

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOMERSETT DEVELOPMENT  
COMPANY, LTD, a Nevada Limited  
Liability Company; SOMERSETT,  
LLC, a dissolved Nevada Limited  
Liability Company, and SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada Corporation,

Appellants,

vs.

SOMERSETT OWNERS  
ASSOCIATION, a domestic non-profit  
corporation,

Respondent.

---

AND RELATED CROSS ACTIONS.

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Electronically Filed  
Apr 21 2020 09:18 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 80881

District Court Case No.: CV17-02427

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the

statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

**1. Judicial District:** Second Judicial District

Department: 10

County: Washoe

Judge: Elliott Sattler

District Ct. Case No. CV17-02427

**2. Attorney filing this docket statement:**

Attorney: Charles Burcham

Telephone: (775) 786-2882

Firm: Thorndal Armstrong Delk Balkenbush & Eisinger

Address: 6590 S. McCarran Blvd., Suite B  
Reno, NV 89509

Client(s): Somersett Development Co., Ltd., Somersett LLC, and Somersett Development Corporation

**3. Attorney(s) representing respondents(s):**

Attorneys: Don Springmeyer, Esq.  
John Samberg, Esq.  
Royi Moas, Esq.

Telephone: (775) 853-6787

Firm: Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP

Address: 5594 B Longley Lane  
Reno, NV 89511

Client(s): Somersett Owners Association

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:   |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim   |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify):   |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                                     |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify):<br>Denial of Motion for<br>Attorney's Fees |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody – No
- ☐ Venue - No
- ☐ Termination of parental rights - No

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

*Somersett Owners Assoc. v. Somersett Dev. Co., Ltd., et al.* Case No. 79920  
(pending)

*Somersett Owners Assoc. v. Somersett Dev. Co., Ltd., et al.* Case No. 79921  
(pending)

*Stantec Consulting Services, Inc., v. Somersett Owners Assoc.,* Case No. 80843  
(pending)

*Q&D Construction, Inc. v. Somersett Owners Assoc.,* Case No. 80880 (pending)

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Respondent Somerset Owners Association (“SOA”) filed suit against Somerset Development Company, Ltd. (“SDC”), Parsons Bros. Rockeries (“PBR”), and Q&D Construction, Inc. (“Q&D”), alleging various constructional defects in the construction of rockery walls in the Somerset subdivision in Reno, Nevada. SDC filed a Third-Party Complaint against Stantec Consulting Services, Inc. (“Stantec”) alleging claims for contribution and indemnity.

After performing discovery on the statute of repose issue, SDC, PBR, Q&D and Stantec (collectively, the “Defense”) filed a joint motion for summary judgment on the basis that SOA did not have any evidence that the rockery walls were completed within six years of SOA’s action, thereby rendering the claims untimely under the NRS 11.202 statute of repose. The Court granted the motion, finding “the Plaintiff has not identified any admissible evidence proving the [suit] was filed within the six-year statute of repose.” Therefore, the Court entered a defense judgment against SOA, including the claims brought under NRS 116.



SDC moved for attorney's fees based upon NRS 18.010, NRS 116.4117 and based upon Somerset CC&Rs. The Court denied the motion, finding that (1) SOA's arguments "were good faith attempts to modify current law on the statute of repose;" (2) the Court never ruled on any issues pertaining to NRS 116; and (3) it was not established that this action was one to enforce or administer the provisions of the CC&Rs.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the district court erred by holding that the fee-shifting provision in NRS 116.4117 was not implicated by the district court's grant of summary judgment on the statute of repose issue.
2. Whether the district court erred by finding that SOA's arguments were good faith attempts to modify current law on the statute of repose, thereby precluding an award of attorney fees under NRS 18.010.
3. Whether the district court erred by determining that this action was not one to enforce Somerset CC&Rs.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None of which SDC is aware.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a

party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

N/A

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

N/A

**13. Assignment to the Court of Appeals or retention in the Supreme Court.**

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the

Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is an appeal from a postjudgment order in a civil case and is therefore presumptively assigned to the Court of Appeals. Please note that in related appeals, SOA has moved the Court for a consolidation order regarding appeals.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

SDC does not intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal.

#### **TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from:** February 27, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

**17. Date written notice of entry of judgment or order was served:** March 17, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing. N/A

☐ NRCP 50(b)      Date of filing:

☐ NRCP 52(b)      Date of filing:

☐ NRCP 59          Date of filing:

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev.\_\_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served: N/A

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed: March 26, 2020**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

N/A

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:**

NRAP 4(a)

## **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                            | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                            | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) NRAP 3A(b)(8) |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(8) – An order denying a motion for attorney fees after the Court grants the motion for summary judgment disposing of all of Plaintiff’s claims is “a special order entered after final judgment,” as the order granting summary judgment was certified as a final judgment by the district court on December 9, 2019.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Somersett Owners Association  
Somersett Development Company, Ltd.  
Somersett, LLC  
Somersett Development Corporation  
Parsons Bros. Rockeries, Inc.  
Q&D Construction, Inc.  
Stantec Consulting Services, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Other. The order from which SDC appeals only affect SDC and SOA. The district court entered separate orders denying Stantec's motion for attorney's fees, Q&D's motion for attorney's fees, and PBR's motion for attorney's fees. To date, Stantec and Q&D have filed their own appeals to those separate orders.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Somerset Owners Association:	<ol style="list-style-type: none"><li>1. Negligence and Negligence Per Se</li><li>2. Breach of Express and Implied Warranties under NRS 116.4113 and 116.4114</li><li>3. Negligent Misrepresentation and/or Failure to Disclose</li><li>4. Declaratory Relief</li><li>5. Breach of NRS 116.4113 and Bad Faith</li></ol>
Somerset Development Co., Ltd. (cross-claims)	<ol style="list-style-type: none"><li>1. Implied Indemnity</li><li>2. Contribution</li><li>3. Equitable Indemnity</li><li>4. Apportionment</li><li>5. Express Indemnity</li></ol>
Somerset Development Co., Ltd. (third-party claims)	<ol style="list-style-type: none"><li>1. Implied Indemnity</li><li>2. Contribution</li><li>3. Equitable Indemnity</li><li>4. Apportionment</li><li>5. Express Indemnity</li></ol>

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

- ☐ Yes  
☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

SDC's cross-claims against PBR and Q&D remain, as does its third-party claims against Stantec.

(b) Specify the parties remaining below:

Somerset Development Co., Ltd. – Cross-Claimant and Third-Party Plaintiff  
Q&D Construction, Inc. – Cross-Defendant  
Parson Bros. Rockeries, Inc. – Cross-Defendant  
Stantec Consulting Services, Inc. – Third-Party Defendant

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

- ☒ Yes, on April 13, 2020  
☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

- ☒ Yes, on April 13, 2020  
☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

As noted, on April 13, 2020, the district court entered its order certifying the attorney's fees orders at issue in this appeal as being final and appealable. This also will pertain to the appeals currently being pursued by Stantec and Q&D as the order applies to all three attorney's fees rulings.

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

**See Attached Documents**



## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Somerset Development Co., Ltd.  
Somerset LLC, and Somerset  
Development Corporation  
\_\_\_\_\_  
Name of appellant

Charles Burcham SBN 2673  
\_\_\_\_\_  
Name of counsel of record

April 21, 2020  
\_\_\_\_\_  
Date

/s/ Charles Burcham  
\_\_\_\_\_  
Signature of counsel of record

Nevada, Washoe County  
\_\_\_\_\_  
State and county where signed

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, I certify that I am an employee of Thorndal  
Armstrong Delk Balkenbush & Eisinger, and that on this day I caused to be served  
via the Supreme Court's e-filing system, a true and correct copy of the foregoing  
document, addressed to the following e-mail address:

**Don Springmeyer, Esq.  
John Samberg, Esq.  
Royi Moas, Esq.  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
5594 B Longley Lane  
Reno, NV 89511  
Attorneys for Respondent**

DATED this 21<sup>st</sup> day of April, 2020.

/s/ Laura Bautista  
An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger

**Attachment to Docketing Statement – Civil Appeals – Case No. 80881**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims

The following are attached:

Exhibit 1 – SOA’s First Amended Complaint

Exhibit 2 – SDC’s Answer to First Amended Complaint and Cross-Claim

Exhibit 3 – SDC’s Third-Party Complaint

- Any tolling motion(s) and order(s) resolving tolling motion(s)

N/A

- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal

Exhibit 4 – Order for Partial Dismissal of Certain Claims, Without Prejudice, from the Second Claim for Relief Against Parsons Bros. Rockeries, Inc. Without Prejudice

- Any other order challenged on appeal

Exhibit 5 – Order Granting Motion for Summary Judgment (This order is subject to a separate appeal and serves as a basis for the attorney’s fees motion that is at issue herein)

Exhibit 6 – Order Denying SDC’s Motion for Attorney’s Fees

- Notices of entry for each attached order

Exhibit 7 – Notice of Entry of Order re Exhibit 4

Exhibit 8 – Notice of Entry of Order re Exhibit 5

Exhibit 9 – Notice of Entry of Order re Exhibit 6

# EXHIBIT 1

# EXHIBIT 1

1 **\$1427**

2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

3 **DON SPRINGMEYER, ESQ. (NSB 1021)**

4 **JOHN SAMBERG, ESQ. (NSB 10828)**

5 **ROYI MOAS, ESQ. (NSB 10686)**

6 5594 B Longley Lane

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8 (775) 853-6787/Fax (775) 853-6774

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11 rmoas@wrslawyers.com

12 *Attorneys for Somersett Owners Association*

13  
14  
15 **IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**  
16 **IN AND FOR THE COUNTY OF WASHOE**  
17

18 SOMERSETT OWNERS ASSOCIATION,  
19 a Domestic Non-Profit Corporation,

20 Plaintiff,

21 vs.

22 SOMERSETT DEVELOPMENT COMPANY,  
23 LTD, a Nevada Limited Liability Company;  
24 SOMERSETT, LLC a dissolved Nevada  
25 Limited Liability Company; SOMERSETT  
26 DEVELOPMENT CORPORATION, a  
27 dissolved Nevada Corporation; Q & B  
28 Construction, Inc., a Nevada Corporation;  
PARSONS BROS ROCKERIES, INC., a  
Washington Corporation; PARSONS ROCKS!,  
LLC., a Nevada Limited Liability Company,  
and DOES 5 through 50, inclusive,

Defendants.

**Case No. CV-1702427**

**Dept. No. 15**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES**

**Exempt from Arbitration:**

- 1) Complex Construction Defect  
Litigation pursuant to NRS 40.600  
et seq. and NRS Chapter 116 (NRS §§  
116.4113, 116.4114)
- 2) Damages in excess of \$50,000
- 3) Declaratory Relief Requested

**Demand for Jury Trial**

PLAINTIFF, by and through its attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN, &  
RABKIN, LLP, hereby files this Complaint for Claims for Relief against Defendants, and each of  
them, and hereby complains, alleges and states as follows:

**I. PARTIES**

**A. Plaintiff**

1. Plaintiff, Somersett Owners Association, (hereinafter referred to as the

1 “Association”), at all times herein mentioned is and was incorporated as a domestic non-profit  
2 Nevada Corporation with its principal place of business in Washoe County, Nevada as a common-  
3 interest-community governed by NRS Chapter 116.

4         2.       The Association is comprised of owners of single family residential units and  
5 common areas, including but not limited to improvements, appurtenances, common areas, and  
6 structures built and existing upon certain parcels of real property (hereinafter referred to as the  
7 “Association Development,” and/or the “Community”), all as more specifically described in the  
8 Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens,  
9 Reservations, and Easements recorded in the Official Records of Washoe County, Nevada, and  
10 any amendments thereto (hereinafter referred to as the “CC&Rs”).

11         3.       The Association is informed and believes, and based thereon alleges, that the  
12 CC&Rs were recorded before title to any common area within the Association Development was  
13 conveyed by deed, and are referenced in the deeds to all common areas within the Association  
14 Development.

15         4.       Development and construction of the Association Development continued by the  
16 declarant/developer(s) and involved contractors until the year the Association board became  
17 homeowner controlled.

18         5.       By the terms of the CC&Rs and pursuant to Nevada Revised Statute, Chapter 116  
19 of the Common Interest Ownership Act, and specifically including NRS 116.3102, the Association  
20 is granted the general authority and responsibility to bring the herein stated action in its own name,  
21 on behalf of units’ owners within the Association , and hereby asserts and exercises such authority  
22 and responsibility as to the claims related to the common areas identified herein..

23         6.       In accordance with the CC&Rs, the Association has the right and duty to manage,  
24 operate, control, repair, replace and restore the Association, including the right to enter into  
25 contracts to accomplish its duties and obligations, and has all of the powers necessary to carry out  
26 its rights and obligations, including the right, duty, and power to contract for legal services to  
27 prosecute any action affecting the Association and or its homeowners when such action is deemed  
28 by it necessary to enforce its powers, rights, and obligations, including the bringing of this action.

1           **B.       Defendants**

2           7.       Plaintiff is informed and believes, and thereon alleges, that Defendant  
3 SOMERSETT DEVELOPMENT COMPANY, LTD, (herein referred to as “Somerset  
4 Development”) whose registered agent is Sierra Corporate Services, Registered Agent, located at  
5 100 West Liberty St., 10th Floor, Reno, Nevada 89501 is, and at all times herein mentioned was,  
6 and continues to be a Nevada Limited Liability Company engaged in business in Washoe County,  
7 Nevada, as a real estate developer and or builder.

8           8.       Plaintiff is informed and believes, and thereon alleges, that Defendant  
9 SOMERSETT, LLC (herein referred to as “Somerset”) whose registered agent was Sierra  
10 Corporate Services, located at 100 West Liberty St., 10th Floor, Reno, Nevada 89501 is a  
11 dissolved company and at all times herein mentioned was a Nevada Limited Liability Company  
12 engaged in business in Washoe County, Nevada, as a real estate developer and or builder.

13          9.       Plaintiff is informed and believes, and thereon alleges, that Defendant  
14 SOMERSETT DEVELOPMENT CORPORATION (herein referred to as “Somerset Corp.”)  
15 whose registered agent was Sierra Corporate Services, located at 100 West Liberty St., 10th Floor,  
16 Reno, Nevada 89501, is a dissolved corporation and at all times herein mentioned was a Nevada  
17 Corporation engaged in business in Washoe County, Nevada.

18          10.      Plaintiff is informed and believes, and thereon alleges, that Defendant s Somerset  
19 Development, Somerset, LLC, and Somerset Corp. are interrelated and/or successor entities each  
20 as to the other in form or forms presently unknown. Plaintiff reserves the right to amend this  
21 Complaint at such time as the inter-relationships become known.

22          11.      Plaintiff is informed and believes, and thereon alleges, that at all times pertinent  
23 hereto, Somerset Development, Somerset, LLC and Somerset Corp., and those acting in concert  
24 with them (co-defendants herein) were developers, contractors, materialmen, suppliers, and  
25 builders of the “Common Elements” as defined in NRS, Chapter 116, which are the subject matter  
26 of this action.

27          12.      Plaintiff is informed and believes, and thereon alleges, that, at all times pertinent  
28 hereto, Somerset Development, Somerset LLC, and Somerset Corp. and those acting in concert

1 with them (co-defendants herein) were declarants of the CC&Rs, applicable to the “Common  
2 Elements” as defined in NRS, Chapter 116, which are the subject matter of this action.

3 13. Plaintiff is informed and believes, and thereon alleges, that Defendant Q & B  
4 CONSTRUCTION, INC., (“Q & B”) whose registered agent is Sierra Corporate Services, located  
5 at 100 West Liberty St., 10th Floor, Reno, Nevada 89501, is and at all times herein mentioned  
6 was, a Nevada Corporation engaged in business in Washoe County, Nevada.

7 14. Plaintiff is informed and believes, and thereon alleges, that Defendant PARSONS  
8 BROS ROCKERIES, INC., a Washington Corporation; (“Parsons Rockeries”) whose registered  
9 agent is Kevin Parsons, located at 710 W. Sunset Road, Suite 10, Henderson, NV 891015, is and  
10 at all times herein mentioned was, a Washington Corporation licensed to do business in the State  
11 of Nevada as a foreign entity.

12 15. Plaintiff is informed and believes, and thereon alleges, that Defendant PARSONS  
13 ROCKS!, LLC., a Nevada Limited Liability Company (“Parsons Rocks”), is and at all times  
14 herein mentioned was, a Nevada limited liability company licensed to do business in the State of  
15 Nevada.

16 16. The true names and capacities of Defendants sued herein as DOES 5 -50 (together  
17 with Somersett Development, Somersett, Somersett Corp., Parsons Rockeries, Parsons Rocks and  
18 Q & B, as “Defendants”) inclusive, and each of them, are presently unknown to Plaintiff and  
19 therefore, they are sued herein under fictitious names. Prior to the filing of this Complaint,  
20 Plaintiff made a good-faith effort to identify all parties who or which should be properly named as  
21 first-party Defendants herein, including inquiry of the named defendant herein, but were unable to  
22 identify such person(s) or entity(ies) with sufficient probability to warrant their inclusion herein at  
23 this time. Plaintiff will identify and name DOE defendants when the true names and capacities of  
24 such Defendants are ascertained.

25 17. Plaintiffs are informed and believe that DOES 5 – 50 are in some way negligently  
26 or otherwise proximately responsible for the injuries and damage suffered by Plaintiff as herein  
27 alleged. All such Defendants named above, including DOES 5- 50, inclusive, shall hereinafter be  
28 referred to as “Defendants.”



1           18.     Plaintiff is informed and believes, and thereon alleges, that at all times relevant  
2 herein, each of the Defendants were and remain the agents, servants, general contractors,  
3 subcontractors, materialmen, suppliers, designers, representatives, independent contractors,  
4 partners, joint venturers, predecessors, successors, alter egos, and/or employees of each and/or  
5 some of the other Defendants, and in doing those acts referred to herein, were acting within the  
6 course and scope of their authority as such agents, servants, subcontractors, representatives,  
7 independent contractors, partners, joint venturers, alter egos, and/or employees, and with the  
8 express and/or implied approval, permission, knowledge, consent, and ratification of all co-  
9 defendants, and in consent of action relating thereto.

10           19.     Defendants sued herein as alter egos are responsible for corporate obligations in  
11 that the unity of interest, including the existence of common employees and management, the  
12 commingling of funds, the diversion or appropriation of corporate assets, the disregard of  
13 corporate formalities, the sole or majority ownership of stock, the exertion of control, the  
14 inadequate capitalization, and the wrongful use of the corporation to avoid legal obligations,  
15 between the individual and the corporation, are so aligned that the separate personalities of the  
16 individual and the corporation no longer exist, and if the acts were treated as those of the  
17 corporation alone, an inequitable result or sanctioning of a fraud would follow.

18           20.     Plaintiff is informed and believes, and based thereon alleges, that at all times  
19 relevant hereto Defendants, and each of them, acted as planners, developers, general contractors,  
20 subcontractors, designers, installers, testers, inspectors, suppliers, manufacturers, and distributors  
21 of any and all labor, parts and/or materials installed and/or constructed at the Subject Property, and  
22 are responsible for the defects and deficiencies in the design, provision of materials and/or labor,  
23 construction, selection of subcontractors, coordination and supervision of the construction, and  
24 inspection and/or approval of the work as alleged herein, and that Plaintiff's damages were and are  
25 directly and proximately caused by the conduct, acts and omissions of these Defendants, and each  
26 of them.

27           21.     Prior to the filing of this Complaint, and on or about December 29, 2017, Plaintiff,  
28 in accordance with provisions of NRS 40.645 and each subsection thereof, provided written notice

1 to the identified Defendants a written NRS Chapter 40 Notice of Claims (herein “Chapter 40  
2 Notice”), including therein a statement that the notice is being given to satisfy the requirements of  
3 NRS 40.645, and identifying in specific detail each defect, damage and injury to the common area  
4 that is the subject of the claim, including, without limitation, the exact location by Map and  
5 Picture of each such defect, damage and injury. Additionally, to the extent known, the cause of  
6 the defects and the nature and extent of the damage or injury resulting from the defects is  
7 identified in reasonable detail . Additionally, the Chapter 40 Notice includes a signed statement by  
8 a member of the executive board and or office of the Plaintiff, verifying that each such defect,  
9 damage and or injury specified in the Chapter 40 Notice exists.

## 10 **II. GENERAL ALLEGATIONS**

11 22. The Association Development is located in the City of Reno, County of Washoe,  
12 State of Nevada.

13 23. The Association Development contains common areas owned by the Association in  
14 accordance with the Association’s governing documents and NRS Chapter 116.

15 24. The common areas include, but are not limited to areas of property that include the  
16 rockery wall structures (“Subject Property”).

17 25. Plaintiff is informed and believe and thereon allege that Defendants, and each of  
18 them, undertook certain works of improvement to develop the Subject Property, including all  
19 works of development, design, construction of the Subject Property.

20 26. Plaintiff is informed and believe, and thereon allege, that at all times relevant  
21 herein, Defendants, including DOEs, were the predecessors or successors in interest, agents,  
22 employees, and representatives of each other in doing or omitting the actions alleged herein, and  
23 in so doing, were acting in the scope of their respective authority and agency.

24 27. Plaintiff is informed and believe, and thereon allege, that Defendants, and each of  
25 them, failed to properly and adequately plan, design, investigate, inspect, supervise, and construct  
26 the Subject Property, in that said Subject Property has and continues to experience defects,  
27 deficiencies, and damages resulting therefrom, as more specifically described below.

28 28. Plaintiff is informed and believe, and thereon allege, that Defendants, and each of

1 them, were merchants and sellers of the units surrounding the Subject Property which is the  
2 subject of this action as described above.

3 29. Plaintiff is informed and believe, and thereon allege, that the Subject Property, as  
4 provided by Defendants, is defective and deficient as is more specifically described below.

5 30. Plaintiff is informed and believe and thereon allege, that Defendants, and each of  
6 them, failed to properly and adequately investigate, design, inspect, plan, engineer, supervise,  
7 construct, produce, manufacture, develop, prepare, and/or transfer the Subject Property, in that  
8 said Subject Property has experienced, and continue to experience, defects, deficiencies and  
9 damages resulting therefrom as more specifically described below.

10 31. Said defects and deficiencies, in certain areas of the Subject Property include those  
11 described in the Plaintiff's Chapter 40 Notice which was attached as Exhibit 1 to the original  
12 complaint filed in this matter on December 29, 2017, including but not limited to, excessive or  
13 inadequate voids with no or inadequate chinking rocks; failure to use filter fabric to enclose the  
14 drain rock or otherwise in construction of rockery walls; drain rock and or retained soil spilling  
15 through voids; inadequate, improper or otherwise bad placement of rockery wall rocks; over-  
16 steepened and or non-uniform face batter of rockery walls; and inadequate stabilization of the  
17 rockery walls.

18 32. Based upon investigation and testing performed by experts retained by Plaintiff,  
19 Plaintiff is informed, believes, and thereon alleges that the above-referenced defects are pervasive  
20 throughout the Subject Property, as reported by Plaintiff's expert in the Chapter 40 Notice, and  
21 that said Defendants, and each of them, had actual knowledge of many of the said deficiencies at  
22 the time of construction and have such knowledge at the present time.

23 33. All of the said defects which are the subject matter of this action were described  
24 and accompanied by an expert report (defect list) as required by NRS 40.645(4), which was and is  
25 a part of the Chapter 40 Notice previously provided to Defendants and which list is incorporated  
26 herein by this reference as though fully set forth herein.

27 34. Plaintiff is informed and believe, and thereon allege, that the Subject Property may  
28 be defective or deficient in other ways not presently known to Plaintiff, and not specified above.

1 Plaintiff reserves its right to amend this Complaint upon discovery of any additional defects or  
2 deficiencies not referenced herein, and/or to present evidence of the same at the time of trial of this  
3 action.

4 35. Plaintiff is informed, believes and thereon alleges that the defects and deficiencies,  
5 as described above and incorporated herein, are, among other things, violations or breaches of  
6 local building and construction practices, industry standards, governmental codes and restrictions,  
7 manufacturer requirements and/or product specifications at the time the Subject Property was  
8 planned, designed, constructed and sold.

9 36. Plaintiff is informed and believe, and thereon allege, that the deficiencies in the  
10 construction, design, planning, and/or construction of the Subject Properties described in this  
11 Complaint were known or should have been known by Defendants at all times relevant hereto.

12 37. Plaintiff alleges generally that this is a complex matter, an appointment of a special  
13 master is appropriate pursuant to NRS 40.680(6). The notices required pursuant to NRS Chapter  
14 40 have already been sent and such claims will be prosecuted against the Defendants.

15 38. Plaintiff alleges generally that the conduct of Defendants, as more fully described  
16 herein, was and remains the actual and proximate cause of general and special damages to the  
17 Plaintiff. A more particular statement of related damages is provided in the prayer for relief,  
18 hereby incorporated by reference.

### 19 **III. FIRST CLAIM FOR RELIEF**

#### 20 **Negligence and Negligence Per Se** 21 **(Against All Defendants)**

22 39. Plaintiff hereby incorporates and realleges Paragraphs 1 through 39 of the  
23 Complaint as though fully set forth herein.

24 40. Plaintiff is informed and believes, and thereon allege, that Defendants, and each of  
25 them, in their development, planning, design, construction, marketing and related functions as  
26 described herein with respect to the Subject Property, owed to Plaintiff, to others similarly  
27 situated, and to the public at large, a duty to exercise reasonable care in fulfilling all of these  
28 functions, and in performing all actions associated therewith.

1           41. Plaintiff is informed and believes, and thereon allege, that Defendants, and each of  
2 them, in breach of said duty, negligently, carelessly, wrongfully and recklessly failed to exercise  
3 reasonable care in the investigation, design, inspection, planning, engineering, supervision,  
4 construction, production, manufacture, development, preparation, marketing, distributing,  
5 supplying and/or transfer of the Subject Property, thereby breaching the duty owed to Plaintiff.  
6 Many of the said breaches of duty resulted in construction which did and does not comply, among  
7 other things, with building standards and or local building codes, and, to that extent, and as  
8 otherwise provided by law, constitute negligence per se.

9           42. Plaintiff is informed and believes, and thereon allege, that under the circumstances,  
10 a reasonable person in each Defendants' position and/or in the position of each of the Defendants'  
11 agents, would have followed building and construction practices, industry standards, governmental  
12 codes and restrictions, manufacturer requirements and product specifications at the time the  
13 Subject Property was planned, designed, constructed and transferred.

14           43. As a proximate and legal result of the negligence of Defendants, and each of them,  
15 and the defective conditions as more fully set forth herein affecting the Subject Property and  
16 associated improvements, Plaintiff has been caused, and will continue to be caused, damages as  
17 more fully described herein, including, but not limited to, the cost to repair all defects and  
18 defective conditions as required, and its interests in the Subject Property has been, and continues  
19 to be, rendered substantially reduced in value, and/or the Subject Property has been rendered  
20 dangerous to the well-being of Plaintiff, its guests and members of the general public, all to the  
21 general detriment and damage of Plaintiff in an amount to be proven at the time of trial.

22           44. As a further proximate and legal result of the negligent conduct of Defendants, and  
23 each of them, and the defective conditions affecting the Subject Property, Plaintiff has incurred,  
24 and will continue to incur, expenses, including, but not limited to, expert and/or subcontractors'  
25 fees, and other associated costs of repair, all in an amount to be established at the time of trial.

26           45. At all times mentioned herein Defendants had a duty to exercise ordinary care in  
27 the conduct of their business and affairs so as to avoid any reasonable likelihood and/or gravity of  
28 potential harm to property and people who might be injured as a foreseeable result of Defendants

1 acts, failure to act, or failure to warn.

2       46. Plaintiff is informed and believes, and thereupon alleges, that Defendants breached  
3 the above standard of care when they negligently, carelessly and recklessly, designed, planned,  
4 developed, constructed, marketed and or transferred the Subject Property, resulting in numerous  
5 defects, some of which are particularly alleged in Plaintiff's General Allegations, specifically  
6 incorporated herein.

7       47. Plaintiff is informed and believe, and thereupon allege, that at all times relevant  
8 hereto, Defendants knew or through the exercise of reasonable care and diligence should have  
9 known as such defective, dangerous and hazardous conditions and that Defendants thereafter  
10 failed to warn Plaintiff of such conditions.

11       48. At all times relevant hereto, there existed local, state, national and international  
12 building codes and or standards, such as, but not limited to, the Nevada Standard Guidelines for  
13 Rockery Wall Construction and the Federal Highway Administration Rockery Design and  
14 Construction Guidelines that controlled the construction of the rockery walls at the Subject  
15 Property.

16       49. At all times relevant hereto, particular provisions of these above mentioned  
17 building standards were intentionally adopted to protect a class of persons to which the Plaintiff  
18 belongs.

19       50. At all times relevant hereto, the injuries suffered by Plaintiff as alleged herein are  
20 the type of injuries that the above mentioned provisions were intended to prevent.

21       51. As a direct and proximate result of the negligent, careless, and/or wanton conduct  
22 of Defendants, Plaintiff has been damaged in the manner herein alleged.

23       52. As a further proximate and legal result of the negligent conduct of Defendants, and  
24 each of them, as herein alleged, and the defective conditions as more fully set forth herein  
25 affecting the Subject Property and associated improvements, Plaintiff has been compelled to resort  
26 to litigation against Defendants to judicially resolve the differences between Plaintiff and  
27 Defendants.

28       53. As a result of the actions or inactions of the Defendants, Plaintiff has been damaged

1 and is entitled to recovery of an amount in excess of \$15,000.00.

2       54. As a result of the actions or inactions of the Defendants, Plaintiff has been required  
3 to retain the services of counsel and experts , to prosecute this matter, and is, therefore, entitled to  
4 recovery of their reasonable attorneys' fees, construction expert costs, past repair costs, the costs  
5 of all future repairs necessary to cure any defects Defendants have failed to cure, the reasonable  
6 value of other property damaged by the constructional and/or material/product defects, and  
7 additional costs fees and interest, all in excess of \$15,000.00.

8       55. Plaintiffs incorporate by reference, as if again set forth herein, the particular  
9 statement of damages described in the prayer for relief hereinafter set forth.

10                                   **IV. SECOND CLAIM FOR RELIEF**

11       **Breach of Express and Implied Warranties Pursuant to NRS 116.4113 and NRS 11.4114 and**  
12                                   **Common Law(Against All Defendants)**

13       56. Plaintiff hereby incorporates and realleges Paragraphs 1 through 56 of the  
14 Complaint as though fully set forth herein.

15       57. Defendants impliedly and expressly warranted pursuant to the contracts, proposals,  
16 purchase orders, and or agreements between each of the Defendants, that their work would be  
17 done in a good, workmanlike and substantial manner, and in full accordance with the provisions  
18 and conditions of the agreements, plans and specifications.

19       58. Plaintiff is informed and believes said Defendants entered into agreements that  
20 were substantially similar in form. Plaintiff is furthered informed and believes that the agreements  
21 expressly or implicitly provided, in pertinent part and without limitation to other and further  
22 matters, the following:

23               (a) That the work by the Defendants will be performed by qualified, careful and  
24 efficient contractors and laborers in a workmanlike, prompt and diligent manner and to furnish  
25 materials as specified for the purpose intended.

26               (b) That performance of any act or thing or work in connection with the  
27 performance or completion of any work of the Defendant's trade or profession or is customarily  
28 performed in Defendant's trade or profession, then such obligation is assumed by the Defendants

1 to be part of its work.

2 (c) That the Defendants agreements would be binding upon and inure to the  
3 benefit of the parties hereto and their respective successors, legal representative and assigns.

4 (d) That the Defendants agreed to exercise due care in the performance of their  
5 duties in connection with their work in strict compliance with the contract documents.

6 (e) That the Defendants shall comply with all local building codes, all federal,  
7 state and municipal codes, ordinances, regulations or any local codes having jurisdiction.

8 (f) All work required or implied by the contract documents will be performed  
9 or installed in accordance with all applicable codes and ordinances.

10 59. Plaintiff is informed and believes and thereon alleges that Defendants, and each of  
11 them, expressly and impliedly warranted that the Subject Property and associated improvements  
12 were of merchantable quality, were safely and properly constructed and/or installed in accordance  
13 with plans and specifications therefore which are part of the CC&Rs for the Community, and were  
14 fit for the normal purpose intended.

15 60. Plaintiff is further informed and believes and thereon alleges that the express  
16 warranties made and utilized by said Defendants, and each of them, have at all relevant times,  
17 been provided in the form of, by example, and without limitation: advertising flyers, brochures,  
18 sales literature, promotional packages, signs, magazine and newspaper articles and advertisements,  
19 all designed to promote the sale of the Subject Property and to impart the belief that said Subject  
20 Property had been sufficiently constructed.

21 61. Further, Plaintiff alleges that the express warranties as set forth in the Public  
22 Offering Statement for the Subject Property, within the meaning of NRS 116.4113, but were not  
23 delivered and orally tendered, including, without limitation, the complimentary statements made  
24 to the Plaintiff and/or members of the Plaintiff and/or Plaintiff's representatives by Defendant  
25 and/or Defendants' representative(s), and/or agents of Defendants, and each of them, in marketing  
26 and offering the Subject Property for sale.

27 62. Plaintiff further alleges that implied warranties arose by virtue of NRS 116.4114  
28 and the offering for sale and transfer by Defendants, and each of them, of the Subject Property to



1 Plaintiff, and members of the Plaintiff, without disclosing that there were material and substantial  
2 defects associated with said Subject Property, thereby leading all members of the Plaintiff to  
3 believe that no such defects existed, impliedly warranting that the Subject Property was free from  
4 defects, free from defective materials, and constructed in accordance with applicable law,  
5 according to sound standards of engineering and construction, and in a workmanlike manner.

6 63. Plaintiff further alleges that the warranties were not limited by the Defendants, and  
7 the provisions of NRS 116.4113 and NRS 116.4114 apply to their fullest extent.

8 64. Plaintiff further is informed and believes and thereon allege that the Defendants  
9 impliedly warranted that the common elements and thereby the Subject Property was suitable for  
10 the ordinary use and made or contracted for be the Defendants in a manner that was free from  
11 defective materials, and constructed in accordance with applicable law, according to sound  
12 standards and in a workmanlike manner without disclosing that there were any defects associated  
13 with the Subject Property, thereby leading the Plaintiff to believe that there no such defects  
14 existed.

15 65. Plaintiff is informed and believes and thereon allege that Defendants, and each of  
16 them, gave similar implied warranties to any and all regulatory bodies who had to issue permits  
17 and/or provide approvals of any nature as to the Subject Property, which were at all relevant times  
18 defective and known by Defendants, and each of them, to be so defective.

19 66. Plaintiff is informed and believes and thereon allege that Defendants, and each of  
20 them, breached their express and implied warranties in that, among other things, the Subject  
21 Property were not, and are not, of marketable quality, nor fit for the purpose intended, in that said  
22 Subject Property were not, and are not, properly and adequately constructed.

23 67. Plaintiff is informed and believe and thereon allege that Defendants, and each of  
24 them, named herein have been notified and have full knowledge of the alleged breaches of  
25 warranties, and that Defendants named herein, and each of them, have failed and refused to take  
26 adequate steps to rectify and/or repair said breaches.

27 68. As a proximate legal result of the breaches of said express (written and oral) and  
28 implied warranties by Defendants, and each of them, and the defective conditions affecting said

1 Subject Property, Plaintiff has been, and will continue to be, caused damage, as more fully  
2 described herein, including but not limited to, that the interests of Plaintiff in said Subject Property  
3 have been, and will be damage of Plaintiffs as more fully alleged above and in an amount to be  
4 established at the time of trial.

5 69. As a further proximate and legal result of the breaches of the express (written and  
6 oral) and implied warranties by Defendants, and each of them, and the defective conditions  
7 affecting said Subject Property, Plaintiff has been, and will continue to be, caused further damage  
8 in that the defects and deficiencies have resulted in conditions which breach the implied warranty  
9 of habitability recognized under Nevada law.

10 70. As a further proximate and legal result of the negligent conduct of Defendants, and  
11 each of them, as herein alleged, and the defective conditions affecting said Subject Property and  
12 associated improvements, Plaintiff has compelled to resort to litigation against Defendants to  
13 judicially resolve the differences between Plaintiff and Defendants.

14 71. As a result of the actions or inactions of the Defendants, Plaintiff has been damaged  
15 and is entitled to recovery of an amount in excess of \$15,000.00.

16 72. As a result of the actions or inactions of the Defendants, Plaintiff has been required  
17 to retain the services of counsel and experts , to prosecute this matter, and is, therefore, entitled to  
18 recovery of their reasonable attorneys' fees, construction expert costs, past repair costs, the costs  
19 of all future repairs necessary to cure any defects Defendants have failed to cure, the reasonable  
20 value of other property damaged by the constructional and/or material/product defects, and  
21 additional costs fees and interest, all in excess of \$15,000.00.

22 73. Plaintiff incorporates by reference, as if set forth herein, the particular statement of  
23 damages described in the Prayer for Relief.

## 24 **V. THIRD CLAIM FOR RELIEF**

### 25 **Negligent Misrepresentation and/or Failure to Disclose** 26 **(Against All Defendants)**

27 74. Plaintiff hereby incorporates and realleges Paragraphs 1 through 74 of the  
28 Complaint as though fully set forth herein.

1           75.     Plaintiff is informed and believe and thereon allege that the Defendants, and their  
2 agents, representatives, and employees, represented both orally and in writing, to Plaintiff at the  
3 time of the transfer of assets to the Plaintiff that the Subject Property were designed, developed,  
4 constructed, and built in a good and workmanlike manner, with good quality products, pursuant to  
5 plans and specifications, industry standards, and reasonably free of defects.

6           76.     Defendants failed to disclose the existence of serious known latent defects and  
7 deficiencies in the Subject Property and/or misrepresented the condition of the Subject Property,  
8 which contained defects.

9           77.     Plaintiff is informed, and believes, and thereon allege, that Defendants and their  
10 agents, representatives, and employees made express representations and implied warranties to the  
11 Plaintiffs when Defendants and their agents had no sufficient or reasonable grounds for believing  
12 them to be true, and said Defendants were negligent in not ascertaining the true condition of the  
13 Subject Property and reporting it to the Plaintiffs.

14           78.     Plaintiff relied to its detriment on the negligent misrepresentations and failures to  
15 disclose material facts by said Defendants and their agents, representatives, and employees  
16 relating to the Subject Property.

17           79.     Plaintiff has recently become aware of the defects identified herein. As a direct and  
18 proximate result of the aforesaid misrepresentations concerning the warranties, the efforts of the  
19 Plaintiff to provide notice of warranty claims, obtain satisfaction of warranty claims, and to obtain  
20 repairs justly due and owing under warranty claims, was rendered useless and futile, and Plaintiffs  
21 were thereby excused from any and all duties to Defendants or any other warranty service  
22 providers to provide notice of further warranty claims.

23           80.     Plaintiff is informed and believes, and thereon allege, that as a direct and proximate  
24 result of the negligent misrepresentation by Defendants, and each of them, Plaintiff has sustained  
25 and will sustain damages as alleged herein, in excess of \$15,000.00.

26           81.     Plaintiff incorporates by reference, as if set forth herein, the particular statement of  
27 damages described in the Prayer for Relief.

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82. Plaintiff hereby incorporates and realleges Paragraphs 1 through 82 of the Complaint as though fully set forth herein.

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1 informed and believes and thereon allege that Defendants deny any negligence and/or breaches of  
2 express or implied warranties, and/or that Plaintiff has incurred, or will continue to incur, any of  
3 the expenses claimed by Plaintiff herein.

4 87. A judicial determination of the parties' rights, duties, and obligations and a  
5 declaration as to the same with respect to the above-specified issues is essential to the  
6 administration of justice in this lawsuit and, therefore, is necessary and appropriate at this time in  
7 order that Plaintiff and Defendants may ascertain its rights, duties, and obligations with respect to  
8 the above-specified controversies.

9 **VII. FIFTH CLAIM FOR RELIEF**

10 **Breach of NRS 116.1113 and the Implied Covenant of Good Faith**  
11 **(Against All Defendants)**

12 88. Plaintiff hereby incorporates and realleges Paragraphs 1 through 88 of the  
13 Complaint as though fully set forth herein.

14 89. Plaintiff is entitled to all covenants of good faith contained in agreements or any  
15 duties arising from Defendants transfer of the Subject Property to the Plaintiff.

16 90. NRS 116.1113 (applicable to all common interest communities created within the  
17 State of Nevada) provides that every contract or duty governed by Chapter 116 imposes an  
18 obligation of good faith in its performance or enforcement.

19 91. NRS 116.1113 and the duties arising from NRS Chapter 116 impose upon said  
20 Defendants an obligation of good faith.

21 92. Said Defendants knew and/or should have known at the time of constructing and or  
22 transfer of the Subject Property that they were defectively constructed as herein alleged. Said  
23 Defendants' conduct was a breach of their statutory duty of good faith owed to the Plaintiff and its  
24 members.

25 93. This conduct of the said Defendants was and remains the actual and proximate  
26 cause of damages to Plaintiff, as set forth in the prayer for relief and incorporated herein by  
27 reference.

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1. For general and special damages pursuant to NRS 40.600 *et seq.*, and all other statutory or common law causes of action, as pled in this Complaint, all in an amount in excess of \$15,000.00;

3. For the costs to reconstruct the defective areas of the Subject Property, in accordance with applicable law, according to sound standards of engineering and construction, and in a workmanlike manner.

5. For losses associated with the defects and/or deficiencies, including loss of use, relocation, incidental expenses;

7. For such relief as is necessary, including equitable and monetary relief, for a just adjudication of this matter;

9. For any other such relief that the Court deems just and proper.

Plaintiffs respectfully demand a trial by a jury of all issues so triable.

The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603A.040 about any

1 person.

2 DATED this 2 day of May, 2018.

3 **WOLF, RIFKIN, SHAPIRO,**  
4 **SCHULMAN & RABKIN, LLP**

5 By: /s/ John Samberg, Esq.  
6 DON SPRINGMEYER, ESQ.  
7 Nevada Bar No. 1021  
8 JOHN SAMBERG, ESQ.  
9 Nevada Bar 10828  
10 ROYI MOAS, ESQ.  
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11 *Attorneys for Plaintiff*

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# EXHIBIT 2

# EXHIBIT 2



Code: 1140

1 Charles L. Burcham, Esq., Nevada Bar No. 2673  
2 Wade Carner, Esq., Nevada Bar No. 11530  
3 Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
6590 S. McCarran, Suite B  
4 Reno, Nevada 89509  
Tel: (775) 786-2882

Attorneys for Defendants

5 SOMERSETT DEVELOPMENT COMPANY, LTD,  
SOMERSETT, LLC, and SOMERSETT DEVELOPMENT CORPORATION

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

7 IN AND FOR THE COUNTY OF WASHOE

8  
9 SOMERSETT OWNERS ASSOCIATION, a  
10 Domestic Non-Profit Corporation,

11 Plaintiff,

Case No. CV17-02427

12 vs.

Dept. No. 15

13 SOMERSETT DEVELOPMENT COMPANY,  
LTD, a Nevada Limited Liability Company;  
14 SOMERSETT, LLC a dissolved Nevada  
Limited Liability Company; SOMERSETT  
15 DEVELOPMENT CORPORATION, a  
dissolved Nevada Corporation; Q & D  
16 Construction, Inc., a Nevada Corporation,  
PARSONS BROS ROCKERIES, INC., a  
17 Washington Corporation; PARSONS  
ROCKS!, LLC., a Nevada Limited Liability  
18 Company, and DOES 5 through 50, inclusive,

19 Defendants.

20 **ANSWER TO FIRST AMENDED COMPLAINT AND CROSS-CLAIM**

21 COMES NOW, Defendants SOMERSETT DEVELOPMENT COMPANY, LTD,  
22 SOMERSETT, LLC, and SOMERSETT DEVELOPMENT CORPORATION, by and through  
23 their attorneys, Thorndal Armstrong Delk Balkenbush & Eisinger, and in answer to Plaintiff's  
24 Amended Complaint, hereby admits, denies, and alleges as follows:

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1 **FIRST DEFENSE**

2 **I. PARTIES**

3 **A. Plaintiff**

4 I.

5 Defendants admit the allegations contained in Paragraph 1 of the Amended Complaint.

6 II.

7 Defendants are without sufficient knowledge or information with which to form a belief  
8 as to the truth of the allegations contained in Paragraphs 2, 3 and 4 of the Amended Complaint,  
9 and upon such basis deny same.

10 III.

11 The allegations of Paragraph 5 of the Amended Complaint are legal and not factual; this  
12 lawsuit was filed in violation of NRS 116.31088.

13 IV.

14 In answer to Paragraph 6 of the Amended Complaint, the referenced CC&Rs speak for  
15 themselves.

16 **B. Defendants**

17 V.

18 Defendants admit the allegations contained in Paragraphs 7, 8 and 9 of the Amended  
19 Complaint.

20 VI.

21 Defendants are without sufficient knowledge or information with which to form a belief  
22 as to the truth of the allegations contained in Paragraphs 10, 13, 14, 15, 16 and 17 of the  
23 Amended Complaint, and upon such basis deny same.

24 VII.

25 Defendants deny the allegations contained in Paragraphs 11, 12, 18, 19 and 20 of the  
26 Amended Complaint.

27 VIII.

28 In answer to Paragraph 21 of the Amended Complaint, Defendants admit that a Notice of

1 Claims was provided, and Defendants allege that said notice was untimely and improper under  
2 NRS 11.202.

3 **II. GENERAL ALLEGATIONS**

4 I.

5 Defendants admit the allegations contained in Paragraph 22 of the Amended Complaint.

6 II.

7 Defendants are without sufficient knowledge or information with which to form a belief  
8 as to the truth of the allegations contained in Paragraphs 23, 24 and 33 of the Amended  
9 Complaint, and upon such basis deny same.

10 IV.

11 Defendants deny the allegations contained in Paragraphs 25, 26, 27, 28, 29, 30, 31, 32,  
12 34, 35, 36, 37 and 38 of the Amended Complaint.

13 **III. FIRST CLAIM FOR RELIEF**

14 **Negligence and Negligence Per Se**

15 **(Against All Defendants)**

16 I.

17 In answer to Paragraph 39 of the Amended Complaint, Defendants repeat and reallege  
18 each and every answering Paragraphs 1 through 38 of the Amended Complaint as though fully  
19 set forth herein.

20 II.

21 Defendants deny the allegation contained in Paragraphs 40, 41, 43, 44, 45, 46, 47, 48, 49,  
22 50, 51, 52, 53 and 54 of the Amended Complaint.

23 III.

24 Defendants are without sufficient knowledge or information with which to form a belief  
25 as to the truth of the allegations contained in Paragraph 42 of the Amended Complaint, and upon  
26 such basis deny same.

27 IV.

28 No response is necessary to Plaintiff 55 of the Amended Complaint.

1 **IV. SECOND CLAIM FOR RELIEF**

2 **Breach of Express and Implied Warranties Pursuant to NRS 116.4113 and NRS 11.4114**  
3 **and Common Law (Against All Defendants)**

4 I.

5 In answer to Paragraph 56 of the Amended Complaint, Defendants repeat and reallege  
6 each and every answering Paragraphs 1 through 55 of the Amended Complaint as though fully  
7 set forth herein.

8 II.

9 Defendants deny the allegations contained in Paragraphs 57, 59, 60, 61, 62, 64, 65, 66,  
10 67, 68, 69, 70, 71 and 72 of the Amended Complaint.

11 III.

12 Defendants are without sufficient knowledge or information with which to form a belief  
13 as to the truth of the allegations contained in Paragraphs 58 and 63 of the Amended Complaint,  
14 and upon such basis deny same.

15 IV.

16 No response is necessary to Paragraph 73 of the Amended Complaint.

17 **V. THIRD CLAIM FOR RELIEF**

18 **Negligent Misrepresentation and/or Failure to Disclose**  
19 **(Against All Defendants)**

20 I.

21 In answer to Paragraph 74 of the Amended Complaint, Defendants repeat and reallege  
22 each and every answering Paragraphs 1 through 73 of the Amended Complaint as though fully  
23 set forth herein.

24 II.

25 Defendants are without sufficient knowledge or information with which to form a belief  
26 as to the truth of the allegations contained in Paragraph 75 of the Amended Complaint, and upon  
27 such basis deny same.

1 III.

2 Defendants deny the allegations contained in Paragraphs 76, 66, 78, 79 and 80 of the  
3 Amended Complaint.

4 IV.

5 No response is necessary to Paragraph 81 of the Amended Complaint.

6 **VI. FOURTH CLAIM FOR RELIEF**

7 **Declaratory Relief**

8 **(Against All Defendants)**

9 I.

10 In answer to Paragraph 82 of the Amended Complaint, Defendants repeat and reallege  
11 each and every answering Paragraphs 1 through 81 of the Amended Complaint as though fully  
12 set forth herein.

13 II.

14 Defendants deny the allegations contained in Paragraphs 83, 84, 85, 86 and 87 of the  
15 Amended Complaint.

16 **VII. FIFTH CLAIM FOR RELIEF**

17 **Breach of NRS 116.1113 and the Implied Covenant of Good Faith**

18 **(Against All Defendants)**

19 I.

20 In answer to Paragraph 88 of the Amended Complaint, Defendants repeat and reallege  
21 each and every answering Paragraphs 1 through 87 of the Amended Complaint as though fully  
22 set forth herein.

23 II.

24 Defendants deny the allegations contained in Paragraphs 89, 92 and 93 of the Amended  
25 Complaint.

26 III.

27 In answer to Paragraphs 90 and 91 of the Amended Complaint, the referenced statute  
28 speaks for itself.

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**SECOND DEFENSE**

Plaintiff's Amended Complaint on file herein fails to state a claim against these Defendants upon which relief may be granted.

**THIRD DEFENSE**

The claims asserted by Plaintiff are barred by the statute of repose.

**FOURTH DEFENSE**

The claims asserted by Plaintiff are barred by the statute of limitations.

**FIFTH DEFENSE**

The occurrence referred to in Plaintiff's Amended Complaint, and all damages, if any, arising therefrom, were caused by the acts or omissions of a third person or persons over whom these Defendants had no control.

**SIXTH DEFENSE**

Defendants allege that Plaintiff fails to name a party necessary for full and adequate relief essential in this action.

**SEVENTH DEFENSE**

Defendants allege that Plaintiff has failed to timely plead this matter and has thereby delayed the litigation and investigation of this claim to the prejudice of these Defendants and accordingly, this action should be dismissed.

**EIGHTH DEFENSE**

Upon information and belief, Plaintiff may have failed to mitigate its damages.

**NINTH DEFENSE**

Plaintiff is estopped from asserting any cause of action whatever against Defendants.

**TENTH DEFENSE**

Plaintiff, by its acts and conduct, has waived and abandoned any and all claims as alleged herein against these Defendants.

**ELEVENTH DEFENSE**

Defendants are informed and believe, and thereon allege, that Plaintiff's claims, in whole or in part, are reduced, modified and/or barred by the doctrine of consent.

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**TWELFTH DEFENSE**

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' answer, and therefore Defendants reserve the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendants request relief as follows:

1. That Plaintiff's Amended Complaint be dismissed with prejudice in its entirety;
2. That Defendants be awarded reasonable attorney's fees and costs incurred in defending this matter;
3. For such other and further relief as the Court deems just and proper in the premises.

**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned hereby affirms that this document does not contain the Social Security number of any person.

DATED this 17 day of August, 2018.

THORNDAL, ARMSTRONG,  
DELK, BALKENBUSH & EISINGER

By: 

CHARLES L. BURCHAM, ESQ.  
Nevada Bar No. 2673  
WADE CARNER, ESQ.  
Nevada Bar No. 11530  
6590 S. McCarran Blvd., Suite B  
Reno, Nevada 89509  
Attorneys for Defendants  
SOMERSETT DEVELOPMENT  
COMPANY, LTD, SOMERSETT, LLC,  
and SOMERSETT DEVELOPMENT  
CORPORATION

1 **CROSS-CLAIM**

2 COMES NOW Defendant/Cross-Claimant SOMERSETT DEVELOPMENT CO., LTD.,  
3 ("SOMERSETT") by and through its attorneys of records, Thorndal Armstrong Delk Balkenbush  
4 & Eisinger, and hereby brings this Cross-Claim against Cross-Defendants Q&D  
5 CONSTRUCTION, INC., a Nevada Corporation; and PARSONS BROTHERS ROCKERIES,  
6 INC., a Washington Corporation; and DOES 1-50 inclusive, and alleges as follows:

7 **GENERAL ALLEGATIONS**

- 8 1. Cross-Claimant incorporates herein that Plaintiff's Complaint solely for the purposes of  
9 establishing that a Complaint has been filed against SOMERSETT but without admitting  
10 the truth of any allegation therein except for such allegations which may have been  
11 admitted in Cross-Claimant's Answer. Cross-Claimant is informed and believes and  
12 therefore alleges that the matters referred to in Plaintiff's Complaint were proximately  
13 caused by the acts and omissions of Cross-Defendants.
- 14 2. SOMERSETT is a Defendant in this matter, having been sued by Plaintiff, SOMERSETT  
15 OWNERS ASSOCIATION ("SOA").
- 16 3. At all times relevant herein Q&D CONSTRUCTION, INC.; and PARSONS BROTHERS  
17 ROCKERIES, INC.; and DOES 1-50 (collectively "Cross-Defendants") were either  
18 individuals, sole proprietorships, partnerships, registered professionals, corporations, or  
19 other legal entities licensed to do and were doing business in Washoe County, State of  
20 Nevada and performed constructions-related work and/or supplied materials for the  
21 construction of the lots identified by PLAINTIFF in its Complaint ("Subject Properties").
- 22 4. Cross-Defendants, and each of them, were developers, contractors, subcontractors, and/or  
23 design professionals who, pursuant to the agreements between each of the Cross-  
24 Defendants and SOMERSETT, performed construction related activities for  
25 SOMERSETT, or were one of the subcontractors who supplied materials and/or items  
26 which were installed into and/or became a part of said subject properties.
- 27 5. SOMERSETT alleges that that Cross-Defendants, including DOES 1-50, may have acted  
28 as alter-egos of other individuals, sole proprietorships, partnerships, registered



1 professionals, corporations, or other legal entities, and that the true names and capacities  
2 of any such persons or entities for which Cross-Defendants acted as alter egos are  
3 currently unknown to SOMERSETT; therefore, SOMERSETT will seek leave of the  
4 Court to amend this Cross-Claim to set forth the true names and capacities of any alter  
5 ego entities and state appropriate charging allegations, if and when that information is  
6 ascertained.

7 6. Cross-Defendants DOES 1-50 are sued herein under fictitious names and the true names  
8 and capacities of said Cross-Defendants are not known by Cross-Claimant who will seek  
9 leave of court to amend this Third-Party Complaint to set forth same as it becomes  
10 known or ascertained.

11 7. The work performed and/or materials supplied by each of the Cross-Defendants was  
12 pursuant to contracts, purchase orders, and/or agreements between Cross-Defendants and  
13 SOMERSETT pursuant to plans and specifications for the Subject Properties.

14 8. SOMERSETT has been sued by Plaintiff SOMERSETT OWNERS ASSOCIATION in  
15 the Second Judicial District Court in Washoe County, State of Nevada, Court Case  
16 Number CV17-02427. The Plaintiffs in this case have alleged defective or deficient  
17 design or construction giving rise to their claims for relief. Plaintiff's allegations  
18 implicate the Cross-Defendants' work.

19 **FIRST CLAIM FOR RELIEF**

20 **(Implied Indemnity)**

21 9. Cross-Claimant realleges each and every allegation contained in paragraphs 1-8 as  
22 though fully set forth herein.

23 10. SOMERSETT is informed and believes and thereon alleges that SOMERSETT entered  
24 into written, oral, and/or implied agreements with Cross-Defendants.

25 11. By reason of the foregoing, if Plaintiffs recover against SOMERSETT, then  
26 SOMERSETT is entitled to implied contractual indemnity from Cross-Defendants, and  
27 each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums paid  
28 by way of settlement or, in the alternative, judgment rendered against SOMERSETT in

1 the underlying action based upon Plaintiff's Complaint or any cross-claims filed herein.  
2 12. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
3 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
4 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
5 and Nevada Law.

6 **SECOND CLAIM FOR RELIEF**

7 **(Contribution)**

8 13. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs  
9 1-12 above as if though fully set forth herein.

10 14. Cross-Claimant is entitled to contribution from Cross-Defendants with respect to any  
11 settlement, judgment, awards or any other type of resolution or claims brought forward  
12 by the Plaintiff in its Complaint on file herein in an amount proportionate to the amount  
13 of negligence and/or fault attributable to each of the Cross-Defendants.

14 15. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
15 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
16 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
17 and Nevada Law.

18 **THIRD CLAIM FOR RELIEF**

19 **(Equitable Indemnity)**

20 16. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs  
21 1-15 above as if though fully set forth herein.

22 17. SOMERSETT is informed and believes and thereon alleges that any and all defects and  
23 damages alleged by Plaintiff in their Complaint are all defects and damages to, or  
24 destruction of, property and SOMERSETT is further informed and believes and thereon  
25 alleges that any and all damages were caused by Cross-Defendants, and each of them,  
26 arising out of and in connection with the performance of Cross-Defendants' operations  
27 and work at the subject properties.

28 18. In equity and good conscience, if Plaintiff recovers against SOMERSETT herein, then

1 SOMERSETT is entitled to an equitable indemnity apportionment of the liability and  
2 contribution among and from the Cross-Defendants, and each of them, according to their  
3 respective faults for the injuries and damages allegedly sustained by Plaintiffs, if any, by  
4 way of sums paid by settlement or, in the alternative, judgment rendered against  
5 SOMERSETT based upon Plaintiff's Complaint.

6 19. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
7 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
8 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
9 and Nevada Law.

#### 10 **FOURTH CLAIM FOR RELIEF**

##### 11 **(Apportionment)**

12 20. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs  
13 1-19 above as if though fully set forth herein.

14 21. SOMERSETT is entitled to an apportionment of liability between Cross-Defendants, and  
15 each of them.

16 22. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
17 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
18 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
19 and Nevada Law.

#### 20 **FIFTH CLAIM FOR RELIEF**

##### 21 **(Express Indemnity)**

22 23. Cross-Claimant repeats and realleges each and every allegation contained in paragraphs  
23 1-22 above as if though fully set forth herein.

24 24. Pursuant to the terms of the agreements entered into between SOMERSETT and Cross-  
25 Defendants, SOMERSETT has defense and indemnification rights from the Cross-  
26 Defendants, and each of them.

27 25. Pursuant to the terms of the agreements entered into between SOMERSETT and Cross-  
28 Defendants, Cross-Defendants, and each of them, have the duty to defend and indemnify

1 SOMERSETT in the action filed by Plaintiffs.

2 26. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
3 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
4 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
5 and Nevada Law.

6 WHEREFORE, Cross-Claimant demands judgment against Cross-Defendants as follows:

- 7 1. For indemnity, all damages, and/or economic losses that Plaintiffs and/or any  
8 cross-claimant/Cross-Claimant recover against SOMERSETT by way of  
9 judgment, order, settlement, compromise or trial;
- 10 2. For reasonable attorney's fees, costs and expert costs and expenses pursuant to  
11 statutory and contract law and the terms of the contract(s);
- 12 3. For prejudgment interest;
- 13 4. For an apportionment of liability between the Cross-Defendants, an each of them;
- 14 5. For contribution pursuant to NRS 17.225; and

15 For such other and further relief as the Court may deem just, equitable and proper.

16 **AFFIRMATION**

17 **Pursuant to NRS 239B.030**

18 The undersigned hereby affirms that this document does not contain the Social Security  
19 number of any person.

20 DATED this 17 day of August, 2018.

21 THORNDAL, ARMSTRONG,  
22 DELK, BALKENBUSH & EISINGER

23 By: 

24 CHARLES L. BURCHAM, ESQ.  
25 Nevada Bar No. 2673  
26 WADE CARNER, ESQ.  
27 Nevada Bar No. 11530  
28 6590 S. McCarran Blvd., Suite B  
Reno, Nevada 89509  
Attorneys for Defendants  
SOMERSETT DEVELOPMENT  
COMPANY, LTD, SOMERSETT, LLC,  
and SOMERSETT DEVELOPMENT  
CORPORATION

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing **ANSWER TO FIRST AMENDED COMPLAINT AND CROSS-CLAIM** to be served on all parties to this action by:

\_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ Second Judicial District Court Eflex ECF (Electronic Case Filing)

\_\_\_\_\_ personal delivery

\_\_\_\_\_ facsimile (fax)

\_\_\_\_\_ Federal Express/UPS or other overnight delivery

fully addressed as follows:

**Don Springmeyer, Esq.  
John Samberg, Esq.  
Royi Moas, Esq.  
Wolf, Rifkin, Shapiro, Schulman & Rabkin,  
LLP  
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Reno, NV 89511  
Attorneys for Plaintiff**

**Natasha Landrum, Esq.  
Dirk W. Gaspar, Esq.  
Lee, Hernandez, Landrum & Garofalo  
7575 Vegas Dr., Ste 150  
Las Vegas, NV 89128  
Attorneys for Defendant  
Q & D Construction**

**Steve Castronova, Esq.  
Castronova Law Offices, P.C.  
605 Forest Street  
Reno, NV 89509  
Attorney for Defendant  
Parsons Bros Rockeries**

DATED this 17<sup>th</sup> day of August, 2018.

  
An employee of Thorndal, Armstrong,  
Delk, Balkenbush & Eisinger

# EXHIBIT 3

# EXHIBIT 3

Code: 4180

Charles L. Burcham, Esq., Nevada Bar No. 2673  
Wade Carner, Esq., Nevada Bar No. 11530  
Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
6590 S. McCarran, Suite B  
Reno, Nevada 89509  
Tel: (775) 786-2882

Attorneys for Defendants  
SOMERSETT DEVELOPMENT COMPANY, LTD,  
SOMERSETT, LLC, and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a  
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT COMPANY,  
LTD, a Nevada Limited Liability Company;  
SOMERSETT, LLC a dissolved Nevada  
Limited Liability Company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada Corporation; Q & D  
Construction, Inc., a Nevada Corporation,  
PARSONS BROS ROCKERIES, INC., a  
Washington Corporation; PARSONS  
ROCKS!, LLC., a Nevada Limited Liability  
Company, and DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona  
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

**THIRD-PARTY COMPLAINT**

COMES NOW Defendant/Third-Party Plaintiff SOMERSETT DEVELOPMENT CO.,  
LTD., ("SOMERSETT") by and through its attorneys of records, Thorndal Armstrong Delk

1 Balkenbush & Eisinger, and hereby brings this Third-Party Complaint against Third-Party  
2 Defendant STANTEC CONSULTING, INC., an Arizona Corporation; and DOES 1-50  
3 inclusive, and alleges as follows:

4 **GENERAL ALLEGATIONS**

- 5 1. Third-Party Plaintiff incorporates herein that Plaintiff's Complaint solely for the purposes  
6 of establishing that a Complaint has been filed against SOMERSETT but without  
7 admitting the truth of any allegation therein except for such allegations which may have  
8 been admitted in Third-Party Plaintiff's Answer. Third-Party Plaintiff is informed and  
9 believes and therefore alleges that the matters referred to in Plaintiff's Complaint were  
10 proximately caused by the acts and omissions of Third-Party Defendants.
- 11 2. SOMERSETT is a Defendant in this matter, having been sued by Plaintiff, SOMERSETT  
12 OWNERS ASSOCIATION.
- 13 3. At all times relevant herein STANTEC CONSULTING, INC; and DOES 1-50  
14 (collectively "Third-Party Defendants") were either individuals, sole proprietorships,  
15 partnerships, registered professionals, corporations, or other legal entities licensed to do  
16 and were doing business in Washoe County, State of Nevada and performed  
17 constructions-related work and/or supplied materials for the construction of the lots  
18 identified by PLAINTIFF in its Complaint ("Subject Properties").
- 19 4. Third-Party Defendants, and each of them, were developers, contractors, subcontractors,  
20 and/or design professionals who, pursuant to the agreements between each of the Third-  
21 Party Defendants and SOMERSETT, performed construction related activities for  
22 SOMERSETT, or were one of the subcontractors who supplied materials and/or items  
23 which were installed into and/or became a part of said subject properties.
- 24 5. SOMERSETT alleges that that Third-Party Defendants, including DOES 1-50, may have  
25 acted as alter-egos of other individuals, sole proprietorships, partnerships, registered  
26 professionals, corporations, or other legal entities, and that the true names and capacities  
27 of any such persons or entities for which Third-Party Defendants acted as alter egos are  
28 currently unknown to SOMERSETT; therefore, SOMERSETT will seek leave of the



1 Court to amend this Third-Party Complaint to set forth the true names and capacities of  
2 any alter ego entities and state appropriate charging allegations, if and when that  
3 information is ascertained.

- 4 6. Third-Party Defendants DOES 1-50 are sued herein under fictitious names and the true  
5 names and capacities of said Third-Party Defendants are not known by Third-Party  
6 Plaintiff who will seek leave of court to amend this Third-Party Complaint to set forth  
7 same as it becomes known or ascertained.
- 8 7. The work performed and/or materials supplied by each of the Third-Party Defendants  
9 was pursuant to contracts, purchase orders, and/or agreements between Third-Party  
10 Defendants and SOMERSETT pursuant to plans and specifications for the Subject  
11 Properties.
- 12 8. SOMERSETT has been sued by Plaintiff SOMERSETT OWNERS ASSOCIATION,,  
13 INC. in the Second Judicial District Court in Washoe County, State of Nevada, Court  
14 Case Number CV17-02427. The Plaintiffs in this case have alleged defective or deficient  
15 design or construction giving rise to their claims for relief. Plaintiff's allegations  
16 implicate the Third-Party Defendants' work.

17 **FIRST CLAIM FOR RELIEF**

18 **(Implied Indemnity)**

- 19 9. Third-Party Plaintiff realleges each and every allegation contained in paragraphs 1-8 as  
20 though fully set forth herein.
- 21 10. SOMERSETT is informed and believes and thereon alleges that SOMERSETT entered  
22 into written, oral, and/or implied agreements with Third-Party Defendants.
- 23 11. By reason of the foregoing, if Plaintiffs recover against SOMERSETT, then  
24 SOMERSETT is entitled to implied contractual indemnity from Third-Party Defendants,  
25 and each of them, for injuries and damages sustained by Plaintiffs, if any, for any sums  
26 paid by way of settlement or, in the alternative, judgment rendered against SOMERSETT  
27 in the underlying action based upon Plaintiff's Complaint or any cross-claims filed  
28 herein.

1 12. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
2 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
3 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
4 and Nevada Law.

5 **SECOND CLAIM FOR RELIEF**

6 **(Contribution)**

7 13. Third-Party Plaintiff repeats and realleges each and every allegation contained in  
8 paragraphs 1-12 above as if though fully set forth herein.

9 14. Third-Party Plaintiff is entitled to contribution from Third-Party Defendants with respect  
10 to any settlement, judgment, awards or any other type of resolution or claims brought  
11 forward by the Plaintiff in its Complaint on file herein in an amount proportionate to the  
12 amount of negligence and/or fault attributable to each of the Third-Party Defendants.

13 15. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
14 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
15 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
16 and Nevada Law.

17 **THIRD CLAIM FOR RELIEF**

18 **(Equitable Indemnity)**

19 16. Third-Party Plaintiff repeats and realleges each and every allegation contained in  
20 paragraphs 1-15 above as if though fully set forth herein.

21 17. SOMERSETT is informed and believes and thereon alleges that any and all defects and  
22 damages alleged by Plaintiff in their Complaint are all defects and damages to, or  
23 destruction of, property and SOMERSETT is further informed and believes and thereon  
24 alleges that any and all damages were caused by Third-Party Defendants, and each of  
25 them, arising out of and in connection with the performance of Third-Party Defendants'  
26 operations and work at the subject properties.

27 18. In equity and good conscience, if Plaintiff recovers against SOMERSETT herein, then  
28 SOMERSETT is entitled to an equitable indemnity apportionment of the liability and

1 contribution among and from the Third-Party Defendants, and each of them, according to  
2 their respective faults for the injuries and damages allegedly sustained by Plaintiffs, if  
3 any, by way of sums paid by settlement or, in the alternative, judgment rendered against  
4 SOMERSETT based upon Plaintiff's Complaint.

5 19. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
6 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
7 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
8 and Nevada Law.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Apportionment)**

11 20. Third-Party Plaintiff repeats and realleges each and every allegation contained in  
12 paragraphs 1-19 above as if though fully set forth herein.

13 21. SOMERSETT is entitled to an apportionment of liability between Third-Party  
14 Defendants, and each of them.

15 22. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
16 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
17 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
18 and Nevada Law.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Express Indemnity)**

21 23. Third-Party Plaintiff repeats and realleges each and every allegation contained in  
22 paragraphs 1-22 above as if though fully set forth herein.

23 24. Pursuant to the terms of the agreements entered into between SOMERSETT and Third-  
24 Party Defendants, SOMERSETT has defense and indemnification rights from the Third-  
25 Party Defendants, and each of them.

26 25. Pursuant to the terms of the agreements entered into between SOMERSETT and Third-  
27 Party Defendants, Third-Party Defendants, and each of them, have the duty to defend and  
28 indemnify SOMERSETT in the action filed by Plaintiffs.

1 26. It has been necessary for SOMERSETT to retain the services of legal counsel to defend  
2 Plaintiff's action and to bring this action. SOMERSETT is entitled to recover attorney's  
3 fees and costs incurred herein pursuant to the contractual provisions of the agreements  
4 and Nevada Law.

5 WHEREFORE, Third-Party Plaintiff demands judgment against Third-Party Defendants as  
6 follows:

- 7 1. For indemnity, all damages, and/or economic losses that Plaintiffs and/or any  
8 cross-claimant/third-party plaintiff recover against SOMERSETT by way of  
9 judgment, order, settlement, compromise or trial;
- 10 2. For reasonable attorney's fees, costs and expert costs and expenses pursuant to  
11 statutory and contract law and the terms of the contract(s);
- 12 3. For prejudgment interest;
- 13 4. For an apportionment of liability between the Third-Party Defendants, an each of  
14 them;
- 15 5. For contribution pursuant to NRS 17.225; and
- 16 6. For such other and further relief as the Court may deem just, equitable and proper.

17 **AFFIRMATION**

18 **Pursuant to NRS 239B.030**

19 The undersigned hereby affirms that this document does not contain the social security  
20 number of any person.

21 DATED this 29<sup>th</sup> day of August, 2018.

22 THORNDAL, ARMSTRONG,  
23 DELK, BALKENBUSH & EISINGER

24 By: 

25 CHARLES L. BURCHAM, ESQ.  
26 State Bar No. 2673  
27 WADE CARNER, ESQ.  
28 State Bar No. 11530  
6590 S. McCarran Blvd., Suite B  
Reno, Nevada 89509  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing **THIRD-PARTY COMPLAINT** to be served on all parties to this action by:

\_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

  X   Second Judicial District Court Eflex ECF (Electronic Case Filing)

\_\_\_\_\_ personal delivery

\_\_\_\_\_ facsimile (fax)

\_\_\_\_\_ Federal Express/UPS or other overnight delivery

fully addressed as follows:

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Parsons Bros Rokerries**

**Theodore Chrissinger, Esq.  
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Reno, NV 89501  
Attorney for Stantec Consulting**

DATED this 29<sup>th</sup> day of August, 2018.

  
An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger

# EXHIBIT 4

# EXHIBIT 4

1 **3995**  
2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**  
3 **DON SPRINGMEYER, ESQ.**  
4 Nevada Bar No. 1021  
5 **JOHN SAMBERG, ESQ.**  
6 Nevada Bar No. 10828  
7 **ROYI MOAS, ESQ.**  
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15 *Attorneys for Somersett Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR THE COUNTY OF WASHOE**

18 **SOMERSETT OWNERS ASSOCIATION, a**  
19 **Domestic Non-Profit Corporation,**

20 **Plaintiff,**

21 **vs.**

22 **SOMERSETT DEVELOPMENT COMPANY,**  
23 **LTD, a Nevada Limited Liability Company;**  
24 **SOMERSETT, LLC a dissolved Nevada**  
25 **Limited Liability Company; SOMERSETT**  
26 **DEVELOPMENT CORPORATION, a**  
27 **dissolved Nevada Corporation; PARSONS**  
28 **BROS ROCKERIES, INC. a Washington**  
**Corporation; Q & D Construction, Inc., a**  
**Nevada Corporation, and DOES 1 through 50,**  
**inclusive,**

**Defendants.**

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott Sattler

**ORDER FOR PARTIAL  
DISMISSAL OF CERTAIN CLAIMS,  
WITHOUT PREJUDICE, FROM THE  
SECOND CLAIM FOR RELIEF  
AGAINST DEFENDANT PARSONS BROS  
ROCKERIES, INC., WITHOUT  
PREJUDICE**

**AND RELATED CROSS-ACTIONS**

The Court, having review the Stipulation for Partial Dismissal of Certain Claims, Without Prejudice, from the Second Claim For Relief (the "Stipulation") of March 4, 2019 and good cause appearing:

**IT IS HEREBY ORDERED that:**

1. Plaintiff's claims for breach of statutory warranties contained in NRS 116.4114 and

1 NRS 116.4115 as partially identified in Plaintiff's Second Claim for Relief, be dismissed as to  
2 Defendant PARSONS BROS ROCKERIES, INC., **ONLY** and **WITHOUT PREJUDICE**.

3 2. Each party to bear their own costs and attorney's fees and with Plaintiff reserving  
4 all rights and claims against the other parties.

5 3. No other claims are dismissed and Plaintiff reserves all its rights to prosecute any  
6 and all other remaining claims in the Complaint against Defendant PARSONS BROS  
7 ROCKERIES, INC., including claims for breach of common law warranties, if applicable.

8 4. In the event it is determined, through additional discovery investigation, testimony,  
9 or other evidence and, at the sole discretion of Plaintiff, that the statutory warranty claims  
10 contained in NRS 116.4114 and NRS 116.4115 as dismissed without prejudice herein, implicate  
11 Defendant PARSONS BROS ROCKERIES, INC., Defendant PARSONS BROS ROCKERIES,  
12 INC. through stipulation, will not oppose Plaintiff's Motion to Amend to re-assert such claims  
13 against Defendant PARSONS BROS ROCKERIES, INC., at any time up through and including  
14 trial. Any such amendments shall relate back to the date of the initial filing of the Complaint by  
15 Plaintiff in this matter.

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 DATED this 7 day of MARCH, 2019.

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20 DISTRICT COURT JUDGE  
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# EXHIBIT 5

# EXHIBIT 5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT  
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT  
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,  
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS

1 ASSOCIATION (“the Plaintiff”) filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS’  
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) (“the Opposition”) on  
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR  
4 JUDICIAL NOTICE (“the RJN”).<sup>1</sup> The Defendants filed DEFENDANTS’ REPLY IN SUPPORT  
5 OF THEIR MOTION FOR SUMMARY JUDGMENT (“the Reply”) on June 7, 2019. The Court  
6 held a hearing on July 15, 2019, and took the matter under advisement.  
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES  
9 (CORRECTED) (“the FAC”) on May 3, 2018.<sup>2</sup> The Plaintiff is a homeowners association of a  
10 common-interest community. The FAC is a construction defect matter which contains the  
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied  
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent  
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS  
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends  
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff’s common-  
16 interest community and breached the express and implied warranties associated with the  
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently  
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls  
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.  
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24  
25 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

28 <sup>2</sup> The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

<sup>3</sup> The Court presumes the Plaintiff intended to write “116.4144.”

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's  
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend  
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes  
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;  
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under  
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from  
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,  
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of  
9 material fact regarding the date of substantial completion for the rockery walls because evaluations  
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition  
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is  
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence  
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant  
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that  
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant  
16 also argues the common law definition of substantial completion does not require an improvement  
17 to be free from defects, and substantial completion cannot occur after actual completion. The  
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or  
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,  
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party  
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of  
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*



1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*  
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for  
3 summary judgment does not bear the burden of persuasion at trial, the movant may satisfy the  
4 burden of production for summary judgment by “submitting evidence that negates an essential  
5 element of the nonmoving party’s claim” or “pointing out that there is an absence of evidence to  
6 support the nonmoving party’s case.” *Cuzze v. Univ. and Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,  
7 602-03, 172 P.3d 131, 134 (2007).

9       When considering a motion for summary judgment, the district court must view the  
10 evidence and any reasonable inferences drawn from it in the light most favorable to the  
11 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must  
12 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*  
13 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may  
14 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible  
15 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of  
16 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes  
17 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,  
18 121 Nev. at 731, 121 P.3d at 1031.

20       NRS 11.202 enumerates the statute of repose for claims related to construction defects and  
21 provides:

- 24       1. No action may be commenced against the owner, occupier or any person  
25       performing or furnishing the design, planning, supervision or observation of  
26       construction, or the construction of an improvement to real property more than 6  
27       years after the substantial completion of such an improvement, for the recovery  
28       of damages for:
  - a. Any deficiency in the design, planning, supervision or observation of  
construction or the construction of such an improvement;

- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
  - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
  - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* <sup>4</sup> “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred.**

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<sup>4</sup> The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*  
2 *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 390, 46 P.3d 62, 63 (2002) (explaining statutes  
3 of repose “absolutely bar any action stemming from injuries caused by a negligently designed or  
4 constructed improvement to real property after a certain period of time has passed.”). In addition to  
5 and separate from the elements of a cause of action, a plaintiff “must also prove that the cause of  
6 action was brought within the time frame set forth by the statute of repose.” *G&H Assocs. v. Ernest*  
7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9       The Court will grant the Motion because there is no genuine dispute of material fact the  
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the  
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible  
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff  
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is  
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and  
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction  
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery  
17 of damages” for construction deficiency can be commenced more than six years after the  
18 substantial completion of the improvement. The statute does not differentiate between types of  
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not  
20 fall within the applicable exemptions, the statute of repose applies. Second, the Plaintiff’s  
21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is  
22 unpersuasive. The Plaintiff essentially argues the discovery of any defects precludes substantial  
23 completion; however, this argument contradicts the purpose of and policy determination embodied  
24 by the statute of repose. The statute of repose is intended to provide parties with finality and  
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1 establish a time period after which they cannot be sued for construction deficiencies. *See*  
2 *Davenport*, 118 Nev. at 393, 46 P.3d at 65 (“[T]he legislature has opted to provide them [parties  
3 involved in creating improvement] with a measure of economic certainty by closing the door to  
4 liability . . .”). If the Court were to accept the Plaintiff’s analysis, the statute of repose would  
5 potentially last decades for appurtenances and other common interest elements and developments,  
6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit  
7 of all members of a community. The statute of repose is an absolute time bar based on substantial  
8 completion and is unaffected by the later discovery of damage or injury. *See G&H Assocs.*, 113  
9 Nev. at 271, 934 P.2d at 233. Accepting the Plaintiff’s argument would eviscerate the purpose of  
10 the statute of repose, render the substantial completion standard meaningless and expressly  
11 contradict the policy determination made by the Legislature.  
12


13  
14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which  
15 has been explained by the Nevada Supreme Court. *See Rhodes*, 130 Nev. at 899, 336 P.3d at 965  
16 (explaining statutes of limitations can be tolled and statutes of repose cannot). *See also State Dep’t*  
17 *of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 738, 265 P.3d 666, 671 (2011)  
18 (explaining operation of equitable tolling for statute of limitations). The Plaintiff’s reliance on out-  
19 of-state case law is unpersuasive in light of mandatory authority undercutting its argument. *See*  
20 *Rhodes*, 130 Nev. at 899, 336 P.3d at 965 (explaining purpose of statute of repose is to “give a  
21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result  
22 from the revival of claims that have remained dormant for a period during which the evidence  
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden  
24 to establish its claims were filed within the six-year statute of repose.  
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1           **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby  
2 **GRANTED.**

3           **DATED** this   2   day of October, 2019.  
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7 ELLIOTT A. SATTLER  
8 District Judge  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this \_\_\_\_\_ day of October, 2019, I deposited in  
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,  
5 Nevada, a true copy of the attached document addressed to:  
6

7  
8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
10 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically  
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of  
12 electronic filing to the following:  
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.  
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Sheila Mansfield  
Judicial Assistant

# EXHIBIT 6

# EXHIBIT 6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC.; PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER DENYING ATTORNEY'S FEES**

Presently before the Court is DEFENDANT'S MOTION FOR ATTORNEY'S FEES ("the Motion") filed by Defendants SOMERSETT DEVELOPMENT CO., LTD.; SOMERSETT, LLC; and SOMERSETT DEVELOPMENT CORPORATION (collectively, "the Somerset Defendants") on October 11, 2019. Plaintiff SOMERSETT OWNERS ASSOCIATION ("the Plaintiff") filed the OPPOSITION OF PLAINTIFF SOMERSETT OWNERS ASSOCIATION TO DEFENDANTS

1 SOMERSETT DEVELOPMENT COMPANY LTD, SOMERSETT, LLC, AND SOMERSETT  
2 DEVELOPMENT CORPORATION'S MOTION FOR ATTORNEY'S FEES ("the Opposition")  
3 on November 25, 2019. The Plaintiff contemporaneously filed PLAINTIFF'S REQUEST FOR  
4 JUDICIAL NOTICE IN SUPPORT OF ITS OPPOSITIONS TO THE MOTIONS FOR  
5 ATTORNEY'S FEES FILED BY DEFENDANTS (1) SOMERSETT DEVELOPMENT  
6 COMPANY, LTD, SOMERSETT DEVELOPMENT CORPORATION, SOMERSETT LLC, (2)  
7 PARSONS BROS ROCKERIES, INC., (3) Q&D CONSTRUCTION, INC., AND (4) STANTEC  
8 CONSULTING SERVICES, INC. ("the RJN") on November 25, 2019.<sup>1</sup> The Somersett  
9 Defendants filed DEFENDANT'S REPLY IN SUPPORT IF (sic) ITS MOTION FOR  
10 ATTORNEY'S FEES ("the Reply") on December 20, 2019. The matter was submitted for the  
11 Court's consideration on December 19, 2019.<sup>2</sup>

12 The parties are well versed in the facts of this case, so the Court will only recite them briefly.  
13 The Plaintiff is a homeowners' association of a common-interest community who sought to recover  
14 damages for collapsed rockery walls constructed within the Plaintiff's community. The FIRST  
15 AMENDED COMPLAINT FOR DAMAGES (CORRECTED) ("the FAC") was filed on May 3,  
16 2018. The FAC contains the following causes of action against the Somersett Defendants,  
17 PARSONS BROTHERS ROCKERIES, INC. and Q&D CONSTRUCTION, INC. (collectively, "the  
18 Defendants"): 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied Warranties  
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26 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
27 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
28 judicial notice of fourteen different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

<sup>2</sup> The Court presumes the fact that the Request for Submission preceded the Reply was merely a clerical error.

1 Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent Misrepresentation  
2 and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS 116.1113 and the Implied  
3 Covenant of Good Faith. The Complaint 8-17.

4  
5 The Defendants filed DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ("the  
6 Omnibus MSJ") on March 26, 2019.<sup>4</sup> After the Omnibus MSJ was fully briefed and oral argument  
7 was held, the Court entered the ORDER GRANTING DEFENDANTS' MOTION FOR  
8 SUMMARY JUDGMENT on October 2, 2019 ("the October Order"). The Court entered summary  
9 judgment in favor of Stantec and the Defendants on the basis the Plaintiff's claims were barred by  
10 the six-year statute of repose for construction defect claims. The October Order 6:10-27; 7:1-28.  
11

12 The Somerset Defendants seek to recover \$131,768.10 in attorney's fees pursuant to the  
13 CC&Rs, NRS 116.4117, and NRS 18.010(2). The Motion 5:1-28; 6:1-27.; 10:20-25.<sup>5</sup> The  
14 Somerset Defendants argue they are entitled to attorney's fees for the following reasons: 1) the  
15 CC&Rs entitle a prevailing party in a suit to enforce or administer the CC&Rs to recover attorney's  
16 fees; 2) NRS 116.4117 permits a prevailing party in a dispute over compliance with NRS Chapter  
17 116 to recover attorney's fees; and 3) NRS 18.010(2) permits the recovery of attorney's fees for  
18 frivolous claims. *Id.* The Plaintiff responds by making the following arguments: 1) the CC&Rs are  
19 inapplicable because the Plaintiff did not seek to enforce the governing documents in the FAC; 2)  
20 NRS 116.4117 is inapplicable because the Plaintiff did not seek to enforce the CC&Rs; and 3) the  
21 Plaintiff made meritorious arguments regarding accrual and tolling of the statute of repose, making  
22 NRS Chapter 18 attorney fees unmerited. The Opposition 4:1-26; 5:1-23; 9:8-24. The Plaintiff  
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26 <sup>3</sup> The Court presumes the Plaintiff intended to write "116.4144."

27 <sup>4</sup> Third-Party Defendant STANTEC CONSULTING SERVICES, INC. ("Stantec") was also a party to the Omnibus  
28 MSJ.

<sup>5</sup> The Somerset Defendants also appear to be requesting an award of costs; however, the Court already awarded the  
Somerset Defendants costs in the ORDER AWARDING COSTS filed on February 5, 2020.

1 alternatively argues that, if the Court awards attorney's fees under NRS Chapter 116, the award  
2 should be significantly reduced and limited to fees attributable to NRS Chapter 116 work. The  
3 Opposition 13:22-27; 14:1. The Somerset Defendants make the following arguments in reply:  
4 1) NRS Chapter 116 or Chapter 18 attorney's fees are warranted because the Plaintiff pursued a  
5 lawsuit it knew was barred by the statute of repose; 2) the FAC was premised on the CC&Rs and  
6 NRS Chapter 116; and 3) all requested attorney's fees are reasonable, and the award should not be  
7 reduced. The Reply 2:18-26; 3:1-2; 4:4-27; 5:1-11, 12-13, 26-28; 6:1-16.

8  
9 Attorney's fees are recoverable where authorized by agreement, statute or rule. *Wheeler*  
10 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*  
11 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 116.4117 provides in relevant  
12 part:  
13

14 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in  
15 NRS 116.3111, a civil action for damages or other appropriate relief for a failure or  
16 refusal to comply with any provision of this chapter or the governing documents of an  
association may be brought:

17 (a) By the association against:

- 18 (1) A declarant;  
19 (2) A community manager; or  
20 (3) A unit's owner.

21 (b) By a unit's owner against:

- 22 (1) The association;  
23 (2) A declarant; or  
24 (3) Another unit's owner of the association . . .

25 6. The court may award reasonable attorney's fees to the prevailing party.  
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1 NRS 18.010(2)(b) permits an award of attorney's fees where:

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3 Without regard to the recovery sought, when the court finds that the claim,  
4 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
5 was brought or maintained without reasonable ground or to harass the prevailing  
6 party. The court shall liberally construe the provisions of this paragraph in favor of  
7 awarding attorney's fees in all appropriate situations. It is the intent of the Legislature  
8 that the court award attorney's fees pursuant to this paragraph and impose sanctions  
9 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
situations to punish for and deter frivolous or vexatious claims and defenses because  
such claims and defenses overburden limited judicial resources, hinder the timely  
resolution of meritorious claims and increase the costs of engaging in business and  
providing professional services to the public.

10 NRCP 11(b) provides:

11 Representations to the Court. By presenting to the court a pleading, written motion, or other  
12 paper--whether by signing, filing, submitting, or later advocating it--an attorney or  
13 unrepresented party certifies that to the best of the person's knowledge, information, and  
belief, formed after an inquiry reasonable under the circumstances:

- 14 (1) it is not being presented for any improper purpose, such as to harass, cause  
15 unnecessary delay, or needlessly increase the cost of litigation;
- 16 (2) the claims, defenses, and other legal contentions are warranted by existing law or by  
17 a nonfrivolous argument for extending, modifying, or reversing existing law or for  
18 establishing new law;
- 19 (3) the factual contentions have evidentiary support or, if specifically so identified, will  
20 likely have evidentiary support after a reasonable opportunity for further  
investigation or discovery; and
- 21 (4) the denials of factual contentions are warranted on the evidence or, if specifically so  
22 identified, are reasonably based on belief or a lack of information.

23 The Court will deny the Somerset Defendants' request for attorney's fees because they are  
24 not entitled to attorney's fees under the CC&Rs, NRS 116.4117(6) or NRS 18.010(2) in this case.  
25 First, section 8 of the CC&Rs entitles a prevailing party "[i]n any action to enforce or administer the  
26 provisions hereof" to recover attorney's fees; however, the Somerset Defendants have failed to  
27 prove the FAC was an action to enforce or administer the provisions of the CC&Rs. The Somerset  
28



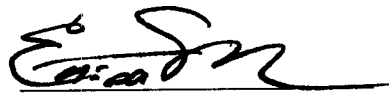
1 Defendants did not provide the CC&Rs to the Court and have conducted no analysis regarding the  
2 manner in which the Plaintiff's claims sought to enforce or administer the provisions of the CC&Rs.  
3 *See Badillo v. Am. Brands, Inc.*, 117 Nev. 34, 42, 16 P.3d 435, 440 (2001) (explaining issue not  
4 meaningfully briefed need not be considered) and *State Indus. Ins. Sys. v. Buckley*, 100 Nev. 376,  
5 382, 682 P.2d 1387, 1390 (1984) (explaining conclusory arguments without substantive citation to  
6 relevant authority will not be reviewed). For these reasons, the Somerset Defendants are not  
7 entitled to attorney's fees pursuant to the CC&Rs. Second, the Somerset Defendants are not  
8 entitled to attorney's fees under NRS 116.4117(6). Even though the Somerset Defendants were  
9 prevailing parties under the October Order, the Court never ruled on any issues pertaining to NRS  
10 Chapter 116. Discovery was limited to the potentially dispositive statute of repose and statute of  
11 limitations issues. *See* JOINT CASE CONFERENCE REPORT, p. 15 (Oct. 17, 2018). This matter  
12 was resolved by the threshold issue of the statute of repose, and the October Order made no mention  
13 of NRS Chapter 116.  
14

15  
16 Third, the Somerset Defendants are not entitled to attorney's fees pursuant to NRS 18.010  
17 because this lawsuit was neither brought nor maintained without reasonable grounds. Throughout  
18 the litigation, the Plaintiff made nonfrivolous arguments regarding the applicability of the statute of  
19 repose. The Plaintiff contended the statute of repose had not yet run because a product unfit for its  
20 intended use is not substantially complete. *See* OPPOSITION OF PLAINTIFF TO DEFENDANTS'  
21 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) 2:15-20; 9:20-23; 10:16-  
22 20; 11:14-17; 17:4-8. The Plaintiff also argued the statute of repose was subject to statutory and  
23 equitable tolling and that the statute of repose was limited to NRS Chapter 40 claims. *See id.* at  
24 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. While the Court was not persuaded by these  
25 arguments, this fact does not automatically render the Plaintiff's argument frivolous. *See Patush v.*  
26  
27  
28

1 *Las Vegas Bistro, LLC*, 135 Nev. Adv. Op. 46, 449 P.3d 467, 470 (2019) (“Attorney fees are not  
2 appropriate where the underlying claim rested on novel and arguable issues, even if those issues  
3 were not resolved in the claimant’s favor.”). The Court finds the Plaintiff’s arguments were good  
4 faith attempts to modify current law on the statute of repose. The Court would also note the  
5 Plaintiff agreed to bifurcate discovery and resolve the statute of repose issue at the threshold.  
6 Finally, this matter did not proceed to trial but was adjudicated via summary judgment, thus  
7 preventing unnecessary litigation and the accumulation of additional expenses.  
8

9 **IT IS ORDERED** DEFENDANT’S MOTION FOR ATTORNEY’S FEES is hereby  
10 **DENIED.**  
11

12 **DATED** this 27 day of February, 2020.  
13

14   
15 ELLIOTT A. SATTLER  
16 District Judge  
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## CERTIFICATE OF ELECTRONIC SERVICE

CHARLES BURCHAM, ESQ.  
NATASHA LANDRUM, ESQ.  
DAVID LEE, ESQ.  
STEPHEN CASTRONOVA, ESQ.  
THEODORE E. CHRISSINGER, ESQ.  
MICHAEL S. KIMMEL, ESQ.  
STEPHEN G. CASTRONOVA, ESQ.  
JOHN SAMBERG, ESQ.  
DON SPRINGMEYER, ESQ.

-8-

# EXHIBIT 7

# EXHIBIT 7

1 **2540**

**WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

2 **DON SPRINGMEYER, ESQ.**

Nevada Bar No. 1021

3 **JOHN SAMBERG, ESQ.**

Nevada Bar No. 10828

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8 *Attorneys for Somersett Owners Association*

9  
10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

11 **IN AND FOR THE COUNTY OF WASHOE**

12  
13 **SOMERSETT OWNERS ASSOCIATION, a**  
14 **Domestic Non-Profit Corporation,**

15 **Plaintiff,**

16 **vs.**

17 **SOMERSETT DEVELOPMENT COMPANY,**  
18 **LTD, a Nevada Limited Liability Company;**  
19 **SOMERSETT, LLC a dissolved Nevada**  
20 **Limited Liability Company; SOMERSETT**  
21 **DEVELOPMENT CORPORATION, a**  
22 **dissolved Nevada Corporation; PARSONS**  
23 **BROS ROCKERIES, INC. a Washington**  
24 **Corporation; Q & D Construction, Inc., a**  
25 **Nevada Corporation, and DOES 1 through 50,**  
26 **inclusive,**

27 **Defendants.**

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott A. Sattler

**NOTICE OF ENTRY OF ORDER FOR  
PARTIAL DISMISSAL OF CERTAIN  
CLAIMS WITHOUT PREJUDICE, FROM  
THE SECOND CLAIM FOR RELIEF  
AGAINST DEFENDANT PARSONS BROS  
ROCKERIES, INC. WITHOUT  
PREJUDICE**

28 **AND RELATED ACTIONS**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on March 7, 2019, the Court duly entered its Order  
for Partial Dismissal of Certain Claims Without Prejudice, from the Second Claim for Relief  
Against Defendant Parsons Bros Rockeries, Inc., Without Prejudice in the above-captioned matter,

1 a true and correct copy of said Order is attached hereto and incorporated herein by this reference  
2 as Exhibit 1.

3 **AFFIRMATION**

4 The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document and  
5 any attachments do not contain personal information as defined in NRS 603A.040 about any  
6 person.

7 DATED this 14<sup>th</sup> day of Mach, 2019

8 **WOLF, RIFKIN, SHAPIRO,**  
9 **SCHULMAN & RABKIN, LLP**

10  
11 By: /s/ John Samberg, Esq.  
12 DON SPRINGMEYER, ESQ.  
13 Nevada Bar No. 1021  
14 JOHN SAMBERG, ESQ.  
15 Nevada Bar No. 10828  
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**INDEX OF EXHIBITS**

<u>Exhibit #</u>	<u>Description of Document</u>	<u>No. Pages</u>
1	Order For Partial Dismissal Of Certain Claims Without Prejudice, From The Second Claim For Relief Against Defendant Parsons Bros Rockeries, Inc. Without Prejudice	2

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 14<sup>th</sup> day of March, 2019, a true and correct copy of **NOTICE**  
3 **OF ENTRY OF ORDER FOR PARTIAL DISMISSAL OF CERTAIN CLAIMS**  
4 **WITHOUT PREJUDICE, FROM THE SECOND CLAIM FOR RELIEF AGAINST**  
5 **DEFENDANT PARSONS BROS ROCKERIES, INC. WITHOUT PREJUDICE** was serve  
6 via the Washoe County E-Flex Filing System on all parties or persons requesting notice as  
7 follows:

8 Charles Brucham, Esq.  
9 Wade Carner, Esq.  
10 Thorndall, Armstrong, Delk, Blakenbush & Eisinger  
11 for SOMERSETT DEVELOPMENT  
12 CORPORATION, SOMERSTT, LLC., SOMERSETT  
13 DEVELOPMENT COMPANY LTD  
14 E-Mail: clb@thorndal.com  
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12 Natasha Landrum, Esq.  
13 Dirk W. Gaspar, Esq.  
14 David Lee, Esq.  
15 Lee, Hernandez, Landrum & Garofalo  
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Theodore E. Chrissinger, Esq.  
Michael S. Kimmel, Esq.  
Hoy, Chrissinger, Kimmel & Vallas  
for STANTEC CONSULTING  
SERVICES, INC.  
Email: tchrissinger@nevadalaw.com  
Email: mkimmel@nevadalaw.com

17 By /s/ Ercilia Noemy Valdez  
18 Ercilia Noemy Valdez, an employee of  
19 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
20 RABKIN, LLP  
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FILED  
Electronically  
CV17-02427  
2019-03-14 12:02:44 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7166333

# EXHIBIT 1

ORDER FOR PARTIAL DISMISSAL OF CERTAIN CLAIMS,  
WITHOUT PREJUDICE,  
FROM THE SECOND CLAIM FOR RELIEF AGAINST  
DEFENDANT PARSONS BROS ROCKERIES, INC.

# EXHIBIT 1

1 **3995**  
2 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**  
3 **DON SPRINGMEYER, ESQ.**  
4 Nevada Bar No. 1021  
5 **JOHN SAMBERG, ESQ.**  
6 Nevada Bar No. 10828  
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15 *Attorneys for Somersett Owners Association*

16 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

17 **IN AND FOR THE COUNTY OF WASHOE**

18 **SOMERSETT OWNERS ASSOCIATION, a**  
19 **Domestic Non-Profit Corporation,**

20 **Plaintiff,**

21 **vs.**

22 **SOMERSETT DEVELOPMENT COMPANY,**  
23 **LTD, a Nevada Limited Liability Company;**  
24 **SOMERSETT, LLC a dissolved Nevada**  
25 **Limited Liability Company; SOMERSETT**  
26 **DEVELOPMENT CORPORATION, a**  
27 **dissolved Nevada Corporation; PARSONS**  
28 **BROS ROCKERIES, INC. a Washington**  
**Corporation; Q & D Construction, Inc., a**  
**Nevada Corporation, and DOES 1 through 50,**  
**inclusive,**

**Defendants.**

Case No. CV-1702427

Dept. No.: 10

Judge: Hon. Elliott Sattler

**ORDER FOR PARTIAL  
DISMISSAL OF CERTAIN CLAIMS,  
WITHOUT PREJUDICE, FROM THE  
SECOND CLAIM FOR RELIEF  
AGAINST DEFENDANT PARSONS BROS  
ROCKERIES, INC., WITHOUT  
PREJUDICE**

**AND RELATED CROSS-ACTIONS**

The Court, having review the Stipulation for Partial Dismissal of Certain Claims, Without Prejudice, from the Second Claim For Relief (the "Stipulation") of March 4, 2019 and good cause appearing:

**IT IS HEREBY ORDERED that:**

1. Plaintiff's claims for breach of statutory warranties contained in NRS 116.4114 and

1 NRS 116.4115 as partially identified in Plaintiff's Second Claim for Relief, be dismissed as to  
2 Defendant PARSONS BROS ROCKERIES, INC., **ONLY** and **WITHOUT PREJUDICE**.

3 2. Each party to bear their own costs and attorney's fees and with Plaintiff reserving  
4 all rights and claims against the other parties.

5 3. No other claims are dismissed and Plaintiff reserves all its rights to prosecute any  
6 and all other remaining claims in the Complaint against Defendant PARSONS BROS  
7 ROCKERIES, INC., including claims for breach of common law warranties, if applicable.

8 4. In the event it is determined, through additional discovery investigation, testimony,  
9 or other evidence and, at the sole discretion of Plaintiff, that the statutory warranty claims  
10 contained in NRS 116.4114 and NRS 116.4115 as dismissed without prejudice herein, implicate  
11 Defendant PARSONS BROS ROCKERIES, INC., Defendant PARSONS BROS ROCKERIES,  
12 INC. through stipulation, will not oppose Plaintiff's Motion to Amend to re-assert such claims  
13 against Defendant PARSONS BROS ROCKERIES, INC., at any time up through and including  
14 trial. Any such amendments shall relate back to the date of the initial filing of the Complaint by  
15 Plaintiff in this matter.

16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 DATED this 7 day of MARCH, 2019.

18   
19 \_\_\_\_\_  
20 DISTRICT COURT JUDGE  
21  
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# EXHIBIT 8

# EXHIBIT 8

Code: 2540

Charles L. Burcham, Esq., Nevada Bar No. 2673  
Wade Carner, Esq., Nevada Bar No. 11530  
Thorndal, Armstrong, Delk, Balkenbush & Eisinger  
6590 S. McCarran, Suite B  
Reno, Nevada 89509  
Tel: (775) 786-2882

Attorneys for Defendants  
SOMERSETT DEVELOPMENT COMPANY, LTD;  
SOMERSETT, LLC and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a  
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT  
COMPANY, LTD, a Nevada Limited  
Liability Company; SOMERSETT, LLC a  
dissolved Nevada Limited Liability Company;  
SOMERSETT DEVELOPMENT  
CORPORATION, a dissolved Nevada  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, PARSONS BROS  
ROCKERIES, INC., a Washington  
Corporation; PARSONS ROCKS!, LLC., a  
Nevada Limited Liability Company, and  
DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona  
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 2<sup>nd</sup> day of October, 2019, the above-entitled Court  
entered its Order in the above-entitled matter.

1 PLEASE TAKE FURTHER NOTICE that on the 2<sup>nd</sup> day of October, 2019, said Order  
2 was duly filed in the office of the Clerk of the above-entitled Court and that attached hereto is a  
3 true and correct copy of said Order.

4 **AFFIRMATION**

5 **Pursuant to NRS 239B.030 and 603A.040**

6 The undersigned hereby affirms that this document does not contain the personal  
7 information of any person.

8 DATED this 2<sup>nd</sup> day of October, 2019.

9 THORNDAL, ARMSTRONG,  
10 DELK, BALKENBUSH & EISINGER

11 By: /s/ Charles Burcham  
12 CHARLES L. BURCHAM, ESQ.  
13 Nevada Bar No. 2673  
14 WADE CARNER, ESQ.  
15 Nevada Bar No. 11530  
16 6590 S. McCarran Blvd., Suite B  
17 Reno, Nevada 89509  
18 Attorneys for Defendants  
19 SOMERSETT DEVELOPMENT  
20 COMPANY, LTD, SOMERSETT, LLC,  
21 and SOMERSETT DEVELOPMENT  
22 CORPORATION  
23  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk,  
3 Balkenbush & Eisinger, and that on this date I caused the foregoing NOTICE OF ENTRY OF  
4 ORDER to be served on all parties to this action by:

5 \_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the  
6 United States mail at Reno, Nevada.

7  X  Second Judicial District Court Eflex ECF (Electronic Case Filing)

8 \_\_\_\_\_ personal delivery

9 \_\_\_\_\_ facsimile (fax)

10 \_\_\_\_\_ Federal Express/UPS or other overnight delivery

11 fully addressed as follows:

12 **Don Springmeyer, Esq.**  
13 **John Samberg, Esq.**  
14 **Royi Moas, Esq.**  
15 **Wolf, Rifkin, Shapiro, Schulman &**  
16 **Rabkin, LLP**  
17 **5594 B Longley Lane**  
18 **Reno, NV 89511**  
19 **Attorneys for Plaintiff**

**Natasha Landrum, Esq.**  
**Dirk W. Gaspar, Esq.**  
**Lee, Hernandez, Landrum & Garofalo**  
**7575 Vegas Dr., Ste 150**  
**Las Vegas, NV 89128**  
**Attorneys for Defendant**  
**Q & D Construction**

17 **Steve Castronova, Esq.**  
18 **Castronova Law Offices, P.C.**  
19 **605 Forest Street**  
20 **Reno, NV 89509**  
21 **Attorney for Defendant**  
22 **Parsons Bros Rockeries**

**Theodore Chrissinger, Esq.**  
**Hoy, Chrissinger, Kimmel & Vallas**  
**50 W. Liberty Street, Suite 840**  
**Reno, NV 89501**  
**Attorney for Stantec Consulting**

22 DATED this 2<sup>nd</sup> day of October, 2019.

24 /s/ Laura Bautista  
25 An employee of Thorndal, Armstrong,  
26 Delk, Balkenbush & Eisinger  
27  
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC., PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Presently before the Court is DEFENDANTS' MOTION FOR SUMMARY JUDGMENT  
("the Motion") filed by Defendants STANTEC CONSULTING SERVICES INC.; SOMERSETT  
DEVELOPMENT CO., LTD; SOMERSETT, LLC; SOMERSETT DEVELOPMENT  
CORPORATION; Q&D CONSTRUCTION, INC; and PARSONS BROTHERS ROCKERIES,  
INC. (collectively "the Defendants") on March 26, 2019. Plaintiff SOMERSETT OWNERS



1 ASSOCIATION (“the Plaintiff”) filed the OPPOSITION OF PLAINTIFF TO DEFENDANTS’  
2 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) (“the Opposition”) on  
3 April 26, 2019. The Plaintiff contemporaneously filed the REQUEST BY PLAINTIFF FOR  
4 JUDICIAL NOTICE (“the RJN”).<sup>1</sup> The Defendants filed DEFENDANTS’ REPLY IN SUPPORT  
5 OF THEIR MOTION FOR SUMMARY JUDGMENT (“the Reply”) on June 7, 2019. The Court  
6 held a hearing on July 15, 2019, and took the matter under advisement.  
7

8 The Plaintiff filed the FIRST AMENDED COMPLAINT FOR DAMAGES  
9 (CORRECTED) (“the FAC”) on May 3, 2018.<sup>2</sup> The Plaintiff is a homeowners association of a  
10 common-interest community. The FAC is a construction defect matter which contains the  
11 following causes of action: 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied  
12 Warranties Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent  
13 Misrepresentation and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS  
14 116.1113 and the Implied Covenant of Good Faith. The Complaint 8-17. The Plaintiff contends  
15 the Defendants negligently designed and constructed rockery walls within the Plaintiff’s common-  
16 interest community and breached the express and implied warranties associated with the  
17 construction. The Complaint 11-13. The Plaintiff also alleges the Defendants negligently  
18 misrepresented and/or failed to disclose known latent defects which later caused the rockery walls  
19 to fail and also breached the implied covenant of good faith and fair dealing. The Complaint 14-16.  
20  
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24  
25 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
26 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
27 judicial notice of twelve different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

28 <sup>2</sup> The requisite Chapter 40 notice was served on December 29, 2017. *See* the Motion 6:10-14.

<sup>3</sup> The Court presumes the Plaintiff intended to write “116.4144.”

1 The Defendants contend they are entitled to summary judgment on all of the Plaintiff's  
2 claims because the statute of repose has expired. The Motion 7:10-21. The Defendants contend  
3 more than six years have elapsed since the rockery walls were substantially completed, and statutes  
4 of repose are not subject to equitable or statutory tolling. The Motion 8:8-17; 9:3-27; 10:6-21;  
5 11:1-22. The Plaintiff responds the Motion should be denied because the warranty claims under  
6 NRS Chapter 116 did not begin to run until control of the Plaintiff's board was transferred from  
7 Defendant SOMERSETT DEVELOPMENT CO., LTD. ("SDC") to the Plaintiff on January 8,  
8 2013. The Opposition 2:6-14; 6:7-15. The Plaintiff also contends there is a genuine issues of  
9 material fact regarding the date of substantial completion for the rockery walls because evaluations  
10 from 2017 and 2018 revealed the rockery walls were unfit for their intended use. The Opposition  
11 2:15-20; 9:20-23; 10:16-20; 11:14-17; 17:4-8. The Plaintiff further contends the statute of repose is  
12 subject to statutory and equitable tolling and is only applicable to the Negligence and Negligence  
13 Per Se claims. The Opposition 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. The Defendant  
14 responds by arguing that the Plaintiff conflates statutes of limitation and statutes of repose and that  
15 tolling only applies to the former. The Reply 4:2-21; 8:16-20; 9:8-12; 11:10-18. The Defendant  
16 also argues the common law definition of substantial completion does not require an improvement  
17 to be free from defects, and substantial completion cannot occur after actual completion. The  
18 Reply 5:6-16; 7:11-23; 8:13-15.

19 NRCP 56(a) allows a party to petition the court for summary judgment on a claim or  
20 defense. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. 49, 55,  
21 366 P.3d 1105, 1109 (2016). Summary judgment is appropriate where the moving party  
22 demonstrates no genuine issue of material fact, thus entitling the party to judgment as a matter of  
23 law. NRCP 56(a). A material fact is one that could impact the outcome of the case. *Wood v.*

1 *Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) (quoting *Anderson v. Liberty*  
2 *Lobby*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2509-10 (1986)). When the party moving for  
3 summary judgment does not bear the burden of persuasion at trial, the movant may satisfy the  
4 burden of production for summary judgment by “submitting evidence that negates an essential  
5 element of the nonmoving party’s claim” or “pointing out that there is an absence of evidence to  
6 support the nonmoving party’s case.” *Cuzze v. Univ. and Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,  
7 602-03, 172 P.3d 131, 134 (2007).

9 When considering a motion for summary judgment, the district court must view the  
10 evidence and any reasonable inferences drawn from it in the light most favorable to the  
11 nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. However, the nonmoving party must  
12 set forth “specific facts demonstrating the existence of a genuine factual issue.” *Pegasus v. Reno*  
13 *Newspapers, Inc.*, 118 Nev. 706, 713, 57 P.3d 82, 87 (2002) (explaining non-moving party may  
14 not stand on “general allegations and conclusions”). Such facts must be predicated on admissible  
15 evidence, and the non-moving party is not permitted “to build a case on the gossamer threads of  
16 whimsy, speculation and conjecture.” *Id.* “The substantive law controls which factual disputes  
17 are material and will preclude summary judgment; other factual disputes are irrelevant.” *Wood*,  
18 121 Nev. at 731, 121 P.3d at 1031.

20 NRS 11.202 enumerates the statute of repose for claims related to construction defects and  
21 provides:

- 24 1. No action may be commenced against the owner, occupier or any person  
25 performing or furnishing the design, planning, supervision or observation of  
26 construction, or the construction of an improvement to real property more than 6  
27 years after the substantial completion of such an improvement, for the recovery  
28 of damages for:
  - a. Any deficiency in the design, planning, supervision or observation of  
construction or the construction of such an improvement;



- b. Injury to real or personal property caused by any such deficiency; or
- c. Injury to or the wrongful death of a person caused by any such deficiency.

2. The provisions of this section do not apply:

- a. To a claim for indemnity or contribution.
- b. In an action brought against:
  - 1) The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.
  - 2) Any person on account of a defect in a product.

The date of substantial completion is the latest of the following dates: the date of the final building inspection, the date the notice of completion is issued, or the date a certificate of occupancy is issued. NRS 11.2055. *See also Dykema v. Del Webb Cmty., Inc.*, 132 Nev. 823, 827, 385 P.3d 977, 980 (2016) (holding issue date for notice of completion is date of recording). If none of the above three events occurred, the date of substantial completion is determined by the rules of the common law. *Id.* <sup>4</sup> “[S]ubstantial completion’ implies that the parties have been given the object of their contract and that any omissions or deviations can be remedied.” 22 AM. JUR. 2D DAMAGES § 83 (explaining contract has been substantially performed).

Statutes of repose are distinct from statutes of limitation. As the *Rhodes* Court explained:

The distinction between these two terms [statute of limitations and statute of repose] is often overlooked. A statute of limitations prohibits a suit after a period of time that follows the accrual of the cause of action . . . Moreover, a statute of limitations can be equitably tolled . . . **In contrast**, a statute of repose bars a cause of action after a specified period of time **regardless of when the cause of action was discovered or a recoverable injury occurred.**

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<sup>4</sup> The parties do not dispute that no final building inspection occurred and no notice of completion was issued. Additionally, the parties do not argue the statute is ambiguous.

1 *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014) (emphasis added). *See also*  
2 *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 390, 46 P.3d 62, 63 (2002) (explaining statutes  
3 of repose “absolutely bar any action stemming from injuries caused by a negligently designed or  
4 constructed improvement to real property after a certain period of time has passed.”). In addition to  
5 and separate from the elements of a cause of action, a plaintiff “must also prove that the cause of  
6 action was brought within the time frame set forth by the statute of repose.” *G&H Assocs. v. Ernest*  
7 *W. Hahn, Inc.*, 113 Nev. 265, 271, 934 P.2d 299, 233 (1997) (internal citations omitted).

9       The Court will grant the Motion because there is no genuine dispute of material fact the  
10 Plaintiff failed to file the FAC within the six-year statute of repose. Even when viewing the  
11 evidence in the light most favorable to the Plaintiff, the Plaintiff has not identified any admissible  
12 evidence proving the FAC was filed within the six-year statute of repose. Because the Plaintiff  
13 bears the burden of persuasion on the statute of repose issue, the lack of affirmative evidence is  
14 fatal. First, the statute of repose applies to all of the Plaintiff’s claims, not only the Negligence and  
15 Negligence Per Se claims. All of the Plaintiff’s claims are premised on the design and construction  
16 of the walls. The plain language of NRS 11.202(1) clearly states that “no action...for the recovery  
17 of damages” for construction deficiency can be commenced more than six years after the  
18 substantial completion of the improvement. The statute does not differentiate between types of  
19 actions, and the only exemptions appear in NRS 11.202(2). Because the Plaintiff’s claims do not  
20 fall within the applicable exemptions, the statute of repose applies. Second, the Plaintiff’s  
21 argument that evaluations from 2017 to 2018 confirm the lack of substantial completion is  
22 unpersuasive. The Plaintiff essentially argues the discovery of any defects precludes substantial  
23 completion; however, this argument contradicts the purpose of and policy determination embodied  
24 by the statute of repose. The statute of repose is intended to provide parties with finality and  
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1 establish a time period after which they cannot be sued for construction deficiencies. *See*  
2 *Davenport*, 118 Nev. at 393, 46 P.3d at 65 (“[T]he legislature has opted to provide them [parties  
3 involved in creating improvement] with a measure of economic certainty by closing the door to  
4 liability . . .”). If the Court were to accept the Plaintiff’s analysis, the statute of repose would  
5 potentially last decades for appurtenances and other common interest elements and developments,  
6 such as roads, sidewalks, walls, parks, trails and developed open spaces constructed for the benefit  
7 of all members of a community. The statute of repose is an absolute time bar based on substantial  
8 completion and is unaffected by the later discovery of damage or injury. *See G&H Assocs.*, 113  
9 Nev. at 271, 934 P.2d at 233. Accepting the Plaintiff’s argument would eviscerate the purpose of  
10 the statute of repose, render the substantial completion standard meaningless and expressly  
11 contradict the policy determination made by the Legislature.  
12


13  
14 Finally, statutes of repose are not subject to equitable or statutory tolling, a concept which  
15 has been explained by the Nevada Supreme Court. *See Rhodes*, 130 Nev. at 899, 336 P.3d at 965  
16 (explaining statutes of limitations can be tolled and statutes of repose cannot). *See also State Dep’t*  
17 *of Taxation v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 738, 265 P.3d 666, 671 (2011)  
18 (explaining operation of equitable tolling for statute of limitations). The Plaintiff’s reliance on out-  
19 of-state case law is unpersuasive in light of mandatory authority undercutting its argument. *See*  
20 *Rhodes*, 130 Nev. at 899, 336 P.3d at 965 (explaining purpose of statute of repose is to “give a  
21 defendant peace of mind by barring delayed litigation, so as to prevent unfair surprises that result  
22 from the revival of claims that have remained dormant for a period during which the evidence  
23 vanished and memories faded.”). For all of these reasons, the Plaintiff has failed to carry its burden  
24 to establish its claims were filed within the six-year statute of repose.  
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1           **IT IS ORDERED** DEFENDANTS' MOTION FOR SUMMARY JUDGMENT is hereby  
2 **GRANTED.**

3           **DATED** this   2   day of October, 2019.  
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7 ELLIOTT A. SATTLER  
8 District Judge  
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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court  
3 of the State of Nevada, County of Washoe; that on this \_\_\_\_\_ day of October, 2019, I deposited in  
4 the County mailing system for postage and mailing with the United States Postal Service in Reno,  
5 Nevada, a true copy of the attached document addressed to:  
6

7  
8 **CERTIFICATE OF ELECTRONIC SERVICE**

9 I hereby certify that I am an employee of the Second Judicial District Court of the State of  
10 Nevada, in and for the County of Washoe; that on the 2nd day of October, 2019, I electronically  
11 filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of  
12 electronic filing to the following:  
13

14 CHARLES BURCHAM, ESQ.

15 NATASHA LANDRUM, ESQ.

16 DIRK GASPAR, ESQ.

17 DAVID LEE, ESQ.

18 STEPHEN CASTRONOVA, ESQ.

19 THEODORE E. CHRISSINGER, ESQ.

20 MICHAEL S. KIMMEL, ESQ.

21 STEPHEN G. CASTRONOVA, ESQ.

22 JOHN SAMBERG, ESQ.

23 DON SPRINGMEYER, ESQ.  
24  
25  
26  
27  
28

  
Sheila Mansfield  
Judicial Assistant



# EXHIBIT 9

# EXHIBIT 9

Code: 2540

Charles L. Burcham, Esq.

Nevada Bar No. 2673

Thorndal Armstrong Delk Balkenbush & Eisinger

6590 S. McCarran, Suite B

Reno, Nevada 89509

Tel: (775) 786-2882

Attorney for Defendants

SOMERSETT DEVELOPMENT COMPANY, LTD;

SOMERSETT, LLC and SOMERSETT DEVELOPMENT CORPORATION

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION, a  
Domestic Non-Profit Corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 15

SOMERSETT DEVELOPMENT  
COMPANY, LTD, a Nevada Limited  
Liability Company; SOMERSETT, LLC a  
dissolved Nevada Limited Liability Company;  
SOMERSETT DEVELOPMENT  
CORPORATION, a dissolved Nevada  
Corporation; Q & D Construction, Inc., a  
Nevada Corporation, PARSONS BROS  
ROCKERIES, INC., a Washington  
Corporation; PARSONS ROCKS!, LLC., a  
Nevada Limited Liability Company, and  
DOES 5 through 50, inclusive,

Defendants.

SOMERSETT DEVELOPMENT CO., LTD.,

Third-Party Plaintiff,

vs.

STANTEC CONSULTING, INC., an Arizona  
Corporation; and DOES 1-50 inclusive,

Third-Party Defendant.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that on the 27<sup>th</sup> day of February, 2020, the above-entitled  
Court entered its Order in the above-entitled matter.

1 PLEASE TAKE FURTHER NOTICE that on the 27<sup>th</sup> day of February, 2020, said Order  
2 was duly filed in the office of the Clerk of the above-entitled Court and that attached hereto is a  
3 true and correct copy of said Order.


4 **AFFIRMATION**

5 **Pursuant to NRS 239B.030 and 603A.040**

6 The undersigned hereby affirms that this document does not contain the personal  
7 information of any person.

8 DATED this 16 day of March, 2020.

9 THORNDAL ARMSTRONG  
10 DELK BALKENBUSH & EISINGER

11 By:   
12 CHARLES L. BURCHAM, ESQ.  
13 Nevada Bar No. 2673  
14 6590 S. McCarran Blvd., Suite B  
15 Reno, Nevada 89509  
16 Attorney for Defendants  
17 SOMERSETT DEVELOPMENT  
18 COMPANY, LTD, SOMERSETT, LLC,  
19 and SOMERSETT DEVELOPMENT  
20 CORPORATION  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this date I caused the foregoing NOTICE OF ENTRY OF ORDER to be served on all parties to this action by:

\_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

  X   Second Judicial District Court Eflex ECF (Electronic Case Filing)

\_\_\_\_\_ personal delivery

\_\_\_\_\_ facsimile (fax)

\_\_\_\_\_ Federal Express/UPS or other overnight delivery

fully addressed as follows:

**Don Springmeyer, Esq.  
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Q & D Construction**

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Parsons Bros Rockeries**

**Theodore Chrissinger, Esq.  
Hoy, Chrissinger, Kimmel & Vallas  
50 W. Liberty Street, Suite 840  
Reno, NV 89501  
Attorney for Stantec Consulting**

DATED this   17   day of March, 2020.

  /s/ Laura Bautista    
An employee of Thorndal, Armstrong,  
Delk, Balkenbush & Eisinger

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

SOMERSETT OWNERS ASSOCIATION,  
a domestic non-profit corporation,

Plaintiff,

vs.

Case No. CV17-02427

Dept. No. 10

SOMERSETT DEVELOPMENT CO., LTD.,  
a Nevada limited liability company;  
SOMERSETT, LLC, a dissolved Nevada  
limited liability company; SOMERSETT  
DEVELOPMENT CORPORATION, a  
dissolved Nevada corporation; Q&D  
CONSTRUCTION, INC.; PARSONS  
BROTHERS ROCKERIES, INC., a  
Washington corporation; PARSONS ROCKS!,  
LLC, a Nevada limited liability company, and  
DOES 5-50 inclusive,

Defendants,

AND RELATED CROSS-ACTIONS.

**ORDER DENYING ATTORNEY'S FEES**

Presently before the Court is DEFENDANT'S MOTION FOR ATTORNEY'S FEES ("the Motion") filed by Defendants SOMERSETT DEVELOPMENT CO., LTD.; SOMERSETT, LLC; and SOMERSETT DEVELOPMENT CORPORATION (collectively, "the Somersett Defendants") on October 11, 2019. Plaintiff SOMERSETT OWNERS ASSOCIATION ("the Plaintiff") filed the OPPOSITION OF PLAINTIFF SOMERSETT OWNERS ASSOCIATION TO DEFENDANTS

1 SOMERSETT DEVELOPMENT COMPANY LTD, SOMERSETT, LLC, AND SOMERSETT  
2 DEVELOPMENT CORPORATION'S MOTION FOR ATTORNEY'S FEES ("the Opposition")  
3 on November 25, 2019. The Plaintiff contemporaneously filed PLAINTIFF'S REQUEST FOR  
4 JUDICIAL NOTICE IN SUPPORT OF ITS OPPOSITIONS TO THE MOTIONS FOR  
5 ATTORNEY'S FEES FILED BY DEFENDANTS (1) SOMERSETT DEVELOPMENT  
6 COMPANY, LTD, SOMERSETT DEVELOPMENT CORPORATION, SOMERSETT LLC, (2)  
7 PARSONS BROS ROCKERIES, INC., (3) Q&D CONSTRUCTION, INC., AND (4) STANTEC  
8 CONSULTING SERVICES, INC. ("the RJN") on November 25, 2019.<sup>1</sup> The Somerset  
9 Defendants filed DEFENDANT'S REPLY IN SUPPORT IF (sic) ITS MOTION FOR  
10 ATTORNEY'S FEES ("the Reply") on December 20, 2019. The matter was submitted for the  
11 Court's consideration on December 19, 2019.<sup>2</sup>

12 The parties are well versed in the facts of this case, so the Court will only recite them briefly.  
13 The Plaintiff is a homeowners' association of a common-interest community who sought to recover  
14 damages for collapsed rockery walls constructed within the Plaintiff's community. The FIRST  
15 AMENDED COMPLAINT FOR DAMAGES (CORRECTED) ("the FAC") was filed on May 3,  
16 2018. The FAC contains the following causes of action against the Somerset Defendants,  
17 PARSONS BROTHERS ROCKERIES, INC. and Q&D CONSTRUCTION, INC. (collectively, "the  
18 Defendants"): 1) Negligence and Negligence Per Se; 2) Breach of Express and Implied Warranties  
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26 <sup>1</sup> NRS 47.130 and 47.1150 govern judicial notice. The effect of judicial notice is to establish the fact which is noticed to  
27 the court. *Lemel v. Smith*, 64 Nev. 545, 566, 187 P.2d 169, 179 (1947). While the Plaintiff has asked the Court to take  
28 judicial notice of fourteen different items, the Court does not believe judicial notice of these items is necessary or  
appropriate for the Motion. The Court will consider the items in the RJN as if they had been submitted as exhibits to the  
Opposition and will give them appropriate weight, if any.

<sup>2</sup> The Court presumes the fact that the Request for Submission preceded the Reply was merely a clerical error.

1 Pursuant to NRS 116.4113 and NRS 11.4114<sup>3</sup> and Common Law; 3) Negligent Misrepresentation  
2 and/or Failure to Disclose; 4) Declaratory Relief; and 5) Breach of NRS 116.1113 and the Implied  
3 Covenant of Good Faith. The Complaint 8-17.

4  
5 The Defendants filed DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ("the  
6 Omnibus MSJ") on March 26, 2019.<sup>4</sup> After the Omnibus MSJ was fully briefed and oral argument  
7 was held, the Court entered the ORDER GRANTING DEFENDANTS' MOTION FOR  
8 SUMMARY JUDGMENT on October 2, 2019 ("the October Order"). The Court entered summary  
9 judgment in favor of Stantec and the Defendants on the basis the Plaintiff's claims were barred by  
10 the six-year statute of repose for construction defect claims. The October Order 6:10-27; 7:1-28.

11  
12 The Somerset Defendants seek to recover \$131,768.10 in attorney's fees pursuant to the  
13 CC&Rs, NRS 116.4117, and NRS 18.010(2). The Motion 5:1-28; 6:1-27.; 10:20-25.<sup>5</sup> The  
14 Somerset Defendants argue they are entitled to attorney's fees for the following reasons: 1) the  
15 CC&Rs entitle a prevailing party in a suit to enforce or administer the CC&Rs to recover attorney's  
16 fees; 2) NRS 116.4117 permits a prevailing party in a dispute over compliance with NRS Chapter  
17 116 to recover attorney's fees; and 3) NRS 18.010(2) permits the recovery of attorney's fees for  
18 frivolous claims. *Id.* The Plaintiff responds by making the following arguments: 1) the CC&Rs are  
19 inapplicable because the Plaintiff did not seek to enforce the governing documents in the FAC; 2)  
20 NRS 116.4117 is inapplicable because the Plaintiff did not seek to enforce the CC&Rs; and 3) the  
21 Plaintiff made meritorious arguments regarding accrual and tolling of the statute of repose, making  
22 NRS Chapter 18 attorney fees unmerited. The Opposition 4:1-26; 5:1-23; 9:8-24. The Plaintiff  
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26 <sup>3</sup> The Court presumes the Plaintiff intended to write "116.4144."

27 <sup>4</sup> Third-Party Defendant STANTEC CONSULTING SERVICES, INC. ("Stantec") was also a party to the Omnibus  
28 MSJ.

<sup>5</sup> The Somerset Defendants also appear to be requesting an award of costs; however, the Court already awarded the  
Somerset Defendants costs in the ORDER AWARDING COSTS filed on February 5, 2020.

1 alternatively argues that, if the Court awards attorney's fees under NRS Chapter 116, the award  
2 should be significantly reduced and limited to fees attributable to NRS Chapter 116 work. The  
3 Opposition 13:22-27; 14:1. The Somerset Defendants make the following arguments in reply:

4 1) NRS Chapter 116 or Chapter 18 attorney's fees are warranted because the Plaintiff pursued a  
5 lawsuit it knew was barred by the statute of repose; 2) the FAC was premised on the CC&Rs and  
6 NRS Chapter 116; and 3) all requested attorney's fees are reasonable, and the award should not be  
7 reduced. The Reply 2:18-26; 3:1-2; 4:4-27; 5:1-11, 12-13, 26-28; 6:1-16.

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9 Attorney's fees are recoverable where authorized by agreement, statute or rule. *Wheeler*  
10 *Springs Plaza, LLC v. Beemon*, 119 Nev. 260, 268, 71 P.3d 1258, 1263 (2003) (quoting *Young v.*  
11 *Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987)). NRS 116.4117 provides in relevant  
12 part:  
13

14 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in  
15 NRS 116.3111, a civil action for damages or other appropriate relief for a failure or  
16 refusal to comply with any provision of this chapter or the governing documents of an  
association may be brought:

17 (a) By the association against:

- 18 (1) A declarant;  
19  
20 (2) A community manager; or  
21  
22 (3) A unit's owner.

23 (b) By a unit's owner against:

- 24 (1) The association;  
25  
26 (2) A declarant; or  
27  
28 (3) Another unit's owner of the association . . .

6. The court may award reasonable attorney's fees to the prevailing party.



1 NRS 18.010(2)(b) permits an award of attorney's fees where:

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3 Without regard to the recovery sought, when the court finds that the claim,  
4 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
5 was brought or maintained without reasonable ground or to harass the prevailing  
6 party. The court shall liberally construe the provisions of this paragraph in favor of  
7 awarding attorney's fees in all appropriate situations. It is the intent of the Legislature  
8 that the court award attorney's fees pursuant to this paragraph and impose sanctions  
9 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
situations to punish for and deter frivolous or vexatious claims and defenses because  
such claims and defenses overburden limited judicial resources, hinder the timely  
resolution of meritorious claims and increase the costs of engaging in business and  
providing professional services to the public.

10 NRCP 11(b) provides:

11 Representations to the Court. By presenting to the court a pleading, written motion, or other  
12 paper--whether by signing, filing, submitting, or later advocating it--an attorney or  
13 unrepresented party certifies that to the best of the person's knowledge, information, and  
belief, formed after an inquiry reasonable under the circumstances:

- 14 (1) it is not being presented for any improper purpose, such as to harass, cause  
15 unnecessary delay, or needlessly increase the cost of litigation;
- 16 (2) the claims, defenses, and other legal contentions are warranted by existing law or by  
17 a nonfrivolous argument for extending, modifying, or reversing existing law or for  
18 establishing new law;
- 19 (3) the factual contentions have evidentiary support or, if specifically so identified, will  
20 likely have evidentiary support after a reasonable opportunity for further  
investigation or discovery; and
- 21 (4) the denials of factual contentions are warranted on the evidence or, if specifically so  
22 identified, are reasonably based on belief or a lack of information.

23 The Court will deny the Somersett Defendants' request for attorney's fees because they are  
24 not entitled to attorney's fees under the CC&Rs, NRS 116.4117(6) or NRS 18.010(2) in this case.

25 First, section 8 of the CC&Rs entitles a prevailing party "[i]n any action to enforce or administer the  
26 provisions hereof" to recover attorney's fees; however, the Somersett Defendants have failed to  
27 prove the FAC was an action to enforce or administer the provisions of the CC&Rs. The Somersett  
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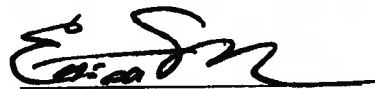
1 Defendants did not provide the CC&Rs to the Court and have conducted no analysis regarding the  
2 manner in which the Plaintiff's claims sought to enforce or administer the provisions of the CC&Rs.  
3 *See Badillo v. Am. Brands, Inc.*, 117 Nev. 34, 42, 16 P.3d 435, 440 (2001) (explaining issue not  
4 meaningfully briefed need not be considered) and *State Indus. Ins. Sys. v. Buckley*, 100 Nev. 376,  
5 382, 682 P.2d 1387, 1390 (1984) (explaining conclusory arguments without substantive citation to  
6 relevant authority will not be reviewed). For these reasons, the Somerset Defendants are not  
7 entitled to attorney's fees pursuant to the CC&Rs. Second, the Somerset Defendants are not  
8 entitled to attorney's fees under NRS 116.4117(6). Even though the Somerset Defendants were  
9 prevailing parties under the October Order, the Court never ruled on any issues pertaining to NRS  
10 Chapter 116. Discovery was limited to the potentially dispositive statute of repose and statute of  
11 limitations issues. *See* JOINT CASE CONFERENCE REPORT, p. 15 (Oct. 17, 2018). This matter  
12 was resolved by the threshold issue of the statute of repose, and the October Order made no mention  
13 of NRS Chapter 116.

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17 Third, the Somerset Defendants are not entitled to attorney's fees pursuant to NRS 18.010  
18 because this lawsuit was neither brought nor maintained without reasonable grounds. Throughout  
19 the litigation, the Plaintiff made nonfrivolous arguments regarding the applicability of the statute of  
20 repose. The Plaintiff contended the statute of repose had not yet run because a product unfit for its  
21 intended use is not substantially complete. *See* OPPOSITION OF PLAINTIFF TO DEFENDANTS'  
22 JOINT MOTION FOR SUMMARY JUDGMENT (OMNIBUS MOTION) 2:15-20; 9:20-23; 10:16-  
23 20; 11:14-17; 17:4-8. The Plaintiff also argued the statute of repose was subject to statutory and  
24 equitable tolling and that the statute of repose was limited to NRS Chapter 40 claims. *See id.* at  
25 13:26-28; 20:17-18; 22:7-11; 23:3-10; 24:4-13. While the Court was not persuaded by these  
26 arguments, this fact does not automatically render the Plaintiff's argument frivolous. *See Patush v.*  
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1 *Las Vegas Bistro, LLC*, 135 Nev. Adv. Op. 46, 449 P.3d 467, 470 (2019) (“Attorney fees are not  
2 appropriate where the underlying claim rested on novel and arguable issues, even if those issues  
3 were not resolved in the claimant’s favor.”). The Court finds the Plaintiff’s arguments were good  
4 faith attempts to modify current law on the statute of repose. The Court would also note the  
5 Plaintiff agreed to bifurcate discovery and resolve the statute of repose issue at the threshold.  
6 Finally, this matter did not proceed to trial but was adjudicated via summary judgment, thus  
7 preventing unnecessary litigation and the accumulation of additional expenses.  
8

9 **IT IS ORDERED DEFENDANT’S MOTION FOR ATTORNEY’S FEES is hereby**  
10 **DENIED.**  
11

12 **DATED this** 27 **day of February, 2020.**  
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15 **ELLIOTT A. SATTLER**  
16 **District Judge**  
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