

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ARTEMIS EXPLORATION  
COMPANY, a Nevada corporation,  
HAROLD WYATT, and MARY  
WYATT, individuals,

Appellants,

vs.

RUBY LAKE ESTATES  
HOMEOWNER'S ASSOCIATION,

Respondent.

Case No. 77721

District Court Case No. CV-C-12-175

Electronically Filed  
Jun 21 2019 02:17 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

---

**RESPONDENT'S APPENDIX – VOLUME 1 – PAGES 001-203**

---

KAREN M. AYARBE, ESQ., NSB 3358  
kayarbe@lkglawfirm.com  
LEACH KERN GRUCHOW ANDERSON SONG  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511  
Tel: (775) 324-5930  
*Attorneys for Respondent*  
Ruby Lakes Estates Homeowner's Association

**APPENDIX SUMMARY**  
***(Chronological Order)***

<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Respondent's Appendix "RA" Page Numbers</b>
Ruby Lake Estates Homeowner's Association's ("RLEHOA") Motion for Summary Judgment ("MSJ").	May 30, 2012	1	001-037
RLEHOA Composite of Exhibits in Support of: (1) RLEHOA's Opposition to Plaintiff's Motion for Summary Judgment: and (2) RLEHOA'S MSJ. [Exh 1-25]	May 30, 2012	1	038-203
RLEHOA Composite of Exhibits in Support of: (1) RLEHOA's Opposition to Plaintiff's Motion for Summary Judgment: and (2) RLEHOA'S MSJ. [Exh 26-52]	May 30, 2012	2	204-371
RLEHOA's Reply to Plaintiff's Opposition to RLEHOA's Motion for Summary Judgment.	July 5, 2012	2	372-399
Exhibit "53" Affidavit of Stephen Wright.	July 5, 2012	2	400-415
Exhibit "65" Risk and Hazard Assessment	July 5, 2012	2	416-425

Case Appeal Statement	March 6, 2018	2	426-431
Case Appeal Statement	December 14, 2018	2	432-437

1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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

12 MAY 30 A11:27

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 AND DOES I-X,

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

16 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

20 Counterdefendant.  
21 \_\_\_\_\_ /

22 **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S**  
23 **MOTION FOR SUMMARY JUDGMENT**

24 Defendant RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION ("the Association" or  
25 "RLEHOA"), a Nevada non-profit corporation, by and through its counsel, Gayle A. Kern, Esq. of KERN &  
26 ASSOCIATES, LTD., moves for summary judgment as to all claims asserted by ARTEMIS EXPLORATION  
27 COMPANY, a Nevada Corporation ("Artemis" or "Plaintiff"), on the grounds that (i) Plaintiff has failed to state  
28 a *prima facie* claim for either fraud, misrepresentation, damages, or declaratory relief; (ii) all of Plaintiff's claims  
are barred by the statute of limitations, NRS 11.190; (iii) and, as a matter of law, Ruby Lake Estates is a

1RA001




1 common-interest community subject to the provisions of NRS Chapter 116. This motion for summary judgment  
2 is made pursuant to Nev.R.Civ.P.56, and is supported by the points and authorities below, attached exhibits, all  
3 papers and pleadings on file herein, and any oral argument the Court deems necessary.

4 All Exhibits referred to herein are filed separately as RLEHOA's Composite of Exhibits in Support of:  
5 (1) RLEHOA's Opposition to Plaintiff's Motion for Summary Judgment; and (2) RLEHOA's Motion for  
6 Summary Judgment.

7 Dated: May 29, 2012

KERN & ASSOCIATES, LTD.

8   
9 GAYLE A. KERN, ESQ.  
10 Attorneys for Ruby Lake Estates  
Homeowners Association

11 I.  
12 INTRODUCTION

13 Plaintiff filed its Complaint on March 2, 2012, seeking a declaratory judgment that RLEHOA is not a  
14 common-interest community subject to the provisions of Chapter 116 of the Nevada Revised Statutes. As  
15 demonstrated herein, *as a matter of law*, Plaintiff's assertions in its Complaint regarding the applicability of  
16 NRS116.021 to RLEHOA are simply wrong. The 2009 Amendments do not affect the standing of Ruby Lake  
17 Estates as a common-interest community formed prior to 1992. Moreover, the Association has the responsibility  
18 of maintaining community roadways and real property which is held in the name of the Association and shown  
19 upon the official Plat Map, in addition to gates, culverts, cattle guards, perimeter fencing, and an entrance  
20 monument sign. Contrary to any theory proffered by Plaintiff, RLEHOA is a common-interest community  
21 subject to the provisions of NRS Chapter 116, *as a matter of law*.

22 Plaintiff's Complaint also seeks general damages in the form of assessments it has paid RLEHOA,  
23 attorney's fees, as well as punitive damages against the Association based upon the generally alleged oppressive,  
24 malicious, and fraudulent actions of the Association in representing itself as a lawfully formed common-interest  
25 community association governed by NRS Chapter 116, and collecting assessments for maintenance of the  
26 community roads and the Association's real property, improvements and fixtures. As demonstrated by facts that  
27 cannot be disputed by Plaintiff, as well as various statutory and case law authorities, there is no basis to award  
28 Plaintiff any relief with respect to the Association. All of Plaintiff's claims fail, *as a matter of law*.

1 Plaintiff filed its Complaint after two significant events. This first was the issuance of an opinion by the  
2 Office of the Ombudsman for Common-Interest Communities, State of Nevada-Department of Business and  
3 Industry-Real Estate Division in response to an Intervention Affidavit filed by Plaintiff. On July 1, 2010, the  
4 Ombudsman's Office completed its case file review and issued its opinion, noting that it had received and  
5 reviewed various documents and information from Mrs. Essington, President and sole shareholder of Plaintiff,  
6 as well as information provided by Association Board President Lee Perks, and counsel for the Association,  
7 Robert Wines, Esq. The Ombudsman noted the June 18, 2010, letter from Robert Wines, included his opinion  
8 that the Association is a common-interest community and obligated to comply with the provisions of NRS  
9 Chapter 116. *See* Exhibit "49", RLE 127-128. Contrary to the assertions of Plaintiff, the Ombudsman's Office  
10 did take action. It just did not take the action Plaintiff requested. The Office of the Ombudsman stated:

11 "For these reasons, we are not, as you requested, going to declare that Ruby Lakes Estates  
12 Homeowners Association is invalid. In other words, it is our view that this Association is  
13 required to comply with the laws pertaining to homeowners associations, specifically, NRS 116  
14 and related laws and regulations."

15 *Id.*

16 The second significant event was the issuance of a Decision and Award by Arbitrator Leonard Gang in  
17 NRED Control No. 11-82, a NRS Chapter 38 arbitral proceeding filed by Artemis on May 6, 2011. After  
18 discovery was completed, including written interrogatories, requests for admissions, depositions of the  
19 principals, and the submission of written briefs and oral arguments before the arbitrator, Arbitrator Gang found  
20 that the Association "is a Common-Interest Community and is subject to NRS Chapter 116. It is lawfully formed  
21 and is a validly existing non-profit common-interest association." *See* Exhibit "47"; *see also* Exhibit "1" attached  
22 to the Association's Answer and Counterclaim. In issuing his Decision and Award, including an award of  
23 attorney's fees and costs in favor of the Association, Arbitrator Gang stated,

24 It is difficult to understand why, faced with the overwhelming evidence that RLHOA is a valid  
25 HOA, any one would continue to maintain that it is not. The HOA owns property within the  
26 subdivision, it maintains roads, signs, gates, culverts and fencing. It is incorporated as required  
27 by law. Indeed, Mr. Essington was at one time on the board of directors of RLHOA and was  
28 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 Administrative Code. His wife,  
Elizabeth Essington, apparently owns all the stock in Artemis.

... 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

1 Ombudsman took no action when it opined that RLHOA had to comply with the laws of the  
2 Nevada pertaining to homeowners association illogical. The Ombudsman clearly opined that  
3 the HOA was subject to the laws of Nevada that applied to HOA's [sic]. The Ombudsman took  
no action on the complaint of Artemis because the RLHOA was validly formed and obliged to  
comply with the law relating to HOA's [sic].

4 The issuance of Arbitrator Gang's Decision and Award had no effect upon Artemis. Artemis then filed  
5 its Complaint in this action based upon the same facts and allegations made in its Intervention Affidavit and in  
6 the ADR Complaint filed in the NRED arbitral proceeding presided over by Arbitrator Gang. Even before the  
7 holding of a pre-trial conference as required by NRCP 16.1(b) and despite submitting documents never before  
8 produced, Artemis filed a motion for summary judgment alleging that RLEHOA was an invalid community  
9 association because of its failure to comply with NRS 116.3101(1) and NRS 116.021. Plaintiff also alleged that  
10 the Association's levying of assessments against Plaintiff and other lot owners within the Ruby Lake Estates  
11 subdivision, constituted an amendment to the Declaration of Covenants, Conditions and Restrictions of Ruby  
12 Lake Estates in contravention of the decision of the Nevada Supreme Court in *Caughlin Ranch Homeowners*  
13 *Ass'n v. Caughlin Club*, 109 Nev. 264, 849 P.2d 310 (1993). Apparently, such notions came to Plaintiff as an  
14 epiphany sometime in 2009 because the actions of Plaintiff for the fifteen (15) years prior to that time, since  
15 becoming a lot owner, were only supportive and confirming of the formation, functions, and actions of the  
16 Association.

17 Contemporaneously with the filing of this Motion, the Association has filed its Opposition to Plaintiff's  
18 Motion for Summary Judgment ("Plaintiff's MSJ") demonstrating why various statutory provisions of NRS  
19 Chapter 116 undermine and make inapplicable Plaintiff's legal arguments and authorities. The Association also  
20 demonstrates that the cases relied upon by Artemis in its MSJ are wholly inapplicable to the facts of this case.  
21 Further, Artemis misapprehends the holdings of the cases it cites. Finally, as demonstrated by the facts brought  
22 forth in its Opposition, which facts directly controvene the "undisputed" facts as alleged by Plaintiff, there are  
23 material and relevant facts, supported by admissible evidence, which call into question Plaintiff's motives and  
24 credibility, thereby precluding summary judgment in favor of Plaintiff.

25 Those same facts, when applied to the authorities cited herein, demonstrate why summary judgment  
26 should be entered in favor of the Association as to all of Plaintiff's claims. As stated by the court in *Far Out*  
27 *Prods., Inc. v. Oskar*, 247 F.3d 986, 996 (9<sup>th</sup> Cir. 2001), "There may be genuine issues of fact precluding summary  
28 judgment on behalf of one party while at the same time the undisputed facts warrant summary judgment for the

1 other party.” In this case, the facts applied to the law can lead the Court to only one conclusion; Ruby Lake  
2 Estates is a common interest community governed by the requirements and protections afforded by NRS Chapter  
3 116. Plaintiff’s claims to the contrary are without merit.

4 Summary judgment should also be entered as to all of Plaintiff’s claims because Plaintiff has failed to  
5 state a *prima facie* claim for either declaratory relief, fraud or damages. Not only are there no facts supporting  
6 Plaintiff’s bare allegations for these claims for relief, but all of Plaintiff’s claims are time barred by NRS  
7 116.2117(2) and NRS 11.190(3). Plaintiff filed its Intervention Affidavit with the Office of the Ombudsman  
8 on December 18, 2009. This was more than three (3) years after the filing of the Articles of Association for  
9 RLEHOA and more than three years after the first payment of an assessment by Plaintiff to the Association, an  
10 obligation of Plaintiff created by statute. There can be no doubt, summary judgment should be entered in favor  
11 of the Association as to all claims made by Artemis.

## 12 II. UNDISPUTED FACTS

13 1. Artemis is a Nevada corporation, whose President, Secretary, Treasurer and sole director is  
14 Elizabeth E. Essington. See Exhibit “1”, RLE 116-117. Mrs. Essington’s husband is George “Mel” Essington.

15 2. The official Plat Map 89036 (“Plat Map”) for Ruby Lake Estates was recorded in the records  
16 of Elko County on September 15, 1989, by Stephen and Mavis Wright, as File No. 281674. See Exhibit “50”,  
17 RLE 014-RLE 016A. Included on the Plat Map are the residential lots within the community as well as the road  
18 ways, easements, building set back lines, and street monuments, among other things. With respect to the road  
19 ways, Sheet 1 of 3 of the Plat Map states:

20 At a regularly held meeting of the Board of Commissioners of Elko County, State of Nevada,  
21 held on the 5<sup>th</sup> day of July, 1989, this Plat was approved as a Final Plat pursuant to NRS 278.328.  
22 **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  
23 utility, drainage and access purposes only as dedicated for public use. [Emphasis added.]

24 3. The roads within Ruby Lake Estates have never been accepted for maintenance by Elko County.  
25 Elko County requires the roadways and adjoining ditches and culverts to be maintained for health and safety  
26 reasons, e.g., fire truck access and fire fuels mitigation. See Exhibit “4”, Wines Affidavit; see also Exhibit “5”,  
27 RLE 120-121; Exhibit “10”, Perks Affidavit; Exhibit “14”, RLE 020-021; Exhibit “19” at RLE 022; Exhibit  
28 “20” at RLE 021E; Exhibit “28” at RLE 060; Exhibit “32” at RLE 078; Exhibit “35” at RLE 105B. Maintenance

1 of the roads and the other common elements of the community is the collective responsibility of the owners of  
2 the residential lots within the Ruby Lake Estates subdivision. A majority of the owners have repeatedly  
3 recognized that a homeowners association, formed pursuant to NRS Chapter 116, is the most cost effective way  
4 to accomplish this task. NRS Chapter 116 provides protections and rights for the benefit of community  
5 association members.

6 4. On October 25, 1989, Stephen and Mavis Wright recorded certain Reservations, Conditions  
7 and Restrictions for Ruby Lake Estates ("CC&Rs"). The CC&Rs were recorded in the Office of the Elko  
8 County Recorder in Book 703, Page 287. *See* Exhibit "51", RLE 001-RLE 006; *see also* Exhibit "B" to  
9 Plaintiff's MSJ. Article I of the CC&Rs provides:

10 The real property affected hereby is subjected to the imposition of the covenants,  
11 conditions, restrictions and reservations specified herein to provide for the development *and*  
12 *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*. . . ." [Emphasis added.]

13 *Id.*, at RLE 001. The Plat Map constitutes part of the Declaration. NRS 116.2109(1).

14 5. In 1991, the Nevada Legislature adopted the Uniform Common-Interest Ownership Act  
15 ("UCIOA") in the form of Chapter 116 of the Nevada Revised Statutes. NRS 116.1201 provides that with  
16 certain limited exceptions, "this chapter applies to all common-interest communities created within this state."  
17 NRS 116.1201(2) then sets forth those certain limited exceptions. None of those exceptions apply to Ruby Lake  
18 Estates. In 1999, NRS Chapter 116 was made applicable to pre-1992 communities. However, because the  
19 CC&Rs and Plat Map were recorded prior to 1992, the Association is not required to comply with the provisions  
20 of NRS 116. 2101 to 116.2122, inclusive. *See* NRS 116.2101(3)(b) and legal arguments below.

21 6. Artemis acquired Lot 6 of Block G of Ruby Lake Estates on June 21, 1994, and Lot 2, Block H  
22 of Ruby Lake Estates on March 9, 2010. Both Lot G-6 and Lot H-2 were created by the Plat Map and are subject  
23 to the terms, conditions and restrictions set forth in the CC&Rs. Title to the Lots was taken subject to ". . .  
24 covenants, conditions, restrictions, exceptions and reservations, easements encumbrances, leases or licenses,  
25 rights, and rights of way of record, if any." *See* Exhibits "C" and "D" attached to Plaintiff's MSJ. *See also*,  
26 Policy of Title Insurance for Lot G-6, Exhibit "3", 00021-00027. The Essingtons' personal residence is located  
27 on Lot G-6. *See* Exhibit "10" Perks Affidavit.

28 7. The Articles of Association for the Ruby Lake Estates Homeowners Association, were filed by

1 Lee Perks on January 16, 2006. See Exhibit "18", RLE 011-013; *see also* Exhibit "H" to MSJ, 00034-00035.  
2 The *Initial* Association Registration Form was filed on March 31, 2006 with the Office of the Ombudsman for  
3 Common-interest Communities, State of Nevada, Department of Business and Industry-Real Estate Division.  
4 *Id.*, at RLE 012. In filing the Articles of Incorporation and forming the Association, the owners of Ruby Lake  
5 Estates took action consistent with the opinion of its counsel. See Exhibit "4", Wines Affidavit; *see also*, Exhibit  
6 "10" Perks Affidavit; Exhibit "15", 00033.

7 8. For over seventeen years (1994-2011), Mr. and Mrs. Essington implicitly and expressly  
8 represented that Lot G-6, was owned by one or both of them. Checks for Association assessments were written  
9 on the account of one or both of them. See Exhibit "9", RLE 027, RLE 036, RLE 058, RLE 081. In August of  
10 2006, Mr. Essington sent a letter to Lee Perks enclosing "our personal check in the amount of \$150. This  
11 amount will cover our Ruby Lake Estates Homeowners dues for 2006." See Exhibit "26", RLE 027A. At no  
12 time prior to 2011, did the Association receive any funds from Artemis. See Exhibit "10", Perks Affidavit.

13 9. In the alternative, Mr. Essington represented to members of the Association, that he had the  
14 capacity and authority to act on behalf of Artemis and/or Mrs. Essington. Mr. Essington signed into member  
15 meetings as the owner of Lot G-6. See Exhibit "12" at RLE 026; *see also* Exhibit "13" at RLE 051. In July of  
16 2006, the Essingtons completed a homeowner survey as owners of Lot G-6. The survey indicates the owners  
17 of Lot G-6 as "Artemis Exploration-Mel/Beth Essington". See Exhibit "48", RLE 021F-021H. Mr. Essington  
18 sent numerous communications to members of the Architectural Review Committee ("ARC"), members of the  
19 Board, and members of the Association, representing he was an owner of Lot G-6. See Exhibit "11", RLE 021A-  
20 021C; Exhibit "24", RLE 030; Exhibit "25", RLE 037-039; Exhibit "26", RLE 027A; Exhibit "29", RLE 076;  
21 Exhibit "31", RLE 076A; Exhibit "32", RLE 078-080; Exhibit "33", RLE 122-123; Exhibit "36", RLE 083;  
22 Exhibit "45", RLE 134. The members relied upon these representations and elected Mr. Essington to the Board  
23 of Directors of the Association in 2007 and again in 2009. See Exhibit "7" at 0062; Exhibit "13", at RLE 048;  
24 Exhibit "42", RLE 058A. Mr. Essington served as a member of the Board of Directors from 2007 until he  
25 resigned on January 2011. See Exhibit "45", RLE 134.

26 10. Following his election to the Association's Board of Directors, Mr. Essington signed a  
27 Declaration of Certification as a Common-Interest Community Board Member, as required by NRS  
28 116.31034(9). In this Declaration he declared, under penalty of perjury, that he had read and understood,

1 "... the governing documents of the Association and the provisions of Chapter 116 of Nevada Revised Statutes  
2 ("NRS") and the Nevada Administration Code ("NAC"). *See* Exhibit "27", RLE 053.

3 11. As a purported member of the Association and lot owner, Mr. Essington seconded a motion to  
4 approve the Bylaws of the Association. *See* Exhibit "12" at RLE 024 and RLE 026. The Bylaws specifically  
5 provide, "All officers must be property owners and members of the Ruby Lake Estates Homeowners Association  
6 in good standing their entire term of office." *See* Exhibit "23" at RLE 008. Mel Essington continually violated  
7 this provision when, for over sixteen years, he held himself out as an owner of a Lot. Furthermore, as Artemis'  
8 representative, Mr. Essington could not serve on the Board after Artemis stopped paying its assessments in 2009.  
9 *See* NRS 116.31034(8).

10 12. The Bylaws, as approved by Mr. Essington, also state: "An assessment fee will be charged yearly  
11 for maintenance, roads, fire protection, and other expenditures as the board allows or required by Elko County."  
12 *See* Exhibit "23" at RLE 007. Mr. Essington approved the Bylaws by voting in favor of their adoption at the  
13 August 2006 Board of Directors and Landowners Meeting. *See* Exhibit "12", RLE 023-026.

14 13. Maintenance of the roadways, as well as the ditches and culverts and other real property  
15 improvements the Association is required to maintain, has repeatedly been recognized as the collective  
16 responsibility of the owners of the lots within the Ruby Lake Estates subdivision, including Plaintiff, acting  
17 through the RLEHOA. In the 2006 Survey questionnaire completed by "Artemis Exploration-Mel/Beth  
18 Essington", Plaintiff responded that it wanted the Association to maintain the roadways. *See* Exhibit "48" at RLE  
19 021F. Road maintenance by the Association has been an ongoing topic of communications between members  
20 and at members' meetings for many years since this maintenance obligation was turned over to the owners by  
21 the developer in 1997. *See* Exhibit "4", "Wines Affidavit"; *See also* Exhibit "5" RLE 120-121; Exhibit "6",  
22 RLE 018-019D; Exhibit "7", 0062-0064, 0085-0087, 0096-0101; Exhibit "8 ", 71:21-24; Exhibit "10", Perks  
23 Affidavit; Exhibit "11" at RLE 021A-021C; Exhibit "12", RLE 023-029; Exhibit "13", RLE 044-052; Exhibit  
24 "14", RLE 020-021; Exhibit "19", RLE 022; Exhibit "20", RLE 021E; Exhibit "23", RLE 007-010; Exhibit "28",  
25 at RLE 060; Exhibit "31", RLE 076A; Exhibit "32", RLE 078-080; Exhibit "34", RLE 084-101; Exhibit "35"  
26 at RLE 105A-RLE105D; Exhibit "42", RLE 058A.

27 14. At various times after becoming a member of the Board in August 2007, Mr. Essington voted  
28 to levy assessments against all members for roadway maintenance, weed abatement, and the repair of signs and

culverts. *See* Exhibit "13" at 00046; *see also*, Exhibit "28", RLE 059-061; Exhibit "31", RLE 076A; Exhibit "32", RLE078-080; Exhibit "35" RLE 105A-105D; Exhibit "7", 0062-0064; 0085-0087; 0096-0101. Both before and during his tenure on the Board, Mr. Essington wrote letters to the members of the Association confirming the existence and necessity of the Association, the necessity of enforcing the CC&Rs, the applicability of NRS Chapter 116 to the Ruby Lake Estates common-interest community, and the ability and responsibility of the Association to levy and collect assessments for maintenance of the common elements. *See* Exhibit "11", RLE 021A-021C; *see also* Exhibit "16", RLE 143; Exhibit "24", RLE 030; Exhibit "25", RLE 037; Exhibit "26" RLE 027A; Exhibit "27" RLE 053; Exhibit "29", RLE 076; Exhibit "30", RLE 112-114; Exhibit "31", RLE 076A; Exhibit "32" at RLE 078; Exhibit "33", RLE 122-123.

15. The Association holds title to real property which was deeded to it by the developer. *See* Exhibit "52", RLE 054-057. The members of the Association, including Mr. Essington while serving on the Board and while representing himself to be an owner of Lot G-6, voted to accept title to this real property, pay the documentary transfer tax, and procure liability insurance covering this property in the name of the Association. *See* Exhibit "13", RLE 044-052. Mrs. Essington also admits the Association holds title to common area real property. *See* Exhibit "8", at 51:12-15.

16. On or about July 14, 2009, the Association's Board, of which Mr. Essington was a member, caused a Reserve Study to be prepared as required by NRS 116.31153. The Reserve Study was prepared by an independent and licensed community association consultant. The Reserve Study identified the common elements of the Association as cattle guards, dirt road maintenance, fencing, gates, entrance signs, and street signs. *See* Exhibit "34", RLE 084-101. It was Mr. Essington that directed the independent Reserve Specialist to the Common Areas. *See* Exhibit "10". Mr. Essington actually met with and physically traveled to all common areas with the Reserve Specialist. *Id.* It was Mr. Essington that directed the Reserve Specialist to the common elements, including the real property, gates, signs, culverts, cattle guards and perimeter fencing. Mr. Essington voted to approve this Reserve Study at the August 08, 2009, Board of Directors and Landowners Meeting, where it was discussed in detail. *See* Exhibit "35", RLE 105A to RLE 105D. Mr. Essington voted to levy assessments in accordance with the Reserve Study and the 2010 budget, which he also approved. *Id.*

17. Since the formation of the Association in 2006, assessments have been levied and budgets were adopted by the members of the Association to pay for county requirements of road maintenance, fire protection,



1 and maintenance of the Association's real property, including the gates, sign, culverts, cattle guards, and  
2 perimeter fencing. *See* Exhibit "6" at RLE 019C; *see also*, Exhibit "13" at 00046; Exhibit "28", RLE 059-  
3 061; Exhibit "31", RLE 076A; Exhibit "32", RLE078-080; Exhibit "35" RLE 105A-105D; Exhibit "7", 0062-  
4 0064; 0085-0087; 0096-0101.; Exhibit "35", RLE 105A-105D. Mr. Essington approved these budgets and  
5 assessments to pay for maintenance of these community improvements at each annual meeting he attended from  
6 2006 through and including 2010. Either Mr. and/or Mrs. Essington, expressly and implicitly representing they  
7 were the owners of Lot G-6, regularly paid the assessments from their personal bank account. *See* Exhibit "9",  
8 RLE 027, RLE 036, RLE 058, RLE 081.

9 18. The June 2006 Survey questionnaire completed by "Artemis Exploration-Mel/Beth Essington,"  
10 indicated the Plaintiff wanted and expected the Association to maintain the roadways. *See* Exhibit "48", RLE  
11 021F-021G. More importantly, the following statement was made and question posed and answered by "Artemis  
12 - Mel/Beth Essington":

13 Statement: "While the declaration of Reservation, Conditions and Restrictions does not  
14 specifically provide that property owners will be required to pay annual dues, it  
15 is implicit in the requirement that such dues may be assessed. If the review  
16 committee is to exercise any authority or powers granted to it by the restrictions,  
17 it must be able to engage in legal accounting, maintenance and other  
18 professional services."

19 Question: "Would \$150.00 to \$200.00 per year be reasonable for road maintenance and  
20 other services?"

21 Answer: "Yes".

22 "Artemis - Mel/Beth Essington" also agreed that to change or raise fees would take only the approval of a simple  
23 majority of land owners. *See* Exhibit "48" at RLE 021G. *See also*, Exhibit "10", Perks Affidavit.

24 19. The 2006 Survey also posed the following questions to which "Artemis-Mel/Beth Essington"  
25 responded as follows:

26 Question: "Are you in favor of Elko County providing road maintenance?"

27 Answer: "No"

28 Question: "or would you be in favor of Ruby Lakes Estates Association provide [sic] the road  
maintenance?"

Answer: "Yes."

20. At each step in the process of the formation of the Association, members acted reasonably and

1 prudently in relying upon the opinion of its legal counsel. *See* Exhibit "15", RLE 00033; *see also* Exhibit "4",  
2 Wines Affidavit; Exhibit "10", Perks Affidavit; Exhibit "5", RLE 120-121; Exhibit "17", RLE 125-126. Robert  
3 Wines has been present at each meeting of the Board as well as at the annual members' meeting from 2006  
4 through 2011. *See* Exhibit "4" and Exhibit "5". Members of the Board have regularly relied upon his opinion  
5 regarding maintenance of the roadways and other areas of the community in order to meet Elko County  
6 requirements as well as comply with the requirements of NRS Chapter 116. *Id.*; *see also* Exhibit "13" at RLE  
7 045. At all times pertinent, it has been Mr. Wines opinion that Ruby Lake Estates is a common-interest  
8 community subject to the provisions of NRS Chapter 116. This opinion is shared by the Office of the  
9 Ombudsman as well as NRED Arbitrator Leonard Gang. *See* Exhibit "49"; *see also* Exhibit "47".

10 21. In 2009 a dispute arose between Elizabeth Essington and the ARC regarding the construction  
11 within the Ruby Lake Estates subdivision of a large building used to house machinery and other equipment.  
12 Mrs. Essington wrote a letter to the Board dated October 26, 2009. *See* Exhibit "37", RLE 106. The ARC and  
13 the Board took the position that such a structure was permitted. *See* Exhibit "38", RLE 107-108. The Essingtons  
14 disputed this position and thereafter began their campaign to have the RLEHOA declared invalid.

15 22. Artemis ceased paying its community association assessments, all of which had been approved  
16 by Mr. Essington as a Board member. Invoices generated in the ordinary course of business for the Association  
17 were sent to Plaintiff in care of the Essingtons. *See* Exhibit "43", RLE 132-133; 0092-0093; 00103-00117.  
18 Eventually, the Association was forced to hire a collection agency to try and collect Artemis' delinquent  
19 assessments. *Id.*, at RLE 132-133. It is the sending of these invoices and notice to Plaintiff of the Association's  
20 intent to record a Notice of Delinquent Assessment Lien, a lien created as a matter of law pursuant to NRS  
21 116.3116, that constitute the sole and only factual basis for Plaintiff's claim that the Association acted with  
22 oppression, malice and fraud. That these are the only facts supporting Plaintiff's claim for fraud was confirmed  
23 in the deposition testimony of Elizabeth Essington. *See* Exhibit "8", at 23:12-13; 24:14-23; 34:17-19.

### 24 III. 25 LEGAL ARGUMENTS AND AUTHORITIES

#### 26 A. Summary Judgment Standard

27 Nevada law requires that two elements be satisfied to obtain a motion for summary judgment: (1) there  
28 must be no genuine issue as to any material fact; and (2) the moving party must be entitled to a judgment as a

1 matter of law. *See* NRCP 56(c); *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026, 1028 (2005). The  
2 purpose of summary judgment is to avoid the necessity and expense of trial when such would serve no real  
3 purpose because there is no real dispute over the facts. *Flowers v. Carville*, 292 F. Supp. 2d 1225 (D. Nev.  
4 2003). Said differently, the purpose of summary judgment is to dispose of factually unsupported claims in a case.  
5 *Flint v. Dennison*, 488 F.3d 816, 825-26 (9<sup>th</sup> Cir. 2007). No better statement can be made regarding the reasons  
6 why summary judgment in favor of the Association should be entered as to all of Plaintiff's claims. An  
7 examination of the facts supported by the admissible evidence, can lead the Court to only one conclusion; there  
8 is no genuine issue of material fact regarding the Association's qualification as a common-interest community  
9 governed by the provisions of NRS Chapter 116.

10 While courts do construe facts in the light most favorable to the party opposing summary judgment, the  
11 nonmoving party also has the burden of setting forth facts demonstrating the existence of a genuine issue for  
12 trial. *See Torrealba v. Kesmetis*, 124 Nev.Adv.Op. 10, 178 P.3d 716, 720 (2008). Moreover, as in this case,  
13 where the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment  
14 may support a motion for summary judgment by either submitting evidence that negates an essential element  
15 of the plaintiff's claim or by pointing out that there is an absence of evidence to support the plaintiff's case. *Id.*  
16 To successfully defend against a motion for summary judgment, the plaintiff must transcend the pleadings and  
17 by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact for  
18 trial. *Id.*

19 Following their dispute with the ARC and Board over the building the Essingtons did not like, Plaintiff  
20 apparently had an epiphany, suddenly claiming, after taking a contrary position for over fourteen years, that the  
21 Association was "invalid", had no authority to levy assessments, and was not subject to the provisions of NRS  
22 Chapter 116. This position flies directly in the face of the uncontroverted evidence, evidence that was created  
23 in large part by Mr. Essington's own hand. Plaintiff's claims are not only contrary to the law, they lack  
24 complete credibility.

25 **B. Analysis of Claims for Declaratory Relief.**

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

27 In *Kress v. Corey*, 65 Nev.1, 26, 189 P2d 352, 364 (1948), the Nevada Supreme Court set forth certain  
28 requirements to obtain declaratory relief: (1) there must be a justiciable controversy; (2) the controversy must

1 be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest  
2 in the controversy; and (4) the issue involved in the controversy must be ripe for judicial determination.

3 The evidence cannot be denied or ignored. Plaintiff has failed to state a *prima facie* cause of action for  
4 declaratory relief against the Association. There is no justiciable controversy between the parties. Plaintiff is  
5 bound by its own actions and admissions. Plaintiff has repeatedly not only acknowledged the existence and  
6 powers of the Association, it insisted that it be formed. *See* Exhibit "4", Wines Affidavit; *see also* Exhibit "11",  
7 RLE 021A-021D; Exhibit "16", RLE 143. Mr. and Mrs. Essingtons' personal attorney was provided copies of  
8 both the Articles of Incorporation prior to their filing, as well as the Bylaws prior to their finalization. *See*  
9 Exhibit "21", RLE 142, RLE 145; *see also* Exhibit "4", Wines Affidavit; Exhibit "5" at RLE 120; Exhibit "22",  
10 5:25; 6:8-11; 8:10-14; 9:9-13; 11:8-12. Until the ARC did something Mrs. Essington did not like, Plaintiff  
11 regularly paid the assessments levied by the Association. Plaintiff even indicated in a 2006 survey that it wanted  
12 and expected the Association to maintain the roads and was willing to pay assessments to have that  
13 accomplished. This was agreed to by "Artemis Exploration-Mel/Beth Essington" immediately following a  
14 provision in the survey which acknowledged the CC&Rs did not expressly provide for the payment of dues.  
15 There is absolutely no credible basis for the Plaintiff to challenge this evidence and now claim there is a  
16 justiciable controversy between the parties. Just because the sole director and officer of Plaintiff changes her  
17 mind, or has an epiphany of sorts, does not give Plaintiff a cause of action.

18 Plaintiff's claim regarding the alleged invalidity of the Association and the existence of a justiciable  
19 controversy is also directly contrary to the many and varied actions taken by Mr. Essington while representing  
20 himself to be an owner of Lot G-6, or an owner's representative, by approving Association budgets, assessments,  
21 and other actions of the Association, including the conveyance of common area real property to the Association  
22 by the developer in 2007, in addition to this actions as a Board member for over 4 years. This position is also  
23 directly contrary to numerous pieces of correspondence Mr. Essington authored and sent to Board members and  
24 members of the Association regarding the Association's need and capacity to enforce the CC&Rs, maintain the  
25 roadways and other common areas of the Association, and the advantages and requirements of NRS Chapter 116.  
26 There is no legal or factual basis for the denial of Mr. Essington's authority. The evidence is all to the contrary,  
27 including Mrs. Essingtons' deposition testimony discussed below.

28 There can be no other conclusion; this action is specious and without merit. There is no legal or

1 equitable basis for Plaintiff's claims for declaratory relief and declaration that the Association is "invalid" and  
2 not subject to the requirements of NRS Chapter 116.

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

4       Again, there can be no dispute; Plaintiff clearly knew that Articles of Incorporation had been filed in  
5 early 2006. Mrs. Essington's attorney, James Copenhaver, was provided copies. Plaintiff or Mr. and Mrs.  
6 Essington paid all assessments commencing August of 2006, and otherwise recognized the applicability of NRS  
7 Chapter 116 as governing the affairs of the Association. Plaintiff had no dispute with the Association until 2009  
8 when a building Mrs. Essington did not like was approved by the ARC. Even after the filing of the Intervention  
9 Affidavit, Mr. Essington continued to serve on the Board of Directors. He did not resign until January 6, 2011.  
10 See Exhibit "45", RLE 134; *see also* Exhibit "2", RLE 118, 131.

11       Plaintiff has no basis to deny either its own actions or the actions of its agent Mel Essington, actions that  
12 have been taken over at least the past seven years that directly contradict the position it now asserts regarding  
13 the invalidity of the Association. The evidence is conclusive; Plaintiff's sole officer and director had full  
14 knowledge of Mr. Essington's actions. Mr. and Mrs. Essington have been married for over 35 years and reside  
15 in the same house. Plaintiff produced e-mail correspondence from "beth essington" signed by Mel. See Exhibit  
16 "31", RLE 076A. Plaintiff produced Newsletters from Ruby Lake Estates citing Mr. Essington's position on the  
17 Board of Directors. Plaintiff produced copies of various Association Registration Forms filed by the Association  
18 with the NRED Office of the Ombudsman. See Exhibit "51", 00131-00155.

19       Plaintiff produced minutes of meetings at which Mr. Essington was present and signed in on the  
20 member's roster as the owner of Lot G-6. According to the Affidavit provided by Robert Wines, Mrs. Essington  
21 was present at some of the board and member meetings. Plaintiff has repeatedly refused to produce any of its  
22 corporate records, thereby raising the fundamental question as to the actual legitimacy and substance of Plaintiff.

23       Mr. Essington wanted other owners to think he was a landowner. See Exhibit "22" at 27:10-15. He knew  
24 this statement to be false. *Id* at 28:1-6. As he admitted, his actions were specifically designed to mislead the  
25 members of the Association. The members clearly relied on these misrepresentations in electing him to the  
26 Board of Directors on two occasions.

27       There can be doubt that Elizabeth Essington was aware of the representations and actions of Mr.  
28 Essington and made no attempt to disavow or curtail his actions, as either a putative owner of Lot G-6 or a

1 representative of Artemis. Her deposition testimony makes this clear:

2 Question by Ms. Kern: Did you ever tell him that he did not have authority to represent Artemis  
3 Exploration at any association meeting?

4 Answer by Ms. Essington: No.

5 See Exhibit "8", at 69:19-25; 78:11-14. With respect to Mr. Essington's authority to act on behalf of Artemis,  
6 Mrs. Essington had no problem with Mr. Essington representing Artemis:

7 Question by Ms. Kern: So your concern for Artemis Exploration wasn't whether or not  
8 he had the authority to represent the corporation. It was simply  
9 to what entity he was purporting to have authority?

10 Answer: Correct. The architectural review committee is- it's in the  
11 CC&Rs.

12 The Plaintiff clearly knew the Association had been formed in 2006. After all, Artemis threatened to  
13 file Articles if others did not. It clearly recognized the Association as a legal entity subject to the requirements  
14 of NRS Chapter 116. Apparently, Plaintiff did not have its epiphany until sometime in late 2009, more than  
15 three years after the Association had been formed. As evidenced by the correspondence of other members of  
16 the Association, this action is obviously a personal vendetta of the Essingtons because a building was allowed  
17 to be constructed in the community which they do not like. See Exhibit "46", letters from homeowners Clark  
18 and Heckman produced by Plaintiff as 00094-00095. Not only is there no justiciable controversy, the claims  
19 of Plaintiff are no longer ripe for determination. See *Colby v. Colby*, 78 Nev. 150, 156, 369 P.2d 1019, 1022  
(1962). Plaintiff has failed to state any claim for declaratory relief and summary judgment should be entered  
20 in favor of the Association.

21 **3. Plaintiff Cannot Seek Monetary Damages Through a Declaratory Relief Claim.**

22 Artemis attempts to seek monetary damages through a declaratory judgment action. This is not  
23 allowed by law. The Nevada Supreme Court has clearly held that attempts to obtain damages are not  
24 appropriate for declaratory relief actions. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 424, 345 P.2d 221  
25 (1959). In *Aronoff*, the Nevada Supreme Court stated "...a declaratory judgment in essence does not carry  
26 with it the element of coercion as to either party. Rather, it determines their legal rights without undertaking  
27 to compel either party to pay money or to take some other action to satisfy such rights as are determined to  
28 exist by the declaratory judgment." *Aronoff*, 75 Nev. at 432, 345 P.2d at 225. Therefore, even if the  
previously cited points and authorities were not a bar to Artemis' claims, there is no basis for an award of

1 general damages in connection with what is essentially an action for declaratory relief.

2 **B. Analysis of Claims for Fraud.**

3 The elements of intentional or negligent misrepresentation in the State of Nevada are: (1) that a  
4 defendant made a false representation; (2) that the defendant knew or believed that his or her representation was  
5 false, or that the defendant had an insufficient basis and information for making the representation; (3) that the  
6 defendant intended to induce Claimant to act or refrain from acting upon a misrepresentation; (4) that the  
7 Claimant justifiably relied upon the defendant's representative; and (5) that the Claimant sustained damages as  
8 a result. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1982).

9 Plaintiff has failed to satisfy three (3) of these essential elements: (1) the Association made no false  
10 representations because it is a validly existing homeowners association and all actions it took to levy and collect  
11 assessments are authorized by statute; (2) the Association never believed its statements to be false and all of the  
12 evidence is to the contrary; and (3) Plaintiff has sustained no damages.

13 ***1. The Association Made No False Representations.***

14 Plaintiff alleges that the Association "represented and continues to represent to Plaintiff that it organized  
15 and controls a homeowner's association with authority to compel Plaintiff to pay homeowners fees under threat  
16 of liens, collections and legal prosecution." See Complaint, pg. 5. Plaintiff further alleges that the Association  
17 knew these statements to be false,

18 "because it knew or should have known that the Declaration, Restrictions and Covenants of  
19 Ruby Lakes Estates did not authorize the Ruby Lakes Estates Homeowner's Association to  
20 compel the payment of dues or assessments, and the Ruby Lakes Estates subdivision is not  
authorized by law to compel the payment of dues and assessments."

21 The facts alleged by Plaintiff which underlie its claims of fraud, misrepresentation, monetary damages  
22 and punitive damages, are nothing more than the actions taken by the Association in levying and attempting to  
23 collect its assessments as mandated by Chapter 116. The power of the Association to levy and collect  
24 assessments is but one of many powers granted by statutory authority to a common-interest community  
25 association. See NRS 116.3102. Plaintiff has failed to satisfy the primary element of a claim for fraud; the  
26 statements made by the Association must be false. Here they clearly was not.

27 That these actions alleged by Plaintiff are the only actions upon which Plaintiff bases its claim for relief  
28 for fraud, was confirmed by Elizabeth Essington during her deposition. See Exhibit "8" at 32:13-25; 33:1-25;

1 34:5-9. No other supposed oppressive, malicious, or fraudulent acts are alleged by Plaintiff in either its  
2 Complaint or MSJ other than the mere mention of the Ombudsman's opinion in the December 2010 Newsletter  
3 (Exhibit "M" to MSJ). *See* MSJ, at 19:12-28; 20:1-17. The brief mention of the Ombudsman's opinion in the  
4 2010 Newsletter was to provide information to the Association's members, information that the members were  
5 entitled to receive. Neither Artemis nor the Essingtons' names were even mentioned. Without doubt, these  
6 statements do not rise to the level of "oppressive, malicious and fraudulent conduct designed to discredit  
7 Artemis" and were not "an attempt to chill opposition to the invalid and oppressive covenants that the  
8 Association was seeking to impose on lot owners." *See* Plaintiff's MSJ, 19:21-28. "The words 'malice' and  
9 'malicious' mean a wish to vex, annoy, or injure another person. Malice means that attitude or state of mind  
10 which actuates the doing of an act for some improper or wrongful motive or purpose." *See California Jury*  
11 *Instructions*, Civil 8<sup>th</sup> Edition, pg. 341, BAJI 7.34. Plaintiff did nothing more than what it was obligated to do  
12 under the law and therefore, there was no improper motive or purpose. The Association clearly did not make  
13 a false representation.

14 The invoices for assessments and correspondence sent to Plaintiff regarding the delinquent invoices were  
15 generated in the ordinary course of business of the Association. *See* Exhibit "44", 000103-00113. There is  
16 nothing "malicious" or "oppressive" about them. The Association's assessment lien on a lot is created by  
17 operation of law. *See* NRS 116.3116. The Association has the right to foreclose that lien, as a matter of law. *See*  
18 NRS 116.31162. The letters sent to Plaintiff, (*see* Exhibit "44" at 00113 and 00144) were in compliance with  
19 the notice *requirements* of NRS 116.31162. The Association did only that which it is required to do by statute.  
20 As a matter of law, there was no misrepresentation nor were the actions of the Association fraudulent, oppressive  
21 or malicious.

## 22 2. *Plaintiff Sustained No Damages.*

23 An essential element for intentional or negligent misrepresentation are damages. *Blanchard v.*  
24 *Blanchard*, 108 Nev. 908, 839 P.2d 1320 (1992). Damages for fraudulent misrepresentation can be awarded  
25 under two theories. The first is the benefit of the bargain measure, which allows a defrauded party to recover  
26 the value of what he would have if representations were true, less what he received. The second measure is to  
27 allow the defrauded party to recover the difference between what he gave and what he actually received. *Collins*  
28 *v. Burns*, 103 Nev. 394, 741 P.2d 819 (1987). Plaintiff alleges that it has suffered damages in the form of the



1 approximately \$200 in yearly assessments it paid for 2006 -2009.

2 First, the evidence establishes that Plaintiff approved the amount of the assessments it paid and willingly  
3 paid those assessments. Second, the evidence establishes that Plaintiff knew that unless the Association paid  
4 for the maintenance of the roadways and the other common elements through the levying of assessments, the  
5 individual homeowners were obligated to do so in the form of a road improvement agreement with the County  
6 of Elko. In the June 2006 survey, Plaintiff specifically said it did not want the County to maintain the roads.  
7 The costs of road maintenance were discussed at many member meetings. Plaintiff knew that it would cost it  
8 much more to form a general improvement district and have the County maintain the roads than to have the  
9 Association do the work. Plaintiff expressly stated it did not want to do this.

10 Plaintiff has come forward with no evidence to establish that the assessments levied by RLEHOA were  
11 any greater than what Plaintiff would have paid to have the roads maintained by Elko County, assuming they  
12 would have even accepted these roadways for maintenance. The evidence is to the contrary. Mr. Wines states  
13 that Elko County does not accept roads for maintenance purposes, even today. Without doubt, the assessments  
14 levied were much less than what the homeowners would have paid in the form of increased real property taxes  
15 or bonds assessments for a general improvement district. The Association estimated these costs to be more than  
16 \$1,000 per year. See Exhibit "19" RLE 022.

17 Since Plaintiff cannot establish that the assessments it paid were any less than what it would have paid  
18 had there not been a homeowners' association, it cannot establish damages, and thus cannot prevail on any  
19 theory of liability based upon fraud or negligent or intentional misrepresentation. Since all of its claims are  
20 based upon these theories, judgment in favor of the Association should be summarily entered.

21 **3. NRS 116.4117 Prohibits An Award of Punitive Damages Against the Association.**

22 NRS 116.4117(5) prohibits the award of punitive damages against:

23 (a) The association;

24 (b) The members of the executive board for acts or omissions that occur in their official  
25 capacity as members of the executive board; or

26 (c) The officers of the association for acts or omissions that occur in their capacity as  
27 officers of the association.

28 In levying assessments and attempting to collect delinquent assessments from Plaintiff through letters  
sent via US Mail, as well as informing Plaintiff that if it did not pay its assessments, the Association had a

1 statutory lien pursuant to NRS 116.3116 which could be foreclosed upon pursuant to NRS 116.3116, *et seq.*,  
2 the members of the Board did nothing more than what they were statutorily obligated to do. Not only has  
3 Plaintiff failed to establish the elements of a claim for fraud, an award of punitive damages against the  
4 Association or its Board members is statutorily prohibited.

5 **C. All of Plaintiff's Claims Are Barred by the Statute of Limitations.**

6 **1. *Plaintiff's Claims for Declaratory Relief are Barred.***

7 Putting aside for the moment that Plaintiff has failed to satisfy the elements of a claim for declaratory  
8 relief because its claims present no justiciable controversy and are no longer ripe for determination, the statute  
9 of limitations for *all* of Plaintiff's claims herein, including declaratory relief, expired well before Plaintiff filed  
10 its Alternative Dispute Resolution (ADR) Claim Form on May 6, 2011. *See* NRS 38.350. Giving Plaintiff every  
11 benefit, the statute had still expired when Plaintiff filed its Intervention Affidavit with the Ombudsman's Office  
12 on December 18, 2009. The Association is entitled to summary judgment, as to all of Plaintiff's claims, as a  
13 matter of law.

14 In Nevada, as in most jurisdictions, a cause of action accrues (and the statute of limitations begins to run)  
15 when the aggrieved party either knows, or reasonably should know, of the facts giving rise to the harm, damage  
16 or injury. *G and H Associates v. Ernest W. Hahn, Inc.*, 113 Nev. 265, 934 P.2d 229 (1997)(citations omitted).  
17 In the present case, the Articles of Incorporation were filed on January 16, 2006. Mrs. Essington's personal  
18 attorney had knowledge of this and had demanded it be done. *See* Exhibit "4", Wines Affidavit. In June of  
19 2006, the President of the Association sent a letter to all homeowners, informing them of the formation of the  
20 Association. *See* Exhibit "19", RLE 022. The letter also covered a survey / questionnaire which was returned  
21 for Lot G-6 indicating the owners of Lot G-6 as "Artemis, Exploration-Mel/Beth Essington." The Survey  
22 appears to be written in Mel Essington's hand-writing. The Survey was received by the Association on July 5,  
23 2006. *See* Exhibit "48", RLE 021F-021H.

24 Not only are the statements and answers provided in the Survey directly contradictory to the position now  
25 asserted by Plaintiff, *at the very latest*, all of the facts underlying Plaintiffs' claims were clearly known by  
26 Plaintiff on or before June 29, 2006 when Plaintiff dated and returned the Survey to the Association. *Id.* Further,  
27 on August 16, 2006, Mel Essington sent a letter to Lee Perks, President of the Association, "enclosing a check  
28 for \$150 to cover the 2006 dues for the Ruby Lakes Estates Homeowners Association." *See* Exhibit "26", RLE

027A; *see also* Exhibit "9" at RLE 027.

More than five (5) years had passed from the time Plaintiff knew, or should have known, that a common-interest community association had been formed and registered with the Nevada Secretary of State, and May 6, 2011, when Plaintiff filed its ADR Complaint form. More than three (3) years had passed from the time Plaintiff knew, or should have known, that a common-interest community association had been formed and registered with the Nevada Secretary of State, and December 18, 2009, when Plaintiff filed its Intervention Affidavit.

Nevada law does not allow a party to sleep on a right to relief granted by law. *See e.g.* NRS 11.190 *et seq.* For example, NRS 11.190 provides for specific time frames when various causes of action must be commenced. In this case, that time frame is three (3) years for claims based upon fraud or mistake, as well as three (3) years for any claim arising from a statutory liability. The power of the Association to levy and collect assessments arises not from the CC&Rs, but by virtue of the powers granted a common-interest community association pursuant to the statutory provisions of NRS Chapter 116, and specifically, NRS 116.3115 and NRS 116.3116. The principles underlying such limitations on civil actions include the prevention of unfair surprise and the presentation of stale claims. *Kielbasa v. B&H Rentals, LLC*, (2003 Tenn. App., LEXIS 389), citing 62 Harv.L.Rev.787 (1949), *Developments in the Law: Declaratory Judgments*:

("[T]he right to declaratory relief continues until the right to coercive relief, as between the parties has itself been extinguished. . . . Regardless of the time when a right to declaratory relief accrues, the statute should begin to run when a coercive cause of action arises, and the statutory period should expire on the coercive and the declaratory causes of action simultaneously. This result would not contravene the statute's policy of preventing unfair surprise and presentation of stale claims. The possibility of declaratory relief cannot be said to subject the party to undue uncertainty so long as coercive relief is or will be available; the evidence of a right cannot be deemed stale so long as that right may yet be transgressed in such a way as to entitle either party to coercive relief. And indeed if the uncertainty is burdensome, the aggrieved party may himself seek a declaration and eliminate his doubt.")

The very same considerations, prevention of stale claims and unfair surprise, that have generated specific time limits on other substantive legal (coercive) claims, apply equally to requests for declaratory relief. As one court noted:

The leading case involving the statute of limitations for declaratory relief actions is *Maquire v. Hibernia S&L Soc.*, (1944) 23 Cal.2D 719, 146 P.2d 672 2 '[t]he period of limitations applicable to ordinary actions at law and suits in equity should be applied in like manner to actions for declaratory relief. Thus, *if declaratory relief is sought with reference to an obligation which has been breached and the right to commence an action for 'coercive' relief upon the action arising therefrom is barred by statute, the right to declaratory relief is likewise barred.*

1 *United Pacific-Reliance Ins. Co. v. DiDomenico*, 219 Cal. Rptr. 119, 120 (Cal App. 1 Dist. 1985)  
2 (emphasis added).

3 The Third Circuit stated the rule thus:

4 Because actions for declaratory relief do not have their own statute of limitations, the district  
5 court concluded that the plaintiffs' causes of action are governed by the period of limitations  
6 applicable to the substantive claims underlying the action, citing *Cope v. Anderson*, 331 U.S.  
461, 463-64, 67 S.Ct. 1340, 1341-42, 91 L.Ed. 1062 (1947).

7 *Algrant v. Evergreen Valley Nurseries Ltd. Partnership*, 126 F.3d 178, 181 (3<sup>rd</sup> Cir. 1997). The *Algrant* court  
8 also pointed out that the:

9 . . . First, Sixth, Ninth, and Tenth Circuit Courts of Appeals have all held that *an action for*  
10 *declaratory relief will be barred to the same extent the applicable statute of limitations bars*  
11 *the concurrent legal remedy. International Ass'n of Machinists & Aerospace Workers v.*  
12 *Tennessee Valley Auth.*, 108 F.3d 658, 668 (6<sup>th</sup> Cir. 1997); *Levald, Inc. v. City of Palm Desert*,  
13 998 F.2d 680, 688-89 (9<sup>th</sup> Cir. 1993); *Gilbert v. City of Cambridge*, 932 F.2d 51, 57-58 (1<sup>st</sup> Cir.  
14 1991); *Clulow v. Oklahoma*, 700 F.2d 1291, 1302 (10<sup>th</sup> Cir. 1983). '*It is settled, therefore that*  
15 *where legal and equitable claims coexist, equitable remedies will be withheld if an applicable*  
16 *statute of limitations bars the concurrent legal remedy.*' *Gilbert*, 932 F.2d at 57. The Court of  
17 Appeals for the Second Circuit, applying state law, has also held that when '*a claim for*  
18 *declaratory relief could have been resolved through another form of action which has a*  
19 *specific limitations period, the specific period of time will apply*'(citation omitted).

20 *Id.* (Emphasis added).

21 The Sixth Circuit Court of Appeals has observed:

22 Because a declaratory judgment action is a procedural device used to vindicate substantive  
23 rights, it is time barred only if relief on the direct claim would also be barred. A contrary rule  
24 would allow the plaintiff to make a mockery of the statute of limitations by the simple  
25 expediency of creative labeling.

26 *Kielbasa, supra*, citing *International Association of Machinists and Aerospace Workers v. Tennessee Valley*  
27 *Authority*, 108 F.3d 658, 668(6<sup>th</sup> Cir. 1997).

28 The "coercive relief" upon which Plaintiff's claim for declaratory relief is based is apparently the alleged  
misrepresentations of the Association in representing its organization and levying and collecting assessments.  
As set forth below, Plaintiff's claims for misrepresentation and fraud, even if they were true, are time barred,  
thereby precluding recovery by Plaintiff on *any* claim, including declaratory relief, as a matter of law.

2. ***Plaintiff's Claims Based Upon an Alleged Amendment of the Declaration are Also Time Barred.***

In Plaintiff's MSJ, Plaintiff argued that the levying of assessments by the Association constituted an  
amendment to the CC&Rs in contravention of the holding in *Caughlin Ranch Homeowners Ass'n v. Caughlin*

1 *Club*, 109 Nev. 264 (1993). As set forth in the Association's Opposition to Plaintiff's MSJ, Plaintiff completely  
2 misapprehends the holding of the *Caughlin* decision in attempting to apply it to the facts of this case. Plaintiff's  
3 arguments ignore the clear provisions of NRS Chapter 116 which demonstrate, as a matter of law, RLEHOA  
4 is a common-interest community subject to the provisions of NRS Chapter 116. As such, the powers of the  
5 Association to levy assessments and collect the same arise from the provisions of Chapter 116, not from the  
6 CC&Rs. The *Caughlin* case and its progeny are irrelevant to the issues in this case. This is not a case involving  
7 amendment of the declaration or governing documents. It is a case involving the application of the provisions  
8 of NRS Chapter 116 to a community which is clearly a common-interest community.

9 Even if the *Caughlin* decision were applicable, which it clearly is not, Plaintiff consented to the  
10 perceived amendment of the CC&Rs when Artemis Exploration- Mel/Beth Essington completed and returned  
11 the 2006 Survey. That consent is evidenced by the following statement which appears at the top of page 2 of the  
12 Survey, and the question posed by the Association and answered by "Artemis - Mel/Beth Essington" thereafter:

13 Statement: "While the declaration of Reservation, Conditions and Restrictions does not  
14 specifically provide that property owners will be required to pay annual dues, it  
15 is implicit in the requirement that such dues may be assessed. If the review  
16 committee is to exercise any authority or powers granted to it by the restrictions,  
17 it must be able to engage in legal accounting, maintenance and other  
18 professional services."

19 Question: "Would \$150.00 to \$200.00 per year be reasonable for road maintenance and  
20 other services? "

21 Answer: "Yes".

22 "Artemis - Mel/Beth Essington" also agreed that to change or raise fees would take only the approval of a simple  
23 majority of land owners. See Exhibit "48" at RLE 021G. See also, Exhibit "10", Perks Affidavit. From 2006  
24 through 2009, Plaintiff acted in accordance with this provision by paying the assessments levied and approved  
25 by the Board of Directors, including Mel Essington.

26 Based upon the statements of the Plaintiff, Plaintiff not only wanted the Association to maintain the  
27 roads, it consented to a putative amendment to the CC&Rs to allow this to happen. NRS 116.2117(2) provides  
28 than an action to challenge the validity of an amendment of the declaration must be brought within one (1) year  
after the amendment is recorded. There was never a recording of any amendment to the CC&Rs because there  
never any amendment. However, the foregoing illustrates the circularity and absurdity of Plaintiff's arguments,  
and that even if Plaintiff's arguments had any basis in either law or fact, they would be time barred.

1           3.     *Plaintiff's Claims Based Upon Misrepresentation Are Also Time Barred.*

2           Again, NRS 11.190 provides a three (3) year statute of limitations for claims based upon fraud or  
3 mistake. Even assuming that Plaintiff's allegations about the falsity of the Association's representations  
4 regarding its organization and capacity were true, which they clearly are not, Plaintiff knew of the formation of  
5 the Association in January of 2006 when the Articles were formed. The Association levied its first assessment  
6 in 2006. Mrs. Essington's attorney was provided with a copy of the Articles by Mr. Wines. Even if Mrs.  
7 Essington's attorney never received the Articles, there is no reason to believe that Plaintiff did not receive a copy  
8 of Mr. Perks' letter sent in June 2006 along with the survey. In fact, the evidence is to the contrary as Plaintiff  
9 dated and returned the survey on or about June 28<sup>th</sup>, 2006. Mr. Essington thereafter sent "our personal check  
10 in the amount of \$150" to cover the "Ruby Lakes Estates Homeowners Association dues for 2006."

11           All claims for fraud or misrepresentation against the Association commenced in January 2006 when the  
12 Articles of Incorporation were filed. This had to be the first alleged misrepresentation.

13                     In determining whether a statute of limitations has run against an action, the  
14 time must be computed from the day the cause of action accrued. A cause of  
15 action "accrues" when a suit may be maintained thereon. *Clark v. Robison*, 113  
16 Nev. 949, 951, 944 P.2d 788 (1998). The general rule concerning statutes of  
17 limitation is that a cause of action accrues when the wrong occurs and a party  
18 sustains injuries for which relief could be sought. An exception to the general  
19 rule has been recognized by this court and many others in the form of the so-  
20 called "discovery rule." Under the discovery rule, the statutory period of  
21 limitations is tolled until the injured party discovers or reasonably should have  
22 discovered facts supporting a cause of action.

23           *Siragusa v. Brown* 114 Nev. 1384, 1392, 971 P.2d 801 (1998).

24           The importance of the statute of limitations as a public policy in the State of Nevada has been  
25 emphasized by the State of Nevada.

26                     Viewed broadly....statutes of limitation embody important public policy  
27 considerations in that they stimulate activity, punish negligence, and promote  
28 repose by giving security and stability to human affairs. Thus, statute of  
limitations rest upon reasons of welfare of society, safeguard against fraud and  
oppression, and compel the settlement of claims within a reasonable period after  
their origin and while the evidence remains fresh in the memory of the  
witnesses.

*Petersen v. Bruen*, 106 Nev. 271, 273, 792 P.2d 18 (1990). (Quoting *Kyle v. Green Acres at Verona, Inc.*, 44  
N.J. 100, 207 A.2d 513, 519 (1965)). These authorities are controlling. All of Artemis' claims are time barred  
and summary adjudication should be entered in favor of Respondents.

1 Plaintiff did not file the Intervention Affidavit with the Office of the Ombudsman until December 18,  
2 2009, more than three (3) years after any of the foregoing events took place. Plaintiff did not file the ADR  
3 Complaint until more than five (5) years after any of the foregoing events took place. Although Plaintiff filed  
4 an action in District Court on February 15, 2011, (Case No. CV-C-11-147) before filing of the ADR Complaint,  
5 even that took place long after the three (3) year period had elapsed. Accordingly, Plaintiff's claims for relief  
6 based upon any theory of fraud or misrepresentation are time barred, and fail as a matter of law.

7 **D. The Association Is a Common-interest Community Subject to the Provisions of NRS Chapter 116,**  
8 **As A Matter of Law.**

9 There can be no dispute as to RLEHOA's qualification as a common-interest community. The Ruby  
10 Lake Estates subdivision was formed in 1989 through the filing and recording of the Plat Map and the CC&Rs.  
11 Two years later, in 1991, the Nevada Legislature adopted the Uniform Common-interest Ownership Act  
12 ("UCIOA") in the form of Chapter 116 of the Nevada Revised Statutes. In 1999, the Nevada legislature made  
13 common-interest communities created by plat and declaration prior to 1992, subject to NRS Chapter 116.

14 **1. *Ruby Lake Estates Meets the Historical Definition of a Common Interest Community.***

15 The Nevada legislature has declared a common-interest community is created through the recording of  
16 covenants, conditions and restrictions in the county in which any portion of the common-interest community  
17 is located. NRS 116.2101. The Plat Map is deemed part of the Declaration. NRS 116.2109. Thus, Ruby Lake  
18 Estates meets the foundational requirements for formation of a common-interest community.

19 Historically, a "common-interest community" was defined as "real estate with respect to which a person,  
20 by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit." See NRS 116.021  
21 (substituted in revision for NRS 116.110323) as enacted in 1991 pursuant to Assembly Bill 221. In 1999 when  
22 NRS Chapter 116 was made applicable to pre-1992 communities, "Real estate" was defined in NRS 116.110378  
23 as:

24 ". . . any leasehold or other estate or interest in, over, or under the land, including structures,  
25 fixtures and other improvements and interests that by custom, usage or law pass with a  
26 conveyance of land though not described in the contract of sale or instrument of conveyance. . .

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

28 "Interests that by custom, usage or law pass with the conveyance of land though not described in the  
contract of sale or instrument of conveyance" encompass CC&Rs which run with the land. Significantly, CC&Rs

1 have been found to be a separate property interest from the land with which they run. *See Thirteen South Ltd.*  
2 *v. Summit Village Inc.*, 109 Nev. 1218, 1221, 886 P.2d 257, 259 (1993). Therefore, CC&Rs have been found  
3 to be “real estate” within the context in which the term is used in NRS 116.021. This was confirmed by the  
4 Nevada Attorney General in her Opinion of August 11, 2008, directed to the Department of Business and  
5 Industry. *See* Exhibit “I” to Plaintiff’s MSJ.

6 Nevada Statute, NRS 116.1201, provides that with certain limited exceptions, “this chapter applies to  
7 all common-interest communities created within this state.” Those certain limited exceptions are set forth in  
8 NRS 116.1201(2)(a)-(e). None of those exceptions apply to the Ruby Lake Estates community. Specifically,  
9 although Ruby Lake Estates is a common-interest community which was created before January 1, 1992, Ruby  
10 Lake Estates does not have less than 50 percent of the units within the community put to residential use. NRS  
11 116.1201(2)(d). There are no other “opt-out” provisions found within NRS Chapter 116. Thus, because Ruby  
12 Lake Estates met the definition of a common-interest community in 1999 when NRS Chapter 116 was made  
13 applicable to pre-1992 communities, the provisions of NRS Chapter 116 apply.

14 **2. NRS 116.021, as amended in 2009, is Not Applicable to RLEHOA.**

15 Citing the 2009 amendments to NRS 116.021, Plaintiff asserts that RLEHOA does not meet the  
16 definition of a common-interest community for purposes of the application of NRS Chapter 116, because the  
17 real estate of the community must be “described in a declaration.” All of Plaintiff’s arguments and criticism of  
18 the 2008 Opinion of the Nevada Attorney General and discussion of the 2009 Legislative changes to NRS  
19 116.012 set forth in Plaintiff’s MSJ, are not only incorrect, but also unwarranted, and irrelevant. Plaintiff’s  
20 arguments fail, as a matter of law for two reasons. First, as discussed below, the Plat Map includes the roads  
21 and all real estate. Therefore, the CC&Rs do cover and encompass real estate. Second, the current requirements  
22 of what must be included in a declaration are not applicable to RLEHOA, as also discussed below. The 2009  
23 amendment to NRS 116.021 was intended to address communities that had no maintenance responsibilities for  
24 real estate. It certainly was not intended to create a situation where roads would be completely abandoned to  
25 no maintenance, creating dangerous conditions for the public and owners of property that depend on the roads.  
26 The Amendment is intended to address a community with nothing but CC&Rs. Plaintiff completely  
27 misconstrues the 2009 Legislative discussion which it attaches as Exhibit “V” to its MSJ. The 2009 amendment  
28 to NRS 116.021 was not intended to prevent a community like Ruby Lake Estates from maintaining its roads,



1 road signs, entrance signs, cattle guards, fencing and parcel of real property.

2 The Ruby Lake Estates subdivision clearly met the definition of a common-interest community set forth  
3 in NRS 116.021, in 1999 when Chapter 116 was made applicable to pre-1992 communities. NRS 116.021, as  
4 amended in 2009, and at all times since its adoption in 1991, was intended to apply only to common-interest  
5 communities formed *after* any amendment took effect. The requirement that the common areas be described  
6 in a declaration is not only inapplicable to Ruby Lake Estates, such requirement is inapplicable to *any*  
7 association formed prior to 2010 when the amended version of NRS 116.021 went into effect. The changes  
8 made to NRS 116.021 in the 2009 Legislative session could not feasibly have been made retroactive to  
9 associations formed before 2010.

10 This same premise was applied by the Legislature in 1999 when NRS Chapter 116 was made effective  
11 as to pre-1992 communities such as Ruby Lake Estates. The Legislature wanted *all* common-interest  
12 communities in Nevada to be subject to NRS Chapter 116, as Chapter 116 is clearly a consumer protection  
13 statute. However, recognizing that communities created prior to 1992, and their governing documents, could  
14 not feasibly be changed to meet *newly adopted* statutory requirements, the Legislature made certain exceptions  
15 for communities formed prior to 1992.

16 **3. The Declaration Does Include the Roads.**

17 The Plat Map clearly depicts the roads that Artemis is so adamant not be maintained. See Exhibit "50".  
18 The Plat Map is a part of the Declaration. See NRS 116.2109. Therefore, Artemis' contention that the  
19 Declaration does not include the real estate at issue is without merit. Because the Plat Map describes and  
20 includes the roads, the Declaration does include such property and the Plaintiff's arguments fail *as a matter of*  
21 *law*.

22 **4. For Pre 1992 Communities, the Common Elements of the Association Are Not Required to**  
23 **be Described in the CC&Rs.**

24 NRS 116.1201(3) specifically provides that the provisions of "this Chapter do not: . . . (b) Require a  
25 common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101  
26 to 116.2122, inclusive; . . ." NRS 116.2105 specifies the contents of the Declaration. However, as a pre-1992  
27 community, RLEHOA is not required to comply with these requirements. In essence, there is no requirement  
28 that the Declaration (CC&Rs) contain a description of the real estate included in the common-interest

1 community. *See* NRS 116.2105(1)(c). Furthermore, as to pre-1992 communities, there is no requirement that  
2 the Declaration contain a description of “any real estate that is or must become common elements.” NRS  
3 116.2105(1)(f). Plaintiff’s arguments that RLEHOA is not a common-interest community because the common  
4 elements are not described in the CC&Rs as allegedly required by NRS 116.2105(1)(c) fail, *as a matter of law*.

5 The provision of NRS 116.021 is not an affirmative obligation. Rather, the obligation is found in NRS  
6 116.2105(1)(c) and such requirement is not applicable to a pre-1992 Association. In fact, the definition is not  
7 applied to any Association formed before 2009. It can’t be. If Artemis was correct, you would have an ever-  
8 changing application of Chapter 116. In 2008 it applied and now it does not? Such a result would be absurd.

9 **5. Plaintiff’s Arguments Regarding NRS 116. 3101 Also Fail, As A Matter of Law.**

10 Citing NRS 116.3101, Plaintiff asserts that the Association could never be formed because it was  
11 required to be “organized no later than the date the first unit in the common-interest community is conveyed”.  
12 Once again this would mean that a pre-1992 Association could never be formed because a requirement that was  
13 not even in existence in 1992 was not met and would be a bar forever. Once the legislature decided that Chapter  
14 116 would apply to pre-1992 communities, the practical effect must be that the community take those steps to  
15 form an entity if one had not been formed before. Plaintiff’s arguments with respect to NRS 116.3101 also fail  
16 *as a matter of law*.

17 In a twist of irony, Plaintiff ignores the contradiction that on the one hand it asserts Chapter 116 is  
18 inapplicable to Ruby Lake Estates, but on the other hand, Chapter 116 required the formation of the entity in  
19 1989 - two years before Chapter 116 even existed. As with the contention the roads should not be maintained  
20 by the Ruby Lake Estates Homeowners Association, this argument is nonsensical.

21 Further, NRS 116.3101 provides that this is when the unit-owner’s association *should* be organized; it  
22 does not state that absent such timely formation the Association is forever lost. In this case, the provisions of  
23 NRS Chapter 116 were not even in effect as to Ruby Lake Estates until 1999. Further, under the Plaintiff’s  
24 analysis, a developer who failed to file the Articles of Incorporation could avoid the obligations of Chapter 116  
25 in perpetuity. Such a result would be nonsensical and clearly contrary to the legislative intent to make the  
26 protections and requirements of Chapter 116 applicable to members of all common-interest communities.

27 Importantly, NRS 116.3101 does not preclude the formation of the unit-owners association after  
28 conveyance of the first unit. It could not because Chapter 116 was retroactively made applicable to pre-1992

1 Associations in 1999 and there had often been no formal unit owners association formed in pre-1992  
2 associations. Even today, there are instances where a homeowner's association is not formed until well after  
3 the conveyance of the first lot by the developer. This does not preclude the formation of an association  
4 thereafter. Just as in this case, prior to the formation of an association, the developer pays for the common  
5 expenses and maintains the common elements for what is often a prolonged period of time while the lots are  
6 being marketed and sold. That is what happened here. Until all the lots were sold in 1997 and the developer  
7 appointed the members of the ARC and they began levying assessments to pay for the common elements of the  
8 community, the developer paid for the road maintenance.

9 The members of the ARC were advised and recognized they were required to comply with NRS Chapter  
10 116 in 1999. They did not actually file the Articles of Incorporation until 2006, after Mr. Essington insisted the  
11 Association be legally formed in accordance with NRS Chapter 116. *See* Exhibit "11", RLE 021A-021D; *see*  
12 *also* Exhibit "32" at RLE 078 . Mr. Essington explained this to the members in his August 2005 letter. *See*  
13 Exhibit "11" at RLE 021A ("Several years have passed now and due largely to a period of inactivity at the  
14 subdivision that organizational attempt has become dysfunctional.") Prior to the formation of the Association,  
15 the ARC collected assessments as early as 1997. *See* Exhibit "6" at RLE 019B. This was still two years before  
16 the Association was made subject to Chapter 116.

17 In sum, there is nothing in Nevada law which precludes the filing of articles of incorporation at any time,  
18 especially where there is the clear necessity of a community association for purposes of maintaining common  
19 roadways and other common elements, and especially when the members of an association have been conducting  
20 themselves as a members' association for purposes of levying assessments and maintaining the common areas.

21 **6. *There Are Common Elements Which the Association Is Required to Maintain.***

22 a. The Plat Map is part of the Declaration.

23 As noted above, the Plat Map for Ruby Lake Estates establishes fifty-one residential lots and one  
24 commercial lot, and the roadways, easements, and set back requirements, as well as the lot which was deeded  
25 to the Association as common-area in 2007. Contrary to the current assertion of Artemis, there was no secret  
26 about the roads. They are clearly identified on the Plat Map. These and other common elements of the  
27 community, which the Association is required to maintain, consisting of the roadways, entrance sign, culverts,  
28 perimeter fencing, cattle guards, and a small lot, are depicted on sheets 2 and 3 of the Plat Map attached as part

1 of Exhibit "50", RLE 014-016A. *See also*, Exhibit "O" to Plaintiff's MSJ, at RLE 015A and 016A.

2 With respect to the roadways, Sheet 1 of 3 of the Plat Map specifically states:

3 "At a regular meeting of the Board of Commissioners of Elko County, State of Nevada, held on  
4 the 5<sup>th</sup> day of July 1989, this Plat was approved as a Final Plat pursuant to N.R.S. 278.360. **The**  
5 **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." [Emphasis added.]

6 *See* Exhibit "50" at RLE 014.

7 Article I of the CC&Rs provides:

8 The real property affected hereby is subjected to the imposition of the covenants,  
9 conditions, restrictions and reservations specified herein to provide for the development *and*  
10 *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*. . . ." [Emphasis added.]

11 *See* Exhibit "B" to MSJ at 00006.

12 Although as a pre-1992 common-interest community, the CC&Rs are not required to describe either the  
13 real property which is subject to the CC&Rs or the common elements of the community, the real property which  
14 is subject to the CC&Rs is described on the Plat Map which is part of the Declaration; it is *all* of the real  
15 property described on the Plat Map and the improvements located thereon, including the roadways, drainage  
16 ditches, signs, perimeter fencing, culverts, and the lot conveyed to the Association in 2007. Plaintiff's Deeds  
17 attached as Exhibit "C" and "D" to Plaintiff's MSJ, clearly describe both Lot G-6 and Lot H-2 with reference  
18 to the recorded Plat Map. The fact that Plaintiff took title to the recorded CC&Rs is referenced not only in the  
19 Deeds but in the Policy of Title Insurance she produced for Lot G-6. *See* Exhibit "3" at 00027. For Mrs.  
20 Essington to claim she had no notice of the provisions of the CC&Rs requiring the maintenance of the roadways  
21 and other real property encompassed by the Plat Map, is unbelievable. Of course, Mr. Essington's  
22 communications completely undercut Mrs. Essington's current position. Mr. Essington noted all of this was in  
23 the sales literature when they purchased the property. *See* Exhibit "11". This is a critical admission that at the  
24 time of the purchase, the Plaintiff knew about the obligations to maintain the roads because the sales literature  
25 stated it. *Id.*

26 Plaintiff's arguments that neither the Association nor its individual members have an obligation to  
27 maintain these roadways because they are "public" is simply wrong. The evidence presented herein clearly  
28 establishes that although the public has access to these roadways, the roadways have never been accepted by

1 Elko County for maintenance. Furthermore, the evidence clearly establishes that Elko County requires these  
2 roads to be maintained for access and fire protection in order to protect the health and safety of the public and  
3 the members of the Association. This obligation can only be fulfilled by either the Association or through a  
4 publicly formed improvement district.

5 Not only must the surface of the roads and the drainage culverts be maintained, but the weeds must be  
6 abated along the sides of the roadways in the adjoining ditches and culverts. The evidence presented clearly  
7 shows that the members of the community intentionally wanted to avoid getting the County involved with the  
8 maintenance of these roads, ditches or culverts. As evidenced by the minutes of member meetings, the members  
9 and the Board recognized that the County could collect money through real property tax assessments. They also  
10 recognized that it would cost every member of the Ruby Lake Estates community more to have the County do  
11 the work, than if the Association performed the work. Members recognized that the roads would have to be  
12 brought up to County Code before the County would accept them for maintenance and that this would cost  
13 members of the Association hundreds of thousands, if not millions of dollars. *See* Exhibit "28 " at RLE 060.

14 As early as 2006, Plaintiff and Mel/Beth Essington recognized and wanted the Association to maintain  
15 the community roadways. They indicated they were willing to pay \$150-\$200 per year for this maintenance and  
16 for other expenses of the Association. *See* Exhibit "48" at RLE 021G.

17 For the members of the community, acting through the Association, to not maintain the roads,  
18 contravenes the spirit and intent of Article I of the CC&Rs. Simple logic compels one to recognize that a  
19 community cannot be of "high quality of use and appearance" if its streets are not being maintained.  
20 Furthermore, to not maintain the streets, culverts, cattle guards and fencing directly contradicts the purpose of  
21 the CC&Rs which mandates "maintenance" in order to assure the members of an aesthetically pleasing and  
22 harmonious community.

23 The recorded Plat Map, establishing and creating Ruby Lake Estates, includes the real property that must  
24 be maintained. Finally, to not maintain these areas, contravenes the stated purpose of the CC&Rs of  
25 "maintaining the value of each and every lot and parcel of said property." Now, directly contradicting a position  
26 it took in 2006, Plaintiff believes neither it, nor the Association, nor Elko County, is responsible for maintaining  
27 these roads. Such a position begs the question, who does Mrs. Essington think is responsible? Plaintiff objects  
28 to the Association performing these duties but presents no good alternatives. The President of Artemis clearly

1 says she is not going to maintain them. *See* Exhibit "8" at 18:15-18; 53:22-25; 56:20-25. Again, such statements  
2 directly contradict earlier requests of Plaintiff that the Association assume these responsibilities. *See* Exhibit  
3 "48" at RLE 021G.

4 b. The Association Holds Title to Real Property.

5 Plaintiff unequivocally states in paragraph 12 of its MSJ, that "there is no record of any common areas  
6 belonging to the Ruby Lake Estates subdivision at the time of its formation or anytime thereafter."<sup>1</sup> This  
7 statement is patently false and is contradicted by Plaintiff's own evidence in the form of Exhibit "Q" which  
8 Plaintiff attaches to its MSJ. As noted above, the statement is also contrary to the deposition testimony of  
9 Elizabeth Essington. Exhibit "Q" to Plaintiff's MSJ is a grant deed from Stephen and Mavis Wright as Grantors,  
10 to the Association as Grantee, for a parcel of real property described on the Plat Map. The conveyance of this  
11 parcel to the Association was discussed at the meeting of members held on August 11, 2007. *See* Exhibit "13"  
12 at 00045. The Deed was recorded August 31, 2007, days after the meeting. Mr. Essington voted to have the  
13 Association accept title to this parcel subject to payment of documentary transfer taxes and secured real property  
14 taxes for 2007-2008. Furthermore, he voted to have the Association procure liability insurance covering this  
15 parcel.

16 During her deposition, Mrs. Essington admitted the Association holds title to real property. The  
17 following exchange occurred between counsel for the Association and Elizabeth Essington:

18 Ms. Kern: You agree that you answered and admitted that the property is titled in  
19 the name of the Ruby Lakes Estates Homeowners Association?

20 Ms. Essington: Yes, it is.

21 *See* Exhibit "8" at 52:6-9.

22 There is nothing in the CC&Rs nor in NRS Chapter 116 that precludes the developer from conveying  
23 this property to the Association in order to provide services for the benefit of the Association. This is exactly  
24 what happened. Furthermore, a majority of owners (31 out of 51 owners, including Mr. Essington) were present  
25 at the meeting and unanimously agreed to accept the conveyance of this parcel in the name of the Association.  
26 Plaintiff knowingly falsely asserts that the Association does not hold title to any common elements of the

---

27 <sup>1</sup> It should be noted there is nothing in the historical definition of a common-interest community provided by NRS 116.110323  
28 (now NRS 116.021), nor in the historical definition of "real estate" provided by NRS 116.110378 (now NRS 116.081) that requires an  
Association to "own" real estate in order to be considered a common-interest community. Ruby Lake Estates meets the historical  
definition of a common-interest community under NRS 116.110323 which controls, not the 2009 Amendment to NRS 116.021.

1 community.

2 These common-elements of the Ruby Lake Estates community, consisting of the roadways, ditches and  
3 culverts, signs, perimeter fencing, gates, and a small parcel of property, are not only detailed in the Reserve  
4 Study which Mr. Essington approved and was instrumental in directing, the obligations of the Association to  
5 maintain these improvements clearly bring Ruby Lake Estates under the historical definition of a common-  
6 interest community provided by NRS 116.021. They are "real estate or improvements to real estate with respect  
7 to which a person, by virtue of his ownership of a unit, is obligated to pay for, other than that unit." By virtue  
8 of owning property in Ruby Lake Estates, the owners must "pay for a share of ... maintenance ...of other real  
9 estate described in that declaration." Here the roadways and improvements are clearly part of the property  
10 subject to the Plat Map which created the common-interest community, Ruby Lake Estates. Additionally, the  
11 evidence presented overwhelmingly demonstrates that the members of the community, including the Plaintiff and  
12 Mr. and Mrs. Essington, recognized that these and other common elements must be maintained by a properly  
13 formed community association.

14 The members of the ARC acted with all prudence and reasonableness in repeatedly relying upon the  
15 opinions of its counsel with respect to these matters. In each and every instance, counsel provided his opinion  
16 that the members of the community were responsible for the roadways, culverts, signs, fences, and gates  
17 constituted common-elements of the community for which the members. Furthermore, counsel correctly  
18 recognized that the Ruby Lake Estates subdivision was properly classified as a non-exempt common-interest  
19 community subject to the provisions of NRS Chapter 116. The Ombudsman was also of the same opinion as  
20 was Arbitrator Leonard Gang. Plaintiff's claims to the contrary lack merit.

21 **7. *The Association was Properly Formed and Is the Entity Charged with Maintaining***  
22 ***the Common Elements of the Ruby Lake Estates Community.***

23 The capacity of an individual, including one acting in a representative capacity, to sue or be sued, shall  
24 be determined by the laws of this State. See NRCP 17(b). There is no provision in Nevada law which  
25 recognizes a committee as an entity with legal capacity. The members of the Architectural Committee were  
26 properly advised by legal counsel to form a community association for purposes of maintaining the common  
27 elements of the community. Further, NRS 116.3101(3)(a) mandates that the "association must be organized as  
28 a profit or nonprofit corporation, association, limited-liability company, trust or partnership." The Articles of

1 Incorporation were properly prepared, executed and filed. Each year thereafter, the Association has complied  
2 with the requirements of the Nevada Division of Real Estate and registered the Association as a common-interest  
3 community. *See* Exhibit "51" 00131-00155. Fees as required have been paid to the NRED Ombudsman, regular  
4 meetings of the Board and members have been held, and elections have taken place with Mr. Essington being  
5 elected to the Board several times. *See* Exhibit "10", Perks Affidavit.

6 Plaintiff does not raise any technical defects with the filing of the Articles of Incorporation. Plaintiff  
7 only asserts that the Articles should not have been filed because Plaintiff allegedly did not approve them. This  
8 statement is in error for at least three reasons. First, the June 18, 2010, letter from Robert Wines states that the  
9 Articles were approved by James Copenhaver, Esq. In her deposition testimony Mrs. Essington admits that Mr.  
10 Copenhaver was her personal attorney. *See* Exhibit "8" at 12:21-25. Additionally, in his deposition testimony,  
11 Mel Essington stated that Mr. Copenhaver was counsel for both Mr. and Mrs. Essington. *See* Exhibit "22 " at  
12 11:4-12. Therefore, counsel for Mrs. Essington, who is the sole director and shareholder of Artemis, approved  
13 the Articles of Incorporation. This is also true of the Bylaws. Mr. Wines provided Mr. Copenhaver a copy of  
14 the Bylaws before they were approved by the Board and members. *See* Exhibit "4 ", Wines Affidavit.  
15 Therefore, Plaintiff's assertion that she did not approve the formation of the Association and the filing of the  
16 Articles is false.

17 Secondly, the evidence presented herein demonstrates that Mr. and Mrs. Essington were the moving  
18 force behind formation of the Association. They even prepared Articles of Incorporation for the Association  
19 which they were prepared to file if members of the ARC did not file Articles. Additionally, there is no legal  
20 requirement that future members of an association consent to the filing of the organization documents of an  
21 association. Filing of such documents is mandated by NRS 116.3101(3). Therefore, Plaintiff's contention that  
22 the Association is invalid because she did not approve the Articles, is not only factually incorrect, it is legally  
23 incorrect. There is no such approval requirement.

24 In sum, there can be no doubt; the Association meets the historical definition of a common-interest  
25 community. There are common improvements it is required to maintain. It holds title to common area real  
26 property. Its Articles of Association were properly filed and it has complied with all filing and registration  
27 requirements of the Nevada Real Estate Division. RLEHOA is a common interest community association, as  
28 a matter of law.



1 **E. The Powers of the Association to Levy and Collect Assessments Arise Under the Provisions of NRS**  
2 **Chapter 116**

3 **1. *The Provisions of the CC&Rs are Deemed to Comply with NRS Chapter 116.***

4 The Nevada legislature has made it abundantly clear; with certain very limited exceptions, it intends  
5 NRS Chapter 116 to apply to all common-interest communities within Nevada. *See* NRS 116.1201(1). When  
6 the Plat Map was recorded evidencing the need to maintain the roads not maintained by the County, a common-  
7 interest community was created. Recognizing that pre-1992 communities could not feasibly amend their  
8 governing documents, but intending to make these communities subject to the provisions of Chapter 116, the  
9 Legislature enacted NRS 116.1206:

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

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

13 Based upon the foregoing provision, there was no need for the Association to even attempt to amend its  
14 CC&Rs. The power of the Association are based upon statutory authority. Additionally, even if this case were  
15 deemed to involve a purported amendment to the CC&Rs, which it clearly does not, Plaintiff's claims would  
16 necessarily be denied, *as a matter of law*. First, if the actions of the members in forming the Association in 2006  
17 and levying assessments could be deemed an amendment to the CC&Rs, the survey completed by Artemis -  
18 Mel/Beth Essington show it (they) consented and approved any putative amendment. *See* Exhibit "48" at RLE  
19 021 G.

20 Secondly, NRS 116.2117(1) provides that a declaration may be amended by a vote or agreement of unit  
21 owners to which at least a majority off the votes in the Association are allocated. There is no requirement that  
22 *all* homeowners approve an amendment. Even though not required, the evidence presented herein shows that  
23 a majority of owners, including Artemis and the Essingtons, approved of the formation of the Association and  
24 the levying of assessments. This is stated specifically by Mr. Essington in his August 2005 correspondence: "I  
25 have discussed the situation with Mr. Perks as well as some of the other owners and believe he and *nearly all*  
26 *of the other owners* agree we need to reorganize the association and move ahead with its intent."

27 A majority of the members, including Mr. Essington, approved the adoption of the Bylaws. A majority  
28 of members approved operating budgets and the Reserve Study. A majority of members approved the

1 maintenance and upkeep of the common elements of the Association, including the gates, entrance sign,  
2 perimeter fencing, culverts and cattle guards. At virtually every meeting of members, from 2006 through 2010,  
3 a majority of members were present. The minutes of these meetings reflect the unanimous approval of the  
4 members as to these and other actions. Thus, even if the actions of the members could be construed as a putative  
5 amendment to the CC&Rs, a majority of members approved that amendment as did Plaintiff and the Essingtons.  
6 These facts undermine all of Plaintiff's claims, and demonstrate Plaintiff has failed to state any claim for relief  
7 against the Association.

8       **2.     *The Power to Levy and Collect Assessments is Provided by Law as Is the Association's***  
9       ***Statutory Lien For Delinquent Assessments.***

10       The Association, acting through its Board of Directors, is granted all the powers set forth in NRS  
11 116.3102, among others. These include the following:

- 12       1.     "Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for  
13       common expenses from the units' owners." NRS 11.3102 (1)(b).
- 14       2.     "To regulate the use, maintenance, repair, replacement and modification of the common  
15       elements." NRS 116.3102(f).
- 16       3.     "Acquire, hold, encumber and convey in its own name any right, title or interest to real estate  
17       or personal property. . ." NRS 116.3102(h).
- 18       4.     "Impose charges for the late payment of assessments pursuant to NRS 116.3115." NRS  
19       116.3102(k)
- 20       5.     "Provide for the indemnification of its officers an executive boar and maintain directors' and  
21       officers' liability insurance." NRS 116.3102(o)
- 22       6.     "Exercise all other powers that may be exercised in this State by legal entities of the same type  
23       as the association." NRS 116.3102(r) .
- 24       7.     "Exercise any other powers necessary and proper for the governance and operation of the  
25       association." NRS 116.3102(t).
- 26       8.     "Adopt and amend bylaws, rules and regulations." NRS 116.3102(a).

27       In addition to the foregoing, pursuant to NRS 116.31031, the Board may impose fines and sanctions for  
28 violation of the governing documents. Pursuant to NRS 116.310313, the Board may charge an owner reasonable  
fees to cover the costs of collecting any past due obligation. Pursuant to NRS 116.3107, the Association has  
imposed upon it *the duty* to provide for the maintenance, repair and replacement of the common elements.  
Pursuant to NRS 116.3113, the Association is required to maintain property and liability insurance, and pursuant  
to NRS 116.3115, the Association is required to levy assessments, at least annually, according to an adopted

1 budget and reserve study. The Association has a statutory lien for unpaid assessments which it may foreclose  
2 if assessments remain unpaid. *See* NRS 116.3116. These are just a few of the rights and powers afforded the  
3 Association, acting through its Board of Directors, by NRS Chapter 116.


4 The facts alleged by Plaintiff which underlie its claims of fraud, misrepresentation, monetary damages  
5 and punitive damages, are nothing more than the actions taken by the Association in levying and attempting to  
6 collect its assessments as mandated by Chapter 116. Plaintiff has failed to state a claim against the Association  
7 for any form of relief. The 2006 Survey completed and returned for Lot G-6 undermines all of Plaintiff's claims.  
8 It clearly provides evidence of Plaintiff's consent to the levy of assessments and knowledge of the  
9 responsibilities of the Association. All of Plaintiff's claims fail *as a matter of law*.

#### 10 IV. 11 CONCLUSION

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

18 DATED this 29<sup>th</sup> day of May, 2012.

19 KERN & ASSOCIATES, LTD.

20 

21 GAYLE A. KERN, ESQ.

22 NEVADA BAR #1620

23 5421 Kietzke Lane, Suite 200

24 RENO, NEVADA 89511

25 Telephone: 775-324-5930

26 Fax: 775-324-6173

27 Email: [gaylekern@kernltd.com](mailto:gaylekern@kernltd.com)

28 Attorneys for Ruby Lake Estates Homeowners Association

CERTIFICATE OF SERVICE

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

RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S  
MOTION FOR SUMMARY JUDGMENT

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

X

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

                     Via facsimile transmission

                     Personal delivery, upon:

                     United Parcel Service, Next Day Air, addressed to:

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

DATED this 29th day of May, 2012.

  
TERESA A. GEARHART

1 CASE NO. CV-C-12-175

2 DEPT. NO. 1

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

12 MAY 30 AM 11:27

ELKO CO. DISTRICT COURT  
CLERK. DEPUTY *[Signature]*

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

9 ARTEMIS EXPLORATION COMPANY, a  
10 Nevada Corporation,

11 Plaintiff,

12 vs.

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

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

16 RUBY LAKE ESTATES HOMEOWNER'S  
ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
20 Nevada Corporation,

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

23 **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S**  
**COMPOSITE OF EXHIBITS IN SUPPORT OF:**  
24 **(1) RLEHOA'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;**  
**AND (2) RLEHOA'S MOTION FOR SUMMARY JUDGMENT**  
25  
26  
27  
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, Ltd., and  
3 that on this day I served the foregoing document described as follows:

4 **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION'S**  
5 **COMPOSITE OF EXHIBITS IN SUPPORT OF:**  
6 **(1) RLEHOA'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;**  
7 **AND (2) RLEHOA'S MOTION FOR SUMMARY JUDGMENT**

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

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

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

19 DATED this 29th day of May, 2012.

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

# INDEX OF EXHIBITS

EXHIBIT NO.	DESCRIPTION	BATES NO.
1	Information From Nevada Sec. of State re Artemis	RLE 116-117
2	Letters to Mel Essington dated April 19, 2010 and August 30, 2010	RLE 118, 131
3	Policy of Title Insurance for Lot G-6	00021-00027
4	Affidavit of Robert Wines in Support of Opposition to Motion for Summary Judgment ("Wines Affidavit")	
5	June 18, 2010 letter from Wines to Meriweather of NRED Ombudsman Office	RLE 120-121
6	1997 Newsletter for Ruby Lakes Estates	RLE 018-019; 00031-00032
7	Newsletters for Ruby Lakes Estates dated October 2009, July 2010, December 2010 produced by Plaintiff	0062-0064; 0085-0087; 0096-00101
8	Deposition Transcript of Elizabeth Essington	
9	Checks written by Essingtons to RLEHOA	RLE 027, RLE 036, RLE 058, RLE 081
10	Declaration of Lee Perks in Support of Opposition to Motion for Summary Judgment ("Perks Affidavit")	
11	Letter and e-mail from Mel Essington dated August 22, 2005	RLE 021A-021D
12	Minutes of August 12, 2006 Meeting	RLE 023-026; 00036-00039
13	Minutes of August 11, 2007 Meeting	RLE 044-052; 00044-00052
14	Letter dated February 21, 2000 from ARC members	RLE 020-021; 00029-00030
15	Letter dated September 7, 2005 from Perks to Wines	00033
16	Articles of Incorporation completed by Mel and Elizabeth Essington	RLE 143

EXHIBIT NO.	DESCRIPTION	BATES NO.
17	June 28, 2010 Letter from Perks to RLEHOA members.	RLE 125-126; 00081-00082
18	Articles of Association for RLEHOA	RLE 011-013; 00034-00035
19	2006 Letter to Members re: formation of RLEHOA	RLE 022
20	July 18, 2006 Letter from Cunningham	RLE 021E
21	May 25, 2006 letter from Copenhaver to Wines; Aug. 24, 2006 letter from Wines to Copenhaver	RLE 142 RLE 145
22	Deposition Transcript of Mel Essington	
23	Bylaws of RLEHOA adopted 2006	RLE 007-010; 00040-00043
24	November 13, 2006 Letter from Mel Essington	RLE 030
25	January 14, 2007 Letter from Mel Essington	RLE 037-039
26	August 16, 2006 Letter from Mel Essington	RLE 027A
27	Mel Essington's Certification of Declaration as Board Member re: applicability of NRS 116	RLE 053
28	Minutes of August 9, 2008 Board Meeting and Members Meeting	RLE 059-061
29	Compliance Inspection Notes of Mel Essington	RLE 076
30	Letter re: Role and Function of ARC written by Mel Essington	RLE 112-114
31	E-mail dated September 17, 2008 from "beth essington" signed by "Mel"	RLE 076A
32	October 13, 2008 Letter authored by Mel Essington with forwarding e-mail	RLE 078-080
33	June 20, 2010 Letter from Mel Essington to "Fellow Ruby Lakes Estates Homeowners"	RLE 122-123; 00078-79
34	Reserve Study for RLEHOA dated July 14, 2009	RLE 084-101



EXHIBIT NO.	DESCRIPTION	BATES NO.
35	Minutes of August 8, 2009 Board Meeting and Meeting Members	RLE 105A-105D 00055-00061
36	2009 Self Nomination of Mel Essington to RLEHOA Board of Directors	RLE 083
37	Letter from Elizabeth Essington dated "10-26-09"	RLE 106
38	Letter to All Lot Owners from Michael Ceechi, V.P of RLEHOA dated November 16, 2009	RLE 107-108
39	Letter from Elizabeth Essington dated December 4, 2009	RLE 109; 00065
40	Letter from Harris to Robert Wines dated June 7, 2010	RLE 119; 00018
41	Letter from Lee Perks to Elizabeth Essington dated December 9, 2009	RLE 110-111; 00066-00067
42	Letter from Lee Perks to Members re Election of Mel Essington at August 2007 meeting	RLE 058A
43	Letter from RLEHOA to Plaintiff re: delinquent assessments	0092-0093; 00103- 00117; RLE 132-133
44	Invoices and Correspondence re Delinquent Assessments sent to Artemis	00103-00113
45	January 6, 2011 Letter of resignation from Mel Essington	RLE 134; 00102
46	Letters from Clark and Heckman re "vendetta" of Elizabeth Essington	00094-00095
47	Arbitrator's Opinion in NRED Control No. 11-82	
48	Survey returned by "Artemis- Mel/Beth Essington" re: responsibilities of the Association rec. July 2006	RLE 021F- 021H
49	Opinion of the Ombudsman dated July 1, 2010	RLE 127-128
50	Plat Map for Ruby Valley Estates	RLE 014-016A
51	Common-Interest Community Registration Forms produced by Plaintiff	00131-00155
52	Deed for Association Real Property recorded August 31, 2007	RLE 054-057

EXHIBIT “1”

EXHIBIT “1”

Search...

Home

Information  
CenterElection  
CenterBusiness  
CenterLicensing  
CenterSecurities  
CenterOnline  
Services

My Data Reports Commercial Recordings Licensing

## ARTEMIS EXPLORATION COMPANY

[Now Search](#)
[Printer Friendly](#)
[Calculate List Fees](#)

Business Entity Information			
Status:	Active	File Date:	5/02/1983
Type:	Domestic Corporation	Entity Number:	C2761-1983
Qualifying State:	NV	List of Officers Due:	5/31/2011
Managed By:		Expiration Date:	
NV Business ID:	NV19831005323	Business License Exp:	5/31/2011

Registered Agent Information			
Name:	RICHARD W. HARRIS	Address 1:	6121 LAKESIDE DRIVE
Address 2:	SUITE 260	City:	RENO
State:	NV	Zip Code:	89511
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

[View all business entities under this registered agent](#)

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 25,000.00
Par Share Count:	25,000.00	Par Share Value:	\$ 1.00

Officers			
<input checked="" type="checkbox"/> Include Inactive Officers			
Director - ELIZABETH E ESSINGTON			
Address 1:	HC 60 BOX 760	Address 2:	
City:	RUBY VALLEY	State:	NV
Zip Code:	89833	Country:	
Status:	Active	Email:	
Treasurer - ELIZABETH E ESSINGTON			
Address 1:	HC 60 BOX 760	Address 2:	
City:	RUBY VALLEY	State:	NV
Zip Code:	89833	Country:	
Status:	Active	Email:	

RLE 116

<b>Secretary - ELIZABETH E ESSINGTON</b>			
Address 1:	HC 60 BOX 760	Address 2:	
City:	RUBY VALLEY	State:	NV
Zip Code:	89833	Country:	
Status:	Active	Email:	
<b>President - ELIZABETH E ESSINGTON</b>			
Address 1:	HC 60 BOX 760	Address 2:	
City:	RUBY VALLEY	State:	NV
Zip Code:	89833	Country:	
Status:	Active	Email:	

**Actions\Amendments**[Click here to view 15 actions\amendments associated with this company](#)

[Information Center](#) | [Election Center](#) | [Business Center](#) | [Licensing Center](#) | [Securities Center](#) | [Online Services](#) | [Contact Us](#) | [Sitemap](#)

101 N Carson Street Suite 3 Carson City, NV 89701 | (775) 684-5708  
© 2010 All Rights Reserved. [Privacy Policy and Disclaimer](#) | [About This Site](#)

RLE 117

EXHIBIT “2”

EXHIBIT “2”

***RUBY LAKE ESTATES  
HOMEOWNERS ASSOCIATION***

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

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

April 19, 2010

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

Mel,

Your status on the board has recently become a little confusing. Our by-laws require that an officer of RLEHA is a property owner or represents a property owner. To remain an officer of the RLEHA you need to show proof that you are an officer/director of Artemis Exploration Company or have been legally appointed in writing to represent that corporation.

The second issue is that Artemis Exploration Company is delinquent in their dues. An officer of RLEHA needs to be in good standing throughout his/her term to remain on the board.

Please remedy these two issues within 15 days of receipt. If not we will interpret this as your resignation and will immediately appoint a replacement.

Sincerely,

Lee Perks  
President  
(775) 358-4403

# ***RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION***

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

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

Mel Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

August 30, 2010

Mr. Essington,

It has been brought to the attention of the Ruby Lake Estates Homeowners Association (RLEHA), that as an elected official of the RLEHA, that you fail to comply with NRS: Chapter 116.31034-Common-Interest-Ownership (UNIFORM ACT).

Please submit proof that you are an OFFICER, EMPLOYEE, AGENT or DIRECTOR of Artemis Exploration Company to prove that you do in fact comply with NRS: 116.31034 Common-Interest-Ownership (Uniform Act).

If you do not prove that you are associated with Artemis Exploration Company owner; the RLEHA will have no other choice than to file an intervention complaint in this matter with the State of Nevada Real Estate Division, office of the Ombudsman.

Please respond to this correspondence prior to September 30<sup>th</sup>, 2010 so as to avoid further action by the RLEHA.

Sincerely,

Lee Perks  
President RLEHA

CC: RLEHA Board  
Robert Wines, esq.

EXHIBIT “3”

EXHIBIT “3”





# POLICY OF TITLE INSURANCE



ISSUED BY

## *First American Title Insurance Company*

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;

and in addition, as to an insured lender only:

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage; said mortgage being shown in Schedule B in the order of its priority;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule B, or the failure of the assignment shown in Schedule B to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, First American Title Insurance Company has caused this policy to be signed and sealed by its duly authorized officers as of Date of Policy shown in Schedule A.

*First American Title Insurance Company*

BY

*Parker S. Kennedy*

PRESIDENT

262719

ATTEST

*Mark R. Amason*

SECRETARY

## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered,

assumed or agreed by the insured claimant;

- (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
  5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
  6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

00022

## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes
  - (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and interests as to any such successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land;
  - (ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
  - (iii) the parties designated in Section 2(a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "insured lender": the owner of an insured mortgage.
- (d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.
- (e) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (f) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (h) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (i) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE.

- (a) After Acquisition of Title. If this policy insures the owner of the indebtedness secured by the insured mortgage, the coverage of this policy shall continue in force as of Date of Policy in favor of (i) such insured lender who acquires all or any part of the estate or interest in the land by foreclosure, purchase, or otherwise, or

insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

### 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by each insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of an insured claimant to provide the required proof of loss or damage, the Company's obligations to such insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, an insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by an insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of an insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that insured for that claim.

### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
  - (i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or
  - (ii) in case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the insured claimant shall execute and deliver to the Company

continued to be obligated to advance at and after Date of Policy.

### 9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, as to an insured lender, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of insurance afforded under this policy as to any such insured, except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured lender except as provided in Section 2(a) of these Conditions and Stipulations.

### 10. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

The provisions of this Section shall not apply to an insured lender, unless such insured acquires title to said estate or interest in satisfaction of the indebtedness secured by an insured mortgage.

### 11. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

### 12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction of subrogation involving these rights.

wholly owned subsidiary of the insured corporation and their cor-  
successors by operation of law and not by purchase, subject to an  
rights or defenses the Company may have against any predeces-  
insureds; and (iii) any governmental agency or governmental  
instrumentality which acquires all or any part of the estate or interest  
to a contract of insurance or guaranty insuring or guarantee-  
indebtedness secured by the insured mortgage.

(b) **After Conveyance of Title.** The coverage of this policy  
shall continue in force as of Date of Policy in favor of an insured only  
so long as the insured retains an estate or interest in the land, or holds  
an indebtedness secured by a purchase money mortgage given by a  
purchaser from the insured, or only so long as the insured shall have  
liability by reason of covenants of warranty made by the insured in any  
transfer or conveyance of the estate or interest. This policy shall not  
continue in force in favor of any purchaser from the insured of either  
(i) an estate or interest in the land, or (ii) an indebtedness secured by  
a purchase money mortgage given to an insured.

(c) **Amount of Insurance:** The amount of insurance after the  
acquisition or after the conveyance by an insured lender shall in neither  
event exceed the least of:

(i) The amount of insurance stated in Schedule A;

(ii) The amount of the principal of the indebtedness secured  
by the insured mortgage as of Date of Policy, interest thereon,  
expenses of foreclosure, amounts advanced pursuant to the insured  
mortgage to assure compliance with laws or to protect the lien of the  
insured mortgage prior to the time of acquisition of the estate or interest  
in the land and secured thereby and reasonable amounts expended to  
prevent deterioration of improvements, but reduced by the amount of  
all payments made; or

(iii) The amount paid by any governmental agency or  
governmental instrumentality, if the agency or instrumentality is the  
insured claimant, in the acquisition of the estate or interest in  
satisfaction of its insurance contract or guaranty.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i)  
in case of any litigation as set forth in Section 4(a) below, (ii) in case  
knowledge shall come to an insured hereunder of any claim of title or  
interest which is adverse to the title to the estate or interest or the lien  
of the insured mortgage, as insured, and which might cause loss or  
damage for which the Company may be liable by virtue of this policy,  
or (iii) if title to the estate or interest or the lien of the insured mortgage,  
as insured, is rejected as unmarketable. If prompt notice shall not be  
given to the Company, then as to that insured all liability of the Company  
shall terminate with regard to the matter or matters for which prompt  
notice is required; provided, however, that failure to notify the Company  
shall in no case prejudice the rights of any insured under this policy  
unless the Company shall be prejudiced by the failure and then only  
to the extent of the prejudice.

### 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the  
options contained in Section 6 of these Conditions and Stipulations, the  
Company, at its own cost and without unreasonable delay, shall provide  
for the defense of such insured in litigation in which any third party  
asserts a claim adverse to the title or interest as insured but only as  
to those stated causes of action alleging a defect, lien or encumbrance  
or other matter insured against by this policy. The Company shall have  
the right to select counsel of its choice (subject to the right of such  
insured to object for reasonable cause) to represent the insured as to  
those stated causes of action and shall not be liable for and will not  
pay the fees of any other counsel. The Company will not pay any fees,  
costs or expenses incurred by an insured in the defense of those  
causes of action which allege matters not insured against by this  
policy.

(b) The Company shall have the right, at its own cost, to  
institute and prosecute any action or proceeding or to do any other act  
which in its opinion may be necessary or desirable to establish the title  
to the estate or interest or the lien of the insured mortgage, as insured,  
or to prevent or reduce loss or damage to an insured. The Company  
may take any appropriate action under the terms of this policy, whether  
or not it shall be liable hereunder, and shall not thereby concede liability  
or waive any provision of this policy. If the Company shall exercise its  
rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or  
interposed a defense as required or permitted by the provisions of this  
policy, the Company may pursue any litigation to final determination by  
a court of competent jurisdiction and expressly reserves the right, in  
its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the  
Company to prosecute or provide for the defense of any action or  
proceeding, the insured shall secure to the Company the right to so  
prosecute or provide defense in the action or proceeding, and all  
appeals therein, and permit the Company to use, at its option, the name  
of such insured for this purpose. Whenever requested by the Company,  
an insured, at the Company's expense, shall give the Company all  
reasonable aid (i) in any action or proceeding, securing evidence,  
obtaining witnesses, prosecuting or defending the action or proceed-  
ing, or effecting settlement, and (ii) in any other lawful act which in the  
opinion of the Company may be necessary or desirable to establish the  
title to the estate or interest or the lien of the insured mortgage, as  
insured. If the Company is prejudiced by the failure of an insured to  
furnish the required cooperation, the Company's obligations to such

paragraph a(i), all liability and obligations to the insured under  
policy, other than to make the payment required in that paragraph, shall  
terminate, including any liability or obligation to defend, prosecute or  
continue any litigation, and the policy shall be surrendered to the  
Company for cancellation.

Upon the exercise by the Company of the option provided for in  
paragraph a(ii) the Company's obligation to an insured Lender under  
this policy for the claimed loss or damage, other than the payment  
required to be made, shall terminate, including any liability or  
obligation to defend, prosecute or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other than the  
Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the  
name of an insured claimant any claim insured against under this  
policy, together with any costs, attorneys' fees and expenses incurred  
by the insured claimant which were authorized by the Company up to  
the time of payment and which the Company is obligated to pay; or  
(ii) to pay or otherwise settle with the insured claimant the  
loss or damage provided for under this policy, together with any costs,  
attorneys' fees and expenses incurred by the insured claimant which  
were authorized by the Company up to the time of payment and which  
the Company is obligated to pay.

Upon the exercise by the Company of either of the options  
provided for in paragraphs b(i) or (ii), the Company's obligations to the  
insured under this policy for the claimed loss or damage, other than  
the payments required to be made, shall terminate, including any  
liability or obligation to defend, prosecute or continue any litigation.

### 7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary  
loss or damage sustained or incurred by the insured claimant who has  
suffered loss or damage by reason of matters insured against by this  
policy and only to the extent herein described.

(a) The liability of the Company under this policy to an  
insured lender shall in no case exceed the least of:

(i) The Amount of Insurance stated in Schedule A, or, if  
applicable, the amount of insurance as defined in Section 2(c) of these  
Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured  
by the insured mortgage as limited or provided under Section 8 of  
these Conditions and Stipulations or as reduced under Section 9 of  
these Conditions and Stipulations, at the time the loss or damage  
insured against by this policy occurs, together with interest thereon;  
or

(iii) the difference between the value of the insured estate  
or interest as insured and the value of the insured estate or interest  
subject to the defect, lien or encumbrance insured against by this  
policy.

(b) In the event the insured lender has acquired the estate or  
interest in the manner described in Section 2(a) of these Conditions  
and Stipulations or has conveyed the title, then the liability of the  
Company shall continue as set forth in Section 7(a) of these  
Conditions and Stipulations.

(c) The liability of the Company under this policy to an  
insured owner of the estate or interest in the land described in  
Schedule A shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or  
(ii) the difference between the value of the insured estate or  
interest as insured and the value of the insured estate or interest  
subject to the defect, lien or encumbrance insured against by this  
policy.

(d) The Company will pay only those costs, attorneys' fees  
and expenses incurred in accordance with Section 4 of these  
Conditions and Stipulations.

### 8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the  
alleged defect, lien or encumbrance, or cures the lack of a right of  
access to or from the land, or cures the claim of unmarketability of  
title, or otherwise establishes the lien of the insured mortgage, all as  
insured, in a reasonably diligent manner by any method, including  
litigation and the completion of any appeals therefrom, it shall have  
fully performed its obligations with respect to that matter and shall not  
be liable for any loss or damage caused thereby.

(b) In the event of litigation, including litigation by the  
Company or with the Company's consent, the Company shall have no  
liability for loss or damage until there has been a final determination  
by a court of competent jurisdiction, and disposition of all appeals  
therefrom, adverse to the title, or, if applicable, to the lien of the insured  
mortgage, as insured.

(c) The Company shall not be liable for loss or damage to  
any insured for liability voluntarily assumed by the insured in settling  
any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for:

(i) any Indebtedness created subsequent to Date of Policy  
except for advances made to protect the lien of the insured mortgage  
and secured thereby and reasonable amounts expended to prevent  
deterioration of improvements; or

(ii) construction loan advances made subsequent to Date of  
Policy, except construction loan advances made subsequent to Date of  
Policy for the purpose of financing in whole or in part the  
construction of an improvement to the land which at Date of Policy  
were secured by the insured mortgage and which the insured was and

insured owner, to all rights and remedies in the proportion which the  
Company's payment bears to the whole amount of the loss; and (ii) as  
an insured lender, to all rights and remedies of the insured claimant  
under the insured claimant shall have recovered its principal, interest,  
and costs of collection.

If loss should result from any act of the insured claimant, as stated  
above, that act shall not void this policy, but the Company, in that event,  
shall be required to pay only that part of any losses insured against by  
this policy which shall exceed the amount, if any, lost to the Company  
by reason of the impairment by the insured claimant of the Company's  
right of subrogation.

### (b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness  
secured by an insured mortgage, provided the priority of the lien of the  
insured mortgage or its enforceability is not affected, may release or  
substitute the personal liability of any debtor or guarantor, or extend or  
otherwise modify the terms of payment, or release a portion of the  
estate or interest from the lien of the insured mortgage, or release any  
collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the  
insured has knowledge of any claim of title or interest adverse to the  
title to the estate or interest or the priority or enforceability of the lien  
of the insured mortgage, as insured, the Company shall be required to  
pay only that part of any losses insured against by this policy which  
shall exceed the amount, if any, lost to the Company by reason of the  
impairment by the insured claimant of the Company's right of  
subrogation.

### (c) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors  
shall exist and shall include, without limitation, the rights of the insured  
to indemnities, guaranties, other policies of insurance or bonds,  
notwithstanding any terms or conditions contained in those instru-  
ments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by  
acquisition of the insured mortgage by an obligor (except an obligor  
described in Section 1(a)(ii) of these Conditions and Stipulations) who  
acquires the insured mortgage as a result of an indemnity, guarantee  
other policy of insurance, or bond and the obligor will not be an insurer  
under this policy, notwithstanding Section 1(a)(i) of these Conditions  
and Stipulations.

### 13. ARBITRATION.

Unless prohibited by applicable law, either the Company or the  
insured may demand arbitration pursuant to the Title Insurance  
Arbitration Rules of the American Arbitration Association. Arbitrable  
matters may include, but are not limited to, any controversy or claim  
between the Company and the insured arising out of or relating to this  
policy, any service of the Company in connection with its issuance or  
the breach of a policy provision or other obligation. All arbitrable  
matters when the Amount of Insurance is \$1,000,000 or less shall be  
arbitrated at the option of either the Company or the insured. All  
arbitrable matters when the Amount of Insurance is in excess  
of \$1,000,000 shall be arbitrated only when agreed to by both the  
Company and the insured. Arbitration pursuant to this policy and under  
the Rules in effect on the date the demand for arbitration is made,  
at the option of the insured, the Rules in effect at Date of Policy shall  
be binding upon the parties. The award may include attorneys' fees  
only if the laws of the state in which the land is located permit a court  
to award attorneys' fees to a prevailing party. Judgment upon the award  
rendered by the Arbitrator(s) may be entered in any court having  
jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under  
the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon  
request.

### 14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached  
hereto by the Company is the entire policy and contract between  
insured and the Company. In interpreting any provision of this policy  
this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based  
negligence, and which arises out of the status of the lien of the ins-  
mortgage or of the title to the estate or interest covered hereby, by  
any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy shall  
be made except by a writing endorsed hereon or attached hereto and  
signed by either the President, a Vice President, the Secretary, an Ass-  
Secretary, or validating officer or authorized signatory of the Com-

### 15. SEVERABILITY.

In the event any provision of this policy is held in-  
unenforceable under applicable law, the policy shall be deemed  
include that provision and all other provisions shall remain in full  
and effect.

### 16. NOTICES, WHERE SENT

All notices required to be given the Company an-  
statement in writing required to be furnished the Company shall be  
the number of this policy and shall be addressed to the Com-  
its main office at 114 East Fifth Street, Santa Ana, California  
office which issued it.

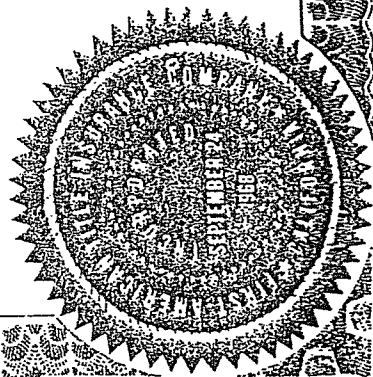
IRA0520002

FIRST AMERICAN



First American Title Insurance Company

POLICY  
OF  
TITLE  
INSURANCE



1RA00934

## SCHEDULE A

Total Fee for Title Search, Examination  
and Title Insurance \$ 229.00

AP # 07-03A-42-0

Amount of Insurance \$ 12,000.00

Policy No. 420306TO

Date of Policy: June 21, 1994 at 1:37PM

1. Name of Insured:

ARTEMIS EXPLORATION COMPANY

2. The estate or interest in the land covered by this policy is:

A FEE

3. Title to the estate or interest in the land is vested in:

ARTEMIS EXPLORATION COMPANY

4. The land referred to in this policy is described as follows:

All that certain lot, piece or parcel of land situate in the County of Elko, State of Nevada, described as follows:

Lot 6 in Block G in the RUBY LAKE ESTATES SUBDIVISION, as shown on the map thereof filed in the Office of the Elko County Recorder on September 15, 1989, as File No. 281674.

EXCEPTING THEREFROM all the oil and gas, sodium, and potassium and all the geothermal steam and associated geothermal resources lying in and under said land as reserved by the United States of America in Patents recorded July 22, 1988, in Book 629, Pages 303 and 305, Official Records, Elko County, Nevada.

## Schedule B

### EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of the following

Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Taxes for the fiscal year 1993-1994, including any secured personal property tax, have been paid in full.  
APNo. 07-03A-42-0  
Total \$13.44
7. The lien of any Supplemental Taxes assessed for the current fiscal year, including any secured personal property tax.
8. Rights incidental to the ownership and development of the mineral interests excepted from the land described herein.
9. Reservations contained in Patents executed by the UNITED STATES OF AMERICA, recorded July 22, 1988 in Book 629 of Official Records at Pages 303 and 305 in the Office of the County Recorder of Elko County, Nevada, which recite as follows:

EXCEPTING AND RESERVING TO THE UNITED STATES:

- a) A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945); and

(CONTINUED ON NEXT PAGE)

b) All the oil and gas, sodium, and potassium in the NW $\frac{1}{4}$ ; SW $\frac{1}{4}$  of said Section 15, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914, 38 Stat. 509, as supplemented; 30 U.S.C. 121-124; and

c) All the geothermal steam and associated geothermal resources in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such resources, upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970, (30 U.S.C. 1002)

SUBJECT TO those rights for an electric distribution line which have been granted to WELLS RURAL ELECTRIC COMPANY, its successors or assigns, by right-of-way number NEV-058476, under the Act of March 4, 1911, as amended (36 Stat. 1253; formerly 43 U.S.C. 961)

This conveyance is made under Section 29 of the Act of February 25, 1920, (30 U.S.C. 186) and the Act of March 4, 1933, (30 U.S.C. 124). The patent is issued subject to the rights of prior permittees or lessees, to use so much of the surface of said lands as is required for mining operations without compensation to the patentee for damages resulting from proper mining operations, for the duration of oil and gas lease N-15953, and any authorized extension of that lease.

10. Covenants, conditions and restrictions contained in Declaration of Reservations, Conditions and Restrictions by STEPHEN G. WRIGHT and MAVIS S. WRIGHT, recorded October 25, 1989, in Book 703 of Official Records at Page 287, Elko County, Nevada.
11. Easements for public utilities, drainage and building set-back as shown on the official map of said subdivision.

EXHIBIT “4”

EXHIBIT “4”



1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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

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

7 IN AND FOR THE COUNTY OF ELKO

8  
9 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

10 Plaintiff,

11 vs.

AFFIDAVIT OF ROBERT WINES

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

14 Defendants.

15 RUBY LAKE ESTATES HOMEOWNER'S  
16 ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

20 Counterdefendant.

21  
22 STATE OF NEVADA )  
23 COUNTY OF ELKO ) ss:  
24 )

25 1. That your Affiant, Robert Wines, is an attorney licensed to practice law in the State  
26 of Nevada. I am competent to testify as to the matters set forth herein below based upon my  
27 personal knowledge. I make this Affidavit on behalf of Ruby Lake Estates Homeowner's  
28 Association ("RLEHOA").

///

1           2.     After the filing of the Official Plat Map and Declaration of Covenants, Conditions  
2 and Restrictions for Ruby Lake Estates, I was retained by Stephen Wright to represent him and his  
3 wife on various matters relating to the Ruby Lake Estates subdivision. In 1997, I reviewed the  
4 appointment of owners of lots within Ruby Lake Estates to the Architectural Review Committee  
5 ("ARC").

6           3.     In 1999, I determined that the Ruby Lake Estates subdivision was a common-interest  
7 community subject to the requirements of NRS Chapter 116, due to the fact that the community  
8 members were required to maintain the roadways as shown on the Official Plat Map. In 1999, the  
9 provisions of NRS Chapter 116 were made applicable to subdivisions created prior to 1992, with  
10 certain limited exceptions, none of which applied to Ruby Lake Estates.

11          4.     In my opinion, the provisions of the Declaration of Covenants, Conditions and  
12 Restrictions for Ruby Lake Estates (the "Declaration"), showed an intent to form a governing body  
13 for the community in order to maintain the road ways and other common areas of the subdivision  
14 as well as adopt rules and regulations for the community. It was also my opinion that the  
15 Declaration expressed an intent and purpose that all lots and parcels within the development,  
16 including the roadways, be developed and maintained in an aesthetically pleasing and harmonious  
17 manner in order to preserve a high quality of use and appearance, as well as the value of all lots  
18 within the subdivision. Without maintenance of the roads within the subdivision, this purpose  
19 could not be accomplished.

20          5.     I knew that the County of Elko had stopped accepting roads for maintenance in  
21 approximately 1986. This is why the County did not accept the roads within the Ruby Lake Estates  
22 subdivision for maintenance when the Plat Map was recorded in 1989. To this date, to the best  
23 of my knowledge, the County of Elko does not accept any roads for maintenance. Instead, the  
24 County of Elko accepts roads only for purposes of public access but without a concomitant  
25 obligation to maintain the same. The County requires that public roads within a subdivision be  
26 maintained either through a road maintenance agreement and government improvement district  
27 (GID), or by a homeowners association. In my experience, maintenance of the roadways by the  
28 County through a road maintenance agreement or GID, and having those costs collected through

1 real property taxes, is much more expensive for the homeowners than maintaining the roads  
2 through a common-interest community association.

3 6. In 2005, I was contacted by James Copenhaver, an attorney representing Mel and  
4 Elizabeth Essington. I was provided with a copy of Articles of Incorporation which the Essingtons  
5 threatened to file if Articles for a homeowners association were not filed by other owners of lots  
6 within the Ruby Lake Estates subdivision. A true and correct copy of those Articles, as maintained  
7 in my records, is contained in the Association's Composite of Exhibits as Exhibit "16", RLE 143.

8 7. I thereafter assisted Mr. Lee Perks with the filing of the Articles of Association for  
9 the Ruby Lake Estates Homeowners Association. I provided a copy of the Articles of Association,  
10 as shown on Exhibit "18" to RLEHOA's Opposition, to counsel for Mr. and Mrs. Essington. I also  
11 provided a copy of the Bylaws of the Association, as shown on Exhibit "23" to RLEHOA's  
12 Opposition, to Mr. Copenhaver who I understood to be counsel for both Mr. and Mrs. Essington.  
13 A true and correct copy of a letter dated May 25, 2006, as maintained in my files and records,  
14 which I received from Mr. Copenhaver is contained in the Association's Composite of Exhibits as  
15 Exhibit "21", RLE 142. A true and correct copy of my August 24, 2006 letter to Mr. Copenhaver  
16 is contained in the Association's Composite of Exhibits as Exhibit "21", RLE 145.

17 8. I have served as general counsel to the Association since the filing of the Articles  
18 of Association through the present. I have attended all Board meetings, many of which have been  
19 held in my office, and have attended all meetings of the members of the Association since 2006  
20 through 2011. At various members' meetings held annually from 2006 through 2011, the members  
21 have discussed the ongoing problems and costs relating to maintaining the roads and other common  
22 elements within the Association. At each meeting, the actions of at least a majority of members  
23 have reaffirmed the Association's duty and responsibility to maintain these areas.

24 9. Members of the Board of Directors have regularly sought my advice on matters  
25 relating to the Association. To the best of my knowledge and belief, since its formation, the  
26 Association has met all registration and filing requirements required by the Nevada Division of  
27 Real Estate and the Nevada Secretary of State, and has paid all required fees for a common-interest  
28

1 community association. Regular Board meetings have been held along with regular meeting of  
2 members and elections have taken place. Budgets have been adopted and assessments have been  
3 levied, all in accordance with NRS Chapter 116. The Association commissioned a Reserve Study  
4 and has levied assessments in accordance therewith and its adopted budgets. To the best of my  
5 knowledge and belief, the Association has complied with all applicable provisions of NRS Chapter  
6 116.

7 10. In 2007, Mavis and Stephen Wright, the original developer of Ruby Lake Estates  
8 and the Declarant under the Declaration, proposed to dedicate to the Association, a small parcel  
9 of property shown on the Official Plat, for purposes of providing a location for a community  
10 dumpster or other use, as desired by the Association members. The proposed conveyance was  
11 discussed at the meeting of members held August 11, 2007, at which I was present. The  
12 conveyance was approved by all members in attendance, including Mr. Essington who I remember  
13 as being present. The Wrights thereafter conveyed the parcel to the Ruby Lake Estates  
14 Homeowners Association by Grant, Bargain and Sale Deed dated August 28, 2007. The Deed was  
15 recorded at my request in the Official Records of Elko County on August 31, 2007, as Document  
16 No. 580650. To the best of my knowledge and belief, the Association currently holds title to this  
17 property. Another small parcel of property containing a pump and well was deeded to the Ruby  
18 Valley Volunteer Fire Department, at the behest of the Association, in order to provide nearby  
19 water for fire safety for members of the community.


20 11. In 2009, I determined it was necessary for the Association to obtain a Reserve Study  
21 for its common elements. The Reserve Study shows the common areas of the Association to be  
22 the roadways, entrance sign, gates, perimeter fencing, culverts and cattle guards, as well as a small  
23 parcel conveyed to the Association in 2007.

24 12. On June 9, 2010, I received a letter from Richard W. Harris, purporting to be  
25 counsel for Elizabeth Essington. A true and correct copy of the letter I received from Mr. Harris,  
26 as maintained in my records, is contained in the Association's Composite of Exhibits as Exhibit  
27 "40".  
28

1           13.     After the filing of the Intervention Affidavit by Artemis with the State of Nevada,  
2 Department of Business and Industry Real Estate Division Office of the Ombudsman, I wrote a  
3 letter to Sonya Meriweather of the Ombudsman's Office. A true and correct copy of this letter,  
4 as maintained in my records, is contained in the Association's Composite of Exhibits as Exhibit  
5 "5". The matters set forth in the letter express my opinion that the Ruby Lake Estates subdivision  
6 is subject to the provisions of NRS Chapter 116, owns common elements, and is required to  
7 maintain the same. If called to testify, I would so testify.

8           I, Robert J. Wines, do hereby swear under penalty of perjury that the matters set forth in  
9 this Affidavit are true and correct to the best of my knowledge and belief.

10 Dated: May 29, 2012

  
Robert J. Wines, Esq.

15 SUBSCRIBED AND SWORN to before me

16 this 29 day of May, 2012.

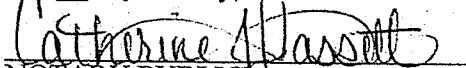
17   
18 NOTARY PUBLIC



EXHIBIT “5”

EXHIBIT “5”

#26

# ROBERT J. WINES, PROF. CORP.

A Professional Law Corporation

## MAILING ADDRESS

P.O. Box 511  
Elko, Nevada 89803

Telephone: (775) 738-3171

Telefax: (775) 753-9860

Robert J. Wines, Esq. - [bobwines@citlink.net](mailto:bobwines@citlink.net)

## OFFICE LOCATION

687 6<sup>th</sup> Street, Suite 1  
Elko, Nevada 89801

June 18, 2010

Nevada Real Estate Division,  
Office of the Ombudsman  
Attn: Sonya Meriweather

Re: Ruby Lake Estates Homeowners Association

Dear Ms. Meriweather:

During late 2005, Stephen Wright ("Steve"), the developer of Ruby Lake Estates Subdivision, contacted me to prepare an association to take over from the developer. He had received either a letter or telephone call from Mel Essington, demanding the creation of the association, or alternatively, threatening that if Steve did not do so, Essington would.

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

Prior to contacting me, Steve had contacted the existing homeowners at the Ruby Lake Estates, and several of them had agreed to serve on the first board. During the fall of 2005, the articles were drafted for signature by those people, circulated by Lee Perks for signature, and submitted to the Nevada Secretary of State for filing. Prior to filing, those articles were disclosed to James M. Copenhagen, the attorney for Mel Essington, who approved them.

#26  
Ombudsman

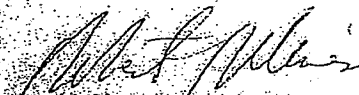
RLEHOA

page 2

The articles were filed in late 2005, during the early summer of 2006, Lee Perks contacted me to see if I would be willing to serve as the attorney for the association. I prepared a proposal, and attended the meeting in Ruby Valley in August, 2006. At that time, the bylaws for the Association were adopted.

Prior to the recent legislative changes, it was my opinion that this Association was a Common Interest Community, because the Association had control of certain elements that were for the benefit of not only the landowners, but also the public (roads). The 2009 Legislation adopted certain "opt-out" provisions, which have not been adopted by RLEHOA, and as such, the Association remains obligated to comply with NRS Chapter 116 as a Common Interest Community.

Very truly yours,



ROBERT J. WINES, ESQ.

RJW

RLE 121

1RA065



EXHIBIT “6”

EXHIBIT “6”

# RUBY LAKE ESTATES

425 WILSON AVE. #2 • ELKO, NV 89801 • (702) 777-7534 • FAX (702) 753-3534

## NEWSLETTER

DEAR PROPERTY OWNERS,

There has been concern about the quality of homes to be built or brought in on the RUBY LAKE ESTATE SUBDIVISION. This is also a concern of ours, as land owners and members of the Architectural Review Committee. There are several subdivisions in the Elko area that have had no regulations to follow or have just ignored the regulations set forth, resulting in run down homes and cluttered lots that are very unappealing, not to mention unfair to a neighbor living next door. Therefore, we have formed a committee that will assure you that steps will be taken to prohibit such occurrences.

We suggest that:

- 1) All homes must be on a permanent foundation.
- 2) No old, dismantled or inoperable vehicles or machinery shall be allowed on lots unless they are housed.
- 3) Garbage shall not be piled up for any amount of time. At this time there is no disposal available. However, the Elko Sanitation Service said that they would service our area if we had at least 10 households to participate. Otherwise, we need to haul our garbage to Elko or a County approved facility.
- 4) All mobile or modular housing shall first be approved by the committee. Age and external condition shall be factors in the committee's decision as to whether or not the same may be placed upon the lot. (Article III, (D) Conditions.)
- 5) The Architectural Review Committee, as well as the County of Elko requires that culverts be placed at each entry to the lot.

These are just a few of our suggestions. We would greatly appreciate any comments or suggestions you may have.

Sincerely,

Bill Harmon  
Committee Chairman

### Members of the committee are as follows:

<u>Committee Chairman</u>	Bill Harmon	425 Wilson Av. #2	Elko, Nv. 89801 (702) 777-7534
<u>Vice Chairman</u>	Jolene Supp	P.O. Box 487	Wells, Nv. 89835 (702) 752-3539
<u>Secretary</u>	Teri Harmon	425 Wilson av. #2	Elko, Nv. 89801 (702) 777-7534
<u>Member</u>	Steve Wright	P.O. Box 486	Wells, Nv. 89835 (702) 752-2477

# RUBY LAKE ESTATES

425 WILSON AVE. #2 • ELKO, NV 89801 • (702) 777-7534 • FAX (702) 753-5534

Another topic brought up at the committee meeting was road maintenance. Steve Wright, the property developer, was responsible for the upkeep on the roads until all of the lots were sold. Now that they have all been sold, the property owners are now responsible.

Therefore, we feel that a property association fee paid yearly, by each property owner would take care of road maintenance, weed control and any legal fees that may arise. We ask that each property owner pay \$100.00 per year to the RUBY LAKE ESTATES PROPERTY OWNERS ASSOCIATION. A yearly balance sheet will be prepared and mailed to each property owner. Surplus funds will be held in a trust fund for future expenses, such as a Volunteer Fire Protection Station, located near the Estate. Which would benefit us all when we apply for our homeowners insurance.

Please remit your association fee by August 1st. Our fiscal Year End & Balance Sheet will also be August 1st. We would greatly appreciate your support of this request.

Please mail payments to: RUBY LAKE ESTATES PROPERTY OWNERS ASSN.  
425 Wilson ave. #2  
Elko, Nevada 89801

The committee meets once a month to discuss concerns of the Estates. Any one who would like to express an interest is welcome to attend the meeting. If you are unable to attend and have a concern, please write. We are very interested in your comments.

Sincerely,  
Bill Harmon  
Committee Chairman

*Paid #  
1209  
7-4-97*

# RUBY LAKE ESTATES

425 WILSON AVE. #2 • ELKO, NV 89801 • (702) 777-7534 • FAX (702) 753-5534

## NEWSLETTER

DEAR PROPERTY OWNERS,

There has been concern about the quality of homes to be built or brought in on the RUBY LAKE ESTATE SUBDIVISION. This is also a concern of ours, as land owners and members of the Architectural Review Committee. There are several subdivisions in the Elko area that have had no regulations to follow or have just ignored the regulations set forth, resulting in run down homes and cluttered lots that are very unappealing, not to mention unfair to a neighbor living next door. Therefore, we have formed a committee that will assure you that steps will be taken to prohibit such occurrences.

We suggest that:

- 1) All homes must be on a permanent foundation.
- 2) No old, dismantled or inoperable vehicles or machinery shall be allowed on lots unless they are housed.
- 3) Garbage shall not be piled up for any amount of time. At this time there is no disposal available. However, the Elko Sanitation Service said that they would service our area if we had at least 10 households to participate. Otherwise, we need to haul our garbage to Elko or a County approved facility.
- 4) All mobile or modular housing shall first be approved by the committee. Age and external condition shall be factors in the committee's decision as to whether or not the same may be placed upon the lot. (Article III, (D) Conditions.)
- 5) The Architectural Review Committee, as well as the County of Elko requires that culverts be placed at each entry to the lot.

These are just a few of our suggestions. We would greatly appreciate any comments or suggestions you may have.

Sincerely,  
Bill Harmon  
Committee Chairman

### Members of the committee are as follows:

<u>Committee Chairman</u>	Bill Harmon	425 Wilson Av. #2	Elko, Nv. 89801 (702) 777-7534
<u>Vice Chairman</u>	Jolene Supp	P.O. Box 487	Wells, Nv. 89835 (702) 752-3539
<u>Secretary</u>	Teri Harmon	425 Wilson av. #2	Elko, Nv. 89801 (702) 777-7534
<u>Member</u>	Steve Wright	P.O. Box 486	Wells, Nv. 89835 (702) 752-2477

# **RUBY LAKE ESTATES**

425 WILSON AVE. #2 • ELKO, NV 89801 • (702) 777-7534 • FAX (702) 753-5534

Another topic brought up at the committee meeting was road maintenance. Steve Wright, the property developer, was responsible for the upkeep on the roads until all of the lots were sold. Now that they have all been sold, the property owners are now responsible.

Therefore, we feel that a property association fee paid yearly, by each property owner would take care of road maintenance, weed control and any legal fees that may arise. We ask ~~that each property owner~~ pay \$100.00 per year to the RUBY LAKE ESTATES PROPERTY OWNERS ASSOCIATION. A yearly balance sheet will be prepared and mailed to each property owner. Surplus funds will be held in a trust fund for future expences, such as a Volunteer Fire Protection Station, located near the Estate. Which would benefit us all when we apply for our homeowners insurance.

Please remit your association fee by August 1st. Our fiscal Year End & Balance Sheet will also be August 1st. We would greatly appreciate your support of this request.

Please mail payments to: RUBY LAKE ESTATES PROPERTY OWNERS ASSN.  
425 Wilson ave. #2  
Elko, nevada 89801

The committee meets once a month to discuss concerns of the Estates. Any one who would like to express an interest is welcome to attend the meeting. If you are unable to attend and have a concern, please write. We are very interested in your comments.

Sincerely,  
Bill Harmon  
Committee Chairman

EXHIBIT “7”

EXHIBIT “7”

# Ruby Lake Estates Newsletter

October 2009

## Contact Information

### Payment Address

765 East Greg St #103  
Sparks, Nevada 89431  
775-358-4403

### Submit Plans for Architectural Review & Correspondence

687 6th Street, Suite 1  
Elko, Nevada 89801

## Meeting Dates

### Executive Board

687 6th St, Elko, 1:30P.M.  
January 15, 2010  
April 16, 2010  
July 16, 2010  
October 15, 2010

### Annual Members Meeting

Ruby Valley Community  
Hall  
August 9, 2010  
@ 11:00 A.M.

### Board Members

Lee Perks, Pres.  
Mike Cecchi, V.P.  
Dennis McIntyre, Treas.  
Valeri McIntyre, Sec.  
Mel Essington, Dir.  
Bill Noble, Dir.

## Receivina RLEHA Information

We will be continuing to keep you up to date in regards to what is happening in our community via this newsletter and other types of correspondence. Please let Valeri know if you would like to receive information via e-mail, fax or mail she would be happy to update your preference in our system. You can contact Valeri @ [valeri@perksplumbing.com](mailto:valeri@perksplumbing.com), via fax 775-358-4403 or call her at 775-358-4403.

## Message from the President

Dear Members,

Mel Essington, Valeri McIntyre, & Lee Perks were re-elected for another two year term. Next year Vice President, Treasurer and one Director will be up for election. Anyone interested in running for a board position needs to fill out a nomination form. We will be sending those out with the January newsletter. If you need a nomination form sooner or do not receive one contact Valeri McIntyre.

There were several changes to the NRS 116 statues this year. The only one I found directly impacting us would be if there was only one person running for an office there need not be an election for that office, the nominate person can accept that position. It is a cost saving measure.

With the completion of the reserve study our long term issues should be in order. Our dues this year will be \$223.48. Copies of the 30 year reserve study are available through e-mail or mail.

It became the burden of this board to try and put some parameters to the aesthetically pleasing and livestock issues. Staying within the guide lines of the language of the CC&R's; our surveys and guidance from council we have finalized the language. Copies will be attached to this month's correspondence. Please remember that this board did not write the CC&R's, we are to maintain and enforce them per state law. The rules adopted

## Message from the President Continued

were unanimously approved by all board members, Lee Perks, Mike Cecchi, Dennis McIntyre, Valeri McIntyre, Bill Noble and Mel Essington.

This winter we will identify the areas where our roads need culverts and will start installing a few over the next couple of years. There used to be 6" steel pipes here and there that were completely filled with dirt. We will replace these with proper culverts. I have been asked about culverts entering individual lots. These culverts are the responsibility of the lot owner to install as needed. If the grading of the road drainage hinders you access a culvert should be installed. The minimum culvert size is 12" diameter. Any questions regarding culverts or installation contact Elko County regarding the proper requirements.

We will be spraying the drainage ditches again for weeds again this fall and spring. If anyone does not want this done in the drainage ditches by their lots please notify the board in "writing" that you do not want your ditch(s) sprayed and that you will maintain the drainage ditches weed and brush free to your property line.

For those that have not been to the valley recently, there are more residences being built. Rumors are a couple more will start in the spring. Make sure you get your plans to the architectural committee so there is no hold up at the building department. Elko County will not accept plans with out the architectural committee stamp with two signatures. Remember grading, homes, building's, sheds (containers), fences all need to got thru the architectural committee for approval. Even though we may not need a building permit, that does not exempt us from approval from the architectural committee. Our current committee members are Mike Cecchi, Mel Essington and Bill Noble.

I hope everything is going well for everyone.  
Lee Perks  
President RLEHA

## Please remember

Board meetings are open to all members. We had our first member attend a meeting last week for our October Meeting. If you can not attend please feel free to send correspondence to Bob Wines office for issues you would like addressed.

Dues are due January 1, 2010. Late fees will be assessed after January 31, 2010

---

Annual Members  
Meeting

August 9, 2010

@ 11:00 A.M.

Bar-B-Que immediately  
following

Come meet your  
neighbors

---



## Architectural Committee

This Committee would like to remind everyone that plans for lot improvements need to be mailed to Bob Wines office at 687 6th Street Suite 1, Elko, Nevada 89801, to be distributed to the Committee from there. You may contact Mike Cecchi with any preliminary questions you may have at:

Mike Cecchi  
C/O Bramco Construction  
325 South 18th St.  
Sparks, Nevada 89431  
775-356-1781 / cell 775-741-7610  
mike@bramcoconst.com

## Still looking for Volunteers:

We are still looking for Volunteers to help with Association Projects. Please contact Lee for items that currently need attention. He can be reached at 775-358-4403 / cell 775-250-8701, mail C/O Perks Plumbing, 765 East Greg ST #103, Sparks, Nevada 89431 or e-mail lee@perksplumbing.com.

## Just for Thought:

### A Strong Board Member Exhibits:

Good Character, Strong Judgement, A willingness to serve, they are Committed to the best interests of the Community as a whole, Possess Relevant Experience or Background for the job, Previous volunteer service, and strong "People Skills"

### Weak Board Members Are:

Unable to Put the Welfare of the Community first, Work behind the Board to run things their own way, are impulsive or quick tempered, Have a Personal or Hidden agenda, Put their individual interests first, Have little or no experience in management, Leadership or Service, and are ineffective and unable to work with others for the common good.

# Ruby Lake Estates Newsletter

July 2010

## Contact Information

### **Payment Address**

765 East Greg St #103  
Sparks, Nevada 89431  
775-358-4403

### **Submit Plans for Architectural Review & Correspondence**

687 6<sup>th</sup> Street, Suite 1  
Elko, Nevada 89801

## Meeting Dates

### **Executive Board**

687 6<sup>th</sup> St, Elko, 1:30P.M.  
January 15, 2010  
April 16, 2010  
July 16, 2010  
October 15, 2010

### **Annual Members Meeting**

Ruby Valley Community  
Hall  
August 7, 2010  
@ 11:00 A.M.

### **Board Members**

Lee Perks, Pres.  
Mike Cecchi, V.P.  
Dennis McIntyre, Treas.  
Valeri McIntyre, Sec.  
Mel Essington, Dir.  
Bill Noble, Dir

## Receiving RLEHA Information

We will be continuing to keep you up to date in regards to what is happening in our community via this newsletter and other types of correspondence. Please let Valeri know if you would like to receive information via e-mail, fax or mail she would be happy to update your preference in our system. You can contact Valeri @ [valeri@perkspetroleum.com](mailto:valeri@perkspetroleum.com), via fax 775-358-4411 or call her at 775-358-4403.

## Message from the President

Dear Members,

Well the Association has had a busy and sorry to say difficult beginning to the year. If you were not aware, one of our Members filed a complaint with the State of Nevada Ombudsman's Office this last December in regards to the validity of our Homeowners Association. The process was not a quick one. The Ombudsman's Office took the complaint very seriously with having the Attorney General's Office review the complaint. We received their official opinion July 1, 2010 stating that we are a legal homeowners association and are required to follow Nevada Revised Statute 116. I am including a copy of that decision with this Newsletter. What brings me the greatest sadness is that the association wasn't being attacked, but the person who represents us was questioned as to his knowledge of the law and that was our legal council Bob Wines. As far as I am concerned Bob had not ever steered us wrong in his opinions and has always taken our Associations business very seriously. I am also going to include some of the original correspondence from the original board in regards to dues and maintenance of the subdivision as this was the intent from the beginning to have an association. But needless to say the investigation was not without cost and the Board may have to consider a special assessment of dues to cover the additional legal fees caused by this complaint. This will be a very important agenda item for the Members meeting so I hope you all can attend so that we may have your input on the matter. But back to happier events we would like everyone to know that we have cleaned up all the architectural violation notices we had as of year. We also have additional lots with building permits in to add structures to their lots while others are completing their structures started last year. We are growing and I believe we are becoming a better and more pleasurable community. I am always available to listen to your comments and concerns so please do not hesitate to call me. Look forward to seeing you at the annual meeting.

---

Annual Members  
Meeting  
August 7, 2010  
@ 11:00 A.M.  
Bar-B-Que immediately  
following  
Come meet your  
neighbors

---

## Spring Weed Abatement

The Board is sorry to say that the Spring Weed Abatement was not completed. We tried to hire a person certified in chemical spraying to do our spring application, but due to the circumstances out of their control the process was not completed. We are now anticipating that the weed control process will be completed this fall. There will be additional work need for the fall application as now the "V" ditches will have to be mowed prior to the application process for the best results. If anyone would like to volunteer any of their services for any of this process it would be greatly appreciated.

Thank you,

The Board

## In need of Volunteers

We will be in search of persons willing to work on the election committee for the annual Members Meeting in August. The responsibilities will be of collecting ballots at the meeting and tallying the votes per the recommended procedures. If you are interested in helping please let Lee or Valeri know.

[Lee@perkspetroleum.com](mailto:Lee@perkspetroleum.com) or

[Valeri@perkspetroleum.com](mailto:Valeri@perkspetroleum.com) via mail 765 East Greg Street, Sparks, Nevada 89431 or fax 775-358-4411. We can be reached also at 775-358-4403

### Election:

Along with this newsletter the "Official Ballots" for the 2010 Elections will be included. Please mail the ballots back by 8/5/10 in the self addressed envelope or bring them to the Annual Members Meeting.

## Architectural Committee

This Committee would like to remind everyone that plans for lot improvements need to be mailed to Bob Wines office at 687 6<sup>th</sup> Street Suite 1, Elko, Nevada 89801, to be distributed to the Committee from there. You may contact Mike Cecchi with any preliminary questions you may have at:

Mike Cecchi  
C/O Bramco Construction  
325 South 18th St.  
Sparks, Nevada 89431  
775-356-1781 / cell 775-741-7610  
mike@bramcoconst.com

## Attached to this newsletter:

Ombudsman's Ruling in regards to the status of the Ruby Lake Estates Homeowners Association and its compliance with NRS 116. Also included are newsletters from the original board and its intent to collect dues for road maintenance and other common needs for the subdivision.

## Just for Thought:

### A Strong Board Member Exhibits:

Good Character, Strong Judgement, A willingness to serve, they are Committed to the best interests of the **Community as a whole**, Possess Relevant Experience or Background for the job, Previous volunteer service, and strong "People Skills"

### Weak Board Members Are:

Unable to Put the Welfare of the Community first, Work behind the Board to run things their own way, are impulsive or quick tempered, Have a Personal or Hidden agenda, Put their individual interests first, Have little or no experience in management, Leadership or Service, and are ineffective and unable to work with others for the common good.

# Ruby Lake Estates Newsletter

December 2010

## Contact Information

### Payment Address

765 East Greg St #103  
Sparks, Nevada 89431  
775-358-4403

### Submit Plans for Architectural Review & Correspondence

687 6th Street, Suite 1  
Elko, Nevada 89801

## Meeting Dates

### Executive Board

687 6th St, Elko, 1:30P.M.  
January 21, 2011  
April 22, 2011  
July 15, 2011  
October 14, 2011

### Annual Members Meeting

Ruby Valley Community  
Hall  
August 13, 2011  
@ 11:00 A.M.

### Board Members

Lee Perks, Pres.  
Mike Cecchi, V.P.  
Dennis McIntyre, Treas.  
Valeri McIntyre, Sec.  
← Mel Essington, Dir. →  
Dennis Cunningham, Dir

## Receivina RLEHA Information

We will be continuing to keep you up to date in regards to what is happening in our community via this newsletter and other types of correspondence. Please let Valeri know if you would like to receive information via e-mail, fax or mail she would be happy to update your preference in our system. You can contact Valeri @ [valeri@perkspetroleum.com](mailto:valeri@perkspetroleum.com), via fax 775-358-4411 or call her at 775-358-4403.

## Message from the President

Dear Members,

Merry Christmas to everyone! Winter is settling in with a couple of inches of snow with a lot of drifts around the Estates. A couple of sections of roads are starting to drift as of last week making travel around the estates a little more difficult.

I would like to welcome our new board member Dennis Cunningham. I would like to thank Dennis for volunteering his time to help our community.

Several more residences are close to completion. This will give us 12 residences with rumors of a couple of more starting in spring. Barrick Gold has purchased the property on both sides of Ruby Lake Estates. I have had a little personal contact with Barrick Gold so far. We do not know why they have purchased the ranch lands yet, but I am sure we will know soon.

We have purchased several sections of culverts but the weather has put a halt to the install most likely until next spring. Our goal is to install 12 culverts where ever needed over the next several years to help control the eroding of the road drainage ditches.

Unfortunately we are still spending additional attorney fees because one member continues to disagree with the board. The State of Nevada has stated that we are a legitimate association in writing and we are mandated to collect dues, have insurance, pay taxes, etc,etc.

Our dues are due again January 1, 2011, but not considered past due until January 31, 2011. Please help the board save time with you timely remittance.

Best wishes to everyone

Lee

## Spring Weed Abatement

We still have our chemicals purchased for our Weed abatement program. Due to the unfortunate availability of volunteers and the wind we were unable to proceed with the spraying this Fall. We hope we will complete it this in the Spring. Due to the delay the some of the growth in the ditches will have to be mowed prior to applying the chemicals. Please let the Board know if you would like to volunteer to help in the Spring so we can keep our ditches flowing and our fire threat down.

Thank you,

The Board

---

Annual Members  
Meeting  
August 13, 2011  
@ 11:00 A.M.  
Bar-B-Que immediately  
following  
Come meet your  
neighbors

---

## In need of Volunteers

We are always looking for volunteers. We will be in need of volunteers for the Spring Weed Abatement. This summer we will need election volunteers and person willing to help out with the annual Bar-B-Que. If you are interested in helping please let Lee or Valeri know. [Lee@perkspetroleum.com](mailto:Lee@perkspetroleum.com) or [Valeri@perkspetroleum.com](mailto:Valeri@perkspetroleum.com) via mail 765 East Greg Street, Sparks, Nevada 89431, or fax 775-358-4411. We can be reached also at 775-358-4403

## Architectural Committee

This Committee would like to remind everyone that plans for lot improvements need to be mailed to Bob Wines office at 687 6<sup>th</sup> Street Suite 1, Elko, Nevada 89801, to be distributed to the Committee from there. You may contact Mike Cecchi with any preliminary questions you may have at:

Mike Cecchi  
C/O Bramco Construction  
325 South 18th St.  
Sparks, Nevada 89431  
775-356-1781 / cell 775-741-7610  
mike@bramcoconst.com

## Attached to this newsletter:

Attached to this newsletter is your 2011 Assessment. Please be advised it is due by January 1, 2011, but will not be considered late until February 1, 2011. We would appreciate your timely payment.

## Member Contact Information:

If any of your contact information has changed or if you would like to add your email please let me know. You can reach me by phone 775-358-4403, fax 775-358-4411 or email [valeri@perkspetroleum.com](mailto:valeri@perkspetroleum.com)

# Ruby Lake Estates Newsletter

February 2011

RECEIVED FEB 25 2011  
ECC

Contact Information

Payment Address

765 East Greg St #103

Sparks, Nevada 89431

775-358-4403

Submit Plans for Architectural  
Review & Correspondence

687 6th Street, Suite 1

Elko, Nevada 89801

Meeting Dates

Executive Board

687 6th St, Elko, 1:30P.M.

January 21, 2011

April 22, 2011

July 15, 2011

October 14, 2011

Annual Members  
Meeting

Ruby Valley Community  
Hall

August 13, 2011

@ 11:00 A.M.

Board Members

Lee Perks, Pres.

Mike Cecchi, V.P.

Dennis McIntyre, Treas.

Valeri McIntyre, Sec.

Dennis Cunningham, Dir.

Vacant, Dir

## Receiving RLEHA Information

We will be continuing to keep you up to date in regards to what is happening in our community via this newsletter and other types of correspondence. Please let Valeri know if you would like to receive information via e-mail, fax or mail she would be happy to update your preference in our system. You can contact Valeri @ [valeri@perkspetroleum.com](mailto:valeri@perkspetroleum.com), via fax 775-358-4411 or call her at 775-358-4403.

## Message from the President

Dear Members,

I hope everyone's 2011 is starting off well. We have had considerable snow come and go this year. Currently the roads are clear and it is easy to get around. Next week winter may return.

We regret to inform the Membership that Mel Essington has resigned from the board. Mel was very instrumental in establishing our Reserve Study and the funding required. We will miss Mel's valuable input to the Ruby Lake Estates. Thanks for your help Mel.

We will be looking into filling the position at the next board meeting. Anyone interested may contact me:

We will start putting culverts in this spring with monies approved in last year's budget. We will need to follow the county guide lines for culverts. Anyone with time and would like to volunteer will be more than welcome.

Ruby Lake Estates elections will be held in August again and anyone interested needs to fill out the attached form and return to Valeri McIntyre by mail, person or e-mail.

Again the saga continues with one member not recognizing the Ruby Lake Estate's as a legitimate organization. This is an issue that they disagree with the State of Nevada Realty Board, the State of Nevada Attorney General and NRS 116 Statute. I think if they did the proper research they would find that NRS 116 statutes backdate to planned communities established as far back as 1981. NRS 116 is a "retroactive" law requiring Ruby Lake Estates to follow this statute. NRS 116 Part II states, that planned communities created before January 1, 1992 are NOT exempt from these regulations, nor immune from registration to the OMBUDS Office under NRS 116331.58. This is not the first time the law has run across this argument about association fees. The law is based on case law and opinions regarding planned communities. We do not expect a sudden reversal of the



---

Annual Members  
Meeting

August 13, 2011

@ 11:00 A.M.

Bar-B-Que immediately  
following

Come meet your  
neighbors

---

## Message from the President (cont)

Interpretation of the NRS 116 statute ten years later. This State of Nevada mandates that we continue to operate or subcontract the management out to private companies or the county. I am confident we are operating properly and as required by the State of Nevada law.

I hope that other members are not buying into this disagreement since the State of Nevada has already made a ruling in writing. We as a board will continue aggressively collect the few outstanding fees that have not been sent this year, as required by NRS statutes to collect.

Currently the Ruby Lake Estates Association has 1 million dollar insurance for anything that may or could happen in the Estates. For additional coverage your private homeowners policy you can add what is called "loss assessment" insurance for about \$20.00 a year for additional coverage.

If anyone has questions or needs additional information feel free to call me anytime.

Lee

## In need of Volunteers

We are looking for persons willing to assist with the culvert installation in the Spring and the Election committee this August. If you would like to volunteer please feel free to contact any of the Board Members

## Election:

Along with this Newsletter we are attaching a Nomination Form and Candidacy Disclosure Statement as required by the State. This disclosure form was updated this year by the State of Nevada and is a requirement of NRS 116 in order to run for Association Office. If you are interested in being a Member of the Board please have this turned in no later than April 20, 2011 @ 5 PM

## Architectural Committee

This Committee would like to remind everyone that plans for lot improvements need to be mailed to Bob Wines office at 687 6th Street Suite 1, Elko, Nevada 89801. to be distributed to the Committee from there. You may contact Mike Cecchi with any preliminary questions you may have at:

Mike Cecchi  
C/O Bramco Construction  
325 South 18th St.  
Sparks, Nevada 89431  
775-356-1781 / cell 775-741-7610  
mike@bramcoconst.com

## Would you be interested?

Currently there is a facebook page named the "Friends of Ruby Valley" they have pictures and information posted by people who enjoy Ruby Valley. At last check there were "8" friends. The Board is interested if you would follow our association's information ie: Newsletter, Forms and General Information on facebook if we formed a web page. Please give us your input.

## Just for Thought:

### A Strong Board Member Exhibits:

Good Character, Strong Judgement, A willingness to serve, they are Committed to the best interests of the Community as a whole. Possess Relevant Experience or Background for the job. Previous volunteer service, and strong "People Skills"

### Weak Board Members Are:

Unable to Put the Wellfare of the Community first, Work behind the Board to run things their own way. are impulsive or quick tempered. Have a Personal or Hidden agenda. Put their individual interests first, Have little or no experience in management, Leadership or Service, and are ineffective and unable to work with others for the common good.

EXHIBIT “8”

EXHIBIT “8”

Case No. NRED Control No. 11-82

**CONDENSED  
TRANSCRIPT**

STATE OF NEVADA  
IN THE DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION

ooOoo

ARTEMIS EXPLORATION )  
COMPANY, on behalf of )  
itself and all others )  
similiarly situated, )  
 )  
Claimants, )  
 )  
vs. )  
 )  
RUBY LAKE ESTATES )  
ARCHITECTURAL COMMITTEE, )  
RUBY LAKE ESTATES )  
HOMEOWNERS' ASSOCIATION, )  
LEROY PERKS, VALERI )  
McINTYRE, DENNIS McINTYRE, )  
MICHAEL CECCHI, )  
 )  
Respondents. )  
/

DEPOSITION OF ELIZABETH ESSINGTON

Taken October 13, 2011

Taken by Zoie Williams, CCR #540

Job No. 145891-B

Page 2

## APPEARANCES

For the Claimants, Artemis Exploration:  
MR. GRANT AND TRAVIS GERBER  
Attorneys at Law  
GERBER LAW OFFICES, LLP  
491 4th Street  
Elko, Nevada 89801

For the Respondents:  
MS. GAYLE A. KERN  
Attorney at Law  
KERN & ASSOCIATES, INC.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511

## INDEX

Respondents' Witness:	Page
ELIZABETH ESSINGTON -	
Direct Examination by Ms. Kern	4

## EXHIBITS

	Page
1 - 10-26-09 Letter	101

Page 4

A. Okay.

Q. So if I ask a question that is ambiguous or you don't understand it, please stop me, let me know.

A. Okay.

Q. Because if you answer it, I'll assume you understood the question.

A. Okay.

Q. Okay?

A. Uh-huh.

Q. And then you're going to have to wait until I finish asking a question before you respond -

A. Okay.

Q. - so that we have a clear record.

A. Okay.

Q. And the court reporter will be taking down everything you and I say.

A. Okay.

Q. And, actually, what anybody else says as well.

A. Yeah.

Q. And will be producing a transcript.

A. Okay.

Q. And you will be able to review that transcript.

But if you make changes, I will be able to comment on them.

A. Okay.

Q. Okay?

Page 3

## PROCEEDINGS

Elko, Nevada, Thursday, October 13, 2011  
oOo

ELIZABETH ESSINGTON,

Having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

## DIRECT EXAMINATION

(BY MS. KERN:)

Q. Mrs. Essington, can you please state your name and spell it for the record?

A. Elizabeth Essington. The last name is E-s-s-i-n-g-t-o-n.

Q. Okay. What is your residence?

A. Six - I call it Six Indian Springs Drive. I have a home office there.

Q. And is this in the Ruby Lake Estates?

A. Correct.

Q. And how long have you lived there?

A. Since '05.

Q. Have you ever had your deposition taken before?

A. No.

Q. Okay. I just want the answers.

Page 5

A. Okay.

Q. Did you assist in preparing the answers to interrogatories that were provided to my office a day or two ago?

A. Yes.

Q. Okay. I'm going to go through some of those -

A. Okay.

Q. - answers and ask some additional questions.

A. Uh-huh. Understand I didn't prepare them all, but some I - you know, I did.

Q. Well, it's my understanding that there is no other shareholder, director, or officer of Artemis Exploration?

A. No.

Q. Is that correct?

A. That's correct.

Q. Do you have any employees?

A. No.

Q. So to the extent that Artemis Exploration is the plaintiff, you are the only one that can speak for Artemis

A. That's correct.

Q. - is that correct?

Okay. You're going to have to wait until I finish so that we get a clear record.

A. Okay.

Page 10

1 right things in buying the property.

2 Um, the CCRs were never disclosed. I asked for  
3 full disclosure. It was never disclosed. And, um, I asked  
4 about CCRs. I was told there were no CCRs.

5 Q. Okay. Before we go any further, I omitted one  
6 thing that I want to make sure that you understand during  
7 the course of this deposition. You did take an oath under  
8 penalty of perjury –

9 A. Yeah. Uh-huh.

10 Q. – correct?

11 A. Correct.

12 Q. And do you understand –

13 A. Yeah.

14 Q. – that while we're in a –

15 A. I understand.

16 Q. Let me please finish, okay, ma'am? I know you  
17 want to answer.

18 A. Yeah.

19 Q. And in normal conversation, that's very common.  
20 But you have to not say anything while I'm talking and then  
21 answer. Okay? Is that okay?

22 A. That's okay.

23 Q. Even though we're in a very casual law office, the  
24 oath that you take has just as much seriousness and  
25 solemnity as the one that you would take if a judge were

Page 11

1 here; do you understand that?

2 A. Uh-huh. Yes.

3 Q. Okay. When you purchased the property, um, you  
4 said in 1993, but the deed actually recorded in June of  
5 1994?

6 A. I believe so, yeah.

7 Q. So would you agree that, as of the date the deed  
8 recorded –

9 A. Yeah.

10 Q. – is when you actually became –

11 A. Yeah.

12 Q. – became the owner of the property?

13 A. Yes.

14 Q. Okay. And then you thereafter purchased a second  
15 property?

16 A. Correct.

17 Q. And that is – um, was in March of 2010?

18 A. Correct.

19 Q. And once again, it's Artemis Exploration Company  
20 that purchased it?

21 A. Correct.

22 Q. Can you explain why Artemis owns the property if  
23 it's your residence?

24 A. The second property?

25 Q. No, the first one.

Page 12

1 A. The first one? Well, when I bought the property,  
2 I bought it for Artemis Exploration, and I was going to put  
3 an office building on it. And then all this stuff started  
4 coming in, like, you know – um, well, the CCRs, I was not  
5 clear on. So I'd ask Copenhaver to make them clear. And he  
6 said there was no harm in, you know, a company owning  
7 property. And why can I live in it? I can.

8 Q. Well, you didn't build an office building, did  
9 you?

10 A. Upstairs is my office.

11 Q. But it is a residence; is that right?

12 A. You're right. Correct. Correct.

13 Q. Are there any improvements on the second property  
14 that you purchased in March of 2010?

15 A. No.

16 Q. It is just raw land?

17 A. Correct.

18 Q. And it is your understanding that it is limited to  
19 residential use?

20 A. Uh, yes.

21 Q. Who was – you referred to somebody by the name of  
22 Copenhaver. Who is that?

23 A. He's an attorney in Elko here. I just had him  
24 explain the CCRs to me.

25 Q. Was this before your purchase in 1994?

Page 13

1 A. No, after.

2 Q. When was it?

3 A. I can't remember the dates, and I didn't keep any  
4 records of it. I just talked to him one time and I asked –  
5 I went to see him about the trailers. I had core trailers  
6 on the property, and I went to see him about the core  
7 trailers.

8 Q. What's a core trailer?

9 A. It's where you put in the core that you drill on a  
10 property.

11 Q. So were you drilling on your property?

12 A. No. It came from somewhere else.

13 Q. You were storing the trailers?

14 A. Storing, right. And that's on my bill of sale. I  
15 got a variance to have the trailers there from Steve Wright.

16 Q. A variance from the CCRs?

17 A. Right.

18 Q. And was that in 1994?

19 A. Uh, yes.

20 Q. So sometime around that period of time, you talked  
21 to Mr. Copenhaver?

22 A. It could have been there or after. I really don't  
23 remember.

24 Q. From 1994 to 2005, did you have any living  
25 facility or any living residence on the property?

Page 18

1 were?

2 A. No.

3 Q. You claim that at the time you purchased in 1994,  
4 you did not know that there were CCRs; am I understanding  
5 you correctly?

6 A. Correct.

7 Q. And are you saying that if you had known that  
8 there were CCRs, you would not have purchased the property  
9 in 1994?

10 A. In '94, had I known there were CCRs, I would have  
11 looked into them a lot closer.

12 Q. Well, you said in 1994 you did speak with  
13 Mr. Copenhaver either then or shortly thereafter?

14 A. Yeah. It was after I bought the property.

15 Q. Who or what do you think is responsible for the  
16 roads within Ruby Lake Estates?

17 A. I don't know who's responsible. I'm not sure  
18 I didn't sign up to take care of roads.

19 Q. Do you use them?

20 A. Yes. And I also pay gas tax.

21 Q. What does that have to do with it?

22 A. Well, gas tax is for road repair.

23 Q. So Elko County takes care of your roads?

24 A. The BLM takes care of the CCC Road.

25 Q. Who takes care of the roads within Ruby Lake

Page 19

1 Estates?

2 A. I don't know. I mean, nobody. We take care of  
3 our own. If we need them taken care of, we do it ourselves.

4 Q. Tell me something that you have done to take care  
5 of a road.

6 A. Uh, we drag the roads to make sure that, you know,  
7 there's no washboard on them.

8 Q. Who's "we"?

9 A. Mel and myself and Jim Sergeant.

10 Q. When did you do that? When is the last time you  
11 did that?

12 A. Last year.

13 Q. Approximately how many times have you done that?

14 A. Oh, several times.

15 Q. Did you obtain any funds from anybody to do that?

16 A. No.

17 Q. You paid for it yourself?

18 A. Correct.

19 Q. Did Mr. Sergeant pay anything?

20 A. No.

21 Q. Approximately how much did it cost?

22 A. Well, I don't know. We didn't keep costs on it.  
23 It's whatever gas you put in the pickup.

24 Q. Did you have any authority to do so?

25 A. No.

Page 20

1 Q. Did Artemis Exploration do it or did you do it  
2 individually?

3 A. We did it individually.

4 Q. Did Artemis Exploration authorize you to do it?

5 A. No. I personally didn't do it. I couldn't do  
6 something like that.

7 Q. Okay. So when you say "we," then I'll ask the  
8 question again. Who do you mean?

9 A. Mel drag -- would put a drag on behind his pickup  
10 and drag the road.

11 Q. Is there any other kind of maintenance that's  
12 required for the roads?

13 A. No.

14 Q. That's all that will ever be required?

15 A. Yes.

16 Q. Are you -- what is your background with respect to  
17 road maintenance?

18 A. Uh, I have no background in road maintenance.

19 Q. Then why do you know that that's the only thing  
20 you would ever need to do?

21 A. Because, I mean, I drive on them. We -- this is  
22 how we live out here in the counties. We don't have paved  
23 roads. We don't have anything like that. We have a Jeep  
24 trail a lot of times.

25 Q. And I don't understand what significance that is.

Page 21

1 A. Well, what it means is we don't get money out here  
2 in the counties to do roads. We take care of ourselves.  
3 We're not on welfare, you know. We don't go to the county  
4 or the city for, you know, every little thing. We take care  
5 of ourselves.

6 Q. Isn't that what an association does? It's the  
7 members taking care of themselves?

8 A. No, members do not take care of me. I take care  
9 of me.

10 Q. Do you contend that the association does not own  
11 any real property?

12 A. Yes.

13 Q. Do you contend that the association does not own  
14 any personal property?

15 A. I don't know if they own any personal property. I  
16 don't know what they own.

17 Q. Would you receive newsletters or copies of minutes  
18 of any association business?

19 A. Did I receive any?

20 Q. Yes.

21 A. Um, there was newsletters that came out. And the  
22 ones that I received -- see, everything I've got, I gave to  
23 you. I gave to Travis and Travis gave to you. That's  
24 everything I have.

25 Q. Well, you said you had articles of incorporation.

Page 26

1 about it. They had -- they just, um -- they didn't know  
2 that much about homeowners' associations. They were against  
3 it.

4 Um, I had one of Mr. Perks' friends come over.  
5 His name was Aaron, he didn't want it.

6 Q. Was Aaron a first name or last name?

7 A. Last name. He came over to the house, and he  
8 wanted to know more about it and everything.

9 Q. When was that?

10 A. That was last summer.

11 Q. Any further communications with Aaron?

12 A. No.

13 Q. When did you have the conversation with the  
14 Sergeants?

15 A. Uh, last year I asked them if they wanted a  
16 homeowners' association. They said, we don't know anything  
17 about this. We're just giving money. And they said that  
18 they were billed a long time ago, and they would not give  
19 money. And, um, they were told they were invoiced. And a  
20 lot of people did not understand homeowners' associations,  
21 they don't.

22 Q. You think you do?

23 A. Now I do. I didn't before. I knew nothing about  
24 a homeowners' association until I started reading, talking  
25 to the ombudsman, and getting various things off of the

Page 27

1 Internet by reading.

2 Q. But the ombudsman disagreed with you, right?

3 A. No, they didn't disagree with me.

4 Q. Okay. Um, and when did you talk to Teresa?

5 A. I never talked to Teresa. I talked to her sister.

6 Q. Oh, I thought you said you talked to Teresa?

7 A. No. Teresa has voiced her opinion.

8 Q. How do you know that?

9 A. Uh, through her sister.

10 Q. Who's her sister?

11 A. Vicki. I don't know their last name.

12 Q. So you spoke with Vicki?

13 A. Right. Several times.

14 Q. Is Vicki a homeowner?

15 A. Uh, she's a lot owner. She has three or four  
16 lots.

17 Q. And when's the last time you talked to Vicki?

18 A. I think it was towards the first of this year,

19 '11. I haven't got the dates, and she's very much against  
20 it.

21 Q. Is Teresa a lot owner?

22 A. Yes.

23 Q. But you haven't talked directly to Teresa?

24 A. Not directly, no.

25 Q. And then you mentioned Bill Noble?

Page 28

1 A. Correct, and he was on the board. He's -- he --  
2 he is very, very much against it, and Mr. Perks is well  
3 aware of this. He definitely -- he -- he was so much  
4 against it -- someone told him I was forming an HOA and he  
5 threatened me. He is so much against the homeowners'  
6 association. I mean, I can't even express how much he is  
7 against it.

8 Q. Did you actually end up in litigation with  
9 Mr. Noble at one time?

10 A. Yes.

11 Q. Tell me about that litigation.

12 A. He came over. I was in my yard. He came over.  
13 He came into my home. He came into my yard. He had a gun  
14 on his four-wheeler.

15 Q. When was this?

16 A. I don't have the date. I'd be giving you the  
17 wrong date. I can give you the correct date.

18 Q. Was it this year?

19 A. No. No. This was before '05. Before this  
20 homeowners' association was formed. He came over with a  
21 gun -- he was so much against it, he said, if you form a  
22 homeowners' association, I will shoot you. And that's on  
23 record at the courthouse here.

24 Q. So what was the litigation about?

25 A. Uh, he came into my yard. I had asked him to

Page 29

1 leave. He wouldn't leave and he threatened me, and he was  
2 charged for it. I mean, I don't speak to the man.

3 Q. You still don't?

4 A. No.

5 Q. But you said he's one of the ones that's against  
6 it?

7 A. Yeah.

8 Q. But you haven't talked to him since 2005?

9 A. No. He's expressed his feelings to everyone out  
10 there, I think, including Lee.

11 Q. How has he expressed his feelings, verbally or in  
12 writing?

13 A. Verbally.

14 Q. And then you said Terri Harmon?

15 A. Correct. They do not want a homeowners'  
16 association.

17 Q. When is the last time you talked to Terri?

18 A. About this, oh, it's been months. I don't go  
19 over -- she has a store, the bar over there, and I don't go  
20 there that often. I can't -- I can't even say when the last  
21 time I was in that bar.

22 Q. But you know that she is --

23 A. Yeah, she's against it.

24 Q. Would it surprise you that she's contacted the  
25 association and asked them to pay for the cattle guard in



Page 34

1 claiming.  
 2 I do not belong to a homeowners' association. I  
 3 never joined one. I did not buy into one. I would not have  
 4 bought if there had been a homeowners' association there.  
 5 Q. And there's no other misrepresentations than what  
 6 you've just been talking about?  
 7 You don't have to repeat what you've already said.  
 8 Just are there any others?  
 9 A. Not that I can think of right now.  
 10 Q. Well, once again, this is my only chance to ask  
 11 you. So I need to know whether or not there are any other  
 12 ones?  
 13 A. What they, I feel -- no, I can't think of any  
 14 right now.  
 15 Q. Um, what acts of oppression do you claim the  
 16 association did?  
 17 A. What acts of oppression? I would say that  
 18 putting -- starting this homeowners' association was wrong.  
 19 That they knew what they were doing.  
 20 Q. When you say "they," who are you referring to?  
 21 A. Um, the four -- well, Lee Perks for one. He knew  
 22 that there was no homeowners' association there when we  
 23 bought. And you can't form one afterwards unless you have  
 24 all the landowners approve it.  
 25 Q. Um, who else?

Page 35

1 A. I guess I can just say Lee Perks because he was  
 2 the one who signed for everything.  
 3 Q. So there's no other person that you believe  
 4 committed oppression against you or your company?  
 5 A. Or my company? I could say that -- see, I don't  
 6 feel I can legally say that Dennis and Valeri and them were  
 7 in on it. I don't know if they were or not. I don't know  
 8 how much they knew.  
 9 Q. Anyone else?  
 10 A. Um, Cecchi. See, I don't know what they knew.  
 11 Q. You made a comment that you can't form an  
 12 association after a certain period of time. On what do  
 13 you -- why are you saying that?  
 14 A. I didn't say that.  
 15 MS. KERN: Can you read back her answer a couple  
 16 of questions ago?  
 17 (Whereupon, it was read back.)  
 18 (BY MS. KERN:)  
 19 Q. On what do you base that statement?  
 20 A. That you have to have -- because you have to  
 21 have -- 100 percent of the landowners have got to approve  
 22 the association.  
 23 Q. And where does that exist? On what do you base  
 24 that?  
 25 MR. GRANT GERBER: You're asking for a legal

Page 36

1 conclusion that she may not have, and she said she didn't  
 2 know.  
 3 MS. KERN: I'm not asking for a legal conclusion  
 4 at all. I'm asking for her to explain her answer.  
 5 (BY MS. KERN:)  
 6 Q. Why did you make that statement?  
 7 A. Why did I make that statement?  
 8 Q. Yes.  
 9 A. Because I never bought into a homeowners'  
 10 association.  
 11 Q. No. Why did you make the statement that 100  
 12 percent of the people need to approve the association being  
 13 formed?  
 14 A. Well, if I never bought -- now, I'm not an  
 15 attorney. If I bought land and it was not a homeowners'  
 16 association, then unless I approve a homeowners' association  
 17 on my land, then there is none.  
 18 Q. And why do you think that?  
 19 A. Because it's my land.  
 20 Q. But why do you think that an association can't be  
 21 formed in accordance with the CCRs or in accordance with the  
 22 law?  
 23 A. I went through the CCRs, and it doesn't mention  
 24 homeowners' association.  
 25 Q. And that's why you're basing that comment --

Page 37

1 A. Right.  
 2 Q. -- that 100 percent of the people need to vote?  
 3 A. Right. Right.  
 4 Q. Um, in 2005 or 2006, did you threaten to sue, um,  
 5 Mr. Wright if he didn't form an association?  
 6 A. No. Mr. Wright, Steve Wright and I were friends.  
 7 I've never -- I never threatened him at any time. I would  
 8 not threaten an elderly man like that.  
 9 Q. Did you tell him that he had -- he needed to form  
 10 one?  
 11 A. No.  
 12 Q. In your answers to interrogatories you said that  
 13 several directors resigned when they out that the homeowners  
 14 was not valid (verbatim). I don't know what that sentence  
 15 means.  
 16 A. I didn't say that.  
 17 Q. Okay. I'm going to show you, it's not Bates  
 18 stamped, but it's page 4, answer to interrogatory number  
 19 eight. If you could read the last sentence to yourself.  
 20 MR. GRANT GERBER: Apparently there's a typo in  
 21 that sentence.  
 22 THE WITNESS: Yeah, there is.  
 23 (BY MS. KERN:)  
 24 Q. So can you tell me what that means? Based on  
 25 information and belief, several directors resigned when they

Page 42

Page 44

1 Q. Did they accept the cattle guards?

2 A. I don't remember.

3 Q. Did they accept the culverts?

4 A. I don't remember.

5 Q. Did they accept the parcel of land that's owned by  
6 the association?

7 A. Um, first of all, I do not agree there is an  
8 association. And I don't know, I never had that  
9 information.

10 Q. Do you understand that Elko County accepted the  
11 streets and roadways at a meeting?

12 A. I was not at the meeting, so I wouldn't know.

13 Q. Have you ever reviewed any other covenants,  
14 conditions, or restrictions, or a declaration for any other  
15 land other than the land in Ruby Lake Estates?

16 A. No.

17 Q. So it would be correct then to say that you've  
18 never read or seen a declaration that described common area  
19 within an association; is that correct?

20 A. I would say that this is the first time I've ever  
21 gone through CCRs.

22 Q. So you've never seen how common area is described  
23 in other declarations?

24 A. No.

25 Q. Okay. So you don't know whether or not this is

1 mineral or --

2 A. Then it's leased out.

3 Q. What's leased out?

4 A. Whatever I discover.

5 Q. So you own the land where you discover it?

6 A. No. No.

7 Q. Then what are you leasing?

8 A. I'm leasing out minerals.

9 Q. You own the minerals?

10 A. The minerals, right.

11 Q. And how do you own the minerals?

12 A. Um, through exploration. And I'm not going to go  
13 into this. This has nothing to do with this case. I'm not  
14 going into my business with you. If you want to get  
15 educated on it, I will give you a few books.

16 Q. Are you refusing to answer?

17 A. I'm refusing to answer because I'm not going to go  
18 into all my exploration and all this. This hasn't got  
19 anything to do with this case.

20 Q. Um, I am going to tell you that Artemis

21 Exploration is a plaintiff and brought this litigation.

22 A. That's correct.

23 Q. It is my contention that you are required to  
24 answer these discussions and discovery and questions in --  
25 let me finish, ma'am -- in this deposition, and you are

Page 43

Page 45

1 unusual or usual?

2 A. I would say that -- well, if I've never seen any  
3 before, I wouldn't know, would I?

4 Q. That's what I would assume, but that's why I'm  
5 asking the question.

6 A. Yeah, that's -- this is the first CCRs I've read.

7 Q. Where's the principal place of business of Artemis  
8 Exploration?

9 A. I have a home office.

10 Q. And is that at the Six --

11 A. Yes. Lot six, I call it. I don't know -- they  
12 gave us an address, but we don't pay too much attention to  
13 it.

14 Q. Does it -- does Artemis conduct business from  
15 anywhere else?

16 A. Um, I conduct business all over.

17 Q. What does that mean?

18 A. I conduct business where business takes me.

19 Q. What is the businesses of Artemis Exploration?

20 A. It's exploration.

21 Q. Of what?

22 A. Minerals exploration. So I can be in Nevada one  
23 year. I can be in Mexico. I can be in South America.  
24 That's what it is.

25 Q. Once it explores and discovers some sort of a

1 required to do so in these interrogatories. Are you  
2 refusing to do so?

3 A. I'm refusing to discuss my whole business with  
4 this issue.

5 Q. Okay. I will tell you that I will be seeking a  
6 motion to compel and asking for attorney's fees and costs  
7 associated with that motion from Judge Gang based upon your  
8 refusal. Do you understand that?

9 A. I understand that.

10 Q. Do you continue to refuse to answer any of my  
11 questions with respect to the business of Artemis  
12 Exploration?

13 A. I am not going -- I don't see where it has  
14 anything to do with the forming of a homeowners'  
15 association.

16 Q. My question was do you refuse to answer the  
17 questions?

18 A. Yes, I do.

19 Q. Okay. Do you conduct business at either the --  
20 either of the properties owned within Ruby Lake Estates?

21 A. I have a home office.

22 Q. Okay. Do you have any other residence, other than  
23 the one in Ruby Lake Estates?

24 A. Yes.

25 Q. Where is your other residence?

Page 50

Page 52

1 MR. GRANT GERBER: If you shout at her again,  
 2 we're walking out.  
 3 MS. KERN: I did not shout at her.  
 4 MR. GRANT GERBER: You did shout.  
 5 MS. KERN: Oh, stop it.  
 6 MR. GRANT GERBER: If you shout at her again,  
 7 we're going -- we're walking out.  
 8 MS. KERN: Please do not create a false record.  
 9 MR. GRANT GERBER: Please do not shout. Please do  
 10 not shout anymore.  
 11 MS. KERN: Stop it. You're lying.  
 12 MR. GRANT GERBER: You did that. No, I'm not.  
 13 You shouted. And if you shout again, we're walking out.  
 14 MS. KERN: Stop it.  
 15 MR. GRANT GERBER: You stop shouting.  
 16 MS. KERN: I am not shouting.  
 17 MR. GRANT GERBER: You did shout at her. You  
 18 said -- you shouted. And if you shout at my client again,  
 19 we walk out.  
 20 MS. KERN: I am not shouting.  
 21 MR. GRANT GERBER: Keep going.  
 22 MS. KERN: I did not shout, and I will not shout.  
 23 MR. GRANT GERBER: Keep going, but do not shout.  
 24 MS. KERN: I'm not going to shout, because I never  
 25 did. Now, stop it.

1 Q. Can you do that?  
 2 A. Finish, please.  
 3 Q. That's a yes or no, ma'am.  
 4 A. Yes, I can wait.  
 5 Q. Thank you.  
 6 Do you agree that you answered and admitted that  
 7 the property is titled in the name of Ruby Lake Estates  
 8 Homeowners' Association?  
 9 A. Yes, it is.  
 10 Q. When you say that it is not common area, what do  
 11 you mean?  
 12 A. It's not -- what do you mean when you say it's not  
 13 a common area? You still talking about that one property?  
 14 Q. The rest of the sentence says, "and is not owned  
 15 in common by any other person or entity."  
 16 I'm asking the question then, following up on  
 17 that, is it your contention that it is not common area?  
 18 A. The acreage that was deeded in 2007? You're  
 19 talking about the acreage that was deeded in 2007?  
 20 Q. Yes. We're talking about this answer.  
 21 A. And continue. I forgot what you had said.  
 22 Q. Do you contend that the property that is titled  
 23 and owned by the association is not common area?  
 24 A. Yeah, it's not.  
 25 Q. What is your understanding of what common area is?

Page 51

Page 53

1 (BY MS. KERN:)  
 2 Q. I am going to quote it again. Let me finish the  
 3 entire sentence, please. "The parcel of land acquired by  
 4 Ruby Lake Estates Homeowners Association in 2007 is owned  
 5 and titled in the name of Ruby Lake Estates Homeowners  
 6 Association and is not owned in common by any other person  
 7 or entity"; is that what you answered?  
 8 A. It was acquired in 2007, right?  
 9 Q. Is that what you answered?  
 10 A. Okay. When was it acquired in 2007? They claim  
 11 they were an association in 2007.  
 12 Q. Did you acknowledge and admit in this answer that  
 13 the property is titled in the name of Ruby Lake Estates  
 14 Homeowners Association --  
 15 A. It is. It is titled that way.  
 16 Q. Okay. Please wait until I finish posing my  
 17 question, please. Can you do that?  
 18 A. Go ahead.  
 19 Q. Can you do that?  
 20 A. Go ahead.  
 21 Q. Please answer the question.  
 22 A. Go ahead. I thought you were still reading.  
 23 Q. I would like you to answer the question. Can you  
 24 wait until I finish, please?  
 25 A. Okay. I'm waiting. Finish.

1 A. My understanding of common area is that everyone  
 2 owns the same -- you know, everyone is involved into the  
 3 same property or each property is in common.  
 4 Q. And what do you base that understanding on?  
 5 A. Just by reading.  
 6 Q. Reading what?  
 7 A. Land issues. But my property out there, when I  
 8 bought it, there was no homeowners's association.  
 9 Q. So you don't understand that if an association  
 10 owns property, that it is common area?  
 11 A. I don't agree there's a homeowners's association  
 12 out there.  
 13 Q. Mine was a generic question, ma'am.  
 14 If an association owns property, do you understand  
 15 that that is, under the law, understood as common area? And  
 16 if you understand or not?  
 17 A. I don't. I don't. I don't understand.  
 18 Q. Okay. And is it your contention if the  
 19 association does not maintain the roads, that nobody should  
 20 maintain them?  
 21 A. If no one maintains the roads?  
 22 Q. No. If the association does not maintain the  
 23 roads.  
 24 A. That no one should maintain them?  
 25 Q. Correct.

Page 58

Page 60

1 MR. GRANT GERBER: No.  
 2 THE WITNESS: It was a joke I was going to tell.  
 3 (BY MS. KERN:)  
 4 Q. What about the fencing?  
 5 A. The fencing? I have fencing around my property.  
 6 Q. What about the fencing with respect to the roads?  
 7 A. Um --  
 8 Q. I'm not asking about your property.  
 9 A. I don't think there's any road around the edges of  
 10 the fencing.  
 11 Q. What about the entrance signs?  
 12 A. The entrance signs? Um, I'm trying to think what  
 13 entrance signs there are. Which ones do you mean?  
 14 Q. Do you -- you don't believe that there are any  
 15 entrance signs?  
 16 A. Going down into the Ruby Lake Estates, there's a  
 17 big sign there that says a CCC Road, that's it. And the BLM  
 18 put that up.  
 19 Q. I'm going to ask you briefly to look at 00001  
 20 through 00005.  
 21 A. I can't read it, but I will look at it.  
 22 Q. You produced it.  
 23 A. This is Ruby Lake Estates. You mean the maps?  
 24 Q. Yeah. I just wanted you to briefly look at those.  
 25 A. Yeah, okay.

1 Q. I believe you're -- that's the last page that I  
 2 asked you to look at.  
 3 A. Yeah. Okay.  
 4 Q. Do you recognize those documents?  
 5 A. Yes, I sure do.  
 6 Q. Okay. And are those the documents that were  
 7 executed at or about the time that you first entered into an  
 8 agreement to purchase the property?  
 9 A. They were mailed to me after I purchased the  
 10 property.  
 11 Q. Okay. Well, let's look at these again then.  
 12 A. I know this seems --  
 13 Q. If you could please look at page 00018. Is that  
 14 your signature?  
 15 A. Yes, that is my signature.  
 16 Q. Okay. And it's dated July 26, 1993; is that  
 17 correct?  
 18 A. That is correct.  
 19 Q. So would you agree that you executed that document  
 20 on July 26th, 1993, for the purchase of the property within  
 21 Ruby Lake Estates?  
 22 A. Yes.  
 23 Q. Okay. And at page 00014, a document that you  
 24 signed in July of 1993, would you agree that in paragraph  
 25 one, it says -- and you tell me if I'm reading this wrong --

Page 59

Page 61

1 Q. You had those in your possession, correct?  
 2 A. Correct.  
 3 Q. And did you receive those at or about the time you  
 4 purchased your first parcel in Ruby Lake Estates in 1994?  
 5 A. No, I did not receive those.  
 6 Q. When do you claim you received them?  
 7 A. Um, I think I went to the courthouse and got them.  
 8 Q. When?  
 9 A. I don't remember exactly when.  
 10 Q. Was it 1995?  
 11 A. Ninety-five? I -- I can't tell you, because I'm  
 12 not sure.  
 13 Q. 1993?  
 14 A. I'm not sure.  
 15 Q. 1996?  
 16 A. I'm not sure.  
 17 Q. Yesterday?  
 18 A. I'm not sure.  
 19 Q. If you could, could you please review 00013  
 20 through 00018? And I'll ask you some questions about them.  
 21 A. Okay. That's when I asked about --  
 22 Q. Excuse me. Right now could you just look at them,  
 23 and then I'll ask you some questions? Thank you.  
 24 A. Okay. This is the -- how far did you want me to  
 25 go to?

1 "Subject to current taxes and assessments for the fiscal  
 2 year and to conditions, covenants, easements, encumbrances,  
 3 exceptions, reservations, restrictions, rights, and  
 4 right-of-way of record."  
 5 A. Right.  
 6 Q. Is that correct?  
 7 A. Right.  
 8 Q. And then I'm going to show you what is 00017. And  
 9 if you will look at paragraph 13 of that agreement.  
 10 And did you agree that this was the entire  
 11 agreement for the purchase of the property within Ruby Lake  
 12 Estates?  
 13 A. Correct.  
 14 Q. I'm going to ask you to look at document 00019.  
 15 And would you agree with me that there is -- that this is  
 16 the deed for your property --  
 17 A. Yes.  
 18 Q. -- correct?  
 19 A. Yes.  
 20 Q. And that deed was subject to taxes for the fiscal  
 21 year and subsequently covenants, conditions, restrictions,  
 22 exceptions, and reservations, easements, encumbrances,  
 23 leases or licenses, rights, and rights-of-way of record, if  
 24 any"?  
 25 A. Yeah, that's what it says.

Page 66

Page 68

1 Artemis Exploration? I mean, I got this from you.  
 2 A. Yeah.  
 3 Q. So I'm trying to figure out, I'm assuming, and  
 4 maybe I should ask that question --  
 5 A. Yeah.  
 6 Q. -- when you put together the documents that you  
 7 were going to produce in connection with this case --  
 8 A. I put --  
 9 Q. -- are they documents from your records of Artemis  
 10 Exploration?  
 11 A. Yeah. Yeah.  
 12 Q. Okay.  
 13 A. I don't remember.  
 14 Q. Do you recall in 2000 whether you paid the hundred  
 15 dollars?  
 16 A. I never paid it, no.  
 17 Q. That's your recollection?  
 18 A. Yes. I never gave them any money up until they  
 19 told me that there was a homeowners' association, and I had  
 20 no idea how one was formed.  
 21 Q. And is that because you told Mr. and Mrs. Wright  
 22 that unless they formed an association, you wouldn't pay  
 23 anything?  
 24 A. No, I never ever talked to Mr. and Mrs. Wright  
 25 like that. I never ever talked to Mr. and Mrs. Wright

1 the owners had voted.  
 2 MR. GRANT GERBER: May we take a recess? We've  
 3 been going an hour and a half.  
 4 MS. KERN: Sure. I don't know who just entered  
 5 the room.  
 6 MR. GRANT GERBER: This is my son, Travis.  
 7 MS. KERN: Oh, okay.  
 8 MR. TRAVIS GERBER: I've been over at another  
 9 court hearing --  
 10 MS. KERN: Okay.  
 11 MR. TRAVIS GERBER: -- and dad was sitting in for  
 12 me.  
 13 MS. KERN: Okay.  
 14 MR. TRAVIS GERBER: Gayle Kern?  
 15 MS. KERN: Yes.  
 16 MR. TRAVIS GERBER: Nice to meet you.  
 17 MS. KERN: Hi, Travis.  
 18 MR. PERKS: Lee Perks. Nice to meet you.  
 19 MR. TRAVIS GERBER: Okay.  
 20 MR. GRANT GERBER: Can we go off the record?  
 21 MS. KERN: No. Do you need to make something on  
 22 the record?  
 23 MR. GRANT GERBER: We need to take a break.  
 24 MS. KERN: Okay.  
 25 MR. GRANT GERBER: May we go off the record now?

Page 67

Page 69

1 together. And we never ever talked about an association to  
 2 Mr. Wright. He never ever brought that up, nor did I.  
 3 Q. Didn't you tell them that you wouldn't pay unless  
 4 they formed an association?  
 5 A. That is not true.  
 6 Q. Did you threaten a lawsuit or file a lawsuit  
 7 because they told you in 2000 that you would be needing to  
 8 pay a yearly fee of a hundred dollars?  
 9 A. No.  
 10 Q. I'm going to ask you to look at 00031. And ask if  
 11 you contend that document is dated after 2006 or before  
 12 2006?  
 13 A. Where's the date?  
 14 Q. Or if you don't know, you don't know.  
 15 A. Oh, I don't know.  
 16 Q. So you certainly don't contend that it was after  
 17 2006, you just don't know?  
 18 A. I don't know.  
 19 Q. Similarly 00032, do you contend that that was  
 20 after 2006, or do you know?  
 21 A. I don't know what date it was. I can't say what  
 22 it was.  
 23 Q. Okay. Did you start paying assessments in 1997?  
 24 A. I started paying when they invoiced me, because I  
 25 checked and I was told I had to pay because the majority of

1 MS. KERN: I don't know what it's about. So just  
 2 tell me what it's about.  
 3 MR. TRAVIS GERBER: I'm going to fill in for him.  
 4 I want him to tell me what's happened so that I can --  
 5 MR. GRANT GERBER: So we want to take a break.  
 6 Okay?  
 7 MS. KERN: Okay. So you can certainly take a  
 8 break and leave the room. Absolutely.  
 9 MR. GRANT GERBER: Take a break and walk around a  
 10 little, if it's okay?  
 11 MS. KERN: Oh, okay. Ten minutes?  
 12 MR. GRANT GERBER: Sure.  
 13 MS. KERN: That be fine?  
 14 MR. TRAVIS GERBER: Sure.  
 15 (Whereupon, a recess was had.)  
 16 MS. KERN: Okay. We're back on the record, and  
 17 Mr. Travis Gerber is now present.  
 18 (BY MS. KERN:)  
 19 Q. At some point in time was Mr. Essington, your  
 20 husband, elected to the board of directors?  
 21 A. Yes. He wasn't -- was he elected? I don't  
 22 remember. I know he was on the board of directors.  
 23 Q. Okay. And was he authorized by Artemis  
 24 Exploration to be a member of the board of directors?  
 25 A. He didn't ask and I didn't say. He was there. It

Page 74

1 A. Yeah, I do. That one I do. Because I recognize  
2 that it's Lee's brother-in-law. That's the way I was told  
3 it was, I don't know.  
4 Q. And what's the significance of that?  
5 A. Nothing. Nothing.  
6 Q. Oh, okay. The letter from Mr. Heckman references  
7 a vendetta that you have.  
8 A. Yeah, about a building.  
9 Q. Can you tell me about that?  
10 A. Yeah, I can. A letter came around saying everyone  
11 should put up a barn instead of, you know, regular old  
12 buildings. So the landowners started putting up barns. And  
13 then he goes and puts up an industrial-looking building.  
14 Q. Who's "he"?  
15 A. Lee. Lee Perks. And the landowners were upset  
16 about it. Um --  
17 Q. What landowners?  
18 A. Okay. Um, what's the name? Um, his neighbor  
19 across the street. Um, I don't remember all their names.  
20 I'm trying to think of their names. Oh, who's across the  
21 street? He lives in a garage. I wish I had wrote their  
22 names down. The Sergeants were very upset about it. I know  
23 the Sergeants were upset. Um --  
24 Q. You had a discussion with the Sergeants?  
25 A. They just said they didn't like the building and

Page 75

1 they went over and told Mr. Perks.  
2 Q. Were you there when they said that?  
3 A. No, I was there -- they said that to me, and they  
4 said they were going to talk to Mr. Perks about it.  
5 Q. Were you upset about the building?  
6 A. No. It's two miles -- it's two miles away from  
7 me. And, um, Vicki felt it hurt the value of her lot.  
8 Q. Vicki who?  
9 A. I don't know her last name. Rocky Rowe's twin  
10 sister, and I don't know her last name.  
11 Q. Okay. Anybody else?  
12 A. I'll think of his name.  
13 Q. And when would you have these discussions with  
14 these people when it was discussed?  
15 A. I asked, um, the Sergeants how they felt about it.  
16 And they were disturbed about it.  
17 Q. Well, if you didn't care about it, what prompted  
18 you to ask them?  
19 A. Rocky Rowe came over and said that his sister was  
20 upset about it. She talked to Bob Wines about it, Vicki  
21 did.  
22 Q. My question was, if you weren't upset about it,  
23 what prompted you to ask the Sergeants about it?  
24 A. I think the Sergeants asked me. I'm not sure on  
25 that one. It came up in a conversation. And I wanted to

Page 76

1 put up a big building to hold my core, and I didn't. I  
2 moved the core at a cost of \$20,000, because I respected the  
3 landowners.  
4 Q. When was that?  
5 A. That was in 2005, around that time. They asked me  
6 to move it. I moved it. I didn't have to move them, but I  
7 did. So it was a principle thing. That's what it was. I  
8 was asked -- I didn't have to move those core trailers.  
9 Q. Who's Nancy Porter?  
10 A. She's an attorney here in town.  
11 Q. Is she your attorney?  
12 A. No.  
13 Q. Is she the attorney for Artemis Exploration?  
14 A. No.  
15 Q. Has she ever been?  
16 A. No.  
17 Q. Why would she have written a letter on their  
18 behalf?  
19 A. Excuse me, she was. I hired her to do the  
20 research, whether or not there was a homeowners' association  
21 formed, you know, before 19- or 2005 or, you know, that I  
22 knew nothing about it. It was research I hired her for.  
23 Q. And Richard Harris is still the resident agent --  
24 A. Right.  
25 Q. -- for Artemis Exploration?

Page 77

1 A. Correct.  
2 Q. I'm going to show you what's marked as RLE-019A, a  
3 letter dated September 15, 1997. Do you recognize that?  
4 A. No, I don't.  
5 Q. Okay. Who's Bill Harmon?  
6 A. Uh, he owns the -- the store out there, the Ruby  
7 Lake Estates Resort.  
8 Q. And do you ever recall Mr. Harmon sending you any  
9 correspondence requesting payment of any funds with respect  
10 to Ruby Lake Estates?  
11 A. No. Huh-uh.  
12 Q. I'm going to show you what's been marked RLE-019B;  
13 does that refresh your recollection?  
14 A. I've seen the letter, but I never received it. It  
15 was never mailed to me. They showed it to me after I was  
16 out there for a time.  
17 Q. Are there any corporate resolutions or minutes  
18 authorizing the commencement of this lawsuit?  
19 A. No.  
20 Q. Do you recall going to the August 11, 2007,  
21 meeting?  
22 A. Where was the meeting held? I don't recall going  
23 to any of the meetings.  
24 Q. Who is G.M. Essington? Is that Mel Essington?  
25 A. Uh-huh.

Page 82

Page 84

1 the United States.

2 Q. Who's Raymond Gardener? What do you mean held by  
3 Raymond Gardener?

4 A. Raymond Gardener holds 51 percent of the mineral  
5 rights. Um, doesn't it state that right there?

6 Q. Yes. Okay. So what does that mean?

7 A. Well, the U.S. owns the other 50 percent of the  
8 mineral rights. And I've got to look into that with the  
9 BLM, whether or not -- the United States government held  
10 that for prospecting.

11 Q. And what does that have to do with disclosures  
12 that you received?

13 A. The disclosures I received from -- from  
14 Mr. Prater?

15 Q. When you purchased the property, yes. That was my  
16 question.

17 A. That was the disclosure right there.

18 Q. Were there any other disclosures --

19 A. Not that I can --

20 Q. -- with respect to the real property?

21 A. No.

22 Q. Did you pay cash for the property?

23 A. Yes.

24 Q. How much?

25 A. Something around 30,000. Something like that. I

Page 83

Page 85

1 don't remember the exact amount. I don't remember.  
2 Anywheres from 28 to 30. I sort of forget there.

3 Q. I'm going to show you what's been marked as  
4 RLE-027. Do you see that?

5 A. Yeah.

6 Q. Does that represent a checking account on which  
7 you are an owner?

8 A. That's my -- our personal checking account.

9 Q. Why didn't Artemis Exploration write the check?

10 A. Um, I gave him the money and he wrote the check on  
11 our account.

12 Q. Oh, so you contend that there's a check from  
13 Artemis Exploration to this --

14 A. No, I gave cash.

15 Q. From whom?

16 A. From me.

17 Q. Is there any money from Artemis Exploration that  
18 is represented in connection with the payment of that check?

19 A. Yes, the money I gave him.

20 Q. Artemis Exploration gave you cash?

21 A. Yes.

22 Q. They have a bank account?

23 A. Yes.

24 Q. And they have some kind of a withdrawal so you can  
25 get cash out of it instead of a check?

1 A. Right.

2 Q. And why would you do it by cash instead of a  
3 check?

4 A. I probably ran out of checks.

5 Q. So you have an ATM card or some kind of withdrawal  
6 card for Artemis Exploration?

7 A. No, I just go to the bank and get it. I go to the  
8 bank and I can take out X amount of dollars.

9 Q. What mechanism do you use to do that?

10 A. Go in and use my account number and take the money  
11 out.

12 Q. So you don't write a check or you don't have any  
13 kind of a card to do that?

14 A. Not if I'm out of checks, which happens  
15 occasionally to everyone.

16 Q. Okay. Show you what's been marked as RLE-036. Do  
17 you have any evidence that Artemis Exploration reimbursed  
18 for that check?

19 A. Uh, I'm pretty sure if he wrote a check, that I  
20 reimbursed him by cash.

21 Q. And by I, you mean Artemis Exploration?

22 A. Right.

23 Q. So you would have been out of checks for Artemis  
24 Exploration again and needed to use cash?

25 A. No. No. He did that on his own.

1 Q. No. I'm asking if Artemis Exploration reimbursed  
2 him.

3 A. To my knowledge, yes.

4 Q. And how would -- how would Artemis Exploration  
5 have done the reimbursement?

6 A. By cash.

7 Q. And why would Artemis Exploration use cash at that  
8 time?

9 A. I'm saying I think they would have -- I gave cash.  
10 I mean, I don't remember.

11 Q. Would it be reflected on your financial  
12 statements?

13 A. What's the date? That's '07, isn't it? I'll have  
14 to look.

15 Q. Do you believe it would be reflected on the  
16 financial statements --

17 A. Yes.

18 Q. -- of Artemis Exploration?

19 A. Yes. Yes. Yes, it would be.

20 Q. Would it be reflected on the bank statements of  
21 Artemis Exploration?

22 A. No. It wouldn't -- you know, it does not say when  
23 I draw out cash what it's for.

24 Q. But it would evidence the cash withdrawal,  
25 correct?

Page 90

1 A. Correct.  
 2 Q. But he, in fact, doesn't own that lot?  
 3 A. Correct.  
 4 Q. Did you know that he was appearing to represent  
 5 that he did?  
 6 A. No.  
 7 Q. Did you authorize him on behalf of Artemis  
 8 Exploration to write this letter as the owner of Block G,  
 9 Lot 6?  
 10 A. No.  
 11 Q. Did you see this letter on or about November 13,  
 12 2006?  
 13 A. Let me read it. No, I didn't pay too much  
 14 attention to what they were doing. I had no idea whether it  
 15 was legal or illegal until I started investigating it. I  
 16 didn't pay too much attention to what they were doing.  
 17 Q. So when he wrote to Mr. Cecchi as the chairperson  
 18 of the Ruby Lake Estates Homeowners' Association  
 19 Architectural Review Committee in November of 2006 and his  
 20 concern about enforcement of the CCRs, that was not on your  
 21 behalf?  
 22 A. No.  
 23 Q. If you had known that he had been doing this,  
 24 would you have told him not to because he didn't have  
 25 authority from Artemis Exploration?

Page 91

1 A. I would not have told him what to do, no. I just  
 2 would -- I just would not have.  
 3 Q. So then by implication, Artemis Exploration was  
 4 okay that he would do this?  
 5 A. Well, they represented it as a homeowners'  
 6 association.  
 7 Q. Okay. I'm really not asking about the  
 8 association. I'm asking about the actions of Mr. Essington,  
 9 though.  
 10 A. I did not give him permission to write that  
 11 letter.  
 12 Q. But you didn't tell him that he couldn't?  
 13 A. That's correct.  
 14 Q. And did you know that he was representing himself  
 15 to be Block G, Lot 6, speaking about that lot?  
 16 A. Would I have known? He was living there, but I  
 17 didn't see the letter. So I can't -- I would not have  
 18 authorized it probably, no.  
 19 Q. So if you had known that he had done this, you  
 20 would have said, you do not have authority from Artemis  
 21 Exploration to do this?  
 22 A. Let's put it this way. I do not agree that  
 23 there's a homeowners' association there.  
 24 Q. My question is only about Mr. Essington's conduct,  
 25 though. I am asking you --

Page 92

1 A. I can't answer for his conduct.  
 2 Q. I'm asking you if Artemis Exploration would have  
 3 authorized this conduct if they had known about it?  
 4 A. If they had known that there was a homeowner's  
 5 association that was not formed properly, Artemis would  
 6 never have approved that letter.  
 7 Q. This has nothing to do with the association. This  
 8 has to do with whether Artemis Exploration would have  
 9 prevented or stopped Mr. Essington from writing a letter in  
 10 November 13, 2006, with respect to the architectural review  
 11 committee.  
 12 A. To the architectural review committee? If he  
 13 wrote a letter, that letter to the architectural review  
 14 committee, because under the CCRs, the architectural review  
 15 committee is legal, I would have approved it. But to a  
 16 homeowners' association, I would not have approved it.  
 17 Q. So your concern for Artemis Exploration wasn't  
 18 whether or not he had the authority to represent the  
 19 corporation. It was simply to what entity he was purporting  
 20 to have authority?  
 21 A. Correct. The architectural review committee is --  
 22 it's in the CCRs.  
 23 MR. TRAVIS GERBER: Would this be a good time to  
 24 break for lunch?  
 25 MS. KERN: You know, I'm almost done, and I would

Page 93

1 love to finish up, and then we can get back and start with  
 2 Mr. Essington.  
 3 MR. TRAVIS GERBER: Because I do have a lunch  
 4 meeting.  
 5 MS. KERN: Oh, okay. Well, you didn't --  
 6 MR. TRAVIS GERBER: If we could come back at 1:00.  
 7 I'm sorry I didn't tell you sooner.  
 8 MS. KERN: Okay. Well, yeah, I only have a little  
 9 bit left, so --  
 10 MR. TRAVIS GERBER: Well, you still have Mel too.  
 11 MS. KERN: Okay.  
 12 MR. TRAVIS GERBER: We could finish with her and  
 13 then go straight to Mel after lunch.  
 14 MS. KERN: Okay. Okay. So back at?  
 15 MR. TRAVIS GERBER: How about quarter after one?  
 16 MS. KERN: That's great. I appreciate you  
 17 accommodating me.  
 18 MR. TRAVIS GERBER: Yeah, that will give us just  
 19 over an hour. All right.  
 20 (Whereupon, a recess was had.)  
 21 MS. KERNS: Okay. We're back on the record. Um,  
 22 I just have a few more questions, Mrs. Essington. My office  
 23 received a fax today or an e-mail, I'm not quite sure how it  
 24 came, with respect to the signed answers to interrogatories.  
 25 Before that, I had not been provided that.



Page 98

1 MR. TRAVIS GERBER: I'm going to object. It's  
2 calling for a legal conclusion.  
3 THE WITNESS: I don't know.  
4 MS. KERNS: I'm asking her understanding.  
5 MR. TRAVIS GERBER: But I'm objecting to the  
6 question on the basis that you're asking for her -- to ask  
7 for a legal conclusion. She's a layperson.  
8 (BY MS. KERNS:)  
9 Q. No, I'm following up on your answer. You told me  
10 the county commissioners did that, and I'm just asking --  
11 A. And I'm just saying that I don't know who enforces  
12 them. I guess if someone objected, they'd take me to court.  
13 Q. And you do not believe that there is any specific  
14 exception that allows commercial activity on your property,  
15 correct?  
16 A. On my property? If anyone objects to it, they can  
17 certainly contact me or contact Travis.  
18 Q. Actually, not my question. My question is, do you  
19 believe that there is an exception that allows you to  
20 perform commercial activities on your property within Ruby  
21 Lake Estates?  
22 A. I really don't have commercial there. It's  
23 research. It doesn't -- I do not have any large equipment.  
24 There's nothing commercial about it.  
25 Q. Do you ever have business meetings there?

Page 99

1 A. No.  
2 Q. You never invite people to attend meetings at your  
3 house --  
4 A. No.  
5 Q. -- with respect to Artemis Exploration?  
6 A. Never. If I have meetings, I have them in Elko at  
7 one of the hotel meeting halls. I never have ever had a  
8 meeting in there. I wouldn't -- I just don't. It's too far  
9 out.  
10 Q. And as I recall, it was your testimony that you  
11 had absolutely no issue or no problem with Mr. Perks's  
12 building because he was several miles away. You had heard  
13 people were complaining, but you personally had no problem?  
14 A. The only problem I personally would have would be  
15 the height of the building that -- I inquired about a  
16 building. They said I had to have it 15 feet high, if I  
17 were to put one up.  
18 Q. Well, when I asked you about it, you said you  
19 didn't care about it.  
20 A. I really -- I really personally do not care that  
21 much about it. I wouldn't take him to court or really fight  
22 it. I wrote the letter and let it go.  
23 Q. You wrote the letter?  
24 A. I wrote a letter about his building.  
25 Q. Okay. You didn't produce a letter when requested?

Page 100

1 A. I couldn't find it.  
2 Q. Okay.  
3 MS. KERNS: I'm going to mark this as the next  
4 item -- or actually the first item, sorry.  
5 (Whereupon, Exhibit 1 was marked for identification.)  
6 MS. KERNS: There's a copy for you, Mr. Gerber.  
7 THE WITNESS: Yeah, I wrote this letter. Um, a  
8 lot of the people out there were complaining about it, so I  
9 thought I'd write them a letter.  
10 (BY MS. KERNS:)  
11 Q. Well, this sounds like you're the one complaining  
12 about it, not everybody else.  
13 A. Well, there was a lot of complaints about it, and  
14 Lee's aware of it.  
15 Q. So it's your testimony that you wrote this letter  
16 because other people were complaining?  
17 A. Well, I wrote the letter because the building was  
18 out of place in the area. And when I had my core trailers  
19 out there, I was asked to move them. And no one had to  
20 write letters or do anything, I just moved them. They  
21 wanted to keep a nice community, um, otherwise residential,  
22 you know, area. And I moved my trailers at an expense of  
23 \$20,000.  
24 Q. But weren't you only allowed to keep the trailers  
25 there because of a short --

Page 101

1 A. I could --  
2 Q. Let me finish, please --  
3 A. Okay.  
4 Q. -- because of a short-term variance that you  
5 received?  
6 A. I could have put up a building and did not. I  
7 didn't -- the building -- the trailers could have been  
8 stored in a building, and I did not do that. I moved them.  
9 Q. Well, you were never denied the ability to put up  
10 a building, were you?  
11 A. I never asked, no. But I wouldn't do it  
12 personally, it was -- I would not do it. I would not do it  
13 to the landowners behind me.  
14 Q. So you were upset about the building that  
15 Mr. Perks put up?  
16 A. No, I was not upset. It was -- I thought I would  
17 inform him, hey, you know, you're doing this.  
18 Q. Oh, did you mail this to him?  
19 A. Um, no, I don't think I did. I didn't have enough  
20 letters to mail out at the time. And I was on my way out of  
21 town.  
22 Q. Didn't you deliberately not mail it to Mr. Perks?  
23 A. No, that is not true. Why would I send it to  
24 everybody else, including his cousins, and not give it to  
25 him deliberate? I knew his cousins would give it to him.

Page 106

1 to accommodate her and make it so that a copy could be made  
 2 without reimbursing the court reporter.  
 3 MR. TRAVIS GERBER: Okay.  
 4 MS. KERNS: I don't want to provide for that.  
 5 MR. TRAVIS GERBER: Okay. I'm not ordering a copy  
 6 of the deposition either.  
 7 MS. KERNS: Okay. Well, the original will be  
 8 available with the court reporter. You can make  
 9 arrangements, if you want to see it, to do it that way.  
 10 MR. TRAVIS GERBER: Okay.  
 11 MS. KERNS: That's what the rule provides.  
 12 MR. TRAVIS GERBER: All right. Can you  
 13 electronically transmit it to Beth to read it?  
 14 THE COURT REPORTER: You know what, it has to be  
 15 done in paper format. I have a local reporter here, Lisa,  
 16 that I can potentially make arrangements for her to come sit  
 17 in the jury room and review it there.  
 18 MR. TRAVIS GERBER: Okay.  
 19 MS. KERNS: That would be great. I appreciate  
 20 that. Thank you.  
 21 THE COURT REPORTER: You will be notified by mail.  
 22 THE WITNESS: Yeah, there's one thing. Mel has to  
 23 go into the hospital, and we're going to be gone three to  
 24 four weeks. So I can't be here during that time.  
 25 MS. KERNS: Okay. We'll accommodate as long as

Page 107

1 the original is viewed in the office.  
 2 THE WITNESS: Okay.  
 3 (Whereupon, the proceedings concluded.)  
 4  
 5  
 6  
 7  
 8  
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

Page 108

## CERTIFICATE OF DEPONENT

PAGE LINE	CHANGE	REASON
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

\* \* \* \* \*

I, Elizabeth Essington, deponent herein,  
 do hereby certify and declare the within and foregoing  
 transcription to be my deposition in said action;  
 under penalty of perjury, that I have read, corrected,  
 and do hereby affix my signature to said deposition.

Elizabeth Essington, deponent      Date

Page 109

1 STATE OF NEVADA )  
 2 ) ss.  
 3 COUNTY OF ELKO )  
 4

5 I, ZOIE WILLIAMS, a certified court  
 6 reporter, in and for the County of Humboldt, State of  
 7 Nevada, do hereby certify:

8 That on Thursday, the 13th day of October,  
 9 2011, of said day at Elko, Nevada, ELIZABETH ESSINGTON  
 10 duly appeared, who was duly sworn by me, according to  
 11 law, to testify to the truth, the whole truth and  
 12 nothing but the truth in the matter entitled herein,  
 13 and thereupon gave answers to the questions propounded  
 14 to him or her,

15 That said questions and answers were taken  
 16 down in stenotype by me, a stenotype reporter, and  
 17 thereafter transcribed to the best of my knowledge,  
 18 skill and ability, and is a true record thereof.

19 IN WITNESS WHEREOF, I have hereunto set my  
 20 hand this October 25, 2011.  
 21  
 22

23 Zoie M. Williams, CCR #540  
 24  
 25

EXHIBIT “9”

EXHIBIT “9”

Bank of America Advantage

GEORGE M. ESSINGTON  
ELIZABETH E. ESSINGTON  
HC. 60 BOX 760  
RUBY VALLEY, NV 89833

6216

34-72/1224 NV  
3046

Date 8-16-06

Pay Ruby Lake Estates Homeowners Association \$ 150.00  
to the order of

One Hundred & fifty Dollars Dollars

Bank of America

ACH RT 122400724

Memo

*G. M. Essington*

⑆ 122400724⑆ 000070429836⑆ 6216

RLE 027

1RA101



BOX 760  
VALLEY, NV 89833-9804

Date 12/01/07

94-72/1224 NV  
7671

Pay to the  
order of Ruby Lake Estates

\$ 150.00

One hundred & fifty

XXX Dollars

Bank of America



ACH R/T 122400724

for 2008 Assoc fees

*Eliana L Essing*

⑆122400724⑆ 004967986755⑈ 03??

1200

RLE 058

1RA103

ELIZABETH E. ESSINGTON  
HC. 60 BOX 760  
RUBY VALLEY, NV 89833-9804

134

Date 1/1/09

24-72/1224 IN  
7671

Pay to the  
Order of

Ruby Lake Estate HOA \$ 225.00  
Two hundred and twenty five <sup>00</sup>/<sub>100</sub> Dollars

Bank of America

ACH RPT 122-000724

For \_\_\_\_\_

Elizabeth E. Essington  
IRA104

RLE 081

EXHIBIT “10”

EXHIBIT “10”



1 CASE NO. CV-C-12-175

2 DEPT. NO. I

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

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

7 IN AND FOR THE COUNTY OF ELKO

8  
9 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

10 Plaintiff,

AFFIDAVIT OF LEE PERKS

11 vs.

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

14 Defendants. /

15 RUBY LAKE ESTATES HOMEOWNER'S  
16 ASSOCIATION,

17 Counterclaimant,

18 vs.

19 ARTEMIS EXPLORATION COMPANY, a  
Nevada Corporation,

20 Counterdefendant. /

21 STATE OF NEVADA )  
22 ) ss:  
23 COUNTY OF WASHOE )

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

27 1. I am the owner of Lots C-8, C-9, C-10 in Ruby Lake Estates, according to the Official Plat  
28 thereof, recorded September 15, 1989 in the Official Records of Elko County, Nevada as File No. 281674.

1 I purchased my first lot in Ruby Lake Estates in September 1996. Prior to my purchase of my first lot in the  
2 Ruby Lake Estates subdivision, I spoke with Stephen Wright, developer of the Ruby Lake Estates  
3 subdivision. Mr. Wright informed me that he would be maintaining the roadways within the subdivision  
4 until such time that all lots within the subdivision had been sold. Thereafter, according to Mr. Wright, the  
5 homeowners were expected to maintain the roadways as they had not been accepted for maintenance by Elko  
6 County. Based upon these statements, it has always been my knowledge and belief, that the homeowners  
7 in Ruby Lake Estates were collectively responsible for paying for the repair and maintenance of all  
8 roadways, including weed abatement.

9         2.       The Architectural Review Committee ("ARC"), was first established by the developer,  
10 Stephen Wright, pursuant to the terms of those certain Covenants, Conditions, and Restrictions for Ruby  
11 Lake Estates ("CC&Rs"). The CC&Rs were recorded on October 25, 1989, in Book 703 of Official Records  
12 at Page 287, Elko County, Nevada. The ARC served as the executive body of an informal association of  
13 lot owners established by Steve Wright, referred to as the "Ruby Lakes Estates Landowners Association."

14         3.       At some point in time, after all Lots in the community were sold by Steven Wright, ARC  
15 members acted as the governing body of the informal "Ruby Lakes Estates Landowners Association" and  
16 this entity regularly assessed owners of lots within Ruby Lake Estates for dues. I became aware of this  
17 governing body in 1997. The dues were used to maintain the roadways and perform weed abatement on the  
18 roadways within the community and in the adjoining ditches.

19         4.       Exhibit "6" in the Association's Composite of Exhibits, is a true and correct copy of a 1997  
20 Newsletter I received from Bill Harmon, Chairman of Ruby Lakes Estates Landowners Association. The  
21 Newsletter references the need of the owners of the lots to collectively maintain the roads within the Ruby  
22 Lake Estates community. A fee of \$100 for 1997 was assessed for each lot. The handwritten notation on  
23 Exhibit "6" is my writing indicating I paid the \$100 by check number 1209, dated July 4, 1997. From 1997  
24 to 2005, I also paid other amounts to the Ruby Lake Estates Landowners Association, as assessments for  
25 road maintenance and weed abatement.

26         5.       The roadways within the Ruby Lake Estates subdivision have never been accepted by Elko  
27 County for maintenance. However, Elko County requires the roadways and adjoining ditches and culverts  
28

1 to be maintained for public health and safety reasons, e.g., fire truck access and fire fuels mitigation.  
2 Sometime after 1999, I recall receiving a letter from the Elko County Fire Department saying that the weeds  
3 on the roads and in the ditches were a fire hazard and needed to be removed. I also had conversations about  
4 maintenance of the roads and clearing of weeds and brush with the County fire office. It has always been  
5 my understanding that the maintenance of all the roads within the subdivision, as well as the adjoining  
6 ditches, culverts, perimeter fencing, gates and the entrance monument sign, is the responsibility of the  
7 owners of the lots within the Ruby Lake Estates subdivision.

8         6. Attorney Bob Wines was present at a meeting of lot owners in November 1999. It was Mr.  
9 Wines' opinion that the Ruby Lake Estates lot owners were required to take over the responsibilities of  
10 maintaining the roads within Ruby Lakes Estates, because Steve Wright had sold all lot and was not no  
11 longer responsible for road maintenance. It was Mr. Wines' opinion that we needed to hold an election for  
12 a board of directors and file documents with the Nevada Secretary of State. At the November 1999 meeting  
13 of lot owners, I was elected to serve on a five (5) member Board of Directors for what was then referred to  
14 as the Ruby Lake Estates Landowner's Association ("RLELA"). I understood the purpose of the RLELA  
15 was to serve as the Architectural Review Committee under the CC&Rs, to levy and collect assessments for  
16 road maintenance, weed abatement and fire protection, and to otherwise carry out and enforce the provisions  
17 of the CC&Rs. The newly elected Board of Directors was also directed to adopt by-laws. Ever since my  
18 election to the Board, I have served as President of the Board. I am familiar with the records of the  
19 Association.

20         7. In February 21, 2000, I drafted a letter to all property owners within Ruby Lake Estates. A  
21 true and correct copy of that letter is contained in the Association's Composite of Exhibits as Exhibit "14".  
22 In my letter to the members, I explained the responsibility of all landowners to pay for maintenance of the  
23 roads as explained to me by Mr. Wines, Mr. Wright, and Elko County fire officials. The Board set a yearly  
24 assessment of \$100 per lot to pay for grading of the roads. I also notified the members of the community  
25 that Steve and Mavis Wright were going to deed two small lots with water wells to the Association for fire  
26 protection. Eventually, one of those parcels was deeded directly to the Ruby Valley Volunteer Fire  
27 Department. The second lot was deeded to the Association in 2007 and remains in the name of the  
28

1 Association today. The conveyance to the Association of the second lot was discussed by the members at  
2 the August 2007 meeting. All members present, including Mr. Essington, approved the conveyance of this  
3 lot to the Association. A true and correct copy of the Minutes of the August 2007 meeting, as maintained  
4 in the Association's records is contained in the Association's Composite of Exhibits as Exhibit "13".

5 8. Not much happened at the Ruby Lake Estates subdivision from about 2000 until 2005. I built  
6 a home, the McIntyres built a home, the Nobles built a home, the Harmons built a home, and Mike Cecchi  
7 built a home. The Board of Directors of the RLELA served as the ARC.

8 9. On information and belief, in 2005 I learned that either an attorney representing Mel and  
9 Elizabeth Essington, or one or both of the Essingtons personally, had contacted Robert Wines, and were  
10 insisting that a homeowner's association be formally established. On August 22, 2005, Mel Essington sent  
11 me a letter encouraging property owners to reorganize and vitalize the Ruby Lake Estates property owners  
12 association and assist in making it function as it was intended. A true and correct copy of the letter I received  
13 from Mel Essington, as well as the cover letter from Mel Essington and the proposed Nomination and Ballot  
14 of Board Members which he prepared, is contained in the Association's Composite of Exhibits as Exhibit  
15 "11".

16 10. A true and correct copy of the Articles of Incorporation prepared by George M. Essington  
17 and Elizabeth Essington, as provided to the Association by Robert Wines, is contained in the Association's  
18 Composite of Exhibits as Exhibit "16".

19 11. I communicated with Mr. Wines on or about September 7, 2005, confirming that what I  
20 referred to as a "committee", had been elected in 1999 by the lot owners and directed to adopt bylaws for  
21 a homeowner's association. A true and correct copy of my letter to Mr. Wines is contained in the  
22 Association's Composite of Exhibits as Exhibit "15". Articles of Association for the Ruby Lake Estates  
23 Homeowners Association (the "Association" or "RLEHOA") were filed with the Nevada Secretary of State  
24 on January 18, 2006. A true and correct copy of the Articles of Association, from the records of the  
25 Association, is contained in the Association's Composite of Exhibits as Exhibit "18".

26 12. A true and correct copy of the *INITIAL* Association Registration Form as filed with the Office  
27 of the Ombudsman For Common-Interest Communities is contained in the Association's Composite of  
28

1 Exhibits as the second page of Exhibit "18" and marked RLE 012.

2 13. In June of 2006, the Board sent a Survey to members of the Association asking what they  
3 expected the homeowner's association to do. A true and correct copy of my letter to the members covering  
4 the Survey, is contained in the Association's Composite of Exhibits as Exhibit "19".

5 14. A true and correct copy of the survey returned to the Association by "Artemis Exploration-  
6 Mel/Beth Essington", and kept as part of the Association's business records, is contained in the  
7 Association's Composite of Exhibits as Exhibit "48". The Survey is dated June 28, 2006 and was received  
8 by the Association on July 5, 2006. "Artemis Exploration- Mel/Beth Essington" answered that they were  
9 in favor of the Association providing road maintenance as well as a fire management plan. Artemis and the  
10 Essingtons also consented to the levying as assessments even though there was nothing in the CC&Rs  
11 requiring the owners to pay dues. At the top of page 2 of the survey, I wrote:

12 While the Declaration of Reservations, Conditions and Restrictions does not  
13 specifically provide that property owners will be required to pay annual dues, it is implicit  
14 in the requirements that such dues may be assessed. If the review committee is to be  
15 expected to exercise any legal authority or powers granted to it by the restrictions, it must be  
16 able to engage in legal accounting, maintenance and other professional services.

17 "Artemis- Mel/Beth Essington" then answered that \$150 to \$200 per year would be a reasonable assessment  
18 to pay for road maintenance and other services. They also indicated that to change or raise fees would require  
19 the approval of only a simple majority of land owners. The Association's records reflect that the vast  
20 majority of lot owners wanted the Association to maintain the roads and were willing to pay assessments,  
21 including Artemis/Mel and Beth Essington.

22 15. I have personally been acquainted with Mel and Elizabeth Essington since the late 1990s.  
23 In 2005, Mr. and Mrs. Essington built their home on Lot G-6 within Ruby Lake Estates. They currently  
24 reside in that home. Mr. Essington regularly attended the meetings of members. Mrs. Essington sometimes  
25 attended. It was my understanding that Mr. Essington was the owner of Lot G-6 within Ruby Lake Estates  
26 or that he was the representative of the Artemis Exploration. The Survey returned by "Artemis Exploration-  
27 Mel/Beth Essington" in 2006 confirmed this.

28 16. Mr. Essington attended the August 2006 Meeting of Members and signed the owner of Lot  
G-6 as Mel Essington/Artemis. A true and correct copy of Minutes of the August 12, 2006 Board of

1 Directors and Landowners Meeting, as maintained in the Association's records, is contained in the  
2 Association's Composite of Exhibits as Exhibit "12". This Exhibit includes a copy of the owner roster  
3 signed by Mr. Essington. Robert Wines, counsel for the Association, was present at the meeting.  
4 Maintenance of the roadways by the Association was discussed. A motion to approve the Bylaws was made  
5 and seconded by Mel Essington. A true and correct copy of the Bylaws, as maintained in the Association's  
6 records, is contained in the Association's Composite of Exhibits as Exhibit "23". A yearly assessment of  
7 \$150 was adopted. All members present, including Mr. Essington, approved this assessment. I received a  
8 letter from Mel Essington dated Aug. 16, 2006, together with "our personal check in the amount of  
9 \$150.00". A true and correct copy of Mr. Essington's letter, as maintained in the Association's records is  
10 contained in the Association's Composite of Exhibits as Exhibit "26." A true and correct copy of the  
11 referenced check is found in Exhibit "9" at RLE 027. The letter and check led me to believe that Mel  
12 Essington was either an owner of Lot G-6 or a representative of the owner.

13 17. In November of 2006, Mr. Essington wrote a letter to Mike Cecchi, chairman of the ARC,  
14 regarding the enforcement of the CC&Rs, among other things. A true and correct copy of this letter signed  
15 by "G.M. Essington Block G Lot 6", as maintained in the Association's records, is contained in the  
16 Association's Composite of Exhibits as Exhibit "24". Again, this letter led me to believe Mr. Essington was  
17 the owner of Lot G-6.

18 18. In January 2007, Mr. Essington wrote me a letter in which he referenced the requirements  
19 of NRS Chapter 116. A true and correct copy of that letter as maintained in the records of the Association,  
20 is contained in the Association's Composite of Exhibits as Exhibit "25". The letters showed that Mr.  
21 Essington was obviously very familiar with the requirements of NRS Chapter 116; at the time I was not.

22 19. Mr. Essington attended the August 2007 meeting of owners and signed in as the owner of Lot  
23 G-6. A true and correct copy of the member sign in roster, as maintained in the Association's records is  
24 included as part of Exhibit "13". The members relied upon his representation that he was an owner of Lot  
25 G-6 as he was nominated from the floor to serve on the Association's Board of Directors. He was elected  
26 for a two-year term. Mr. Essington thereafter signed a Declaration of Certification Common-Interest  
27 Community Board Member. A true and correct copy of the Declaration of Certification signed by Mel  
28

1 Essington, as maintained in the Association's records, is contained in the Association's Composite of  
2 Exhibits as Exhibit "27".

3 20. There was a discussion at the 2007 meeting as to Steve Wright's intent to transfer a small  
4 parcel of property to the Association. All members present, 31 out of 51 lot owners, including Mr.  
5 Essington, voted to acquire the property as common area of the association, pay the documentary transfer  
6 tax, liability insurance, and all other fees associated with acquiring the property. The property was deeded  
7 to the Association by the Wrights on August 28, 2007. The Association does hold title to common area  
8 property, Mr. Essington voted in favor of the Association acquiring this property, and the Association  
9 continues to own this property today.

10 21. In January of 2008 I wrote a letter to all RLEHOA members. A true and correct copy of his  
11 letter, as maintained in the Association's records, is contained in the Association's Composite of Exhibits  
12 as Exhibit "42". I mention the election of Mel Essington to the Board of Directors. The budget for the  
13 roadway maintenance and weed abatement was also discussed.

14 22. As a member of the Board and the ARC, Mr. Essington performed compliance inspections  
15 of lots within the community and noted violations. A true and correct copy of a memo written by Mr.  
16 Essington to me regarding a compliance inspection he performed, as maintained in the Association's records,  
17 is contained in the Association's Composite of Exhibits as Exhibit "29".

18 23. A true and correct copy of the Minutes of the August 2008 Board of Directors Meeting and  
19 Landowners Meeting, as maintained in the Association's records, is contained in the Association's  
20 Composite of Exhibits as Exhibit "28". Robert Wines was present at the meeting. The members discussed  
21 the fact that it would cost hundreds of thousands of dollars if not millions of dollars to bring the roads within  
22 the subdivision up to county code. The members did not want to pay this and wanted the Association to  
23 continue to maintain the roads.

24 24. At various times after becoming a member of the Board in August 2007, Mr. Essington voted  
25 to levy assessments against all members for roadway maintenance, weed abatement, and the repair of signs  
26 and culverts. During his tenure on the Board, Mr. Essington wrote letters to the members of the Association  
27 confirming the existence and necessity of the Association, the applicability of NRS Chapter 116, and the  
28

1 ability and responsibility of the Association to levy and collect assessments for maintenance of the common  
2 elements. In an e-mail communication dated September 12, 2008, sent from "beth essington" to "Mike",  
3 Mel Essington again acknowledges the need for assessments to maintain the community roads, as well as  
4 the applicability of NRS Chapter 116. A true and correct copy of this communication, as maintained in the  
5 Association's records, is contained in the Association's Composite of Exhibits as Exhibit "31".

6 25. A true and correct copy of an e-mail communication covering a letter drafted by Mr.  
7 Essington, which later was sent to members of the Association, as maintained in the Association's records,  
8 is contained in the Association's Composite of Exhibits as Exhibit "32". In this letter, Mr. Essington again  
9 acknowledges the existence and need for the Association and the applicability of NRS Chapter 116, as well  
10 as the common elements of the Association and the Association's duty and responsibility to maintain the  
11 same. Finally, Mr. Essington clearly acknowledges the Association's right and obligation to levy and collect  
12 assessments.

13 26. On June 20, 2010, Mr. Essington wrote a letter to his fellow homeowners in which he again  
14 acknowledged the existence and powers of the Association, including its power to levy assessments. A true  
15 and correct copy of this letter drafted by Mr. Essington which was sent to members of the Association, as  
16 maintained in the Association's records, is contained in the Association's Composite of Exhibits as Exhibit  
17 "33".

18 27. On or about July 14, 2009, the Association's Board, of which Mr. Essington was a member,  
19 caused a Reserve Study to be prepared as required by NRS 116.31153. The Reserve Study was prepared  
20 by an independent Reserve Specialist and identified the common elements of the Association as the cattle  
21 guards, dirt road maintenance, fencing, gates, entrance signs, street signs, and the lot owned in fee title by  
22 the Association. A true and correct copy of this Reserve Study, as maintained in the Association's records,  
23 is contained in the Association's Composite of Exhibits as Exhibit "34". It was Mr. Essington who directed  
24 the Reserve Specialist to the common areas. *see* also, Exhibit "50" which depicts those common areas on  
25 the Plat Map. Mr. Essington actually met with and physically traveled to all common areas with the Reserve  
26 Specialist. It was Mr. Essington that directed the Reserve Specialist to the common elements, including the  
27 real property, gates, signs, culverts, cattle guards and perimeter fencing. The Reserve Specialist included  
28



1 all of these common elements in the Reserve Study. Mr. Essington voted to approve this Reserve Study at  
2 the August 08, 2009 Board of Directors and Landowners Meeting, where it was discussed in detail. A true  
3 and correct copy of the Minutes of the August 8, 2009 Board of Directors and Landowners Meeting, as  
4 maintained in the Association's records, is contained in the Association's Composite of Exhibits as Exhibit  
5 "35". At the August 2009 meeting, Mr. Essington also voted to approve the Association's budget for 2010.  
6 Assessments for 2010 were determined and levied against all owners in accordance with the approved  
7 Reserve Study and budget.

8 28. At the August 8, 2009, meeting, various other components of the common elements and  
9 problems with maintenance thereof were discussed, including weed abatement, roadways, culverts and cattle  
10 guards. Due to recent rains the culverts needed to be replaced and the cattle guard at the north entrance to  
11 the community had begun to sink. The Board and the members discussed the need for weed abatement  
12 along the roads and even voted to allocate additional Association funds in order to hire professionals to  
13 apply the weed killer. The surface condition of the roads and culverts were also discussed, as was the fact  
14 that Association common funds only allowed the surface of the roads to be maintained at a minimal level.  
15 The Minutes of the August 2009 meeting reflect the members' desire to continue to have the Association  
16 maintain the roads.

17 29. In July 2009, Mr. Essington nominated himself for re-election to the Board of Directors. A  
18 true and correct copy of Mr. Essington's self nomination to the Board, as maintained in the Association's  
19 records, is contained in the Association's Composite of Exhibits as Exhibit "36". At the August 2009  
20 members' meeting, Mel Essington was re-elected to serve on the Board for another two year term. True and  
21 correct copies of Newsletters sent to members of the Association, as maintained in the Association's records,  
22 are contained in the Association's Composite of Exhibits as Exhibit "7". The October 2009 Newsletter  
23 specifically mentions Mr. Essington's election to the Board of Directors.

24 30. The October 2009 Newsletter also specifically mentions "changes made to the NRS 116  
25 statutes this year", thereby again giving the members notice of the applicability of NRS Chapter 116.  
26 Obviously, the members of the Board, including Mr. Essington, as well as the other members of the  
27 Association, unequivocally recognized and accepted the Association's duty and responsibility to maintain  
28

1 the surface of the roadways and to keep the adjacent ditches and culverts free of weeds. The Association  
2 and its members also recognized these as common areas of the Association and the members' concomitant  
3 obligation to pay to have these areas maintained and repaired. The Newsletter also states," With the  
4 completion of the reserve study our long term issues should be in order. Our dues this year will be \$223.48.  
5 ...Dues are due January 1, 2010. Late fees will be assessed after January 31, 2010." As a member of the  
6 Board, Mr. Essington approved the budget as well as the increase in assessments for 2010.

7 31. In 2009 a dispute arose between the Essingtons and the ARC regarding the construction  
8 within the Ruby Lake Estates subdivision of a large building used to house machinery and other equipment.  
9 Mrs. Essington wrote a letter to the Board dated October 26, 2009. A true and correct copy of the letter  
10 received from "E. Essington" dated 10-26-09, as maintained in the Association's records, is contained in  
11 the Association's Composite of Exhibits as Exhibit "37". The ARC and the Board took the position that  
12 such a structure was permitted. A true and correct copy of the letter written to Mrs. Essington by the  
13 Chairman of the ARC, as maintained in the Association's records, is contained in the Association's  
14 Composite of Exhibits as Exhibit "38".

15 32. As a result of the ARC's approval of this building, the Essingtons began to assert that the  
16 Association was not validly formed and had no authority to levy or collect assessments. On December 4,  
17 2009, Elizabeth Essington wrote a letter to your affiant, questioning the formation of the homeowners  
18 association. A true and correct copy of the letter written by Mrs. Essington, as maintained in the  
19 Association's records, is contained in the Association's Composite of Exhibits as Exhibit "39". I responded  
20 on behalf of the Association by letter dated December 9, 2009, explaining that the CC&Rs to which Mrs.  
21 Essington and her property were subject, evidenced the developer's intent to create a common-interest  
22 community governing body to maintain the roads which are part of the property covered by the CC&Rs.  
23 I also explained that we were required to comply with the provisions of NRS Chapter 116 as this was the  
24 opinion of counsel. A true and correct copy of the letter sent to Mrs. Essington, as maintained in the  
25 Association's records, is contained in the Association's Composite of Exhibits as Exhibit "41".

26 33. Assessments for Lot G-6 have never been paid by Artemis. All checks were written either  
27 by Mel or Elizabeth Essington. Most were written on the Essingtons' joint account. True and correct copies  
28

1 of the checks received by the Association for Lot G-6 as maintained as part of the Association's records, are  
2 contained in the Association's Composite of Exhibits as Exhibit "9".

3 34. Even after the filing of the Intervention Affidavit, Mel Essington continued to serve as a  
4 Board member and member of the ARC. On or about January 17, 2010, Mr. Essington authored a document  
5 entitled Role and Function of the Architectural Review Committee. A true and correct copy of the  
6 document, as maintained in the records of the Association, is contained in the Association's Composite of  
7 Exhibits as Exhibit "30". In this document, he acknowledged the existence and authority of the homeowner's  
8 association, noting that the bylaws of the Association established the composition of the ARC. More  
9 importantly, Mr. Essington acknowledged the intended purpose and intent of the CC&Rs. The stated  
10 purpose of the CC&RS could never be fulfilled if the entrance signs of the community were allowed to fall  
11 into disrepair and the streets and culverts were allowed to become impassable due to wind and water erosion  
12 as well as infested with weeds. Quite simply, the stated purpose of the CC&Rs could never be fulfilled  
13 unless these services were performed by a community association.

14 35. July 1, 2010, the NRED Ombudsman's Office completed its review and issued its opinion,  
15 noting that it had received and reviewed various documents and information from Mrs. Essington, myself,  
16 and counsel for the Association, Robert Wines, Esq. A copy of the Ombudsman's letter opinion is contained  
17 in the Association's Composite of Exhibits as Exhibit "49". The Ombudsman noted the June 18, 2010,  
18 letter from Robert Wines indicating his opinion that it is a common-interest community and obligated to  
19 comply with the provisions of NRS 116. Contrary to the assertions of Plaintiff, the Ombudsman's office did  
20 take action; it just did not take the action Plaintiff requested.

21 36. Notwithstanding the ruling of the Ombudsman, Artemis refused to pay its assessments and  
22 the Board of Directors was forced to take appropriate action to collect the delinquent assessments. True and  
23 correct copies of a letter sent to Artemis regarding its delinquent assessments generated in the ordinary  
24 course of business of the Association is contained in the Association's Composite of Exhibits as Exhibit  
25 "43". Invoices generated in the ordinary course of business were sent to Artemis. True and correct copies  
26 of those invoices are contained in the Association's Composite of Exhibits as Exhibit "44". In sending those  
27 invoices and employing the services of a collection company, the Board did nothing more than follow its  
28 normal procedures for collecting delinquent accounts, which it was obligated to do in order to protect the

1 interests of the other members of the Association. All of these procedures were approved by the Board,  
2 including Mr. Essington. There was no "oppressive", "malicious", or "fraudulent" conduct employed by the  
3 Association in attempting to collect these assessments.

4 37. After the filing of the Intervention Affidavit with the Ombudsman's office, the Association  
5 learned that Mr. Essington was not an officer, director, or shareholder, of Artemis. A true and correct copy  
6 of information maintained by the Nevada Secretary of State is contained in the Association's Composite of  
7 Exhibits as Exhibit "1". This was directly contrary to the position taken by Mr. Essington for over sixteen  
8 (16) years. Furthermore, Artemis had not paid its assessments and therefore, its representative could not  
9 serve on the Board of Directors. The Bylaws require a Board Member to be an owner and in good standing.  
10 Consequently, Artemis was asked to pay its delinquent assessments and Mr. Essington was asked to provide  
11 proof that he was an officer, director or other authorized representative of Artemis. True and correct copies  
12 of the letters sent to Mr. Essington, as maintained in the records of the Association, seeking his compliance,  
13 are contained in the Association's Composite of Exhibits as Exhibit "2". Mr. Essington subsequently  
14 resigned from the Board of Directors. A true and correct copy of his letter of resignation, as maintained in  
15 the records of the Association, is contained in the Association's Composite of Exhibits as Exhibit "45".

16 38. On June 28, 2010, I sent a letter to members of the Association explaining the history and  
17 formation of the Association. A true and correct copy of my letter, as maintained in the records of the  
18 Association, is contained in the Association's Composite of Exhibits as Exhibit "17".

19 39. Contrary to Plaintiff's allegations, the members of the Association do not support Plaintiff's  
20 position and realize that the Association was properly formed and is required by Nevada law to enforce the  
21 CC&Rs and levy and collect assessments for the maintenance of the common elements. They fully  
22 recognize the actions of the Essingtons as being a vendetta against the Board and the ARC because of the  
23 building approved by the Board and ARC. Copies of letters received by the Essingtons are contained in the  
24 Association's Composite of Exhibits as Exhibit "46".

25 40. Since the filing of the Articles of Association, to the best of my knowledge and belief, the  
26 Association has operated in accordance with the requirements of Chapter 116 of the Nevada Revised  
27 Statutes. Robert Wines has served as general counsel for the Association and I, and other members of the  
28 Board, have conformed our actions to his opinions. As a Board, we have acted in a reasonable and prudent

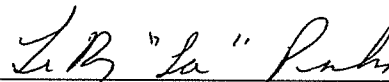
1 manner to fulfill our duties to maintain the roadways and common elements of the Association. Contrary  
2 to Plaintiff's assertions, the Association has never asserted that it "owns" the streets, road signs, entrance  
3 sign, cattle guards, and perimeter fencing. The Association does not hold legal title to these specific  
4 improvements, but these specific improvements are located on, adjacent to, or in the streets the Association  
5 is clearly obligated to maintain. Further, at best a majority of landowners, including Mel and Elizabeth  
6 Essington/Artemis have indicated they want the Association to maintain these common elements for the  
7 benefit of the members. The Association does own a parcel of real property.

8 41. Part of Exhibit "50" is a copy of the Plat Map of Ruby Valley Estates upon which I have  
9 drawn the location of the roadways and other improvements the Association maintains for the benefit of the  
10 members of the Association and the health, safety and well being of the members and the public.

11 42. I hereby reaffirm the facts set forth herein as being in support of the Association's Motion  
12 for Summary Judgment. Where the Opposition has been specifically referenced above, the averments are  
13 also applicable to the Association's Motion for Summary Judgment.

14 I, Lee Perks, do hereby swear under penalty of perjury that the matters set forth herein are true and  
15 correct to the best of my knowledge and belief.

16 DATED: May 29, 2012

  
\_\_\_\_\_  
Lee Perks

18 SUBSCRIBED AND SWORN to before me

19 this 29th day of May, 2012.

20   
21 NOTARY PUBLIC

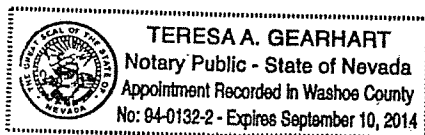


EXHIBIT “11”

EXHIBIT “11”

Ruby lakes Estates Property Owners Association  
HC 60 Box 760  
Ruby Valley, NV 89833

August 22, 2005

Dear Fellow Lakes Estates Property Owner:

I am writing to each of you concerning the need to revitalize the Ruby Lakes Estates property owners association. The organizer of the subdivision and property owners association, Mr. Steve Wright, has stepped aside and turned his duties and responsibilities over to the property owners as was described to each of us in the sales literature. As you may also be aware little has been done subsequent to the first attempt at forming an association several years ago. In the meanwhile there has been a steady increase in the use, building, and interest in the lots of the subdivision. Many of the other the owners I have spoken with and I believe it is important for the property owners to reorganize and vitalize the association.

Each of us purchased lots in the subdivision with the knowledge, understanding, and acceptance of the Covenants, Conditions, and Restriction's (CCR's) that attended our property deeds. The CCR's were designed to work for the good of the owners, assure the aesthetic qualities of the subdivision, protect the value of our investments, and the beauty of Ruby Valley. The association also has the capability of providing services for the subdivision that might otherwise elude the individual owner. Those services could include: assisting in acquiring telephone service, periodic road maintenance, coordinating with County officials on planning issues, and departments such as the Highway Department in 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 and the association is responsibility of the owners as expressed through the association; although any individual owner may pursue the enforcement of the CCR's.

Mr. Leroy Perks and others recognized and accepted the responsibility past on by Mr. Wright several years ago when they organized the association and worked toward achieving progress toward its stated goals. Several years have passed now and due largely to a period of inactivity at the subdivision that organizational attempt has become dysfunctional. I have discussed the situation with Mr. Perks as well as some of the other owners and believe he and nearly all of the other owners agree we need to reorganize the association and move ahead with its intent. I am therefore appealing to all of the property owners to take the time and interest now to help to revitalize the association and assist in making it function as it was intended.

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. Attempting to organize a meeting the majority of the owners can attend is difficult to impossible as I believe Mr. Perks can attest. Therefore, I propose to organize a mail-in election. Very soon I should be able to provide an e-mail address to conduct correspondence for those of you accustomed to using the internet. Those of you with e-mail please provide your addresses.

I am presently asking for those of you who are interested in working on or for the association to provide me with your name, an indication of what capacity or office you are interested in filling, and a short description of your background for other voting owners to evaluate. Voting and participation in the association will, of course, be limited to registered owners and or spouses. I will take that information and prepare an election ballot to be sent to each of the registered owners for their vote on the association officers.

Association positions that require filling are: President, Vice President, Secretary/Treasurer, and directors. Given the service he has formerly provided I for one would be pleased to see Mr. Perks run again for association president. If you each would take a few minutes to indicate your level of interest in the association it would be of benefit to and appreciated by all of the owners. Not everyone will be interested in becoming an officer or director but your vote is important. Please take the time to vote when the ballot is sent to you even if you don't otherwise wish to participate. The election results will be determined by those completed ballots that are returned to be counted. A record of all election related correspondence will be maintained and will be available for inspection.

Enclosed with this letter is a simple form on which you can indicate what office you are interested in and a space to provide a brief description of your background or qualifications. Please take the time to fill out the form and return it for incorporation into the election files. Your interest and support in this election and the owners association is important and will be appreciated.

Sincerely,

Mel Essington



G.M.Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

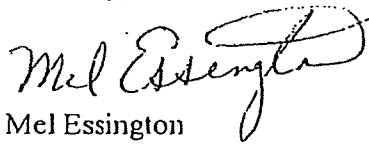
August 22, 2005

Mr. Lee Perks  
3030 Brenda Way  
Carson City, NV 89704

Dear Lee:

Enclosed is a draft letter to the property owners I said I would send you to look over.  
Take a look at it and see what you think.

Sincerely,

  
Mel Essington

Enclosure

RLE 021C

1RA122

Ruby Lakes Estates Property Owners Association

2005 Association Officers/Directors Ballot

Association Officers to be elected: President, Vice President, Secretary/Treasurer,  
Directors (2)

I \_\_\_\_\_ am interested the filling the office of  
\_\_\_\_\_ and would like my name included on the election ballot  
for that office or position

My background is or qualifications are:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

EXHIBIT “12”

EXHIBIT “12”

#7

**RUBY LAKE ESTATES HOMEOWNERS  
ASSOCIATION**

**RUBY VALLEY, NEVADA**

**BOARD OF DIRECTORS  
AND LANDOWNERS MEETING  
MINUTES**

**SATURDAY, AUGUST 12, 2006 12:00 PM  
AT  
HARMONS' RUBY LAKE RESORT**

**Board Members Present:** Lee Perks, Mike Cecchi, Dennis McIntyre, Bill Harmon,  
Bill Noble.

**Board Members Absent:** None

**Members Present:** 31 parcel owners represented

---

**Call Meeting to Order**

Lee Perks called Meeting to order.

Lee introduced all Board Members in attendance. He also introduced Bob Wines as potential legal council for the Association.

**Minutes of previous meeting:** None to approve.

**Treasurer's Report:** None to approve

**Old Business:** None to Report

**Standing Committees:** None standing at this time.

**New Business:**

Lee Perks discusses the status of the Ruby Lake Homeowners Association, to be referred to as RLEHA. He discussed the steps that had been taken to get our association to a legal status. He explained that the association had one more matter to resolve in order to finish the process. The process he referred to was to have an approved set of By-Laws for the RLEHA. He had a preliminary set written for the membership to approve.

Lee Perks introduces Bob Wines, Attorney at Law, and explained how Bob had given him a direction on how things should be set forth. Lee also explained to the membership what services he could provide for the association and how it would benefit the members involved in our association.

Bob Wines brings to the attention of the association that Elko County may force the RLEHA to have garbage service through a G.I.D. District.

Lee discusses road maintenance for the association. Dennis Cunningham brings up the NRS statute in regards to county requirements. Dennis states that he would like the roads maintained with weed control, but not necessarily graded every year.

Lee brought it to the member's attention that we are required by the Fire Department to have firebreaks around power poles to impede any fire hazard if lighting was attracted to a pole and sparked to start a fire. There was discussion as to how this would be implemented with out actual resolve.

Lee informed the association of who was required to maintain roads not included in the association, in particular the CCC road. He advised that the BLM was in charge of the road and suggested that members of the association that this affected write letters to the appropriate government agency.

Bob Wines makes it aware that several members have concerns about trailers on properties. He explains that the CC&R's about this situation are vague and suggest a meeting of the Members to discuss and come up with standard interpretation of the rule.

Bob Heckman motions to approve the By-Laws as they are written. Mike Cecchi seconds the motion.

There is discussion about how the By-Laws were designed and came upon. Several members have many questions and are addressed. There is a suggestion that the membership reviews By-Laws a paragraph at a time to make sure there is no vague interpretation of the By-Laws. The Bylaws are discussed and adjusted per discussions with board, membership and Bob Wines.

Motion: Mike Cecchi motions to approve amended By-Laws. Mel Essington seconds motion.

Under question:

It is pointed out by Bob Wines that we have a blank spot on the By-Laws. The yearly assessment fee has not been set. Bob Wines advises this needs to be addresses before any further action.

#17  
Motion: Bob Heckman motions to approve \$150.00 yearly fee. Jake Brennan seconds motion.

Under question:

Discussion is brought up about is this too much or too little and how will we change it if more or less is needed. Discussion by several members is addressed as to how this will be handled. It is decided that this fee should be assessed at the annual meeting and based on need and good of the association.

Motion: Dennis Cunningham motions to approve revised bylaws, Kris Cecchi seconds.

Votes for approval of By-Laws: 31 yeah's

Motion: Dennis Cunningham motions to approve \$150.00 assessment for year 2006 and 2007. Mike Cecchi seconds motion

Votes for approval of assessment: 31 yeah's

Motion: Brad Keife motions to retain the services of Bob Wines. Dennis Cunningham seconds motion.

Votes for approval of retaining Bob Wines: 31 yeah's

Motion: Bill Noble motions for adjournment, Bob Heckman seconds motion.

Votes for adjournment: 31 yeah's

Valeri McIntyre 8/11/07

## Ruby Lake Estates

August 12, 2006

12:00 PM

	PRINT NAME	SIGNATURE	Lot #	
1	LEE & NORA PERKS	Lee Perks	#C-6, 7, 8	3
2	Rosar Clark	Rosar Clark	BK H, Lot 8	1
3	Mike & Kris Cocchi	Mike & Kris Cocchi	C-6	1
4	Dennis & Valeri McIntyre	Dennis McIntyre	J-2	1
5	Bob Hecker and	Bob Hecker	F-3	
6	Hunt Healy	Hunt Healy	Lot 2 Bk E	
7	Sally Bannan	Sally Bannan	Lot B 1	
8	Dale & Judy Hubert	Dale Hubert	G-4	
9	DARLENE CUNNINGHAM	Darlene Cunningham	H-1	
10	DENNIS CUNNINGHAM	Dennis Cunningham	H-1	
11	Steve Wright	Steve Wright	5-3	
12	Rocky Rex	Rocky Rex	Lot H3	
13	Bill Harmon	Bill Harmon	Lot C-1	
14	Paul Lucas	Paul Lucas	D-3	
15	Rhonda Keife	Rhonda Keife	C-3 D-1	2
16	SERGIO GORMAN	Sergio Gorman	D-2	
17	DAVE MILLER	Dave Miller	D-4	
18	BO HARMON	Bo Harmon	E-3	
19	McEssington/Artemis Exp	G.M. Essington	C-6	
20	Jimmy Dargatz	Jimmy Dargatz	E-1	
21	KATHIE ALLEN	Kathie Allen	D-5	
22	Steve Forbess	Steve Forbess	D-4/1	3
23	STEVE FORBES	Steve Forbess	E-5	
24				
25				
26				
27				
28				
29				
30				

**RUBY LAKE ESTATES HOMEOWNERS  
ASSOCIATION  
RUBY VALLEY, NEVADA**

**BOARD OF DIRECTORS  
AND LANDOWNERS MEETING  
MINUTES**

**SATURDAY, AUGUST 12, 2006 12:00 PM  
AT  
HARMONS' RUBY LAKE RESORT**

Board Members Present: Lee Perks, Mike Cecchi, Dennis McIntyre, Bill Harmon,  
Bill Noble.

Board Members Absent: None

Members Present: 31 parcel owners represented

---

**Call Meeting to Order**

Lee Perks called Meeting to order.

Lee introduced all Board Members in attendance. He also introduced Bob Wines as potential legal council for the Association.

**Minutes of previous meeting:** None to approve.

**Treasurer's Report:** None to approve

**Old Business:** None to Report

**Standing Committees:** None standing at this time.

**New Business:**

Lee Perks discusses the status of the Ruby Lake Homeowners Association, to be referred to as RLEHA. He discussed the steps that had been taken to get our association to a legal status. He explained that the association had one more matter to resolve in order to finish the process. The process he referred to was to have an approved set of By-Laws for the RLEHA. He had a preliminary set written for the membership to approve.



Lee Perks introduces Bob Wines, Attorney at Law, and explained how Bob had given him a direction on how things should be set forth. Lee also explained to the membership what services he could provide for the association and how it would benefit the members involved in our association.

Bob Wines brings to the attention of the association that Elko County may force the RLEHA to have garbage service through a G.I.D. District.

Lee discusses road maintenance for the association. Dennis Cunningham brings up the NRS statue in regards to county requirements. Dennis states that he would like the roads maintained with weed control, but not necessarily graded every year.

Lee brought it to the member's attention that we are required by the Fire Department to have firebreaks around power poles to impede any fire hazard if lighting was attracted to a pole and sparked to start a fire. There was discussion as to how this would be implemented with out actual resolve.

Lee informed the association of who was required to maintain roads not included in the association, in particular the CCC road. He advised that the BLM was in charge of the road and suggested that members of the association that this affected write letters to the appropriate government agency.

Bob Wines makes it aware that several members have concerns about trailers on properties. He explains that the CC&R's about this situation are vague and suggest a meeting of the Members to discuss and come up with standard interpretation of the rule.

Bob Heckman motions to approve the By-Laws as they are written. Mike Cecchi seconds the motion.

There is discussion about how the By-Laws were designed and came upon. Several members have many questions and are addressed. There is a suggestion that the membership reviews By-Laws a paragraph at a time to make sure there is no vague interpretation of the By-Laws. The Bylaws are discussed and adjusted per discussions with board, membership and Bob Wines.

Motion: Mike Cecchi motions to approve amended By-Laws. Mel Essington seconds motion.

Under question:

It is pointed out by Bob Wines that we have a blank spot on the By-Laws. The yearly assessment fee has not been set. Bob Wines advises this needs to be addresses before any further action.

Motion: Bob Heckman motions to approve \$150.00 yearly fee. Jake Brennan seconds motion.

Under question:

Discussion is brought up about is this too much or too little and how will we change it if more or less is needed. Discussion by several members is addressed as to how this will be handled. It is decided that this fee should be assessed at the annual meeting and based on need and good of the association.

Motion: Dennis Cunningham motions to approve revised bylaws, Kris Cecchi seconds.

Votes for approval of By-Laws: 31 yeah's

Motion: Dennis Cunningham motions to approve \$150.00 assessment for year 2006 and 2007. Mike Cecchi seconds motion

Votes for approval of assessment: 31 yeah's

Motion: Brad Keife motions to retain the services of Bob Wines. Dennis Cunningham seconds motion.

Votes for approval of retaining Bob Wines: 31 yeah's

Motion: Bill Noble motions for adjournment, Bob Heckman seconds motion.

Votes for adjournment: 31 yeah's

*Valerie McIntyre* 8/11/07

Ruby Lake Estates

August 12, 2006

12:00 PM

	PRINT NAME	SIGNATURE	Lot #	
1	LEE & NORA PERKS	Lee Perks	#C-6, 7, 8	3
2	Robert Clark	Robert Clark	B/K H, LOT 8	1
3	MIKE & KRIS COCCHI	Mike & Kris Cocchi	C-6	1
4	Dennis & Valeri McIntyre	Dennis McIntyre	J-2	1
5	Bob Heechman	Bob Heechman	F-3	
6	Hunt Healy	Hunt Healy	Lot 2 B/K E	
7	Jack Brennan	Jack Brennan	Lot B 1	
8	Dale & Tully Hubert	Dale Hubert	G-4	
9	DARLENE CUNNINGHAM	Darlene Cunningham	H-1	
10	DENNIS CUNNINGHAM	Dennis Cunningham	H-1	
11	Steve Wright	Steve Wright	5-3	
12	Rocky Roe	Rocky Roe	Lot H3	
13	BILL HARMON	Bill Harmon	Lot C-1	
14	PAUL LUCAS	Paul Lucas	D-3	
15	Rhonda Keife	Rhonda Keife	C-3 D-1	2
16	SERGIO GUMON	Sergio Gumon	D-2	
17	DAVE MILLER	Dave Miller	D-4	
18	BO HARMON	Bo Harmon	E-3	
19	McEssington/Artemis Exp	G.M. Essington	G-6	
20	JIMMY JARGENT	Jimmy Jargent	E-1	
21	KRISTINE ALLEN	Kristine Allen	D-5	
22	Steve Forbes	Steve Forbes	D-4	3
23	STEVE FORBES	Steve Forbes	E-5	
24				
25				
26				
27				
28				
29				
30				

EXHIBIT “13”

EXHIBIT “13”

#12

# RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

RUBY VALLEY, NEVADA

## BOARD OF DIRECTORS AND LANDOWNERS MEETING MINUTES

SATURDAY, AUGUST 11, 2007 11:00 AM  
AT

Ruby Valley Community Hall

Board Members Present: Lee Perks, Mike Cecchi, Dennis McIntyre, Valeri McIntyre  
Bill Harmon, Bill Noble.

Board Members Absent: None

Members Present: 31 parcel owners represented (24 in attendance 7 via  
Proxy)

---

### Call Meeting to Order

Lee Perks called Meeting to order.

**Minutes of previous meeting:** Ellen Sargent requests that the prior minutes be read to the association in attendance. Mike Cecchi approves minutes Hunt Healy seconds approval.

Members Vote - 31 Yeah's

**Treasurer's Report:** Dennis reads current financial statement. He discusses current tax situation. Les Preader makes aware of tax for 1120-FF for tax filing and also the accrual basis for our funds. He makes note that there has not been accrual for legal fees from Robert Wines and Robert says he has not issued a bill in regards to legal fees as of yet. The association agrees that the profit and loss needs to be adjusted for the legal fees.

Cheryl Noble approves amended financial statement, Kris Cecchi seconds.

Member Votes - 31 Yeah's

### Old Business:

**Garbage** -- Lee discusses garbage as a potential problem. Robert Wines discusses that Steve Wright is willing to transfer title of small lot that is located at the end of Kiln Road for a dumpster location or how we see fit. He also discusses access rights for the 7th as they may need access to their well directly behind the lot. He also discusses concreting an area and fencing it off with a locked gate and who may be allowed access. There is discussion as to the transfer fees and property taxes for the lot. Would we be required to get liability insurance for the area? What would be the greatest use for the property? Marnie Brennen motions to acquire lot and pay all fees associated with acquiring property. Les Preader Seconds motion

### Discussion

Bob Wines also comments that the tax year for 2007-2008 will have to be paid as part of the acquisition of lot.

Member Vote -- 31 Yeah's

**Dues** -- Lee discusses what the current fee is and opens the floor to discussion. There is discussion among the members. Bill Noble suggests that the annual fee be lowered to \$100.00 per lot. Mike Cecchi suggests that it should remain the same. There is discussion of the funds that have not been used and the things we would like to do and if we lower the fees we may not be able to do even start what we would like to accomplish. Mike Cecchi calls for a motion for the annual fee to remain at \$150.00. Lee Perks seconds motion.

Member vote -- 31 Yeah's

Les Preader discusses having a budget and appropriate fiscal budget and carry over. Board will work on fiscal budget.

**Roads** -- Bob Wines discusses legal way for paying for road maintenance. He discusses time and material work versus Bid work. He explains the difference between a personal individual and a licensed contractor. He suggests a budget number of around \$5,000.00. Dave Miller discusses 2 contractors working at the Fish Hatchery that may be approached for road maintenance. Mike Cecchi suggests weed abatement first then grade every other year. Bill Harmon discussed the road conditions the last time they were graded. Raymond from the Blue Jay ranch was hired at that time, and was advised by Raymond that the roads would need material to be repaired.

Mike Cecchi suggests a \$5,000.00 budget for weed abatement and road repair. There is a small discussion of the matter with the members and Mike Cecchi makes a motion for \$3,000.00. Bill Noble seconds.

Discussion -

There is discussion on the actual mileage of the Estates. The board will meter the mileage so appropriate plans can be made for the weed abatement plan.

There is a discussion about the conditions of the CCC Road and what the association is responsible for.

The first motion dies to lack of consensus.

Les Preader suggests a larger sum for weed abatement and road repair. He suggests an amount of \$5,000.00. Bob Wines suggests we should have \$10,000.00 in reserve for emergency and that the \$5,000.00 would be a more appropriate amount for the budget. Mike Cecchi motions again to approve the revised budget number. Dennis McIntyre seconds.

Members vote: 30 Yeah's and 1 nay.

Mel Essington discussed that there may be extra material at the hatchery after their expansion project. Brad Keife discusses a committee to follow through on the hatchery material and see if it is possible. Bill Noble offers to head the committee for the materials at the Hatchery. Dave Miller also offers to help. Brad Keife motions for approval of committee. Kris Cecchi seconds.

Member vote - 31 Yeah's

Phones - Dennis brings the membership up to date on the current status of phones in the association. There is discussion as to putting reflectors on the phone boxes along the side of the road. Since there have been no obstructions in the road for a very long time it is thought that we should take measures to make the boxes noticeable. Dennis McIntyre makes a motion to put reflectors on telephone boxes with \$150.00 budget. Mike Cecchi seconds motion.

Members vote: 31 Yeah's

Standing Committees: None

New Business:

Items submitted by members via mail:

- a. **Cost of removing power poles and moving power poles underground.**  
It is brought up and it is discussed that it would be cost prohibitive to do so.
- b. **Quality of homes to maintain property values.**  
Les Preader states it is the duty of the Architectural committee for keeping the association in accordance with the CC&R's. He also states it is their responsibility

to deny approval if a project is inappropriate. Building codes and county requirements are also discussed as guidelines for building.

c. **R.V. and trailer storage as per CC&R's dictate**

Bob Wines discusses trailer and R.V.'s with the county requirement for R.V. living. It is discussed that the CC&R's do not address time limits for R.V.'s on owner's lots. The CC&R's only out lines 6 weeks for guest. Bob Wines suggests that the association make a resolution to resolve the time limits. We need to address part time residence while under construction or having an active permit. What is a property owner allowed to have and how long they can leave a recreational vehicle and what defines a recreational vehicle. Questions were brought up about unoccupied vehicles. It is suggested that the board work with Bob Wines to come up with a questionnaire for the members to give input on their opinion with the appropriate guidelines. Les Preader makes motion for the board to develop questions for the body. Marnie Brennan seconds

Member vote: 31 yeah's

**New items discussed at meeting:**

Discussion begins on the Fire Hydrant along the CCC Road. It is pointed out that Steve Wright donated the land to the volunteer fire department to put a hydrant there for our best interests.

Mike Cecchi brings up discussion as to livestock issues in the association. Bob Wines says there county ordinances and zoning requirements for livestock. It outlines raising livestock for personal use and commercial use. He also asks, "What constitutes a pet? For example 4H projects for children. Mel Essington asks Bob Wines as to the intent of the CC&R's. He states that it is another gray matter in our CC&R's. Mike Cecchi makes a motion for a questionnaire in regards to the CC&R's and livestock issues go out to the body. Dennis McIntyre seconds.

**Under Question**

Mel Essington brings up the discussion of ownership or control of the livestock. It is brought up that the county codes should be included in the questionnaire so that the body can make informed opinions. There was discussion as to how to inter the county code into the CC&R's. Mike Cecchi makes a motion to combine the R.V. and Livestock questionnaire on to one questionnaire. Kris Cecchi seconds.

Member vote -- 31 yeah's

**Good of the Association -- Fire Department Donation**

There was a discussion of a donation to the volunteer fire department. Bill Nobles motions for a \$1,000.00 donation.



Motion dies due to lack of consensus.

Discussion --

Brad Keife gives a history of the Volunteer Fire Department in Ruby Valley. Mike Cerchi seconds the motion.

Dennis McIntyre thinks that is too much money to spend at this time. Brad Keife suggests that we ask the Volunteer Fire Department what they may need.

Member Vote - 31 Nays

Ellen Sargent points out that on the Wells Rural Electric bill that you may receive that they give you an option to do a donation when paying your bill also.

It is agreed that the Board will contact the Volunteer Fire Department for input.

Tally of ballots for new board members --

The votes were tallied by Jim Sargent and Roger Clark. They were pleased to announce that Mel Essington was elected to the Director #1 position replacing Bill Harmon. Lee Perks and Valeri McIntyre were re-elected to their posts of President and Secretary.

Meeting called to adjournment at 12:30 P.M.

P.S. The Bar-B-Que that followed was a huge success and many members were able to meet their neighbors for the first time!!!

*Valeri McIntyre*  
8/9/08

#12

24 Properties removed

25 Properties removed

26 Properties removed

27 Properties removed

28 Properties removed

29 Properties removed

30 Properties removed

31 Properties removed

PROXY RECEIVED

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

C-8	PROXY RECEIVED
C-9	LEE PERKINS & NOCA PERKINS
C-10	PR
D-1	BRAD & ROLANDA KETTER
D-2	<del>BRAD &amp; ROLANDA KETTER</del>
D-3	<del>BRAD &amp; ROLANDA KETTER</del>
D-4	DAVE WILSON
D-5	LAUSTINE ANDERS
D-6	MICHAEL & HOLLY MASON
E-1	JAMES & JILLIAN SARGENT
E-2	ABRAM & GRACE
E-3	
E-4	
E-5	STEVEN & JILLIAN
E-6	
F-1	
F-2	DAVID & DENNIS M. FERGUSON

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

F-3	
F-4	
F-5	PROXY RECEIVED
G-1	<i>Kate S. Allen</i>
G-2	
G-3	
G-4	PROXY RECEIVED
G-5	
G-6	<i>L. M. Cunningham</i>
H-1	<i>Gregory R. Cunningham</i>
H-2	<i>Adrian P. Cunningham</i>
H-3	
H-4	
H-5	PROXY RECEIVED
H-6	PROXY RECEIVED
H-7	PROXY RECEIVED
H-8	<i>Ryan D. Allen</i>

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

FL-9

**RUBY LAKE ESTATES HOMEOWNERS  
ASSOCIATION  
RUBY VALLEY, NEVADA**

**BOARD OF DIRECTORS  
AND LANDOWNERS MEETING  
MINUTES**

**SATURDAY, AUGUST 11, 2007 11:00 AM  
AT  
Ruby Valley Community Hall**

Board Members Present: Lee Perks, Mike Cecchi, Dennis McIntyre, Valeri McIntyre  
Bill Harmon, Bill Noble.

Board Members Absent: None

Members Present: 31 parcel owners represented (24 in attendance 7 via  
Proxy)

---

**Call Meeting to Order**  
Lee Perks called Meeting to order.

**Minutes of previous meeting:** Ellen Sargent requests that the prior minutes be read to the association in attendance. Mike Cecchi approves minutes Hunt Healy seconds approval.

Members Vote – 31 Yeah's

**Treasurer's Report:** Dennis reads current financial statement. He discusses current tax situation. Les Preader makes aware of tax for 1120-H for tax filing and also the accrual basis for our funds. He makes note that there has not been accrual for legal fees from Robert Wines and Robert says he has not issued a bill in regards to legal fees as of yet. The association agrees that the profit and loss needs to be adjusted for the legal fees.

Cheryl Noble approves amended financial statement, Kris Cecchi seconds.

Member Votes – 31 Yeah's

### **Old Business:**

**Garbage** – Lee discusses garbage as a potential problem. Robert Wines discusses that Steve Wright is willing to transfer title of small lot that is located at the end of Kiln Road for a dumpster location or how we see fit. He also discusses access rights for the 7H as they may need access to their well directly behind the lot. He also discusses concreting an area and fencing it off with a locked gate and who may be allowed access. There is discussion as to the transfer fees and property taxes for the lot. Would we be required to get liability insurance for the area? What would be the greatest use for the property? Marnie Brennen motions to acquire lot and pay all fees associated with acquiring property. Les Preader Seconds motion

### **Discussion**

Bob Wines also comments that the tax year for 2007-2008 will have to be paid as part of the acquisition of lot.

Member Vote – 31 Yeah's

**Dues** – Lee discusses what the current fee is and opens the floor to discussion. There is discussion among the members. Bill noble suggests that the annual fee be lowered to \$100.00 per lot. Mike Cecchi suggests that it should remain the same. There is discussion of the funds that have not been used and the things we would like to do and if we lower the fees we may not be able do even start what we would like to accomplish. Mike Cecchi calls for a motion for the annual fee to remain at \$150.00. Lee Perks seconds motion.

Member vote – 31 Yeah's

Les Preader discusses having a budget and appropriate fiscal budget and carry over. Board will work on fiscal budget.

**Roads** – Bob Wines discusses legal way for paying for road maintenance. He discusses time and material work versus Bid work. He explains the difference between a personal individual and a licensed contractor. He suggests a budget number of around \$5,000.00. Dave Miller discusses 2 contractors working at the Fish Hatchery that may be approached for road maintenance. Mike Cecchi suggests weed abatement first then grade every other year. Bill Harmon discussed the road conditions the last time they were graded. Raymond from the Blue Jay ranch was hired at that time, and was advised by Raymond that the roads would need material to be repaired.

Mike Cecchi suggests a \$3,000.00 budget for weed abatement and road repair. There is a small discussion of the matter with the members and Mike Cecchi makes a motion for \$3,000.00. Bill Noble seconds.

## Discussion -

There is discussion on the actual mileage of the Estates. The board will meter the mileage so appropriate plans can be made for the weed abatement plan.

There is a discussion about the conditions of the CCC Road and what the association is responsible for.

The first motion dies to lack of consensus.

Les Preader suggests a larger sum for weed abatement and road repair. He suggests an amount of \$5,000.00. Bob Wines suggests we should have \$10,000.00 in reserve for emergency and that the \$5,000.00 would be a more appropriate amount for the budget. Mike Cecchi motions again to approve the revised budget number. Dennis McIntyre seconds.

Members vote: 30 Yeah's and 1 nay.

Mel Essington discussed that there may be extra material at the hatchery after their expansion project. Brad Keife discusses a committee to follow through on the hatchery material and see if it is possible. Bill Noble offers to head the committee for the materials at the Hatchery. Dave Miller also offers to help. Brad Keife motions for approval of committee. Kris Cecchi seconds.

Member vote - 31 Yeah's

Phones - Dennis brings the membership up to date on the current status of phones in the association. There is discussion as to putting reflectors on the phone boxes along the side of the road. Since there have been no obstructions in the road for a very long time it is thought that we should take measures to make the boxes noticeable. Dennis McIntyre makes a motion to put reflectors on telephone boxes with \$150.00 budget. Mike Cecchi seconds motion

Members vote: 31 Yeah's

**Standing Committees: None**

## **New Business:**

Items submitted by members via mail.

- a. **Cost of removing power poles and moving power poles underground.**  
It is brought up and it is discussed that it would be cost prohibitive to do so.
- b. **Quality of homes to maintain property values.**  
Les Preader states it is the duty of the Architectural committee for keeping the association in accordance with the CC&R's. He also states it is their responsibility



to deny approval if a project is inappropriate. Building codes and county requirements are also discussed as guidelines for building.

c. **R.V. and trailer storage as per CC&R's dictate**

Bob Wines discusses trailer and R.V.'s with the county requirement for R. V. living. It is discussed that the CC&R's do not address time limits for R.V.'s on owner's lots. The CC&R's only allow 6 weeks for guest. Bob Wines suggests that the association make a resolution to resolve the time limits. We need to address part time residence while under construction or having an active permit. What is a property owner allowed to have and how long they can leave a recreational vehicle and what defines a recreational vehicle. Questions were brought up about unoccupied vehicles. It is suggested that the board work with Bob Wines to come up with a questionnaire for the members to give input on their opinion with the appropriate guidelines. Les Preader makes motion for the board to develop questions for the body. Marnie Brennan seconds

Member vote: 31 yeah's

**New items discussed at meeting**

Discussion begins on the Fire Hydrant along the CCC Road. It is pointed out that Steve Wright donated the land to the volunteer fire department to put a hydrant there for our best interests.

Mike Cecchi brings up discussion as to livestock issues in the association. Bob Wines says there county ordinances and zoning requirements for livestock. It outlines raising livestock for personal use and commercial use. He also asks, "What constitutes a pet? For example 4H projects for children. Mel Essington asks Bob Wines as to the intent of the CC&R's. He states that it is another gray matter in our CC&R's. Mike Cecchi makes a motion for a questionnaire in regards to the CC&R's and livestock issues go out to the body. Dennis McIntyre seconds.

**Under Question**

Mel Essington brings up the discussion of ownership or control of the livestock. It is brought up that the county codes should be included in the questionnaire so that the body can make informed opinions. There was discussion as to how to inter the county code into the CC&R's. Mike Cecchi makes a motion to combine the R.V. and Livestock questionnaire on to one questionnaire. Kris Cecchi seconds.

Member vote - 31 yeah's

**Good of the Association - Fire Department Donation**

There was a discussion of a donation to the volunteer fire department. Bill Nobles motions for a \$1,000.00 donation.

Motion dies due to lack of consensus.

Discussion –

Brad Keife gives a history of the Volunteer Fire Department in Ruby Valley. Mike Cecchi seconds the motion.

Dennis McIntyre thinks that is too much money to spend at this time. Brad Keife suggests that we ask the Volunteer Fire Department what they may need.

Member Vote – 31 Nays

Ellen Sargent points out that on the Wells Rural Electric bill that you may receive that they give you an option to do a donation when paying your bill also.

It is agreed that the Board will contact the Volunteer Fire Department for input.

**Tally of ballots for new board members –**

The votes were tallied by Jim Sargent and Roger Clark. They were pleased to announce that Mel Essington was elected to the Director #1 position replacing Bill Harmon. Lee Perks and Valeri McIntyre were re-elected to their posts of President and Secretary.

Meeting called to adjournment at 12:30 P.M.

P.S. The Bar-B-Que that followed was a huge success and many members were able to meet their neighbors for the first time!!!

*Valeri McIntyre*  
8/9/08

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

24  
31 Properties owned  
7 Properties Occupied  
31 Properties Unrepresented

LOT #	SIGNATURE
A-1	
A-2	John Bean
B-1	
B-2	
B-3	
B-4	
B-5	Chris Lynette
B-6	
B-7	
C-1	Bill Harmon
C-2	
C-3	BRAD & RICHONDA KEIFE
C-4	
C-5	
C-6	Mike & Linda
C-7	PROXY RECEIVED

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

C-8	PROXY RECEIVED
C-9	LEE PERKS + NOVA PERKS
C-10	" "
D-1	BRAD & ROLANDA KEIFE
D-2	<del>BRAD &amp; ROLANDA KEIFE</del>
D-3	<del>BRAD &amp; ROLANDA KEIFE</del>
D-4	JOHN WILSON
D-5	CHRISTINE ARBERS
D-6	MICHAEL & KELLY MAISON
E-1	JAMES & ELLIEN SARGENT
E-2	ALBERT BRONKHORST
E-3	
E-4	
E-5	STENOR GARDNER
E-6	
F-1	
F-2	VALERIE & DENNIS M. GILG

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

F-3	
F-4	
F-5	PROXY RECEIVED
G-1	<i>Robert Clark</i>
G-2	
G-3	
G-4	PROXY RECEIVED
G-5	
G-6	<i>L. M. Casper</i>
H-1	<i>Gregory B. Casper</i>
H-2	<i>Adrian Taylor - Jackie Proctor</i>
H-3	
H-4	
H-5	PROXY RECEIVED
H-6	PROXY RECEIVED
H-7	PROXY RECEIVED
H-8	<i>Ryan Clark</i>

\* [

Ruby Lake Estates  
Sign in Sheet  
August 11, 2007

H-9

EXHIBIT “14”

EXHIBIT “14”

#2  
February 21, 2000

To the property owners of the Ruby Lake Estates.

Last November a meeting was held for the Ruby Lake Estates. A committee was established to meet the county requirements of road maintenance and basic fire protection. A committee of five owners were selected, Lee Perks from Carson City, NV will be the chairperson with Bill Harmon of Ruby Valley, NV, Bill Noble of Las Vegas, Mike Cecchi of Reno, NV and Dennis McIntyre of Sparks, NV as the committee members.

These committee members were directed to write Bylaws to establish the Ruby Lake Estates Landowners Association (RLELA) which is to collect moneys to meet Elko County Requirements.

At present there are three homes in Ruby Lake Estates with two others under construction. Five other lots have pump houses or other out buildings. This summer it appears that several structures will go up.

In a meeting with the local fire dept. last fall it was suggested that the Ruby Valley Estates owners should keep the roads graded and free of weeds to provide fire breaks and fire truck access. Also owners are to keep a firebreak around their structures. This will help limit each individual land owners liability and the necessity of making fire breaks on each lot. If we meet these needs then we would meet the intent of NRS 474.580 which requires the owner of the land to remove fire hazards as directed. If a person fails to comply then the Board of commissioners can authorize the clean-up and charge the owner.

On November 19, 1999 Steve Wright obtained the services of Attorney Robert Wines regarding the maintenance of the roads per county policy. In Mr. Wines response he stated that Elko County Code (ECC) describes Elko County Road policy. This authorizes the County to use "any appropriate means to maintain the county roads, The "Appropriate Means" employed by the county on roads such as in the Ruby Lake Estates Subdivision, is to require the property owners to enter in to a roadway maintenance agreement. Mr. Wines suggests that we enter into an Association to maintain these roads at a small fee now, than wait until major work and expense is needed. We should note that once the county has approved the original installation and accepted it, the developer is no longer obligated to repair or maintain these roads, except to the extent he is a property owner and jointly responsible with all other property owners.

In the past Steve Wright has paid for the grading of the roads, but now that all the lots are sold it now is the responsibility of all of the landowners to maintain the roads. As owners in the Ruby Lake Estates we would much rather be in control of our roads than allow the County to maintain and charge us for this service.



#2  
The Committee has set a yearly fee of \$100.00 (\$8.34 per month) per lot to have the roads graded twice a year. The fees are listed in our Bylaws so that to raise or lower this fee we would have to notify all of the owners and have two thirds of the property owners agree to the change.

Please review this proposal carefully as we need 100% participation, as we do not want to spend any funds on legal fees or involve the Elko County Commissioners.

On another note Steve & Mavis Wright are going to deed the two commercial wells in the Ruby Lake Estates to the Association for fire protection or whatever other uses we deem necessary.

Please contact Lee Perks (775) 358-4403 or Bill Harmon (775) 779-2242 with questions. Please send \$100.00 to Ruby Lake Estates Landowners Association, HC60 Box 725 Ruby Valley, NV 89833

Sincerely,

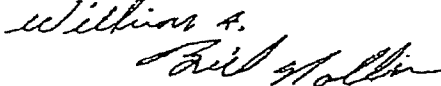
Lee Perks



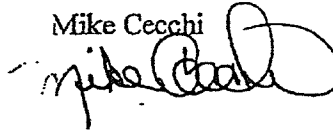
Bill Harmon



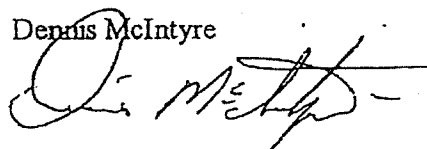
Bill Noble



Mike Cecchi



Dennis McIntyre



February 21, 2000

To the property owners of the Ruby Lake Estates.

Last November a meeting was held for the Ruby Lake Estates. A committee was established to meet the county requirements of road maintenance and basic fire protection. A committee of five owners were selected, Lee Perks from Carson City, NV will be the chairperson with Bill Harmon of Ruby Valley, NV, Bill Noble of Las Vegas, Mike Cecchi of Reno, NV and Dennis McIntyre of Sparks, NV as the committee members.

These committee members were directed to write Bylaws to establish the Ruby Lake Estates Landowners Association (RLELA) which is to collect moneys to meet Elko County Requirements.

At present there are three homes in Ruby Lake Estates with two others under construction. Five other lots have pump houses or other out buildings. This summer it appears that several structures will go up.

In a meeting with the local fire dept. last fall it was suggested that the Ruby Valley Estates owners should keep the roads graded and free of weeds to provide fire breaks and fire truck access. Also owners are to keep a firebreak around their structures. This will help limit each individual land owners liability and the necessity of making fire breaks on each lot. If we meet these needs then we would meet the intent of NRS 474.580 which requires the owner of the land to remove fire hazards as directed. If a person fails to comply then the Board of commissioners can authorize the clean-up and charge the owner.

On November 19, 1999 Steve Wright obtained the services of Attorney Robert Wines regarding the maintenance of the roads per county policy. In Mr. Wines response he stated that Elko County Code (ECC) describes Elko County Road policy. This authorizes the County to use "any appropriate means to maintain the county roads, The "Appropriate Means" employed by the county on roads such as in the Ruby Lake Estates Subdivision, is to require the property owners to enter in to a roadway maintenance agreement. Mr. Wines suggests that we enter into an Association to maintain these roads at a small fee now, than wait until major work and expense is needed. We should note that once the county has approved the original installation and accepted it, the developer is no longer obligated to repair or maintain these roads, except to the extent he is a property owner and jointly responsible with all other property owners.

In the past Steve Wright has paid for the grading of the roads, but now that all the lots are sold it now is the responsibility of all of the landowners to maintain the roads. As owners in the Ruby Lake Estates we would much rather be in control of our roads than allow the County to maintain and charge us for this service.

The Committee has set a yearly fee of \$100.00 (\$8.34 per month) per lot to have the roads graded twice a year. The fees are listed in our Bylaws so that to raise or lower this fee we would have to notify all of the owners and have two thirds of the property owners agree to the change.

Please review this proposal carefully as we need 100% participation, as we do not want to spend any funds on legal fees or involve the Elko County Commissioners.

On another note Steve & Mavis Wright are going to deed the two commercial wells in the Ruby Lake Estates to the Association for fire protection or whatever other uses we deem necessary.

Please contact Lee Perks (775) 358-4403 or Bill Harmon (775) 779-2242 with questions. Please send \$100.00 to Ruby Lake Estates Landowners Association, HC60 Box 725 Ruby Valley, NV 89833

Sincerely,

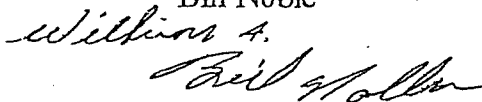
Lee Perks



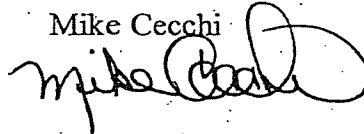
Bill Harmon



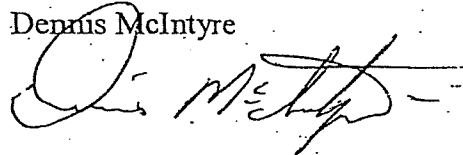
Bill Noble



Mike Cecchi



Dennis McIntyre



I have never been notified of a fee change. I have never been asked if I wanted the fee to be raised.

EXHIBIT “15”

EXHIBIT “15”

**received**  
9/13/05NV Lic. 12559 A, 12559B, 12559C  
NV UTH Lic. 1018

CA Lic. 678948

**L. A. Perks Plumbing & Heating, Inc.**

765 East Greg Street #103

Sparks, Nevada 89431

Ph. (775) 358-4403

Fax. (775) 358-4411

[lee@perksplumbing.com](mailto:lee@perksplumbing.com)

September 7, 2005

Robert Wines  
P. O. Box 511  
Elko, NV 89803

Dear Robert,

We had a meeting in November of 1999 to establish a new committee and relieve Steve of his obligation to the Ruby Lake Estates. I was appointed by vote as chairperson with Mike Cecchi, Bill Harmon, Dennis McIntyre and Bill Noble as committee members. Our direction was to establish a Association to handle the roads, fire protection and architectural review assignment. Steve helped coach me with all of the information from you and I sent letters to the property owners. I received a handful of replies of "not interested, I bought for investment only". As there were only a few of us we handled things as needed.

I am sorry I did not react to this faster to save Steve the grief of dealing with these petty problems. We do have several people that are building at present and would like to have there RV's on site to stay in while building. I believe that most Counties and Cities will allow a person to stay in an RV while a building permit is open. We want to be a little more lenient than that that a person can use a RV for one year before permits are issued. It is a long drive to the Ruby Lake Estates and this will help property owners get more done in preparation of building. It would be done on a case by case basis.

If you think we are over stepping our authority please advise me. I have only had one person mention this to me.

I am working on a survey to send out to all property owners to get a feel for what everyone wants. I am enclosing a draft you can look over and comment. I am also inclosing a copy of bylaws that we are preparing and the letter I sent property owners when Steve stepped down.

Hopefully with the nudging of new comers I will stay on this and get it moving. It is time as there are ten places at present with 3-4 more in the works.

I am sure we will need your services soon, if you would like to help us with reviews and letters to get things moving properly.

Thank you very much,

Lee Perks

EXHIBIT “16”

EXHIBIT “16”



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

**Articles of Incorporation  
Nonprofit Cooperative Corporation  
Without Stock**  
(PURSUANT TO NRS 81.410-81.540)

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY

1. <b>Name of Corporation:</b>	Ruby Lakes Estates Homeowners Association			
2. <b>Resident Agent Name and Street Address:</b>	George M. Essington Name #6 Indian Springs Dr. Ruby Valley NEVADA 89833 Physical Street Address HC 60 Box 760 Ruby Valley NV 89833 Additional Mailing Address City State Zip Code			
3. <b>Names, Addresses, Number of Board of Directors/Trustees:</b> <small>(must not be less than three)</small>	The First Board of Directors/Trustees shall consist of _____ members whose names and addresses are as follows: 1. George M. Essington Name HC 60 Box 760 Ruby Valley NV 89833 Street Address City State Zip Code 2. Elizabeth E. Essington Name HC 60 Box 760 Ruby Valley NV 89833 Street Address City State Zip Code 3. _____ Name _____ Street Address _____ City _____ State _____ Zip Code _____			
4. <b>Purpose:</b>	The purpose of this Corporation shall be:			
5. <b>Voting Power and Property Rights/ Interest of Each Member:</b> <small>(Please see instructions)</small>				
6. <b>Names, Addresses and Signatures of Incorporators:</b> <small>(must be subscribed by three or more of the original members, a majority of whom must be residents of this state)</small>	1. George M. Essington Name HC 60 Box 760 Ruby Valley NV 89833 Address City State Zip Code Signature 2. Elizabeth E. Essington Name HC 60 Box 760 Ruby Valley NV 89833 Address City State Zip Code Signature 3. _____ Name _____ Address _____ City _____ State _____ Zip Code _____ Signature _____			
7. <b>Certificate of Acceptance of Appointment of Resident Agent:</b>	I hereby accept appointment as Resident Agent for the above named corporation. Authorized Signature of R.A. or On Behalf of R.A. Company _____ Date _____			

This form must be accompanied by appropriate fees.

Nevada Secretary of State Form NRS81.410ARTICLES 2083  
Revised on: 03/29/05

RLE 143

1RA160

EXHIBIT “17”

EXHIBIT “17”



## ***RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION***

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

687 6th Street, Suite1  
Elko, Nevada 89801  
(Correspondence)

June 28, 2010

To All Ruby Lake Estates Members,

I recently received a letter from two board members advising us that the Ruby Lake Estates Homeowners Association was improperly established. I think the rest of the details need to be presented for the defense of Steve Wright and Robert Wines.

The original attorney that helped Steve Wright establish the Ruby Lake Estates passed away early in the history of the Ruby Lake Estates. In November 1999 Steve Wright hired Robert Wines to represent the development. Shortly there after Steve Wright held a meeting and asked for a show of hands to approve replacement officers he could appoint replace him and Jolene Supp on the board. Steve Wright then appointed Mike Cecchi, Dennis McIntyre, Bill Noble, Bill Harmon and myself as chairmen. This was over 10 years ago and our CC&R's allow for Steve Wright to appoint his successors. Before that time the board was made up of Bill Harmon, chairman, Jolene Supp Vice Chairman, Teri Harmon, secretary, Steve Wright, member. They requested dues and suggested yearly fees assessed in 1997 which I know I paid and many other lot owners. Again this was before Robert Wines was our council.

As a new board we were very uneducated and just drifted along until Mel and Beth Essington demanded that we operate as a board or they wanted to handle it. So we decided to send letters and collect fees. To do this we needed to obtain a federal ID number. To obtain a federal ID # we had to have a factious name, (this is when I came up with the name Ruby Lake Estates Homeowners Association) to get a factious name we had get a nonprofit designation, to get that we had to register with the Secretary of State. This all happened in 2005. Now remember the board had been operating to my knowledge when I bought in 1996. After all this is when the OMBUDSMANS office contacted us about registering with them which we did.

This is when the Board had a meeting to get permission to hire counsel to help guide us through the legal issues regarding having a board. Robert Wines them gave us our first lessons on NRS 116.

I know a letter was sent to the Ombudsman's office 12/9/2009 as I receive d a copy in March of 2010 from the Ombudsman's. This issue regarding the legal forming of the association has never been discussed at a board meeting, even after the letter was sent. I can not understand why these two members have blind sided Robert Wines without even

#28

discussing the issue with him in person if they had these concerns. It is hard to image the motives after one of the board members has been on the board for ten years and the other is in his second term. Are they just pouting? What is their solution to the management of the Ruby Lake Estates? It was Steve Wright's intent to have dues collected for roads and other expenses. Enclosed is a copy of a 1997 news letter. As you will notice in the news letter the early name was the Ruby Lake Estates Property Owners Association.

It is easy to cherry pick the law, but the early days of Ruby Lake Estates shows that we needed to abide by NRS 116. NRS 116.2117 states that challenges need to be done less than one year after made, this was four years. The NRS statues state that board members are required to have insurance provided by the members. I am wondering how these two board members propose to collect and distribute monies?

I understand that the early establishment and set up of the association was not technically perfect but the intent was. Just so everybody understands this association was not just started spontaneously by a show of hands as alleged but has a track recorded well before any of the current board was established. Robert Wines legal opinion is we are bound by the NRS116 statues.

If everyone looks at their deed they will see that the CC&R's are listed on their deed. Also we have had a 100% participation from 2006 through 2009.

I want everyone to know I stand firmly behind Steve Wright and Robert Wines and their efforts to build and maintain a special place in Ruby Valley and will strongly defend their actions.

I have personally been in contact with the Ombudsman's office and they have instructed us to continue business as usual. We were able to fill in the blanks that the complaint failed to note.

There is more but I wanted to hit the highlights of how we got to where we are.

Sincerely,

Lee Perks  
President RLEHA

# **RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION**

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

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

June 28, 2010

To All Ruby Lake Estates Members,

I recently received a letter from two board members advising us that the Ruby Lake Estates Homeowners Association was improperly established. I think the rest of the details need to be presented for the defense of Steve Wright and Robert Wines.

The original attorney that helped Steve Wright establish the Ruby Lake Estates passed away early in the history of the Ruby Lake Estates. In November 1999 Steve Wright hired Robert Wines to represent the development. Shortly there after Steve Wright held a meeting and asked for a show of hands to approve replacement officers he could appoint replacing himself, Teri Harmon and Jolene Supp on the board. Steve Wright then appointed Mike Cecchi, Dennis McIntyre, Bill Noble, Bill Harmon and myself as chairmen. This was over 10 years ago and our CC&R's allow for Steve Wright to appoint his successors. Before that time the board was made up of Bill Harmon, chairman, Jolene Supp Vice Chairman, Teri Harmon, secretary, Steve Wright, member. They requested dues and suggested yearly fees assessed in 1997 which I know I paid and many other lot owners. Again this was before Robert Wines was our council.

As a new board we were very uneducated and just drifted along until Mel and Beth Essington demanded that we operate as a board or they wanted to handle it. So we decided to send letters and collect fees. To do this we needed to obtain a federal ID number. To obtain a federal ID # we had to have a fictitious name, (this is when I came up with the name Ruby Lake Estates Homeowners Association) to get a fictitious name we had get a nonprofit designation, to get that we had to register with the Secretary of State. This all happened in 2005. Now remember the board had been operating to my knowledge when I bought in 1996. After all this is when the OMBUDSMANS office contacted us about registering with them which we did.

2005 is when the Board had a meeting to get permission to hire counsel to help guide us through the legal issues regarding having a board. Robert Wines then gave us our first lessons on NRS 116.

I know a letter was sent to the Ombudsman's office 12/9/2009 as I received a copy in March of 2010 from the Ombudsman's. This issue regarding the legal forming of the association has never been discussed at a board meeting, even after the letter was sent. I can not understand why these two members have blind sided Robert Wines without even

discussing the issue with him in person if they had these concerns. It is hard to image the motives after one of the board members has been on the board for ten years and the other is in his second term. What is their solution to the management of the Ruby Lake Estates? It was Steve Wright's intent to have dues collected for roads and other expenses. Enclosed is a copy of a 1997 news letter. As you will notice in the news letter the early name was the Ruby Lake Estates Property Owners Association.

It is easy to cherry pick the law, but the early days of Ruby Lake Estates shows that we needed to abide by NRS 116. NRS 116.2117 states that challenges need to be done less than one year after made, this was four years. The NRS statues state that board members are required to have insurance provided by the members. I am wondering how these two board members propose to collect and distribute monies?

I understand that the early establishment and set up of the association was not technically perfect but the intent was there. Just so everybody understands this association was not just started spontaneously by a show of hands as alleged but has a track recorded well before any of the current board was established. Robert Wines legal opinion is we are bound by the NRS116 statues.

If everyone looks at their deed they will see that the CC&R's are listed on their deed. Also we have had a 100% participation from 2006 through 2009.

I want everyone to know I stand firmly behind Steve Wright and Robert Wines and their efforts to build and maintain a special place in Ruby Valley and will strongly defend their actions.

I have personally been in contact with the Ombudsman's office and they have instructed us to continue business as usual. We were able to fill in the blanks that the complaint failed to note.

There is more but I wanted to hit the highlights of how we got to where we are.

Sincerely,



Lee Perks  
President RLEHA

CCC: Ombudsman  
Robert Wines

EXHIBIT “18”

EXHIBIT “18”



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

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

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY

<b>1. Name of Association:</b>	RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION								
<b>2. Resident Agent Name and Street Address:</b> <small>(must be a Nevada address where Process may be served)</small>	LEE PERKS Name 765 E. GREG STREET, #103 Physical Street Address  Additional Mailing Address	SPARKS City  City	NEVADA State  State 89431 Zip Code  Zip Code						
<b>3. Term:</b> <small>(may be perpetual)</small>									
<b>4. Names &amp; Addresses of Board of Directors/Trustees:</b> <small>(attach additional pages there are more than 3)</small>	1. LEE PERKS Name 765 E. GREG STREET, #103 Address 2. BILL HARMON Name HC 60, BOX 725 Address 3. MIKE CECCHI Name 10890 OSAGE RD Address								
<b>5. Membership Fee:</b> <small>(must be completed)</small>	The Membership fee is \$ _____ yearly fee per member. Each member signing the articles has paid the fee and their interests and rights are equal								
<b>6. Purpose:</b> <small>(must be completed)</small>	The purpose of this Association shall be: Maintain roadways and enforce restrictive covenants								
<b>7. Names, Addresses and Signatures of Subscribers:</b> <small>(attach additional pages there are more than 3 subscribers must be subscribed by the original associates or members)</small>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;">           LEE PERKS Name 765 E. GREG STREET, #103 Address            DENNIS MCINTYRE Name 1530 South View Dr. Address Sparks NV 89436            MIKE CECCHI Name 10890 OSAGE RD Address         </td> <td style="width: 50%; vertical-align: top;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">               Signature <i>Lee Perks</i>                SPARKS City                NV State                89431 Zip Code             </td> <td style="width: 50%;">               Signature <i>Dennis McIntyre</i>                SPARKS City                NV State                89436 Zip Code             </td> </tr> <tr> <td>               Signature <i>Mike Cecchi</i>                RENO City                NV State                89506 Zip Code             </td> <td></td> </tr> </table> </td> </tr> </table>			LEE PERKS Name 765 E. GREG STREET, #103 Address DENNIS MCINTYRE Name 1530 South View Dr. Address Sparks NV 89436 MIKE CECCHI Name 10890 OSAGE RD Address	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">               Signature <i>Lee Perks</i>                SPARKS City                NV State                89431 Zip Code             </td> <td style="width: 50%;">               Signature <i>Dennis McIntyre</i>                SPARKS City                NV State                89436 Zip Code             </td> </tr> <tr> <td>               Signature <i>Mike Cecchi</i>                RENO City                NV State                89506 Zip Code             </td> <td></td> </tr> </table>	Signature <i>Lee Perks</i> SPARKS City NV State 89431 Zip Code	Signature <i>Dennis McIntyre</i> SPARKS City NV State 89436 Zip Code	Signature <i>Mike Cecchi</i> RENO City NV State 89506 Zip Code	
LEE PERKS Name 765 E. GREG STREET, #103 Address DENNIS MCINTYRE Name 1530 South View Dr. Address Sparks NV 89436 MIKE CECCHI Name 10890 OSAGE RD Address	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">               Signature <i>Lee Perks</i>                SPARKS City                NV State                89431 Zip Code             </td> <td style="width: 50%;">               Signature <i>Dennis McIntyre</i>                SPARKS City                NV State                89436 Zip Code             </td> </tr> <tr> <td>               Signature <i>Mike Cecchi</i>                RENO City                NV State                89506 Zip Code             </td> <td></td> </tr> </table>	Signature <i>Lee Perks</i> SPARKS City NV State 89431 Zip Code	Signature <i>Dennis McIntyre</i> SPARKS City NV State 89436 Zip Code	Signature <i>Mike Cecchi</i> RENO City NV State 89506 Zip Code					
Signature <i>Lee Perks</i> SPARKS City NV State 89431 Zip Code	Signature <i>Dennis McIntyre</i> SPARKS City NV State 89436 Zip Code								
Signature <i>Mike Cecchi</i> RENO City NV State 89506 Zip Code									
<b>8. Certificate of Acceptance of Appointment of Resident Agent</b>	I hereby accept appointment as Resident Agent for the above named Association. <i>Lee Perks</i> Authorized Signature of R.A. or On Behalf of R.A. Company 10-27-2005 Date								

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

Nevada Secretary of State Form NRS 81.170.3003  
Revised on 05/08/03

#5

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION  
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES

788 Fairview Drive, Suite 200 • Carson City, Nevada 89701-5453 • (775) 687-4280  
2501 East Sahara Avenue, Suite 102 • Las Vegas, Nevada 89104-4137 • (702) 486-4033  
2501 East Sahara Avenue, Suite 201 • (702) 486-4480 • fax: (702) 486-4520  
Toll free: (877) 829-9907 <http://www.red.state.nv.us>

**INITIAL ASSOCIATION REGISTRATION FORM**

**Note: Please read instructions on reverse side before completing registration form.**

<sup>1</sup> Indicate by checking which type of entity the association will be organized with the SOS, pursuant to NRS 116.3101:

<b>Corporation:</b>  <input type="checkbox"/> Profit <input checked="" type="checkbox"/> Nonprofit	<input type="checkbox"/> Trust	<b>Partnership:</b>  <input type="checkbox"/> General <input type="checkbox"/> Limited <input type="checkbox"/> Limited Liability
----------------------------------------------------------------------------------------------------------	--------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------

<sup>2</sup> Association

Name Ruby lake Estates Homeowner's Association

Address:

Number and Street 687 6th Street suite 1

City/State/Zip Code Elko, NV 89801

Telephone Number (775) 738-3171

<sup>4</sup> County Elko

<sup>5</sup> Number of Units 51 and Maximum Number of Units that may be built 51

<sup>3</sup> Indicate by checking the type of Common-Interest Community for association:

☐ Condominium  
☐ Cooperative  
☒ Planned Community (PC)  
 If PC, select type(s) of units in association:  
☒ Single Family Dwelling    ☐ Condominium  
☐ Townhouse    ☐ Manufactured Housing

<sup>6</sup> Please indicate by checking the type of association:     Master Association ☒     Sub-Association ☐     Not Applicable ☐

*Note: If Sub-Association, please record the following information in the space provided:*

• Name of the Master Association that the Sub is part of: \_\_\_\_\_

• Association responsible for payment of the Ombudsman's Unit Fees:     Master Association ☐     Sub-Association ☐

Executive Board	President	Secretary	Treasurer
Board Member's Name	LeRoy Perks	Dennis McIntyre	Mike Cecchi
Address: Number and Street City / State / Zip Code	3030 Brenda Way Carson City, NV 89704	1530 Southview Dr. Sparks, Nv 89436	10890 Osage Rd. Reno, NV 89506
Telephone Number	(775) 358-4403	(775) 358-4403	(775) 356-1781
E-mail Address (Optional)	lee@perksplumbing.com	dennis@perksplumbing.com	mike@bramcoconst.com
	<sup>8</sup> Community Manager	<sup>9</sup> Custodian of Records	<sup>10</sup> Attorney
Business Name	Executive Board of Association	Mathews & Wines	Mathews & Wines
Contact Name	LeRoy Perks	Robert Wines	Robert Wines
Address: Number and Street City / State / Zip Code	3030 Brenda Way Carson City, NV 89704	687 6th St. Suite 1 Elko, NV 89801	687 6th St. suite 1 Elko, NV 89801
Telephone Number	(775) 358-4403	(775) 738-3171	(775) 738-3171
E-mail Address (Optional)	lee@perksplumbing.com	bobwines@citlink.net	bobwines@citlink.net
			<sup>11</sup> Declarant
			Steve & Mavis Wright
			Steve Wright
			P.O. Box 486 Wells, NV 89835
			(775) 752-2477

<sup>12</sup> Signature/Title (Individual completing form): LeRoy Perks     Date signed: 3/31/04

To be completed by Ombudsman Office only.  <b>SOS Filing Date:</b> _____ <b>SOS File Number:</b> _____  <b>Initials and Date received:</b> _____ <b>Initials and Date entered:</b> _____		<b>Fiscal Year:</b> _____
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	---------------------------

## 4. CONTINUED

DENNIS McINTYRE

1530 SOUTHVIEW DRSPARKS, NV 89436

BILL NOBLE

4624 BRUSHFIRE STLAS VEGAS, NV N. LAS Vegas NV 89037





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

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

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY

1. <u>Name of Association:</u>	RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION			
2. <u>Resident Agent Name and Street Address:</u> <small>(must be a Nevada address where Process may be served)</small>	LEE PERKS Name 765 E. GREG STREET, #103 Physical Street Address SPARKS NEVADA 89431 City State Zip Code Additional Mailing Address City State Zip Code			
3. <u>Term:</u> <small>(may be perpetual)</small>				
4. <u>Names &amp; Addresses of Board of Directors/Trustees:</u> <small>(attach additional pages there are more than 3)</small>	1. LEE PERKS Name 765 E. GREG STREET, #103 Address SPARKS NV 89431 City State Zip Code 2. BILL HARMON Name HC 60, BOX 725 Address RUBY VALLEY NV 89833 City State Zip Code 3. MIKE CECCHI Name 10890 OSAGE RD Address RENO NV 89506 City State Zip Code			
5. <u>Membership Fee:</u> <small>(must be completed)</small>	The Membership fee is \$ yearly fee per member. Each member signing the articles has paid the fee and their interests and rights are equal			
6. <u>Purpose:</u> <small>(must be completed)</small>	The purpose of this Association shall be: Maintain roadways and enforce restrictive covenants			
7. <u>Names, Addresses and Signatures of Subscribers:</u> <small>(attach additional pages there are more than 3 subscribers must be subscribed by the original associates or members)</small>	LEE PERKS Name 765 E. GREG STREET, #103 Address SPARKS NV 89431 City State Zip Code DENNIS MCINTYRE Name 1530 South View Dr. Address SPARKS NV 89436 City State Zip Code MIKE CECCHI Name 10890 OSAGE RD Address RENO NV 89506 City State Zip Code			
8. <u>Certificate of Acceptance of Appointment of Resident Agent</u>	I hereby accept appointment as Resident Agent for the above named Association. Authorized Signature of R.A. or On Behalf of R.A. Company Date 10-27-2005			

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

4. CONTINUED

DENNIS McINTYRE

1530 SOUTHVIEW DR

SPARKS, NV 89436

BILL NOBLE

4626 BRUSHFIRE ST

LAS VEGAS, NV N. LAS Vegas NV 89031

EXHIBIT “19”

EXHIBIT “19”

**RUBY LAKE ESTATES LANDOWNERS ASSOCIATION**  
**Ruby Valley, Nevada**

All property owners of Ruby lake Estates,

The time has come that we have an active association. We have filed the appropriate documentation with the Office of the OMBUDSMAN and the Secretary of State. We now need to have a meeting and discuss the issues related to the Ruby Lake Estates, Elko County Requirements and the State of Nevada. The meeting will be held 12:00 PM, August 12, 2006 at Harmon's Ruby Lake Resort.

Our first order of business will be to establish a set of bylaws for guidelines of elections and meetings. The current board will bring an outline for discussions to the next meeting.

Bob Wines, the attorney for Steve Wright, has helped with the set up of the association on requirements we need to perform. We as landowners should obtain the services of Bob Wine to explain the State of Nevada laws and our current CCR's.

The Fire Department has requested that we keep the roads graded and free of weeds. We are to provide fire breaks on all lots to protect our neighbors and remove weeds and brush around structures. If we do this we will meet the intent of NRS 474.580. We now have a 250 gpm pump to fill fire trucks by lot F-3 that was put in by the Ruby Valley Volunteer Fire Department. The RVVFD is taking care of the pump and paying the power bills.

We have no choice but to start Ruby Lake Estates Landowner dues effective immediately this year. If Elko County steps in because of complaints of safety every land owner could receive a bill for a \$1000.00 plus yearly on their tax bill. It will be much more cost effective to handle this management on our own through the association. We understand that not all landowners visit or stay at their property very often but they still have an obligation to their neighbors regardless, under state law.

There are now (8) lots with residences, three more with active building permits just received, with two more lots getting ready to start construction.

Please fill out the survey and have input.

Thanks you for helping in advance,

Lee Perks  
Dennis McIntyre  
Bill Harmon  
Mike Cecchi  
Bill Noble

EXHIBIT “20”

EXHIBIT “20”

Dennis Cunningham  
285 Pompe Way  
Reno NV 89506  
July 18, 2006

**All Property Owners of Ruby Lake Estates,**

This letter is written in regards to the letter that was received on June 14, 2006. As a property owner there are several concerns that will need to be addressed at the August meeting. Having had previous experience with other associations we have concerns, which include some of the following:

1. Roads
2. Firebreaks on all lots
3. Association Board Members
4. Accountability of funds

**Roads** - The road's supervisor Otis Tipton was contacted in regards to maintaining private roads in the Ruby Lake Estates. They do not do it. It has to be contracted out to a private contractor. They will establish an account for the Ruby Lake Estates Property Owner's Association through our county tax bill. This is called a GID. This will eliminate the need for a bank account, a paid secretary, computers, paperwork etc. We will still need to have a three member volunteer Board to meet once a year to contract out roadwork. Upon completion of the roadwork the county will pay it for the Association members from the fund established.

**Firebreaks on all lots** - As established in the CCRs the only fire restrictions required are for the properties that have permanent structures in place and need a 50-foot clearance around them (Article 3, Section P). Each individual property owner is responsible for clearance.

**Association Board Members** - Without going into complete detail Chapter 474 details the requirements for elections, procedures and changes in the CCRs which requires persons entitled to vote and voting by proxy. We do not need an attorney for something that is already established by law. This just incurs unnecessary expense to the members.

**Accountability of funds** - We have paid annual dues since 1997 and have never received an annual statement stipulating where the funds went. We have never received acknowledgement of the funds sent. Occasional independent audits need to be conducted an additional expense to the membership.

We believe these issues need to be addressed to prevent unnecessary fees to the membership. We will see you at the meeting; bring any concerns that you also may share.

Respectfully,



Dennis and Darlene Cunningham

EXHIBIT “21”

EXHIBIT “21”

**JAMES M. COPENHAVER, P.C.**

Law Offices  
950 Idaho Street  
Elko, Nevada 89801

James M. Copenhaver  
Attorney at Law

Telephone: (775) 738-1951  
Facsimile: (775) 738-1953

May 25, 2006

Robert J. Wines, Esq.  
MATTHEWS & WINES, P.C.  
P.O. Box 511  
Elko, Nevada 89803

RE: RUBY LAKE ESTATES HOMEOWNERS ASSOCIATION

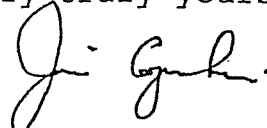
Dear Bob:

Could you provide me with a copy of the bylaws for the Ruby Lake Estates Homeowners Association?

I believe that my client, Mel Essington, as a property owner, would have a right to obtain the bylaws.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



JAMES M. COPENHAVER

JMC/jm

RLE 142

1RA177



# ROBERT J. WINES, PROF. CORP.

A Professional Law Corporation

## MAILING ADDRESS

P.O. Box 511  
Elko, Nevada 89803

## OFFICE LOCATION

687 6<sup>th</sup> Street, Suite 1  
Elko, Nevada 89801

Telephone: (775) 738-3171

Telefax: (775) 753-9860

Email: [bobwines@citlink.net](mailto:bobwines@citlink.net)

August 24, 2006

Via Facsimile: 738-1953 & US Mail

James M. Copenhaver, Esq.  
950 Idaho Street  
Elko, NV 89801

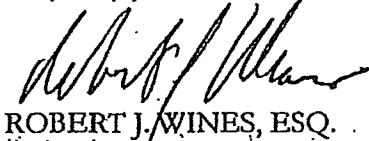
Re: Ruby Lake Estates Homeowner's Association

Dear Jim:

On Saturday, August 12, 2006, the Ruby Lake Estates Homeowner's Association met in Ruby Valley and discussed the proposed Bylaws. There were changes made to the draft that I previously forwarded to you; those changes were noted by the Association Secretary on the official draft copy of the Bylaws. At that meeting, the Bylaws, as changed were adopted by the Members. The Secretary is transcribing those changes into a "final" version of the Bylaws, and as soon as I receive a copy of them, I will forward a copy to you.

As I previously advised, I had been invited to attend, and in fact, I did so. If it is imperative that you review the adopted Bylaws before receipt of the official version, I have a draft which has my notes on it. For your information, they asked me to represent the Board, for the purpose of getting it set up, and so they could pose questions with respect to interpretation of the CCR's. I have informed them all that my duties would relate to the whole, and not for the benefit of any individual.

Very truly yours,



ROBERT J. WINES, ESQ.

RJW/cjh

pc: Lee Perks

RLE 145

1RA178

EXHIBIT “22”

EXHIBIT “22”

Case No. NRED Control No. 11-82

CONDENSED  
TRANSCRIPT

STATE OF NEVADA  
IN THE DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION

○○○

ARTEMIS EXPLORATION )  
COMPANY, on behalf of )  
itself and all others )  
similarly situated, )  
 )  
Claimants, )  
 )  
vs. )  
 )  
RUBY LAKE ESTATES )  
ARCHITECTURAL COMMITTEE, )  
RUBY LAKE ESTATES )  
HOMEOWNERS' ASSOCIATION, )  
LEROY PERKS, VALERI )  
McINTYRE, DENNIS McINTYRE, )  
MICHAEL CECCHI, )  
 )  
Respondents. )

DEPOSITION OF GEORGE "MEL" ESSINGTON

Taken October 13, 2011

Taken by Zoie Williams, CCR #540

Job No. 145891-A

Page 2

APPEARANCES

For the Claimants, Artemis Exploration:  
MR. TRAVIS GERBER  
Attorneys at Law  
GERBER LAW OFFICES, LLP  
491 4th Street  
Elko, Nevada 89801

For the Respondents:  
MS. GAYLE A. KERN  
Attorney at Law  
KERN & ASSOCIATES, INC.  
5421 Kietzke Lane, Suite 200  
Reno, Nevada 89511

INDEX

Respondents' Witness:	Page
GEORGE "MEL" ESSINGTON -	
Direct Examination by Ms. Kern	4

EXHIBITS

	Page	
1 - 10-26-09 Letter (Mrs. Essington's depo)	100	
2 - 5-25-06 Letter	6	
3 - Articles of Incorporation	9	
4 - 6-6-06 Letter	11	

Page 3

PROCEEDINGS

Elko, Nevada, Thursday, October 13, 2011  
oOo

GEORGE "MEL" ESSINGTON,  
Having been first duly sworn to tell the truth, the whole  
truth, and nothing but the truth, was examined and testified  
as follows:

THE WITNESS: I do.

DIRECT EXAMINATION

(BY MS. KERN:)

Q. Can you please state your name and spell it for  
the record?

A. George Essington. And what was the second part?

Q. To spell your name for the record.

A. Essington. E-s-s-i-n-g-t-o-n.

Q. And, Mr. Essington, do you sometimes go by the  
name Mel?

A. I do.

Q. Okay. As you will note that we have a court  
reporter here, and she's taking down every word that both of  
us say.

A. Okay.

Q. And it will be reduced into a transcript that will

Page 4

be a record for this proceeding. Any member of the  
association can read it. You will be able to review it.

If you do make any changes, however, when you  
review it, I will comment on them. Do you understand that?

A. I do.

Q. Okay. I also am not here to trick you or ask you  
any questions that you don't understand. If I ask a  
question that is ambiguous or you don't understand it,  
please let me know, and I will try to rephrase it, as I want  
a complete record. Is that okay?

A. Very good.

Q. And if you do answer it, though, I will assume  
that you understood the question that had been posed. Okay?

A. Okay.

Q. Have you ever had your deposition taken before?

A. No.

Q. Okay. What is your position with Artemis  
Exploration?

A. I have no position with Artemis Exploration.

Q. Um, I'm going to show you what Artemis Exploration  
produced as document 00039 and ask you to look at line 19.

A. Okay.

Q. In August 12, 2006, did you have a position with  
Artemis Exploration?

A. I did not.

Page 5

Q. Can you explain why you would have signed Mel  
Essington/Artemis E-x-p?

A. The lot within the subdivision is owned by  
Artemis, and I was simply there because I'm a resident at  
that establishment.

Q. Did Artemis Exploration authorize you to attend  
the meeting on August 12, 2006?

A. They did not.

Q. Did they authorize you to execute or sign in on  
behalf of lot number - is that G6?

A. That's correct. No, they did not.

Q. So can you explain why you did?

A. I'm a resident there. I have an interest in the  
well-being of the community and the property there, the  
investment that it represents.

Q. And how do you have an interest in that?

A. It's my residence.

Q. But you have no interest in Artemis Exploration?

A. That is correct.

Q. But this constituted a representation to people  
that you did; is that correct?

A. It could be interpreted that way. That was not my  
intent.

Q. Do you recall having retained the services of a  
James M. Copenhaver?

Page 10

Page 12

1 handwriting.  
2 Q. So what were you doing with this document?  
3 A. I no longer recall.  
4 Q. Do you remember when you did it? Do you remember  
5 when you filled it out?  
6 A. No, I don't.  
7 Q. Was it yesterday?  
8 A. Obviously not.  
9 Q. Why is that obvious?  
10 A. Well, because I can remember what I did yesterday.  
11 Q. So was it last year?  
12 A. I cannot tell you when this document was -- was  
13 completed.  
14 Q. Why did you complete it?  
15 A. At the moment, I can't tell you.  
16 Q. Well, you remember completing it, don't you?  
17 A. I just said that I do not. I say that that  
18 appears to be my handwriting, yes, I admit to that. Other  
19 than that, I don't remember filling the document out.  
20 Q. Do you remember doing it in 2009?  
21 A. I've already said that I cannot remember when the  
22 document may have been completed.  
23 Q. Do you recall doing it with the assistance of  
24 anybody?  
25 A. I can't remember anything about that document

1 MR. TRAVIS GERBER: It's been asked and answered,  
2 ma'am.  
3 MS. KERN: No, it hasn't. We talked about the May  
4 letter. We're talking about the June letter. He has not  
5 answered a question about the June letter.  
6 (BY MS. KERN:)  
7 Q. Please answer the question.  
8 MR. TRAVIS GERBER: Okay. Sorry. I misunderstood  
9 your question.  
10 (BY MS. KERN:)  
11 Q. We're going to be here a long time if you don't  
12 just answer the questions.  
13 A. Again, I know that we had discussed our interest  
14 in what we believed were the bylaws in question here, and  
15 that we were interested in seeing those. I cannot say that  
16 I specifically or my wife specifically asked for him to  
17 intervene and request a copy of it.  
18 Q. Then why do you think he would have done it?  
19 A. I think it's because of a poor memory, ma'am.  
20 Q. Whose poor memory, Mr. Copenhaver's or yours?  
21 A. Mine. My memory is less than perfect.  
22 Q. Is there-- as a result of your poor memory, are  
23 you able to even have your deposition taken today? Do you  
24 think it will improve?  
25 A. Improve what?

Page 11

Page 13

1 being filled out.  
2 (Whereupon, Exhibit 4 was marked for identification.)  
3 (BY MS. KERN:)  
4 Q. I'm going to show you what's been marked  
5 Exhibit 4. This is a letter dated June 6, 2006, from James  
6 M. Copenhaver. Do you recognize that letter?  
7 A. No, I don't.  
8 Q. On June 6th, 2006, was Mr. Copenhaver your  
9 attorney, or your wife's attorney, or both?  
10 A. I believe he was.  
11 Q. Which?  
12 A. Both.  
13 Q. Was he the attorney for Artemis Exploration?  
14 A. No, he was not.  
15 Q. So he was a personal attorney for you and your  
16 wife?  
17 A. That is correct.  
18 Q. Did he have authority to write this letter to  
19 Mr. Wines?  
20 A. This appears to be just a restatement of what he's  
21 done before. Simply a request for a document.  
22 Q. Did he have authority to write the letter in June  
23 of 2006?  
24 A. I believe we've covered that.  
25 Q. Please answer the question.

1 Q. Your memory.  
2 A. Well, I don't think this is going to have any  
3 therapeutic value for my memory, no.  
4 Q. That's not what I asked you, sir.  
5 Is there a reason we cannot continue with this  
6 deposition? Do you feel unable to do so? Do you feel  
7 incapable of doing so?  
8 A. No, I do not. But my memory, like others, is less  
9 than perfect.  
10 Q. And you say it's a lack of memory as to why you  
11 can't say whether or not Mr. Copenhaver had authority to  
12 write a letter on your behalf?  
13 A. I do not remember all conversations in extreme  
14 detail, ma'am, no more than you do.  
15 Q. So it's your testimony that because you don't  
16 understand the complete conversation you had with  
17 Mr. Copenhaver, you don't know whether he had authority to  
18 write the letter on your behalf or not?  
19 A. Exactly.  
20 Q. So you think lawyers write letters for their  
21 clients without authority?  
22 MR. TRAVIS GERBER: Um, I'm going to object to the  
23 question.  
24 (BY MS. KERN:)  
25 Q. Did Mr. Copenhaver write the letter with or

Page 18

Page 20

1 Q. Well, Artemis was the landowner, right?  
 2 A. That is correct.  
 3 Q. So you knew they weren't -- the landowner was not  
 4 authorizing you to do that?  
 5 A. Well, I knew I did not have authorization from  
 6 Artemis Exploration.  
 7 Q. Then why did you think you had the authority to  
 8 second a motion?  
 9 A. Well, we've gone over that twice now. Would you  
 10 like the third answer?  
 11 Q. I haven't heard an answer to that question.  
 12 That's a different question, sir.  
 13 A. The house on that lot is my personal residence.  
 14 It is my official residence. And I am concerned with the  
 15 well-being of that area.  
 16 Q. And so why does that concern give you the  
 17 authority to participate as a landowner?  
 18 A. It is in and of itself.  
 19 Q. In and of itself what?  
 20 A. My concern.  
 21 Q. Why does concern give you the authority to  
 22 participate as a landowner?  
 23 A. Because it has to do with my well-being.  
 24 Q. Is that in some statute or is that in the CCRs? I  
 25 mean, I don't understand.

1 (BY MS. KERN:)  
 2 Q. If you're not a landowner, do you have the  
 3 authority in connection with any kind of CCRs?  
 4 Can you enforce the CCRs just because you're  
 5 concerned?  
 6 A. Can I?  
 7 MR. TRAVIS GERBER: I think you're asking for a  
 8 legal conclusion. I'm going to object at this point.  
 9 (BY MS. KERN:)  
 10 Q. Do you understand that because you're concerned  
 11 that you can enforce the CCRs? Just asking what your  
 12 understanding is.  
 13 MR. TRAVIS GERBER: I think the question is vague.  
 14 (BY MS. KERN:)  
 15 Q. You can answer it.  
 16 A. Can I enforce the CCRs as an individual? No, I  
 17 don't suppose I can.  
 18 Q. But Artemis Exploration can, correct?  
 19 A. Yes.  
 20 Q. Did you ever complete or fill out a nomination  
 21 form to run for election as a board member?  
 22 A. No.  
 23 Q. Never?  
 24 A. Never.  
 25 Q. Were you part of the litigation --

Page 19

Page 21

1 MR. TRAVIS GERBER: I'm going to object at this  
 2 point. I think you're trying to make Mr. Essington draw a  
 3 legal conclusion. In this document, he is seconding a  
 4 motion, George Essington. He doesn't purport to stand for  
 5 anybody other than himself. Um --  
 6 (BY MS. KERN:)  
 7 Q. You can answer the question.  
 8 A. What is the question?  
 9 MS. KERN: Can you read it back?  
 10 (Whereupon, it was read back.)  
 11 THE WITNESS: It's not a statute. It's not in the  
 12 CCRs.  
 13 (BY MS. KERN:)  
 14 Q. So if I'm concerned about the property in Ruby  
 15 Lake Estates, can I go participate as a landowner?  
 16 A. Are you a resident?  
 17 Q. Let's say I am.  
 18 A. Then I certainly wouldn't deny you.  
 19 Q. Well, you don't really have any authority to deny  
 20 or not deny, right? You're not a landowner?  
 21 MR. TRAVIS GERBER: Is that a question?  
 22 THE WITNESS: I don't know how to respond to that.  
 23 (BY MS. KERN:)  
 24 Q. It's a question.  
 25 MR. TRAVIS GERBER: What is the question?

1 Were you a party to the litigation between  
 2 Mrs. Essington and Mr. Noble or was that just Mrs. Essington  
 3 and Mr. Noble?  
 4 A. That was just Mrs. Essington and Mr. Noble.  
 5 Q. Have you ever been a party to any litigation with  
 6 any member or any person living at Ruby Lake Estates or  
 7 owning property at Ruby Lake Estates?  
 8 A. No.  
 9 Q. Okay. So it's your contention that you did not  
 10 receive votes and were not elected to the board of  
 11 directors? You were appointed, is that your testimony?  
 12 A. No.  
 13 Q. Okay. Is it your testimony that you did, in fact,  
 14 run for election?  
 15 A. No. I did -- yes, I did. I did run for an  
 16 election on the second term.  
 17 Q. What year was that?  
 18 A. I don't recall.  
 19 Q. But it's your testimony that you did not fill out  
 20 or provide any kind of a nomination form for yourself?  
 21 A. I did not fill out a nomination form. That was  
 22 your original question. I did sign a document saying I was  
 23 willing to run for office.  
 24 Q. Well, what document do you think that is?  
 25 A. It's a handwritten document.

Page 26

Page 28

1 00079.  
2 A. I recognize the document.  
3 Q. Well, you didn't really look at it.  
4 A. I know what it is.  
5 Q. Okay. What is it?  
6 A. It's a letter.  
7 Q. What's the letter about?  
8 A. Uh, the letter is about the alleged homeowners'  
9 association.  
10 Q. What's it dated?  
11 A. June 20th, 2010.  
12 Q. And it's written to, "Dear fellow Ruby Lake  
13 Estates Landowner."  
14 You're not a landowner. So how did you write it  
15 to fellow landowners?  
16 A. I'm only one author.  
17 Q. So because Mr. Noble is a landowner, you're  
18 entitled to call people fellow landowners?  
19 You signed the letter, right?  
20 A. I did.  
21 Q. Would you agree that if someone got this, they  
22 certainly would believe that you were a landowner?  
23 A. They could.  
24 Q. They could?  
25 A. Yes.

1 Q. But it would be a misrepresentation to say that  
2 you were a landowner, wouldn't it?  
3 A. I am not a landowner.  
4 Q. So if you said you were, that wouldn't be the  
5 truth, would it?  
6 A. It wouldn't.  
7 MR. TRAVIS GERBER: I'm going to object. It's  
8 asking for a legal conclusion.  
9 MS. KERN: No. Telling the truth is something  
10 that anybody can testify to, and I appreciate that you  
11 answered the question. Thank you.  
12 MR. TRAVIS GERBER: We do live in a community  
13 property state.  
14 (BY MS. KERN:)  
15 Q. Are you claiming you have a community property  
16 interest in the property at Ruby Lake Estates?  
17 A. I'm not contending anything.  
18 Q. I mean, you're not married to Artemis Exploration,  
19 are you?  
20 A. Hardly.  
21 Q. When you were serving on the board of directors at  
22 Ruby Lake Estates, did you ever attend a single class on  
23 Chapter 116?  
24 A. No.  
25 Q. Did you understand as a board member you had a

Page 27

Page 29

1 Q. Well, you intended them to believe that, didn't  
2 you?  
3 A. I suppose I did.  
4 Q. Why?  
5 A. Because that's my residence.  
6 Q. But you're not a landowner?  
7 A. My name isn't on the deed.  
8 Q. So now you're claiming you are a landowner?  
9 A. That's not what I said.  
10 Q. You wanted people to believe you were a landowner,  
11 didn't you?  
12 A. Yes.  
13 Q. Why?  
14 A. Because I wanted them to convey that information  
15 to them.  
16 Q. And you didn't think they'd listen to you if they  
17 didn't think you were a landowner?  
18 A. No, it just seemed to be the way to open a letter.  
19 Q. Why didn't you have your wife write it?  
20 A. It wasn't from her.  
21 Q. Were you authorized by the landowner to write it?  
22 A. No.  
23 Q. Did you show it to the landowner, Artemis  
24 Exploration, before you sent it out?  
25 A. I can't say for certain whether she saw it or not.

1 fiduciary duty to the other members of the association?  
2 A. Yes.  
3 Q. I'm going to show you what's been marked as  
4 00-102, a letter dated January 6th, 2011; is that your  
5 signature?  
6 A. That is my signature.  
7 Q. Did you have authority from Artemis Exploration to  
8 write that letter?  
9 A. No.  
10 Q. So why did you write it?  
11 A. I think it states that clearly within the context  
12 of the letter.  
13 Q. Tell me where it says why you wrote the letter.  
14 A. It says because you were erroneously listed my  
15 name (verbatim).  
16 Q. Is that your resignation letter?  
17 A. It is. It is my second letter.  
18 Q. Oh, when was your first?  
19 A. June 20th, 2010.  
20 Q. That's a very good memory. You can remember that  
21 exact date?  
22 A. I can. Because I looked it up this morning so I  
23 could remember it.  
24 Q. Oh.  
25 A. Because last night, I couldn't remember it.

Page 34

Page 36

1 Q. I didn't ask you if it was poorly written --  
2 worded. I asked you, is that what it says?  
3 A. That's what it says.  
4 Q. So in August of 2005, you believed that the  
5 association had been referenced to and needed to be started  
6 up as had been contemplated by Mr. Steve Wright, correct?  
7 A. I believe at that time I didn't understand what  
8 was going on. I was absolutely confused.  
9 Q. Were you under any medical condition that was  
10 creating your confusion?  
11 A. No.  
12 Q. Now, the next paragraph says, "Each of us  
13 purchased lots in the subdivision with the knowledge,  
14 understanding, and acceptance of the covenants, conditions,  
15 and restrictions, CCRs, that attended our property deeds."  
16 That's correct, isn't it?  
17 A. No.  
18 Q. That's a correct statement?  
19 A. No, it's not.  
20 Q. You didn't purchase a lot with CCRs?  
21 A. No.  
22 Q. Did anybody purchase a lot with CCRs?  
23 A. I can't tell you that.  
24 Q. So why do think that that's not a correct  
25 statement, if you don't know?

1 Q. Well, I just thought you said you weren't  
2 answering me because it was hearsay?  
3 A. Well, it would be hearsay, wouldn't it?  
4 Q. It's not my question. My question is, name a  
5 person that said that to you.  
6 A. I can't draw up a name at this moment.  
7 Q. You can't think of a single person who ever said  
8 that to you, can you?  
9 A. I know that they have.  
10 Q. How do you know that they have if you can't  
11 remember it?  
12 A. Remember what? Remember that a statement was  
13 made, but I can't recall specifically who made it? Yeah.  
14 Q. When was it made to you?  
15 A. Time scale doesn't always attend me well. I don't  
16 remember time scales like that.  
17 Q. So you don't remember who told you, you don't  
18 remember when it was said, but you're positive somebody said  
19 it to you?  
20 A. Yep.  
21 Q. I'm going to show you a document dated -- or  
22 excuse me, identified the as RLE-035 dated December 8th,  
23 2006; do you recall receiving that letter?  
24 A. I think I do, yeah.  
25 Q. What was that in response to? Do you remember why

Page 35

Page 37

1 A. Because it was written in ignorance.  
2 Q. So now you contend there aren't even CCRs?  
3 A. No.  
4 Q. No what?  
5 A. I do not contend that there are not CCRs.  
6 Q. You agree that there are CCRs?  
7 A. Yes, I do.  
8 Q. And everybody purchased their lots with the CCRs  
9 recorded, correct?  
10 A. That is correct.  
11 Q. So why is there anything wrong with that sentence?  
12 Why is it an ignorant sentence?  
13 A. Because a lot of people didn't know there were  
14 CCRs when they bought their lots. They were never told.  
15 Q. Who told you they didn't know that?  
16 A. I've heard it from the landowners.  
17 Q. Who?  
18 A. Various landowners.  
19 Q. Name one.  
20 A. I don't believe I can.  
21 Q. Why not?  
22 A. That would be hearsay.  
23 Q. Do you know the name of any landowner who told  
24 you, I didn't know there were CCRs recorded?  
25 A. At this moment, I can't give you a name.

1 you received this letter?  
2 Had you written a letter, complained about  
3 something?  
4 A. I don't recall.  
5 Q. But you recall this letter?  
6 A. Yeah, I remember seeing the document. Yeah.  
7 Q. RLE-036. Is that your writing on the check?  
8 A. It certainly appears to be.  
9 Q. Did you receive reimbursement for that?  
10 A. I have no knowledge of it.  
11 Q. Did Mrs. Essington give you cash for that check?  
12 A. I have no knowledge of it.  
13 Q. What do you mean you have no knowledge?  
14 A. I don't remember. Why would she?  
15 Q. You don't believe that she would have given you  
16 cash to reimburse you for having written this check?  
17 A. No reason she should.  
18 Q. Well, Artemis Exploration owned the property,  
19 right?  
20 A. Right.  
21 Q. So wouldn't it have been Artemis Exploration's  
22 responsibility to pay that amount to the Ruby Lake Estates  
23 Homeowners' Association?  
24 A. I can't answer for Artemis Exploration.  
25 Q. I didn't ask you to.



Page 42

Page 44

1 e-mail that you sent?

2 A. I believe it is.

3 Q. Can you please go through those violations and  
4 explain why you identified them as a violation?

5 For example, it identifies Block H, Lot 6,  
6 stored - I'm sorry, I can't read that - stored slide-on,  
7 cab-over camper, no vegetation control. What did you mean  
8 by that?

9 A. It was a clear violation in the middle of a  
10 stipulation within the CCRs.

11 Q. So it was your understanding that the association  
12 would enforce the CCRs?

13 A. That was discussed, yes.

14 Q. Discussed where?

15 A. At a board meeting.

16 Q. Was this when you were on the board?

17 A. It was.

18 Q. And are the other identified violations ones which  
19 you believed were violations under the CCRs?

20 A. As requested by Mr. Cecchi, yes.

21 Q. What do you mean "as requested by Mr. Cecchi"?

22 A. Mr. Cecchi sat at my side one afternoon at a board  
23 meeting - combination board meeting/landowners' meeting,  
24 and he said specifically looking me in the eye, "I direct  
25 you to go out and to generate a list of violations of CCRs

1 president. He was chairman of the architectural review

2 committee and I was a member thereof. And he seemed to take

3 it upon himself that he had - that he was making a  
4 direction here of something he wanted accomplished. It  
5 hadn't happened before. It seemed out of place.

6 Q. RLE-076A is that an email that you sent?

7 A. Um, yes, it is.

8 Q. So this time you remember sending this one?

9 A. Yeah, I believe I sent it.

10 Q. What was your purpose in sending it?

11 A. We get back to the same thing. It states right in  
12 the context of the message why it was done.

13 Q. Were you on the board at this time?

14 A. I was.

15 Q. RLE-077. Was that an email that you sent?

16 A. I believe it is.

17 Q. And does it reference a draft letter that you have  
18 prepared, once again, for the landowners?

19 A. It does.

20 Q. And to your recollection, is RLE-078 and 079 -  
21 I'm sorry, just 078, that draft letter?

22 A. It is.

23 Q. And you drafted this letter?

24 A. Yes.

25 Q. And in it you identify and state, "The Ruby Lakes

Page 43

Page 45

1 in the association and submit the list to me," which I did,  
2 and that's the document.

3 Q. Did you object to that request?

4 A. I did not.

5 Q. Did you think that it was a legitimate request?

6 A. I did.

7 Q. So when you say that he looked you in the eye, you  
8 acted as though you were very upset or that he shouldn't  
9 have done that. Is that what you meant to imply?

10 A. I was surprised that he took that tone, yes.

11 Q. Why?

12 A. It seemed out of place.

13 Q. Why did it seem out of place?

14 A. It just did.

15 Q. It seemed out of place to you? Did anybody - I  
16 mean, did you comment on it at that time?

17 A. I did not.

18 Q. When did this occur? Sometime in August of 2008?

19 A. Um, what's the date on the document?

20 Q. It says Sunday -

21 A. Just the year. Is it 2008? Okay. Then it was at  
22 the - the 2008 meeting.

23 Q. And you were taken aback by the request? I'm not  
24 quite sure -

25 A. It seemed out of character to me. He was vice

1 Estates is a common interest ownership community as defined  
2 by State statute"; is that correct?

3 A. I was under the assumption that was correct at the  
4 time. I no longer believe that.

5 Q. RLE-081 - oh, I'm sorry. That's Mrs. Essington,  
6 I apologize.

7 RLE-082, it's an email May 3rd, 2009. Is that an  
8 email that you sent? The one on the bottom.

9 A. Yes.

10 Q. Do you use the same computer as Mrs. Essington or  
11 do you have separate computers?

12 A. She allows me use of her computer.

13 Q. Do you save your emails?

14 A. No.

15 Q. When do you purge them?

16 A. I don't save them.

17 Q. I know. That's why I was asking when do you purge  
18 them? When do you destroy them?

19 A. They're not saved on the machine. My software  
20 doesn't save emails.

21 Q. You understand that when you send an email, you go  
22 to a place that says sent emails, and there they all are  
23 unless you actually purge them or get rid of them; you don't  
24 understand that?

25 A. I don't know of a function like that.

Page 50

Page 52

1 Q. When did you tell Rocky?  
 2 A. I did -- you cannot ask me a when question. I  
 3 cannot give those answers.  
 4 Q. Was it within the last year?  
 5 A. Oh, longer than that, certainly.  
 6 Q. Was it within the last two years?  
 7 A. Probably.  
 8 Q. When did you tell Bill Harmon?  
 9 A. I don't know.  
 10 Q. Was it within the last year?  
 11 A. We haven't spoken much in the last year.  
 12 Q. Is there a reason for that?  
 13 A. No, not really.  
 14 Q. Um, what was the third -- who was the third  
 15 person? Bill Noble; is that correct?  
 16 A. Terri Harmon.  
 17 Q. Oh, Terri Harmon.  
 18 A. Uh-huh.  
 19 Q. But I thought you also said that you told Bill  
 20 Noble?  
 21 A. Yeah.  
 22 Q. When did you tell Bill Noble?  
 23 A. Probably about the same time I would have told  
 24 Terri Harmon. It might have come up in a conversation over  
 25 at her store.

1 A. Define "take any action."  
 2 Q. I'm saying that very broadly. Did you talk about  
 3 it? Did you write a letter? Did you send an email?  
 4 Anything? Did you do anything?  
 5 A. Well, certainly it was discussed.  
 6 Q. With whom?  
 7 A. My wife.  
 8 Q. Anybody else?  
 9 A. Um, yeah.  
 10 Q. Who else?  
 11 A. Terri Harmon, Bill Noble, Rocky Rowe. Those are  
 12 the only other people that live out there. So there's  
 13 nobody else to talk to.  
 14 Q. Well, lots of people used to go -- or lots of  
 15 people go to the landowner meetings, right? I mean, you get  
 16 30, 31 people coming?  
 17 A. I had stopped attending those meetings quite some  
 18 time ago.  
 19 Q. What does "quite some time ago" mean? What year?  
 20 A. I do not recall.  
 21 Q. Did you attend --  
 22 A. Well, you could look at the record and see when my  
 23 last attendance at a board meeting was. It would have been  
 24 after that.  
 25 Q. Did you know that the association has been asked

Page 51

Page 53

1 Q. And would that have been within the last couple of  
 2 years?  
 3 A. Or more. It's never been a deep dark secret.  
 4 Q. Do you have any children?  
 5 A. I have a stepson.  
 6 Q. When you received the letter of April 19, 2010,  
 7 requesting that you provide some information with respect to  
 8 your status in connection with the property ownership, is  
 9 that when you decided to resign?  
 10 A. No.  
 11 Q. When did you resign?  
 12 A. To clarify, much earlier I divorced myself from  
 13 any communication with the alleged organization on  
 14 June 20th. I think I clearly indicated the fact that I had  
 15 no association with it. And formally did it with a final  
 16 document whose date I don't remember.  
 17 Q. And when you say June 20th, that's 2010; correct?  
 18 A. That is correct.  
 19 Q. So that's about two months after you received the  
 20 letter asking for evidence and proof that you had authority  
 21 as a property owner, correct?  
 22 A. That's correct.  
 23 Q. Did you assist with or take any action in  
 24 connection with the building constructed by Mr. Perks that  
 25 your wife was unhappy with?

1 by Terri Harmon to repair the cattle guard in front of her  
 2 store?  
 3 A. There is no association.  
 4 Q. Did you know that Terri Harmon had communicated  
 5 with the board of directors of the Ruby Lake Estates  
 6 Homeowners' Association to repair the cattle guard; yes or  
 7 no?  
 8 A. No.  
 9 Q. Is it your opinion that Miss Harmon should be  
 10 told, forget it, we're not doing anything with your cattle  
 11 guard?  
 12 A. No, that's not my opinion.  
 13 Q. Well, what do you think should be done in  
 14 connection with the cattle guard?  
 15 A. That's not for me to say.  
 16 Q. Whether or not you have any legal authority to say  
 17 anything or not isn't the question. What do you think  
 18 should be done?  
 19 A. I don't have any problem with the cattle guard out  
 20 there. When I travel over it, it works just fine. I don't  
 21 have any bone to pick about the cattle guard.  
 22 Q. My question, though, is, Miss Harmon has a problem  
 23 and has requested that the cattle guard be repaired. Do you  
 24 think she should be told, forget it, repair it yourself?  
 25 A. I think it's an excellent opportunity to ascertain

Page 58

Page 60

1 Q. So you drug the road?  
2 A. Uh-huh.  
3 Q. Is that a yes? I'm sorry.  
4 A. Yes, that is a yes.  
5 Q. Have you done anything to build the road back up?  
6 A. Yes.  
7 Q. When?  
8 A. When I drag it.  
9 Q. What do you do?  
10 A. I angle the blade so that I cut the material from  
11 the outside to the inside and reconstruct the crown every  
12 time I do that.  
13 Q. And when's the last time you did that?  
14 A. Um, sometime in the spring.  
15 Q. Of this year?  
16 A. Yes.  
17 Q. And before that, when's the last time you did it?  
18 A. Sometime the previous year.  
19 Q. Would it have been in the spring again, or was it  
20 different times of the year?  
21 A. Um, usually gets done twice a year.  
22 Q. Okay. But you said you did it this year and you  
23 had done it the year before?  
24 A. Uh-huh.  
25 Q. So you didn't do it twice during 2011, did you?

1 Q. Were you a part of the original purchase of the  
2 first parcel that Artemis Exploration purchased in 1993?  
3 A. I'm not associated with Artemis, so, no.  
4 Q. So you didn't see any of the documents with  
5 respect to the offer and purchase for the first lot owned by  
6 Artemis? Lot six?  
7 A. There were no such documents.  
8 Q. So you've never seen a real estate purchase  
9 agreement?  
10 A. Well, I have, yes.  
11 Q. Then why did you just say there were no such  
12 documents?  
13 A. You said for the sale. There were no documents  
14 associated with the sale of the land. That's --  
15 Q. Well, didn't somebody sell it to you, or sell it  
16 to Artemis?  
17 A. Yes, they did.  
18 Q. Okay. So did you see the real estate purchase  
19 agreement when Lot 6 was sold back in 1993, 1994?  
20 A. Um, yes, I did.  
21 Q. Oh, and you remember that?  
22 A. Yeah.  
23 Q. Do you recall reviewing the documents?  
24 A. Reading it.  
25 Q. In 1993 or 1994?

Page 59

Page 61

1 Have you?  
2 A. No.  
3 Q. Do you intend on doing it again?  
4 A. It is my intention, yes.  
5 Q. When?  
6 A. Oh, depends upon availability of equipment.  
7 Q. Have you asked permission to do it in any respect?  
8 A. No.  
9 Q. Do you own Indian Springs?  
10 A. Do I own Indian Springs? No, it resides on  
11 government property, on public lands.  
12 Q. Oh, it does?  
13 A. Yes.  
14 Q. Who is it titled to?  
15 A. Well, the land's under the administration of the  
16 Bureau of Land Management.  
17 Q. Indian Springs is under the auspices of the BLM?  
18 A. That's correct.  
19 Q. On what do you base that?  
20 A. Its location.  
21 Q. Have you ever seen any document with respect to  
22 that?  
23 A. No.  
24 Q. You just believe that to be true?  
25 A. Yeah.

1 A. Sometime in there, yeah.  
2 Q. And do you recall seeing the deed that was  
3 recorded conveying Lot 6 to Artemis Exploration?  
4 A. Uh-huh. Yes, I've seen the document.  
5 Q. Did you see it at or about 1994 when it was  
6 recorded?  
7 A. If that was the date it was recorded, yes.  
8 Q. Okay. And have you had an opportunity or have you  
9 had an occasion to review it since then?  
10 A. Yes.  
11 Q. When?  
12 A. I don't remember specific dates.  
13 Q. Did you help put together the documents in  
14 connection with the litigation commenced by Artemis  
15 Exploration?  
16 A. The documents?  
17 Q. Yes.  
18 A. No.  
19 Q. You had nothing to do with putting together the  
20 documents that supported the claims of Artemis Exploration  
21 in this lawsuit?  
22 A. No.  
23 THE WITNESS: I think we should take a short  
24 break.  
25 MS. KERN: You know what, I am like, I believe,

EXHIBIT “23”

EXHIBIT “23”

# **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION**

**RUBY VALLEY, NEVADA**

## **Mission Statement**

The mission of the Ruby Lake Estates Homeowner's Association (RLEHA) is to provide to the community a democratic form, for the safety, freedom, and land stewardship within the RLEHA.

## **Meeting Agenda**

A quorum will be a minimum of 50% of the officers and an equal number of members.

Meeting format:

- Call meeting to Order
- Introduction of board members
- Introduction of guests
- Minutes of the previous meeting (Read and Approve)
- Treasurer's report (Read and Approve)
- Old Business
- Standing Committees
- New Business
- Good of the association
- Election of officers
- Adjournment

Motions: Motions will be accepted by the president. A motion will be required to obtain a second before discussion. Once a second has been received a motion will be discussed at the direction of the President. At the completion of discussion a hand vote will be called if required.

## **Membership**

Each lot in the Ruby Lake Estates will be allowed one membership. An assessment fee will be charged yearly for maintenance, roads, fire protection, and other expenditures as the board allows or required by Elko County. The amount of the assessment will be assessed at the annual meeting.

Membership fees are due January 1<sup>st</sup> every year and with this notice a nomination form for that years elections will be included. The nomination forms need to be returned by January 31<sup>st</sup> of that year. When the nomination forms are returned, any questions or concerns a member has can be listed to be discussed at the next annual meeting. If a member's fees are not received by January 31<sup>st</sup> of that year, they will be considered delinquent. It will be the responsibility of the Board of Director of the Ruby Lake Estate Homeowner's Association to collect those funds due using attorney's, the court system and/or collection agencies or other means necessary to collect delinquent accounts. Members with delinquent accounts will be assessed all costs associated with collecting their delinquent account.

A Membership is allowed one vote. A Membership may have multiple speakers for its representation at a meeting, but at no time more than one vote per lot.

If a member sells their lot in Ruby Lake Estates, they need to notify the RLEHA within 30 days and the membership transfers to the new owner as well as the paid fee.

### **Officers & Duties**

All officers must be property owners and members of the Ruby Lake Estates Homeowners Association in good standing their entire term of office

Officers: President, Vice President, Secretary, Treasurer, Director, Director.

#### **Duties:**

##### **President:**

The President will have the duty to reside at all RLEHA meetings, to appoint all committees, to preserve order and decorum, and to see that the intent and meaning of the bylaws are met.

##### **Vice President:**

The Vice President will carry out the duties of the president should the president be absent. The Vice President will be in charge of all the properties and assets of the RLEHA and keep accurate records of said properties and assets. The Vice President is to sit as Chairperson of the Architectural Committee.

##### **Secretary:**

The Secretary will record the minutes of the meetings and maintain minutes of all meetings. The Secretary will handle all RLEHA correspondences unless other wise delegated. The Secretary will send a copy of any RLEHA meeting within 30 days after that meeting to all property owners.

##### **Treasurer:**

The Treasurer will receive and keep all monies of the RLEHA. The Treasurer will keep a complete accounting of all funds in a balanced checkbook. A general report is to be given at each regular meeting. The treasurer is in charge of billing the Membership fee in December of each year and collection of monies. The Treasurer will be responsible for payment of RLELA bills incurred by and authorized by the RLEHA.

##### **Directors:**

The Directors are to assist with the board and vote on all board issues. The Directors are to sit in the Architectural Committee with the Vice President.

If the board is unable to come to a conclusion on their voting and remain in a tie vote the issue is to be returned to the membership for a solution or vote.

#### **Expenditure Procedures**

The RLEHA's bills, fees, donations, and improvements are to be paid from the funds received from members, donations, and fundraisers. All expenditures are to be approved by the board and paid by the Treasurer. All checks issued by the RLEHA will be required to have two signatures. The Treasures and President. The Vice President signature is to be an alternate if the President/Treasurer is unavailable.

An expense accounting is to be sent to all members with the notice of the annual meeting.

#### **Meetings and Special Meetings**

The RLEHA will have one regular meeting a year. This meeting will be held the second Saturday of August. The secretary will notify the Membership in writing not less than 60 days before each meeting.

Special meetings may be requested by any board member, it will require the approval of at least four board members. The RLEHA Membership is to be notified of the meeting and agenda by the Secretary 60 days before the scheduled meeting. The meeting will be limited to items on the agenda.

Emergency meetings may be necessary due to the acts of God or public safety issues. Emergency meetings will be requested by four board members, with a phone call approval by at least 50% of the membership for issues on the agenda only.

#### **Property & Assets**

The RLEHA may acquire property and assets. These items are to be managed by the Board of Directors and records kept as directed by theses Bylaws.

#### **Election of Officers**

Officers are to be elected for a period of two years with alternating election years. Officer positions will have an even or odd numbered position. Odd numbered officers will be elected on odd numbered years and even numbered officers will be elected in even numbered years. The officer's positions are numbered as follows: 1. President, 2 Vice-President, 3 Secretary, 4 Treasurer, 5 Director #1 and 6 Director #2. If the meeting at which elections are to be held exceeds two years the current officers will remain in office until the next regular meeting, but no longer than 180 days.

Nominations of officers will be accepted in January in writing prior to January 31<sup>st</sup>. Official proxies are to be mailed to the members 60 days prior to the election by an election committee.

The Election committee as appointed by the President shall tally all votes and return the results to the President. The Election committee will only accept proxies and voting by members in good standing. An Officer on the Board of Directors may be removed from

office at any time with the provision that all members in good standing be notified by mail of a recall vote. A recall vote may be initiated by petition of 25% of the membership in good standing. An officer will be removed by a 51% vote for removal. If an officer is removed a new officer will be appointed by the Board of Directors and will hold office until that term expires.

The loss of an officer due to moving, selling, resignation, etc. is to be filled by the Board within 90 days or at the next regular meeting with the proper notifications as set forth in these Bylaws, which ever comes first.

#### **Proxies**

Proxies will be accepted. Proxies can name any member in good standing and proxies can be used for all RLEHA voting issues and elections. Proxies must be received by the President and in writing, before the meeting in which the proxies may be used. Proxies will be good for a period of six months. The start date will be the date opened and read at the meeting. All proxies are to have original signatures, along with notarization

#### **Architectural Committee / CCR's**

The Architectural Committee will be comprised of the Vice President and two directors. The Vice President shall sit as chairperson.

The Architectural Committee will follow the guidelines as established by the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions dated September 6, 1989.

#### **Changes or Additions to the Bylaws**

These Bylaws may be changed, additions made, or modifications by approval of two thirds of the membership in good standing at two consecutive meetings. The Bylaw changes are to be heard at the regular scheduled meeting. If a Special meeting is called, all rules for a Special Meeting will be followed. At least one meeting to approve Bylaw changes is to be at a regular scheduled meeting. All changes, additions, modifications are to be sent in writing 30 days before the final vote at the second meeting. Mail in proxies will be accepted for Bylaw changes by members in good standing only.



# **RUBY LAKE ESTATES HOMEOWNER'S ASSOCIATION**

## **RUBY VALLEY, NEVADA**

### **Mission Statement**

The mission of the Ruby Lake Estates Homeowner's Association (RLEHA) is to provide to the community a democratic form, for the safety, freedom, and land stewardship within the RLEHA.

### **Meeting Agenda**

A quorum will be a minimum of 50% of the officers and an equal number of members.

Meeting format:

- Call meeting to Order
- Introduction of board members
- Introduction of guests
- Minutes of the previous meeting (Read and Approve)
- Treasurer's report (Read and Approve)
- Old Business
- Standing Committees
- New Business
- Good of the association
- Election of officers
- Adjournment

Motions: Motions will be accepted by the president. A motion will be required to obtain a second before discussion. Once a second has been received a motion will be discussed at the direction of the President. At the completion of discussion a hand vote will be called if required.

### **Membership**

Each lot in the Ruby Lake Estates will be allowed one membership. An assessment fee will be charged yearly for maintenance, roads, fire protection, and other expenditures as the board allows or required by Elko County. The amount of the assessment will be assessed at the annual meeting.

Membership fees are due January 1<sup>st</sup> every year and with this notice a nomination form for that years elections will be included. The nomination forms need to be returned by January 31<sup>st</sup> of that year. When the nomination forms are returned, any questions or concerns a member has can be listed to be discussed at the next annual meeting. If a member's fees are not received by January 31<sup>st</sup> of that year, they will be considered delinquent. It will be the responsibility of the Board of Director of the Ruby Lake Estate Homeowner's Association to collect those funds due using attorney's, the court system and/or collection agencies or other means necessary to collect delinquent accounts. Members with delinquent accounts will be assessed all costs associated with collecting their delinquent account.

A Membership is allowed one vote. A Membership may have multiple speakers for its representation at a meeting, but at no time more than one vote per lot.

If a member sells their lot in Ruby Lake Estates, they need to notify the RLEHA within 30 days and the membership transfers to the new owner as well as the paid fee.

### **Officers & Duties**

All officers must be property owners and members of the Ruby Lake Estates Homeowners Association in good standing their entire term of office

Officers: President, Vice President, Secretary, Treasurer, Director, Director.

Duties:

President:

The President will have the duty to reside at all RLEHA meetings, to appoint all committees, to preserve order and decorum, and to see that the intent and meaning of the bylaws are met.

Vice President:

The Vice President will carry out the duties of the president should the president be absent. The Vice President will be in charge of all the properties and assets of the RLEHA and keep accurate records of said properties and assets. The Vice President is to sit as Chairperson of the Architectural Committee.

Secretary:

The Secretary will record the minutes of the meetings and maintain minutes of all meetings. The Secretary will handle all RLEHA correspondences unless other wise delegated. The Secretary will send a copy of any RLEHA meeting within 30 days after that meeting to all property owners.

Treasurer:

The Treasurer will receive and keep all monies of the RLEHA. The Treasurer will keep a complete accounting of all funds in a balanced checkbook. A general report is to be given at each regular meeting. The treasurer is in charge of billing the Membership fee in December of each year and collection of monies. The Treasurer will be responsible for payment of RLEHA bills incurred by and authorized by the RLEHA.

Directors:

The Directors are to assist with the board and vote on all board issues. The Directors are to sit in the Architectural Committee with the Vice President.

If the board is unable to come to a conclusion on their voting and remain in a tie vote the issue is to be returned to the membership for a solution or vote.

### **Expenditure Procedures**

The RLEHA's bills, fees, donations, and improvements are to be paid from the funds received from members, donations, and fundraisers. All expenditures are to be approved by the board and paid by the Treasurer. All checks issued by the RLEHA will be required to have two signatures. The Treasures and President. The Vice President signature is to be an alternate if the President/Treasurer is unavailable.

An expense accounting is to be sent to all members with the notice of the annual meeting.

### **Meetings and Special Meetings**

The RLEHA will have one regular meeting a year. This meeting will be held the second Saturday of August. The secretary will notify the Membership in writing not less than 60 days before each meeting.

Special meetings may be requested by any board member, it will require the approval of at least four board members. The RLEHA Membership is to be notified of the meeting and agenda by the Secretary 60 days before the scheduled meeting. The meeting will be limited to items on the agenda.

Emergency meetings may be necessary due to the acts of God or public safety issues. Emergency meetings will be requested by four board members, with a phone call approval by at least 50% of the membership for issues on the agenda only.

### **Property & Assets**

The RLEHA may acquire property and assets. These items are to be managed by the Board of Directors and records kept as directed by theses Bylaws.

### **Election of Officers**

Officers are to be elected for a period of two years with alternating election years. Officer positions will have an even or odd numbered position. Odd numbered officers will be elected on odd numbered years and even numbered officers will be elected in even numbered years. The officer's positions are numbered as follows: 1. President, 2 Vice-President, 3 Secretary, 4 Treasurer, 5 Director #1 and 6 Director #2. If the meeting at which elections are to be held exceeds two years the current officers will remain in office until the next regular meeting, but no longer than 180 days.

Nominations of officers will be accepted in January in writing prior to January 31<sup>st</sup>. Official proxies are to be mailed to the members 60 days prior to the election by an election committee.

The Election committee as appointed by the President shall tally all votes and return the results to the President. The Election committee will only accept proxies and voting by members in good standing. An Officer on the Board of Directors may be removed from

office at any time with the provision that all members in good standing be notified by mail of a recall vote. A recall vote may be initiated by petition of 25% of the membership in good standing. An officer will be removed by a 51% vote for removal. If an officer is removed a new officer will be appointed by the Board of Directors and will hold office until that term expires.

The loss of an officer due to moving, selling, resignation, etc. is to be filled by the Board within 90 days or at the next regular meeting with the proper notifications as set forth in these Bylaws, which ever comes first.

#### **Proxies**

Proxies will be accepted. Proxies can name any member in good standing and proxies can be used for all RLEHA voting issues and elections. Proxies must be received by the President and in writing, before the meeting in which the proxies may be used. Proxies will be good for a period of six months. The start date will be the date opened and read at the meeting. All proxies are to have original signatures, along with notarization

#### **Architectural Committee / CCR's**

The Architectural Committee will be comprised of the Vice President and two directors. The Vice President shall sit as chairperson.

The Architectural Committee will follow the guidelines as established by the Ruby Lake Estates Declaration of Reservations, Conditions and Restrictions dated September 6, 1989.

#### **Changes or Additions to the Bylaws**

These Bylaws may be changed, additions made, or modifications by approval of two thirds of the membership in good standing at two consecutive meetings. The Bylaw changes are to be heard at the regular scheduled meeting. If a Special meeting is called, all rules for a Special Meeting will be followed. At least one meeting to approve Bylaw changes is to be at a regular scheduled meeting. All changes, additions, modifications are to be sent in writing 30 days before the final vote at the second meeting. Mail in proxies will be accepted for Bylaw changes by members in good standing only.

EXHIBIT “24”

EXHIBIT “24”

#9  
G.M. Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

November 13, 2006

Mr. Mike Cecchi  
10890 Osage Road  
Reno, NV 89506

Dear Mr. Cecchi:

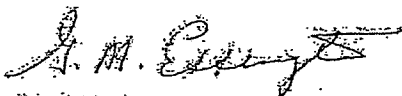
As you are the chairperson of the Ruby Lake Estates Homeowners Association Architectural Review Committee I am writing to you to express my concern about enforcement of the CCR's. As you may be aware I have been and continue to be concerned about the presence of trailers in the Ruby Lake Estates contrary to the CCR's. At the Homeowners Association meeting in August Bob Wines twice brought up and flagged for attention and action the issue of trailers. His recommendation to take up the issue at the meeting was passed over by the officers of the association much to my dismay.

Now that hunting season is over and no longer provides an excuse to have trailers on any of the parcels there are several trailers and one slide-on camper left on some of the individual lots. These are the same trailers that have been left on these lots for the past several years and constitute an unsightly intrusion on the area. I believe these trailers and campers should be removed by their owners and not left as an eyesore for the rest of us to endure and constitute a degradation of everyone's property values.

I am hereby requesting the Architectural Review Committee take appropriate action and have the owners remove the trailers. I am further requesting the issue of trailers be made an agenda item for the next homeowners meeting. I would further like to see the by-laws amended wholly excluding the use of trailers, trailer homes, or manufactured homes as acceptable residences in the Ruby Lake Estates. I believe this action will serve to protect the natural beauty of the area and preserve and protect property values.

I am also enclosing a copy of a portion the Elko County Zoning Ordinance for your inspection. You will note that in Agricultural Residential districts such as Ruby Valley the use of trailers is allowed only under exceptional conditions and then for only limited periods. A full copy of the ordinance is available on line.

Sincerely,



G.M. Essington  
Black & Tot 6

EXHIBIT “25”

EXHIBIT “25”

#10

M. Essington  
HC 60 Box 760  
Ruby Valley, NV 89833

January 14, 2007

Mr. Lee Perks  
President, Ruby Lakes Homeowners Association  
765 Greg Street  
Sparks, NV 89431

Reference: Letter Lee Perks to Mel Essington December 8, 2006

Dear Mr. Perks:

Your above referenced letter in response to my correspondence to Mr. Mike Cecchi concerning the presence of trailers in the Ruby Lakes subdivision contains some misunderstandings which require clarification. First, I believe you do understand what I mean by trailers but as you profess to not understanding allow me to be more specific. My reference is to the common usage of a recreational type vehicle, mobile, travel trailers these types of vehicles are expressly addressed by the CCR's and the Elko County Zoning code Agricultural-Residential District. We need not digress to ridiculous extremes by including horse and cargo trailers.

You also state in your letter that Mr. Wines "interprets" the CCR's and thereby the Zoning Code to allow for the storage of these types trailers on individual lots for one year. I disagree that it is Mr. Wines position to "interpret" any of the language contained in the CCR's and/or Zoning Code. The language is sufficiently clear and does not require anyone's interpretation. You seem to forget that this area is zoned and the county zoning code precedes the CCR's. All of the trailers/slide on campers I am referring to have been left or abandoned on the various lots for several years. There in lies the difficulty that needs to be addressed. I believe unit owners with homes should be able to keep a recreational type trailer/vehicle next to one of their buildings as they may in most other areas. Unit owners without homes (vacant lots) should be free to use trailers on their open lots during the recreational and hunting seasons and while holding valid building permits issued by the county during the period of construction, but they should not be left indefinitely on vacant lots. I contend the subdivision should be regulated and managed so as not to become an unsightly, cheap, trailer park or dumping grounds for trailers and campers. I believe other owners share my view.

You further state in your letter you are unsure of my concern about manufactured housing stating several homes including ours are of that category. You would obviously benefit from furthering your education with the prevailing terminology and legislation in



reference to trailers, trailer houses, manufactured houses, modular houses, and stick built homes. The Nevada State Legislature has unfortunately obscured the language and blurred the former distinction between these construction types by declaring what was formerly described as trailers or trailer houses to now be the same as manufactured housing. You will find that category of housing construction (manufactured) is governed by the HUD manufacturing code while modular homes, such as ours, are covered under the UBC code the same as site or stick built housing. As you well know, the difference in the application of the two building codes results in a considerable difference in the quality, appearance, and relative life span of the two types of construction.

Manufactured homes are sold having a wide range of construction quality and appearance. I believe those manufactured homes presently located in the subdivision are of an acceptable quality to meet the standards of the community I would like to see maintained. However, despite the confusion caused by the State Legislature, there are obvious and undesirable differences between traditional trailers and trailer houses verses most manufactured, modular, and site built housing. Conversely, the Nevada Supreme Court has reopened the door in this area and ruled that HOA's can distinguish between trailers and other types of home construction. I am recommending that the association take advantage of this ruling, maintain a higher level of aesthetics, and exclude trailer and trailer homes from use in the subdivision.

In order to protect the value of individual ownership I recommend that the association adopt a policy of time-limited use, parking, and or storage of RV type travel trailers on otherwise vacant lots and prohibiting or excluding any house-trailer quality housing in the subdivision. I recommend the inclusion of rules in the by-laws that will accomplish those goals. Suggested wording for inclusion in the By Laws might consist of the following.

1. Travel trailers, tent trailers, RV vehicles, slide on campers, and other types of trailers may be parked/stored by their owners adjacent to existing, full size, buildings. Travel trailers, tent trailers, RV vehicles, and slide on campers used on vacant lots may not be left, parked, or stored on the individual lots beyond the end of hunting season each year. Unit owners holding a valid Elko County Building permit may request a variance from the Board for use during the period of construction. *To be adopted if consistent with the intent of the County Zoning code.*

2. Trailers and trailers homes (single wide, double wide and or triple wide type construction) are excluded from use in the Ruby Lake Estates. Other forms of building construction are subject to approval by the ARC.

Finally, in your letter, you state that you personally do not have a problem with trailers in the subdivision; this hardly a surprising statement. As you are not a full time resident of the subdivision, have not developed an attachment to the area, or developed any concern for it, of course you do not have a problem with trailers. Your primary residence and associated concerns are located elsewhere, far removed from Ruby Valley. Ruby Lake Estates subdivision is only a place for you to occasionally visit and recreate. To place

#10  
yourself in our position and in our concern you need to examine the issue from a standpoint more vital and important to you, and one directly affecting your primary residence.

How would you feel and respond if someone wanted to do the same thing in your neighborhood affecting the value of your full time residence? What would you do if someone moved a cheap trailer house or poorly constructed manufactured house in next to your home assuming it was possible to do so? I'd bet you'd come unglued if the standards of your residential neighborhood and value of your primary home were eroded by such an action. Well, that's how we would feel if it were allowed to happen here, as it easily could. As head of the homeowners association you need to work to protect the value of the investments of all of the individual owners and be able to look beyond your own more restricted outlook. Remember this area is zoned Agricultural-Residential by the County and the zoning code takes precedent over the CC&R's.

I assume you are aware Nevada has found it necessary to create a commission to oversee the operation of the many HOAs in the state. I would also assume you are aware that NRS 116, Section 10, 8 (d) now requires that the HOA records including financial records be located within 60 miles of the physical location of the community for inspection purposes. I presume that Mr. Wines will fulfill that function for the association.

Sincerely,



G.M. Essington

cc: Mike Cecchi