

Case No. 81390

In the Supreme Court of Nevada

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

Appellant,

vs.

SEPTEMBER TRUST, DATED MARCH 23, 1972;
GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, as
trustees of the GERRY R. ZOBRIST AND JOLIN
G. ZOBRIST FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE SANDOVAL
GEGEN, as Trustees of the RAYNALDO G. AND
EVELYN A. SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27, 1992;
DENNIS A. GEGEN AND JULIE S. GEGEN,
Husband and wife, as joint tenants; ROBERT
Z. DISMAN; and YVONNE A. DISMAN,

Respondents.

Electronically Filed
Mar 15 2021 07:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable TIMOTHY C. WILLIAMS, District Judge
District Court Case Nos. A-16-747800-C and A-17-765372-C

APPELLANTS' APPENDIX

VOLUME 1

PAGES 1-250

JOEL D. HENRIOD (SBN 8492)

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Appellants

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CERTIFICATE OF SERVICE

I certify that on March 15, 2021, I submitted the foregoing “Appellants’ Appendix” for filing *via* the Court’s eFlex electronic filing system.

Electronic notification will be sent to the following:

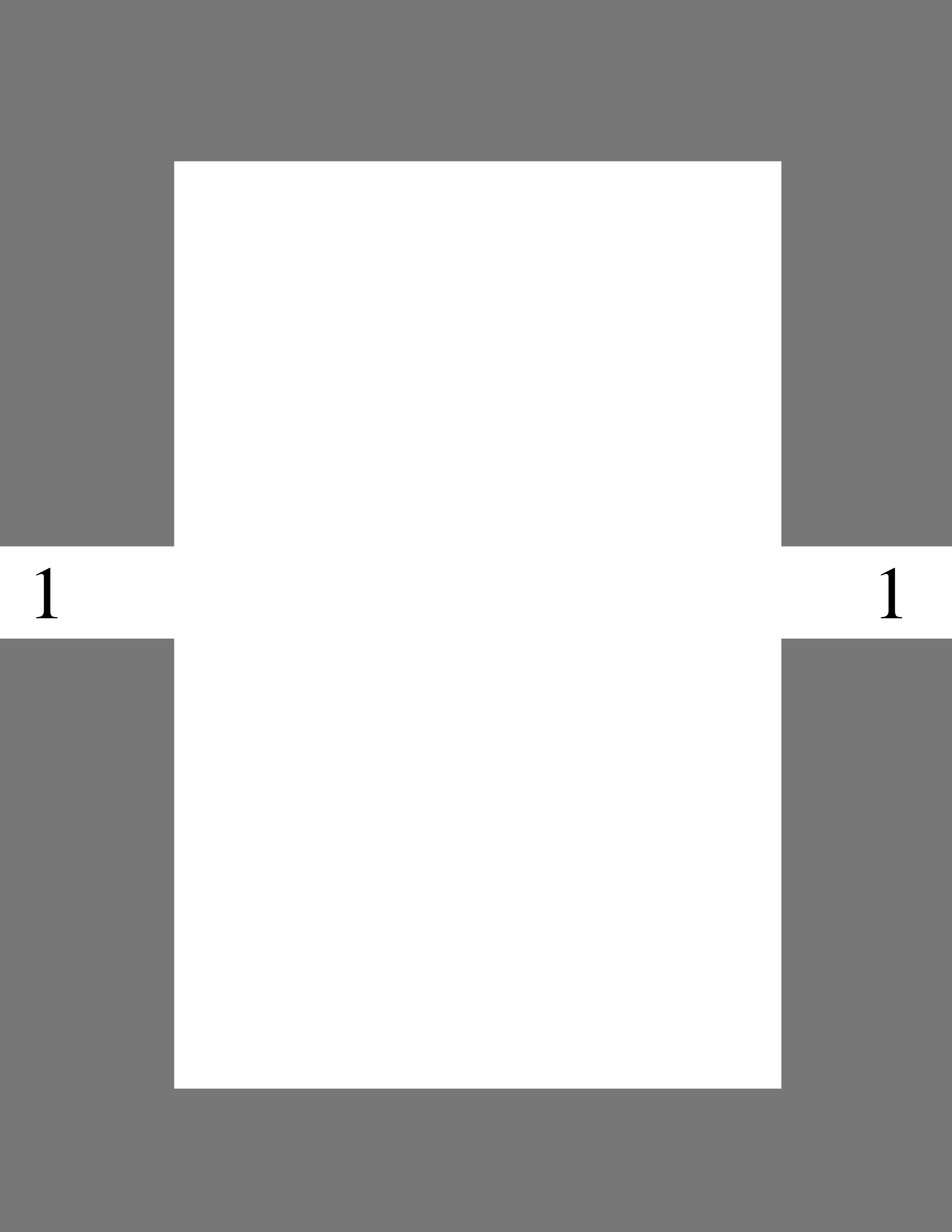
Kevin B. Christensen
Wesley J. Smith
CHRISTENSEN JAMES & MARTIN
7740 W. Sahara Avenue
Las Vegas, Nevada 89117

Christina H. Wang
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113

*Attorneys for Respondents Robert Z.
Disman and Yvonne A. Disman*

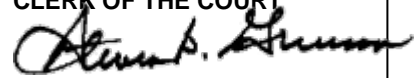
*Attorneys for Respondents September
Trust, dated March 23, 1972, Gerry R.
Zobrist and Jolin G. Zobrist, as trus-
tees of the Gerry R. Zobrist and Jolin
G. Zobrist Family Trust, Raynaldo G.
Sandoval and Julie Marie Sandoval
Gegen, as trustees of the Raynaldo G.
and Evelyn A. Sandoval Joint Living
and Devolution Trust dated May 27,
1992, and Dennis A. Gegen and Julie
S. Gegen, husband and wife, as joint
tenants*

/s/ Emily D. Kapolnai
An Employee of Lewis Roca Rothgerber Christie LLP



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NOE
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

v.)

TRUDI LEE LYTLE AND JOHN ALLEN)
LYTLE, AS TRUSTEES OF THE LYTLE)
TRUST, DOES I through X; and ROE)
CORPORATIONS I through X,)
Defendants.)

Case No. A-16-747800-C
Dept. No. XVI

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the Clerk of the Court entered the attached Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment in the above-entitled manner on April 26th, 2017. A copy of said Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment is attached hereto

///

///

///

1 as Exhibit “A”.

2

Respectfully Submitted,

3

FOLEY & OAKES, PC

4

5

/s/Daniel T. Foley

6

Daniel T. Foley, Esq.

7

Nevada Bar No. 1078

8

626 So. 8th Street

9

Las Vegas, Nevada 89101

10

Attorney for Plaintiffs

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FOLEY²⁸
&
OAKES

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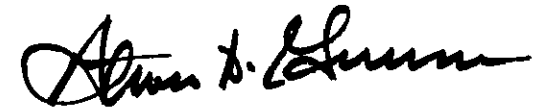
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EXHIBIT “A”

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EXHIBIT “A”



CLERK OF THE COURT

1 **FFCL**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 S 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Plaintiffs*

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

9 MARJORIE B. BOULDEN, TRUSTEE OF)
10 THE MARJORIE B. BOULDEN TRUST,)
11 LINDA LAMOTHE AND JACQUES)
12 LAMOTHE, TRUSTEES OF THE)
13 JACQUES & LINDA LAMOTHE)
14 LIVING TRUST)

13 Plaintiff,)

14 v.)

15 TRUDI LEE LYTLE AND JOHN ALLEN)
16 LYTLE, AS TRUSTEES OF THE LYTLE)
17 TRUST, DOES I through X; and ROE)
18 CORPORATIONS I through X,)
19 Defendants.)

Case No. A-16-747800-C
Dept. No. XVI

Date of Hearing: April 13, 2017
Time of Hearing: 9:00 a.m.

19 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING**
20 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

21 Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for
22 Summary Judgment having come on for hearing before this Court on the 13th day of April 2017,
23 Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley,
24 Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust,
25 appearing with their counsel, Richard Haskin, Esq. The Court having reviewed the Plaintiffs'
26 Motion, the Defendants' Opposition and Counter-Motion and the Plaintiffs' Reply and all
27

1 documents attached thereto or otherwise filed in this case, and good cause appearing therefore,
2 makes these Findings of Fact and Conclusions of Law.

3 To the extent any Findings of Fact also contain Conclusions of Law said Conclusions of
4 Law should be considered as such. To the extent that any Conclusions of Law also contain
5 Findings of Fact said Findings of Fact should be considered as such.

6 FINDINGS OF FACT

7
8 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
9 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
10 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

11 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe
12 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property
13 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV
14 89117 (the "Lamothe Property").

15 3. The Boulden Property and the Lamothe Property are located in the Rosemere
16 Court subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original
17 CC&Rs").

18
19 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
20 (collectively the "Defendants") which owns that certain residential property known as parcel
21 number 163-03-313-009 (the "Lytle Property").

22 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association
23 (the Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere
24 LPA Litigation").

25
26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

1 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that
2 term is found in Section 25 of the Original CC&Rs.

3 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
4 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 5 a. The Association is a limited purpose association under NRS 116.1201, is
6 not a Chapter 116 "unit-owners' association," and is relegated to only
7 those specific duties and powers set forth in Paragraph 21 of the Original
8 CC&Rs and NRS 116.1201.
- 9 b. The Association did not have any powers beyond those of the "property
10 owners committee" designation in the Original CC&Rs – simply to care
11 for the landscaping and other common elements of Rosemere Estates as
12 set forth in Paragraph 21 of the Original CC&Rs.
- 13 c. Consistent with the absence of a governing body, the Developer provided
14 each homeowner the right to independently enforce the Original CC&Rs
15 against one another.
- 16 d. The Amended and Restated CC&Rs recorded with the Clark County
17 Recorder's Office as Instrument #20070703-0001934 (the "Amended
18 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

19 9. Pursuant to NRS 116.1201(2) most of NRS Chapter 116 does not apply to the
20 Association because it is a limited purpose association that is not a rural agricultural residential
21 community.

22 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the
23 Defendants filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a
24 prove-up hearing on damages. After hearing all matters, a Final Judgment was entered in the
25 Defendants' favor against the Association for \$361,238.59, which includes damages, attorneys'
26 fees and costs (the "Final Judgment").

27 11. After obtaining the Final Judgment, the Defendants, on August 16, 2016, recorded
28 with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment

1 against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract of
2 Judgment").

3 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
4 Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
5 and Final Judgment was to attach.

6 13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
7 office an Abstract of Judgement referencing the Final Judgment against the Association, recorded
8 as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract
9 of Judgment listed the parcel number of the Lamothe Property only as the property to which the
10 Final Judgment was to attach.

11 14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's
12 office an Abstract of Judgement referencing the Final Judgment against the Association, recorded
13 as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of
14 Judgment listed the parcel number of the Boulden Property only as the property to which the
15 Final Judgment was to attach.

16 CONCLUSIONS OF LAW

17 1. The Association is a "limited purpose association" as referenced in NRS
18 116.1201(2).

19 2. As a limited purpose association, NRS 116.3117 is not applicable to the
20 Association.

21 3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially
22 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
23 have no force and effect and were declared void ab initio.

24 4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that
2 Defendants' Motion for Summary Judgment is DENIED.

3 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
4 Defendants improperly clouded the title to the Boulden Property.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Defendants improperly clouded the title to the Lamothe Property.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
8 Defendants slandered the title to the Boulden Property.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First
10 Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County
11 Recorder's Office is hereby expunged and stricken from the records of the Clark County
12 Recorder's Office.

13 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
14 Second Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County
15 Recorder's Office is hereby expunged and stricken from the records of the Clark County
16 Recorder's Office.

17 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
18 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County
19 Recorder's Office is hereby expunged and stricken from the records of the Clark County
20 Recorder's Office.

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
22 Defendants are permanently enjoined from recording and enforcing the Final Judgment from the
23 Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the
24 Lamothe Property.

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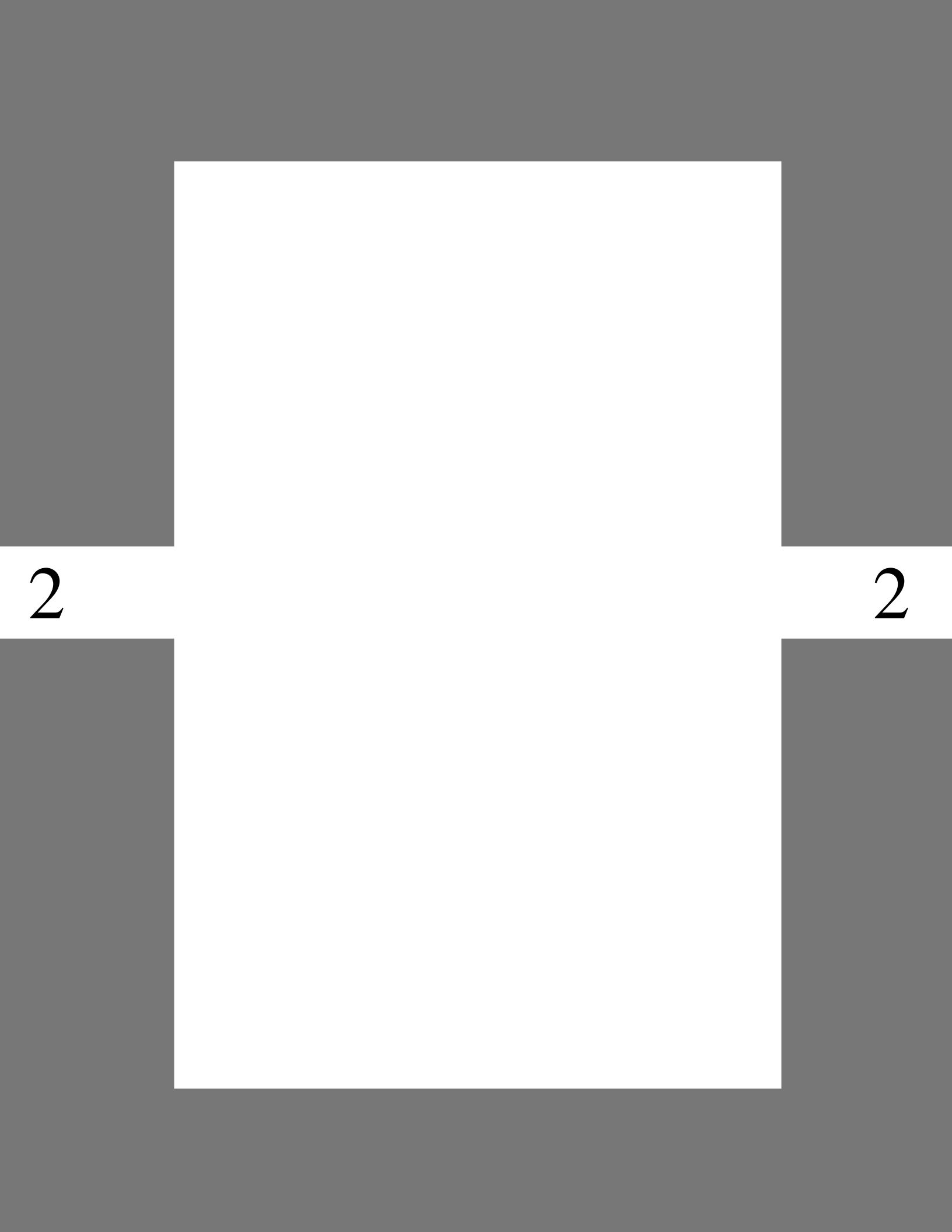
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**FOLEY
&
OAKES**

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Richard E. Haskin, Esq.
Gibbs Giden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants

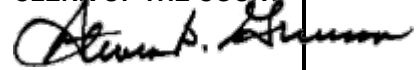


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Steven D. Grier

CLERK OF THE COURT



CASE NO. A-16-747800-C

DOCKET U

DEPT. XVI

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

MARJORIE B. BOULDEN TRUST,

Plaintiff,

vs.

LYTLE TRUST,

Defendant.

REPORTER'S TRANSCRIPT
OF
MOTION

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

DISTRICT COURT JUDGE

DATED THURSDAY, JUNE 6, 2017

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

1 APPEARANCES:

2

3

FOLEY & OAKES, PC
BY: DANIEL T. FOLEY, ESQ.
626 So. 8th STREET
LAS VEGAS, NV 89101
(702) 384-2070
(702) 384-2128
DAN@FOLEYOAKES.COM

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9 FOR THE DEFENDANT:

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GIBBS, GIDEN, LOCHER, TURNER & SENET, LLP
BY: RICHARD HASKIN, ESQ.
7450 ARROYO CROSSING PARKWAY
SUITE 270
LAS VEGAS, NV 89113
(702) 836-9800
(702) 836-9802 Fax
RHASKIN@GIBBSGIDEN.COM

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1 LAS VEGAS, NEVADA; THURSDAY, JUNE 6, 2017

2 9:13 A.M.

3 P R O C E E D I N G S

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6 THE COURT: All right. We're going to move
7 on. Next up page 5, Marjorie B. Boulden versus the
8 Lytle Trust.

9 MR. HASKIN: Good morning, your Honor.

09:14:06 10 Richard Haskin on behalf of the Lytle Trust.

11 MR. FOLEY: Dan Foley on behalf of the
12 plaintiffs.

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13 THE COURT: All right. Good morning. And
14 it's my understanding this is plaintiff's motion to
09:14:15 15 cancel two lis pendens and motion to hold the defendant
16 and/or their counsel in contempt; is that correct,
17 Mr. Foley?

18 MR. FOLEY: Yes, your Honor.

19 THE COURT: All right.

09:14:26 20 MR. FOLEY: Thus far when we had our court
21 appearances here you've been fully prepared and have
22 read everything. I think it's fully briefed.

23 THE COURT: It is.

24 MR. FOLEY: If your Honor has any questions,
09:14:35 25 I'd be happy to respond.

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09:14:41 1 THE COURT: I don't have any questions. I
2 feel I have a pretty good handle on both the law and
3 facts of this pending motion, but I want to give
4 everyone a full and fair opportunity to make whatever
09:14:53 5 record they feel necessary to do.

6 MR. FOLEY: I don't have anything to add
7 beyond the papers, your Honor.

8 THE COURT: Okay.

9 MR. HASKIN: Your Honor, I would agree that
09:15:00 10 the matter is fully briefed. I would also invite
11 questions from your Honor should you have any.

12 I think that from our standpoint, there's a
13 couple of issues we'd like to stress. The first being,
14 and this really goes to the contempt issue. This Court
09:15:18 15 ordered in its findings -- although, we've requested in
16 our motion for reconsideration, your Honor, that you --

17 THE COURT: I'm not going to hold you in
18 contempt.

19 MR. HASKIN: Okay.

09:15:29 20 THE COURT: All right.

21 MR. HASKIN: Well --

22 THE COURT: Let's talk about the lis pendens.

23 MR. HASKIN: Yes.

24 THE COURT: Because it appears to me that
09:15:34 25 there's a procedural problem statutorily first and

09:15:38 1 foremost the lis pendens should have been filed with
2 the answer if possible. But just as important too, it
3 appears that the lis pendens filing is contrary to the
4 order I issued in this case. And let me see where
09:15:52 5 there's the specific language. And this would be on
6 page 7 of the order. I guess, it starts -- let me make
7 sure I have it here -- at lines 12. And it says:

8 It is hereby further ordered, adjudged, and
9 decreed that the defendants are permanently
09:16:14 10 enjoined from taking any action in the future
11 against plaintiffs or the property based upon
12 the Rosemere LPA Litigation.

13 MR. HASKIN: Well, your Honor, I -- and that
14 was the point I was going to. I -- your Honor, the lis
09:16:29 15 pendens is simple providing notice to the world as you
16 know, and as the statute defined that there is an
17 action ongoing with respect to this property.

18 And, your Honor, we --

19 THE COURT: But isn't it a little narrower in
09:16:41 20 focus than that as far as the application of the
21 statute? Because I did take a look at, I guess, it was
22 the Waddell case.

23 MR. HASKIN: Um-hum.

24 THE COURT: And it specifically looks at some
09:16:57 25 prior Nevada decisions, also decisions out of the state

09:17:00 1 of California as to the application of lis pendens.
2 And it appeared to me that under the facts of this
3 case, the lis pendens would not be the appropriate
4 vehicle.

09:17:17 5 MR. HASKIN: Well, your Honor --

6 THE COURT: You know, I can --

7 MR. HASKIN: Yeah.

8 THE COURT: I'm teeing it up for you --

9 MR. HASKIN: Sure.

09:17:20 10 THE COURT: -- you can tell me why it is, but
11 that's my impression.

12 MR. HASKIN: Sure. And, your Honor, let me
13 address that. You know, there's -- the contention is
14 and perhaps the confusion has been in this case that
09:17:32 15 our case is against Marjorie Boulden and Linda Lamothe
16 individually, and it's not.

17 The Lytle's case, and your Honor obviously,
18 granted summary judgment against us, and we understand
19 that and respect the Court's decision. Nonetheless,
09:17:47 20 we're appealing that decision and believe steadfastly
21 that we have a claim of right. But that claim of right
22 is against the units themselves. It's not against the
23 individuals. And our concern is simply this, and I'll
24 pose to the Court the hypothetical that we did present
09:18:03 25 in our opposition papers. But I'll pose it again.

09:18:07 1 If Ms. Boulden sells this property to a third
2 party, and the third party takes that property without
3 notice of this action, that property -- and let's play
4 the hypothetical further, and suppose that the Supreme
09:18:19 5 Court does overturn your Honor's decision and it comes
6 back -- that third party is necessarily a new defendant
7 in this action. That new party is going to actually
8 replace Marjorie Boulden as a defendant in this action.

9 And that -- and that's our claim. This is --
09:18:36 10 this is a claim that affects title to the property.
11 Why? Why do we have a lis pendens? To put the
12 subsequent purchaser on notice that they're purchasing
13 a property that may be in one way or another under
14 right of another and under collection of another.

09:18:52 15 And we are a creditor in this action. We are
16 a creditor that claims a right to title to the property
17 in that action.

18 THE COURT: But there's no right to title to
19 the property. I mean, there's no claim of an ownership
09:19:05 20 interest. We can all agree to that, right?

21 MR. HASKIN: I agree to that.

22 THE COURT: Okay. And it appears to me that
23 the Waddell case specifically handled those types of
24 issues where you have a potential creditor. And the
09:19:19 25 creditor -- creditor status would not be the

09:19:23 1 appropriate basis for filing a lis pendens as to
2 property.

3 MR. HASKIN: Well, the language from the
4 Waddell court, your Honor, says that the action has to
09:19:33 5 affect title to the property. And I agree it's not
6 regarding ownership. But they -- what we are keying on
7 is affect title to the property.

8 THE COURT: But think about it for a second.
9 Affect title to the property, to me it appears that
09:19:46 10 stands for the proposition that there is a dispute as
11 to the ownership of the property; right?

12 MR. HASKIN: Well, in a way, your Honor,
13 perhaps. But it -- I read it broader than that. It's
14 broader than just ownership. It's affecting title to
09:20:01 15 the property. It's whether -- I have a claim as a
16 creditor that in one way or another is going to change
17 title to the property. And I'm -- and I'm replacing
18 effect and you're using ownership. I'm saying change
19 title to the property. Because, again, using my
09:20:17 20 hypothetical, if the Supreme Court does overturn your
21 Honor's decision and it comes back, and we necessarily
22 have to replace Marjorie Boulden with a new defendant,
23 the new defendant who owns title to the property, that
24 person, that third-party purchaser needs notice that
09:20:34 25 this action is ongoing and what my claim is even about.

09:20:38 1 THE COURT: Now, here's my question for you:
2 What is this action for?

3 MR. HASKIN: Well, this action was brought by
4 the plaintiff to --

09:20:44 5 THE COURT: No, no, no. But, I mean,
6 ultimately, the action is for money as a result of a
7 determination by the trial court in the case in front
8 of --

9 MR. HASKIN: Yeah.

09:20:54 10 THE COURT: What -- which judge was it again?

11 MR. HASKIN: Leavitt.

12 THE COURT: Judge Leavitt, there was an award
13 of attorney's fees and costs; right?

14 MR. HASKIN: And damages.

09:21:03 15 THE COURT: And damages; right?

16 MR. HASKIN: Correct.

17 THE COURT: But those are specifically what:
18 Monetary damages.

19 MR. HASKIN: Yes and no. And here's the
09:21:08 20 distinction. And it's an important one, your Honor.
21 Normally, when a creditor obtains a judgment against a
22 debtor, the debtor is the person who owns the property.
23 This case is different. So if in that example --

24 THE COURT: Haven't we agreed that there's no
09:21:22 25 ownership interest in the property by the limited

09:21:25 1 purpose association in this case?

2 MR. HASKIN: We haven't agreed.

3 THE COURT: Didn't I --

4 MR. HASKIN: Your Honor has made that
09:21:29 5 decision, but there's not an agreement.

6 THE COURT: Didn't I have -- I read -- I
7 actually read the entire transcript too from the
8 hearing. And I thought that -- let me see if I can
9 pull it here. And to be candid, counsel, I think we
09:21:42 10 have a really good record in this case.

11 MR. HASKIN: We do. I agree.

12 THE COURT: I don't mind saying that because I
13 went back and I read the transcript. It's in here
14 somewhere, but I thought there was a specific
09:21:51 15 acquiescence as it relates to the fact that the limited
16 purpose association in this case had no claim of
17 ownership interest to the house or unit at issue.

18 MR. HASKIN: It's not ownership interest. If
19 your -- if your Honor is using the term ownership, I'm
09:22:05 20 going to 100 percent concede. That's not what we as --
21 let me play out the hypothetical, your Honor, to a
22 conclusion and then -- and we have -- I will also
23 concede that we have an excellent record in this case.
24 And I thank your Honor for always allowing me to make
09:22:22 25 the arguments that I need to make.

09:22:24 1 But, again, the claim for the creditor in this
2 case is different than just a standard monetary claim
3 from a creditor. The judgment is against the
4 association. The association by definition of the
09:22:38 5 limited -- of the Common Interest Development Act under
6 116 and the provisions, the definition that apply to an
7 LPA as much as they apply to a homeowners association
8 say that a unit owner -- says that is an association,
9 whether it be a LPA or a unit owner association,
09:22:55 10 whatever, includes the units whether they're owned or
11 unowned. Our claim is against the units.

000023 12 THE COURT: But it's my recollection that
13 NRS 116.1201 specifically stands for the proposition
14 that a limited purpose association is not controlled by
09:23:12 15 the act.

16 MR. HASKIN: But that's not true. 1201 says
17 most of this act doesn't apply, but some does. That's
18 what 116.1201 does. That's exactly what it does.

19 THE COURT: And --

09:23:25 20 MR. HASKIN: And, in fact, 40, your Honor,
21 40 --

22 THE COURT: And just for the record, I thought
23 about it. Although this wasn't raised, but I think we
24 had a lot of discussion as to whether this was a
09:23:35 25 limited purpose association and all those wonderful

09:23:37 1 things. But at the end of the day, based upon the
2 determination by Judge Leavitt, I think estoppel would
3 clearly apply under those circumstances. So that's a
4 nonissue. That's what it is.

09:23:48 5 MR. HASKIN: But, your Honor, I'll give you
6 the perfect example. We cite in our brief, in our
7 opposition brief 116.4109 which requires plaintiffs in
8 this case to give notice of this action. Whether it's
9 against the association or against them individually,
09:24:02 10 they're required statutorily under 116.4109 to provide
11 a subsequent purchaser or would be purchaser with the
12 very notice that's contemplated in the lis pendens.

000024 13 Now, 1201, which your Honor just cited,
14 specifically includes 116.4109 within the provisions
09:24:20 15 that do apply to limited purpose association. That's
16 my point. Is you can't -- you can't have this
17 broad-brush stroke that 116 doesn't apply because it's
18 simply not the case. We're citing a provision 4109
19 that requires them to give notice as the provision
09:24:37 20 specifically included within Chapter 116 that applies
21 to limited purpose associations.

22 THE COURT: Mr. Foley brought up an issue in
23 his points and authorities. And I think the issue was
24 essentially this, he said, Look, Judge, if they were
09:24:50 25 going to file a lis pendens, they were required to file

09:24:52 1 their lis pendens at the time they filed their answer
2 in this case specifically as it relates to the statute.

3 And what's your position on that? Because the
4 statute does appear to be fairly clear. I don't have
09:25:07 5 it right in front of me, but I did read it. And it
6 appeared the language "shall" is included in that
7 statute. So what impact does that have? Does that
8 preclude you from filing a lis pendens at this point?

9 MR. HASKIN: Well, your Honor, I searched up
09:25:18 10 and down Nevada case law and states that have similar
11 statutes to that, and California is not one of them.
12 California is a very different statutory scheme --

13 THE COURT: Right.

14 MR. HASKIN: -- when it comes to lis pendens
09:25:29 15 as does Arizona and Utah. And there's simply nothing
16 on the point. The court -- the statute does say shall
17 file. My interpretation of the statute, your Honor, is
18 that in the way the statute reads it contemplates that
19 we would have been the plaintiff in the case and not
09:25:44 20 the defendant. But --

21 THE COURT: But it does say -- I mean, I don't
22 have the statute in front me, but it's my recollection
23 that it actually states in the alternative that the
24 plaintiff when he files this complaint, if they're
09:25:58 25 seeking a lis pendens and/or the defendant in their

09:26:01 1 answer, they have to file their lis pendens; right?

2 MR. HASKIN: I think it says shall file the
3 lis pendens.

4 THE COURT: Yeah. But, I mean, shall for
09:26:06 5 both. But it contemplates the plaintiff filing the
6 complaint, filing their lis pendens contemporaneously,
7 and the defendant filing an answer that's seeking a
8 counterclaim based upon maybe title issues or the like
9 that would be controlled by the statute to file their
09:26:21 10 lis pendens at that time.

11 MR. HASKIN: Yes, your Honor. My -- again, I
12 searched case law for what shall. I mean, does it have
13 to be filed at the exact same time? Ten days? 15
14 days? My reading was that it was a statutory provision
09:26:35 15 that favors the plaintiff or the person recording the
16 lis pendens as having the right to do so.

17 THE COURT: What was that statute again?

18 MR. FOLEY: It's 14.010(1).

19 THE COURT: Right. Right in front of me.

09:26:50 20 MR. HASKIN: Yeah.

21 THE COURT: And it provides as follows:

22 In an action for the foreclosure of a
23 mortgage upon real property or affecting title
24 or possession of real property, the plaintiff
09:27:08 25 at the time of filing the complaint and the

09:27:10 1 defendant at the time of filing his or her
2 answer, if affirmative relief is claimed in the
3 answer, shall record with the recorder of the
4 county in which the property or some part
09:27:24 5 thereof is situated a notice of pendency of
6 action.

7 MR. HASKIN: And, your Honor, again, that's --
8 I guess, that's my point. We weren't the plaintiff
9 filing an action for foreclosure. We could have
09:27:34 10 brought a counterclaim for foreclosure but did not do
11 so. We choose -- we chose in the alternative to pursue
12 nonjudicial foreclosure in the event that we prevailed.
13 But the second part of that reading says that if you're
14 filing a counterclaim that seeks affirmative relief.
09:27:51 15 We didn't file a claim that sought affirmative relief.
16 We simply filed an answer in this case.

17 THE COURT: Well, that raises another issue.
18 How do I address that if you failed to file a,
19 potentially, what would be a compulsory counterclaim?
09:28:03 20 How do I deal with that?

21 MR. HASKIN: Your Honor, one, I don't think
22 the issue has been presented to you. The second thing
23 is I don't believe it is a compulsory counterclaim. I
24 believe --

09:28:12 25 THE COURT: But --

09:28:13 1 MR. HASKIN: We could elect to pursue
2 nonjudicial foreclosure if we chose to do so.

3 THE COURT: Yeah. But I think -- I wouldn't
4 paint with a broad brush, and the issue hasn't been
09:28:21 5 presented to me. I mean, Mr. Foley didn't bring up
6 whether it was permissive or compulsory counterclaim,
7 but he did bring up the fact that the lis pendens was
8 filed contrary to the mandate of NRS 14.010.1.

9 MR. HASKIN: He did raise the issue, your
09:28:36 10 Honor. I simply disagreed for the reasons I've stated
11 on the record.

12 THE COURT: What about this issue here? I
13 mean, I'm taking -- I'm looking. And this is straight
14 from the Waddell case versus HTO Inc. And it appears
09:28:54 15 to me -- where is at, the decision? I just want to
16 make sure. I think it's on page 751.

17 MR. HASKIN: Um-hum.

18 THE COURT: And this is language that's
19 contained in the case that the Nevada Supreme Court
09:29:09 20 relied upon. They looked at some of the California
21 cases. And they said:

22 Stating an action for money only, even if
23 it relates in some way to specific real
24 property, would not support a lis pendens.

09:29:21 25 Then they went further.

09:29:24 1 Therefore, under Nevada law, the filing of
2 a notice of pendency is limited to actions
3 involving the foreclosure of a mortgage on real
4 property or affecting title or possession of
09:29:35 5 real property.

6 MR. HASKIN: And, your Honor, again, we
7 draw -- we draw your Honor's attention to after the
8 "or" in that sentence. Affecting title to the
9 property. Your Honor has read it as ownership. We
09:29:46 10 concede that this isn't an ownership case. We're not
11 claiming ownership. We're claiming that our action
12 necessarily affects title to that property.

13 THE COURT: Now, tell me. I have this one
14 more question for you --

09:29:57 15 MR. HASKIN: Sure.

16 THE COURT: -- on that. Potentially, filing
17 any lien on property could affect title; right?

18 MR. HASKIN: Your Honor, again, you're right.
19 Except we are not a normal creditor where my --
09:30:12 20 where -- and that's the distinction. Where my claim
21 runs with the owner of the property. And that's the
22 distinction that needs to be made. Meaning, if I'm a
23 normal creditor, my claim would be against Marjorie
24 Boulden as an individual.

09:30:26 25 And when she sold the property, well, Okay.

09:30:28 1 Now, I can't reach the property, but I can garnish
2 wages. I can levy bank accounts. I have other
3 remedies available to me. It's different there.

4 Your Honor, my claim is against the
09:30:36 5 association, and by definition through 116, the
6 association includes all units within the association
7 unowned or owned.

8 And I understand your Honor's disagreement
9 with that argument. Nevertheless, that is our
09:30:48 10 argument. I'm not a normal creditor that I can seek
11 Marjorie Boulden once she sells that property. My
12 claim relates directly to the title of that property
13 and only the title to that property. Nothing else.

14 THE COURT: I understand.

09:31:05 15 MR. HASKIN: Okay.

16 THE COURT: Anything else, sir?

17 MR. HASKIN: Nothing else, your Honor.

18 THE COURT: Okay.

19 MR. FOLEY: And the judgment for attorneys
09:31:10 20 fees doesn't say anything about any property. Which it
21 could have. They could have gone back and gotten it
22 amended. This is just a confused -- intentionally
23 confused argument. It's a money judgment period.
24 Nothing more. There's no attachment to any property.

09:31:30 25 They recorded it in such a way that they just

09:31:33 1 added a parcel number unilaterally so that attaches to
2 my client's property.

3 MR. HASKIN: Your Honor, to that end, if I
4 could.

09:31:41 5 MR. FOLEY: All they are seeking to do is
6 collect on a money judgment here. And your Honor has
7 properly pointed out from the Waddell court that this
8 is improper. Does it affect the title? Sure. That's
9 why we are here. That's why we filed the suit. But
09:31:54 10 Waddell says that's not what a lis pendens is.

11 MR. HASKIN: Your Honor, if I could address
12 that really quick. Let's pretend -- let's pretend for
13 the sake of the argument that we were not a limited
14 purpose association and all the confusion in this case
09:32:05 15 was withdrawn, and we were a full-blown units owners
16 association. There would be no argument in that
17 instance that 116.3117 applies which allows us,
18 specifically permits us the right to collect against
19 the units in this case.

09:32:20 20 If that were the case, it would specifically
21 permit us the right to lien and foreclose on each and
22 every unit in the association. And our contention is
23 that we still have that right regardless of the fact
24 that we're an LPA.

09:32:35 25 But if we use that hypothetical, would there

09:32:37 1 be a question in that hypothetical that our claim
2 didn't relate to the title of the property? Would I be
3 required as a creditor to go back and amend the
4 judgment? Of course not. Because as a creditor, I
09:32:47 5 have the right to pursue whatever collection remedies
6 are available to me, including foreclosure of units
7 that are included within the association by definition.
8 And if I were not an LPA, and the confusion were
9 removed from this case, and there was a specific
09:33:02 10 statute telling me I had that right, I would have the
11 right to record a lis pendens. There would be no
12 question about it because my claim necessarily affects
13 title to the property.

000032 14 The fact that an I'm an LPA, your Honor, has
09:33:16 15 understandably added confusion to this case. And I
16 have made the argument that I still have those same
17 rights pursuant to the logic that I've included in our
18 briefings. And your Honor is absolutely correct. We
19 have heard argument on this. The record is complete,
09:33:30 20 and the record is full.

21 Nevertheless, in that instance, I would have
22 the absolute right to record a lis pendens. There
23 would be no question about it. My argument today, your
24 Honor, is I still have that same right by virtue of my
09:33:42 25 argument that we're afforded that same remedy as a

09:33:45 1 creditor by virtue of the other avenues we've explained
2 in our briefings.

3 MR. FOLEY: Hold on. 116.1201 says the
4 Chapter 10 is inapplicable.

09:33:54 5 MR. HASKIN: It doesn't say that.

6 MR. FOLEY: Except for, and it goes through a
7 number of exceptions, but --

8 THE COURT: One at a time.

9 MR. FOLEY: 3117 is inapplicable. So what
09:34:05 10 counsel's argument was was if it was applicable, I
11 could do all these things. But since the statute says
12 it's inapplicable, I want to kind of think about it a
13 different way, and I want to review things differently
14 and do something that would give me the same rights as
09:34:20 15 3117. Unfortunately, the statute says it's
16 inapplicable, and I think that argument just is
17 entirely supportive of my position.

18 THE COURT: Is there anything else I need to
19 know?

09:34:33 20 MR. FOLEY: No, your Honor.

21 MR. HASKIN: No, your Honor.

22 THE COURT: Okay. Let me see here. I mean,
23 hypothetically, you might be barred from filing a lis
24 pendens at this late date based upon the mandate under
09:34:49 25 the statute which says you must file it

09:34:51 1 contemporaneously with the answer. Let's not overlook
2 that one important procedural detail; right?

3 MR. HASKIN: Only if I present an affirmative
4 claim, which I did not.

09:35:00 5 THE COURT: Yeah. I understand.

6 Anyway, regarding -- let me see. What is this
7 motion? Regarding plaintiff's motion to cancel the two
8 lis pendens and motion to hold the defendants and/or
9 their counsel in contempt of court on an order

09:35:14 10 shortening time, I'm going to grant the motion to
11 cancels the two lis pendens.

12 Regarding the contempt, I'm not going to grant
13 that. I'm not going to hold you in contempt, sir.
14 But, however, no more lis pendens. Please.

09:35:27 15 MR. HASKIN: Understood, your Honor.

16 THE COURT: Understand that?

17 MR. HASKIN: Yeah.

18 THE COURT: And I want to make sure that,

19 Mr. Foley, when you prepare the order regarding the
09:35:35 20 cancellation of the two lis pendens, put in language
21 that would include any sort of filing that would impact
22 title, cloud to title, or anything that abstracts, I
23 mean, I -- you can prepare a laundry list of things for
24 me to consider in that regard.

09:35:56 25 Because at the end of the day, my decision is

09:36:00 1 essentially this: No abstracts, no lis pendens, no
2 liens, none of those issues at this point. And because
3 the bottom line is either I'm right or wrong. I
4 thoroughly -- I guess, we thoroughly vetted the issues.
09:36:18 5 And I'm comfortable with the decision I made. That's
6 probably the best way I can say it.

7 MR. HASKIN: Thank you, your Honor.

8 MR. FOLEY: Couple of things, your Honor. If
9 I may request for attorney's fees on this. I think --

09:36:28 10 THE COURT: You know what I'm going to do.
11 I'm going to -- I'm not going to consider. We have one
12 more motion; right? Don't we?

13 MR. HASKIN: Two more.

14 THE COURT: Two more.

09:36:36 15 MR. HASKIN: Your Honor, we have a motion for
16 reconsideration being heard the same day as a motion
17 for damages, which it's really their motion for
18 attorney's fees.

19 THE COURT: Is that pending?

09:36:43 20 MR. HASKIN: Yeah. It's on June 29.

21 THE COURT: That's what I mean. It's coming
22 up.

23 MR. HASKIN: Yeah.

09:36:47 24 THE COURT: I want to decide all those -- I
25 want to decide that --

09:36:48 1 MR. FOLEY: Okay.

2 THE COURT: -- along with the motion for

3 attorney's fees.

4 MR. FOLEY: All right. I'll put that in the

09:36:53 5 order that --

6 THE COURT: Yes. I haven't decided that right

7 now.

8 MR. FOLEY: And then the second thing, I know

9 counsel has been saying he's traveling out of state and

09:37:01 10 may be out of the --

11 MR. HASKIN: Out of the country, yeah.

12 MR. FOLEY: I don't know what your travel

13 plans are, but I'd like to get this order done so that

14 we can get the lis pendens canceled and not have to

09:37:10 15 wait for counsel to get back. I don't know what

16 your --

17 MR. HASKIN: No, I understand. I leave on the

18 14th.

19 THE COURT: Okay.

09:37:15 20 MR. FOLEY: Fine.

21 MR. HASKIN: If we could get an order done

22 this week, I'll certainly release the lis pendens.

23 MR. FOLEY: Done.

24 THE COURT: All right. Anything else?

09:37:21 25 MR. HASKIN: No. Thank you, your Honor.

09:37:22 1

MR. FOLEY: Thank you.

2

THE COURT: Enjoy your day.

3

MR. HASKIN: Thank you, your Honor.

4

MR. FOLEY: You too.

09:37:30 5

THE COURT: All right.

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(Proceedings were concluded.)

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

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/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

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MR. FOLEY: [21] 3/10 3/17 3/19 3/23 4/5 14/17 18/18 19/4 21/2 21/5 21/8 21/19 23/7 23/25 24/3 24/7 24/11 24/19 24/22 24/25 25/3 MR. HASKIN: [59] THE COURT: [65] / /s [1] 26/18 1 10 [1] 21/4 100 percent [1] 10/20 116 [4] 11/6 12/17 12/20 18/5 116.1201 [3] 11/13 11/18 21/3 116.3117 [1] 19/17 116.4109 [3] 12/7 12/10 12/14 12 [1] 5/7 1201 [2] 11/16 12/13 14.010 [1] 14/18 14.010.1 [1] 16/8 14th [1] 24/18 15 [1] 14/13 2 2017 [2] 1/22 3/1 2070 [1] 2/5 2128 [1] 2/5 270 [1] 2/12 29 [1] 23/20 3 3117 [2] 21/9 21/15 384-2070 [1] 2/5 384-2128 [1] 2/5 4 40 [2] 11/20 11/21 4109 [1] 12/18 5 541 [2] 1/25 26/18 6 626 [1] 2/4	7 702 [4] 2/5 2/5 2/13 2/14 7450 [1] 2/12 751 [1] 16/16 8 836-9800 [1] 2/13 836-9802 [1] 2/14 89101 [1] 2/4 89113 [1] 2/13 8th [1] 2/4 9 9800 [1] 2/13 9802 [1] 2/14 9:13 [1] 3/2 : :SS [1] 26/2 A A-16-747800-C [1] 1/1 A.M [1] 3/2 ABILITY [1] 26/11 about [9] 4/22 8/8 8/25 11/23 16/12 18/20 20/12 20/23 21/12 absolute [1] 20/22 absolutely [1] 20/18 abstracts [2] 22/22 23/1 accounts [1] 18/2 ACCURATE [1] 26/11 acquiescence [1] 10/15 act [3] 11/5 11/15 11/17 action [18] 5/10 5/17 7/3 7/7 7/8 7/15 7/17 8/4 8/25 9/2 9/3 9/6 12/8 14/22 15/6 15/9 16/22 17/11 actions [1] 17/2 actually [3] 7/7 10/7 13/23 add [1] 4/6 added [2] 19/1 20/15 address [3] 6/13 15/18 19/11 adjudged [1] 5/8 affect [5] 8/5 8/7	8/9 17/17 19/8 affecting [4] 8/14 14/23 17/4 17/8 affects [3] 7/10 17/12 20/12 affirmative [4] 15/2 15/14 15/15 22/3 afforded [1] 20/25 after [1] 17/7 again [9] 6/25 8/19 9/10 11/1 14/11 14/17 15/7 17/6 17/18 against [13] 5/11 6/15 6/18 6/22 6/22 9/21 11/3 11/11 12/9 12/9 17/23 18/4 19/18 agree [5] 4/9 7/20 7/21 8/5 10/11 agreed [2] 9/24 10/2 agreement [1] 10/5 all [15] 3/6 3/13 3/19 4/20 7/20 11/25 18/6 19/5 19/14 21/11 23/24 24/4 24/24 25/5 26/5 allowing [1] 10/24 allows [1] 19/17 along [1] 24/2 also [3] 4/10 5/25 10/22 alternative [2] 13/23 15/11 although [2] 4/15 11/23 always [1] 10/24 amend [1] 20/3 amended [1] 18/22 and/or [3] 3/16 13/25 22/8 another [5] 7/13 7/14 7/14 8/16 15/17 answer [8] 5/2 13/1 14/1 14/7 15/2 15/3 15/16 22/1 any [8] 3/24 4/1 4/11 5/10 17/17 18/20 18/24 22/21 anything [6] 4/6 18/16 18/20 21/18 22/22 24/24	Anyway [1] 22/6 appealing [1] 6/20 appear [1] 13/4 appearances [2] 2/1 3/21 appeared [2] 6/2 13/6 appears [5] 4/24 5/3 7/22 8/9 16/14 applicable [1] 21/10 application [2] 5/20 6/1 applies [2] 12/20 19/17 apply [6] 11/6 11/7 11/17 12/3 12/15 12/17 appropriate [2] 6/3 8/1 are [11] 5/9 7/15 7/15 8/6 9/17 17/19 19/5 19/9 20/6 20/7 24/13 argument [11] 18/9 18/10 18/23 19/13 19/16 20/16 20/19 20/23 20/25 21/10 21/16 arguments [1] 10/25 Arizona [1] 13/15 ARROYO [1] 2/12 as [28] association [18] 10/1 10/16 11/4 11/4 11/7 11/8 11/9 11/14 11/25 12/9 12/15 18/5 18/6 18/6 19/14 19/16 19/22 20/7 associations [1] 12/21 at [19] 5/7 5/21 5/24 10/17 12/1 13/1 13/8 14/10 14/13 14/25 15/1 16/15 16/20 21/8 21/24 22/25 23/2 26/6 26/8 attaches [1] 19/1 attachment [1] 18/24 attention [1] 17/7 attorney's [4] 9/13 23/9 23/18 24/3 attorneys [1] 18/19	authorities [1] 12/23 available [2] 18/3 20/6 avenues [1] 21/1 award [1] 9/12 B back [6] 7/6 8/21 10/13 18/21 20/3 24/15 bank [1] 18/2 barred [1] 21/23 based [4] 5/11 12/1 14/8 21/24 basis [1] 8/1 be [21] 3/25 5/5 6/3 7/13 7/25 10/9 11/9 12/11 13/4 14/9 14/13 15/19 17/22 17/23 19/16 20/1 20/2 20/11 20/23 21/23 24/10 because [10] 4/24 5/21 8/19 10/12 12/17 13/3 20/4 20/12 22/25 23/2 been [7] 3/21 5/1 6/14 13/19 15/22 16/4 24/9 BEFORE [2] 1/19 26/6 BEFORE-ENTITLED [1] 26/6 behalf [2] 3/10 3/11 being [2] 4/13 23/16 believe [3] 6/20 15/23 15/24 best [2] 23/6 26/11 beyond [1] 4/7 blown [1] 19/15 both [2] 4/2 14/5 bottom [1] 23/3 BOULDEN [8] 1/9 3/7 6/15 7/1 7/8 8/22 17/24 18/11 brief [2] 12/6 12/7 briefed [2] 3/22 4/10 briefings [2] 20/18 21/2 bring [2] 16/5 16/7 broad [2] 12/17 16/4 broad-brush [1] 12/17 broader [2] 8/13
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Peggy Isom, CCR 541, RMR

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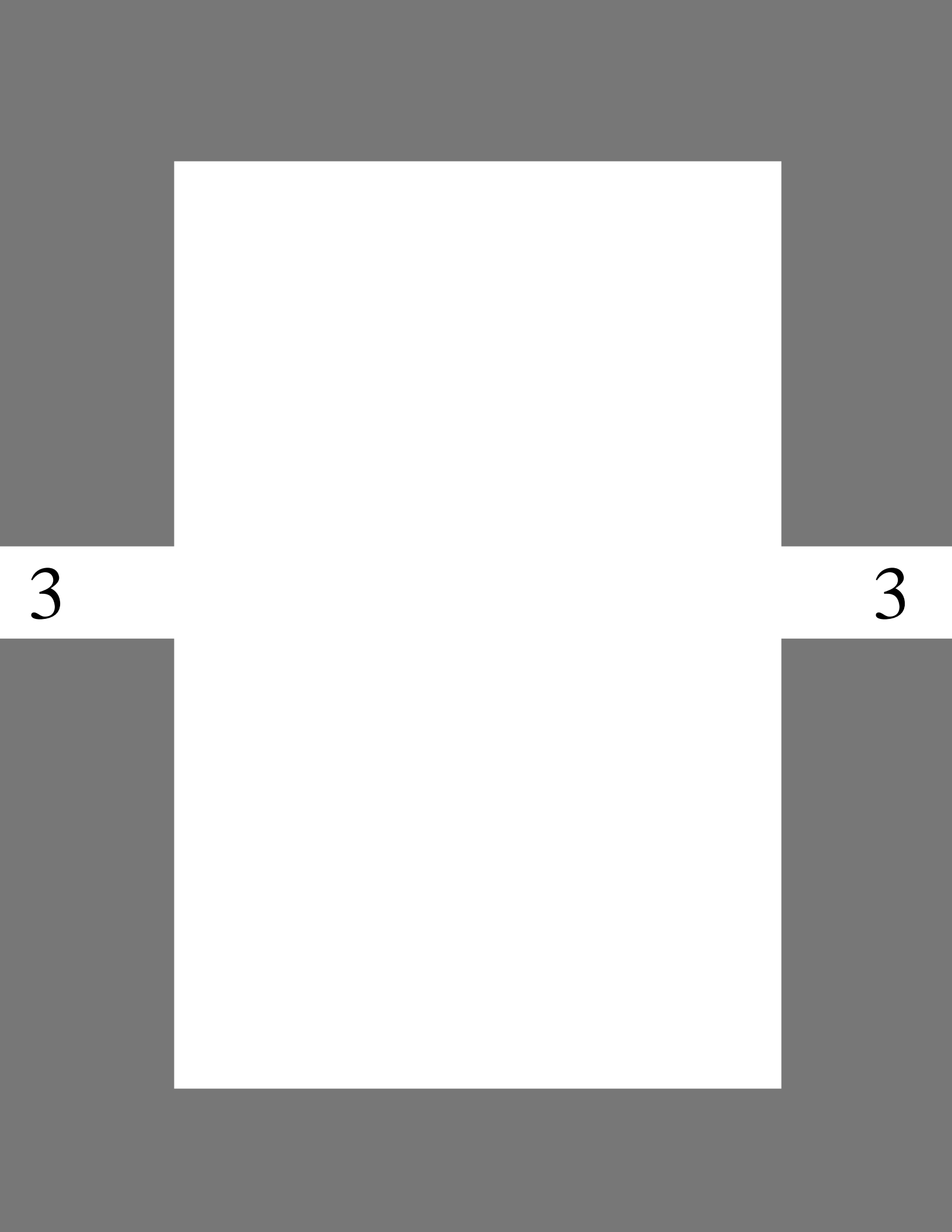
Peggy Isom, CCR 541, RMR

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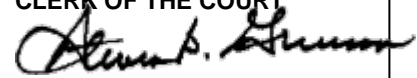
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NOE
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

v.)

TRUDI LEE LYTLE AND JOHN ALLEN)
LYTLE, AS TRUSTEES OF THE LYTLE)
TRUST, DOES I through X; and ROE)
CORPORATIONS I through X,)
Defendants.)

Case No. A-16-747800-C
Dept. No. XVI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that the Clerk of the Court entered the attached Order Granting Plaintiffs' Motion to Cancel Lis Pendens and Order Denying Motion to Hold Defendants' and/or Their Counsel in Contempt of Court in the above-entitled manner on June 23, 2017. A copy of said Order Granting Plaintiffs' Motion to Cancel Lis Pendens and Order Denying Motion to Hold Defendants' and/or Their Counsel in Contempt of Court is attached hereto

///

///

1 as Exhibit “A”.

2

Respectfully Submitted,

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FOLEY & OAKES, PC

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5

/s/Daniel T. Foley

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Daniel T. Foley, Esq.

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Nevada Bar No. 1078

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626 So. 8th Street

9

Las Vegas, Nevada 89101

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Attorney for Plaintiffs

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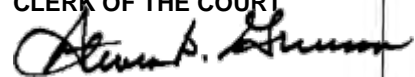
FOLEY²⁸
&
OAKES

Page 3 of 3

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EXHIBIT “A”

EXHIBIT “A”



ORDR

DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

v.)

TRUDI LEE LYTLE AND JOHN ALLEN)
LYTLE, AS TRUSTEES OF THE LYTLE)
TRUST, DOES I through X; and ROE)
CORPORATIONS I through X,)
Defendants.)

Case No. A-16-747800-C
Dept. No. XVI

Date of Hearing: June 6, 2017
Time of Hearing: 9:00 a.m.

**ORDER GRANTING PLAINTIFFS' MOTION TO CANCEL *LIS PENDENS* AND
ORDER DENYING MOTION TO HOLD DEFENDANTS AND/OR THEIR COUNSEL IN
CONTEMPT OF COURT**

Plaintiffs' Motion To Cancel *Lis Pendens* and Motion to Hold Defendants and/or Their
Counsel in Contempt of Court having come on for hearing before this Court on the 6th day of June
2017, Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T.
Foley, Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust,
appearing with their counsel, Richard Haskin, Esq. The Court having reviewed the Plaintiffs'

1 Motions, the Defendants' Opposition and the Plaintiffs' Reply and all documents attached thereto
2 or otherwise filed in this case, and good cause appearing therefore, makes these Findings of Fact:

3 **FINDINGS OF FACT**

4 1. Mrs. Boulden is the owner of that residential property known as parcel number
5 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden
6 Property").

7
8 2. Mr. and Mrs. Lamothe are the owners of that certain residential property known as
9 parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV 89117 (the
10 "Lamothe Property").

11 3. The Boulden Property and the Lamothe Property are located in the Rosemere
12 Court subdivision and are subject to the CC&Rs recorded January 4, 1994.

13 4. In 2009, the Lytles sued the Rosemere Home Owners Association in the Eighth
14 Judicial District Court, case # A-09-593497-C (the "Rosemere Litigation"). Mrs. Boulden and
15 the Lamothes were never parties to the Rosemere Litigation.

16
17 5. The Lytles obtained a money judgment against the Rosemere Home Owners
18 Association for \$361,238.59 (the "Attorneys' Fees Judgment").

19 6. After obtaining the Attorneys' Fees Judgment, on August 16, 2016, the Lytles
20 recorded with the Clark County Recorder's office three different Abstracts of Judgement against
21 the Plaintiffs' properties (the "3 Abstracts of Judgment").

22 7. Mrs. Boulden lost a sale of her house due to the Lytles' recording of the Abstracts
23 of Judgment.

24 8. This Court, on April 27, 2017, entered its Order which included the following
25 Orders:
26

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
2 **DECREED** that the Defendants improperly clouded the title to the Boulden
3 Property.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
5 **DECREED** that the Defendants improperly clouded the title to the Lamothe
6 Property.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
8 **DECREED** that the Defendants slandered the title to the Boulden Property.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
10 **DECREED** that the First Abstract of Judgment recorded as Instrument
11 #20160818-0001198 in the Clark County Recorder's Office is hereby expunged
12 and stricken from the records of the Clark County Recorder's Office.

13 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
14 **DECREED** that the Second Abstract of Judgment recorded as Instrument
15 #20160902-0002684 in the Clark County Recorder's Office is hereby expunged
16 and stricken from the records of the Clark County Recorder's Office.

17 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
18 **DECREED** that the Third Abstract of Judgment recorded as Instrument
19 #20160902-0002690 in the Clark County Recorder's Office is hereby expunged
20 and stricken from the records of the Clark County Recorder's Office.

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
22 **DECREED** that the Defendants are permanently enjoined from recording and
23 enforcing the Final Judgment from the Rosemere LPA Litigation or any abstracts
24 related thereto against the Boulden Property or the Lamothe Property.

25 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND**
26 **DECREED** that the Defendants are permanently enjoined from taking any action
27 in the future against the Plaintiffs or their properties based upon the Rosemere
28 LPA Litigation.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND
DECREED that the Defendants are hereby ordered to release the First Abstract of
Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment
recorded with the Clark County Recorder within ten (10) days after the date of
Notice of Entry of this Order.

9. Prior to complying with the Court's Order that they release the Abstracts of
Judgment, the Lytles recorded a *lis pendens* against the Lamothes' Property as Instrument
#20170509-0002188 in the Clark County Recorder's Office (the "*Lamothe Lis Pendens*").

1 10. The Lytles recorded the Lamothe *Lis Pendens* on May 9, 2017.

2 11. On May 10, 2017 at 12:02:06 p.m., the Lytles recorded a *lis pendens* against the
3 Boulden Property as Instrument #20170510-0002238 in the Clark County Recorder's Office (the
4 "Boulden *Lis Pendens*").

5 12. The Lytles released the 3 Abstracts of Judgment at 12:02:06 on May 10, 2017.

6 13. The Lamothe *Lis Pendens* is an improper cloud on the Lamothe Property.

7 14. The Boulden *Lis Pendens* is an improper cloud on the Boulden Property.

8 15. The Lytles' recording of the Lamothe *Lis Pendens* and the Boulden *Lis Pendens*
9 were improper and in violation of this Court's April 27, 2017 Order enjoining the Lytles from
10 "taking any action in the future against the Plaintiffs or their properties based upon the Rosemere
11 LPA Litigation".

12 16. The Lytles and their counsel by recording the Lamothe *Lis Pendens* and the
13 Boulden *Lis Pendens* were not in contempt of Court.

14
15 **ORDER**

16
17 Based upon the Findings of Fact and good cause appearing therefore,

18 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion
19 to Cancel Two *Lis Pendens* is GRANTED.

20 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that
21 Plaintiffs' Motion to Hold the Defendants and/or their Counsel in Contempt of Court is DENIED.

22 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that by
23 recording the Boulden *Lis Pendens* the Defendants improperly clouded the title to the Boulden
24 Property.

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the by
2 recording the Lamothe *Lis Pendens* Defendants improperly clouded the title to the Lamothe
3 Property.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
5 Lamothe *Lis Pendens* recorded as Instrument #20170509-0002188 in the Clark County
6 Recorder's Office is hereby expunged and stricken from the records of the Clark County
7 Recorder's Office.
8

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
10 Boulden *Lis Pendens* recorded as Instrument #20170510-0002238 in the Clark County Recorder's
11 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

12 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
13 Defendants are permanently enjoined from recording and enforcing the Attorneys' Fee
14 Judgment from the Rosemere Litigation or any abstracts related thereto against the Boulden
15 Property or the Lamothe Property.
16

17 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
18 Defendants are permanently enjoined from taking any action in the future against the Plaintiffs,
19 the Lamothe Property, or the Boulden Property based upon the Rosemere Litigation or the
20 Attorneys' Fee Judgment, including but not limited to, filing or recording any court awards,
21 judgments, court orders, liens, abstracts, *lis pendens*, encumbrances, clouding documents,
22 slanderous documents or any other documents or instruments.
23

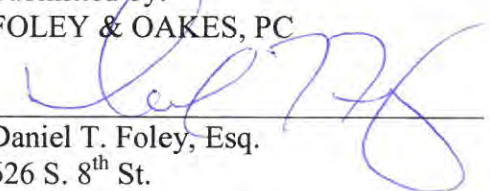
24 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
25 Defendants are hereby ordered to record releases with the Clark County Recorder's Office of the
26 Lamothe *Lis Pendens* and the Boulden *Lis Pendens* within three (3) days after the date of Notice
27 of Entry of this Order.

1 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that
2 Plaintiffs' request for an award of attorneys' fees and costs for having to bring the Motion to
3 Cancel the *Lis Pendens* will be considered by this Court on June 29, 2017 at the time of the
4 hearing of Plaintiffs' Motion for Attorneys' Fees and Costs.

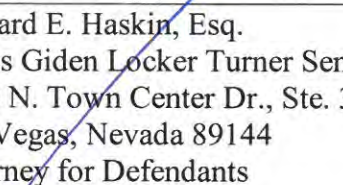
5 DATED this 20th day of June 2017

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DISTRICT COURT JUDGE
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10 Submitted by:
11 FOLEY & OAKES, PC

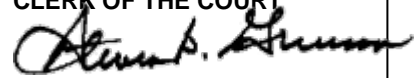
12 
Daniel T. Foley, Esq.
13 626 S. 8th St.
Las Vegas, Nevada 89101
Attorney for Plaintiffs

14 Approved as to form:

15
16 
Richard E. Haskin, Esq.
17 Gibbs Giden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
18 Las Vegas, Nevada 89144
Attorney for Defendants
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22
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26
27

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ACOM
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th St.
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

Case No. A-16-747800-C

Dept. No. XVI

v.)

TRUDI LEE LYTLE AND JOHN ALLEN)
LYTLE, AS TRUSTEES OF THE LYTLE)
TRUST, DOES I through X; and ROE)
CORPORATIONS I through X,)
Defendants.)

SECOND AMENDED COMPLAINT

COMES NOW Marjorie Boulden as Trustee of the Marjorie Boulden Trust (Mrs. Boulden”), Linda Lamothe and Jacques Lamothe as Trustees of the Jacques & Linda Lamothe Living Trust (“Mr. and Mrs. Lamothe”), by and through their attorneys Foley & Oakes, PC, as and for a Complaint against Trudi Lee Lytle, and John Lytle, as Trustees of the Lytle Trust (collectively the “Lyttles”), DOES I through X; and ROE CORPORATIONS I through X and allege as follows:

1 1. Mrs. Boulden is the owner of the residential property known as parcel number
2 163-03-313-008 also known as 1960 Rosemere Ct., Las Vegas, NV 89117 (the “Boulden
3 Property”)

4 2. Mr. and Mrs. Lamothe are the owners of the residential property in Clark County
5 Nevada known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
6 NV 89117 the (“Lamothe Property”).

7 3. Mr. and Mrs. Lytle are residents of Clark County, and are co-trustees of the Lytle
8 Trust.

9 4. The true names and capacities, whether individual, corporate, associate, or
10 otherwise, of the Defendants herein designated as DOES I through V individuals and/or ROE V
11 through X Corporations, inclusive, are unknown to Plaintiff, who therefore sues said Defendants
12 by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of
13 the Defendants designated herein as DOES I through V individuals and/or ROE V through X
14 Corporations is responsible in some manner for the events and happenings herein referred to, or
15 claim an interest in said property. Plaintiff will seek leave to amend this Complaint to show the
16 true names and capacities of said Defendants DOES I through V individuals and/or ROE V
17 through X Corporations when the same have been ascertained by Plaintiff, together with
18 appropriate charges and allegations and to join such Defendants in this action.

19 5. Plaintiff is informed, believes, and thereon alleges, that at all times relevant,
20 Defendants, and each of them, including those fictitiously named DOES or ROE, were the agents
21 or sureties of the other and in doing the things alleged herein, were acting within the course and
22 scope of such agency and with the consent and permission of the other co-defendants and/or are
23 liable under the doctrine of respondeat superior. Accordingly, Defendants are liable to Plaintiff
24 for each other’s actions as set forth in this Second Amended Complaint. For ease of reference,
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1 the named Defendants may be referred to collectively in the singular as "Defendant," and
2 reference to one shall constitute reference to the others as well.

3 6. The Boulden Property and the Lamothe Property are located in the Rosemere
4 Court subdivision and are subject to the CC&R's recorded January 4, 1994 (the "CC&Rs").

5 7. The CC&Rs provide in paragraph 21 that a property owners committee shall be
6 established by all owners of lots within the subdivision to determine the landscaping on the four
7 exterior wall planters and the entrance way planters, and to determine the method and cost of
8 watering the planters.

9 8. A non-profit corporation, the Rosemere Estates Property Owners Association,
10 was formed in 1997 in order to open a bank account to handle the owners committee's funds for
11 the landscaping described above. The corporate charter of the Rosemere Estates Property
12 Owners Association was revoked by the Nevada Secretary of State's office in 2015.

13 9. The CC&Rs provided in paragraph 24 that in order to enforce the CC&Rs any
14 appropriate judicial proceeding in law or in equity could be used by any lot owner suing directly
15 any other lot owner or owners for any violation of the CC&Rs.

16 10. In 2009, the Lytles filed suit against the Rosemere Estates Property Owners
17 Association directly in case # A09-593497-C (the "Rosemere Litigation").

18 11. A number of lot owners within the Rosemere Subdivision had attempted to amend
19 the CC&R's. The Lytles and the Plaintiffs did not vote in favor of amending the CC&Rs.

20 12. The Lytles did not name the Plaintiffs or any other lot owners as defendants in the
21 Rosemere Litigation.

22 13. On or about July 29, 2016 the Lytles obtained a Judgment in their favor against
23 the Rosemere Estates Property Owners Association in the amount of \$361,238.59 (the
24 "Rosemere Judgment").

1 14. Thereafter, in August and September of 2016, the Lytles recorded with the Clark
2 County Recorder's office three different abstracts of the Rosemere Judgement against the
3 Rosemere Estates Property Owners Association specifically listing the parcel numbers of the
4 Boulden Property and the Lamothe Property as properties to which the Rosemere Judgment was
5 to attach (the "Abstracts of Judgment").

6 15. When the Lytles recorded the Abstracts of Judgment, the Lytles specifically
7 included the parcel numbers of the Boulden Property and the Lamothe Property even though
8 Plaintiffs were not parties to the Rosemere Litigation from which the Rosemere Judgment arose.

9 16. The Plaintiffs have no legal duty to pay the Rosemere Judgment and advised the
10 Lytles of this fact.

11 17. The Lytles knew or should have known that the Plaintiffs did not have a legal
12 duty to pay the Rosemere Judgment.

13 18. The Abstracts of Judgment were wrongfully recorded against the Boulden
14 Property and the Lamothe Property and the Lytles knew or should have known the Abstracts of
15 Judgment were wrongfully recorded.

16 19. A Purchase and Sale Agreement to purchase the Boulden Property was executed
17 by a third party buyer and Mrs. Boulden and deposited into the escrow (the "PSA").

18 20. The buyer under the PSA terminated Escrow because of the recorded Abstracts of
19 Judgment.

20 21. In May 2017, the Lytles recorded two *lis pendens* against the Plaintiffs' property.

21 22. On June 15, 2017, Mr. Haskin, counsel for the Lytles, sent an email to Mr. Foley,
22 counsel for the Plaintiffs, enclosing a different judgment the Lytles obtained against the
23 Rosemere Estates Property Owners Association in the amount of \$274,608.28, in case # 10-
24 631355-C (the "Rosemere II Litigation"), a different case from the Rosemere Litigation (the
25 "Rosemere II Judgment").

1 23. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
2 have notice of the same.

3 24. In his June 15, 2017 email, Mr. Haskin stated “the Lytle Trust more recently
4 obtained another judgment against the Association in another case. The Lytle Trust was awarded
5 its attorneys’ fees. A copy of that award is attached hereto. We trust your clients will honor
6 their obligation to disclose all judgments and litigation to any buyer.”
7

8 **FIRST CAUSE OF ACTION**
9 **(Slander of Title, Mrs. Boulden)**

10 25. Plaintiffs repeat and re-allege each and every allegation set forth above.

11 26. The Lytles’ recording of the Abstracts of Judgment were false and malicious
12 communications that disparaged Mrs. Boulden’s title to the Boulden Property.

13 27. As a proximate result of the Lytles’ actions, Mrs. Boulden has been damaged due
14 to a third-party buyer cancelling escrow due to the existence of the recorded Abstracts of
15 Judgment.

16 28. As a proximate result of the Lytles’ actions, the vendibility of the Boulden
17 Property was impaired.

18 29. As a proximate result of Lytles’ actions Mrs. Boulden is entitled to special
19 damages in an amount in excess of \$10,000.00.

20 30. As a proximate result of Lytles’ actions Mrs. Boulden is entitled to punitive
21 damages in an amount in excess of \$10,000.00.

22 31. As a proximate result of Lytles’ actions, Mrs. Boulden has been required to retain
23 the services of Foley & Oakes, PC to prosecute this action, and is entitled to an award of
24 attorney’s fees and costs.
25

26 **SECOND CAUSE OF ACTION**
27 **(Injunction, All Plaintiffs)**

28 32. Plaintiffs repeat and re-allege each and every allegation set forth above.

1 33. Plaintiffs do not owe any money whatsoever to the Lytles.

2 34. Plaintiffs do not have an adequate remedy at law because they cannot sell their
3 property with the Abstracts of Judgment recorded against their property.

4 35. Plaintiffs will suffer irreparable harm if they are not able to sell their property due
5 to the recording of the Abstracts of Judgment.

6 36. Plaintiffs are likely to prevail on their claims against the Lytles.

7 37. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
8 expunging the liens in the form of the recorded Abstracts of Judgment.

9 38. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
10 prosecute this action, and are entitled to an award of attorney's fees and costs.

11
12 **THIRD CAUSE OF ACTION**
13 **(Quiet Title, All Plaintiffs)**

14 39. Plaintiffs repeat and re-allege each and every allegation set forth above.

15 40. The Lytles, by their claims and actions, have asserted certain rights to lien the
16 Boulden Property and the Lamothe Property.

17 41. The Lytles are without any legal basis whatsoever to lien the Boulden Property
18 and the Lamothe Property.

19 42. The Lytles are without any legal basis whatsoever to claim any interest in the
20 Boulden Property and the Lamothe Property, including any rights to lien or sell the same.

21 43. As a proximate result of the Lytles' actions, the titles to the Boulden Property and
22 the Lamothe Property have been improperly and illegally clouded.

23 44. Plaintiffs are entitled to an Order from this Court pursuant to NRS 40.010
24 quieting title in their names and expunging the Abstracts of Judgment.

25 45. Plaintiffs herein have been required to retain the services of Foley & Oakes, PC,
26 to prosecute this action, and are entitled to an award of attorney's fees and costs.
27
28

FOURTH CAUSE OF ACTION
(Declaratory Relief)

46. Plaintiffs repeat and re-allege each and every allegation set forth above.

47. A dispute and actual controversy exists between the parties relative to their interpretation of the rights and duties of the Plaintiffs regarding the Rosemere Judgment, the recorded Abstracts of Judgment, and the Boulden Property and the Lamothe Property.

48. The Plaintiffs are entitled to a declaration from the Court, to the effect that the Rosemere Judgment against the Rosemere Estates Home Owners Association is not a judgment against the Plaintiffs, separately or individually, and that the Rosemere Judgment and the Abstracts of Judgment were improperly and unlawfully recorded against the Boulden Property and the Lamothe Property.

49. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to prosecute this action, and are entitled to an award of attorney's fees and costs.

FIFTH CAUSE OF ACTION
(Injunction, Rosemere II Judgment)

50. Plaintiffs repeat and re-allege each and every allegation set forth above.

51. Plaintiffs do not owe any money whatsoever to the Lytles.

52. The Lytles have threatened Plaintiffs with the Rosemere II Judgment demanding that Plaintiffs notify any and all prospective purchasers of their property of the Rosemere II Judgment, just as the Lytles did by recording the now cancelled two *Lis Pendens*.

53. If the Lytles were to record the Rosemere II Judgment like they did the Rosemere Judgment, the Plaintiffs will not have an adequate remedy at law because they could not sell their property.

54. Plaintiffs will suffer irreparable harm if they are not able to sell their property due to the recording of the Abstracts of Judgment.

55. Plaintiffs are likely to prevail on their claims against the Lytles.

1 56. Plaintiffs are entitled to injunctive relief in the form of an Order from this Court
2 enjoining the Lytles from taking any action with respect to the Rosemere II Judgment with
3 respect to the Plaintiffs or their property.

4 57. Plaintiffs have been required to retain the services of Foley & Oakes, PC to
5 prosecute this action, and are entitled to an award of attorney's fees and costs.

6
7 **SIXTH CAUSE OF ACTION**
8 **(Declaratory Relief)**

8 58. Plaintiffs repeat and re-allege each and every allegation set forth above.

9 59. A dispute and actual controversy exists between the parties relative to their
10 interpretation of the rights and duties of the Plaintiffs regarding the Rosemere II Judgment and
11 the Boulden Property and the Lamothe Property.

12 60. The Plaintiffs are entitled to a declaration from the Court, to the effect that the
13 Rosemere II Judgment against the Rosemere Estates Home Owners Association is not a
14 judgment against the Plaintiffs, separately or individually, and that the Rosemere II Judgment
15 cannot be recorded against the Boulden Property and the Lamothe Property.

16 61. Plaintiffs have been required to retain the services of Foley & Oakes, PC, to
17 prosecute this action, and are entitled to an award of attorney's fees and costs.

18 **WHEREFORE**, Plaintiffs pray for judgment against the Lytles as follows:

19 A. That a Preliminary Injunction should be issued, restraining the Lytles, and each of
20 them, their, agents, servants, employees, attorneys, successors and assign, during the pendency
21 of this action, from foreclosing upon or selling the Boulden Property and the Lamothe Property
22 and from doing, causing, or permitting to be done, directly or indirectly, any acts whereby the
23 rights of the Plaintiffs in said property is in any matter impaired, violated or interfered with; and
24 that after such hearing as may be required by law, said preliminary injunction be made
25 permanent. Further, the Preliminary Injunction should strike the Abstracts of Judgment;
26
27
28

1 B. For judgment against the Lytles for general, special and punitive damages in
2 amounts in excess of \$10,000.00, plus costs, disbursements and interest;

3 C. For an Order quieting title of the Boulden Property and the Lamothe Property in
4 favor of the Plaintiffs and against the Lytles;

5 D. For a declaration that the Lytles, and each of them, have no right, title or interest
6 in the Boulden Property and the Lamothe Property, and a judgment and order quieting the
7 Plaintiffs' title, canceling and expunging the Abstracts of Judgment;

8 E. That Plaintiffs be awarded their reasonable attorneys' fees and costs of such suit
9 herein; and
10

11 F. For such other and further relief as this Court may deem proper in the premises.

12 DATED this 25th day of July 2017.

13 Respectfully Submitted,

14 FOLEY & OAKES, PC

15 /s/Daniel T. Foley

16 Daniel T. Foley, Esq.

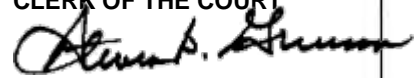
17 626 S. 8th St.

18 Las Vegas, Nevada 89101

19 *Attorneys for Plaintiffs*
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21
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5



1 **NEOJ**

2 Richard E. Haskin, Esq.

3 Nevada State Bar # 11592

4 Timothy P. Elson, Esq.

5 Nevada State Bar # 11559

6 **GIBBS GIDEN LOCHER TURNER**

7 **SENET & WITTBRODT LLP**

8 1140 N. Town Center Drive, Suite 300

9 Las Vegas, Nevada 89144-0596

10 (702) 836-9800

11 Attorneys for Defendants

12 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,

13 & THE LYTLE TRUST

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 MARJORIE B. BOULDEN, TRUSTEE OF THE
17 MARJORIE B. BOULDEN TRUST, LINDA
18 LAMOTHE AND JACQUES LAMOTHE,
19 TRUSTEES OF THE JACQUES & LINDA
20 LAMOTHE LIVING TRUST

21 Plaintiff,

22 v.

23 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
24 THE LYTLE TRUST, DOES I through X,
25 inclusive, and ROE CORPORATIONS I through
26 X,

27 Defendants.

Case No.: A-16-747800-C

Dept.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION TO ALTER OR
AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

28 NOTICE IS HEREBY GIVEN that on the 25th day of July, 2017, an ORDER GRANTING
MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW was
entered in the above-entitled matter, a copy of which is attached hereto.

DATED: July 25, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: /s/ Richard E. Haskin

Richard E. Haskin, Esq.

Nevada State Bar # 11592

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144

Attorneys for Defendants

TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

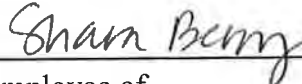
CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER
 SENET & WITTBRODT LLP, hereby certifies that on July 25, 2017, she served a copy of the
 foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO ALTER OR AMEND**
FINDINGS OF FACT AND CONCLUSIONS OF LAW by electronic service through the
 Regional Justice Center for Clark County, Nevada's ECF System:

DANIEL T. FOLEY, ESQ.
 FOLEY & OAKS
 626 S. 8th Street
 Las Vegas, Nevada 89101

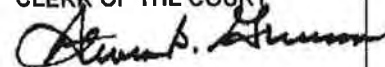
Attorneys for Plaintiffs **MARJORIE**
BOULDEN, TRUSTEE OF THE MARJORIE
B. BOULDEN TRUST, ETAL.

Tel: (702) 384-2070
 Fax: (702) 384-2128
 Email: dan@folevoakes.com


 An employee of
 Gibbs Giden Locher Turner
 Senet & Wittbrodt LLP

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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7/25/2017 1:52 PM
Steven D. Grierson
CLERK OF THE COURT



ORDR

Richard E. Haskin, Esq.

Nevada State Bar # 11592

Timothy P. Elson, Esq.

Nevada State Bar # 11559

GIBBS GIDEN LOCHER TURNER

SENET & WITTBRODT LLP

1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144-0596

(702) 836-9800

Attorneys for Defendants

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,

& THE LYTLE TRUST

DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST

Plaintiff,

v.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
inclusive, and ROE CORPORATIONS I through
X,

Defendants.

Case No.: A-16-747800-C

Dept.: XVI

**ORDER GRANTING MOTION TO
ALTER OR AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Hearing: June 29, 2017

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25, 2017.

///

1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to
 2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe
 3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee
 4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the
 6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause
 7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR
 8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,
 9 granting Plaintiffs' Motion for Partial Summary Judgment.

10 FINDINGS OF FACT

11 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
 12 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
 13 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

14 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe
 15 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property
 16 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV 89117
 17 (the "Lamothe Property").

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court
 19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively
 21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-
 22 009 (the "Lytle Property").

23 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association (the
 24 Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA
 25 Litigation").

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

27 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that
 28 term is found in Section 25 of the Original CC&Rs.

1 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
2 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 3 a. The Association is a limited purpose association under NRS 116.1201, is not
4 a Chapter 116 "unit-owners' association," and is relegated to only those
5 specific duties and powers set forth in Paragraph 21 of the Original CC&Rs
6 and NRS 116.1201.
7 b. The Association did not have any powers beyond those of the "property
8 owners committee" designation in the Original CC&Rs – simply to care for
9 the landscaping and other common elements of Rosemere Estates as set forth
10 in Paragraph 21 of the Original CC&Rs.
11 c. Consistent with the absence of a governing body, the Developer provided
12 each homeowner the right to independently enforce the Original CC&Rs
13 against one another.
14 d. The Amended and Restated CC&Rs recorded with the Clark County
15 Recorder's Office as Instrument #20070703-0001934 (the "Amended
16 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

17 9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
18 Association because it is a limited purpose association that is not a rural agricultural residential
19 community.

20 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants
21 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
22 hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants'
23 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
24 (the "Final Judgment").

25 11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016,
26 recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final
27 Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract
28 of Judgment").

 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
and Final Judgment was to attach.

///

13. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002684 (the "Second Abstract of Judgment"). The Second Abstract of Judgment listed the parcel number of the Lamothe Property only as the property to which the Judgment was to attach.

14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of Judgment listed the parcel number of the Boulden Property only as the property to which the Judgment was to attach.

CONCLUSIONS OF LAW

1. The Association is a "limited purpose association" as referenced in NRS 116.1201(2).

2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.

3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.

4. The Plaintiffs were not parties to the Rosemere LPA Litigation.

5. The Plaintiffs were not "losing parties" in the Rosemere LPA Litigation as per Section 25 of the Original CC&Rs.

6. The Final Judgment in favor of the Defendants is not against, and is not an obligation of, the Plaintiffs.

7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

8. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe Property.

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1 9. The First Abstract of Judgment recorded as Instrument #20160818-0001198 was
2 improperly recorded against the Boulden Property and constitutes a cloud against the Boulden
3 Property.

4 10. The Second Abstract of Judgment recorded as Instrument #20160902-0002684
5 improperly recorded against the Lamothe Property and constitutes a cloud against the Lamothe
6 Property.

7 11. The Third Abstract of Judgment recorded as Instrument #20160902-0002690 was
8 improperly recorded against the Boulden Property and constitutes a cloud against the Boulden
9 Property.

10 12. The Court does not make any findings that the Defendants slandered title to
11 Plaintiffs' properties, and this issue is left to trier of fact.

12 **ORDER**

13 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
14 therefore,

15 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for
16 Partial Summary Judgment is GRANTED as to Plaintiffs' claims and causes of action for quiet title
17 and declaratory relief, the Second and Third Causes of Action in Plaintiffs' First Amended
18 Complaint.

19 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that Defendants'
20 Motion for Summary Judgment is DENIED.

21 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
22 Defendants improperly clouded the title to the Boulden Property.

23 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
24 Defendants improperly clouded the title to the Lamothe Property.

25 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the First
26 Abstract of Judgment recorded as Instrument #20160818-0001198 in the Clark County Recorder's
27 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

28 ///

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from recording and enforcing the Final Judgment from the Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the Lamothe Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation.

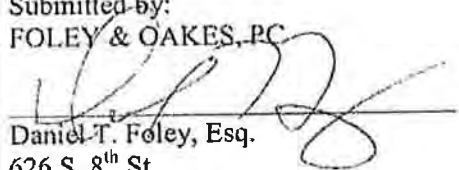
IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

DATED this 19th day of July 2017


DISTRICT COURT JUDGE

Submitted by:

FOLEY & OAKES, PC

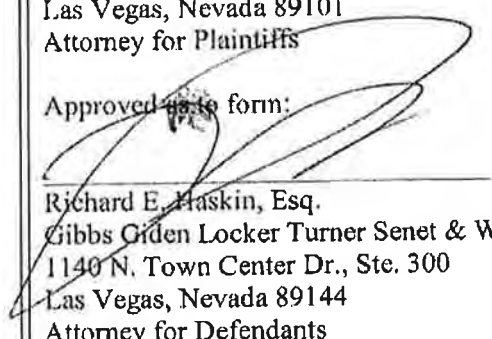

Daniel T. Foley, Esq.

626 S. 8th St.

Las Vegas, Nevada 89101

Attorney for Plaintiffs

Approved ~~as to~~ form:


Richard E. Haskin, Esq.

Gibbs Giden Locker Turner Senet & Wittbrodt LLP

1140 N. Town Center Dr., Ste. 300

Las Vegas, Nevada 89144

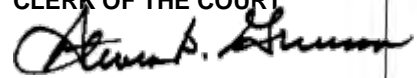
Attorney for Defendants

GIBBS GIDEN LOCKER TURNER SENET & WITTBRODT LLP

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JCCR
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

v.)

TRUDI LEE LYTLE, JOHN ALLEN)
LYTLE, THE LYTLE TRUST, DOES I)
through X; and ROE CORPORATIONS)
I through X,)

Defendants.)

Case No. A-16-747800-C
Dept. No. XVI

JOINT CASE CONFERENCE REPORT

DISCOVERY PLANNING/DISPUTE

CONFERENCE REQUESTED:

YES _____ NO X _____

I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

**FOLEY
&
OAKES**

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1 A. Description of the action:

2 In 2009, the Lytle Trust sued the Rosemere Estates Property Owners Association in the
3 Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA Litigation"). Mrs.
4 Boulden and the Lamothe's were never parties to the Rosemere LPA Litigation. The Lytle Trust
5 obtained a Summary Judgment from the District Court in the Rosemere LPA Litigation,
6 determining and declaring that the Rosemere LPA was not a full-fledged home owners'
7 association under NRS 116, but instead was a limited-purpose association as defined by NRS
8 116.1201(6).
9

10 The Lytle Trust filed a Motion for Attorneys' Fees and Costs and against the Rosemere
11 LPA in addition to proving up damages, and a Judgment was entered in the Lytle Trust's favor
12 against the Rosemere LPA for \$361,238.59 (the "Judgment"). After obtaining the Judgment, on
13 August 16, 2016, the Lytle Trust recorded with the Clark County Recorder's office three
14 Abstracts of Judgement against the Plaintiffs' property referencing the Judgment against the
15 Rosemere LPA.
16

17 On or about November 7, 2016, Mrs. Boulden entered into a purchase and sale agreement
18 for the Boulden Property with a third party buyer (the "PSA #1"). Plaintiffs allege that the
19 buyer under the PSA #1 terminated Escrow on November 15, 2016, because of the recorded
20 Abstracts of Judgment.
21

22 Defendant, the Lytle Trust, denies the material allegations set forth in Plaintiffs'
23 Complaint. The Lytle Trust asserts and alleges that it has the right to record the abstracts of
24 judgment pursuant to Nevada's Uniform Common Interest Development Act, the Original
25 CC&Rs, and the Amended CC&Rs, which were the governing documents at the time when the
26 damages, fees and costs were sustained by the Lytle Trust.

27 A. Claims for relief:

1. Slander of Title
2. Quiet Title
3. Declaratory Relief
4. Injunctive Relief

B. Defenses-Complaint:

1. The Complaint fails to state a claim upon which relief can be granted.
2. If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was directly and proximately caused and contributed to by the breach of contract, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiffs or person or entities under Plaintiffs' control, and thereby completely or partially bars Plaintiffs' recovery herein.
3. Defendants are not legally responsible for the acts and/or omissions claimed herein.
4. Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged damages, if any, thus barring or diminishing Plaintiffs' recovery herein.
5. The injuries and damages of which Plaintiffs complain were proximately caused by, or contributed to, by the acts of other persons and/or other entities, whether now named or otherwise, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or entitled to contribution from such parties.
6. Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.
7. Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The damages alleged by the Plaintiffs were caused by, or arose out of, risks which Plaintiffs directly assumed.
8. Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims against these Defendants at issue herein.
9. Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages alleged in the Complaint.
10. In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be entitled to offsets and credits against any purported damages, if any, allegedly sustained by Plaintiffs.
11. Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is never waived.
12. Defendants incorporate by reference those affirmative defenses enumerated in NRCP 8 as fully and set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend its answer to

specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

13. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not be stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer to the Complaint, and therefore, Defendants specifically reserve the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants, up to and including through the time of trial in this matter.

III.

DISCOVERY PLAN [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiffs' view: None.

2. Defendants' views: None.

B. When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiffs' disclosures: August 1, 2017

2. Defendants' Disclosures: August 1, 2017

C. Subjects on which discovery may be needed:

1. Plaintiff's view: Liability and damages.

2. Defendants' views: Liability and damages.

D. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view: No.

2. Defendants' views: No.

E. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view: None.

2. Defendants' views: None.

F. What, if any, other orders should be entered by court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view: None.

2. Defendants' views: None.

G. Estimated time for trial:

1. Plaintiff's view: 2 days

2. Defendants' views: 2 days

V.

DISCOVERY AND MOTION DATES [16.1(c)(5)-(8)]

A. Dates agreed by the parties:

1. Close of discovery: January 15, 2018

2. Final date to file motions to amend pleadings or add parties (without a further court order): October 15, 2017

3. Final dates for expert disclosures:

i. initial disclosure: October 15, 2017

ii. rebuttal disclosures: November 15, 2017

4. Final date to file dispositive motions: March 15, 2018

VI.

JURY DEMAND [16.1(c)(10)]

1 The Lytle Trust intends on filing a demand for jury trial.

2 VII.

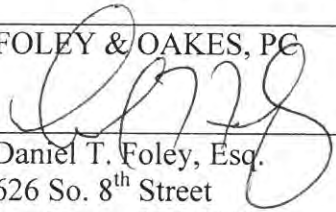
3 INITIAL DISCLOSURES/OBJECTIONS [16.1(a)(1)]

4 If a party objects during the Early Case Conference that initial disclosures are not
5 appropriate in the circumstances of this case, those objections must be stated herein. The Court
6 shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.
7

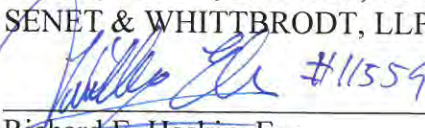
8 This report is signed in accordance with rule 26(g)(1) of the Nevada Rules of Civil
9 Procedure. Each signature constitutes a certification that to the best of the signer's knowledge,
10 information and belief, formed after a reasonable inquiry, the disclosures made by the signer are
11 complete and correct as of this time.

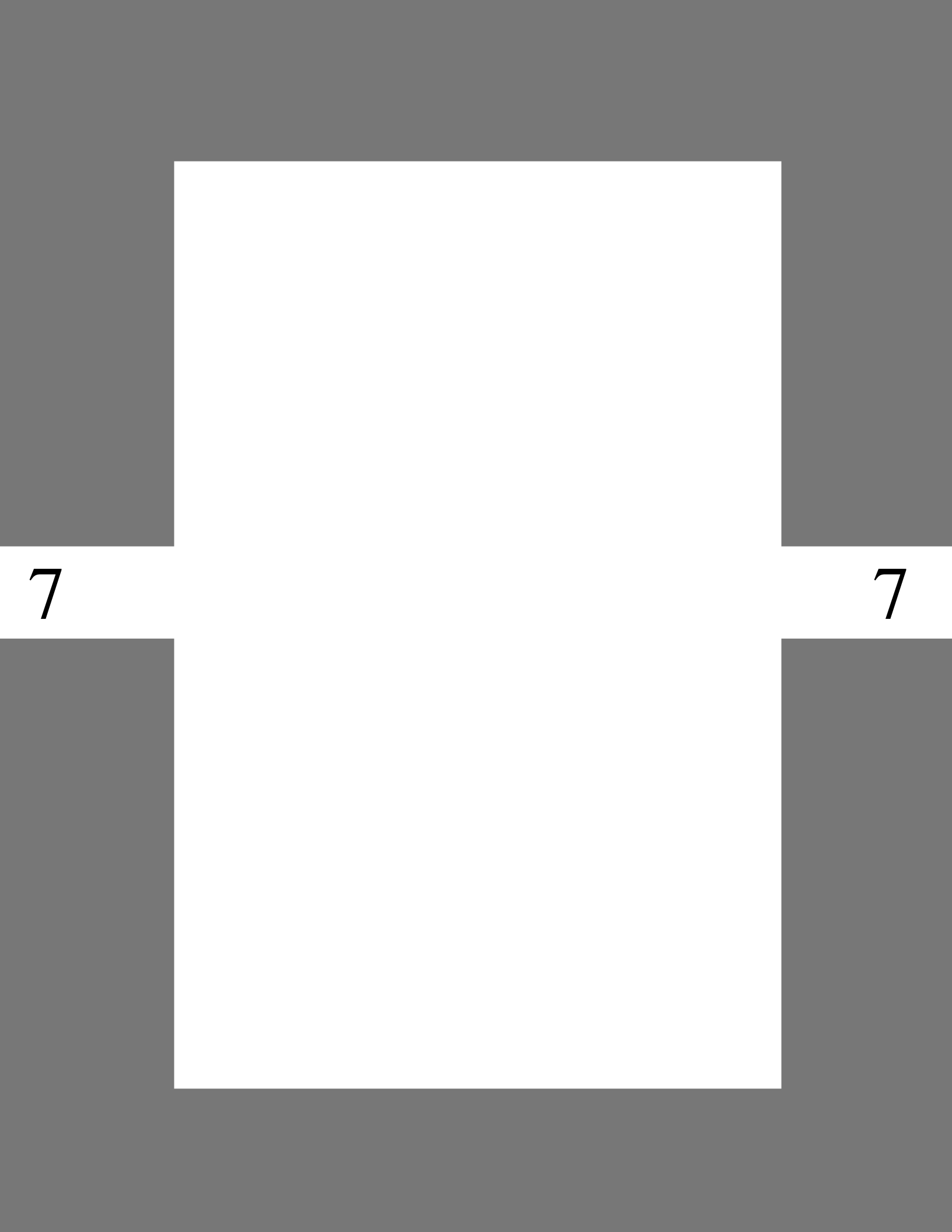
12 DATED this 2nd day of August 2017

13 FOLEY & OAKES, PC

14 
15 Daniel T. Foley, Esq.
16 626 So. 8th Street
17 Las Vegas, NV 89101
18 *Attorneys for Plaintiffs*

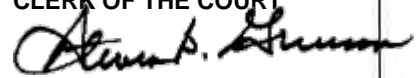
GIBBS, GIDEN, LOCHER, TURNER,
SENET & WHITTBRODT, LLP

19  #11559
20 Richard E. Haskin, Esq.
21 1140 N. Town Center Drive, Suite 300
22 Las Vegas, NV 89144
23 *Attorneys for Defendants*



7

7



1 **ANAC**
Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
Timothy P. Elson, Esq.
3 Nevada State Bar # 11559
GIBBS GIDEN LOCHER TURNER
4 **SENET & WITTBRODT LLP**
1140 N. Town Center Drive, Suite 300
5 Las Vegas, Nevada 89144-0596
(702) 836-9800

6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

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

11 MARJORIE B. BOULDEN, TRUSTEE OF THE
MARJORIE B. BOULDEN TRUST, LINDA
12 LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
13 LAMOTHE LIVING TRUST

14 Plaintiff,

15 v.

16 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST, DOES I through X,
17 inclusive, and ROE CORPORATIONS I through
X,

18 Defendants.

19
20
21 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST,

22 Counter-Claimants,

23 v.

24 LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST, ROBERT Z.
25 DISMAN, YVONNE A. DISMAN, and ROES 1
through 10, inclusive,

26 Counter-Defendants.
27
28

Case No.: A-16-747800-C
Dept.: XVI

**DEFENDANTS TRUDI LEE LYTLE AND
JOHN ALLEN LYTLE, TRUSTEES OF
THE LYTLE TRUST'S ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND COUNTERCLAIM**

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

1 COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of
2 THE LYTLE TRUST (“Defendants” and/or the “Lyttles”), by and through their counsel of record,
3 Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &
4 WITTBRODT, LLP, and hereby answers Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF
5 THE MARJORIE B. BOULDENR TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE,
6 TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST’s (collectively
7 “Plaintiffs”) Second Amended Complaint as follows:

8 1. As to Paragraphs 1 through 3 of the Second Amended Complaint, Defendants admit
9 the allegations set forth in said Paragraphs.

10 2. As to Paragraphs 4 through 5 of the Second Amended Complaint, Defendants are
11 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
12 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
13 Defendants deny the same on that basis.

14 3. As to Paragraph 6 of the Second Amended Complaint, Defendants admit the
15 allegations set forth in said Paragraph.

16 4. As to Paragraph 7 of the Second Amended Complaint, Defendants admit that
17 Rosemere Estates Property Owners Association, a Nevada non-profit corporation (“Rosemere”), is a
18 Limited Purpose Association governed by Chapter 116 of the Nevada Revised Statutes. As to the
19 remaining allegations, said Paragraph also contains legal conclusions rather than facts that need
20 admitted or denied. Defendants deny the same on that basis, as well as the content of such allegation
21 should such a denial be necessary.

22 5. Defendants deny the allegations in Paragraph 8 of the Second Amended Complaint.

23 6. As to Paragraphs 9 of the Second Amended Complaint, Defendants admit that
24 paragraph 24 of the CC&Rs speaks for itself.

25 7. As to Paragraphs 10 through 14 of the Second Amended Complaint, Defendants
26 admit the allegations set forth in said Paragraphs.

27 ///

28 ///

1 8. As to Paragraph 15 of the Second Amended Complaint, Defendants admit that the
2 Bouldens and the Lamothes were not parties to the aforementioned lawsuit. However, Defendants
3 deny the allegation that the property of the Bouldens and Lamothes described in the Second
4 Amended Complaint is not subject to the judgment described in the Second Amended Complaint.
5 As to the remaining allegations, said Paragraph also contains legal conclusions rather than facts that
6 need to be admitted or denied. Defendants deny the same on that basis, as well as the content of
7 such allegation should such a denial be necessary.

8 9. Defendants deny the allegations in Paragraphs 16 through 18 of the Second Amended
9 Complaint. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need
10 to be admitted or denied. Defendants deny the same on that basis.

11 10. As to Paragraphs 19 and 20 of the Second Amended Complaint, Defendants are
12 without knowledge or information sufficient to admit or deny the allegations contained therein.

13 11. As to Paragraphs 21 and 22 of the Second Amended Complaint, Defendants admit the
14 allegations contained therein.

15 12. As to Paragraph 23. Defendants admit that Plaintiffs were not parties in the Rosemere
16 II litigation; however, Defendants deny that Plaintiffs did not have notice of the same. Plaintiffs
17 regularly attended Board meetings for the Association during which all litigation by and against
18 Defendants were discussed, and Plaintiffs routinely contributed assessments to fund such litigation.

19 13. As to Paragraph 24 of the Second Amended Complaint, Defendants admit the
20 allegations contained therein.

21 **FIRST CAUSE OF ACTION**

22 **(Slander of Title, Mrs. Boulden)**

23 14. Defendants repeat herein by this reference Paragraphs 1 through 13, inclusive, with
24 the same force and effect as if said Paragraphs were set forth herein in full.

25 15. As to Paragraph 25 of the Second Amended Complaint, Defendants deny the
26 allegations contained therein. Furthermore, said Paragraph also contains legal conclusions rather
27 than facts that need to be admitted or denied. Defendants deny the same on that basis.

28 ///

1 16. As to Paragraphs 26 through 31 of the Second Amended Complaint, Defendants are
2 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
3 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
4 Defendants deny the same on that basis.

5 **SECOND CAUSE OF ACTION**

6 **(Injunction, All Plaintiffs)**

7 17. Defendants repeat herein by this reference Paragraphs 1 through 16, inclusive, with
8 the same force and effect as if said Paragraphs were set forth herein in full.

9 18. Defendants deny the allegations in Paragraph 33 of the Second Amended Complaint.

10 19. As to Paragraphs 34 through 38 of the Second Amended Complaint, Defendants are
11 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
12 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
13 Defendants deny the same on that basis.

14 **THIRD CAUSE OF ACTION**

15 **(Quiet Title, All Plaintiffs)**

16 20. Defendants repeat herein by this reference Paragraphs 1 through 19, inclusive, with
17 the same force and effect as if said Paragraphs were set forth herein in full.

18 21. As to Paragraph 40 of the Complaint, Defendants admit the allegations contained
19 therein.

20 22. As to Paragraphs 41 through 45 of the Second Amended Complaint, Defendants deny
21 the allegations contained therein. Furthermore, said Paragraphs also contain legal conclusions rather
22 than facts that need admitted or denied. Defendants deny the same on that basis.

23 **FOURTH CAUSE OF ACTION**

24 **(Declaratory Relief, All Plaintiffs)**

25 23. Defendants repeat herein by this reference Paragraphs 1 through 22, inclusive, with
26 the same force and effect as if said Paragraphs were set forth herein in full.

27 24. As to Paragraph 47 of the Second Amended Complaint, Defendants admit the
28 allegations contained therein.

25. As to Paragraphs 48 through 49 of the Second Amended Complaint, Defendants deny that the allegations contained therein.

FIFTH CAUSE OF ACTION

(Injunction, Rosemere II Judgment)

26. Defendants repeat herein by this reference Paragraphs 1 through 25, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

27. As to Paragraphs 51 through 57 of the Second Amended Complaint, Defendants deny that the allegations contained therein.

SIXTH CAUSE OF ACTION

(Declaratory Relief)

28. Defendants repeat herein by this reference Paragraphs 1 through 27, inclusive, with the same force and effect as if said Paragraphs were set forth herein in full.

29. Defendants admit the allegations contained in Paragraph 59 of the Second Amended Complaint.

30. 27. As to Paragraphs 60 through 61 of the Second Amended Complaint, Defendants deny that the allegations contained therein.

AFFIRMATIVE DEFENSES

For their further and separate affirmative defenses to the Second Amended Complaint filed by Plaintiffs and the claims asserted therein, and without assuming the burden of proof on any matters for which that burden rests with Plaintiffs, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was directly and proximately caused and contributed to by the breach of contract, conduct, acts, omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of Plaintiffs or persons or entities under Plaintiffs' control, and thereby completely or partially bars Plaintiffs' recovery herein.

THIRD AFFIRMATIVE DEFENSE

Defendants are not legally responsible for the acts and/or omissions claimed herein.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

FIFTH AFFIRMATIVE DEFENSE

The injuries and damages of which Plaintiffs complain were proximately caused by, or contributed to, by the acts of other persons and/or other entities, whether now named or otherwise, and that said acts were an intervening and superseding cause of the injuries and damages, if any, of which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or entitled Defendants to contribution from such parties.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The damages alleged by Plaintiffs were caused by, and arose out of, risks which Plaintiffs directly assumed.

EIGHTH AFFIRMATIVE DEFENSE

Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims against these Defendants at issue herein.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages alleged in the Complaint.

TENTH AFFIRMATIVE DEFENSE

In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be entitled to offsets and credits against any purported damages, if any, allegedly sustained by Plaintiffs.

///

ELEVENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is never waived.

TWELFTH AFFIRMATIVE DEFENSE

Defendants incorporate by reference those affirmative defenses enumerated in NRCP 8 as fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendants reserve the right to seek leave of the court to amend its answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendants' Answer to the Second Amended Complaint, and therefore, Defendants specifically reserve the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants, up to and including through the time of trial in this matter.

WHEREFORE, Defendants pray for relief as follows:

1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by way of its Second Amended Complaint;
2. For costs and disbursements in connection with this action;
3. For reasonable attorney's fees, and
4. For such other and further relief that this Court deems just and proper.

COUNTERCLAIM

COMES NOW Defendants and Counter-Claimants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (the "Lyttles"), by and through their counsel of record, Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby alleges as follows:

I. THE PARTIES AND JURISDICTION

1. The Lytle Trust (the "Lytle Trust"), is the current owner of real property located 1930 Rosemere Court, in Clark County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada ("Lytle Property").

The Lytle Property was previously owned by Defendants, Counter-Claimants J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996.

2. The Lyttles are informed and believe, and thereon allege, that Counter-Defendants Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust, are the owners of the residential property in Clark County, Nevada known as parcel number 163-03-313-002, and commonly known as 1830 Rosemere Court, Las Vegas, Nevada 89117 ("1830 Rosemere Court").

3. The Lyttles are informed and believe, and thereon allege, that Plaintiff Marjorie B. Boulden ("Boulden") was formerly the owner of the residential property in Clark County, Nevada known as parcel number 163-03-313-008, and commonly known as 1860 Rosemere Court, Las Vegas, Nevada 89117 ("1960 Rosemere Court"). However, the Lyttles are informed and believe, and thereon allege, that on or about August 4, 2017, Boulden sold 1960 Rosemere Court to Counter-Defendants Robert Z. Disman and Yvonne A. Disman, who are now owners of 1960 Rosemere Court. Under NRS 116.4109, Counter-Defendants Robert and Yvonne Disman knew or should have known that the Association had judgments against it and recorded against it that could encumber

1 their property prior to their purchase of the property.

2 4. The true names and capacities of Counter-Defendants sued herein as ROES 1 through
3 10, inclusive, and each of them, are presently unknown to the Lytles, and, therefore, they are sued
4 herein under fictitious names, and when the true names are discovered, the Lytles will seek leave to
5 amend this Counterclaim and proceedings herein to substitute the true names of said Counter-
6 Defendants. The Lytles are informed and believe and based thereon allege that each of the foregoing
7 Counter designated herein as a ROE is negligent or responsible in some manner for the events herein
8 referred to.

9 **II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS**

10 5. The Original CC&Rs, in the first paragraph, defines Rosemere Estates as “Lots 1
11 through 9 of Rosemere Court, a subdivision...” The document adds that “it is the desire and
12 intention of the Subdivider to sell the land described above and to impose on it mutual, beneficial,
13 covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit
14 of all of the land described above and the future owners of the lots comprising said land.” Thus, the
15 Association includes each and every lot within Rosemere Estates.

16 6. Rosemere Property Owners’ Association (the “Association”), at all times herein
17 mentioned is comprised of nine (9) owners of single family lots all as more particularly described in
18 the recorded Declaration of Covenants, Conditions and Restrictions, dated January 4, 1994 (the
19 “Original CC&Rs”) for the Association, as recorded in the official records of the Clark County
20 Nevada Recorder’s office. A true and correct copy of the Original CC&Rs is attached hereto, and
21 incorporated herein, as Exhibit “1.” The Lytles are informed and believe, and based thereon allege,
22 that the Original CC&Rs were recorded on January 4, 1994, before title to any lot within the
23 Association was conveyed by deed, and are referenced in the deeds to all Nine (9) properties located
24 within the Association.

25 7. On February 25, 1997, Plaintiff and Counter-Defendant Linda Lamothe and Plaintiff
26 Marge Boulden, acting on behalf of all owners, filed Non-Profit Articles of Incorporation (the
27 “Articles”) pursuant to Nevada Revised Statutes (“NRS”) 82, which formalized the property owners’
28 committee and created an association, naming it “Rosemere Estates Property Owners Association.”

1 8. At the July 2, 2007, the Association's Board, the Board presented the homeowners
2 with a binder that contained the following: (1) new Articles of Incorporation, dated July 6, 2007,
3 which articles were never filed although represented to be as set forth herein; (2) a letter from Kearn
4 to the Association members; (3) a Corporate Charter referencing the February 25, 1997 and July 6,
5 2007 Articles of Incorporation; (4) a section entitled "Governing Documents" referencing the July 6,
6 2007 Articles of Incorporation; (5) the "First Statutorily Mandated Amendment to the Bylaws of the
7 Rosemere Estates Homeowners Association," and (5) the proposed Amended and Restated
8 Covenants, Conditions and Restrictions ("Amended CC&Rs").

9 9. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
10 and changed the very nature of property ownership within Rosemere Estates. The Amended CC&Rs
11 contained numerous use restrictions including a section entitled "Restrictions on Use, Alienation,
12 and Occupancy," pet restrictions, lease restrictions, the establishment of a Design Review
13 Committee with unfettered discretion, and a new and expansive definition of "nuisance." Further,
14 the Amended CC&Rs made the Association a full blown unit owners' association, subject to the
15 entirety of Chapter 116.

16 10. The proposed amended CC&Rs were not agreed to by all owners at the July 2, 2007
17 meeting, in fact less than 67% thereof, with at least 3 owners specifically objecting to the proposed
18 changes and refusing to sign the approval.

19 11. Despite the failure to obtain the required unanimous approval for changing the
20 CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder for Clark
21 County, Nevada, the Amended CC&Rs.

22 12. The Lytles immediately contested and continued to contest the Amended CC&Rs and
23 its unlawful adoption.

24 **III. THE UNDERLYING LITIGATION**

25 13. After proceeding through two separate mandatory arbitrations via NRS 38.383 in
26 2009 and 2010, one which contested the validity of the Amended CC&Rs and a second which
27 contested the validity of liens placed against the Lytle Property by the Association due to the Lytles
28 refusing to pay assessments levied against their property to fund litigation against them, the Lytles

1 filed two lawsuits in Nevada District Court. Pursuant to the Amended CC&Rs, which was the
2 governing document at the time and at all times during the underlying litigation, the Lytles were
3 required to file their claims against the Association, not against the any of the individual owners.

4 **A. NRED I LITIGATION**

5 14. The first lawsuit commenced by the Lytles, case number A-09-593497-C which was
6 assigned to Judge Michelle Leavitt in Department XII, contested the validity of the Amended
7 CC&Rs and sought to overturn the Amended CC&Rs ("NRED I Litigation"). The Lytles ultimately
8 prevailed, entirely, in the litigation, and the Court granted the Lytles summary judgment on July 29,
9 2013. The matter was appealed, and the Nevada Supreme Court affirmed the District Court's Order
10 granting the Lytles summary judgment. The Supreme Court remanded the case to the District Court
11 for redetermination of costs, attorneys' fees and damages on October 19, 2015.

12 15. On May 25, 2016, the Court awarded the Lytles \$297,072.66 in attorneys' fees
13 pursuant to the Original CC&Rs and the Amended CC&Rs, which the Court declared as the
14 governing documents during the entirety of the litigation.

15 16. On June 17, 2016, the Court awarded the Lytles damages in the NRED I Litigation,
16 after a prove-up hearing, in the amount of \$63,566.93.

17 17. Finally, on July 22, 2016, the Court in the NRED I Litigation awarded the Lytles
18 costs in the amount of \$599.00.

19 18. On September 2, 2016, the Lytles recorded Abstracts of Judgment from the NRED I
20 Litigation against each property within the Association pursuant to the law set forth herein.

21 **B. NRED II LITIGATION**

22 19. On December 13, 2010, the Lytles filed a second lawsuit against the Association
23 seeking to release and expunge three (3) unlawfully recorded liens, which were recorded by the
24 Association against the Lytle Property in 2009 and 2010. This second lawsuit bore case number A-
25 10-631355-C and was assigned to Department 32, Judge Robert Bare (the "NRED II Litigation").

26 20. Distinct from the NRED I Litigation, in the NRED II Litigation, both the Lytles and
27 the Association stipulated to the underlying fact that the Amended CC&Rs were the controlling
28 governing documents for the Association in the NRED II Litigation.

1 21. On November 14, 2011, the Court granted the Association's Motion for Summary
2 Judgment against the Lytles in the NRED II Litigation. The Court then granted attorneys' fees to the
3 Association pursuant to the Amended CC&Rs and NRS 116.4117. The Lytles appeals the Court's
4 rulings in the NRED II Litigation.

5 22. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting
6 Summary Judgment in the NRED II Litigation and remanded the NRED II Litigation back to
7 Department 32 for determination. The Supreme Court also vacated the order awarding attorneys'
8 fees, costs, and damages to the Association.

9 23. On November 10, 2016, the Court in the NRED II Litigation granted the Lytles'
10 Motion for Summary Judgment and entered an Order thereon, finding in favor of the Lytles as to all
11 causes of action.

12 24. On April 14, 2017, the Court in the NRED II Litigation awarded the Lytles'
13 attorneys' fees in the amount of \$274,608.28 pursuant to the Original CC&Rs, the Amended CC&Rs
14 and NRS 116.4117, finding that the Amended CC&Rs controlled the remedies provided in the
15 action. The Court also awarded costs in the amount of \$4,725.00.

16 25. Finally, on May 11, 2017, after a prove-up hearing, the Court in the NRED II
17 Litigation awarded the Lytles punitive damages in the amount of \$823,824.84, pursuant to NRS
18 42.005.

19 26. On July 20, 2017, the Court in the NRED II Litigation issued an Abstract of
20 Judgment in the amount of \$1,103,158.12, which has been recorded against the Association but none
21 of the individual lots or properties within the Association.

22 **FIRST CAUSE OF ACTION**

23 **(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamouthe, Third-**
24 **Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)**

25 27. The Lytles incorporate the allegations contained in Paragraphs 1 through 26 herein as
26 though set forth in full.

27 ///

28 ///

1 28. There exists a controversy between the Lytles and Counter-Defendants and Third
2 Party Defendants regarding the interpretation, application and enforcement of NRS, Chapter 116 as
3 well as the application of the Original CC&Rs and Amended CC&Rs to the controversy at hand,
4 requiring a determination by this Court and entry of declaratory relief.

5 29. Specifically, the Lytles contend as follows:

- 6 a. Pursuant to the Original CC&Rs, a lien or judgment against the Association
7 established under the Original CC&Rs attaches to each lot within the Association.
- 8 b. Pursuant to the Amended CC&Rs, which were in force at all times from 2007
9 through July 29, 2013, a lien or judgment against the Association established
10 under the Amended CC&Rs attaches to each lot within the Association.
- 11 c. Pursuant to NRS, Chapter 116, the Uniform Common Interest Development Act,
12 a lien or judgment against the Association attaches to each lot within the
13 Association, even if the Association is a *limited purpose association*, because
14 under NRS 116.021, each common interest community consists of all “real estate
15 described in a declaration with respect to which a person, by virtue of the person’s
16 ownership of a unit, is obligated to pay for a share of real estate taxes, insurance
17 premiums, maintenance or improvement of, or services or other expenses related
18 to, common elements, other units or other real estate described in that
19 declaration.” Further under NRS 116.093, each “unit” is defined as the “physical
20 portion of the common-interest community designated for separate ownership or
21 occupancy...” Thus, the association, or common interest community, includes
22 each and every unit in the community, including those owned by third parties.
- 23 d. Pursuant to NRS 116.3117, which governed the Association and all owners
24 during the underlying litigation, a judgment against the Association is a lien in
25 favor of the Lytles against all of the real property within the Association and all of
26 the units therein, including Counter-Defendants’ properties. The Association and
27 its membership are not entitled to use Chapter 116 and all of its provisions as a
28 sword during the litigation against the Lytles, *e.g.* to record multiple liens totaling

1 \$209,883.19 against the Lytles and attempt foreclosure against the Lytle Property
2 forcing the Lytles to procure a \$123,000.00 cash bond to prevent such
3 foreclosure, and then a shield to defend against the Lytles after they prevailed in
4 that litigation and the Association was declared a *limited purpose association*.

5 30. The Lytles desire a judicial determination of the parties' rights and duties and a
6 declaration the a lien against the Association, specifically the Abstract of Judgment issued in the
7 NRED II Litigation, can be recorded against 1830 Rosemere Court and 1960 Rosemere Court.

8 31. A judicial declaration is necessary and appropriate at this time so that the parties may
9 ascertain their rights and duties because the Lytles wish to record the Abstract of Judgment in the
10 NRED II Litigation against 1830 Rosemere Court and 1960 Rosemere Court to enforce their rights
11 as creditors against the Association.

12
13 WHEREFORE, Defendants and Counter-Claimants pray for relief as follows:

14 1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by
15 way of its Second Amended Complaint;

16 2. That the Court enter a Declaratory Judgment in favor of the Lytles and against the
17 Counter-Defendants and Third Party Defendants, finding and declaring that the Lytles are entitled to
18 record a lien and/or Abstract of Judgment obtained in the NRED II Litigation against 1830
19 Rosemere Court and 1960 Rosemere Court in order to enforce the Lytles' rights as creditors against
20 the Association.

21 3. For an injunction preventing any Counter-Defendant or Third Party Defendant from
22 selling either 1830 Rosemere Court and 1960 Rosemere Court until this Court has entered a
23 Declaratory Judgment;

24 4. For costs and disbursements in connection with this action;

25 5. For reasonable attorney's fees, and

26 ///

27 ///

28 ///

6. For such other and further relief that this Court deems just and proper.

DATED: August 11, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy P. Elson, Esq.
Nevada State Bar # 11559
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER
 SENET & WITTBRODT LLP, hereby certifies that on August 11, 2017, she served a copy of the
 foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF
 THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT
 AND COUNTERCLAIM;** by electronic service through the Regional Justice Center for Clark
 County, Nevada's ECF System:

Daniel T. Foley, ESQ.
 FOLEY & OAKS, PC
 626 S. 8th Street
 Las Vegas, Nevada 89101

Attorney for Plaintiffs

Tel: (702) 384-2070
 Fax: (702) 384-2128
 Email: dan@folevoakes.com



An employee of
 Gibbs Giden Locher Turner
 Senet & Wittbrodt LLP

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

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AFFIDAVIT OF SERVICE

CLARK COUNTY DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

Steven D. Grierson

Marjorie B. Boulden, et al.,

Plaintiff(s)

v.

Trudi Lee Lytle, et al.,

Defendant(s)

Case No.:A-16-747800-C

Richard E. Haskin, Esq. Bar No.11592

GIBBS GIDEN LOCHER TURNER ET.AL.

1140 N. Town Center Drive, Suite 300

Las Vegas, NV 89144

(702) 836-9800

Attorneys for the Defendant

Client File# 4389.005

I, Tanner Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Answer to Second Amended Complaint and Counterclaim from GIBBS GIDEN LOCHER TURNER ET.AL.

That on 8/15/2017 at 5:58 PM at 1861 Jasmine Joy Court, Las Vegas, NV 89117 I served Robert Z. Disman with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Robert Z. Disman.

That the description of the person actually served is as follows:

Gender: Male, Race: Caucasian, Age: 46 - 50, Height: 5'6 - 6'0, Weight: 160-180 Lbs, Hair: Gray/White, Eyes:Green

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date:

8/21/2017
Tanner Trewet

Tanner Trewet
Registered Work Card# R-075655
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:

Nationwide Legal Nevada, LLC

626 S. 7th Street

Las Vegas, NV 89101

(702) 385-5444

Nevada Lic # 1656



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AFFIDAVIT OF SERVICE

CLARK COUNTY DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

Steven D. Grierson

Marjorie B. Boulden, et al.,

Plaintiff(s)

v.

Trudi Lee Lytle, et al.,

Defendant(s)

Case No.: A-16-747800-C

Richard E. Haskin, Esq. Bar No. 11592

GIBBS GIDEN LOCHER TURNER ET.AL.

1140 N. Town Center Drive, Suite 300

Las Vegas, NV 89144

(702) 836-9800

Attorneys for the Defendant

Client File# 4389.005

I, Tanner Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Answer to Second Amended Complaint and Counterclaim from GIBBS GIDEN LOCHER TURNER ET.AL.

That on 8/15/2017 at 5:58 PM at 1861 Jasmine Joy Court, Las Vegas, NV 89117 I served Yvonne A. Dismen with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Robert Dismen whose relationship is Husband/Co-Resident.

That the description of the person actually served is as follows:

Gender: Male, Race: Caucasian, Age: 46 - 50, Height: 5'6 - 6'0, Weight: 160-180 Lbs, Hair: Gray/White, Eyes: Green

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 8/21/2017

Tanner Trewet
Tanner Trewet
Registered Work Card# R-075655
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:

Nationwide Legal Nevada, LLC

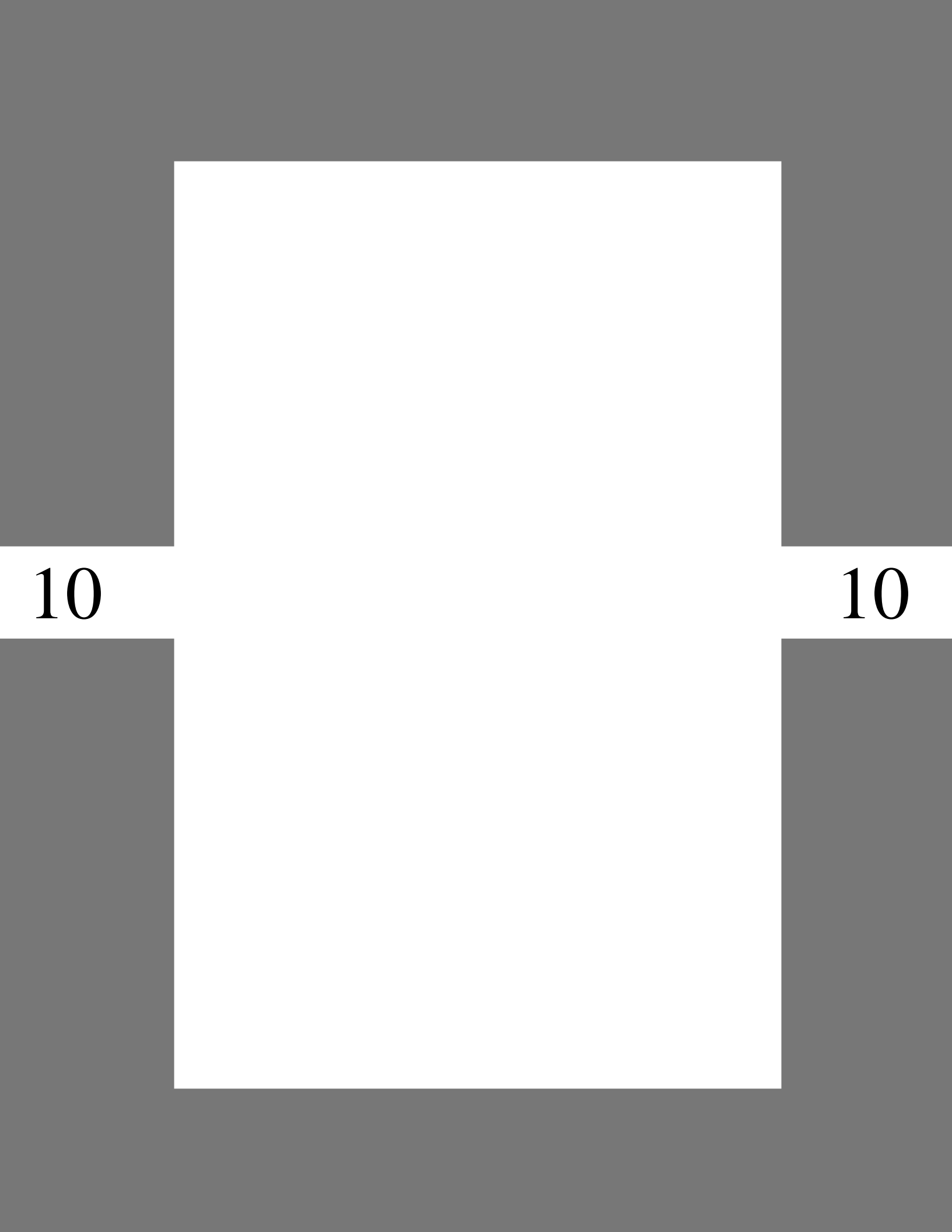
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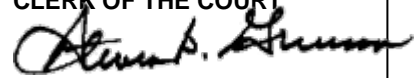
Nevada Lic # 1656





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ANSR
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE JACQUES
& LINDA LAMOTHE LIVING TRUST

Plaintiffs,

v.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, DOES I through X; and ROE
CORPORATIONS I through X

Defendants.

Case No. A-16-747800-C

Dept. No. XVI

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, THE LYTLE TRUST,

Counter-Claimants,

v.

LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE JACQUES
& LINDA LAMOTHE LIVING TRUST,
ROBERT Z. DISMAN, YVONNE A.
DISMAN, and ROES 1 through 10, inclusive,

Counter-Defendants.

PLAINTIFFS' ANSWER TO COUNTER COMPLAINT

COMES NOW Plaintiffs/Counter Defendants, Marjorie B. Boulden Trustee of the Marjorie B. Boulden Trust and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust (collectively the "Plaintiffs") by and through their attorneys Foley & Oakes, PC, and hereby respond to Trudi Lee Lytle's John Allen Lytle's, and the Lytle Trust's (collectively the "Lyttles") Counter Complaint as follows:

1. With respect to the allegations contained in paragraphs numbered 2, 16, and 17, the Plaintiffs admit all of the allegations contained therein.

2. With respect to the allegations contained in paragraphs numbered 28 and 31, the Plaintiffs deny all of the allegations contained therein.

3. With respect to the allegations contained in paragraphs numbered 1, 4, 6, 8, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, 24, 25, 26, 29, 30, the Plaintiffs are without sufficient information upon which they can admit or deny said allegations, and on that basis deny all of the allegations contained therein.

4. With respect to the allegations contained in paragraph numbered 3, the Plaintiffs deny that the Dismans knew or should have known that the Association had judgments against it and recorded against it that could encumber their property. Otherwise, the Plaintiffs admit all other allegations contained in paragraph numbered 3.

5. With respect to the allegations contained in paragraph numbered 5, the Plaintiffs deny that the Association included each and every lot within Rosemere Estates. Otherwise, the Plaintiffs admit all other allegations contained in paragraph numbered 5.

6. With respect to the allegations contained in paragraph numbered 7, Plaintiffs deny that the filing of articles of incorporation "formalized" the property owners' committee or created an association. Otherwise, the Plaintiffs admit all other allegations contained in paragraph numbered 7.

1 7. With respect to the allegations contained in paragraph numbered 15, Plaintiffs
2 admit that the court awarded Lytles \$297,072.66 in attorneys' fees. Otherwise, the Plaintiffs
3 deny all other allegations contained in paragraph numbered 15.

4 8. With respect to the allegations contained in paragraph numbered 18, Plaintiffs
5 admit that the Lytles recorded Abstracts of Judgment. Otherwise, the Plaintiffs deny all other
6 allegations contained in paragraph numbered 18.

7 9. With respect to the allegations contained in paragraph numbered 27, Plaintiffs
8 repeat and re-allege their Answers to the paragraphs referenced therein.

9 10. To the extent necessary, Defendants deny the request for relief contained in the
10 prayer of the Complaint.

11
12 **AFFIRMATIVE DEFENSES**

13 As and for Affirmative Defenses to the Lytle's Counter Complaint, Plaintiffs alleges as
14 follows:

15 **FIRST AFFIRMATIVE DEFENSE**

16 The Counter Complaint fails to state a claim or claims against the Plaintiffs upon which
17 relief may be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 The injuries and damages, if any, which the Lytles allege in their Counter Complaint
20 were caused solely by the negligence and action of the Lytles and/or others, and not by any act or
21 omission to act on the part of Plaintiffs.

22 **THIRD AFFIRMATIVE DEFENSE**

23 The Lytles' claims and Counter Complaint are barred by the doctrine of estoppel.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 The Lytles waived any rights or claims they may have had against Plaintiffs.
26
27

FIFTH AFFIRMATIVE DEFENSE

The Lytles' claims and Counter Complaint are barred by the doctrine of Laches.

SIXTH AFFIRMATIVE DEFENSE

The Lytles' claims and Counter Complaint are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The Lytles failed to mitigate their damages.

EIGHTH AFFIRMATIVE DEFENSE

The Lytles' claims and Counter Complaint are barred by the statute of limitations.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs hereby incorporate those affirmative defenses enumerated in NRCP 8 as if fully set forth herein

TENTH AFFIRMATIVE 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 Plaintiffs' Answer and, therefore, Plaintiffs reserve the right to amend their Answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, Plaintiffs pray for relief as follows:

1. That Lytles take nothing by reason of their Counter Complaint on file herein and that Plaintiffs have judgment against the Lytles, and each of them, for their costs of suit incurred including a reasonable attorney's fee; and

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2 || DATED this 30th day of August 2017

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Daniel T. Foley, Esq.
Nevada Bar No. 1078
626 So. 8th Street
Las Vegas, Nevada 89101
Attorneys for Defendants

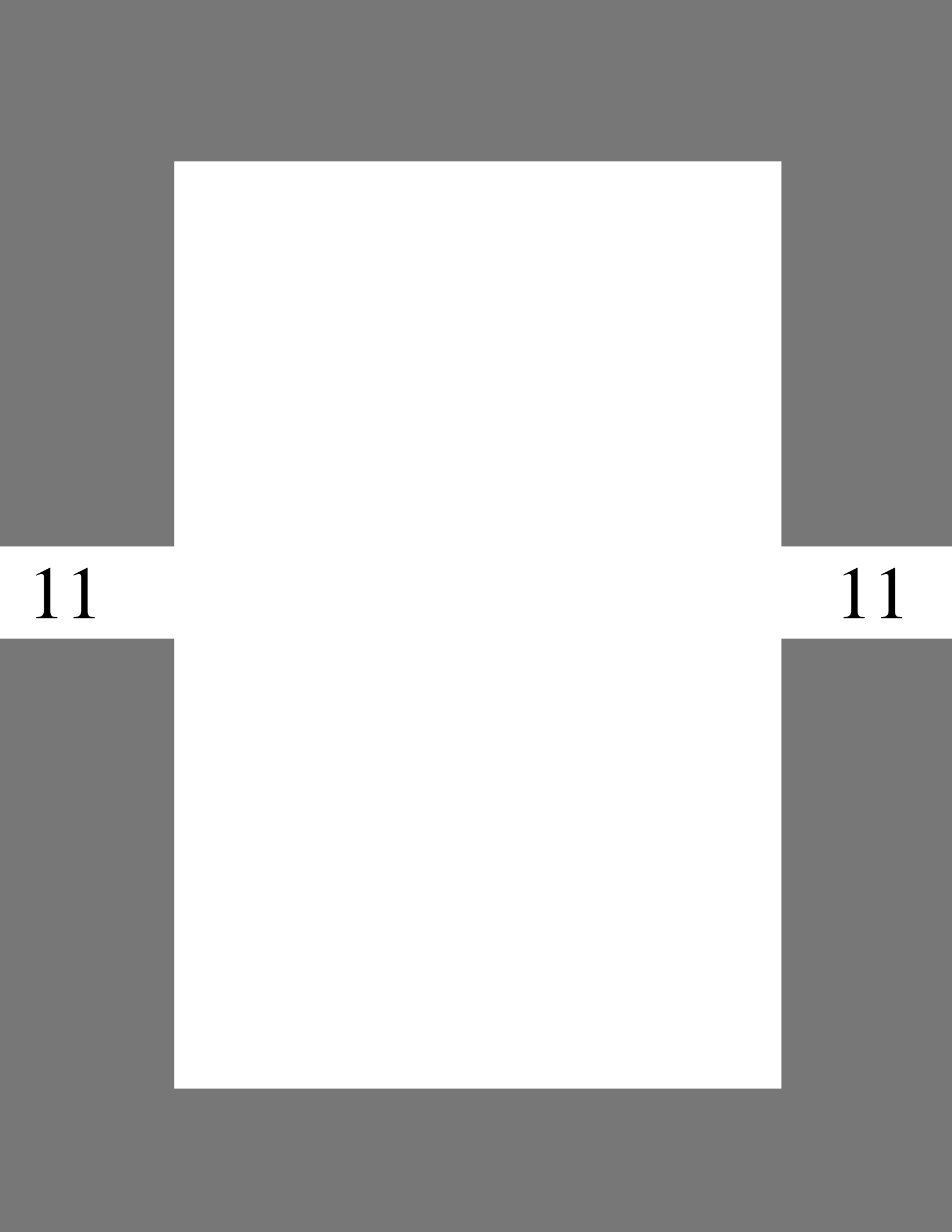
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PLAINTIFFS' ANSWER TO COUNTER COMPLAINT

Richard E. Haskin, Esq.
GIBBS, GIDEN, LOCHER, TURNER,
SENET & WHITTBRODT, LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, NV 89144

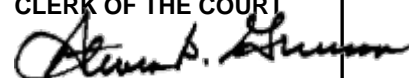
I declare under the penalty of perjury that the foregoing is true and correct.

/s/ Maren Foley
An employee of FOLEY & OAKES



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11



ANS/CRCM
CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
Tel: (702) 667-3000
Fax: (702) 697-2020
Email: christina.wang@fnf.com
Attorneys for Counter-Defendants/Cross-Claimants
Robert Z. Disman and Yvonne A. Disman

DISTRICT COURT
CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF THE)
MARJORIE B. BOULDEN TRUST, LINDA)
LAMOTHE AND JACQUES LAMOTHE,)
TRUSTEES OF THE JACQUES & LINDA)
LAMOTHE LIVING TRUST,)

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
THE LYTLE TRUST, DOES I through X, and)
ROE CORPORATIONS I through X,)

Defendants.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
THE LYTLE TRUST,)

Counter-Claimants,

vs.

LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE JACQUES &)
LINDA LAMOTHE LIVING TRUST, ROBERT)
Z. DISMAN, YVONNE A. DISMAN, and)
ROES 1 through 10, inclusive,)

Counter-Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**COUNTER-DEFENDANTS AND
CROSS-CLAIMANTS ROBERT Z.
DISMAN AND YVONNE A. DISMAN'S
ANSWER AND CROSSCLAIM**

1 ROBERT Z. DISMAN, an individual; and)
 2 YVONNE A. DISMAN, an individual,)
 3 Cross-Claimants,)
 4 vs.)
 5 MARJORIE B. BOULDEN, TRUSTEE OF THE)
 6 MARJORIE B. BOULDEN TRUST,)
 7 AMENDED AND RESTATED DATED JULY)
 8 17, 1996; DOES I through X; and ROE)
 9 BUSINESS ENTITIES XI through XX,)
 10 Cross-Defendants.)

11 Counter-Defendants ROBERT Z. DISMAN and YVONNE A. DISMAN (hereinafter
 12 collectively referred to as, the “Dismans”) by and through their attorneys of record, the Fidelity
 13 National Law Group, hereby file this Answer to Counter-Claimants TRUDI LEE LYTLE and
 14 JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (hereinafter collectively referred to
 15 as, the “Lyttles”) Counterclaim as follows:

16 **I. THE PARTIES AND JURISDICTION**

17 1. Answering paragraph numbers 1 and 2, the Dismans are without sufficient
 18 knowledge or information to form a belief as to the truth of the allegations of said paragraphs
 19 and on that basis deny each and every allegation set forth therein.

20 2. Answering paragraph number 3, the Dismans admit that in or about August 2017,
 21 they purchased the real property commonly known as 1960 Rosemere Court, Las Vegas, Nevada
 22 89117, Parcel No. 163-03-313-008 (“1960 Rosemere Court” or “Property”) from Marjorie B.
 23 Boulden, Trustee of The Marjorie B. Boulden Trust, amended and restated dated July 17, 1996.
 24 The Dismans further admit that they are now owners of 1960 Rosemere Court. The Dismans
 25 generally and specifically deny all other allegations set forth in paragraph number 3.

26 3. Answering paragraph number 4, the Dismans are without sufficient knowledge or
 27 information to form a belief as to the truth of the allegations of said paragraph and on that basis
 28 deny each and every allegation set forth therein.

II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS

4. Answering paragraph number 5, the allegations set forth therein attempt to

1 characterize the terms of the document referenced, which speaks for itself. Therefore, the
2 Dismans generally and specifically deny any characterization or legal conclusion inconsistent
3 with the document referenced and no further response is required.

4 5. Answering paragraph numbers 6, 7, 8, 9, 10, 11 and 12, the Dismans are without
5 sufficient knowledge or information to form a belief as to the truth of the allegations of said
6 paragraphs and on that basis deny each and every allegation set forth therein.

7 **III. THE UNDERLYING LITIGATION**

8 6. Answering paragraph number 13, the Dismans are without sufficient knowledge
9 or information to form a belief as to the truth of the allegations of said paragraph and on that
10 basis deny each and every allegation set forth therein.

11 **A. NRED I LITIGATION**

12 7. Answering paragraph numbers 14, 15, 16, 17 and 18, the Dismans are without
13 sufficient knowledge or information to form a belief as to the truth of the allegations of said
14 paragraphs and on that basis deny each and every allegation set forth therein.

15 **B. NRED II LITIGATION**

16 8. Answering paragraph numbers 19, 20, 21, 22, 23, 24, 25 and 26, the Dismans are
17 without sufficient knowledge or information to form a belief as to the truth of the allegations of
18 said paragraphs and on that basis deny each and every allegation set forth therein.

19 **FIRST CAUSE OF ACTION**

20 **(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamothe, Third-**
21 **Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)**

22 9. Answering paragraph number 27, the Dismans repeat and reallege their answers
23 to paragraphs 1 through 26 above, and incorporates the same by reference as though fully set
24 forth herein.

25 10. Answering paragraph number 28, the Dismans generally and specifically deny
26 the allegations set forth therein.

27 11. Answering paragraph numbers 29(a) and (b), the allegations set forth therein
28 attempt to characterize the terms of the documents referenced, which speak for themselves.

1 Therefore, the Dismans generally and specifically deny any characterization or legal conclusion
2 inconsistent with the documents referenced and no further response is required.

3 12. Answering paragraph numbers 29(c) and (d), and 30, the allegations set forth
4 therein call for legal conclusions to which no response is required. To the extent paragraph
5 numbers 29(c) and (d) are determined to contain factual allegations, the Dismans are without
6 sufficient knowledge or information to form a belief as to the truth of the allegations of said
7 paragraphs and on that basis deny each and every allegation set forth therein.

8 13. Answering paragraph number 31, the Dismans generally and specifically deny
9 the allegations set forth therein

10 AFFIRMATIVE DEFENSES

11 The Dismans assert the following affirmative defenses to the claims and allegations
12 contained in the Counterclaim.

13 1. The Counterclaim fails to state a claim or cause of action against the Dismans
14 upon which relief can be granted.

15 2. The Counterclaim is not ripe for determination.

16 3. The Counterclaim is barred in whole or in part by the doctrines of laches, waiver,
17 estoppel, and/or unclean hands.

18 4. The Counterclaim is barred in whole or in part by the doctrines of ratification,
19 confirmation, release, discharge, and/or set-off.

20 5. The Counterclaim is barred in whole or in part by the doctrines of mistake,
21 excuse, and/or non-performance.

22 6. The Dismans acted at all times in accordance with their contractual and legal
23 rights.

24 7. The Dismans acted at all times in good faith and in conformity with applicable
25 law and regulations.

26 8. Any damage, injury or loss sustained by the Lytles was caused by the actions of
27 others or by intervening or superseding events for which the Dismans have no responsibility.
28

PARTIES

1 1. The Dismans are, and at all times relevant herein were, residents of Clark
2 County, Nevada.

3 2. The Dismans are informed and believe and on that basis allege that MARJORIE
4 B. BOULDEN, Trustee of THE MARJORIE B. BOULDEN TRUST, AMENDED AND
5 RESTATED DATED JULY 17, 1996 ("Boulden"), is, and at all relevant times herein was, a
6 resident of Clark County, Nevada.

7 3. The Dismans are unaware of the true names and legal capacities, whether
8 individual, corporate, associate, or otherwise, of the Cross-Defendants sued herein as DOES I
9 through X and ROE BUSINESS ENTITIES XI through XX, inclusive, and therefore sue said
10 Cross-Defendants by their fictitious names. The Dismans pray leave to insert said Cross-
11 Defendants' true names and legal capacities when ascertained. The Dismans are informed and
12 believe and on that basis allege that each of the Cross-Defendants designated herein as a DOE or
13 a ROE is in some way legally responsible and liable for the events referred to herein and
14 proximately caused the damages alleged herein.

JURISDICTION AND VENUE

15 4. This Court's jurisdiction over the parties is proper under NRS 14.065 as it is
16 consistent with the constitution of this state and the Constitution of the United States.

17 5. Venue is proper in the Eighth Judicial District Court of Nevada under NRS
18 13.010 as the subject property is located in Clark County, Nevada.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

19 6. This action concerns the real property commonly known as 1960 Rosemere
20 Court, Las Vegas, Nevada 89117, Parcel No. 163-03-313-008 ("1960 Rosemere Court" or
21 "Property").

22 7. In or about August 2017, the Dismans purchased 1960 Rosemere Court from
23 Boulden for \$550,000.00.

24 8. The Grant, Bargain, Sale Deed conveying title of the Property from Boulden to
25 the Dismans was recorded on August 4, 2017, as Instrument No. 20170804-0002656 of the

1 Official Records of Clark County, Nevada.

2 9. Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (hereinafter
3 collectively referred to as, the "Lyttles") allege that 1960 Rosemere Court is encumbered by a
4 judgment lien that they recorded against the Rosemere Property Owners' Association and that
5 attached to the Property (the "Judgment Lien").

6 **FIRST CLAIM FOR RELIEF**

7 **(Breach of Warranty)**

8 10. The Dismans repeat, reallege and incorporate by reference each and every
9 allegation contained in Paragraphs 1 through 9 as though fully set forth herein.

10 11. Pursuant to Nevada law and, specifically, NRS 111.170, the Grant, Bargain, Sale
11 Deed whereby Boulden conveyed 1960 Rosemere Court to the Dismans is a warranty deed that
12 contains certain covenants, including, but not limited to, the covenant that the Property is free
13 from any encumbrance and defect in title.

14 12. Such covenants may be sued upon in the same manner as if they had been
15 expressly inserted in the conveyance.

16 13. By virtue of the Lyttles' Counterclaim against the Dismans, 1960 Rosemere Court
17 may be subject to the Judgment Lien.

18 14. Boulden, therefore, breached the covenants contained in the Grant, Bargain, Sale
19 Deed whereby she conveyed the Property to the Dismans.

20 15. As a direct and proximate result of Boulden's breach, the Dismans have suffered
21 damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), all in a sum to be
22 determined according to proof at the time of trial.

23 16. As a direct and proximate result of Boulden's breach, the Dismans have been
24 required to retain legal counsel and incur legal fees and costs in connection with this action and
25 is, therefore, entitled to recover reasonable attorneys' fees and costs from Boulden as special
26 damages.

27 ///

28 ///

SECOND CLAIM FOR RELIEF

(In the Alternative, Unjust Enrichment)

17. The Dismans repeat, reallege and incorporate by reference each and every allegation contained in Paragraphs 1 through 16 as though fully set forth herein.

18. The Dismans paid Boulden the fair market value for the purchase of 1960 Rosemere Court.

19. Boulden, however, failed to convey clear title of the Property to the Dismans because the Lytles claim a Judgment Lien against the Property.

20. Boulden, therefore, has been unjustly enriched at the Dismans' expense.

21. As a direct and proximate result of Boulden's conduct, the Dismans have suffered damages in an amount in excess of Fifteen Thousand Dollars (\$15,000.00), all in a sum to be determined according to proof at the time of trial.

22. As a direct and proximate result of Boulden's conduct, the Dismans have been required to retain legal counsel and incur legal fees and costs in connection with this action and is, therefore, entitled to recover reasonable attorneys' fees and costs from Boulden as special damages.

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1 WHEREFORE, the Dismans pray for judgment against Boulden, DOES I through X and
2 ROE BUSINESS ENTITIES XI through XX, and each of them, as follows:

- 3 1. For damages in excess of \$15,000.00, plus all applicable interest thereon;
- 4 2. For an award of attorney's fees and costs of litigation; and
- 5 3. For any and all such other relief as the Court deems just and proper.

6 DATED this 26th day of September, 2017.

7 FIDELITY NATIONAL LAW GROUP

8
9 
10 CHRISTINA H. WANG, ESQ.
11 Nevada Bar No. 9713
12 8363 W. Sunset Road, Suite 120
13 Las Vegas, Nevada 89113
14 *Attorneys for Counter-Defendants/Cross-*
15 *Claimants Robert Z. Disman and*
16 *Yvonne A. Disman*

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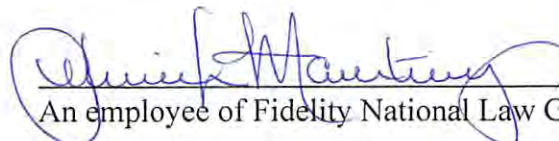
CERTIFICATE OF SERVICE

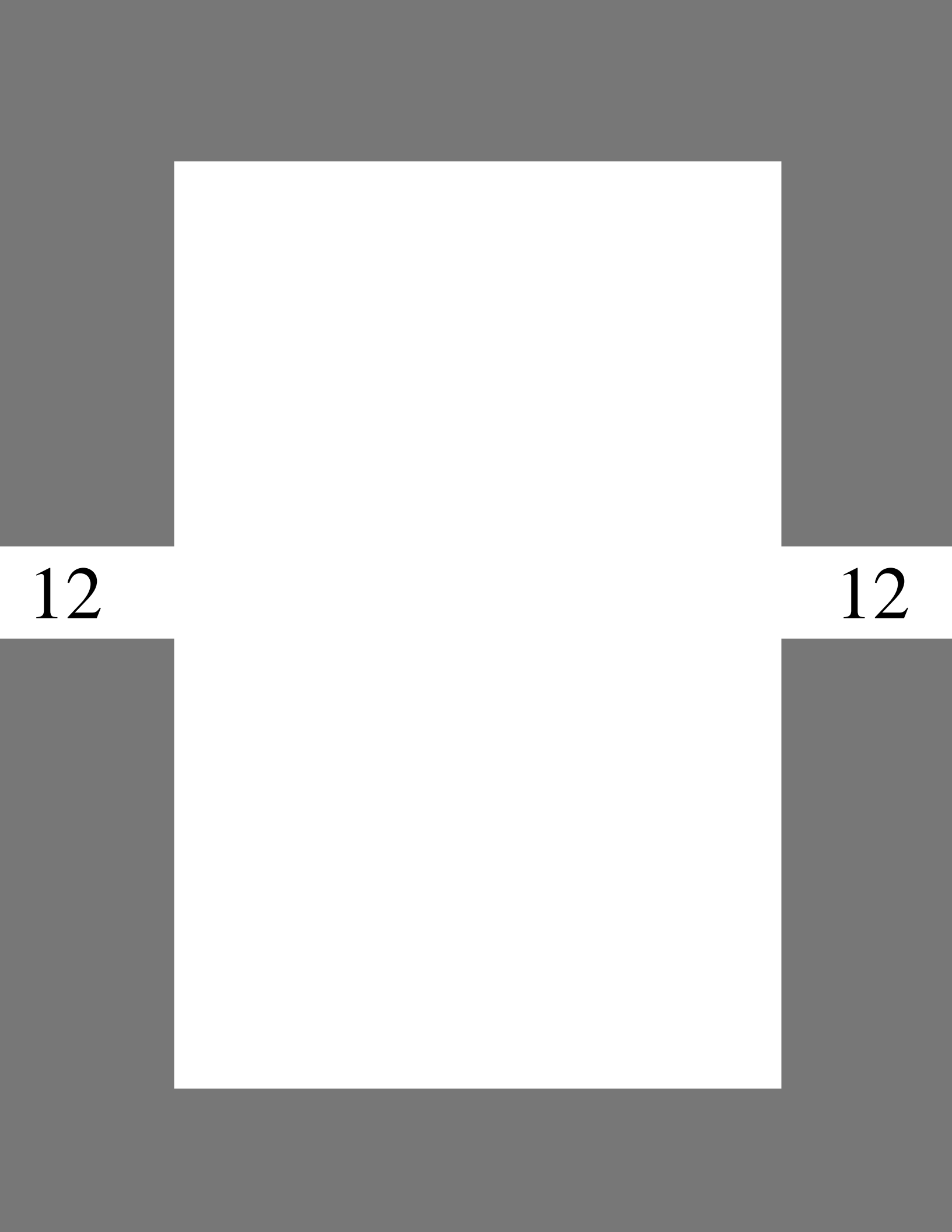
The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **COUNTER-DEFENDANTS AND CROSS-CLAIMANTS ROBERT Z. DISMAN AND YVONNE A. DISMAN'S ANSWER AND CROSSCLAIM** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: ☐ (i) placing said copy in an envelope, first class postage prepaid, in the United States Mail at Las Vegas, Nevada, ☐ (ii) via facsimile, ☐ (iii) via courier/hand delivery, ☐ (iv) via overnight mail, ☐ (v) via electronic delivery (email), and/or ☒ (vi) via electronic service through the Court's Electronic File/Service Program.

Richard E. Haskin, Esq.
Timothy P. Elson, Esq.
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
*Attorneys for Defendants/Counter-
Claimants Trudi Lee Lytle and John
Allen Lytle, Trustees of The Lytle Trust*

Daniel T. Foley, Esq.
Foley & Oakes, PC
626 S. 8th Street
Las Vegas, Nevada 89101
*Attorneys for Plaintiffs Marjorie B.
Boulden, Trustee of The Marjorie B.
Boulden Trust, amended and restated
dated July 17, 1996; and Linda Lamothe
and Jacques Lamothe, Trustees of the
Jacques and Linda Lamothe Living Trust*

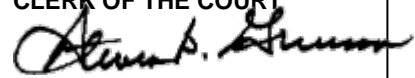
DATED: 9/26/17


An employee of Fidelity National Law Group



12

12



1 **ANSR**
2 DANIEL T. FOLEY, ESQ.
3 Nevada Bar No. 1078
4 FOLEY & OAKES, PC
5 626 S 8th Street
6 Las Vegas, Nevada 89101
7 Tel.: (702) 384-2070
8 Fax: (702) 384-2128
9 Email: dan@foleyoakes.com
10 *Attorneys for Marjorie Boulden*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 MARJORIE B. BOULDEN, TRUSTEE OF)
14 THE MARJORIE B. BOULDEN TRUST,)
15 LINDA LAMOTHE AND JACQUES)
16 LAMOTHE, TRUSTEES OF THE JACQUES)
17 & LINDA LAMOTHE LIVING TRUST)

18 *Plaintiffs,*)

19 *Plaintiffs,*)

20 vs.)

21 TRUDI LEE LYTLE AND JOHN ALLEN)
22 LYTLE, AS TRUSTEES OF THE LYTLE)
23 TRUST, DOES I through X; and ROE)
24 CORPORATIONS I through X)

25 *Defendants.*)

26 TRUDI LEE LYTLE AND JOHN ALLEN)
27 LYTLE, THE LYTLE TRUST,)

28 *Counter-Claimants,*)

v.)

29 LINDA LAMOTHE AND JACQUES)
30 LAMOTHE, TRUSTEES OF THE JACQUES)
31 & LINDA LAMOTHE LIVING TRUST,)
32 ROBERT Z. DISMAN, YVONNE A.)
33 DISMAN, and ROES 1 through 10, inclusive,)

34 *Counter-Defendants.*)

Case No. A-16-747800-C
Dept. No. XVI

PLAINTIFFS' ANSWER TO
CROSS COMPLAINT

1 ROBERT Z. DISMAN, an individual; and)
 2 YVONNE A. DISMAN, an individual,)
 3 Counter-Claimants,)
 4 v.)
 5 MAJORIE B. BOULDEN, TRUSTEE OF THE)
 6 MARJORIE B. BOULDEN TRUST,)
 7 AMENDED AND RESTATED DATED JULY)
 8 17, 1996; DOES 1 through 10, inclusive,)
 9 Counter-Defendants.)

10 **PLAINTIFFS' ANSWER TO CROSS COMPLAINT**

11
 12 COMES NOW Plaintiff/Counter Defendant/ Cross Defendant, Marjorie B. Boulden
 13 Trustee of the Marjorie B. Boulden Trust ("Ms. Boulden") by and through her attorneys Foley &
 14 Oakes, PC, and hereby respond to Robert Disman's and Yvonne Disman's Cross Complaint as
 15 follows:

16 1. With respect to the allegations contained in paragraphs numbered 1, 2, 4, 5, 6, 7,
 17 and 8, Ms. Boulden admits all of the allegations contained therein.

18 2. With respect to the allegations contained in paragraphs numbered 9, 11, 12, 13,
 19 14, 15, 16, 19, 20, 21, and 22, Ms. Boulden denies all of the allegations contained therein.

20 3. With respect to the allegations contained in paragraphs numbered 3 and 18, Ms.
 21 Boulden is are without sufficient information upon which they can admit or deny said
 22 allegations, and on that basis denies all of the allegations contained therein.

23 4. With respect to the allegations contained in paragraphs numbered 10 and 17, Ms.
 24 Boulden repeats and re-alleges her Answers to the paragraphs referenced therein.

1 5. To the extent necessary, Ms. Boulden denies the request for relief contained in the
2 prayer of the Complaint.

3
4 **AFFIRMATIVE DEFENSES**

5 As and for Affirmative Defenses to the Lytle's Counter Complaint, Ms. Boulden alleges
6 as follows:

7 **FIRST AFFIRMATIVE DEFENSE**

8 The Cross Complaint fails to state a claim or claims against Ms. Boulden upon which
9 relief may be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 The injuries and damages, if any, which the Dismans allege in their Cross Complaint
12 were caused solely by the negligence and action of the Dismans and/or others, and not by any act
13 or omission to act on the part of Ms. Boulden.

14 **THIRD AFFIRMATIVE DEFENSE**

15 The Dismans' claims and Cross Complaint are barred by the doctrine of estoppel.

16 **FOURTH AFFIRMATIVE DEFENSE**

17 The Dismans waived any rights or claims they may have had against Ms. Boulden

18 **FIFTH AFFIRMATIVE DEFENSE**

19 The Dismans' claims and Cross Complaint are barred by the doctrine of Laches.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The Dismans' claims and Cross Complaint are barred by the doctrine of unclean hands.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 The Dismans failed to mitigate their damages.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 The Dismans' claims and Cross Complaint are barred by the doctrine of waiver.

26 **NINTH AFFIRMATIVE DEFENSE**

27 The Dismans' claims and Cross Complaint are barred by the doctrine of Accord and
28 satisfaction.

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ELEVENTH AFFIRMATIVE DEFENSE

.TWELFTH AFFIRMATIVE DEFENSE

THIRTEENTH AFFIRMATIVE DEFENSE

WHEREFORE, Ms. Boulden prays for relief as follows:

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

DATED this 13th day of October 2017.

FOLEY & OAKES, PC

/s/**Daniel T. Foley**

Daniel T. Foley, Esq.

Nevada Bar No. 1078

626 So. 8th Street

Las Vegas, Nevada 89101

Attorneys for Ms. Boulden

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, N.R.C.P. 5(b) and EDCR 7.26, I hereby certify that I am an employee of Foley & Oakes, PC, and that on the 13th day of October, 2017, I served the following document(s):

PLAINTIFFS' ANSWER TO CROSS COMPLAINT

I served the above-named document(s) by the following means to the person s as listed below: [x] By Electronic Transmission through the Odyssey eFileNV system:

Richard E. Haskin, Esq. GIBBS, GIDEN, LOCHER, TURNER, SENET & WHITTBRODT, LLP 1140 N. Town Center Drive, Suite 300 Las Vegas, NV 89144 Attorneys for Defendants/Counterclaimants	Christina H. Wang, Esq. FIDELITY NATIONAL LAW GROUP 8363 Sunset Road, Suite 120 Las Vegas, Nevada 89113 Attorneys for Counter-Defendants/Cross Claimants
---	---

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

/s/ Liz Gould
An employee of FOLEY & OAKES

13

13

MSJD
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and
ROE ENTITIES I through V, inclusive,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XXVIII

**MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION
FOR JUDGMENT ON THE PLEADINGS**

Come Now the Plaintiffs, September Trust, dated March 23, 1972 (“September Trust”),
Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist
Family Trust (“Zobrist Trust”), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as
Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated
May 27, 1992 (“Sandoval Trust”), Dennis A. Gegen and Julie S. Gegen, Husband and Wife as

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

1 Joint Tenants (hereafter “Gegen”) (hereafter September Trust, Zobrist Trust, Sandoval Trust and
2 Gegen may be collectively referred to as “Plaintiffs”), by and through their attorneys,
3 Christensen James & Martin, and hereby move this Court for Summary Judgment pursuant to
4 NRCP 56, or in the alternative, for a Judgment on the Pleadings pursuant to NRCP 12(c), on all
5 of the causes of action alleged in the Complaint filed concurrently herewith, against Defendants
6 Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (collectively the “Lyttles” or
7 “Defendants”).

8 DATED this 29th day of November, 2017.

9 CHRISTENSEN JAMES & MARTIN

10 By: /s/ Laura J. Wolff, Esq.

11 Laura J. Wolff, Esq.

12 Nevada Bar No. 6869

13 7440 W. Sahara Avenue

14 Las Vegas, NV 89117

15 Tel.: (702) 255-1718

16 Fax: (702) 255-0871

17 *Attorneys for Plaintiffs*

18 **NOTICE OF MOTION**

19 To: All Interested Parties; and

20 To: Their Attorneys of Record herein.

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Plaintiffs’ Motion for
22 Summary Judgment, Or in the Alternative, Motion for Judgment on the Pleadings will be heard
23 **XXVIII**
24 by the above captioned court in Department ____ of the Regional Justice Center the **4** day of
25 **Jan.**, 20**18** at the hour of **9:00 am**.

26 ///

27 ///

28 ///

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 I.

4 **STATEMENT OF UNDISPUTED FACTS**

5 1. The September Trust is the owner of the residential property in Clark County,
6 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
7 03-313-004 ("September Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
8 attached hereto as Exhibit "1". *See* Affidavit of Sherman Kearl, as Trustee of the September
9 Property ("Kearl Affidavit").
10

11 2. The Zobrist Trust is the owner of the residential property in Clark County,
12 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
13 03-313-005 ("Zobrist Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
14 attached hereto as Exhibit "2". *See* Affidavit of Gerry R. Zobrist, as Trustee of the Zobrist
15 Property ("Zobrist Affidavit").
16

17 3. The Sandoval Trust is the owner of the residential property in Clark County,
18 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
19 03-313-001 ("Sandoval Property"). A true and correct copy of the Quitclaim Deed is attached
20 hereto as Exhibit "3". *See* Affidavit of Julie Marie Sandoval Gegen, as Trustee of the Sandoval
21 Property and as Joint Tenant of the Gegen Property (defined below)("Gegen Affidavit")
22 (hereafter Kearl Affidavit, Zobrist Affidavit and Gegen Affidavit are collectively "Plaintiffs'
23 Affidavits").
24

25 4. Gegen is the owner of the residential property in Clark County, Nevada known as
26 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003
27 ("Gegen Property") (hereafter September Property, Zobrist Property, Sandoval Property and
28

1 Gegen Property may be collectively referred to as “Plaintiffs’ Properties”). A true and correct
2 copy of the Grant, Bargain, Sale Deed is attached hereto as Exhibit “4”. *See Id*

3 5. The Plaintiffs’ Properties are located in the Rosemere Estates subdivision
4 (“Rosemere Subdivision” or “Subdivision”), wherein there are nine (9) lots and/or properties.
5 *See Exhibits 1-4.*

6 6. The Plaintiffs’ Properties are subject to the CC&R’s recorded January 4, 1994
7 (the “CC&Rs”). A true and correct copy of the CC&R’s is attached hereto as Exhibit “5”.

8 7. In 2009, the Lytles filed suit against the Rosemere Association directly in Case
9 No. A-09-593497-C (“Rosemere Litigation I”). The Lytles did not name the Plaintiffs or any
10 other lot owners as Defendants in the Rosemere Litigation I. A copy of the Lytles’ Complaint
11 filed in the Rosemere Litigation I is attached hereto as Exhibit “6”.

12 8. In the Rosemere Litigation I, the Lytles alleged that the CC&Rs had been
13 improperly amended by some of the property owners in the Subdivision which converted the
14 Association to a full-fledged homeowner’s association. *See Ex. 6.*

15 9. The Lytles sought and obtained a Summary Judgment from the District Court,
16 which held that the Rosemere Association was not a home-owners association as defined in NRS
17 116 but instead was a limited-purpose association as defined in NRS 116.1201(6) that was not
18 subject to the requirements or benefits of NRS Chapter 116. *See* a true and correct copy of the
19 Order Granting Summary Judgment filed in the Rosemere Litigation I and attached hereto as Ex.
20 7, pg. 9, par. 19. The Summary Judgment was appealed to, and upheld by the Nevada Supreme
21 Court.

22 10. Thereafter, on or about July 29, 2016, the Lytles obtained a Judgment against the
23 Rosemere Association for their attorney’s fees and costs in the amount of \$361,238.59 (hereafter
24 “Attorneys’ Fees Judgment”).

1 11. Thereafter, in August and September of 2016, the Lytles recorded with the Clark
2 County Recorder's office two different abstracts of the Rosemere Judgment I. The first Abstract
3 (filed in August) specifically listed the parcel numbers of the Plaintiffs' Properties as properties
4 to which the Rosemere Judgment I was to attach but pursuant to the records of the Clark County
5 Recorder's Office only attached to one (1) of the Plaintiffs' Properties-the Sandoval Property.
6 However, the first recorded Abstract appears on a Title Report for the Zobrist Property. The
7 second Abstract (filed in September) only listed one parcel number but attached to three (3) of
8 the Plaintiffs' Properties (hereafter the 2 Abstracts are "Abstracts of Judgment"). Therefore,
9 both the Abstracts of Judgment affect and are an unlawful encumbrance on all of Plaintiffs'
10 Properties. True and correct copies of the recorded Abstracts of Judgment are attached hereto as
11 Exhibit "8".
12

13 12. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
14 wrongfully recorded against their Properties and have alleged Quiet Title and Declaratory Relief
15 in the Complaint. *See* the Complaint filed concurrently herewith.
16

17 13. Other property owners in the Rosemere Subdivision, the Bouldens (Parcel No.
18 163-03-313-008) and the Lamothes (Parcel No. 163-03-313-002) have already filed a lawsuit
19 (Case No. A-16-747900-C) requesting the same relief ("BL Lawsuit") as the Plaintiffs, because
20 the Abstracts of Judgment were recorded against all the properties in the Subdivision except for
21 the Lytle's property.
22

23 14. On February 24, 2017, the Bouldens and Lamothes filed a Motion for Partial
24 Summary Judgment in the BL Lawsuit. A true and correct copy of the Motion for Partial
25 Summary Judgment is attached hereto as Exhibit "9".
26
27
28

1 15. On July 25, 2017, the Court issued its Order in the BL Lawsuit granting the
2 Motion for Partial Summary Judgment and finding certain Findings of Fact and Conclusions of
3 Law (“Order”). A true and correct copy of the Order is attached hereto as Exhibit “10”.

4 16. In its Order, the Court found that, among other things, the Association is not
5 subject to NRS 116.3117, the Bouldens and Lamothes were not parties to the Rosemere
6 Litigation, the Rosemere Judgment I (referred to as the “Rosemere LP Litigation” in the Order)
7 is not an obligation or debt of the Bouldens or the Lamothes and that the Abstracts of Judgment
8 were improperly recorded against such properties and must be expunged and stricken from the
9 record. *See* Ex. 10, pg. 4-5.

11 17. After the Court issued its Order, the Lytles released their liens against the
12 Boulden and Lamothes properties. True and correct copies of the Lien Releases are attached
13 hereto as Exhibit “11”.

14 18. The Lytles have appealed the Order in the BL Lawsuit.

15 19. In 2010, the Lytles filed another suit against the Rosemere Association directly in
16 Case No. A-10-631355-C (“Rosemere Litigation II”). The Lytles did not name the Plaintiffs or
17 any other lot owners as Defendants in the Rosemere Litigation II. On or about November 14,
18 2016, the Lytles were granted Summary Judgment against the Rosemere Association. On or
19 about July 20, 2017, the District Court signed an Abstract of Judgment in the amount of
20 \$1,103,158.12. (“Abstract Rosemere Judgment II”). *See* a true and correct copy of the Abstract
21 Rosemere Judgment II attached hereto as Exhibit “12”.

22 20. The Plaintiffs were not named parties in the Rosemere II Litigation and did not
23 have notice of the same. *Id.* *See* Plaintiffs’ Affidavits.

24 21. As of the date of filing this Motion, the Rosemere Judgment II has not been
25 recorded against the Plaintiffs’ Properties.

1 22. On or about April 2, 2015, the Lytles filed a third case (Case No. A-15-716420-
2 C) against the Association and named as Defendants Sherman L. Kearl (“Kearl”) and Gerry G.
3 Zobrist (“Zobrist”) (“Rosemere Litigation III”). On April 8, 2015, the Lytles filed an Errata to
4 the Complaint amending it so that all references to Kearl and Zobrist were taken out of the
5 Complaint. A true and correct copy of the Complaint and Errata are attached hereto as Exhibit
6 “13”.

7 23. On or about September 13, 2017, the Court entered its Order granting Summary
8 Judgment for Declaratory Relief as against the Association (“Rosemere Judgment III). A true
9 and correct copy of the Order Granting Summary Judgment is attached hereto as Exhibit “14”.
10 On November 8, 2017, the Lytles’ Motion for Attorney’s Fees and Costs was granted. A true
11 and correct copy of the Order Granting Motion for Attorney’s Fees is attached hereto as Exhibit
12 “15”.

13 24. As of the date of filing this Motion, the Rosemere Judgment III has not been
14 recorded against the Plaintiffs’ Properties nor has an Abstract of Judgment been filed with the
15 Court.
16

17 25. Although the Plaintiffs and Lytles have participated in settlement discussions and
18 the Plaintiffs have requested the same relief granted to the Bouldens and Lamothes, that of
19 removing the Abstracts of Judgment from their Properties, as of the date of filing this Motion,
20 the Lytles have not agreed to release the Abstracts of Judgment wrongfully recorded against the
21 Plaintiffs’ Properties. *See* Declaration of Wesley J. Smith (“Smith Decl.”) attached hereto.
22

23 26. All of the facts set forth above are undisputed.
24

25 II.

26 STANDARD OF REVIEW
27
28

Summary judgment “shall be rendered forthwith if the pleadings. . . together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” NRCP 56, *See also Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The substantive law pertaining to each cause of action defines which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment has the burden of showing there is no genuine issue of material fact. *See Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). Once the moving party meets its burden by presenting evidence that would entitle the movant to a directed verdict, the burden shifts to the other party to go beyond the pleadings and set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Anderson*, 477 U.S. at 249-51.

NRCP12(c) provides that a motion for judgment on the pleadings may be made by any party and if matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. A motion under NRCP 12(c) “is designed to provide a means of disposing of cases when material facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of the pleadings.” *Duff v. Lewis*, 114 Nev. 564 (1998); *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987). A motion under this rule “has utility only when all material allegations of fact are admitted in the pleadings and only questions of law remain.” *Id.* at 136, 734 P.2d at 1241.

III.

LEGAL ARGUMENT

Defendants have improperly recorded Abstracts of Judgment against the Plaintiffs’ Properties. The Plaintiffs were never parties to the lawsuit and are not named in the Judgment. *See* Plaintiffs’ Affidavits. Further, other property owners have already been accorded the same

1 relief from this District Court. Finally, Plaintiffs are also entitled to a Declaratory Judgment that
2 the Judgments named in this Motion may NOT be recorded against Plaintiffs' Properties.

3 A. The Plaintiffs Are Not Parties to the Rosemere Litigation I.

4 As shown on all the pleadings in all the cases filed thus far by the Lytles against the
5 Association, the Plaintiffs are not named parties to **any** of the litigation and when some of the
6 Plaintiffs were named in a Complaint, the Lytles filed an Errata to remove them. *See* Exs. 6-15
7 and Plaintiffs' Affidavits. The Attorneys' Fee Judgment was not entered against the Plaintiffs in
8 the Rosemere Litigation I. The Abstracts of Judgment do not name the Plaintiffs in the same
9 litigation.
10

11 NRS 17.150(2) provides that:

12 A transcript of the original docket or an abstract or copy of any judgment or decree of a
13 district court of the State of Nevada or the District Court or other court of the United
14 States in and for the District of Nevada, the enforcement of which has not been stayed on
15 appeal, certified by the clerk of the court where the judgment or decree was rendered,
16 may be recorded in the office of the county recorder in any county, and when so recorded
it becomes a lien upon all the real property of the judgment debtor not exempt from
execution in that county, **owned by the judgment debtor at the time, or which the**
judgment debtor may afterward acquire, until the lien expires. (emphasis added)

17 The Plaintiffs are not Judgment Debtors-they have never been named in any of the lawsuits
18 brought by the Lytles. Therefore, the Abstracts of Judgment cannot be recorded against the
19 Plaintiffs' Properties. A Judgment may **only** become a lien upon property of the judgment
20 debtor--which in this case is only the Association. Therefore, the Abstracts of Judgment have
21 been wrongfully recorded and must be expunged immediately.
22

23 B. Other Subdivision Homeowners Have Had This Same Issue Decided in Their Favor.

24 This District Court (Judge Timothy C. Williams) has already decided this same issue on a
25 partial summary judgment motion in favor of other homeowners in the Subdivision-the Bouldens
26 and Lamothes. The Bouldens and Lamothes obtained the exact relief Plaintiffs are requesting in
27 this Motion in District Court, Case No. A-16-747900-C, Dept. No XVI.
28

1 In their case, the Bouldens and Lamothes filed a Motion for Partial Summary Judgment
2 (“SJ Motion”) on these very same issues. In deciding the Bouldens and Lamothes SJ Motion, the
3 District Court entered an Order (Ex. “10”) finding some of the following relevant facts:

4 • The Plaintiffs were not parties or a “losing party” as per Section 25 of the CC&R’s in
5 the Rosemere Litigation I (4:17-19);

6 • The Association is a limited purpose association as referenced under NRS 116.1201 (2)
7 (4:12);

8 • NRS 116.3117 is not applicable to the Association (4:13);

9 • The Final Judgment against the Association is not an obligation or debt of the Plaintiffs
10 (4:20-24); and

11 • The Abstracts of Judgment were improperly recorded against the Boulden and
12 Lamothe’s Properties (4:24-26;5:1-9).

13 After the Court entered its Order, the Lytles released the Abstracts of Judgment against the
14 Boulden and Lamothe’s Properties. Ex. “11”. This is exactly what the Plaintiffs in this case are
15 requesting that the Lytles do in their case. Thus, this Court should grant the same relief to the
16 Plaintiffs that Judge Williams has already granted to the Boulden and Lamothe’s and required
17 that the Lytles remove their Abstracts of Judgment from their Properties.

18 C. Defendants Sought and Obtained a Declaration that the Association is a Limited
19 Purpose Association.

20 In the Rosemere Litigation I, the Lytles specifically sought and obtained declaratory
21 relief that the Rosemere Association was only a limited-purpose association and was not a home-
22 owners association required to abide by NRS 116. See Ex. 7. In the Summary Judgment Order
23 that was prepared by the Lytle’s counsel, the District Court held that the Rosemere Association
24 was “a limited purpose association under NRS 116.1201, is not a Chapter 116 “unit-owners’
25 association” and is relegated to only those specific duties and powers set forth in paragraph 21 of
26
27
28

1 the Original CC&R's and NRS 116.1201." Ex. 7, p. 9, par. 19. Paragraph 21 of the CC&R's
2 provides that a property owners committee shall be established by all owners of lots within the
3 subdivision to determine the landscaping on the four exterior wall planters and the entrance way
4 planters, to determine the method and cost of watering the planters, to maintain the exterior
5 perimeter wall, to maintain the Entrance Gate and to maintain and repair the interior street. *See*
6 Ex. 5, par. 21.

7 As a limited purpose association NRS 116 does not apply to its actions. *See* NRS
8 116.1201(2) (specifically excluding the application of NRS 116 to limited purpose associations).
9 This concept is important because NRS 116.3117 provides that a judgment recorded against a
10 homeowners association attaches to all property owned by members within the association.
11 However, since the Rosemere Association has been declared to be only a limited purpose
12 association NRS 116.3117 does not apply to any of the Judgments obtained by the Lytles against
13 the Rosemere Association. Therefore, the Lytles cannot rely on this portion of NRS to record its
14 Abstracts of Judgment against Plaintiffs' Properties and the inclusion of the Plaintiffs' Properties
15 constitutes a cloud on the Plaintiffs' Titles.
16

17
18 D. The CC&Rs Do Not Create Joint Liability for the Plaintiffs.

19 The CC&R's are very short and were specifically made only to create a committee with
20 responsibilities for landscaping, the perimeter wall, the entrance gate and the private drive. Ex.
21 5, p. 3, par. 21. There is no language in the CC&Rs that allows a judgment against the
22 Association to attach to a non-parties property. In fact, the CC&Rs specifically provide that if
23 any disputes arise between residents relating to the CC&Rs that each resident has the right to
24 initiate their disputes against each other, not against the Association. Paragraph 24 of the
25 CC&R's provides:
26

27 Except as otherwise provided herein, Subdivider or any owner or owners of any of the
28 lots shall have the right to enforce any or all of the provisions of the covenants,

1 conditions and restrictions upon any other owner or owners. In order to enforce said
2 provision or provisions, any appropriate judicial proceeding in law or in equity may be
3 initiated and prosecuted by any such lot owner or owners against any other owner or
4 owners.

4 Ex. 5, p. 4.

5 Plaintiffs anticipate that Defendants will argue that since all the lots are subject to the
6 CC&Rs that somehow judgment against the Association is enforceable against all property
7 owners. The Lytles will most likely point to language that the CC&Rs are applicable to all 9
8 lots. However, such language only shows that the CC&Rs are for the benefit of the Subdivision
9 properties and does not include the right to file a Judgment against all the property owners when
10 they are not even a named party in the litigation.

12 Plaintiffs anticipate that Defendants will also argue that the introductory language in the
13 CC&Rs that states that breaches of the CC&Rs shall not defeat mortgages or deeds of trusts
14 recorded against any of the properties also gives them the right to file the Abstracts of Judgment
15 against the Plaintiffs' Properties. However, this language is simply to allow buyers of property
16 to obtain loans to finance the purchases of their homes.

18 Finally, if Defendants attempt to argue that NRS 116 should apply to this Association, the
19 Defendants are precluded from doing so because they have already litigated this issue and sought
20 for and obtained a Judgment that the exact opposite is true-that NRS 116 does not apply to this
21 Association. *See* Ex. 7.

22 E. The Abstracts of Judgment Must be Expunged and Plaintiffs are Entitled to Injunctive
23 Relief.

24 The Plaintiffs are being irreparably harmed by the Abstracts of Judgment because injury
25 to real property constitutes irreparable harm. Real property and its attributes are considered
26 unique and loss of real property rights generally results in irreparable harm. *See Leonard v.*
27 *Stoebling*, 102 Nev. 543, 728 P.2d 1358 (1986) (view from home is unique asset; injunction
28

1 issued to preserve view); *see also Nevada Escrow Service, Inc. v. Crockett*, 91 Nev. 201, 533
2 P.2d 471 (1975) (denial of injunction to stop foreclosure reversed because legal remedy
3 inadequate). Clearly, compensatory damages do not provide an adequate remedy in this situation
4 where some or all of the Plaintiffs would like to sell and/or refinance their Properties and cannot
5 do so with the Abstracts of Judgment clouding their titles. The real estate market in Las Vegas
6 has proved to be volatile in the past and could take a turn at any point. Therefore, it will be
7 difficult to substantiate the value of these Properties and the value of other homes that may be
8 purchased with the sale proceeds of any of the Plaintiffs' Properties in the future of this
9 litigation.
10

11 Therefore, pursuant to NRS 40.010 this Court should declare the Defendants' Abstracts
12 of Judgment to be improper clouds on the Plaintiffs' Properties, which should be stricken and
13 expunged from the records of the Clark County Recorder's Office.
14

15 III.

16 CONCLUSION

17 Plaintiffs respectfully request that this Court enter a Summary Judgment against the
18 Defendants expunging and striking the Abstracts of Judgment recorded against the Plaintiffs'
19 Properties, restraining and enjoining the Lytles from selling or attempting to sell the Plaintiffs'
20 Properties and from taking any action in the future against the Plaintiffs or their Properties based
21 upon any litigation the Lytles have commenced against the Rosemere Association.
22

23 DATED this 29th day of November, 2017.

24 CHRISTENSEN JAMES & MARTIN

25 By: /s/ Laura J. Wolff, Esq.

26 Laura J. Wolff, Esq.

27 Nevada Bar No. 6869

28 *Attorneys for Plaintiffs*

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

AFFT
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and
ROE ENTITIES I through V, inclusive,

Defendants.

Case No.:
Dept. No.:

**AFFIDAVIT OF SHERMAN L. KEARL
AS TRUSTEE OF THE SEPTEMBER
TRUST, DATED MARCH 23, 1972 IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

State of Nevada)
) ss.
County of Clark)

Sherman L. Kearl, states under penalty of perjury:

1. I am a resident of Clark County, Nevada and over the age of 18.

1 2. I am one of the Trustees for the September Trust, Dated March 23, 1972
2 (hereafter "September Trust").

3 3. I make this Affidavit in support of Plaintiffs' Motion for Summary Judgment or,
4 in the Alternative, Motion for Judgment on the Pleadings.

5 4. I have personal knowledge of the facts stated herein, except as to those matters
6 which are stated upon information and belief, and as to those matters I believe them to be true. I
7 am competent to testify to the same and would so testify if called upon as a witness.

8 5. The September Trust is the owner of the residential property in Clark County,
9 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
10 03-313-004 ("September Property").

11 6. According to the online records of the Clark County Recorder's Office as of
12 November 14, 2017, the September Property is encumbered by one of two (2) Abstracts of
13 Judgment recorded by the Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the
14 Lytle Trust (hereafter "Lyttles"), in August and September of 2016.

15 7. To date, the September Trust has not been a named party to any of the lawsuits
16 filed by the Lyttles against the Rosemere Estates Property Owners Association and is not a debtor
17 to any judgment obtained by the Lyttles.

18 8. The September Trust does not owe any money to the Lyttles.

19 9. The Abstracts of Judgment are an unauthorized, improper and illegal cloud upon
20 title to the September Property.

21 10. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
22 wrongfully recorded against their Properties.

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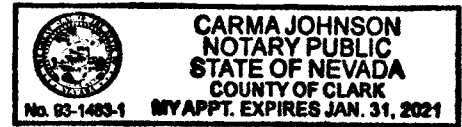
11. Further your affiant sayeth naught.

DATED this 29th day of November, 2017.

By: Sherman L. Kearl
Sherman L. Kearl

Subscribed and sworn to before me
this 29th day of the month of November, 2017.

Carma Johnson
Notary Public in and for the County and State



AFFT
CHRISTENSEN JAMES & MARTIN
 KEVIN B. CHRISTENSEN, ESQ.
 Nevada Bar No. 175
 WESLEY J. SMITH, ESQ.
 Nevada Bar No. 11871
 LAURA J. WOLFF, ESQ.
 Nevada Bar No. 6869
 7440 W. Sahara Avenue
 Las Vegas, Nevada 89117
 Tel.: (702) 255-1718
 Facsimile: (702) 255-0871
 Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
 LYTLE, AS TRUSTEES OF THE LYTLE
 TRUST; JOHN DOES I through V; and
 ROE ENTITIES I through V, inclusive,

Defendants.

Case No.:
 Dept. No.:

**AFFIDAVIT OF GERRY R. ZOBRIST AS
 TRUSTEE OF THE GERRY R. ZOBRIST
 AND JOLIN G. ZOBRIST FAMILY
 TRUST IN SUPPORT OF PLAINTIFFS'
 MOTION FOR SUMMARY JUDGMENT
 OR, IN THE ALTERNATIVE, MOTION
 FOR JUDGMENT ON THE PLEADINGS**

State of Nevada)
) ss.
 County of Clark)

Gerry R. Zobrist, states under penalty of perjury:

1. I am a resident of Clark County, Nevada and over the age of 18.

CHRISTENSEN JAMES & MARTIN
 7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
 PH: (702) 255-1718 & FAX: (702) 255-0871

000135

1 2. I am one of the Trustees for the Gerry R. Zobrist and Jolin G. Zobrist Family
2 Trust (hereafter "Zobrist Trust").

3 3. I make this Affidavit in support of Plaintiffs' Motion for Summary Judgment or,
4 in the Alternative, Motion for Judgment on the Pleadings.

5 4. I have personal knowledge of the facts stated herein, except as to those matters
6 which are stated upon information and belief, and as to those matters I believe them to be true. I
7 am competent to testify to the same and would so testify if called upon as a witness.

8 5. The Zobrist Trust is the owner of the residential property in Clark County,
9 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
10 03-313-005 ("Zobrist Property").

11 6. According to a Preliminary Title Report obtained on August 29, 2017, the Zobrist
12 Property is encumbered by two (2) Abstracts of Judgment recorded by the Defendants Trudi Lee
13 Lytle and John Allen Lytle, as Trustees of the Lytle Trust (hereafter "Lyttles"), in August and
14 September of 2016.

15 7. To date, the Zobrist Trust has not been a named party to any of the lawsuits filed
16 by the Lyttles against the Rosemere Estates Property Owners Association and is not a debtor to
17 any judgment obtained by the Lyttles.

18 8. The Zobrist Trust does not owe any money to the Lyttles.

19 9. The Abstracts of Judgment are an unauthorized, improper and illegal cloud upon
20 title to the Zobrist Property.

21 10. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
22 wrongfully recorded against their Properties.

23 ///

26 ///

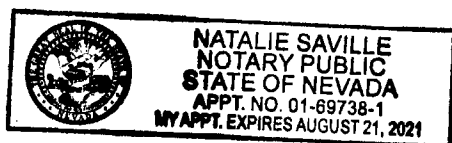
11. Further your affiant sayeth naught.

DATED this 29 day of November, 2017.

By: Gerry R. Zobrist
Gerry R. Zobrist

Subscribed and sworn to before me
this 29 day of the month of November, 2017.

N. Saville
Notary Public in and for the County and State



AFFT
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and
ROE ENTITIES I through V, inclusive,

Defendants.

Case No.:
Dept. No.:

**AFFIDAVIT OF JULIE MARIE
SANDOVAL GEGEN AS TRUSTEE OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27,
1992 TRUST AND INDIVIDUALLY AS A
JOINT TENANT WITH DENNIS A.
GEGEN IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, MOTION
FOR JUDGMENT ON THE PLEADINGS**

State of Nevada)
) ss.
County of Clark)

Julie Marie Sandoval Gegen, states under penalty of perjury:

1. I am a resident of Clark County, Nevada and over the age of 18.

CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 & FAX: (702) 255-0871

000138

1 2. I am one of the Trustees for the Raynaldo G. and Evelyn A. Sandoval Joint Living
2 and Devolution Trust Dated May 27, 1992 (hereafter "Sandoval Trust").

3 3. I am also a Joint Tenant with my husband Dennis A. Gegen as joint owners
4 (hereafter "Gegens") of the residential property in Clark County, Nevada known as 1831
5 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003 ("Gegen
6 Property").

7 4. I make this Affidavit in support of Plaintiffs' Motion for Summary Judgment or,
8 in the Alternative, Motion for Judgment on the Pleadings.

9 5. I have personal knowledge of the facts stated herein, except as to those matters
10 which are stated upon information and belief, and as to those matters I believe them to be true. I
11 am competent to testify to the same and would so testify if called upon as a witness.

12 6. The Sandoval Trust is the owner of the residential property in Clark County,
13 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-
14 03-313-001 ("Sandoval Property").

15 7. According to the online records of the Clark County Recorder's Office as of
16 November 14, 2017, the Sandoval Property is encumbered by one of two (2) Abstracts of
17 Judgment recorded by the Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the
18 Lytle Trust (hereafter "Lyttles") in August of 2016 and the Gegen Property is encumbered by an
19 Abstract of Judgment recorded by the Lyttles in September 2016.

20 8. To date, neither the Sandoval Trust nor the Gegens have been named parties to
21 any of the lawsuits filed by the Lyttles against the Rosemere Estates Property Owners Association
22 and are not debtors to any judgment obtained by the Lyttles.

23 9. The Sandoval Trust does not owe any money to the Lyttles. The Gegens do not
24 owe any money to the Lyttles.

25 10. The Abstracts of Judgment are an unauthorized, improper and illegal cloud upon
26 title to the Sandoval Property and the Gegen Property.

1 11. Plaintiffs have filed suit in this case in order to remove the Abstracts of Judgment
2 wrongfully recorded against their Properties.

3 12. Further your affiant sayeth naught.

4 DATED this 29 day of November, 2017.

5
6 By: Julie Marie Sandoval Gegen
7

8 Subscribed and sworn to before me
9 this 29 day of the month of November, 2017.

10 N Saville
11 Notary Public in and for the County and State



DECL
CHRISTENSEN JAMES & MARTIN
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: wes@cjmlv.com; ljw@cjmlv.com
Attorneys for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and
ROE ENTITIES I through V, inclusive,

Defendants.

Case No.:

Dept. No.:

**DECLARATION OF COUNSEL IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

DECLARATION OF WESLEY J. SMITH, ESQ.

STATE OF NEVADA)

:ss.

COUNTY OF CLARK)

Wesley J. Smith, Esq., being first duly sworn and under penalty of perjury of the laws of
the United States of America and the State of Nevada:

1 1. I am at least 18 years of age and of sound mind. I personally prepared this
2 Declaration and I am familiar with all factual statements it contains, which I know to be true and
3 correct, except for any statements made on information and belief, which statements I believe to
4 be true. I am competent to testify to the same and would so testify if called upon as a witness.

5 2. I am an attorney licensed to practice before all state and federal courts of the State
6 of Nevada.

7 3. I am a partner and shareholder in Christensen James & Martin, counsel for the
8 Plaintiffs, September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and
9 Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist
10 Trust"), Raynaldo G. Sandoval and Jule Marie Sandoval Gegen, as Trustees of the Raynaldo G.
11 and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992 ("Sandoval
12 Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife as Joint Tenants (hereafter
13 "Gegen") (hereafter September Trust, Zobrist Trust, Sandoval Trust and Gegen may be
14 collectively referred to as "Plaintiffs").
15

16 4. I make this Declaration in support of Plaintiffs' Motion for Summary Judgment,
17 Or in the Alternative, Motion for Judgment on the Pleadings ("Motion").
18

19 5. I reviewed the online records of the Clark County Recorder's Office, and I found
20 and printed the following records from that website:

- 21 a. The Grant, Bargain, Sale Deed naming the September Trust as owner of that
22 residential property in Clark County, Nevada known as 1861 Rosemere Court,
23 Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-004
24 ("September Property"). A true and correct copy of the Grant Bargain Sale
25 Deed is attached to the Motion as Exhibit "1".
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1 b. The Grant, Bargain, Sale Deed naming the Zobrist Trust as the owner of the
2 residential property in Clark County, Nevada known as 1901 Rosemere Court,
3 Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-005 ("Zobrist
4 Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
5 attached to the Motion as Exhibit "2".

6 c. The Quitclaim Deed naming the Sandoval Trust as the owner of the residential
7 property in Clark County, Nevada known as 1860 Rosemere Court, Las
8 Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-001 ("Sandoval
9 Property"). A true and correct copy of the Quitclaim Deed is attached to the
10 Motion as Exhibit "3".

11 d. The Grant, Bargain, Sale Deed naming Gegen as the owner of the residential
12 property in Clark County, Nevada known as 1831 Rosemere Court, Las
13 Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-003 ("Gegen
14 Property"). A true and correct copy of the Grant, Bargain, Sale Deed is
15 attached to the Motion as Exhibit "4".

16
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18 6. The Plaintiffs' Properties are located in the Rosemere Estates subdivision
19 ("Rosemere Subdivision" or "Subdivision"), wherein there are nine (9) lots and/or properties.
20 See Exhibits 1-4.

21 7. A true and correct copy of the CC&R's for the Rosemere Association is attached
22 to the Motion as Exhibit "5".

23 8. A true and correct copy of the Lytles' Complaint filed in the suit against the
24 Rosemere Association directly in Case No. A-09-593497-C ("Rosemere Litigation I") is attached
25 to the Motion as Exhibit "6".
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1 9. A true and correct copy of the Order Granting Summary Judgment in the
2 Rosemere Litigation I is attached to the Motion as Ex. "7".

3 10. True and correct copies of the Abstracts of Judgment filed in the Rosemere
4 Litigation I and recorded at the Clark County Nevada Recorder's Office are attached to the
5 Motion as Exhibit "8".

6 11. A true and correct copy of the Motion for Partial Summary Judgment filed in the
7 the Bouldens and the Lamothes lawsuit (Case No. A-16-747900-C) ("BL Lawsuit") is attached
8 to the Motion as Exhibit "9".

9 12. A true and correct copy of the BL Lawsuit Summary Judgment Order is attached
10 to the Motion as Exhibit "10".

11 13. True and correct copies of the Lien Releases filed by the Lytles in the Clark
12 County Recorder's Office are attached to the Motion as Exhibit "11".

13 14. In 2010, the Lytles filed another suit against the Rosemere Association directly in
14 Case No. A-10-631355-C ("Rosemere Litigation II"). True and correct copies of the Abstracts of
15 Judgment filed in the Rosemere Litigation II are attached to the Motion as Exhibit "12".

16 15. The Lytles filed a third case (Case No. A-15-716420-C) against the Association
17 ("Rosemere Litigation III"). A true and correct copy of the Complaint and Errata filed in the
18 Rosemere Litigation III are attached to the Motion as Exhibit "13".

19 16. A true and correct copy of the Order Granting Summary Judgment entered in the
20 Rosemere Litigation III is attached to the Motion as Exhibit "14".

21 17. A true and correct copy of the Order Granting Motion for Attorney's Fees in the
22 Rosemere Litigation III is attached to the Motion as Exhibit "15".

23 18. Although the this office and the Lytles' attorney have participated in settlement
24 discussions and the Plaintiffs have requested the same relief granted to the Bouldens and
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1 Lamoths, as of the date of filing this Motion, the Lytles have not agreed to release the Abstracts
2 of Judgment wrongfully recorded against the Plaintiffs' Properties.

3 19. To my knowledge, Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle
4 Trust, are not minors, incompetents or in the military service, or otherwise exempted under the
5 Servicemembers' Civil Relief Act, 50 U.S.C. § 501, et seq.

6 Further your affiant sayeth naught.

7 DATED this 29th day of November, 2017.

8 /s/ Wesley J. Smith
9 Wesley J. Smith, Esq.

Exhibit 1

000146

000146

Exhibit 1

3

APN: 163-03-313-004

MAIL TAX NOTICE/BILL/
RECORDED DEED TO:
September Trust
1861 Rosemere Court
Las Vegas, NV 89117

Space Above this Line For Recorder's Use

GRANT, BARGAIN, SALE DEED

The undersigned grantors:

Sherman L. Kearl and Karen Dee Kearl, Trustees of the Sherman
Kearl Family Trust dated March 23, 1972, and as amended and
restated on August 15, 1994

do hereby convey, grant, bargain, sell and warrant to the following grantees:

September Trust, dated March 23, 1972,

the grantor's interest in the real property located in the County of Clark, State of Nevada described as
follows:

Lot Four (4) of Rosemere Court, as shown by map thereof on file in Book 59 of Plats,
Page 58 in the Office of the County Recorder of Clark County, Nevada.

(And more commonly known as 1861 Rosemere Court, Las Vegas, NV 89117).

The property is conveyed with all warranties of title (subject to each encumbrance, covenant, restriction,
reservation and right-of-way of record), together with each and every tenement, hereditament, and
appurtenance thereof.

The grantee(s), as Trustee(s) of the above-referenced Trust, may sell, encumber, or otherwise transfer said
property, or any interest therein, and no person dealing with said Trustee(s) has any duty to inquire as to
the terms of the Trust or as to the application of the proceeds from the sale, transfer, or encumbrance
hereof.

Grant, Bargain, Sale Deed

The undersigned grantors, under penalties of perjury, declares that the actual consideration received for this conveyance was none.

DATED: JUN 22 2009

GRANTOR:

SHERMAN KEARL FAMILY TRUST:

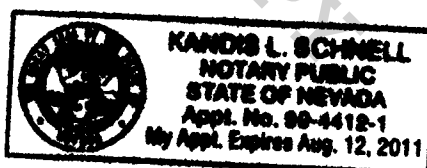
By: Sherman L. Kearl
Sherman L. Kearl, Trustee

By: Karen Dee Kearl
Karen Dee Kearl, Trustee

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this _____ day of JUN 22 2009, personally appeared before me, a Notary Public, **Sherman L. Kearl and Karen Dee Kearl**, who are personally known or proved to me to be the persons whose names are subscribed to the above instrument and who acknowledged to me that they signed the instrument.

Kandis L. Schnell
NOTARY PUBLIC



STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- (a) 163-03-313-004
 (b) _____
 (c) _____
 (d) _____

FOR RECORDERS OPTIONAL USE ONLY

Document Instrument #: _____
 Book: _____ Page: 1
 Date of Recording: Oct 10 2009
 Notes: _____

2. Type of Property:

- (a) ☐ Vacant Lot (b) ☒ Single Fam. Res
 (c) ☐ Condo/Twnhse (d) ☐ 2-4 Plex
 (e) ☐ Apt. Bldg (f) ☐ Comm'l/Ind'l
 (g) ☐ Agricultural (h) ☐ Mobile Home
☐ Other _____

3. Total Value/Sales Price of Property

\$ _____

Deed in Lieu of Foreclosure Only (value of Property) (_____)

Transfer Tax Value

\$ _____

Real Property Transfer Tax Due

\$ _____

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 7 _____

b. Explain Reason for Exemption: Transfer to Trust; no consideration.

5. Partial Interest: Percentage being transferred: _____ %

The undersigned, declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity: GrantorSignature Sherman L. KearlCapacity: Grantee

SELLER (GRANTOR) INFORMATION (Required)

BUYER (GRANTEE) INFORMATION (Required)

Print Name: Sherman L. KearlPrint Name: September TrustAddress: 1861 Rosemere Ct.

Address: _____ SAME _____

City: Las Vegas

City: _____

State: NV Zip: 89117

State: _____ Zip: _____

Company/Person Requesting Recording (required if not seller or buyer)

Evans & Associates

3230 S. Buffalo, Suite 108

Las Vegas, NV 89117

Exhibit 2

000150

000150

Exhibit 2

STATE OF NEVADA
DECLARATION OF VALUE

20010416
00190

1. Assessor Parcel Number(s)

a) 163-03-313-005
b) _____
c) _____
d) _____

FOR RECORDERS USE ONLY

Documentation Reviewed by: _____
Type of Documentation: _____
Assessor's Tag: _____
Recording Deputy: VA

2. Type of Property:

a) ☐ Vacant Land b) ☐ Single Fam. Res.
c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg f) ☐ Comm/Indl
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other

3. Total Value/Sales Price of Property

\$ _____

Deduct Assumed Liens and/or Encumbrances ()

(Recording information on assumed amounts: Book/Instrument # _____)

4. Taxable Value (per NRS 375.010, Section 2):

\$ _____

Real Property Transfer Tax Due

\$ _____

If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 2 NAC 375 Section 8

b. Explain Reason for Exemption: transferring title from name of individuals
to name of Family Trust

5. Partial Interest: Percentage being transferred: _____ %

The undersigned Seller (Grantor)/Buyer (Grantee), declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1 1/2% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

SELLER (GRANTOR) INFORMATION

Seller Signature: [Signature]

Print Name: Gerry R Zobrist

Jolin G Zobrist

Address: 1901 Rosemere Court

City: Las Vegas

State: NV Zip: 89117

Telephone: () 702 300 4226

Capacity: Husband and wife

BUYER (GRANTEE) INFORMATION

Buyer Signature: [Signature]

Print Name: Gerry R Zobrist, Trustee

Jolin R Zobrist, Trustee

Address: 1901 Rosemere Court

City: Las Vegas

State: NV Zip: 89117

Telephone: () 702 300 4226

Capacity: Trustees

COMPANY REQUESTING RECORDING

Co. Name: _____ Escrow #: _____

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

190

COPY

20010416
00190

21 Affix R.P.T.T., \$ 418.167 63 203-005

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Gerry R Zobrist and Jolin G Zobrist, husband and wife
as joint tenants

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do hereby Grant, Bargain,
Sell and Convey to Gerry R Zobrist and Jolin G Zobrist, Trustee of the Gerry R Zobrist and
Jolin G Zobrist Family Trust

all that real property situated in the _____ County of Clark
State of Nevada, Bounded and described as follows:
Lot Five (5) of Rosemere Court, as shown by map thereof on file in Book 59 of
Plats, Page 58, in the Office of the County Recorder, Clark County, Nevada

Together with and reserving therefrom an easement for ingress and egress and public utility
easement as shown on said map of Rosemere Court

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise
appertaining.

Witness our hand at this 9th day of April, 2001

STATE OF NEVADA }
COUNTY OF Clark } ss. Gerry R Zobrist
Jolin G Zobrist

On April 9, 2001
personally appeared before me, a Notary Public, Gerry R Zobrist and Jolin G Zobrist

personally known (or proved) to me to be the person whose
name is subscribed to the above instrument,
who acknowledged that he Y executed the above
instrument.

Signature [Signature]
(Notary Public)

(Notarial Seal)

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
CHERIE STOTT
Appt. No. 99-27180-1
My Appt. Expires Dec. 3, 2003

ESCROW NO. _____
ORDER NO. _____
WHEN RECORDED MAIL TO: John Zobrist
1901 Rosemere Court, Las Vegas, NV 89119

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
LAWYERS TITLE OF NEVADA
04-16-2001 00190 R16
BOOK: 20010416 INST. 00190
FEE: 7.00 APPT. EX#006

FORM 109

000152

000152

Exhibit 3

Exhibit 3

4-1

Inst #: 20160728-0002848000154

Fees: \$19.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #007

07/28/2016 09:35:40 AM

Receipt #: 2831006

Requestor:

JUNES LEGAL SERVICES

Recorded By: TAH Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 163-03-313-001

RECORDING REQUESTED BY:

BOYCE & GIANNI, LLP

1701 N. Green Valley Pkwy., Suite 8-A
Henderson, Nevada 89074

WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:

Raynaldo G. and Evelyn A. Sandoval
Joint Living and Devolution Trust
1860 Rosemere Court
Las Vegas, Nevada 89117

QUITCLAIM DEED

For good and valuable consideration, the receipt of which is hereby acknowledged,

RAYNALDO G. SANDOVAL, Trustee of the RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992, does hereby quitclaim to

RAYNALDO G. SANDOVAL and JULIE MARIE SANDOVAL GEGEN, as Trustees of the RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992 (Grantee's address: 1860 Rosemere Court, Las Vegas, Nevada 89117), the following described real property in the State of Nevada, County of Clark:

**SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"
AND INCORPORATED HEREIN BY REFERENCE**

Commonly known as: 1860 Rosemere Court, Las Vegas, Nevada 89117

Subject To: 1. Taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights of Way and Easements now of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED this 6 day of July, 2016.

RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING
AND DEVOLUTION TRUST DATED MAY 27, 1992


RAYNALDO G. SANDOVAL, Trustee

000154

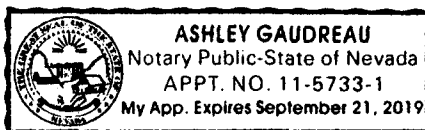
000154

000154

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

On this 10th day of JULY, 2016, before me, a notary public, personally appeared RAYNALDO G. SANDOVAL who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or entity upon behalf of which person acted, executed the instrument.


NOTARY PUBLIC



ASSESSOR'S COPY

EXHIBIT "A"
Legal Description

APN: 163-03-313-001

LOT ONE (1) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 59 OF PLATS, PAGE 58, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

ASSESSOR'S COPY

STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a) 163-03-313-001

b) _____

2. Type of Property:

- a) ☐ Vacant Land b) ☒ Single Fam Res
 c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
 e) ☐ Apt. Bldg. f) ☐ Com'l/Ind'l
 g) ☐ Agricultural h) ☐ Mobile Home
 i) ☐ Other: _____

FOR RECORDER'S OPTIONAL USE ONLY

Doc./Inst. #: _____

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a) Total Value/Sales Price of Property:

\$ N/A

b) Deed in Lieu of Foreclosure Only (value of property):

(_____)

c) Transfer Tax Value:

\$ _____

d) Real Property Transfer Tax Due:

\$ _____

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 007b. Explain Reason for Exemption: **THIS IS A TRANSFER OF TITLE TO A TRUST
WITH NO CONSIDERATION**

5. Partial Interest: Percentage being transferred:

100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____

Capacity: Grantor

Signature: _____

Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)

Print Name: **Raynaldo G. and Evelyn A.
Sandoval Joint Living and
Devolution Trust**

Address: 1860 Rosemere Court
 City: Las Vegas
 State: NV Zip: 89117

BUYER (GRANTEE) INFORMATION (REQUIRED)

Print Name: **Raynaldo G. and Evelyn A.
Sandoval Joint Living and
Devolution Trust**

Address: 1860 Rosemere Court
 City: Las Vegas
 State: NV Zip: 89117

COMPANY REQUESTING RECORDING (required if not seller or buyer)

Print Name: BOYCE & GIANNI, LLP
 Address: 1701 N. Green Valley Pkwy., Suite 8-A
 City, State, Zip: Henderson, Nevada 89074

Escrow #: N/A

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Exhibit 4

Exhibit 4

Inst #: 20150923-0002560 000159

Fees: \$20.00 N/C Fee: \$0.00

RPTT: \$892.50 Ex: #

09/23/2015 02:48:47 PM

Receipt #: 2561114

Requestor:

CHICAGO TITLE LAS VEGAS

Recorded By: CDE Pgs: 5

DEBBIE CONWAY

CLARK COUNTY RECORDER

ESCROW NO: 15040132-148-SAB

APN: 163-03-313-003

Affix R.P.T.T. \$ 892.50

WHEN RECORDED MAIL TO and

MAIL TAX STATEMENT TO:

DENNIS A. GEGEN AND JULIE S. GEGEN

1831 ROSEMERE COURT

LAS VEGAS, NV 89117

ESCROW NO: 15040132-148-SAB

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That

John C. Haehn, a married man as his sole and separate property and
Cynthia Ann Selcer, an unmarried woman

in consideration of \$10.00 and other valuable consideration, the receipt of which is hereby
acknowledged, do hereby Grant, Bargain, Sell and Convey to

Dennis A. Gegen and Julie S. Gegen, husband and wife, as Joint Tenants

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

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Subject to: 1. Taxes for the current fiscal year, paid current.
2. Conditions, covenants, restrictions, reservations, rights, rights of way and
easements now of record, if any.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging
or in anywise appertaining.

000159

000159

Witness my/our hand(s) this 22nd day of September, 2015.

SIGNED IN COUNTERPART

John C. Haehn

Cynthia Ann Selcer
Cynthia Ann Selcer

STATE OF NORTH DAKOTA

COUNTY OF CASS) ss.

On this 22nd day of Sept, 2015

appeared before me, a Notary Public,

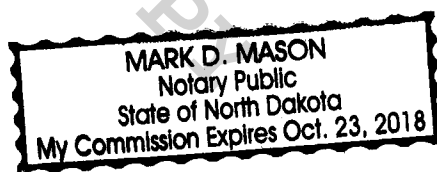
CYNTHIA ANN SELCER

personally known or proven to me to
be the person(s) whose name(s) is/are
subscribed to the above instrument,
who acknowledged that he/she/they
executed the instrument for the
purposes therein contained.

Mark D Mason

Notary Public

My commission expires: 10-23-2018



Witness my/our hand(s) this 22 day of September, 2015.

John C. Haehn
John C. Haehn

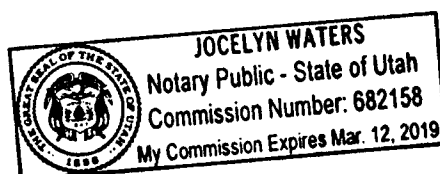
SIGNED IN COUNTERPART
Cynthia Ann Selcer

STATE OF Utah)
) ss.
COUNTY OF Washington

On this 9/22/2015

appeared before me, a Notary Public,

John C. Haehn



personally known or proven to me to
be the person(s) whose name(s) ~~is~~ are
subscribed to the above instrument,
who acknowledged that ~~he~~ she/they
executed the instrument for the
purposes therein contained.

Jocelyn Waters
Notary Public

My commission expires: 3/12/2019

ESCROW NO: 15040132-148-SAB

EXHIBIT A

LOT THREE (3) OF ROSEMERE COURT, AS SHOWN BY MAP THEREOF ON FILE IN
BOOK 59 OF PLATS, PAGE 58 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK
COUNTY, NEVADA.

ASSESSOR'S COPY

STATE OF NEVADA DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a) 163-03-313-003

b)

c)

2. Type of Property:

- a) ☐ Vacant Land b) ☒ Single Fam. Res.
 c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
 e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
 g) ☐ Agricultural h) ☐ Mobile Home
 i) ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property:

\$175,000.00

Deed in Lieu of Foreclosure Only (value of property): ()

Transfer Tax Value:

\$175,000.00

Real Property Transfer Tax Due:

\$ 892.50

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month.

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____

Capacity Grantor

Signature Dennis A. Gegen

Capacity Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)

Print Name John C. Haehn and Cynthia Ann

Selcer

Address: 2664 W 290 N

City, St., Zip: Hurricane, UT 84737

BUYER (GRANTEE) INFORMATION (REQUIRED)

Print Name: Dennis A. Gegen

Address: 1831 Rosemere Court

City, St., Zip: Las Vegas, NV 89117

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Chicago Title of Nevada, Inc.

Address: 500 N. Rainbow Blvd

City/State/Zip: Las Vegas, NV 89107

Escrow #: 15040132-148

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 5

Exhibit 5

7 4 0 1 0 0 1 2 4 1

4

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

This Declaration of Covenants, Conditions and Restrictions made this 21st Day of Jan, 1994 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

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

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

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

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

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

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

3. No air conditioning or heating units shall be visible on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

S E C T I O N 2 4 1

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

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

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

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

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

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

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

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

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

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

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

7 4 1 1 2 1 2 4 1

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

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

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

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

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

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

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

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

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

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

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

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

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

3 of 4

2 4 0 1 0 : 0 1 2 4 1

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

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

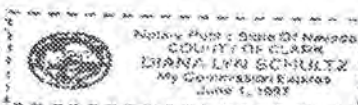
25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

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

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

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

Stephen F. Turner & Richard J. Baughman



(this area for official seal)

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

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

4 of 4

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER INC.
01-04-94 14102 PER 4
OFFICIAL RECORDS
BOOK 940104 PAGE 01041
FEE: 10.00 NPIT: .00

Exhibit 6

Exhibit 6

ORIGINAL

FILED

JUN 26 4 23 PM '09

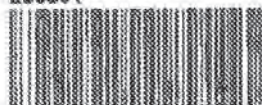

 CLERK OF THE COURT

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

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

A-09-593497-C

205801



DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.:

Dept. No.:

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

ARBITRATION EXEMPT
 (Appeal from Arbitration; Declaratory
 Relief Requested)

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

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

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada.

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

-1-

COMPLAINT FOR TRIAL DE NOVO PURSUANT TO NRS 38.330

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RECEIVED

JUN 26 2009

CLERK OF THE COURT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 WHEREFORE, Plaintiff prays that this Court:

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

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

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

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

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

5
6 Dated this 26th day of June, 2009.

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

9
10
11 By: 

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

17 *Attorneys for Plaintiff, John Allen Lytle & Trudi Lee*
18 *Lytle, as Trustees of the Lytle Trust*
19
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Legal Tests Co. 1-800-322-3022

Recycled  Stock # FX 4-B

EXHIBIT 1

APR 128.05

961115.02307

APN 163-03-313-009

GRANT, BARGAIN, SALE DEED

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

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

all that real property situated in the _____ County of Clark

State of Nevada, bounded and described as follows:

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

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

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness my hand and seal this _____ day of November, 1996

STATE OF NEVADA } SS.
COUNTY OF Clark

Justin A. Englert
Justin A. Englert

On November 6, 1996

Before me, a Notary Public, personally appeared

Justin A. Englert

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

Signature _____
(Notary Public)

(Notarial Seal)



G. MOON
Notary Public - Nevada
Clark County
My exp. exp. Oct. 1, 1998

ESCROW NO:

96-10-2326 CTR

MAIL TAX STATEMENTS TO Lytle 4705 Aladdin Lane
Las Vegas, NV 89162-0601

0000816

EXHIBIT "A"
LEGAL DESCRIPTION

961115.02307

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

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

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY
11-15-96 16:24 DB1 2
BOOK: 961115 OFFICIAL RECORDS
FEE: 8.00 RST 82307
RPTD 128.25

000047

Capital Tapes Co. 1-800-322-3022

Recycled  Stock # EX-5-8

EXHIBIT 2

94010401241

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

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

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

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

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

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

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

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

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

9 4 0 1 0 1 2 4

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

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15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.
16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.
16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobiles, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.
17. No boat, trailer, mobile home, camper, or commercial vehicles may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobiles, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.
18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.
19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.
20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.
21. A property owners committee shall be established by all owners of lots within the subdivision.
 - a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.
 - b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.
 - c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.
 - d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.
22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

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

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

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

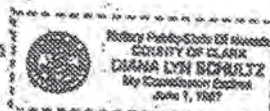
IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

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

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

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

Stephen F. Turner & Richard J. Baughman



(this area for official seal)

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

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

4 of 4
CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER, INC.
91-04-94 10100 PDR
BOOK 448104 PAGE 01841
FEE 10.00 10/11

Legal Ties Co. 1-800-322-3022

Recycled  Stock # EX-5-B

EXHIBIT 3

[illegible]



Legal Titles Co. 1-800-322-3022


Recycled  Stock # EX-6-B

EXHIBIT 4

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

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

2. 1830 Rosemere Ct. Jacques/Linda Lamothe date: _____
Jacques/Linda Lamothe

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

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

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

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

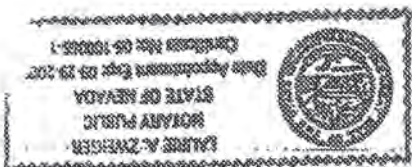
7. 1961 Rosemere Ct. Orville/Johnnie McCumber date: 7-2-07
Orville/Johnnie McCumber

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

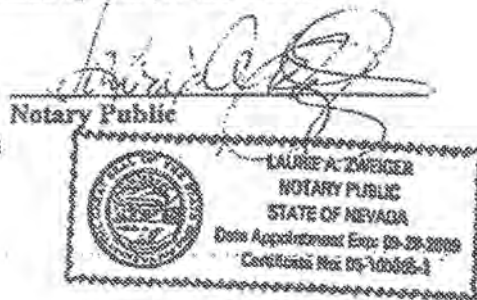
9. 1930 Rosemere Ct. Allen/Trudi Lytle date: _____
Allen/Trudi Lytle

State of Nevada, County of Clark

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



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EXHIBIT 5

CERTIFICATE OF OFFICERS

We, the undersigned, hereby certify as follows:

1. We are the duly elected and acting President and Secretary for ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation.

2. The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rosemere Estates, duly adopted by the members of the Association on July 2, 2007.

3. Members representing more than sixty-seven percent (67%) of the voting power of the Members of the Association voted in favor of the First Amendment.

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

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION

By: [Signature]

Its: President

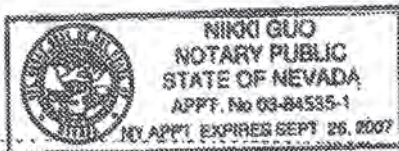
By: [Signature]

Its: Secretary

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

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

[Signature]
NOTARY PUBLIC



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EXHIBIT 6



JIM GIBBONS
Governor

LINDSAY WAITE
Ombudsman

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

DIANNE CORNWALL
Director

GAIL J. ANDERSON
Administrator

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

June 4, 2009

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


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

Alternative Dispute Resolution (ADR) Control # 09-33 Non-Binding Arbitration

Claimant(s): Lytle Trust, John Allen Lytle & Trude Lee Lytle, Trustees c/o Thomas D. Harper, Esq.

Respondent(s): Rosemere Estates Property Owners' Association c/o Jason D. Smith, Esq.

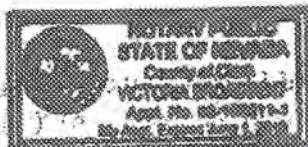
This notarized document will serve as a certificate for the Claimant(s) certifying they have completed the Alternative Dispute Resolution process as required by NRS 38.



Gordon Mildren
Administrative Assistant III

cc: Ara H. Shinnian, Esq., Arbitrator

STATE OF NEVADA
COUNTY OF CLARK

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




Victoria G. Broadbent
Notary Public, State of Nevada

MY COMMISSION EXPIRES: 6/1/10

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

L. 1000 IV

Exhibit 7

Exhibit 7

Electronically Filed
07/30/2013 10:15:58 AM

Alvin L. Johnson

CLERK OF THE COURT

OGSJ
Richard E. Haskin, Esq.
Nevada State Bar # 11592
**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE
as Trustees of the Lytle Trust

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

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

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

//

//

Pursuant to NRCP 56(e), the Court's findings with respect to the undisputed material facts and legal determinations on which the court granted summary judgment are set forth herein and as follows:

L. FINDINGS OF UNDISPUTED MATERIAL FACTS

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

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

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

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

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

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

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

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

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

///

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ///

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

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

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

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

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

II. LEGAL DETERMINATIONS

A. Summary Judgment Standard

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

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

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

B. Plaintiff Is Entitled To Summary Judgment In Its Favor

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

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

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

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

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

Organization of unit-owners' association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NRS 116.2117 provides, in pertinent part:

1. . . . the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

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

(Emphasis added.)

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

III. JUDGMENT

IT IS HEREBY ADJUDGED AND DECREED:

A. Declaration

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

B. Injunctive Relief

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

C. Plaintiff's Monetary Damages

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

D. The Association's Motion For Summary Judgment

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

E. Costs

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

iii

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Exhibit 8

Exhibit 8

RECORDING REQUESTED BY

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

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

7

Inst #: 20160818-0001198

Fees: \$19.00

N/C Fee: \$0.00

08/18/2016 11:51:34 AM

Receipt #: 2848915

Requestor:

NATIONWIDE LEGAL

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DEBBIE CONWAY

CLARK COUNTY RECORDER

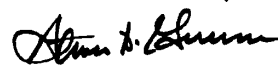
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APN No.: 163-03-313-002
APN No.: 163-03-313-003
APN No.: 163-03-313-004
APN No.: 163-03-313-005
APN No.: 163-03-313-006
APN No.: 163-03-313-007
APN No.: 163-03-313-008

ABSTRACT OF JUDGMENT

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

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CLERK OF THE COURT

1 Richard E. Haskin, Esq.
Nevada State Bar # 11592
2 Timothy P. Elson, Esq.
Nevada State Bar # 11559
3 **GIBBS GIDEN LOCHER TURNER**
SENET & WITTBRODT LLP
4 7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
5 (702) 836-9800

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

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

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

12 Plaintiff,

ABSTRACT OF JUDGMENT

13 v.

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

16 Defendants.

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

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

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

26 Finally, on July 22, 2016, the District Court entered and Order Awarding Plaintiffs' Costs
27 against Defendant in the amount of \$599.00.

28 ///

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DEPT. 12

1 Pursuant to the foregoing, the total amount of the Judgment, plus attorneys' fees and costs is
2 \$361,238.59. In addition, Plaintiff is due post-judgment interest at the Nevada legal rate annually
3 until the Judgment is satisfied.

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

6
7 DATED: 8/15/16


DISTRICT COURT JUDGE
RL

8
9
10
11 Respectfully requested by:

12 GIBBS GIDEN LOCHER TURNER
13 SENET & WITTBRODT LLP

14
15 By: 

16 Richard E. Haskin, Esq.
17 Nevada State Bar # 11592
18 Timothy P. Elson, Esq.
19 Nevada State Bar # 11559
20 7450 Arroyo Crossing Parkway, Suite 270
21 Las Vegas, Nevada 89113-4059
22 Attorneys for Plaintiff
23 JOHN ALLEN LYTLE and TRUDI LEE
24 LYTLE
25
26
27
28

RECORDING REQUESTED BY

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

AND WHEN RECORDED MAIL TO

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

Inet #: 20160902-0002684

Fees: \$19.00

N/C Fee: \$0.00

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Requestor:

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THIS SPACE FOR RECORDER'S USE CLARK COUNTY RECORDER

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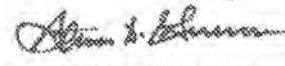
ABSTRACT OF JUDGMENT

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(Govt. Code 27361.5)

(Additional recording fee applies)

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CLERK OF THE COURT

1 Richard E. Haskin, Esq.
Nevada State Bar # 11592
2 Timothy P. Elson, Esq.
Nevada State Bar # 11559
3 GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP
4 7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
5 (702) 836-9800

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

8
9 DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

12 Plaintiff,

ABSTRACT OF JUDGMENT

13 v.

14 ROSEMERE ESTATES PROPERTY OWNERS'
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15 inclusive,

16 Defendants.

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21 ASSOCIATION ("Defendant").

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26 Finally, on July 22, 2016, the District Court entered an Order Awarding Plaintiffs' Costs
27 against Defendant in the amount of \$599.00.


28 //

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DEPT. 12

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

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

DATED: 8/15/10


DISTRICT COURT JUDGE
22

Respectfully requested by:

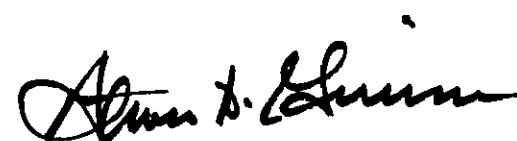
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: 

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

Exhibit 9

Exhibit 9



CLERK OF THE COURT

MPSJ
DANIEL T. FOLEY, ESQ.
Nevada Bar No. 1078
FOLEY & OAKES, PC
626 S 8th Street
Las Vegas, Nevada 89101
Tel.: (702) 384-2070
Fax: (702) 384-2128
Email: dan@foleyoakes.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF)
THE MARJORIE B. BOULDEN TRUST,)
LINDA LAMOTHE AND JACQUES)
LAMOTHE, TRUSTEES OF THE)
JACQUES & LINDA LAMOTHE)
LIVING TRUST)

Plaintiff,)

Case No. A-16-747800-C

Dept. No. XVI

v.)

TRUDI LEE LYTLE, JOHN ALLEN)
LYTLE, THE LYTLE TRUST, DOES I)
through X; and ROE CORPORATIONS)
I through X,)

Defendants.)

MOTION FOR PARTIAL SUMMARY JUDGMENT

TO: ALL INTERESTED PARTIES; and

TO: THEIR ATTORNEYS OF RECORD HEREIN:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Defendants' Motion for

Partial Summary Judgment will be heard by the above captioned court in Department 16 of the

Regional Justice Center the 28 day of MARCH, 2017 at the hour of 9:00A

 m.

**FOLEY
&
OAKES**

1 DATED this 24th day of February 2017

2
3 Respectfully Submitted,

4 FOLEY & OAKES, PC

5 /s/Daniel T. Foley

6 Daniel T. Foley, Esq.

7 Nevada Bar No. 1078

8 626 So. 8th Street

9 Las Vegas, Nevada 89101

10 Attorney for Plaintiffs

11 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

12 COMES NOW Plaintiffs, by and through their attorneys, Foley & Oakes, PC, and hereby
13 move this Court for Partial Summary Judgment against Defendants Trudi Lee Lytle and John
14 Lytle, the Trustees of the Lytle Living Trust (collectively the “Lyttles”). Plaintiffs move this
15 Court to enter judgment in Plaintiffs’ favor on all four causes of action leaving only an
16 evidentiary hearing regarding damages and attorneys’ fees on Marjorie Boulden’s slander of title
17 cause of action numbered 1. Plaintiffs hereby seek a Judgment Granting Declaratory Relief
18 determining that the Lyttles have clouded title on both pieces of property, that the Lyttles have
19 slandered Ms. Boulden’s title, and injunctive relief expunging and striking the two Abstracts of
20 Judgment recorded against the Plaintiffs’ property, restraining and enjoining the Lyttles from
21 selling or attempting to sell the Plaintiffs’ property via foreclosure sale, and restraining and
22 enjoining the Lyttles from taking any action in the future against the Plaintiffs or their properties
23 based upon the litigation the Lyttles commenced against third-party Rosemere Property Owner’s
24 Association.
25
26
27

1 The Plaintiffs move this Court pursuant to NRCP Rules 56 and the pleadings and papers
2 on file herein, together with the Memorandum of Points and Authorities set forth below.

3 DATED this 24th day of February 2017

4 Respectfully Submitted,

5 FOLEY & OAKES, PC

6 /s/Daniel T. Foley

7 Daniel T. Foley, Esq.

8 Nevada Bar No. 1078

9 626 S 8th St.

10 Las Vegas, Nevada 89101

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **STATEMENT OF FACTS**

14 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter “Mrs.
15 Boulden”) which owns that residential property known as parcel number 163-03-313-008 also
16 known as 1960 Rosemere Ct., Las Vegas, NV 89117 (“the Boulden Property”).

17 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques
18 Lamothe Living Trust (hereinafter “Mr. and Mrs. Lamothe”) which owns that certain residential
19 property known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas,
20 NV 89117 (the “Lamothe Property”).

21 3. The Boulden Property and the Lamothe Property are located in the Rosemere
22 Court subdivision and are subject to the CC&Rs recorded January 4, 1994. A true and correct
23 copy of the CC&Rs is attached hereto as Exhibit “1”.

24 4. In 2009, the Lytles sued the Rosemere Estates Property Owners Association in the
25 Eighth Judicial District Court, case # A-09-593497-C (the “Rosemere LPA Litigation”).
26

1 5. Mrs. Boulden and Mr. and Mrs. Lamothe were never parties to the Rosemere LPA
2 Litigation. A copy of the Lytles Complaint filed in the Rosemere LPA Litigation is attached
3 hereto as Exhibit "2".

4 6. The Lytles alleged, among other things, that the owners of the residences within
5 the Rosemere Court Subdivision had improperly amended the CC&Rs and attempted to convert
6 the simple 9 residence Rosemere Court Subdivision into a full-fledged home owners'
7 association. Exhibit "2".

8 7. The Lytles obtained a Summary Judgment from the District Court in the
9 Rosemere LPA Litigation, determining and declaring that the Rosemere LPA was not a full-
10 fledged home owners' association under NRS 116, but instead was a limited-purpose association
11 as defined by NRS 116.1201(6). See paragraph 19 on page 9 of the Order Granting Summary
12 Judgment a true and correct copy of which is attached hereto as Exhibit "3".

13 8. The Summary Judgment was appealed to, and upheld by, the Nevada Supreme
14 Court.

15 9. Upon remand, the Lytles filed a Motion for Attorneys' Fees and Costs and against
16 the Rosemere LPA, and a Judgment was entered in the Lytles' favor against the Rosemere LPA
17 for \$361,238.59 (the "Attorneys' Fees Judgment"). A true and copy of the Attorneys' Fees
18 Judgment is attached hereto as Exhibit "4".

19 10. After obtaining the Attorneys' Fees Judgment, on August 16, 2016, the Lytles
20 recorded with the Clark County Recorder's office their First Abstract of Judgement referencing
21 the Attorneys' Fees Judgment against the Rosemere LPA. A true and correct copy of the First
22 Abstract of Judgment is attached hereto as Exhibit "5".
23
24
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27

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 The specific powers and duties of the Original CC&Rs and NRS 116.1201 are addressed
12 more specifically below.
13

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

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

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

22 Finally, the Abstracts of Judgment recorded by the Lytles do not in any way name or
23 refer to the Plaintiffs. Exhibits "5" and "6". The Lytles and their counsel simply attached cover
24 pages to the Abstracts of Judgment that included the Plaintiffs parcel numbers.
25

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

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

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

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

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

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

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

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

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

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

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

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

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

4 There are no "specific powers" set forth in 116.1201, referenced in the Paragraph 19 of
5 the Summary Judgment Order that in any way relate to or intimate that judgments obtained
6 against the Rosemere LPA could attach to all of the properties.
7

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

10 By recording the Abstracts of Judgment and including the Plaintiffs' parcel numbers on
11 the cover sheets, the Lytles have recorded liens against the Plaintiffs' property and therefore
12 have clouded the titles to Plaintiffs' property. In re Contrevo, 123 Nev. 20, 153 P.3d 652 (2007).
13 The Plaintiffs are unable to sell their properties due to the recordings and Mrs. Boulden has
14 already lost one sale.
15

16 Based on the undisputed facts set forth above, this Court should, pursuant to NRS 40.010,
17 declare the Lytles' recording of the Abstracts of Judgment against the Plaintiffs' property to be
18 improper clouds on the titles and Order the Abstracts of stricken and expunged from the records
19 of the Clark County Recorders' Office in order to remove the clouds on the titles to the
20 Plaintiffs' Properties.
21

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

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

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

6
7 In addition to Ordering the Abstracts of Judgment stricken and expunged from the records
8 of the Clark County Records' Office, this Court should find and Order that the Lytles slandered
9 Ms. Boulden's property and award to her special damages in the form lost interest from her first
10 proposed sale along with an award of attorneys' fees and costs.

11
12 **H. THE PLAINTIFFS ARE ENTITLED TO INJUNCTIVE RELIEF**

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

21
22 Plaintiffs respectfully request that this Court issue an injunction expunging and striking
23 the two Abstracts of Judgment recorded against the Plaintiffs' property and restraining and
24 enjoining the Lytles from taking any action in the future against the Plaintiffs or their properties
25 based upon the Rosemere LPA Litigation or the Judgment for Attorneys' Fees.
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Dated this 24th day of February 2017

/s/Daniel T. Foley
Daniel T. Foley, Esq.
Nevada Bar No. 1078
626 So. 8th Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

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EXHIBIT 1

EXHIBIT 1

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

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of July, 1924 by Buchanan & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 57 of Plats, Page 38, Clark County Records, Nevada.

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

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

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

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

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

3. No aerial transmission or reception of television or radio signals shall be maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

3 4 1 0 1 0 1 2 4 1

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

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

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

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

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

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

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

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

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

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

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

9 4 1 1 2 1 2 4 1

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

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

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

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

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

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

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

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

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

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

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

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

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

3 of 4

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

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

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

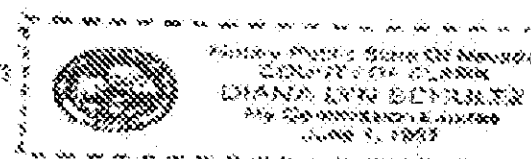
IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereto affixed their signatures.

Date: 1-4-94 Stephen E. Turner
Owner/Subdivider/Trustee Stephen E. Turner

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

On this 14th day of JANUARY, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen E. Turner & Richard J. Baughman



(this area for official seal)

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

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

4 of 4

CLARK COUNTY, NEVADA
JOAN L. SMITH, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER INC.
01-04-94 14:00 PDR
OFFICIAL RECORDS
BOOK: 940124 PAGE: 01201
FEE: 10.00 RPT: .00

EXHIBIT 2

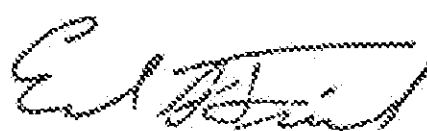
EXHIBIT 2

ORIGINAL

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

FILED

JUN 26 4 23 PM '09


 CLERK OF THE COURT

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

A-09-593497-C
 205801



DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

Case No.: A09593497C

Dept. No.: XI

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

ARBITRATION EXEMPT
 (Appeal from Arbitration; Declaratory
 Relief Requested)

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

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

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

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

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

-1-

COMPLAINT FOR TRIAL DE NOVO PURSUANT TO NRS 38.330

I:\LV0755\025\Pleadings\Complaint-062609.wpd

RECEIVED

JUN 26 2009

CLERK OF THE COURT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 WHEREFORE, Plaintiff prays that this Court:

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

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

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

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

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

5
6 Dated this 26th day of June, 2009.

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

9
10
11 By: 

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

17 *Attorneys for Plaintiff, John Allen Lytle & Trudi Lee*
18 *Lytle, as Trustees of the Lytle Trust*
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2

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Legal Tabs Co. 1-800-322-0022


Recycled  Stock # EX-6-8

EXHIBIT 1

Form R.P.T. 1 12B-05

961115.02307

APN 163-03-313-009

GRANT, BARGAIN, SALE DEED

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

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

all that real property situated in the _____ County of Clark

State of Nevada, bounded and described as follows:

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

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

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

Witness my hand and seal this _____ day of November, 1996

STATE OF NEVADA
COUNTY OF Clark } SS.

Justin A. Englert
Justin A. Englert

On November 6, 1996
Before me, a Notary Public, personally appeared

Justin A. Englert

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

Signature [Signature]
(Notary Public)

(Notarial Seal)



2 MOON
Notary Public - Nevada
Clark County
My exp. exp. Oct. 1, 1998

ESCROW NO:

96-10-2326 CTS

MAIL TAX STATEMENTS TO: Lytle 4703 Aladdin Lane
Las Vegas, NV 89162-0601

FOR FURTHER USE ONLY
NOTARY

000816

EXHIBIT "A"
LEGAL DESCRIPTION

961115.02307

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

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

CLARK COUNTY, NEVADA
JUDITH A. WANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY
11-15-96 16:24 DBI
BOOK 961115 OFFICIAL RECORDS 2
FEE: 8.00 RST 82387
RPT: 128.85

000017

Legal Tender Co. 1-800-322-3122


Recycled  Stock # EX-5-B

EXHIBIT 2

94010401241

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

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

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

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

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

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

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

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

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

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

9 4 6 1 8 9 2 1 2 4

15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.
16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.
16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.
17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.
18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.
19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.
20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.
21. A property owners committee shall be established by all owners of lots within the subdivision.
 - a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.
 - b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.
 - c. The Entrance Gate and it's related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.
 - d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.
22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

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

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

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

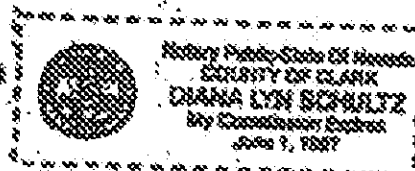
IN WITNESS WHEREOF, said Owner/Subdivider Baughman & Turner Pension Trust of Nevada, has hereunto affixed their signatures.

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

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

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

Stephen F. Turner & Richard J. Baughman



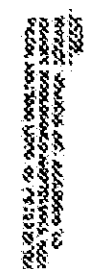
(this area for official seal)

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

When Recorded Mail To:
Baughman & Turner, Inc.
1210 Nisson Street
Las Vegas, NV 89103

4 of 4

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER, INC.
01-04-94 10:00 AM
BOOK 448104 PAGE 01241
FEE 10.00



Legal Titles Co. 1-800-322-3022


Recycled  Stock # EX-5-8

EXHIBIT 4

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

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

2. 1830 Rosemere Ct. Jacques/Linda Lamothe date: _____

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

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

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

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

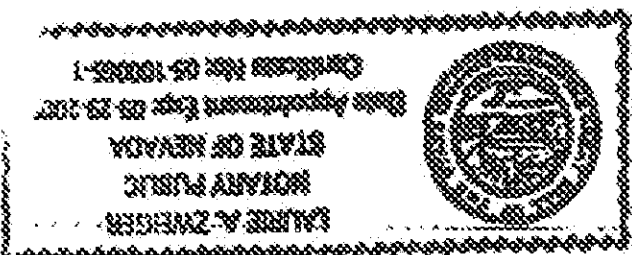
7. 1961 Rosemere Ct. Orville/Johnnie McCumber date: 7-2-07

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

9. 1930 Rosemere Ct. Allen/Trudi Lytle date: _____

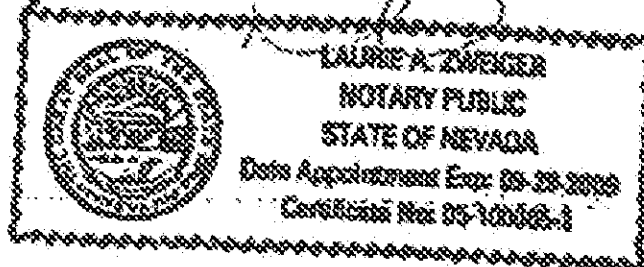
State of Nevada, County of Clark

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



33

Notary Public



Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EX-5-B

EXHIBIT 5