.

9 70. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the Cross-
10 Claim.

11 71. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
12 Cross-Claim.

13 72. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
14 Cross-Claim.

15 73. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
16 Cross-Claim.

17 74. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
18 Cross-Claim.

19 75. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
20 Cross-Claim.

21 76. The Seventh Claim for Relief is asserted against Artemis only, and is not part of the
22 Cross-Claim.

23 **AFFIRMATIVE DEFENSES**

24 LOT OWNERS hereby present their affirmative defenses in the above-entitled action as
25 follows:

26 **FIRST AFFIRMATIVE DEFENSE**

27 The Crossclaim fails to state a claim upon which relief can be granted.
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SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

The Crossclaim is barred because Crossclaimant is not a valid unit-owners' association located in a "common-interest community" pursuant to NRS 116.021.

FOURTH AFFIRMATIVE DEFENSE

The Crossclaim is barred under the doctrines of estoppel, laches, and/or unclean hands.

FIFTH AFFIRMATIVE DEFENSE

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

PRAYER FOR RELIEF

Cross-Defendants, therefore, respectfully request that judgment be entered in Cross-Defendants' favor and against Defendant as follows:

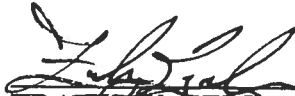
1. That Defendant/Crossclaimant take nothing by way of its Crossclaim filed herein;
2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's Association is not located within a common-interest community and is not authorized under the Ruby Lake Estates Declaration, Restrictions and Covenants to compel the payment of dues or assessments, or to otherwise compel property owners within the Ruby Lake Estates to participate in the activities of the Ruby Lake Estates Homeowner's Association; and
3. For such other and further relief as the Court may deem just and proper.

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1 DATED this 12th day of May, 2016.

2 GERBER LAW OFFICES, LLP

3 BY:

4 
5 TRAVIS W. GERBER, ESQ.
6 Nevada State Bar No. 8083
7 ZACHARY A. GERBER, ESQ.
8 Nevada State Bar No. 13128
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11 (775) 738-9258
12 ATTORNEYS FOR CROSS-
13 DEFENDANTS
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CERTIFICATE OF SERVICE BY MAIL

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

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

Dated this 12 day of May, 2016.


MADISON JOHNSON

1 CASE NO. CV-C-12-175

2 DEPT. 1 2

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

FILED

2018 FEB 26 AM 9:29

ELKO CO DISTRICT COURT

CLERK DEPUTY *DA*

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

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,
10 Plaintiff,

11 vs.

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

14 Defendants.

15 RUBY LAKE ESTATES HOMEOWNER'S
16 ASSOCIATION,
17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY,
20 a Nevada Corporation,

21 Counterdefendant.

22 RUBY LAKE ESTATES HOMEOWNER'S
23 ASSOCIATION,

24 Cross-Claimant,

25 vs.

26 STEPHEN WEST; *et. al.*,

27 Cross-Defendants.

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

FILED

2018 FEB 26 AM 9:52

U.S. DISTRICT COURT

410

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

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

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

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

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

23 5. In accord with this Court's Order: Joinder of Necessary Parties entered September 11,
24 2015 ("Joinder Order"), Artemis filed its Second Amended Complaint on or about April 14, 2016,
25 naming all additional property owners of RLEHOA, and RLEHOA filed its Answer, Counterclaims,
26 and Cross-claim on or about April 14, 2016. Thereafter, and following proper service of process of
27 the Second Amended Complaint and RLEHOA's Cross-claim, the Wyatts filed their Answer on or
28 about May 16, 2016. The Second Amended Complaint contains a single declaratory relief claim

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

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

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

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

28 ///

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

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

10 DATED this 16th day of February, 2018.

11 KERN & ASSOCIATES, LTD.

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13 GAYLE A. KERN, ESQ.
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15 KAREN M. AYARBE, ESQ.
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Email: karenayarbe@kernltd.com
Attorneys for Defendant Ruby Lake
Estates Homeowner's Association

DATED this 20th day February, 2018.

GERBER LAW OFFICE, LLP

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Company and Defendants Harold and Mary
Wyatt

ORDER

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

21
22
23 [Signature]
24 DISTRICT COURT JUDGE
25
26
27
28

EXHIBIT “A”

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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

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

7 IN AND FOR THE COUNTY OF ELKO

8 ARTEMIS EXPLORATION COMPANY, a
9 Nevada Corporation,

10 Plaintiff,

FINAL JUDGMENT

11 vs.

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

14 Defendants.
15 _____ /

16 The Court, having reviewed and considered the parties' Stipulation and Order for Dismissal
17 of Counterclaims and Crossclaim Without Prejudice, Withdrawal of Pending Motions, and for Final
18 Judgment ("Stipulation and Order"), and further based upon this Court's review and consideration
19 of the Motion for Summary Judgment of Defendant Ruby Lake Estates Homeowner's Association
20 ("RLEHOA") on Plaintiff Artemis Exploration Company's ("Artemis's") Declaratory Relief Claim,
21 the exhibits in support of RLEHOA's Motion, Artemis's Opposition thereto, RLEHOA's Reply; and
22 Artemis's Motion for Summary Judgment on its Declaratory Relief Claim, RLEHOA's Opposition
23 thereto, and Artemis's Reply; and the Court being fully informed in the premises:
24

25
26 The Court finds that a Complaint was filed by Artemis on March 2, 2012, which contained
27 a cause of action for Declaratory Relief, and other causes of action that were subsequently,
28 voluntarily dismissed by Artemis. On April 2, 2012, RLEHOA answered the Complaint and filed
counterclaims against Artemis. After competing Motions for Summary Judgment were filed by

1 Artemis and RLEHOA regarding Artemis's sole claim of Declaratory Relief, this Court entered its
2 Order Granting RLEHOA's Motion for Summary Judgment entered February 14, 2013, and the
3 Court's Order Denying Artemis's Motion for Summary Judgment entered February 12, 2013. The
4 Orders determined as a matter of law that RLEHOA is a common interest community pursuant to
5 NRS Chapter 116, valid at its inception, and it continues to be so today.
6

7 Pursuant to this Court's Order: Joinder of Necessary Parties, filed September 11, 2015,
8 Artemis filed its Second Amended Complaint on April 14, 2016, against RLEHOA and all property
9 owners within Ruby Lake Estates subdivision. RLEHOA filed its Answer to Second Amended
10 Complaint, Counterclaim and Cross-Claim on April 14, 2016, which asserted Counterclaims against
11 Artemis and a Cross-Claim against all property owners within Ruby Lake Estates subdivision
12 seeking a determination that RLEHOA is a common interest community pursuant to NRS Chapter
13 116. All property owners within Ruby Lake Estates subdivision were properly served in accord with
14 the Nevada Rules of Civil Procedure with Artemis's Second Amended Complaint and RLEHOA's
15 Cross-claim. Except for Harold and Mary Wyatt and Artemis, all other property
16 owners/defendants/cross-defendants failed to respond or appear, and defaults for each of them have
17 been entered. Pursuant to the afore-mentioned Stipulation and Order, RLEHOA's counterclaims
18 and cross-claim have now been dismissed without prejudice, and all pending Motions have been
19 withdrawn. Furthermore, the Wyatts as party defendants to Artemis's Second Amended Complaint
20 have stipulated and agreed to be bound by this Court's Order Granting RLEHOA's Motion for
21 Summary Judgment entered February 14, 2013, and the Court's Order Denying Artemis's Motion
22 for Summary Judgment entered February 12, 2013, and any subsequent appeal related thereto.
23
24
25

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

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

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

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

19 DATED this ____ day of _____, 2018.

23 _____
DISTRICT COURT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY,
A NEVADA CORPORATION,

Appellant,

vs.

RUBY LAKE ESTATES
HOMEOWNERS ASSOCIATION,

Respondent.

No. 77721

APPELLANT'S APPENDIX

VOLUME 1

Electronically Filed
Apr 23 2019 02:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S APPENDIX - VOLUME 1 - Pgs. 1 - 145

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APPENDIX SUMMARY
Alphabetical Order

Document	Date	Vol.	Appellant's Appendix "AA" Pg. Nos.
Acceptance of Service	March 21, 2012	1	50
Answer to Complaint and Counterclaim	April 2, 2012	1	51-72
Answer to Counterclaim	April 16, 2012	1	73-80
Answer to First Amended Complaint; Counterclaim and Cross-Claim	March 11, 2016	1	146-166
Answer to Second Amended Complaint; Counterclaim and Cross-Claim	April 14, 2016	1	192-212
Answer to Second Amended Counterclaim	May 4, 2016	1	213-222
Arbitration Order (Exhibit)	February 7, 2012	3	195-198
Complaint	March 2, 2012	1	24-49
Complaint for Declaratory Judgment, Restitution and Damages	February 15, 2011	1	1-20
Deed Lot 4 Block F - Stephen G. Wright & Mavis S. Wright to Van Der Meer 1983 Trust (Exhibit)	February 15, 1990	3	187-188
Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company (Exhibit)	June 16, 1994	3	189-190

Final Judgment	February 26, 2018	2	1-11
First Amended Complaint	February 17, 2016	1	121-145
Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company (Exhibit)	December 15, 1989	3	185
Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill (Exhibit)	February 12, 1990	3	186
Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company (Exhibit)	February 18, 2010	3	193-194
Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim	May 12, 2016	1	223-235
Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 3, 2018	3	167-168
Motion for Attorney's Fees and Costs	March 20, 2018	2	15-110
Notice of Appeal	March 6, 2018	2	12-14
Notice of Appeal	December 14, 2018	3	173-175

Notice of Entry of Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 11, 2018	3	169-172
Notice of Entry of Order Awarding Attorney's Fees and Costs	November 19, 2018	3	83-166
Official Plat of Ruby Lake Estates	September 15, 1989	3	176-178
Order Awarding Attorney's Fees and Costs	November 1, 2018	3	1-82
Order Denying Plaintiff's Motion for Summary Judgment	February 12, 2013	1	81-91
Order Granting Defendant's Motion for Summary Judgment	February 14, 2013	1	92-102
Order Granting Motion for Relief from Judgment	April 14, 2015	1	106-112
Order: Joinder of Necessary Parties	September 11, 2015	1	113-120
Order to Show Cause	October 7, 2013	1	103-105
Plaintiff's Opposition to Motion for Attorney's Fees and Costs	April 26, 2018	2	111-181
Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions (Exhibit)	October 25, 1989	3	179-184

Ruby Lake Estates Homeowner's Association's Articles of Incorporation (Exhibit)	January 18, 2006	3	191-192
Ruby Lake Estates Homeowner's Association's Reply Points & Authorities in Support of Motion for Attorney's Fees and Costs	August 3, 2018	2	182-200
Second Amended Complaint	April 14, 2016	1	167-191
Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment	February 26, 2018	1	236-244
Stipulation and Order to Dismiss Complaint without Prejudice	April 1, 2011	1	21-23

APPENDIX SUMMARY
Chronological Order

Document	Date	Vol.	Appellant's Appendix "AA" Pg. Nos.
Complaint for Declaratory Judgment, Restitution and Damages	February 15, 2011	1	1-20
Stipulation and Order to Dismiss Complaint without Prejudice	April 1, 2011	1	21-23
Complaint	March 2, 2012	1	24-49
Acceptance of Service	March 21, 2012	1	50
Answer to Complaint and Counterclaim	April 2, 2012	1	51-72
Answer to Counterclaim	April 16, 2012	1	73-80
Order Denying Plaintiff's Motion for Summary Judgment	February 12, 2013	1	81-91
Order Granting Defendant's Motion for Summary Judgment	February 14, 2013	1	92-102
Order to Show Cause	October 7, 2013	1	103-105
Order Granting Motion for Relief from Judgment	April 14, 2015	1	106-112
Order: Joinder of Necessary Parties	September 11, 2015	1	113-120
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Answer to First Amended Complaint; Counterclaim and Cross-Claim	March 11, 2016	1	146-166
Second Amended Complaint	April 14, 2016	1	167-191
Answer to Second Amended Complaint; Counterclaim and Cross-Claim	April 14, 2016	1	192-212
Answer to Second Amended Counterclaim	May 4, 2016	1	213-222
Harold Wyatt and Mary Wyatt's Answer to Second Amended Complaint and Cross-Claim	May 12, 2016	1	223-235
Stipulation and Order for Dismissal of Counterclaims and Cross-Claim Without Prejudice, Withdrawal of Pending Motions, and for Final Judgment	February 26, 2018	1	236-244
Final Judgment	February 26, 2018	2	1-11
Notice of Appeal	March 6, 2018	2	12-14
Motion for Attorney's Fees and Costs	March 20, 2018	2	15-110
Plaintiff's Opposition to Motion for Attorney's Fees and Costs	April 26, 2018	2	111-181
Ruby Lake Estates Homeowner's Association's Reply Points & Authorities in Support of Motion for Attorney's Fees and Costs	August 3, 2018	2	182-200

Order Awarding Attorney's Fees and Costs	November 1, 2018	3	1-82
Notice of Entry of Order Awarding Attorney's Fees and Costs	November 19, 2018	3	83-166
Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 3, 2018	3	167-168
Notice of Entry of Judgment for Attorney's Fees and Costs in Favor of Ruby Lake Estates Homeowner's Association	December 11, 2018	3	169-172
Notice of Appeal	December 14, 2018	3	173-175
EXHIBITS			
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Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions	October 25, 1989	3	179-184
Grant, Bargain and Sale Deed 49 Lots - Stephen G. Wright & Mavis S. Wright to Cattlemen's Title Guarantee Company	December 15, 1989	3	185
Grant, Bargain and Sale Deed Lot 1 Block A - Stephen G. Wright & Mavis S. Wright to Robert E. Morley, Deborah L. Morley, Duane V. Merrill, & Sally E. Merrill	February 12, 1990	3	186

Deed Lot 4 Block F - Stephen G. Wright & Mavis S. Wright to Van Der Meer 1983 Trust	February 15, 1990	3	187-188
Deed Lot 6 Block G - Cattlemen's Title Guarantee Company to Artemis Exploration Company	June 16, 1994	3	189-190
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Grant, Bargain & Sale Deed Lot 2 Block H - Adrian P. Preader & Jackie R. Preader to Artemis Exploration Company	February 18, 2010	3	193-194
Arbitration Order	February 7, 2012	3	195-198

1 CASE NO. CV-C- 11-147

2 DEPT. NO. 1

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

FILED

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY Be

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

9
10 **ARTEMIS EXPLORATION COMPANY,**
11 **on behalf of itself, and all others similarly**
12 **situated,**

13 **Plaintiffs,**

14 **vs.**

15 **RUBY LAKE ESTATES HOMEOWNER'S**
16 **ASSOCIATION, LEROY PERKS, VALERI**
17 **MCINTYRE, DENNIS MCINTYRE,**
18 **MICHAEL CECCHI, AND DOES I-X,**

19 **Defendants.**

COMPLAINT FOR DECLARATORY
JUDGMENT, RESTITUTION, AND
DAMAGES

20 Plaintiff, ARTEMIS EXPLORATION COMPANY, on behalf of itself, and all others
21 similarly situated, and for causes of action against Defendants, jointly and severally, alleges and
22 complains as follows:

23 **JURISDICTION**

24 1. Plaintiff is a Nevada corporation with its principle place of business in Elko County,
25 Nevada.

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

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1 AA000001

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

4 4. Defendant, Ruby Lake Estates Homeowners Association, is registered as a domestic
5 non-profit cooperative association in the State of Nevada, and purports to represent homeowners
6 of the Ruby Lake Estates subdivision located in Elko County, Nevada.

7 5. Defendants, LEROY PERKS, VALERI MCINTYRE, DENNIS MCINTYRE, and
8 MICHAEL CECCHI, are each residents of the State of Nevada, each have ownership interests in
9 the Ruby Lake Estates subdivision, and each are organizers, officers and/or directors of Ruby
10 Lakes Estates Homeowner's Association.

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

13 **COMMON FACTS**

14 7. The parcel map that created the Ruby Lake Estates subdivision was recorded in the
15 office of the Recorder of Elko County, State of Nevada, on September 15, 1989, as File No.
16 281674 and 281674 A.

17 8. The Declaration of Reservations, Conditions and Restrictions for the Ruby Lake
18 Estates was recorded on October 25, 1989, in the Office of the Recorder of Elko County in Book
19 703, Page 287. See copy attached hereto as Exhibit A.

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

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

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

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1 12. The Declaration of Reservations, Conditions and Restrictions do not authorize or
2 empower the Architectural Review Committee to levy dues or other assessments.

3 13. The Declaration of Reservations, Conditions and Restrictions did not authorize the
4 creation of a homeowner's association to compel the payment of dues or other assessments to
5 maintain roads or provide any other services.

6 14. In 2005, Defendant, Leroy Perks, purported to represent the Architectural Review
7 Committee under authority of the Declaration of Reservations, Conditions and Restrictions, and
8 sought to transform the Architectural Review Committee into a homeowner's association.

9 15. After the purported selection of the Architectural Review Committee and its claim to
10 form and comprise a homeowner's association, Beth Essington, President of Artemis Exploration
11 Company, began inquiring into the authority and legitimacy of such a body to compel the payment
12 of dues.

13 16. In response to her letter of inquiry concerning the association's legitimacy, Leroy
14 Perks, replied in a letter dated December 9, 2009, explaining, "We added to the architectural
15 committee to lighten the load of the volunteers, which we researched and is legal. This is now our
16 executive committee." See letter from Lee Perks dated December 9, 2009, attached hereto as
17 Exhibit B.

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

22 18. Artemis Exploration Company demanded that the Ruby Lake Estates Homeowner's
23 Association cease sending invoices and collection letters to compel the payment of dues.

24 19. Ruby Lake Estates Homeowner's Association continues to send delinquent account
25 statements to Artemis Exploration Company, and other property owners similarly situated,
26 threatening collections and legal action. See Invoice from Ruby Lake Estates Homeowner's
27 Association dated December 16, 2010, attached hereto as Exhibit C.

28

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

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

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

22. Plaintiffs restate and re-allege each prior allegation as if set forth fully herein.

23. The class is defined as the owners of the Ruby Lake Estates, which parcels are shown on the official map thereof recorded in the office of the Recorder of Elko County, State of Nevada, on September 15, 1989, as File No. 281674 and 281674 A.

24. Plaintiffs seek a declaratory judgment to establish that Ruby Lake Estates Homeowners Association is not authorized under the Declaration, Restrictions and Covenants to collect dues or assessments, or otherwise compel property owners within the Ruby Lake Estates to participate in the activities of Ruby Lake Estates Homeowner's Association.

25. Plaintiffs further seek a declaratory judgment to establish that Ruby Lake Estates Homeowner's Association is not authorized by law to compel the payment of dues or assessments.

SECOND CLAIM FOR RELIEF
(Damages)

26. Plaintiffs restate and re-allege each prior allegation as if set forth fully herein.

27. Defendants falsely represented that the Ruby Lake Estates Homeowner's Association has authority to compel the payment of dues and assessments against the owners of the Ruby Lake Estates.

28. Defendants caused invoices to be sent to the owners of the Ruby Lake Estates and collected monies under false pretenses that they were not entitled to collect.

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29. Plaintiffs are entitled to recover an award of restitution and damages against Defendants, and each of them, including but not limited to the repayment to Plaintiffs of all monies collected by the Ruby Lake Estates Homeowner's Association, or such greater amount as the court may award, together reasonable attorneys fees, costs, and interest.

THIRD CLAIM FOR RELIEF
(Fraud)

30. Plaintiffs restate and re-allege each prior allegation as if set forth fully herein.

31. Defendants represent and continue to represent to Plaintiffs that they organized and control a homeowner's association with authority to compel Plaintiffs to pay homeowners fees under threat of liens, collections, and legal prosecution.

32. The representations pertained to existing material facts.

33. The representations were false because Defendants knew that the Declaration, Restrictions and Covenants of the Ruby Lake Estates did not authorize the Ruby Lake Estates Homeowner's Association to compel the payment of dues or assessments, and that Ruby Lake Estates subdivision is not authorized by law to compel the payment of dues or assessments.

34. The Defendants knew that these statements were false or else made these representations recklessly, knowing that they had insufficient knowledge upon which to base such representations.

35. The Defendants made these representations for the purpose of inducing Plaintiffs to rely on these representations and to coerce payments from Plaintiffs which were not legally required or due.

36. Defendants acted in concert and with an intent to induce Plaintiffs to make payments to Defendants.

37. Plaintiffs, acting reasonably and in ignorance of the falsity of these representations, did, in fact, rely on these representations and were induced to act or refrain from acting to their damage or injury.

38. To their detriment, Plaintiffs relied on the falsity of these representations which resulted in Plaintiffs paying money to Defendants under false pretenses.

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1 39. The Defendants acted deliberately, maliciously, and with conscious disregard for
2 Plaintiffs' rights.

3 40. The Defendant's actions constitute fraud, for which Plaintiffs are entitled to
4 damages in an amount to be determined at trial, including exemplary or punitive damages.

5 Plaintiffs have been required to retain the services of a lawyer to prosecute this action.
6 Plaintiffs have incurred and will incur costs and fees in this action, and Plaintiffs are entitled to
7 recover said costs and fees from Defendants.

8 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth below.

9 **PRAYER FOR RELIEF**

10 Plaintiffs, therefore, respectfully request that judgment be entered in Plaintiffs' favor and
11 against Defendants as follows:

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

17 2. For an award of restitution and damages against Defendants, and each of them,
18 including but not limited to the repayment to Plaintiffs of all monies collected by the Ruby Lake
19 Estates Homeowner's Association;

20 3. For Plaintiffs' reasonable attorney fees and costs of suit;

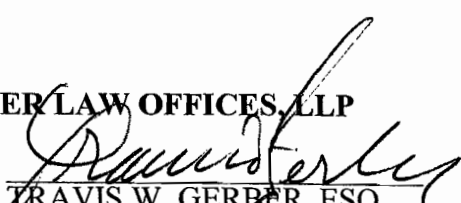
21 4. For exemplary or punitive damages; and

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

23 DATED this 15th day of February, 2011.

24 **GERBER LAW OFFICES, LLP**

25 BY:


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ATTORNEYS FOR PLAINTIFFS

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EXHIBIT A

RUBY LAKE ESTATES
DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 6 day of Sept., 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

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

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

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

ARTICLE I
GENERAL PURPOSE OF
RESERVATIONS AND RESTRICTIONS

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

BOOK 703 PAGE 287

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

ARTICLE III

CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright
Ruby Valley, NV 89833

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV VARIANCES

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

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

ARTICLE V VIOLATION AND ENFORCEMENT

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

•-

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

DECLARANT:

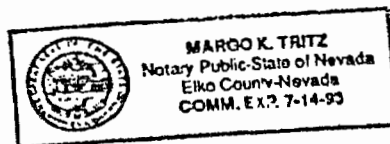
Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. Wright
MAVIS S. WRIGHT

STATE OF Nevada)
COUNTY OF Elko) SS.

On Sept. 10, 1989, personally appeared before me, a Notary Public,
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the
above instrument.

Margo K. Tritz
NOTARY PUBLIC



INDEXED :

FEE 10⁰⁰ FILE # 283750
FILED FOR RECORD
AT REQUEST OF
Marnett + Hansen
'89 OCT 25 AIO:43

RECORDED BY 703 287
JERRY D. REYNOLDS
ELKO CO. RECORDER

283750

BOOK 703 PAGE 292

EXHIBIT B

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

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

December 9, 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

Dear Mrs. Essington,

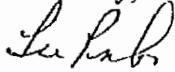
I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lee Perks'.

Lee Perks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

EXHIBIT C

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	321

Bill To
ROCKY ROA HC 60 BOX 755 RUBY VALLEY, NV 89833

Payment remit to:
Ruby Lake Estates C/O L. A Perks
765 East Greg Street, Suite 103
Sparks, Nevada 89431

P.O. No.	Terms	Project
	1/1/2011	

Quantity	Description	Rate	Amount
1	2011 YEARLY ASSESSMENT	226.99	226.99
<p><i>Payment Due By:</i></p> <p><i>January 31, 2011</i></p>			
PLEASE REMIT TO: 765 E. GREG ST #103 SPARKS, NEVADA 89431			Total \$226.99

1 AA000018

EXHIBIT D

**ANGIUS
& TERRY**
COLLECTIONS
LLC
A Division of ANGIUS & TERRY LLP
ATTORNEYS

January 4, 2011

Artemis Exploration Company
HC 60 Box 755
Ruby Valley, NV 89833

VIA CERTIFIED AND FIRST CLASS MAIL

Re: Ruby Lake Estates / 2010-3298
Artemis Exploration Company
3817 Indian Springs Drive
Ruby Valley, NV 89833

Dear Homeowner(s):

Angius & Terry Collections, LLC ("ATC") represents Ruby Lake Estates ("Association"), and has been directed to act on your delinquent account with respect to the above-referenced property ("Property"). This is our **NOTICE OF INTENT TO RECORD A NOTICE OF DELINQUENT ASSESSMENT LIEN ("Demand")**.

As of the date of this Demand, there is a total of \$662.92 owing and unpaid to the Association. Please ensure that all amounts due to the Association, plus all additional amounts which become due and payable to the Association including recoverable fees and costs be paid, in full, and physically received in our office on or before 5:00 P.M. on 2/4/2011. Payment should be made payable to Angius & Terry Collections, LLC. Call our office, at least 48 hours prior to your deadline date, at (702) 255-1124 or (877) 781-8885 to obtain the correct payment amount as the total amount owed is subject to change. Please note, that should a reinstatement amount be provided by our office prior to our receiving notification of a change in the Association's assessments, you will be responsible for the account balance that reflects the change in the Association's assessment. Should you elect to ignore this Demand, a Notice of Delinquent Assessment Lien will be prepared and forwarded to the County Recorder's office and additional collections fees and costs will be added to your account.

If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above. You should direct all communications relating to this demand to the above-referenced office.

Please note all payments must be in the form of a cashier's check or money order. Personal check's and cash will not be accepted.

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

Sincerely,


Carolyn Swanson
Angius & Terry Collections, LLC

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

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

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

1 AA000020

1 **CASE NO. CV-C-11-147**

2 **DEPT. 1**

11 APR -1 P3:00

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

ELKO

FILED

KD

6

7 **IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF ELKO**

9

10 **ARTEMIS EXPLORATION COMPANY,**
11 **on behalf of itself, and all others similarly**
12 **situated,**

13 **Plaintiffs,**

14 **vs.**

STIPULATION AND ORDER
TO DISMISS COMPLAINT
WITHOUT PREJUDICE

15 **RUBY LAKE ESTATES HOMEOWNER'S**
16 **ASSOCIATION, LEROY PERKS, VALERI**
17 **MCINTYRE, DENNIS MCINTYRE,**
18 **MICHAEL CECCHI, AND DOES I-X,**

19 **Defendants.**

20 _____/

21

22 COMES NOW, Plaintiff, **ARTEMIS EXPLORATION COMPANY**, by and through its
23 counsel, **TRAVIS W. GERBER, ESQ.**, of **GERBER LAW OFFICES, LLP**, and Defendants,

24 **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, LEROY PERKS, VALERI**

25 **MCINTYRE, DENNIS MCINTYRE, and MICHAEL CECCHI**, by and through their counsel,

26 **GAYLE A. KERN, ESQ.**, of **KERN & ASSOCIATES, LTD.**, and hereby stipulate to dismiss the

27 Complaint without prejudice. Plaintiff shall submit the matter to non-binding arbitration pursuant

28 to NRS 38.310, and the parties reserve their rights to seek attorney's fees and costs arising out of

this proceeding at arbitration.

///

///

28

1 DATED this 30th day of March, 2011.

2 GERBER LAW OFFICES, LLP

3
4 BY: 

5 TRAVIS W. GERBER, ESQ.
6 State Bar No. 8083
7 491 4th Street
8 Elko, Nevada 89801
9 (775) 738-9258
10 ATTORNEYS FOR PLAINTIFFS

11 DATED this _____ day of March, 2011.

12 KERN & ASSOCIATES, LTD.

13 By: _____

14 GAYLE A. KERN, ESQ.
15 State Bar #1620
16 5421 Kietzke Lane, Suite 200
17 Reno, Nevada 89511
18 (775) 324-5930
19 ATTORNEY FOR DEFENDANTS

20 **ORDER**

21 Based on the foregoing stipulation of the parties, and good cause appearing,
22 IT IS HEREBY ORDERED that the action is dismissed without prejudice.
23
24
25
26
27
28

DISTRICT JUDGE

1 DATED this ____ day of March, 2011.

2 GERBER LAW OFFICES, LLP

3
4 BY:

5 TRAVIS W. GERBER, ESQ.
6 State Bar No. 8083
7 491 4th Street
8 Elko, Nevada 89801
9 (775) 738-9258
10 ATTORNEYS FOR PLAINTIFFS

11 DATED this 30th day of March, 2011.

12 KERN & ASSOCIATES, LTD.

13 By:

14 Gayle A. Kern
15 GAYLE A. KERN, ESQ.
16 State Bar #1620
17 5421 Kietzke Lane, Suite 200
18 Reno, Nevada 89511
19 (775) 324-5930
20 ATTORNEY FOR DEFENDANTS

21 ORDER

22 Based on the foregoing stipulation of the parties, and good cause appearing,

23 IT IS HEREBY ORDERED that the action is dismissed without prejudice.

24 /S/ ANDREW J. PUCCINELLI
25 DISTRICT JUDGE
26
27
28

3/31/11

1 CASE NO. CV-C- 12-175

2 DEPT. NO. 1

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

FILED

2012 MAR -2 P 3:06

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY JS

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

9
10 **ARTEMIS EXPLORATION COMPANY,**
11 **a Nevada Corporation,**

12 **Plaintiff,**

13 **vs.**

COMPLAINT

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

16 **Defendants.**

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

20 **JURISDICTION**

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

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

26 3. Artemis Exploration Company purchased Lot 2, Block H, of the Ruby Lake Estates and
27 recorded its Deed in the office of the Recorder of Elko County, State of Nevada, as Document No.
28 623994, on March 9, 2010.

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

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

7 **COMMON FACTS**

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

9 7. The parcel map that created the Ruby Lake Estates subdivision was recorded in the
10 office of the Recorder of Elko County, State of Nevada, on September 15, 1989, as File No.
11 281674 and 281674 A. See copies attached hereto as Exhibit A.

12 8. The Declaration of Reservations, Conditions and Restrictions for the Ruby Lake
13 Estates was recorded on October 25, 1989, in the Office of the Recorder of Elko County in Book
14 703, Page 287. See copy attached hereto as Exhibit B.

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

17 10. The Declaration of Reservations, Conditions and Restrictions provides for an
18 Architectural Review Committee for the "general purpose of maintaining an aesthetically pleasing
19 development of a residential or vacation community in the aforesaid subdivision in conformity
20 with these conditions."

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

24 12. The Declaration of Reservations, Conditions and Restrictions do not authorize or
25 empower the Architectural Review Committee to levy dues or other assessments.

1 13. The Declaration of Reservations, Conditions and Restrictions did not authorize the
2 creation of a homeowner's association to compel the payment of dues or other assessments to
3 maintain roads or provide any other services.

4 14. In 2005, Defendant, Ruby Lake Estates Homeowner's Association and its officers,
5 purported to represent the Architectural Review Committee under authority of the Declaration of
6 Reservations, Conditions and Restrictions, and sought to transform the Architectural Review
7 Committee into a homeowner's association and to levy and collect dues from the property owners
8 of Ruby Lake Estates.

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

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

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

21 18. Artemis Exploration Company demanded that the Ruby Lake Estates Homeowner's
22 Association cease sending invoices and collection letters to compel the payment of dues.

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

27 20. On or about January 3, 2011, Ruby Lake Estates Homeowner's Association engaged
28 Angius & Terry Collections, LLC, a collection agency, to send a notice to Artemis Exploration

1 Company threatening that a "Delinquent Assessment Lien" would be placed on the property of
2 Artemis Exploration Company if the purported dues and assessments were not paid. See Notice
3 of Intent to Record a Notice of Delinquent Assessment Lien dated January 4, 2011, attached
4 hereto as Exhibit E.

5 21. Other property owners of the Ruby Lake Estates have been sent similar notices and
6 threats of collection, liens, and legal action.

7 **FIRST CLAIM FOR RELIEF**
8 **(Declaratory Judgment)**

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

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

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

18 25. Ruby Lake Estates subdivision does not have any common elements nor are any
19 common elements described in the Declaration, Restrictions and Covenants of Ruby Lake Estates
20 subdivision.

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

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

SECOND CLAIM FOR RELIEF
(Damages)

28. Plaintiff restates and re-alleges each prior allegation as if set forth fully herein.

29. Defendant falsely represented that the so-called Ruby Lake Estates Homeowner's Association has authority to compel the payment of dues and assessments against Plaintiff and the property owners of the Ruby Lake Estates.

30. Defendant caused invoices to be sent to the owners of the Ruby Lake Estates and collected monies under false pretenses that they were not entitled to collect.

31. Plaintiff is entitled to recover an award of restitution and damages against Defendant, including but not limited to the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's Association, or such greater amount as the court may award, together reasonable attorneys fees, costs, and interest.

THIRD CLAIM FOR RELIEF
(Fraud)

32. Plaintiff restates and re-allege each prior allegation as if set forth fully herein.

33. Defendant represented and continues to represent to Plaintiff that it organized and controls a homeowner's association with authority to compel Plaintiff to pay homeowners fees under threat of liens, collections, and legal prosecution.

34. The representations pertained to existing material facts.

35. The representations were false because Defendant knew or should have known that the Declaration, Restrictions and Covenants of the Ruby Lake Estates did not authorize the Ruby Lake Estates Homeowner's Association to compel the payment of dues or assessments, and that Ruby Lake Estates subdivision is not authorized by law to compel the payment of dues or assessments.

36. Defendant knew or should have known that these statements were false or else made these representations recklessly, knowing that it had insufficient knowledge upon which to base such representations.

1 within the Ruby Lake Estates to participate in the activities of the so-called Ruby Lake Estates
2 Homeowner's Association;

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

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

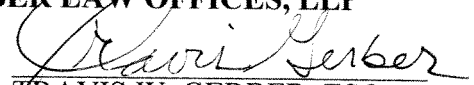
7 4. For exemplary or punitive damages; and

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

9 DATED this 2nd day of March, 2012.

10 **GERBER LAW OFFICES, LLP**

11 BY:


12 TRAVIS W. GERBER, ESQ.

13 State Bar No. 8083

14 491 4th Street

15 Elko, Nevada 89801

16 (775) 738-9258

17 ATTORNEYS FOR PLAINTIFF

18 ARTEMIS EXPLORATION

19 COMPANY

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

Darlene McGarr
DARLENE MCGARR

EXHIBIT A

RUBY LAKE ESTATES ELKO COUNTY, NEVADA

ENGINEERING CERTIFICATE

ANALYSIS OF ALL MAPS BY THESE ENGINEERS THAT SHOWING A
SECTION 8, T28N, R8E, W3E, BEING THE CORNER OF THE PUBLIC
LANDS IN THIS PLAT, THE ENGINEERS HAVE FOUND THAT THE
PLAT IS IN ACCORDANCE WITH THE PUBLIC LANDS ACT AND
ALL OF THE STRIPS AND CORNERS FOR PUBLIC LANDS AND
PUBLIC UTILITY PLANNING AS APPLICABLE HEREIN. IN WIT-
NESS WHEREOF, THE ENGINEERS HAVE SIGNED IN THE DATE BELOW.

Stephen S. Wright June 28, 1989
Stephen S. Wright
Mark S. Wright June 28, 1989
Mark S. Wright

STATE OF NEVADA
COUNTY OF ELKO

ON THE 21st DAY OF June, 1989,
I, Stephen S. Wright, COUNTY CLERK OF ELKO COUNTY, NEVADA,
DO HEREBY CERTIFY THAT THE ABOVE PLAT IS IN ACCORDANCE
WITH THE PUBLIC LANDS ACT AND ALL OF THE STRIPS AND CORNERS
FOR PUBLIC LANDS AND PUBLIC UTILITY PLANNING AS APPLICABLE
HEREIN.

Stephen S. Wright
COUNTY CLERK OF ELKO COUNTY, NEVADA



APPROVAL - ELKO COUNTY PLANNING COMMISSION

AT A REGULAR MEETING OF THE ELKO COUNTY PLANNING
COMMISSION, HELD IN THE CITY OF ELKO, NEVADA, ON THE
21st DAY OF June, 1989, A TENTATIVE PLAT OF THIS
SUBDIVISION WAS APPROVED FOR THE PUBLIC LANDS ACT AND
THIS PLAT WAS SUBMITTED TO THE PLANNING COMMISSION FOR
THEIR REVIEW AND ALL CONDITIONS PERTAINING TO THE SAME
WERE MET.

James L. Blair 7-5-89
James L. Blair
DATE

APPROVAL - ELKO COUNTY BOARD OF COMMISSIONERS

AT A REGULAR MEETING OF THE BOARD OF COMMISSIONERS
OF ELKO COUNTY, NEVADA, HELD IN THE CITY OF ELKO,
NEVADA, ON THE 21st DAY OF June, 1989, THE BOARD HAS
APPROVED THIS PLAT FOR THE PUBLIC LANDS ACT AND
ALL OF THE STRIPS AND CORNERS FOR PUBLIC LANDS AND
PUBLIC UTILITY PLANNING AS APPLICABLE HEREIN.

James L. Blair 7-5-89
James L. Blair
DATE

James L. Blair
COUNTY TREASURER



COUNTY TREASURER'S CERTIFICATE

I, James L. Blair, COUNTY TREASURER OF ELKO COUNTY,
NEVADA, DO HEREBY CERTIFY THAT THE ABOVE PLAT IS IN
ACCORDANCE WITH THE PUBLIC LANDS ACT AND ALL OF THE
STRIPS AND CORNERS FOR PUBLIC LANDS AND PUBLIC UTILITY
PLANNING AS APPLICABLE HEREIN.

James L. Blair 7-5-89
James L. Blair
DATE

DIVISION OF WATER RESOURCES CERTIFICATE

THIS FINAL PLAT IS APPROVED BY THE STATE OF NEVADA
DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CON-
SERVATION AND NATURAL RESOURCES ON THE 21st DAY OF
JUNE, 1989.

Harold Ricci 23 Jun 89
Harold Ricci
DATE

HEALTH DIVISION CERTIFICATE

THIS FINAL PLAT IS APPROVED BY THE HEALTH DIVISION
OF THE DEPARTMENT OF HEALTH SERVICES ON THE 21st DAY OF
JUNE, 1989.

Joseph L. Tule 7/13/89
Joseph L. Tule
DATE

APPROVAL - PUBLIC UTILITIES

THE PUBLIC UTILITY ENGINEERS, AN INDIVIDUAL ENGINEER,
DO HEREBY CERTIFY THAT THE ABOVE PLAT IS IN ACCORDANCE
WITH THE PUBLIC UTILITY ACT AND ALL OF THE STRIPS AND
CORNERS FOR PUBLIC UTILITY PLANNING AS APPLICABLE
HEREIN.

Al Feltner 6-28-89
Al Feltner
DATE

SUBDIVISION CERTIFICATE

I, Stephen S. Wright, A REGISTERED LAND SURVEYOR IN THE
STATE OF NEVADA, DO HEREBY CERTIFY THAT I HAVE
EXAMINED THIS FINAL PLAT AND FIND IT SUBSTANTIALLY
IN ACCORDANCE WITH THE PUBLIC LANDS ACT AND ALL OF THE
STRIPS AND CORNERS FOR PUBLIC LANDS AND PUBLIC UTILITY
PLANNING AS APPLICABLE HEREIN.

Stephen S. Wright 7-13-89
Stephen S. Wright
DATE

I, James L. Blair, COUNTY TREASURER OF ELKO COUNTY,
NEVADA, DO HEREBY CERTIFY THAT I HAVE
EXAMINED THIS FINAL PLAT AND FIND IT SUBSTANTIALLY
IN ACCORDANCE WITH THE PUBLIC LANDS ACT AND ALL OF THE
STRIPS AND CORNERS FOR PUBLIC LANDS AND PUBLIC UTILITY
PLANNING AS APPLICABLE HEREIN.

James L. Blair 7-13-89
James L. Blair
DATE

FILING DATA

FILE NO. 281674
FILED AT THE REQUEST OF
NOTARY SURVEYOR
DATE SEPT. 15, 1989
TIME 10:27 A.M.
Al Feltner
NOTARY PUBLIC
COUNTY OF NEVADA

SHEET 1 OF 3

OFFICIAL PLAT OF
RUBY LAKE ESTATES
FOR
STEPHEN S. & MARIE S. WRIGHT
SECTIONS 8&20, T28N-R8E, H086
ELKO COUNTY, NEVADA

NOTARY SURVEYING
440 NORTH 25TH STREET
ELKO, NV 89601
89036

SHEET 1 OF 3

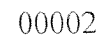


EXHIBIT B

RUBY LAKE ESTATES
DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 6 day of Sept, 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

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

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

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

ARTICLE I

GENERAL PURPOSE OF
RESERVATIONS AND RESTRICTIONS

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

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

ARTICLE III

CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright
Ruby Valley, NV 89833

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV VARIANCES

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

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

ARTICLE V VIOLATION AND ENFORCEMENT

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

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

DECLARANT:

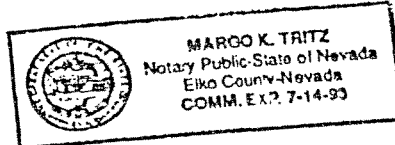
Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. Wright
MAVIS S. WRIGHT

STATE OF Nevada)
)SS.
COUNTY OF Elko)

On Sept. 16, 1989, personally appeared before me, a Notary Public,
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the
above instrument.

Margo K. Tritz
NOTARY PUBLIC



INDEXED :

FEE 10⁰⁰ FILE # 283750
FILED FOR RECORD
AT REQUEST OF
Marnett + Hansen
89 OCT 25 AIO:43

RECORDED BY 703 287
JERRY D. REYNOLDS
ELKO CO. RECORDER

283750

1 AA000042

703 202

EXHIBIT C

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

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

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

December 9, 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

Dear Mrs. Essington,

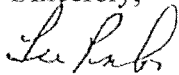
I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

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

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

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee Perks".

Lee Perks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

EXHIBIT D

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

Invoice

Date	Invoice #
12/16/2010	321

Bill To
ROCKY ROA HC 60 BOX 755 RUBY VALLEY, NV 89833

Payment remit to:
Ruby Lake Estates C/O L. A Perks
765 East Greg Street, Suite 103
Sparks, Nevada 89431

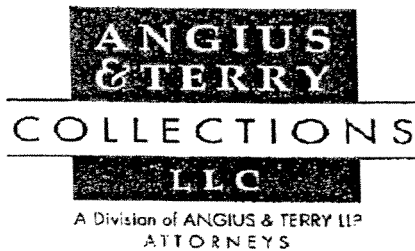
P.O. No.	Terms	Project
	1/1/2011	

Quantity	Description	Rate	Amount
1	2011 YEARLY ASSESSMENT	226.99	226.99
<p><i>Payment Due By:</i> <i>January 31, 2011</i></p>			

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

Total \$226
1 AA000047

EXHIBIT E



January 4, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

Artemis Exploration Company
HC 60 Box 755
Ruby Valley, NV 89833

Re: Ruby Lake Estates / 2010-3298
Artemis Exploration Company
3817 Indian Springs Drive
Ruby Valley, NV 89833

Dear Homeowner(s):

Angius & Terry Collections, LLC ("ATC") represents Ruby Lake Estates ("Association"), and has been directed to act on your delinquent account with respect to the above-referenced property ("Property"). This is our **NOTICE OF INTENT TO RECORD A NOTICE OF DELINQUENT ASSESSMENT LIEN ("Demand")**.

As of the date of this Demand, there is a total of \$662.92 owing and unpaid to the Association. Please ensure that all amounts due to the Association, **plus all additional amounts** which become due and payable to the Association including recoverable fees and costs be paid, in full, and physically received in our office on or before 5:00 P.M. on 2/4/2011. Payment should be made payable to Angius & Terry Collections, LLC. **Call our office, at least 48 hours prior to your deadline date, at (702) 255-1124 or (877) 781-8885 to obtain the correct payment amount as the total amount owed is subject to change.** Please note, that should a reinstatement amount be provided by our office prior to our receiving notification of a change in the Association's assessments, you will be responsible for the account balance that reflects the change in the Association's assessment. Should you elect to ignore this Demand, a Notice of Delinquent Assessment Lien will be prepared and forwarded to the County Recorder's office and additional collections fees and costs will be added to your account.

If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above. You should direct all communications relating to this demand to the above-referenced office.

Please note all payments must be in the form of a **cashier's check or money order**. Personal check's and cash will not be accepted.

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

Sincerely,


Carolyn Swanson
Angius & Terry Collections, LLC

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

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

1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304

tel 877.781.8885 fax 877.781.8886

ATCollections.com

1 AA000049

1 CASE NO. CV-C- 12-175

2 DEPT. NO. 1

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

FILED

2012 MAR 21 P 3:19

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY JA

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

9
10 **ARTEMIS EXPLORATION COMPANY,**
11 **a Nevada Corporation,**

11 **Plaintiff,**

12 **vs.**

ACCEPTANCE OF SERVICE

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

15 **Defendants.** /

16
17 COMES NOW, GAYLE A. KERN, ESQ., Attorney for Defendant, RUBY LAKE ESTATES
18 HOMEOWNER'S ASSOCIATION, and hereby accepts service of the Complaint on behalf of the
19 Defendant, RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION.

20 DATED this 20 day of March, 2012.

KERN & ASSOCIATES, LTD.

22
23 By: Gayle A. Kern
24 GAYLE A. KERN
25 Attorney for RUBY LAKE ESTATES
26 HOMEOWNER'S ASSOCIATION
27
28

ORIGINAL

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

FILED

2012 APR -2 P 1:48

ELKO CO DISTRICT COURT

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

CLERK DEPUTY

6 IN AND FOR THE COUNTY OF ELKO

7 ARTEMIS EXPLORATION COMPANY, a
8 Nevada Corporation,

9 Plaintiffs,

10 vs.

**ANSWER TO COMPLAINT AND
COUNTERCLAIM**

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

Defendants.

13 _____/
14 RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

15 Counterclaimant,

16 vs.

17 ARTEMIS EXPLORATION COMPANY, a
18 Nevada Corporation,

19 Counterdefendant.
_____ /

20 Defendant Ruby Lake Estates Homeowner's Association ("Ruby Lake"), by and through its
21 attorneys, Kern & Associates, Ltd. answers the Plaintiff's Complaint and counterclaims as follows:

22 **JURISDICTION**

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

25
26 2. Answering paragraph 2 of Plaintiff's Complaint, Ruby Lake has no information who
27 or what recorded the deed referenced and based thereon, denies the same. Ruby Lake admits there
28 is a deed recorded on June 21, 1994.

1 AA000051

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

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

8 5. Answering paragraph 5 of Plaintiff's Complaint, Ruby Lake admits the allegations
9 in paragraph 5.

10 COMMON FACTS

11 6. Answering paragraph 6 of Plaintiff's Complaint, Ruby Lake incorporates by
12 reference each and every answer contained in paragraphs 1 through 5 stated above.

13 7. Answering paragraph 7 of Plaintiff's Complaint, Ruby Lake asserts that there was
14 no Exhibit A and based thereon denies each and every allegation.

15 8. Answering paragraph 8 of Plaintiff's Complaint, Ruby Lake asserts that there was
16 no Exhibit B and based thereon denies each and every allegation.

17 9. Answering paragraph 9 of Plaintiff's Complaint, Ruby Lake denies each and every
18 allegation contained in paragraph 9.

19 10. Answering paragraph 10 of Plaintiff's Complaint, Ruby Lake asserts the Declaration
20 of Reservations, Conditions and Restrictions speaks for itself and Ruby Lake denies any contrary
21 allegations.

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

25 12. Answering paragraph 12 of Plaintiff's Complaint, Ruby Lake denies each and every
26 allegation contained in paragraph 12.

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

1 14. Answering paragraph 14 of Plaintiff's Complaint, Ruby Lake denies each and every
2 allegation contained in paragraph 14. Ruby Lake admits that in accordance with Nevada law and
3 the governing documents of Ruby Lake, assessments were properly made and collected to pay for
4 the common expenses of the common-interest community.

5 15. Answering paragraph 15 of Plaintiff's Complaint, Ruby Lake denies the allegations
6 regarding action by the Architectural Review Committee. Ruby Lake admits Beth Essington had
7 communications. Ruby Lake denies each and every remaining allegation contained in paragraph 15.

8 16. Answering paragraph 16 of Plaintiff's Complaint, Ruby Lake asserts there was no
9 Exhibit C and based thereon denies each and every allegation contained in paragraph 16.

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

12 18. Answering paragraph 18 of Plaintiff's Complaint, Ruby Lake asserts Artemis
13 Exploration Company wrongfully refused to pay lawful assessments. Ruby Lake denies each and
14 every remaining allegation contained in paragraph 18.

15 19. Answering paragraph 19 of Plaintiff's Complaint, Ruby Lake asserts there was no
16 Exhibit D and based thereon denies each and every allegation contained in paragraph 19.

17 20. Answering paragraph 20 of Plaintiff's Complaint, Ruby Lake asserts there is no
18 Exhibit E and based thereon denies each and every allegation contained in paragraph 20.

19 21. Answering paragraph 21 of Plaintiff's Complaint, Ruby Lake asserts there was no
20 Exhibit E in paragraph 20 and referenced again in paragraph 21, and based thereon denies each and
21 every allegation contained in paragraph 21.

22 **FIRST CLAIM FOR RELIEF**

23 **(Declaratory Judgment)**

24 22. Answering paragraph 22 of Plaintiff's Complaint, Ruby Lake incorporates by
25 reference each and every answer contained in paragraphs 1 through 21 stated above.

26 23. Answering paragraph 23 of Plaintiff's Complaint, Ruby Lake is without knowledge
27 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23,
28 and based thereon denies the same.

1 24. Answering paragraph 24 of Plaintiff's Complaint, Ruby Lake asserts that the statute
2 speaks for itself.

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

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

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

10 **SECOND CLAIM FOR RELIEF**

11 **(Damages)**

12 28. Answering paragraph 28 of Plaintiff's Complaint, Ruby Lake incorporates by
13 reference each and every answer contained in paragraphs 1 through 27 stated above.

14 29. Answering paragraph 29 of Plaintiff's Complaint, Ruby Lake denies each and every
15 allegation contained in paragraph 29.

16 30. Answering paragraph 30 of Plaintiff's Complaint, Ruby Lake denies each and every
17 allegation contained in paragraph 30.

18 31. Answering paragraph 31 of Plaintiff's Complaint, Ruby Lake denies each and every
19 allegation contained in paragraph 31.

20 **THIRD CLAIM FOR RELIEF**

21 **(Fraud)**

22 32. Answering paragraph 32 of Plaintiff's Complaint, Ruby Lake incorporates by
23 reference each and every answer contained in paragraphs 1 through 31 stated above.

24 33. Answering paragraph 33 of Plaintiff's Complaint, Ruby Lake is without knowledge
25 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33,
26 and based thereon denies the same.

27 34. Answering paragraph 34 of Plaintiff's Complaint, Ruby Lake is without knowledge
28 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34,

1 and based thereon denies the same.

2 35. Answering paragraph 35 of Plaintiff's Complaint, Ruby Lake denies each and every
3 allegation contained in paragraph 35.

4 36. Answering paragraph 36 of Plaintiff's Complaint, Ruby Lake denies each and every
5 allegation contained in paragraph 36.

6 37. Answering paragraph 37 of Plaintiff's Complaint, Ruby Lake denies each and every
7 allegation contained in paragraph 37.

8 38. Answering paragraph 38 of Plaintiff's Complaint, Ruby Lake denies each and every
9 allegation contained in paragraph 38.

10 39. Answering paragraph 39 of Plaintiff's Complaint, Ruby Lake denies each and every
11 allegation contained in paragraph 39.

12 40. Answering paragraph 40 of Plaintiff's Complaint, Ruby Lake denies each and every
13 allegation contained in paragraph 40.

14 41. Answering paragraph 41 of Plaintiff's Complaint, Ruby Lake denies each and every
15 allegation contained in paragraph 41.

16 42. Answering paragraph 42 of Plaintiff's Complaint, Ruby Lake denies each and every
17 allegation contained in paragraph 42.

18 43. Answering paragraph 43 of Plaintiff's Complaint, Ruby Lake denies each and every
19 allegation contained in paragraph 43.

20 44. Answering paragraph 44 of Plaintiff's Complaint, Ruby Lake is without knowledge
21 or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44,
22 and based thereon denies the same.

23 AS FOR SEPARATE AND AFFIRMATIVE DEFENSES, RUBY LAKE ALLEGES AND
24 AVERS AS FOLLOWS:

25 **FIRST AFFIRMATIVE DEFENSE**

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

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SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

Ruby Lake acted in good faith.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

Pursuant to the provisions of Rule 11 of the Nevada Rules of Civil Procedure, at the time

1 of the filing of Ruby Lake's answer, all possible affirmative defenses may not have been alleged
2 inasmuch as insufficient facts and other relevant information is unknown at this time. Ruby Lake
3 reserves the right to amend this answer to allege additional affirmative defenses if subsequent
4 investigation warrants the same.

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

- 6 1. That Plaintiff takes nothing by reason of its Complaint;
- 7 2. That the Complaint be dismissed;
- 8 3. That judgment be entered in favor of Ruby Lake and against Plaintiff for a
9 reasonable attorneys' fee, for costs of suit; and
- 10 4. For such other and further relief as may be just and proper in the premises.

11 **COUNTERCLAIM**

12 As and for a counterclaim against Artemis Exploration Company ("Artemis"), Ruby Lake,
13 alleges as follows:

14 **GENERAL ALLEGATIONS**

- 15 1. Ruby Lake is organized as a non-profit corporation and operating as a common-
16 interest community association and existing by virtue of the laws of the State of Nevada.
- 17 2. Artemis is a Nevada corporation ("Artemis" or "Claimant"), whose President,
18 Secretary, Treasurer and sole director is Elizabeth E. Essington.
- 19 3. Mrs. Essington's husband is George "Mel" Essington.
- 20 4. For over sixteen years (1994-2010), Mr. and Mrs. Essington implicitly and expressly
21 represented that Mr. Essington had the capacity and authority to act on behalf of Artemis.
- 22 5. There are recorded certain Reservations, Conditions and Restrictions for Ruby Lake
23 Estates ("CC&Rs"). The CC&Rs were recorded on October 25, 1989, in the Office of the Elko
24 County Recorder in Book 703, Page 287.
- 25 6. Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot
26 2, Block H of Ruby Lake Estates on March 9, 2010, and that both Lot 6 and Lot 2 ("Lots") are
27 subject to the terms, conditions and restrictions set forth in the CC&Rs.
- 28 7. Articles of Incorporation for RLEHOA were filed with the Nevada Secretary of

1 State on January 16, 2006.

2 8. Prior to the filing of the Articles of Incorporation, the ARC served as the governing
3 body of the Association.

4 9. Newsletters and written communications were regularly sent to the members of the
5 Association, including Mr. and Mrs. Essington, and meetings were held by the Board of Directors.

6 10. Assessments were levied in order to pay for the maintenance of the community
7 roads and other common elements.

8 11. Mr. and Mrs. Essington, representing they were the owners of Lot 6 of Block G
9 individually, regularly paid the assessments, as levied by the ARC and Board of Directors from time
10 to time.

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

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

16 14. In 2005, Mel Essington prepared Articles of Incorporation for filing with the
17 Nevada Secretary of State listing himself and Elizabeth Essington as the incorporators and officers
18 of the Association.

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

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

23 17. Both prior to the filing of the Articles, as well as for more than five years thereafter,
24 Mel Essington served on the Board of Directors.

25 18. Mel Essington represented his authority to act and all members of the Association
26 relied on such representation.

27 19. Artemis is fully bound by his representations and actions. During his tenure on the
28 Board as Artemis' representative, Mr. Essington wrote letters to the members of RLEHOA urging

1 them to "revitalize the Ruby Lakes Estates property owners association", as well as confirming the
2 existence of the HOA, the applicability of NRS Chapter 116, and the ability and responsibility of the
3 RLEHOA to levy and collect assessments. See RLE 021A-021D; RLE 0044- 048; RLE 053; RLE
4 077-080; RLE 083.

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

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

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

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

20 22. An election was thereafter held and directors of the Association were elected by the
21 members.

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

27 . . . As head of the homeowners association you need to work to protect the value of
28 the investments of all of the individual owners and be able to look beyond your own
more restricted outlook. . . . I assume you are aware Nevada has found it necessary

1 to create a commission to oversee the operation of the many HOA's [sic] in the
2 state. I would also assume you are aware that NRS 116, Section 10, 8(f) now
3 requires that the HOA records including financial records be located within sixty
4 miles of the physical location of the community for inspection purposes. I presume
5 that Mr. Wines will fulfill that function for the Association.

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

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

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

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

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

Under the statutes both the HOA and each individual unit owner share responsibility
and liability for the common elements. It is the expressed responsibility of the HOA
executive board to insure sufficient maintenance of the common elements in this
instance the community roads. Our roads are open to the public and carry
responsibility and liability. Accepted surface road maintenance standards include
shoulder and drainage features as well as the road surface. Because community
roads have not received any maintenance for 8 years the shoulders have become
weed and brush infested, and some sections lack adequate drainage. Obviously, it
is past time to reestablish minimal road maintenance requirements. The HOA's
budget does not currently permit meeting a contractor's fee to perform such

1 maintenance. Hence, a temporary annual fee increase is necessary to raise those
2 funds. It is anticipated that once the maintenance work is completed the fees may
3 be reduced to their former level.

4 26. Mrs. Essington thereafter paid the increased assessment as levied by the Board
5 members, including Mr. Essington ratifying the authority of Mr. Essington as representative of
6 Artemis.

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

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

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

21 29. During the time that Mr. Essington was on the Board, he was also a member of the
22 ARC.

23 30. On behalf of Artemis, Mr. Essington regularly voiced his opinions regarding the
24 enforcement and interpretation of the CC&Rs; he voted to approve the Reserve Study and regularly
25 voted to approve all budgets, levy assessments, and increase assessments from time to time.

26 31. In 2009 a dispute arose between the Essingtons and the ARC regarding the
27 construction within the Ruby Lake Estates subdivision of a large building used to house machinery
28 and other equipment.

32. The ARC and Board took the position that such a structure was permitted and the
Essingtons disputed this position.

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

1 assessments.

2 34. Artemis ceased paying its assessments, all of which had been approved by Mr.
3 Essington as a Board member.

4 35. Invoices generated in the ordinary course of business for the Association were sent
5 to the Essingtons.

6 36. On or about December 18, 2009, Mrs. Essington filed an Intervention Affidavit with
7 the Office of the Ombudsman, Department of Business and Industry, Real Estate Division, seeking
8 a determination that RLEHOA was an invalid community association.

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

12 38. Artemis continued to fail to pay its assessments and the Board of Directors took
13 appropriate action to collect the delinquent assessments.

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

16 40. The position taken in April of 2010 was directly contrary to the position taken by
17 Artemis for nearly a decade.

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

20 42. Mr. Essington subsequently resigned from the Board of Directors per letter dated
21 January 6, 2011.

22 **FIRST CLAIM FOR RELIEF**
23 **(Breach of Contract and Breach of Statutory Duties)**

24 43. Ruby Lake incorporates paragraphs 1 through 42 as if set forth in full herein.

25 44. Artemis wrongfully and in violation of Chapter 116 and the governing documents
26 of Ruby Lake caused Ruby Lake to incur expenses that it would not have incurred but for Artemis'
27 wrongful and unlawful conduct.

28 45. Artemis incurred damages in excess of \$10,000.00.

1 46. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to
2 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby
3 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

4 **SECOND CLAIM FOR RELIEF**
5 **(Negligence)**

6 47. Ruby Lake incorporates paragraphs 1 through 46 as if set forth in full herein.

7 48. Artemis owed a duty to exercise due care in its actions in connection with Ruby
8 Lake.

9 49. Artemis was negligent in its actions with Ruby Lake.

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

12 51. Ruby Lake was required to retain Kern & Associates, Ltd. and is entitled to
13 attorney's fees and costs in accordance with NRS 18.010, the governing documents of the Ruby
14 Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

15 **THIRD CLAIM FOR RELIEF**
16 **(Violations)**

17 52. Ruby Lake incorporates paragraphs 1 through 51 as if set forth in full herein.

18 53. Artemis' actions were, and continue to be, violations of the governing documents.

19 54. Artemis should pay all damages sustained.

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

23 **FOURTH CLAIM FOR RELIEF**
24 **(Confirmation of Award of Attorneys Fees and Costs)**

25 56. Ruby Lake incorporates by reference the allegations of paragraphs 1 through 55 as
26 though fully set forth herein.

27 57. An Award was entered in favor of Ruby Lake on the substantive portion of the
28 arbitration proceeding NRED Claim 11-82, a copy of which is attached as Exhibit "1".

 58. An Award for attorney's fees in the amount of \$22,092.00 and costs in the amount

1 of \$4,718.67 was in favor of Ruby Lake in the non-binding arbitration proceeding NRED Claim 11-
2 82, a copy of which is attached as Exhibit "1".

3 59. The Award entered should be confirmed and adopted.

4 **FIFTH CLAIM FOR RELIEF**
5 **(Damages - Attorneys Fees)**

6 60. Ruby Lake incorporates paragraphs 1 through 59 as if set forth in full herein.

7 61. Counter-Defendant's actions resulted in Ruby Lake incurring attorney's fees as
8 damages.

9 62. Pursuant to NRS 38.330(7), Ruby Lake should be awarded all attorney's fees and
10 costs incurred in the defense and prosecution of this action as well as all of those attorney's fees and
11 costs incurred in the arbitration proceeding NRED Claim 11-82.

12 63. Artemis should pay all damages sustained.

13 64. Ruby Lake was required to retain Kern & Associates, Ltd., and is entitled to
14 attorney's fees and costs in accordance with *Sandy Valley Associates v. Sky Ranch Estates Owners*
15 *Association*, 117 Nev.Adv.Rep. 78, 35 P.3d 964 (2001); NRS 18.010, the Governing Documents of
16 Ruby Lake, Chapters 116 and 38 of the Nevada Revised Statutes.

17 65. All attorney's fees and costs were and will be incurred as a direct and proximate
18 result of the Counter-Defendant's violations of the Governing Documents of Ruby Lake.

19 **SIXTH CLAIM FOR RELIEF**
20 **(Declaratory Relief - Chapter 30 of the Nevada Revised Statutes)**

21 66. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 65 of
22 its Counterclaim as though fully set forth herein.

23 67. A real controversy exists between the parties hereto concerning whether it is a
24 lawfully formed and validly existing non-profit common interest community association in good
25 standing, organized for the purposes of administering and enforcing the CC&Rs and exercising all
26 powers of a community association granted under the provisions of Nevada law, including Chapters
27 81 and 116 of the Nevada Revised Statutes. An order should be entered resolving this controversy
28 in favor of Ruby Lake.

///

SEVENTH CLAIM FOR RELIEF
(Preliminary and Permanent Injunction)

68. Ruby Lake incorporates by reference the allegation of paragraphs 1 through 67 of its Counterclaim as though fully set forth herein.

69. Counter-Defendant's behavior in the past shows that it will continue to interfere with business of Ruby Lake.

70. Counter-Defendant's behavior poses a serious, substantial and irreparable harm to the lawful actions of Ruby Lake.

71. Ruby Lake has no adequate remedy at law or otherwise for the harm or damage done and threatened to be done.

72. The only remedy that will allow Ruby Lake to maintain peace and quiet and comply with the statutory and recorded obligations of a common-interest community is a restraining order from this Court.

73. Ruby Lake will suffer irreparable harm unless Counter-Defendant is ordered by this Court to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members.

74. On a final hearing, a permanent injunction enjoining and ordering the Counter-Defendants to refrain from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members.

75. On a final hearing, a permanent injunction enjoining and ordering the Counter-Defendants to refrain from from taking any action to interfere with Ruby Lake and its lawful requirements under the law as a common-interest community.

WHEREFORE, Ruby Lake prays for judgment against Artemis Exploration Company, as follows;

1. That Ruby Lake recover special and general damages in an amount in excess of \$10,000.00;

2. That Ruby Lake is a lawfully formed and validly existing non-profit common-interest community association in good standing, organized for the purposes of administering and enforcing

1 the CC&Rs and exercising all powers of a community association granted under the provisions of
2 Nevada law, including Chapters 81 and 116 of the Nevada Revised Statutes;

3 3. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain
4 from interfering with the enjoyment, comfort, rights or convenience of Ruby Lake and its members;

5 4. For a permanent injunction enjoining and ordering the Counter-Defendants to refrain
6 from from taking any action to interfere with Ruby Lake and its lawful requirements under the law
7 as a common-interest community;

8 5. For a judgment confirming the Awards entered by the Arbitrator in the arbitration
9 proceeding NRED Claim 11-82 in favor of Ruby Lake;

10 6. That Ruby Lake be awarded its costs;

11 7. That Ruby Lake be awarded its attorney's fees;

12 8. Such other and further relief as the Court deems just and proper in the premises.

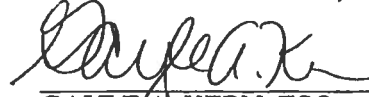
13 **AFFIRMATION**

14 **Pursuant to NRS 239B.030**

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

17 DATED this 29th day of March, 2012.

18 KERN & ASSOCIATES, LTD.

19 

20 GAYLE A. KERN, ESQ.
21 NEVADA BAR #1620
22 5421 Kietzke Lane, Suite 200
23 RENO, NEVADA 89511
24 Telephone: 775-324-5930
25 Fax: 775-324-6173
26 Email: gaylekern@kernltd.com
27 Attorneys for Ruby Lake Estates
28

1 CERTIFICATE OF SERVICE

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

4 ANSWER TO COMPLAINT AND COUNTERCLAIM

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

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

8 Via facsimile transmission

9 Personal delivery, upon:

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

11 Travis Gerber, Esq.
12 Gerber Law Offices, LLP
13 491 4th Street
Elko, NV 89801

14 DATED this 21st day of March, 2012.

15 
16 TERESA A. GEARHART

EXHIBIT “1”

EXHIBIT “1”

**LEONARD I. GANG
ATTORNEY AT LAW
ARTIBRATION * MEDIATION**

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

RECEIVED

FEB - 9 2012

GAYLE A. KERN, LTD

February 7, 2012

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

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

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

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

FACTS

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

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

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

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

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

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

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

DISCUSSION

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

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

DECISION

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

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

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

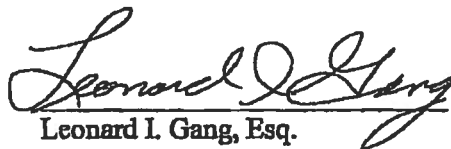
ORDER

1. Ruby Lake Estates is a Common -Interest Community and is subject to NRS Chapter 116. It was lawfully formed and is a validly existing non-profit common interest association.
2. The complaint against the individual board members is dismissed since no evidence was presented that they acted with willful or wanton misfeasance or gross negligence or were guilty of intentional misrepresentation or negligence.
3. Claimant is not entitled to punitive damages as a matter of law and no evidence was presented that would warrant such an award.
4. Respondent is entitled to an award of attorney's fees in the amount of \$22,092.00 and costs in the amount of \$4,718.67. I make this award taking into consideration the Brunzell factors. These factors were clearly articulated in the affidavit of Mrs. Kerns in support of her request for attorney's fees and costs and I find them to be accurate based upon my personal observations of Mrs. Kern's performance as an attorney representing homeowner's associations in these types of matters.

IT IS SO ORDERED.

Dated this 7th day of February, 2012.

ARBITRATOR,


Leonard I. Gang, Esq.

LIG:rg

CERTIFICATE OF MAILING

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

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

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


ROBERTA GANG

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

FILED

2012 APR 16 P 3:16

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

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

8
9 ARTEMIS EXPLORATION COMPANY,
10 a Nevada Corporation,

11 Plaintiff,

12 vs.

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

15 Defendants.

16 RUBY LAKE ESTATES
17 HOMEOWNER'S ASSOCIATION,

18 Counterclaimant,

19 vs.

20 ARTEMIS EXPLORATION COMPANY,
21 a Nevada Corporation,

22 Counterdefendant.

ANSWER TO COUNTERCLAIM

23 Plaintiff/Counterdefendant, ARTEMIS EXPLORATION COMPANY (hereinafter
24 "ARTEMIS"), hereby files its Answer to the Counterclaim filed herein by Defendant, RUBY
25 LAKE ESTATES HOMEOWNER'S ASSOCIATION, dated March 29, 2012:

26 1. ARTEMIS admits that RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION
27 registered itself as a domestic non-profit cooperative association in the State of Nevada on or
28

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

4 2. ARTEMIS admits that allegations contained in Paragraph 2 of the Counterclaim.
5 3. ARTEMIS admits that allegations contained in Paragraph 3 of the Counterclaim.
6 4. ARTEMIS denies the allegations contained in Paragraph 4 of the Counterclaim.
7 5. ARTEMIS admits that allegations contained in Paragraph 5 of the Counterclaim.
8 6. ARTEMIS admits that allegations contained in Paragraph 6 of the Counterclaim.
9 7. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles
10 of Incorporation for RLEHOA were filed with the Nevada Secretary of State on January 18, 2006,
11 and denies the remaining allegations contained in Paragraph 7 of the Counterclaim.

12 8. ARTEMIS denies the allegations contained in Paragraph 8 of the Counterclaim.
13 9. ARTEMIS admits that newsletters and written communications have been sent to
14 property owners located within Ruby Lake Estates subdivision, including to Mr. and Mrs.
15 Essington, and that meetings were held by the Board of Directors of the RUBY LAKE ESTATES
16 HOMEOWNER'S ASSOCIATION, but denies the remaining allegations contained in Paragraph
17 9 of the Counterclaim.

18 10. ARTEMIS admits that the RUBY LAKE ESTATES HOMEOWNER'S
19 ASSOCIATION has attempted to levy assessments against the property owners within the Ruby
20 Lake Estates subdivision, but denies the remaining allegations contained in Paragraph 10
21 including a denial that there are any common elements within the subdivision or that RUBY
22 LAKE ESTATES HOMEOWNER'S ASSOCIATION has any authority to make assessments.

23 11. ARTEMIS admits that it and Mel Essington initially paid some invoices sent by
24 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION, but denies the remaining
25 allegations contained in Paragraph 11 of the Counterclaim.

26
27
28

1 12. ARTEMIS admits that Lee Perks, President of RUBY LAKE ESTATES
2 HOMEOWNER'S ASSOCIATION, authored a letter dated June 28, 2010, but denies the
3 remaining allegations contained in Paragraph 12 of the Counterclaim.

4 13. ARTEMIS admits that Elizabeth and Mel Essington may have been initially in favor
5 of the creation of an association before they learned that Ruby Lake Estates does not qualify as a
6 common-interest community, but denies the remaining allegations contained in Paragraph 13 of
7 the Counterclaim.

8 14. ARTEMIS admits that a form for Articles of Incorporation was filled out listing Mel
9 and Elizabeth Essington as incorporators and officers, but denies that said form was filed and
10 denies the remaining allegations contained in Paragraph 14 of the Counterclaim.

11 15. ARTEMIS admits, based on records from the Nevada Secretary of State, that Articles
12 of Incorporation for RLEHOA were filed with the Nevada Secretary of State by Lee Perks on
13 January 18, 2006. ARTEMIS is without sufficient information to form a belief as to the truth of
14 the remaining allegations contained in Paragraph 15 of the Counterclaim.

15 16. ARTEMIS admits that Mel Essington initially participated in the activities of the
16 Ruby Lake Estates Homeowner's Association as a board member, but lacks information sufficient
17 to form a belief as to the truth of the remaining allegations contained in Paragraph 16.

18 17. ARTEMIS admits that Mel Essington served as a board member, but denies the
19 remaining allegations contained in Paragraph 17.

20 18. ARTEMIS denies the allegations contained in Paragraph 18.

21 19. ARTEMIS admits that Mel Essington wrote letters to the lot owners of Ruby Lake
22 Estates and that said letters speak for themselves. ARTEMIS denies the remaining allegations
23 contained in Paragraph 19.

24 20. ARTEMIS denies the allegations contained in Paragraph 20.

25 21. ARTEMIS admits the allegations contained in Paragraph 21.

26 22. ARTEMIS admits that Ruby Lake Estates Homeowner's Association is a voluntary
27 association that elected a board of directors, but denies any other inference or allegations
28 contained in Paragraph 22.

1 23. ARTEMIS admits that Mel Essington authored a letter to Lee Perks dated January 14,
2 2007, and that said letter speaks for itself. ARTEMIS denies the remaining allegations contained
3 in Paragraph 23.

4 24. ARTEMIS denies the allegations contained in Paragraph 24.

5 25. ARTEMIS admits that Mel Essington sent correspondence which correspondence
6 speaks for itself. ARTEMIS denies the remaining allegations contained in Paragraph 25.

7 26. ARTEMIS admits that Mel Essington paid assessments as levied by Ruby Lake
8 Estates Homeowner's Association, but denies the remaining allegations contained in Paragraph
9 26.

10 27. ARTEMIS admits that Mel Essington sent correspondence to other lot owners within
11 Ruby Lake Estates which correspondence speaks for itself. ARTEMIS denies the remaining
12 allegations contained in Paragraph 27.

13 28. ARTEMIS admits that Mel Essington served as a board member of Ruby Lake Estates
14 Homeowner's Association beginning in or around August of 2007, but denies the remaining
15 allegations contained in Paragraph 28.

16 29. ARTEMIS denies the allegations contained in Paragraph 29.

17 30. ARTEMIS admits that Mel Essington initially participated in the activities of the
18 Ruby Lake Estates Homeowner's Association as a board member, but lacks information sufficient
19 to form a belief as to the truth of the remaining allegations contained in Paragraph 30.

20 31. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size
21 of the structure, but denies the remaining allegations contained in Paragraph 31.

22 32. ARTEMIS admits that Beth Essington, its president, had concerns regarding the size
23 of the structure and that the structure was approved by the board of Ruby Lake Estates
24 Homeowner's Association, but denies the remaining allegations contained in Paragraph 32.

25 33. ARTEMIS denies the allegations contained in Paragraph 33.

26 34. ARTEMIS admits that it ceased paying assessments, but denies the remaining
27 allegations contained in Paragraph 34.

28

1 35. ARTEMIS admits that invoices were sent to ARTEMIS by Ruby Lake Estates
2 Homeowner's Association, but denies the remaining allegations contained in Paragraph 35.

3 36. ARTEMIS admits the allegations contained in Paragraph 36.

4 37. ARTEMIS admits the Ombudsman's Office issued an opinion dated July 1, 2012, in
5 which it declined to take any action. The Ombudsman stated in its letter, "... we are not, as you
6 requested, going to declare that the Ruby Lake Estates Homeowners Association is invalid." The
7 Ombudsman did not declare the Association valid, but concluded, "... in our view this
8 Association is required to comply with the law pertaining to homeowners associations,
9 specifically, NRS 116 and related laws and regulations."

10 38. ARTEMIS admits that it stopped paying assessments when it discovered that the
11 homeowner's association was not valid, but denies the remaining allegations contained in
12 Paragraph 38.

13 39. ARTEMIS denies the allegations contained in Paragraph 39.

14 40. ARTEMIS denies the allegations contained in Paragraph 40.

15 41. ARTEMIS denies the allegations contained in Paragraph 41.

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

18 43. Paragraph 43 does not require any response.

19 44. ARTEMIS denies the allegations contained in Paragraph 44.

20 45. ARTEMIS denies the allegations contained in Paragraph 45.

21 46. ARTEMIS denies the allegations contained in Paragraph 46.

22 47. Paragraph 47 does not require any response.

23 48. ARTEMIS denies the allegations contained in Paragraph 48.

24 49. ARTEMIS denies the allegations contained in Paragraph 49.

25 50. ARTEMIS denies the allegations contained in Paragraph 50.

26 51. ARTEMIS denies the allegations contained in Paragraph 51.

27 52. Paragraph 52 does not require any response.

28 53. ARTEMIS denies the allegations contained in Paragraph 53.

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- 1 54. ARTEMIS denies the allegations contained in Paragraph 54.
- 2 55. ARTEMIS denies the allegations contained in Paragraph 55.
- 3 56. Paragraph 56 does not require any response.
- 4 57. ARTEMIS admits the allegations contained in Paragraph 58, but disputes the findings
5 of said decision.
- 6 58. ARTEMIS admits the allegations contained in Paragraph 58, but disputes the findings
7 of said decision.
- 8 59. ARTEMIS denies the allegations contained in Paragraph 59.
- 9 60. Paragraph 60 does not require any response.
- 10 61. ARTEMIS denies the allegations contained in Paragraph 61.
- 11 62. ARTEMIS denies the allegations contained in Paragraph 62.
- 12 63. ARTEMIS denies the allegations contained in Paragraph 63.
- 13 64. ARTEMIS denies the allegations contained in Paragraph 64.
- 14 65. ARTEMIS denies the allegations contained in Paragraph 65.
- 15 66. Paragraph 66 does not require any response.
- 16 67. ARTEMIS admits that a real controversy exists regarding the validity of Ruby Lake
17 Estates Homeowner's Association as a common-interest community under NRS 116, and denies
18 the remaining allegations contained in Paragraph 67.
- 19 68. Paragraph 68 does not require any response.
- 20 69. ARTEMIS denies the allegations contained in Paragraph 69.
- 21 70. ARTEMIS denies the allegations contained in Paragraph 70.
- 22 71. ARTEMIS denies the allegations contained in Paragraph 71.
- 23 72. ARTEMIS denies the allegations contained in Paragraph 72.
- 24 73. ARTEMIS denies the allegations contained in Paragraph 73.
- 25 74. ARTEMIS denies the allegations contained in Paragraph 74.
- 26 75. ARTEMIS denies the allegations contained in Paragraph 75.
- 27
- 28

1 **PRAYER FOR RELIEF**

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

- 4 1. That Defendant/Counterclaimant take nothing by way of its Counterclaim filed herein;
5 2. For a declaratory judgment establishing that Ruby Lake Estates Homeowner's
6 Association is not authorized under the Ruby Lake Estates Declaration, Restrictions and
7 Covenants to compel the payment of dues or assessments, or to otherwise compel property owners
8 within the Ruby Lake Estates to participate in the activities of the Ruby Lake Estates
9 Homeowner's Association;
10 3. For an award of restitution and damages against Defendant, including but not limited to
11 the repayment to Plaintiff of all monies collected by the Ruby Lake Estates Homeowner's
12 Association;
13 4. For Plaintiff's reasonable attorney fees and costs of suit;
14 5 For exemplary or punitive damages; and
15 6. For such other and further relief as the Court may deem just and proper.

16 DATED this 16 day of April, 2012.

17 **GERBER LAW OFFICES, LLP**

18 BY:


TRAVIS W. GERBER, ESQ.

State Bar No. 8083

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ATTORNEYS FOR PLAINTIFF

ARTEMIS EXPLORATION

COMPANY

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

DATED: April 16, 2012.

Darlene McGarr
DARLENE MCGARR

VC

FILED

RECEIVED 14 JUN 2012
THE CO DISTRICT COURT

CLERK DEPUTY 

Case No. CV-C-12-175
Dept. No. 2

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

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Plaintiff,

v.

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

Defendants.

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

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

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

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

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

///
///
///

1 **1. Law of Summary Judgment**

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

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

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

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

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

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

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

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

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

11 **2. Undisputed Material Facts**

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

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

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

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

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

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

28 ///

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

4 Article I of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

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

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

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

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

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

1 under the CC&Rs.

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

7 **3. Analysis**

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

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

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

23 ///

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

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

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

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

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

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

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

24 A covenant is “[a] formal agreement or promise to do or not do a particular act.” Black’s Law
25 Dictionary 419 (9th ed. 2009). A covenant running with the land is “[a] covenant intimately and
26

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

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

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

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

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

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

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

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

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


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

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

5 **4. Order**

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

8
9 DATED this 14 day of February, 2013.

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11 
12 The Honorable Alvin R. Kacin
13 District Judge/Department 2
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27 ⁴ The Court also concludes that the Ruby Lakes Estates plat also constitutes "real estate," other than the unit owned, for
28 which unit owners are obligated to pay. NRS 116.2101 (common-interest community may be created pursuant to Act
only by recording a declaration executed in the same manner as a deed); NRS 116.2109(1) (plats are part of the
declaration). The plat contains "common elements" as that term is currently defined in NRS 116.017, including fixtures
such as gates.

CERTIFICATE OF MAILING

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

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

a true copy of the foregoing document addressed to:

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

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


Kevin Naughton

FILED

2013 FEB 12 PM 3:23

ELKO CO DISTRICT COURT

CLERK DEPUTY *[Signature]*

Case No. CV-C-12-175

Dept. No. 2

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

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Plaintiff,

v.

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

Defendants.

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

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

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

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

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

1. Law of Summary Judgment

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

///

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

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

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

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

25 "Summary judgment is appropriate and 'shall be rendered forthwith' when the pleadings and
26 other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the
27 moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729
28 (2005) (citing NRCP 56(c); Tucker v. Action Equip. and Scaffold Co., 113 Nev. 1349, 1353 (1997)).
"[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn
from it, must be viewed in a light most favorable to the nonmoving party." Id. "The burden of proving
the absence of triable facts is upon the moving party." Butler v. Bogdanovich, 101 Nev. 449, 451
(1985).

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

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

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

7 **2. Undisputed Material Facts**

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

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

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

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

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

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

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

27 Article I of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subdivision, including Artemis.

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

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

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

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

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

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

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

1 **3. Analysis**

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

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

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

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

23 ///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ///

25 ///

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

1 **4. Order**

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

4 DATED this 12 day of February, 2013.

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7 The Honorable Alvin R. Kacin
8 District Judge/Department 2
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1 CERTIFICATE OF MAILING

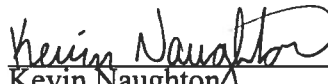
2 Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District
3 Judge, Fourth Judicial District Court, Department 2, and that on this 12 day of February, 2013,
served by the following method of service:

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

7 a true copy of the foregoing document addressed to:

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

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

13 
14 Kevin Naughton

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTEMIS EXPLORATION COMPANY,
A NEVADA CORPORATION,
Appellant,
vs.
RUBY LAKE ESTATES
HOMEOWNER'S ASSOCIATION,
Respondent.

No. 63338

FILED

OCT 07 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER TO SHOW CAUSE

This is an appeal from a district court order granting a motion to confirm and enter judgment on an arbitration award and awarding additional attorney fees and costs.

Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(g) reveals a potential jurisdictional defect. Specifically, it appears that the district court has not entered a final, written judgment adjudicating all the rights and liabilities of all the parties, in that respondent's counterclaims for breach of contract, negligence, and violations of the governing documents, and its request for a permanent injunction, appear to remain pending below. As a result, this court ostensibly lacks jurisdiction over this appeal, at least with respect to appellant's arguments concerning the earlier summary judgment order. NRAP 3A(b)(1); *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

According to appellant's docketing statement, after losing in NRS Chapter 38 nonbinding arbitration, it filed a district court complaint for declaratory relief to determine whether the Ruby Lakes Estates

subdivision was a common-interest community under NRS Chapter 116, in order to establish that respondent homeowner's association was not authorized to compel participation therein.¹ Respondent then filed counterclaims, and the district court granted respondent's motion for summary judgment on appellant's declaratory relief request, concluding that the subdivision was a common-interest community and that the respondent was a valid homeowner's association. While the summary judgment resolved all of appellant's claims, it did not mention respondent's counterclaims noted above. Later, upon respondent's motion, the district court confirmed the arbitration award for the purposes of awarding the attorney fees and costs granted in the arbitration, as well as for awarding additional attorney fees and costs under NRS 38.243, and entered judgment on both attorney fees and costs awards.

NRS 38.330(5) allows a party to apply to the district court for confirmation of a nonbinding arbitration award if no action concerning the arbitrated issues has been commenced within 30 days of service of the award. Here, however, an action was commenced within the applicable time frame, and the district court resolved the issues on their merits, not under the standard applicable for reviewing arbitration awards. Accordingly, it appears that this matter does not fall within NRS Chapter 38's confirmation of an arbitration award provisions, such that, despite the district court's confirmation language, NRS 38.247 does not apply and a final judgment is necessary to procure appellate jurisdiction under NRAP 3A(b)(1). Moreover, to the extent that the order confirming and entering judgment on the attorney fees and costs award is deemed independently

¹Appellant's damages claims were dismissed as abandoned below.

appealable under NRS 38.247(1)(c) or (f), it does not appear that this court could reach the subdivision and homeowner's association issues in the context of this appeal from that order, since it confirms only the attorney fees and costs awarded and awards additional fees and costs to the prevailing party.

Accordingly, appellant shall have 30 days from the date of this order within which to show cause why this appeal should not be dismissed, at least in part, for lack of jurisdiction. In responding to this order, appellant should submit documentation that establishes this court's jurisdiction including, but not necessarily limited to, points and authorities and any order resolving the noted counterclaims. We caution appellant that failure to demonstrate that this court has jurisdiction may result in this court's dismissal of this appeal. The briefing schedule in this appeal shall be suspended pending further order of this court. Respondent may file any reply within 11 days from the date that appellant's response is served.

It is so ORDERED.

Pickering, C.J.

cc: Gerber Law Offices, LLP ✓
Kern & Associates, Ltd.

Case No. CV-C-12-175

Dept. No. 2

FILED
2015 APR 14 AM 10:56
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY _____

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

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Plaintiff,

vs.

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

Defendants.

**ORDER GRANTING MOTION FOR
RELIEF FROM JUDGMENT**

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

On March 2, 2012, Plaintiff/Counterdefendant Artemis Exploration Company filed a complaint against Defendant/Counterclaimant Ruby Lake Estates Homeowner's Association (hereinafter "the HOA"). The complaint contains one claim for declaratory relief, as well as two claims for damages.¹

On April 2, 2012, the HOA filed its answer and counterclaim. The answer contains twelve affirmative defenses. The counterclaim contains claims for declaratory and injunctive relief, as well as claims for damages for breach of contract and statutory duties, negligence, violations of the governing documents of Ruby Lake Estates subdivision, and attorney's fees under NRS 38.330(7). The counterclaim also contains a claim for confirmation of an award of attorney's fees and costs in nonbinding arbitration.

Artemis filed its answer to the counterclaim on April 16, 2012. No affirmative defenses are raised therein.

¹ Artemis styles its second claim as one for "Damages," and its third claim as one for "Fraud."

1 A mere two weeks after the parties completed the pleading phase of this case, Artemis filed a
2 motion for summary judgment declaring the HOA invalid.²

3 On May 30, 2012, the HOA opposed the motion for summary judgment and counter-moved for
4 summary judgment against Artemis on all three of its claims.

5 On June 15, 2012, Artemis filed its "Reply to Opposition to Plaintiff's Motion for Summary
6 Judgment." Artemis also opposed the HOA's motion for summary judgment on June 22, 2012.

7 On July 5, 2012, the HOA filed a "Reply to Plaintiff's Opposition to RLEHOA's Motion for
8 Summary Judgment."

9 During the argument on the motion and counter-motion for summary judgment, Artemis
10 abandoned its claims for damages. At the conclusion of the argument, the Court took the matter under
11 consideration. On February 12, 2013, the Court entered its Order Denying Plaintiff's Motion for
12 Summary Judgment. Two days later, the Court entered its Order Granting Defendant's Motion for
13 Summary Judgment.

14 On March 1, 2013, the HOA filed a "Motion for Confirmation and Judgment on an Arbitration
15 Award [NRS 38.239 and NRS 38.330(5)] and Award of Attorney's Fees and Costs" (hereinafter
16 "Motion for Confirmation and Judgment and Additional Attorney's Fees and Costs"). Artemis opposed
17 the Motion for Confirmation and Judgment and Additional Attorney's Fees and Costs on March 15,
18 2013. On March 29, 2013, the HOA filed its "Reply to Plaintiff's Opposition to Motion for
19 Confirmation and Judgment on an Arbitration Award [NRS 38.239 and NRS 38.330(5)] and Award of
20 Attorney's Fees and Costs."

21 On May 15, 2013, the Court entered an order granting the Motion for Confirmation and
22 Judgment and Attorney's Fees and Costs.

23 On May 20, 2013, the HOA filed a paper titled "Request for Amended Order Granting
24 Defendant's Motion for Confirmation and Judgment on an Arbitration Award and Award of Attorney's
25 Fees and Costs." Artemis opposed provision of that relief on May 29, 2013, and filed a notice of appeal
26 of the order granting the Motion for Confirmation and Judgment and Additional Attorney's Fees and
27 Costs on June 3, 2013.

28

² Artemis also requested therein a trial on its claims for damages.

1 On June 6, 2013, the Court entered a Judgment on an Arbitration Award and Award of
2 Attorney's Fees and Costs.

3 On October 7, 2013, Chief Justice Kristina Pickering of the Nevada Supreme Court issued an
4 order to show cause as to why the appeal should not be dismissed. The Chief Justice noted therein that
5 this Court "ha[d] not entered a final, written judgment adjudicating all the rights and liabilities of all the
6 parties, in that [the HOA's] counterclaims for breach of contract, negligence and violations of the
7 governing documents, and its request for a permanent injunction[.]" The Chief Justice was concerned
8 that the Nevada Supreme Court lacked jurisdiction over the appeal, "at least with respect to []
9 arguments concerning the earlier summary judgment order." She then essentially opined that this Court
10 erred in entering its order granting the Motion for Confirmation and Judgment and Attorney's Fees and
11 Costs as follows.

12 NRS 38.330(5) allows a party to apply to the district court for confirmation of a nonbinding
13 arbitration award if no action concerning the arbitrated issues has been commenced within
14 30 days of service of the award. Here, however, an action was commenced within the
15 applicable time frame, and the district court resolved the issues on their merits, not under the
16 standard applicable for reviewing arbitration awards. Accordingly, it appears that this matter
17 does not fall within NRS Chapter 38's confirmation of an arbitration award provisions, such
18 that, despite the district court's confirmation language, NRS 38.247 does not apply and a
19 final judgment is necessary to procure appellate jurisdiction under NRAP 3A(b)(1).
20 Moreover, to the extent that the order confirming and entering judgment on the attorney's
21 fees and costs award is deemed independently appealable under NRS 38.247(1)(c) or (f), it
22 does not appear that this court could reach the subdivision and homeowner's association
23 issues in the context of this appeal from that order, since it confirms only the attorney fees
24 and costs awarded and awards additional fees and costs to the prevailing party.

25 On November 26, 2013, Artemis moved for relief from the June 6, 2013, Judgment on an
26 Arbitration Award and Award of Attorney's Fees and Costs and for summary judgment against the HOA
27 on its counterclaims. Then, on January 2, 2014, Artemis filed a notice that its appeal had been
28 dismissed.

On January 10, 2014, the HOA opposed the motions for relief from judgment and summary
judgment on its counterclaims.

On January 23, 2014, Artemis replied to the arguments in opposition to the new relief sought,
and the HOA moved for summary judgment on its counterclaims. Artemis opposed the HOA's latest
motion for summary judgment on February 7, 2014.

///

1 On February 21, 2014, the HOA filed reply points and authorities in support of its pending
2 motion for summary judgment. A copy of that paper was filed on February 24, 2014.

3 On May 28, 2014, the parties argued the pending motions. Since then the Court has undertaken a
4 comprehensive review of NRS Chapter 38, NRS Chapter 116, applicable rules of the Nevada Rules of
5 Civil Procedure, and the law of declaratory and injunctive relief, breach of contract and statutory duties,
6 negligence, and awards of attorney's fees and costs.

7 Having again extensively reviewed the pleadings, papers and voluminous exhibits on file herein,
8 the Court is vacating the order granting the Motion for Confirmation and Judgment and Additional
9 Attorney's Fees and Costs, and the Judgment on an Arbitration Award and Award of Attorney's Fees
10 and Costs entered on June 6, 2013.³

11 **1. Appropriateness of NRCP 60(b) Relief**

12 By the Motion for Confirmation and Judgment and Additional Attorney's Fees and Costs, the
13 HOA sought the entry of an order and a judgment: (a) confirming, among other things, the arbitrator's
14 order declaring Ruby Lake Estates to be a common interest community subject to NRS Chapter 116 and
15 awarding attorney's fees in the amount of \$22,092.00 and costs of \$4,718.67; and (b) awarding
16 additional fees and costs incurred in this action. As authority for an award of attorney's fees, the HOA
17 specifically cited NRS 38.243, NRS 116.4117, NRS 116.3115(6), NRS 18.010(2), and the governing
18 documents of Ruby Lake Estates. In hindsight, the Court has concluded that the effort to confirm the
19 arbitrator's order by judgment was completely without merit. The concomitant attempt to obtain an
20 award of additional attorney's fees and costs was arguably premature. NRCP 54.

21 In any event, Artemis cites NRCP 60(b) as authority for its "Motion for Relief from Judgment or
22 Order." As noted above, Artemis specifically seeks therein relief from the June 6, 2013, judgment. As
23 that judgment was based on the May, 2013, Order Granting Defendant's Motion for Confirmation and
24 Judgment on an Arbitration Award and Award of Attorney's Fees and Costs, which was the order from
25 which Artemis appealed, the Court shall treat the motion as one for relief from that order as well.

26 Under the rule, the Court "may relieve a party . . . from a final judgment, order or proceeding" for
27 several reasons, including "mistake," the ground urged by Artemis. However, the motion for NRCP
28

³ The Court shall dispose of the cross motions for summary judgment on the counterclaims under separate orders.

1 60(b) relief on that basis must be made “not more than 6 months after the proceeding was taken or the
2 date that the written notice of entry of the judgment or order was served.” Here, the motion was made
3 well after six months after those events occurred. Therefore, NRCP 60(b) relief for “mistake” is not
4 appropriate.

5 Nevertheless, the Court has concluded that relief is available to Artemis because the judgment
6 and the order upon which it is based are void as they purport to be a “final” confirmation of the
7 arbitrator’s order following nonbinding arbitration. NRCP 60(b)(4). See Scheeline Banking & Trust
8 Co. v. Stockgrowers & Ranchers Bank, 54 Nev. 346, 352 (1932) (court on its own motion may vacate
9 void judgment) (citing Persing v. Reno Stock Brokerage Co., 30 Nev. 342, 349 (1908)). As suspected
10 by Chief Justice Pickering, and now apparently acknowledged by the HOA, the Court simply lacked
11 subject matter jurisdiction to confirm the arbitrator’s order. See *Black’s Law Dictionary* 931 (9th ed.
12 2009) (defining subject matter jurisdiction as jurisdiction over the nature of the case *and the type of*
13 *relief sought*); Landreth v. Malik, 127 Nev. ___, ___ (2011) (as initial matter, whether court lacks
14 subject matter jurisdiction can be raised by the parties at any time, or sua sponte by a court of review,
15 and cannot be conferred by the parties) (citing Swan v. Swan, 106 Nev. 464, 469 (1990)). As the lack of
16 jurisdiction that can render a judgment void may be jurisdiction over the subject matter, NRCP 60(b)(4)
17 relief is in order. See 1 *Nevada Civil Practice Manual* § 24.14[2], § 25.09[2][d] (Matthew Bender);
18 Fitchett v. Henley, 31 Nev. 326, 341 (1909); Landreth, 127 Nev. at ___; (if district court lacks subject
19 matter jurisdiction, judgment rendered void) (citing State Indus. Ins. System v. Sleeper, 100 Nev. 267,
20 269 (1984)).

21 Because this action is now at a point that it has not yet proceeded to a judgment under which the
22 HOA is a prevailing party, the Court has concluded that NRCP 60(b) relief should be granted even as it
23 relates to an award of attorney’s fees and costs in this action, whether based on a rule, the governing
24 documents of Ruby Lake Estates, or any statute cited by the HOA. See Barney v. Mt. Rose Heating &
25 Air, 124 Nev. 821, 825 (2008) (district court may award attorney fees only if authorized by a rule,
26 contract, or statute); NRCP 54; Dimick v. Dimick, 112 Nev. 402, 404 (1996) (holding that husband not
27 entitled to attorney’s fees awarded pursuant to provision of prenuptial contract when wife stipulated to
28 agreement’s validity before any hearing held or evidence presented, as litigant cannot be a “prevailing

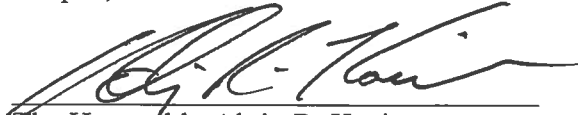
1 party" where action has not "proceeded to judgment"); NRS 116.4117(6) (court may award reasonable
2 attorney's fees to "prevailing party"); Works v. Kuhn, 103 Nev. 65, 68 (1987) (party to an action cannot
3 be considered a "prevailing party" within the contemplation of NRS 18.010 where the action has not
4 proceeded to judgment). Of course, the HOA's citation to NRS 38.243 as authority for confirmation of
5 the arbitrator's award and for additional attorney's fees and costs has been exposed as inapposite under
6 the present procedural posture of this case. See NRS 38.239 (after a party to arbitral proceeding receives
7 notice of award, it may move for order confirming the award, at which time court shall issue a
8 confirming order); NRS 38.243(2) (court may allow reasonable costs of motion and subsequent judicial
9 proceedings); NRS 38.243(3) (on application of "prevailing party" to contested judicial proceeding
10 under NRS 38.239, 38.241 or 38.242, court may add reasonable attorney's fees and other reasonable
11 expenses of litigation incurred in judicial proceeding after the award is made to judgment confirming,
12 vacating without directing a rehearing, modifying or correcting award).

13 **2. Order**

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

- 15 a. The Motion for Relief from Judgment or Order is GRANTED.

16
17 DATED this 13 day of April, 2015.

18
19 
20 The Honorable Alvin R. Kacin
21 District Judge/Department 2
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27
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District Judge, Fourth Judicial District Court, Department 2, and that on this 14th day of April, 2015, served by the following method of service:

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

a true copy of the foregoing document addressed to:

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

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



Christina M. Hansen

Case No. CV-C-12-175

Dept. No. 2

FILED

2015 SEP 11 PM 2:36

ELKO CO DISTRICT COURT

CLERK DEPUTY KA

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

ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

Plaintiff,

vs.

**ORDER RE: JOINDER OF NECESSARY
PARTIES**

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

Defendants.

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

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

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

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

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

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

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

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

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

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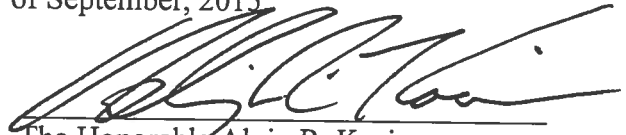
1 **For all of the foregoing reasons, the Court hereby enters the following orders:**

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

7

8 DATED this 11 day of September, 2015

9

10 

11 The Honorable Alvin R. Kacin
12 District Judge/Department 2

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1 CERTIFICATE OF SERVICE

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

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

8 a true copy of the foregoing document addressed to:

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

11 Gayle Kern, Esq.
12 5421 Kietzke Lane, Suite 200
13 Reno, Nevada 89801
Attorney for Defendant
[Regular US Mail]

14
15 
16 Pedro "Kepa" Zugazaga

Exhibit A

Exhibit A

Ruby Lake Estates Customer Contact List

June 23, 2015

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

Ruby Lake Estates
Customer Contact List

June 23, 2015

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

1 CASE NO. CV-C-12-175

2 DEPT. 2

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

FILED

2016 FEB 17 PM 3:36

ELKO CO DISTRICT COURT

CLERK DEPUTY *[Signature]*

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

8
9 ARTEMIS EXPLORATION COMPANY, a
Nevada Corporation,

10 Plaintiff,

11 vs.

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

27 Defendants.
28

FIRST AMENDED COMPLAINT

GERBER LAW OFFICES, LLP

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

1 AA000121

1 RUBY LAKE ESTATES HOMEOWNER'S
ASSOCIATION,

2 Counterclaimant,

3 vs.

4 ARTEMIS EXPLORATION COMPANY,
a Nevada Corporation,

5 Counterdefendant.
6 _____/

7 RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION,

8 Cross-Claimant,

9 vs.

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

22 Cross-Defendants.
23 _____/

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

26 **JURISDICTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **PRAYER FOR RELIEF**

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

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

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

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

15 DATED this 16th day of February 2016.

16 GERBER LAW OFFICES, LLP

17
18 BY:


19 TRAVIS W. GERBER, ESQ.

20 State Bar No. 8083

ZACHARY A. GERBER, ESQ.

21 State Bar No. 13128

491 4th Street

22 Elko, Nevada 89801

(775) 738-9258

23 ATTORNEYS FOR PLAINTIFF

ARTEMIS EXPLORATION

24 COMPANY

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CERTIFICATE OF SERVICE BY MAIL

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

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

DATED: February 17, 2016.


MADISON JOHNSON

EXHIBIT A

EXHIBIT A

affirmative, binding

Page 1 of 3

CHARTER NUMBER
Sheet 1 of 3

CHARTER NO. 123

CHARTER NUMBER

CHARTER NUMBER



DEEDS NUMBER
Sheet 1 of 3

DEEDS NUMBER

DEEDS NUMBER

DEEDS NUMBER

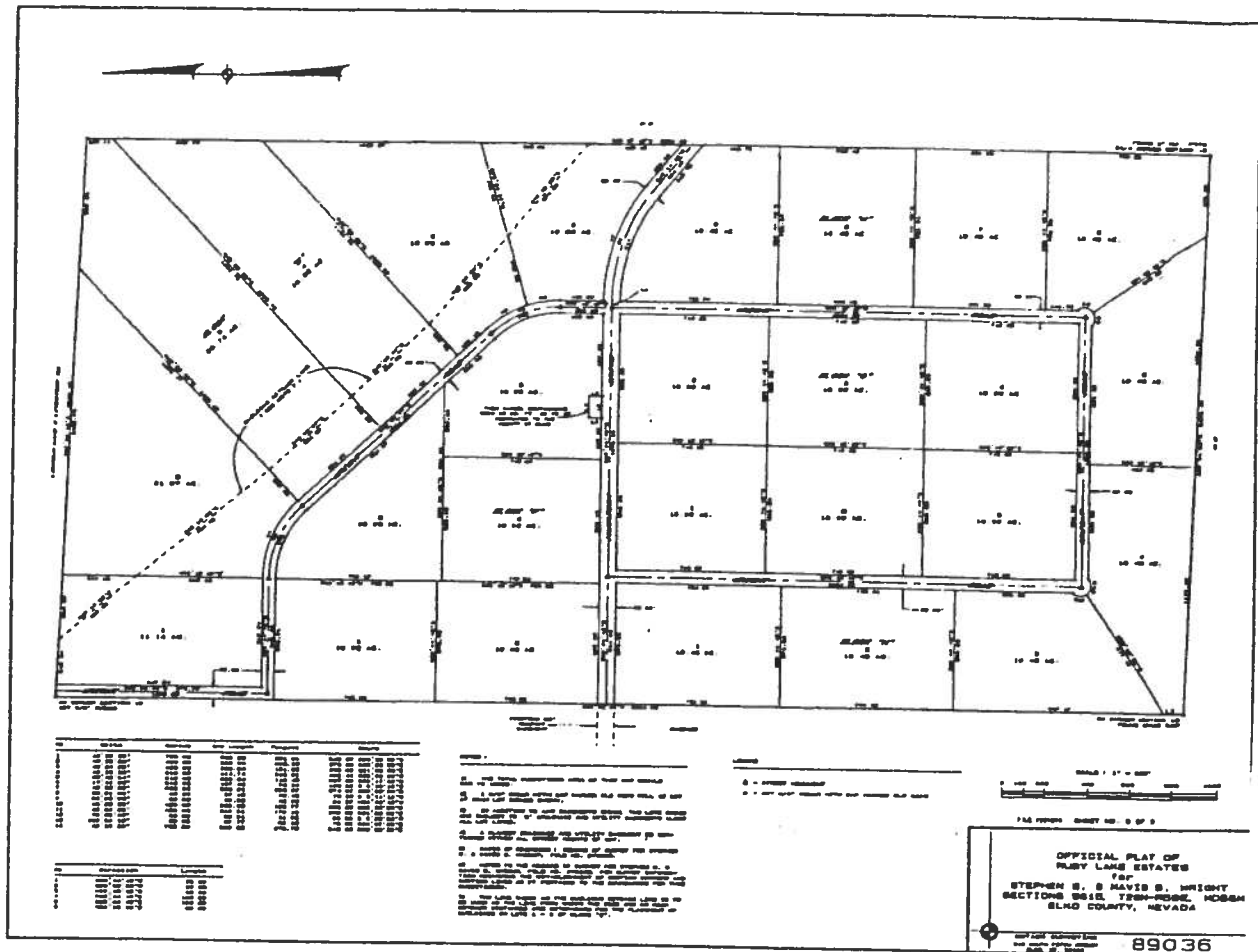


EXHIBIT B

EXHIBIT B

RUBY LAKE ESTATES
DECLARATION OF RESERVATIONS, CONDITIONS AND RESTRICTIONS

This Declaration of Restrictions, made effective this 6 day of Sept, 1989, by Stephen G. Wright and Mavis S. Wright, hereinafter collectively referred to as "DECLARANT".

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

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

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

ARTICLE I
GENERAL PURPOSE OF
RESERVATIONS AND RESTRICTIONS

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

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE

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

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

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

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

ARTICLE III

CONDITIONS

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

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

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

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

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

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

Steve and Mavis Wright
Ruby Valley, NV 89833

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV VARIANCES

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

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

ARTICLE V VIOLATION AND ENFORCEMENT

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

The failure or election of any person having standing to bring any action for violation of any condition herein shall not constitute a waiver of such condition for any purpose and each and every condition hereunder shall continue in full force and effect notwithstanding the length of time of any violation, the person or entity committing the violation, or any change in the nature and character of the violation, and each day such violation continues, shall constitute a new violation of such condition so violated.

DECLARANT:

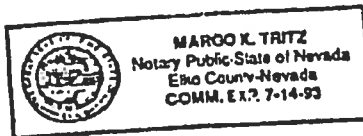
Stephen G. Wright
STEPHEN G. WRIGHT

Mavis S. Wright
MAVIS S. WRIGHT

STATE OF Nevada)
COUNTY OF Elko) ss.

On Sept. 10, 1989, personally appeared before me, a Notary Public,
Stephen G. Wright and Mavis S. Wright, who acknowledged that they executed the
above instrument.

Margo K. Fritz
NOTARY PUBLIC



INDEXED :

FEE 10⁰⁰ FILE # 283750
FILED FOR RECORD
AT REQUEST OF
Marnett + Hansen
89 OCT 25 AIO 43

RECORDED BY 703 287
JERRY D. REYNOLDS
ELKO CO. RECORDER

283750

1 AA000138

EXHIBIT C

EXHIBIT C

RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

765 EAST GREG ST #103
SPARKS, NEVADA 89431
(remit to)

687 6th Street, Suite 1
Elko, Nevada 89801
(correspondence)

December 9, 2009

Elizabeth Essington
HC 60 Box 760
Ruby Valley, NV 89833

Dear Mrs. Essington,

I am in receipt of your letter requesting information on the Ruby Lake Estates Homeowners Association. I will try and answer your questions as best I can.

- 1) The HOA was formed by the developer Steve Wright when he subdivided the properties originally. The formation of a committee was required in the original documents. Your property deed lists the CC&R's so you signed originally for this and agreed to a committee. This is your original signature and agreement. State law is very clear about this.
- 2) Steve Wright had the authority to appoint a committee to manage the CC&R's. Steve Wright had a meeting which I was appointed president, Mike Cecchi, VP, Dennis McIntyre sec/tres, Bill Harmon and Bill Noble, directors.
- 3) Once this happened I began researching the requirements of handling the committee and money required to operate. Federal law required that we obtain a Federal Id number to operate. (Steve Wright could operate under his existing). To do this we had to have a fictitious name and non profit status. This led to having an official name and registration.
- 4) To continue through our research we found out we are required per NRS 116 that insurance and council are required. We have done that.
- 5) We added to the architectural committee to lighten the load of the volunteers, which we researched and is legal. This is now our Executive committee.
- 6) There is no implied obligation or absence of legal documentation; it is there clearly in your deed.

Under the developers requirements Steve Wright did turn over the committee to the homeowners. He had the right to appoint. Steve Wright did not need any particular lot owner's permission to do this, it was strictly his choice. Now we are following the NRS

statues and administration code though the direction of our council Bob Wines. I hope this helps you understand your obligations.

Sincerely,



Lee Perks
President RLEHA

Cc: RLEHA Board members
Robert Wines, Esq.

EXHIBIT D

EXHIBIT D

Ruby Lake Estates

687 6th Street Ste 1
Elko, NV 89801

Invoice

Date	Invoice #
12/16/2010	321

Bill To
ROCKY ROA HC 60 BOX 755 RUBY VALLEY, NV 89833

Payment remit to:
Ruby Lake Estates C/O L. A Perks
765 East Greg Street, Suite 103
Sparks, Nevada 89431

P.O. No.	Terms	Project
	1/1/2011	

Quantity	Description	Rate	Amount
1	2011 YEARLY ASSESSMENT	226.99	226.95
<p>Payment Due By: January 31, 2011</p>			

PLEASE REMIT TO: 765 E. GREG ST #103
SPARKS, NEVADA 89431

Total \$226

1 AA000143

EXHIBIT E

EXHIBIT E

Jan 14 11 03:35p

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**ANGIUS
& TERRY
COLLECTIONS
LLC**

A Division of ANGIUS & TERRY LLP
ATTORNEYS

January 4, 2011

Artemis Exploration Company
HC 60 Box 755
Ruby Valley, NV 89833

VIA CERTIFIED AND FIRST CLASS MAIL

Re: Ruby Lake Estates / 2010-3298
Artemis Exploration Company
3817 Indian Springs Drive
Ruby Valley, NV 89833

Dear Homeowner(s):

Angius & Terry Collections, LLC ("ATC") represents Ruby Lake Estates ("Association"), and has been directed to act on your delinquent account with respect to the above-referenced property ("Property"). This is our **NOTICE OF INTENT TO RECORD A NOTICE OF DELINQUENT ASSESSMENT LIEN ("Demand")**.

As of the date of this Demand, there is a total of \$662.92 owing and unpaid to the Association. Please ensure that all amounts due to the Association, plus all additional amounts which become due and payable to the Association including recoverable fees and costs be paid, in full, and physically received in our office on or before 5:00 P.M. on 2/4/2011. Payment should be made payable to Angius & Terry Collections, LLC. Call our office, at least 48 hours prior to your deadline date, at (702) 255-1124 or (877) 781-8885 to obtain the correct payment amount as the total amount owed is subject to change. Please note, that should a reinstatement amount be provided by our office prior to our receiving notification of a change in the Association's assessments, you will be responsible for the account balance that reflects the change in the Association's assessment. Should you elect to ignore this Demand, a Notice of Delinquent Assessment Lien will be prepared and forwarded to the County Recorder's office and additional collections fees and costs will be added to your account.

If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above. You should direct all communications relating to this demand to the above-referenced office.

Please note all payments must be in the form of a cashier's check or money order. Personal check's and cash will not be accepted.

This is a serious matter and your immediate attention is imperative. Should you have any questions, please contact our office at (702) 255-1124 or (877) 781-8885.

Sincerely,

Carolyn Swanson
Carolyn Swanson
Angius & Terry Collections, LLC

cc: Ruby Lake Estates
Enclosures: Fair Debt Collection Practices Act Notice

Angius & Terry Collections, LLC is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

1120 North Town Center Drive, Suite 260 • Las Vegas, NV 89144-6304
tel 877 781.8885 fax 877.781.8886

ATCollections.com

1 AA000145