

Case No. 81390

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**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 07:22 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**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

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**APPELLANTS' APPENDIX**

**VOLUME 2**

**PAGES 251-500**

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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 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*

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

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



# 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

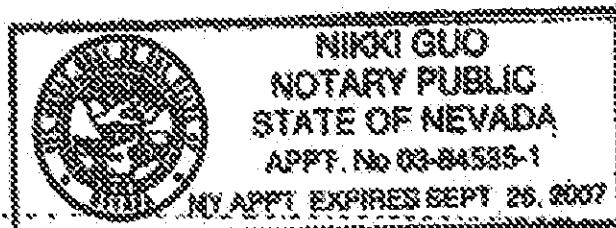
STATE OF NEVADA )

)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 Gerry Zlotoff, Sherman Keart, 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

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

DIANNE CORNWALL  
Director

GAIL J. ANDERSON  
Administrator

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.

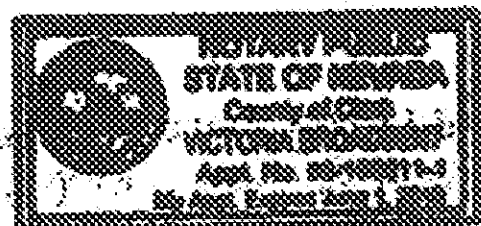
This notarized document will serve as a certificate for the Claimant(s) certifying they have completed the Alternative Dispute Resolution process as required by NRS 38.

Gordon Milden  
Administrative Assistant III

cc: Ara H. Shinnian, Esq., Arbitrator

STATE OF NEVADA  
COUNTY OF CLARK

On June 4, 2009, Gordon Milden, 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

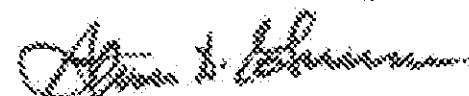


# EXHIBIT 3

# EXHIBIT 3



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07/30/2013 10:15:58 AM



CLERK OF THE COURT

OGSJ

Richard E. Haskin, Esq.

Nevada State Bar # 11592

**GIBBS GIDEN LOCHER TURNER**

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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 Plaintiff 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 Plaintiff 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.

//

//

7/30/2013



Pursuant to NRCP 56(c), the Court's findings with respect to the undisputed material facts and legal determinations on which the court granted summary judgment are set forth herein and as follows:

**I. FINDINGS OF UNDISPUTED MATERIAL FACTS**

1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs.")

2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

3. The Original CC&Rs create a "property owners' committee" with very limited maintenance duties over specific common area items (exterior walls and planters, entrance way and planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the Original CC&Rs.

4. The Original CC&Rs then grant each homeowner, and not any homeowners' association, the power to enforce the Original CC&Rs against one another.

5. Among other things, there are no rental or pet restrictions or construction deadline in the Original CC&Rs.

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

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

8. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lyttles"), purchased a Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995.

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

///



10. The Lytles purchased the property with the sole purpose of building a custom home thereon.

11. The primary reasons that the Lytles selected the property were the limited restrictions contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

12. Further, the Lytles could not meet any restrictive deadline on construction, so Plaintiff purposefully selected in a community with no construction deadline.

13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff had developed preliminary plans that were approved by the Developer.

14. Sometime after Plaintiff purchased its property, a group of property owners formed the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners' committee and named it "Rosemere Estates Property Owners Association."

16. The property owners recognized that the Association did not have powers granted to it other than those granted by the Original CC&Rs. For example, the Association had no power to assess, fine, issue rules and regulations, or undertake other actions commonly reserved for homeowners' associations.

17. In 1997, some of the property owners prepared and distributed a proposed set of amended CC&Rs, which proposed to empower the Association and drastically increase the scope of the Original CC&Rs.

18. The property owners determined that unanimous consent was required to amend the Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs were not adopted.

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///



1           19. At a February 23, 2004 Association meeting, two Board members presented a set of  
2 proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within  
3 the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations,  
4 prohibitions against "unsightly articles," and other use restrictions and obligations.

5           20. The proposed amended CC&Rs were not unanimously approved at the February 23,  
6 2004 meeting and, therefore, not adopted.

7           21. Without wanting, consultation or advisement to the Rosemere property owners, on or  
8 about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by  
9 the Board.

10           22. This third set of proposed amended CC&Rs increased the complexity, scope, and size  
11 of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the  
12 property owners.

13           23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the  
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated  
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a  
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February  
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"  
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated  
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the  
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on  
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration  
22 and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions  
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24           24. The binders containing all of the foregoing documents were presented to each  
25 homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of  
26 Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for  
27 amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada  
28 Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed



1 to conform to NRS Chapter 116 "without complying with the procedural requirements generally  
2 applicable to the adoption of an amendment..." and (5) all of the changes made were under NRS  
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs  
5 and changed the very nature of property ownership within Rosemere Estates. The Amended  
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the  
7 powers, rights, and duties of the Association, a section entitled "Restrictions on Use, Alienation,  
8 and Occupancy," pet restrictions, parking restrictions, lease restrictions, the establishment of a  
9 Design Review Committee with unfettered discretion, and a new and expansive definition of  
10 "nuisance."

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,  
13 offensive, or unlawful by the Board of Directors may be  
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found  
16 off a leash to immediately be turned over to animal control, and any animal causing a "nuisance," a  
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days  
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would  
20 require Plaintiff to complete the construction of the custom home on the lot within a mere 60 days  
21 of receipt of approval from the proposed Design Review Committee—something never envisioned  
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff's property is the only Property subject to this restriction as Plaintiff's  
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined  
26 \$50.00 per day for failure to comply with this impossible deadline.

27 ///

28 ///



31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within the Board's discretion, (2) based on Design Review Guidelines that have never been published, and (3) not subject "to any objective standards of reasonableness."

32. After the Board presented the proposed Amended CC&Rs to the owners, together with the written misrepresentations set forth above, the Board did not provide the owners with a reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice. Rather, the Board insisted that the amendment was "a done deal."

33. Despite the misrepresentations introducing the governing documents, the vast expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that the amendment was a "done deal," the Board asked the property owners to sign documents acknowledging their approval, with a notary retained by the Board present to verify signatures.

34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007 meeting. In fact, only five of the property owners approved, with three property owners who refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not counted by the Board.

35. Despite the failure to obtain the required unanimous approval for amending the Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the office of the Recorder for Clark County, Nevada.

## II. LEGAL DETERMINATIONS

### A. Summary Judgment Standard

1. Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP Rule 56(c).

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue' as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law." *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting NRCP 56(c).)



3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

**B. Plaintiff Is Entitled To Summary Judgment In Its Favor**

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

**C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116**

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

**Organization of unit-owners' association.**

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq*.

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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.<sup>1</sup>

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.

11

<sup>1</sup> "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. 605, 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); *Bordleon 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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1           B.     The CC&Rs Can Only Be Amended By Unanimous Consent of All Property  
 2                 Owners

3           20.    Because Rosemere Estates is a limited purpose association under NRS 116.1201,  
 4           NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not  
 5           apply here.

6           21.    The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates  
 7           property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land.  
 8           Accordingly, under long-standing and well-established common law, the Original CC&Rs are  
 9           binding, and not subject to amendment, absent a new conveyance properly executed by all  
 10          Rosemere property owners and in conformance with all of the other legal requirements for a valid  
 11          transfer of an interest in real property. In short, there can be no valid amendment of the Original  
 12          CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

13          22.    There has never been unanimous consent to amend the Original CC&Rs and there has  
 14          never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically,  
 15          unanimous consent was not received in 2007, when the invalid Amended CC&Rs were wrongfully  
 16          recorded by the Association.

17          23.    Even if the provisions related to amendment within Chapter 116 were to apply, the  
 18          Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required  
 19          unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments  
 20          that require unanimous unit owner approval (as opposed to majority or supermajority approval). In  
 21          particular, a "change of use" always requires unanimous approval.

22          NRS 116.2117 provides, in pertinent part:

23               1. . . the declaration, including any plats, may be amended only by vote or agreement of  
 24               units' owners of units to which at least a majority of the votes in the association are  
 25               allocated, unless the declaration specifies a different percentage for all amendments or for  
 26               specified subjects of amendment. If the declaration requires the approval of another  
                   person as a condition of its effectiveness, the amendment is not valid without that  
                   approval.

                  \* \* \*

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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 countermotion 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.

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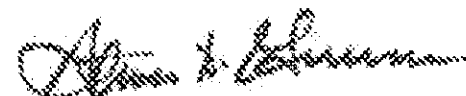


# EXHIBIT 4

# EXHIBIT 4



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1 **ORDER**

Richard E. Haskin, Esq.

2 Nevada State Bar # 11592

Bryan M. Gragg, Esq.

3 Nevada State Bar # 13134

**GIBBS GIDEN LOCHER TURNER**

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(702) 836-9800

6 Attorneys for Plaintiff

7 **JOHN ALLEN LYTLE and**

**TRUDI LEE LYTLE**

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

12 Plaintiffs,

13 v.

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

16 Defendants.

CASE NO. A-09-S93497-C  
Dept.: XII

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

18  
19 On May 2, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for  
20 Attorneys' Fees came on regularly for hearing, the Honorable Michelle Leavitt presiding. Plaintiffs  
21 appeared through counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Witthrodt,  
22 LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association  
23 ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance  
24 at the hearing.

25 Having considered the moving papers, the affidavits and declarations filed concurrently  
26 therewith, and the exhibits attached thereto, the Court finds that as the prevailing party, Plaintiffs are  
27 entitled to an award of attorney fees under the Original CC&Rs, the Amended CC&Rs and NRS  
28 § 116.4117.

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

3 24. Except as otherwise provided herein, Subdivider or any owner or  
4 owners of any of the lots shall have the right to enforce any or all of the  
5 provisions of the covenants, conditions, and restrictions upon any other  
6 owner or owners. In order to enforce said provision or provisions, any  
7 appropriate judicial proceeding in law or in equity may be initiated and  
8 prosecuted by any lot owners or owners against any other owner or  
9 owners.

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

15 See Original CC&Rs, §§ 24, 25. Plaintiffs prevailed in enforcing the Original CC&Rs (by  
16 obtaining a declaration from this Court that that the Amended CC&Rs are invalid and that Defendant  
17 did not have the powers it claimed to have) and prevailed in restraining the violation of the Original  
18 CC&Rs (by obtaining injunctive relief prohibiting Defendant from enforcing the Amended CC&Rs  
19 and requiring public notice of their revocation). Accordingly, Plaintiffs are entitled to an award of  
20 attorney fees, pursuant to the terms of the Original CC&Rs.

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

23 16.1(a) In the event the Association, or any Owner shall commence  
24 litigation or arbitration to enforce any of the covenants, conditions,  
25 restrictions or reservations contained in the Governing Documents, the  
26 prevailing party in such litigation or arbitration shall be entitled to  
27 costs of suit and such attorney's fees as the Court or arbitrator may  
28 adjudge reasonable and proper.

See Amended CC&Rs, § 16.1(a).

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

///

///

///



Finally, Plaintiff are also entitled to an award of attorney fees pursuant to NRS 116.4117.

NRS 116.4117 provides as follows:

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

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

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

Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Brunzell v. Golden Gate Nat'l Bank* (1969) 85 Nev. 348, 349, 455 P.2d 31, 33. The Court considered all of the factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered and applied:

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

The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs' attorneys, as set forth in the various affidavits and declarations presented to this Court with the moving papers. The Court finds that Plaintiffs are entitled to an award of \$297,072.66 in attorneys' fees as the prevailing party in this action, having achieved the revocation of the Amended CC&Rs and removing the cloud on title to their property.

///


///



Therefore, the Court orders as follows:

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

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

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

DATED: May 19, 2016

GIBBS GIDEN LOCHER TURNER  
SENET & WITTSKODT LLP

By: 

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
7450 Aeroysa Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4039  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTSKODT



# EXHIBIT 5

# EXHIBIT 5



## 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

THIS SPACE FOR RECORDER'S USE

Inet #: 20160818-0001198

Fees: \$18.00

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Receipt #: 2545915

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NATIONWIDE LEGAL

Recorded By: ANI Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN No.: 163-03-313-001

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

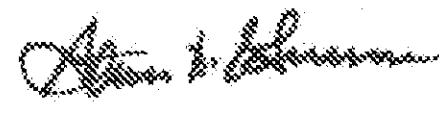
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(Govt. Code 27361.6)  
(Additional recording fee applies)

17697371

Description: Clark, NV Document-Year, Date, DocID 2016, 818, 1198 Page: 1 of 3  
Order: Judgment; Comment:



Electronically Filed  
08/18/2016 08:50:29 AM

  
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 \$63,366.93.

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


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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: 8/15/16

  
DISTRICT COURT JUDGE  
RL

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

Richard E. Maskin, 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 6

# EXHIBIT 6



## 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: \$15.00

N/C Fee: \$0.00

09/02/2016 04:13:55 PM

Receipt #: 2854037

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DEBBIE CONWAY

THIS SPACE FOR RECORDER'S USE CLARK COUNTY RECORDER

APN No.: 163-03-313-002

## ABSTRACT OF JUDGMENT

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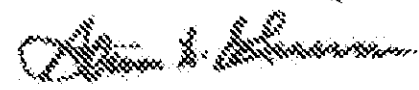
(Govt. Code 27361.5)

(Additional recording fee applies)

1275913



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CLERK OF THE COURT

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Timothy P. Elson, Esq.  
Nevada State Bar # 11559  
**GIBBS GIDEN LOCHER TURNER  
SENET & WITBORNT 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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

CASE NO. A-99-593497-C  
Dept.: XII

Plaintiff,

**ABSTRACT OF JUDGMENT**

v.

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

Defendants.

In the District Court of Clark County, State of Nevada, on July 29, 2013, a Judgment was entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION ("Defendant").

On May 25, 2016, the District Court entered an Order Awarding Attorneys' Fees in the amount of \$297,072.66 in favor of Plaintiff and against Defendant.

On June 17, 2016, the District Court entered an Order Awarding Plaintiffs' Damages following Prove-Up Hearing against Defendant in the amount of \$63,564.93.

Finally, on July 22, 2016, the District Court entered an Order Awarding Plaintiffs' Costs against Defendant in the amount of \$599.06.

ff

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AUG 18 2016

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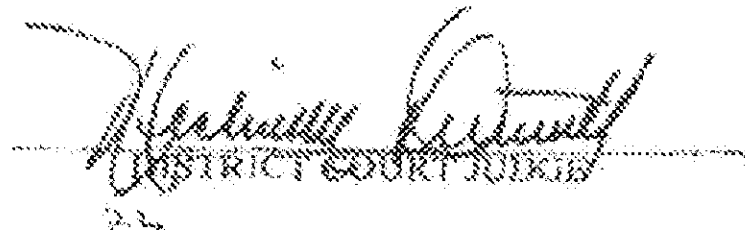
EXHIBIT :



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

Respectfully requested by:

GIBBS GIDEN LOCHER TURNER  
SENET & WITTENRODT 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



DECLARATION OF MARJORIE B. BOULDEN

1, Marjorie B. Boulden, declare under penalty of perjury that the foregoing is true and correct:

1. I own the residence located at 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Residence").

2. On November 7, 2016, I entered into a purchase and sale agreement for the Residence with a third party buyer (the "PSA #1").


3. The buyer in the PSA #1 terminated the escrow November 15, 2016 because of the Abstract of Judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence.

4. On December 1, 2016, I entered into another purchase and sale agreement for the Residence with a different third party buyer (the "PSA #2").

5. The PSA #2 is scheduled to close escrow on January 20, 2017. The buyer in the PSA #2 has been informed of the \$361,238.59 judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence, and that buyer will not agree to pay an additional \$361,238.59 to acquire the Residence. In turn, I cannot agree to pay \$361,238.59 from the sale proceeds of the Residence to the Lytles.

6. The Lytles have effectively slandered and clouded the title to the Residence.

DATED this 10 day of January 2017

  
MARJORIE B. BOULDEN



# EXHIBIT 7

# EXHIBIT 7



DECLARATION OF MARJORIE B. BOULDEN

I, Marjorie B. Boulden, declare under penalty of perjury that the foregoing is true and correct:

1. I own the residence located at 1960 Rosemere Ct., Las Vegas, NV 89117 (the "Residence").

2. On November 8, 2016, I entered into a purchase and sale agreement for the Residence with a third party buyer (the "PSA #1"). A true and correct copy of PSA #1 is attached hereto as Exhibit A.

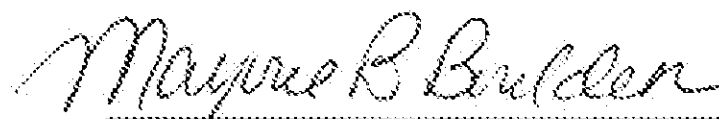
3. The buyer in the PSA #1 terminated the escrow November 15, 2016 because of the Abstract of Judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence.

4. On December 1, 2016, I entered into another purchase and sale agreement for the Residence with a different third party buyer (the "PSA #2"). A true and correct copy of PSA #2 is attached hereto as Exhibit B.

5. The PSA #2 is currently scheduled to close escrow on <sup>or before</sup> 8/4/17. The buyer in the PSA #2 has been informed of the \$361,238.59 judgment against the Rosemere LPA that Mr. and Mrs. Lytle recorded against the Residence, and that buyer will not agree to pay an additional \$361,238.59 to acquire the Residence. In turn, I cannot agree to pay \$361,238.59 from the sale proceeds of the Residence to the Lytles.

6. The Lytles have effectively slandered and clouded the title to the Residence.

DATED this 24 day of February 2017

  
MARJORIE B. BOULDEN



# EXHIBIT A

# EXHIBIT A





## COUNTER OFFER

NO. 3

ATTENTION: Alan W. Cota COMPANY: Realty Group Preferred  
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☐ Seller ☒ Buyer Robert & Yvonne Dismann  
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1980 Rosemary Ct Las Vegas  
dated: November 28th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Buyer may perform any and all inspections.
2. Home is being sold as is.
3. Seller will make no repairs or modifications as a result of any inspections.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1, 2, 3

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 5 ☐ AM ☒ PM on (month) December,  
(day) 1st, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/30/2016

Authenticator

Marjorie S. Boulden, Trustee

☐ Buyer ☒ Seller Marjorie S. Boulden, Trustee Signature

Time:       

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

☒ accepts the Counter Offer;

☐ accepts the terms of this Counter Offer subject to the attached Counter Offer No.       ; or

☐ rejects the Counter Offer.

Date: 12-1-16

☒ Buyer ☐ Seller Robert E. Dismann Signature

Time: 10:30am

☒ Buyer ☐ Seller Yvonne A. Dismann Signature

Counter Offer Rev. 5/12

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This form presented by Kenneth S. Lowrey / Greater Homes of Las Vegas / 702-216-4543 / [kennethslorey.com](http://www.kennethslorey.com)

Instantaneous





COUNTER OFFER

NO. 2

ATTENTION: Kenneth Lowman COMPANY: Luxury Homes of Las Vegas  
(Agent) (Name)

The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Marjorie B. Boulden Trust  
(Name)

to ☐ Buy ☒ Sell the real property commonly known as: 1960 ROSEBERRY CT LAS VEGAS  
dated: November 18th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Seller agrees to extend the expiration date of Counter Offer 1 to coincide with the date of this counter offer #2.
2. Sales price to be \$550,000.00.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1.

EXPIRATION: ☐ Buyer ☒ Seller must respond by: 5 ☐ AM ☒ PM on (month) November,  
(day) 30th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☒ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/28/2016

☒ Buyer ☐ Seller Robert S. Dismen Signature

Time: 8 p.m.

☒ Buyer ☐ Seller Troune A. Dismen Signature

The undersigned ☐ Buyer ☒ Seller hereby:

☐ accepts the Counter Offer;  
☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. 3; or  
☐ rejects the Counter Offer.

Date: 11/30/2016

Authentication  
Marjorie B. Boulden, Trustee  
☐ Buyer ☒ Seller Marjorie B. Boulden, Trustee Signature

Time:       

☐ Buyer ☐ Seller Signature

Counter Offer Rev. 3/12

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## COUNTER OFFER

NO. 1

ATTENTION: Alan W Cota COMPANY: Realty Group Preferred  
(Agent) (Name)

The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Robert & Yvonne Disman  
(Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1960 Rosemary Ct Las Vegas  
dated: November 27th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Sales price shall be \$595,000.
2. Appraisal contingency shall be removed in 21 days.
3. Financing contingency shall be removed in 30 days.
4. Escrow and Title shall be Chicago Title - Kathe Stevens.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 5 ☐ AM ☒ PM on (month) November,  
(day) 29th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☒ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/28/2016

Margaret B Bouldon, Trustee  
☐ Buyer ☒ Seller Margaret B Bouldon, Trustee Signature

Time:                     

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

                     accepts the Counter Offer;

                     accepts the terms of this Counter Offer subject to the attached Counter Offer No.                     ; or

                     rejects the Counter Offer.

Date:                     

☒ Buyer ☐ Seller Robert & Disman Signature

Time:                     

☒ Buyer ☐ Seller Yvonne A Disman Signature

Counter Offer Rev. 5/12

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### Print Page Instructions

Date: 4/27/20

Robert Z. Disman  
1960 ROSEMARY CT  
City or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,  
Zip 89117, A.P.N. # 163-03-313-008 for the purchase price of \$ 550,000.00  
(Five Hundred Fifty Thousand dollars) ("Purchase Price") on the terms and conditions  
contained herein: BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

## Buyer's Offer

### 1. FINANCIAL TERMS & CONDITIONS:

\$ 18,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer --OR-- ☒ Wired to Escrow  
Upon Acceptance, Earnest Money to be  
deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2  
business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, --OR-- ☐ Seller's Broker's  
Trust Account. (NOTE: It is a felony in the State of Nevada - punishable by up to four years in prison and a \$5,000  
fine - to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

§ ..... B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date) ..... The additional deposit ☐ will ~~OR~~ ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 22 herein.)

\$ 440,000.00 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:  
☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_

§ \_\_\_\_\_ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S):

☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify) \_\_\_\_\_  
Interest: ☐ Fixed rate, \_\_\_\_\_ years - OR - ☐ Adjustable Rate, \_\_\_\_\_ years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

§ ..... E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS  
IN "FINANCING ADDENDUM" which is attached hereto.

\$ 55,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("CDF").

\$ 550,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, proration, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. **NEW LOAN APPLICATION:** Within 2 business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Guerrilla Name      Robert S. Disman      Yvonne S. Disman

DIVERGENT INSTALAS

Present Address: 1900 ROSEMERE CT

SELLER'S INITIALS

Rev. 8576

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Page 1 of 10

This form presented by Alan H Cote | Reality Group Protected | 702-342-5434 | [alan@realitygroup.com](mailto:alan@realitygroup.com)

### References



This form prepared by Alan W. Cohn | Health Group Preferred | 762-362-5454 | [alan@cohn.com](mailto:alan@cohn.com) | (optional)



1 the Escrow Number.

2  
3 **B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of  
4 this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

5  
6 **C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before:  
7 01/20/17 (date). If the designated date falls on a weekend or holiday, COE shall be the next business  
8 day.

9  
10 **D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW  
11 HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction  
12 and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this  
13 information to the Internal Revenue Service after COE in the manner prescribed by federal law.

14  
15 **6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and  
16 marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase  
17 price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate  
18 marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

19  
20 **7. BUYER'S DUE DILIGENCE:** Buyer's obligation is X is not \_\_\_\_\_ conditioned on the Buyer's Due Diligence as  
21 defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative.  
22 Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 15 calendar days from Acceptance (as  
23 defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence.  
24 Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's  
25 investigations and through the close of escrow.

26  
27 **A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such  
28 action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to,  
29 whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise  
30 affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or  
31 hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other  
32 concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/  
33 non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning,  
34 water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors  
35 or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors.  
36 Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at  
37 Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not  
38 apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross  
39 negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to  
40 consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools;  
41 proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire  
42 protection; other governmental services; existing and proposed transportation; construction and development; noise or odor  
43 from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection  
44 report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and  
45 telephone number of the inspector.

46  
47 **B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole  
48 discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence  
49 Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller,  
50 whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of  
51 further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in  
52 writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

53  
54 **C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential  
55 Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as  
56 provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

57 [Signature] Buyer's Initials UAS Buyer's Initials

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Disman Yvonne A. Disman

Property Address: 1960 ROSEBERRY CT

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BUYER(S) INITIALS: [Signature]

SELLER(S) INITIALS: [Signature]

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**D. INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contaminant Inspection	Buyer	Well Inspection (Quantity)	N/A
Home Inspection	Buyer	Mechanical Inspection	Buyer	Well Inspection (Quality)	N/A
Termite/Pest Inspection	Buyer	Pool/Spa Inspection	Buyer	Wood-Burning Device/Chimney Inspection	N/A
Roof Inspection	Buyer	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	N/A	Septic Pumping	N/A	Structural Inspection	Buyer
Survey (type):	Waived	Other:		Other:	

**E. CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

**F. BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

**G. FEES, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

**A. TITLE, ESCROW & APPRAISAL FEES:**


Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	Buyer	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Buyer	Other:	

**B. PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

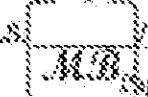
**C. PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Bissman Yvonne A. Bissman

BUYER(S) INITIALS: 

Property Address: 1950 ROSEMEAD CT

SELLER(S) INITIALS: 

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exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

**D. LENDER AND CLOSING FEES:** In addition to Seller's expenses identified herein, Seller will contribute \$ zero dollars to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including ~~OR~~ ☒ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

**E. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives ~~OR~~ ☒ requires a Home Protection Plan with To be chosen by buyer prior to COE. ☒ Seller ~~OR~~ ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$ 795.00. Buyer will order the Home Protection Plan. Neither Seller nor Broker make any representation as to the extent of coverage or deductibles of such plans.

**9. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

**10. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- \* Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- \* If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- \* Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

**A. CIC RELATED EXPENSES:** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	Seller	CIC Capital Contribution	Buyer	CIC Transfer Fees	Seller
Other: _____					

**11. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Seller's Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) \_\_\_\_\_

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Disman Yvonne A. Disman

BUYER(S) INITIALS: [Signature]

Property Address: 1960 ROSSMAN CT

SELLER(S) INITIALS: [Signature]

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## References



19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in Interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or right of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

## Brokers

21. **BROKER'S COMPENSATION/FEES:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will ~~OR~~ ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

**Other Notes:**

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counterparts and said Agreement and all counterparts have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a

Each party acknowledges that he/she has read, understood, and agrees in each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Submitter's Name: Robert E. Dismann Robert E. Dismann

**BIBLIOGRAPHY**

Property Address: 1950 ROOSEVELT CT

SELLER'S INITIALS

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1998 7 10



1 developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a  
 2 written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional.  
 3 "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property.  
 4 "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents  
 5 associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar  
 6 day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common  
 7 Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-  
 8 time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fee" means  
 9 the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of  
 10 recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material  
 11 obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by  
 12 facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price  
 13 less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will  
 14 handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association  
 15 of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance  
 16 with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District.  
 17 "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as  
 18 Amended. "Party" or "Parties" means Buyer and Seller. "PIII" means principal, interest, taxes, and hazard insurance.  
 19 "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in  
 20 effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal  
 21 property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means  
 22 Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property.  
 23 "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is  
 24 the United States Code. "VA" is the Veterans Administration.

#### 25 24. SIGNATURES, DELIVERY, AND NOTICES:

26 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each  
 27 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be  
 28 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

29 B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this  
 30 Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the  
 31 Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read  
 32 receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be  
 33 delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to  
 34 Escrow in the same manner.

35 25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party  
 36 electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost  
 37 to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

38 26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement  
 39 shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This  
 40 Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and  
 41 intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties  
 42 agree that the county and state in which the Property is located is the appropriate forum for any action relating to this  
 43 Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of  
 44 any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing  
 45 party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by  
 46 such prevailing party.

47 THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review  
 48 the terms of this Agreement.

49 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
 50 otherwise modified by addendum or counteroffer.

51 Buyer's Name: Robert S. Bissman Yvonne A. Bissman

BUYER(S) INITIALS: 

52 Property Address: 1960 ROSEBERRY CT

SELLER(S) INITIALS: 

53 Rev. 8/8/16

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1 THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS®  
 2 (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY  
 3 PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO  
 4 ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN  
 5 APPROPRIATE PROFESSIONAL.

7 This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®.  
 8 REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL  
 9 ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

11 27. ADDENDUM(S) ATTACHED: \_\_\_\_\_

13 28. ADDITIONAL TERMS: \_\_\_\_\_

### Buyer's Acknowledgement of Offer

22 Confirmation of Representation: The Buyer is represented in this transaction by:

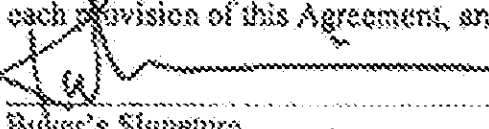
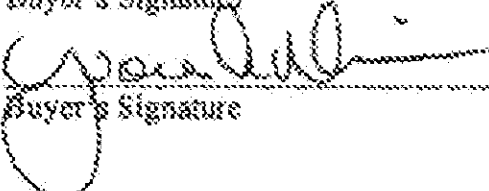
24 Buyer's Broker: <u>Alan Cote</u>	Agent's Name: <u>Alan W Cote</u>
25 Company Name: <u>Realty Group Preferred</u>	Agent's License Number: <u>19796</u>
26 Broker's License Number: <u>19796</u>	Office Address: <u>7281 W. Sahara Ave #100-118</u>
27 Phone: <u>702-242-3434</u>	City, State, Zip: <u>Las Vegas NV 89117</u>
28 Fax: <u>702-242-3710</u>	Email: <u>alan.cote@rgrp.com</u>

30 BUYER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.232(1)(c), a real estate licensee must disclose if  
 31 he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

32 ☒ DOES NOT have an interest in a principal in the transaction. -OR-

33 ☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) -OR- ☐ family or firm  
 34 relationship with Buyer or ownership interest in Buyer (if Buyer is an entity); (specify relationship)

37 Seller must respond by: 5 ☐ AM/PM on (month) December, (day) 1, (year) 2016. Unless  
 38 this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date  
 39 and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by  
 40 each provision of this Agreement, and all signed addenda, disclosures, and attachments.

42 	Robert E. Dismas	11-27-16 6:00 AM
43 Buyer's Signature	Buyer's Printed Name	Date Time
45 	Yvonne A. Dismas	11-27-16 6:00 AM
46 Buyer's Signature	Buyer's Printed Name	Date Time

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
 otherwise modified by addendum or counteroffer.

Buyer's Name: Robert E. Dismas Yvonne A. Dismas

Property Address: 1960 ROSEBERRY CT

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Instant



## Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker:	Kenneth Lowman	Agent's Name:	Kenneth Lowman
Company Name:	Luxury Homes of Las Vegas	Agent's License Number:	B.0035723
Broker's License Number:	B.0035723	Office Address:	7834 N Sahara Ave # 100
Phone:	702-216-4663	City, State, Zip:	Las Vegas NV 89117-1544
Fax:	702-216-4664	Email:	klowman@luxuryhomeslv.com

**SELLER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☐ DOES NOT have an interest in a principal to the transaction. --OR--

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) --OR-- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship)

**FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at [www.irs.gov](http://www.irs.gov). Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ☒ is not ☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: MLB

**ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

☒ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

☐ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

<p>_____  <i>Signature of Nicholas P. Boulton, Trustee</i>          Seller's Signature          11/28/2016 3:42:54 PM PST</p>		<p>_____          Nicholas P Boulton, Trustee          Seller's Printed Name</p>	<p>11/28/2016 <input type="checkbox"/> AM <input type="checkbox"/> PM          Date Time</p>
<p>_____          Seller's Signature</p>		<p>_____          Seller's Printed Name</p>	<p><input type="checkbox"/> AM <input type="checkbox"/> PM          Date Time</p>

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Robert F. Dieman Fvonne A. Dieman

Property Address: 1960 ROSEBERRY CT

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BUYER(S) INITIALS: [Signature]

SELLER(S) INITIALS: MLB

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Instant: 05/16



EXHIBIT B

EXHIBIT B



# ADDENDUM NO. 1 TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Burkow Living Trust  
Carl & Angeline Burkow as Buyer(s) and Marjorie B Boulden, Trustee  
as Seller(s), dated 11/07/16  
covering the real property at 1960 ROSEMEERE CT LAS VEGAS NV 89117  
the ☒ Buyer ☐ Seller hereby proposes that the Purchase Agreement be amended as follows:  
1. Buyers hereby cancels this escrow as of this date 11/15/2016. This date is within their due diligence period. All Earnest monies to be refunded in entirety to Buyer's immediately.

☐ ADDITIONAL PAGE(S) ATTACHED. This Addendum is not complete without the additional terms on the attached \_\_\_\_\_ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

Carl Burkow 11/15/2016  
☒ Buyer ☐ Seller Carl Burkow, Burkow Living Trust Date

Angeline Burkow 2:20 pm  
☒ Buyer ☐ Seller Angeline Burkow, Burkow Living Trust Time

Acceptance:  
Marjorie Boulden Trs 11/16/2016  
☐ Buyer ☒ Seller Marjorie B Boulden, Trustee Date

☐ Buyer ☐ Seller Time

Prepared by: Lorree Baylatis 702-250-5735  
Agent's Printed Name Phone

Addendum to Purchase Agreement 9/12 © 2012 Greater Las Vegas Association of REALTORS®

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LorreeBaylatis@gmail.com

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## NO. 2

This form presented by Kenneth A. Izenman ; luxury taxes of Las Vegas ; 702-215-4462 ;  
kizman@comcast.net

instanetforums





## COUNTER OFFER

NO. 2
 ATTENTION: Reanneth Lowman COMPANY: Luxury Homes of Las Vegas  
 (Agent) (Name)

 The ☐ Offer ☒ Counter Offer made by: ☒ Seller ☐ Buyer Marjorie B Boulden, Trustee  
 (Name)

 to ☐ Buy ☒ Sell the real property commonly known as: 1960 ROSEMARY CT LAS VEGAS  
 dated: November 6th, 2016 is not accepted in its present form, but the following Counter Offer  
 is hereby submitted:

1. Sales Price to \$560,000.
2. Earnest Money to be \$10,000.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional  
 additional terms on the attached        page(s).

 OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms  
 agreed to in Counter Offer(s) No. 1.

 EXPIRATION: ☐ Buyer ☒ Seller must respond by: 5 ☐ AM ☒ PM on (month) November,  
 (day) 6th, (year) 2016. Unless this Counter Offer is accepted by execution below  
 and delivered to the ☒ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall  
 lapse and be of no further force and effect.
Date: 11/07/2016
☒ Buyer ☐ Seller Carl Burkow, Burkow Living Trust Signature
Time: 1:30 PM
☒ Buyer ☐ Seller Angeline Burkow, Burkow Living Trust Signature
The undersigned ☐ Buyer ☒ Seller hereby:       accepts the Counter Offer;
X accepts the terms of this Counter Offer subject to the attached Counter Offer No. 3; or  
       rejects the Counter Offer.
Date: 11/7/2016
 Authentication:  
Marjorie B Boulden, Trustee  
☐ Buyer ☒ Seller Marjorie B Boulden, Trustee Signature
Time:       
☐ Buyer ☐ Seller        Signature





## COUNTER OFFER

NO. 1

ATTENTION: Lorrene Baylatis COMPANY: BHHS NV Properties  
 (Agent) (Name)

The ☒ Offer ☐ Counter Offer made by: ☐ Seller ☒ Buyer Burkow Living Trust  
 (Name)

to ☒ Buy ☐ Sell the real property commonly known as: 1950 Rosemere Ct Las Vegas  
 dated: November 6th, 2016 is not accepted in its present form, but the following Counter Offer is hereby submitted:

1. Sales price shall be \$600,000.
2. Earnest money deposit shall be \$25,000.
3. Title and escrow shall be Chicago Title - Kathe Stevens.

☐ ADDITIONAL PAGE(S) ATTACHED. This Counter Offer is not complete without the additional additional terms on the attached        page(s).

OTHER TERMS: All other terms to remain the same as original Residential Purchase Agreement plus terms agreed to in Counter Offer(s) No. 1.

EXPIRATION: ☒ Buyer ☐ Seller must respond by: 4:00 ☐ AM ☒ PM on (month) November,  
 (day) 7th, (year) 2016. Unless this Counter Offer is accepted by execution below and delivered to the ☐ Buyer's ☐ Seller's Broker before the above date and time, this Counter Offer shall lapse and be of no further force and effect.

Date: 11/06/2016

Authorizations

Marjorie B Boulden, Trustee

☐ Buyer ☒ Seller Marjorie B Boulden, Trustee Signature

Time: 12:33 PM

☐ Buyer ☐ Seller Signature

The undersigned ☒ Buyer ☐ Seller hereby:

       accepts the Counter Offer;

☒ accepts the terms of this Counter Offer subject to the attached Counter Offer No. 2; or

       rejects the Counter Offer.

Date: 11/7/2016

☒ Buyer ☐ Seller Carl Burkow Signature

Time: 1:30 PM

☒ Buyer ☐ Seller Angeline Burkow Signature





## RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 11/06/16

Burkow Living Trust Carl & Angelina Burkow ("Buyer"), hereby offers to purchase  
1960 ROSEMERE CT ("Property"), within the  
city or unincorporated area of LAS VEGAS, County of CLARK, State of Nevada,  
Zip 89117, A.P.N. # 163-03-313-008 for the purchase price of \$ 550,000.00  
(Five Hundred Fifty Thousand dollars) ("Purchase Price") on the terms and conditions  
contained herein. BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

### Buyer's Offer

#### 1. FINANCIAL TERMS & CONDITIONS:

\$ 5,000.00 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer -OR- ☒ upon  
accepted offer. Upon Acceptance, Earnest Money to be  
deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or  
business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's  
Trust Account. (NOTE: It is a felony in the State of Nevada -punishable by up to four years in prison and a \$5,000  
fine--to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$            B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date)           . The  
additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional  
deposit should be set forth in Section 28 herein.)

\$ n/a C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN:  
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)           

\$            D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE  
FOLLOWING EXISTING LOAN(S):  
☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify)             
Interest: ☐ Fixed rate,            years -OR- ☐ Adjustable Rate,            years. Seller further agrees to  
provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer  
within FIVE (5) calendar days of acceptance of offer.

\$ n/a E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS  
IN "FINANCING ADDENDUM" which is attached hereto.

\$ 545,000.00 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to  
Close of Escrow ("COE").

\$ 550,000.00 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees  
and costs associated with the purchase of the Property as defined herein.)

#### 2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within            business days of Acceptance, Buyer agrees to (1) submit a  
completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard  
factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB

Property Address: 1960 ROSEMERE CT

SELLER(S) INITIALS:           

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applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

**B. APPRAISAL CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than n/a calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.

**C. LOAN CONTINGENCY:** Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than n/a calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.

**D. CASH PURCHASE:** Within 4 business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

**3. SALE OF OTHER PROPERTY:** This Agreement ☒ is not ~~OR~~ ☐ is contingent upon the sale (and closing) of another property which address is \_\_\_\_\_

Said Property ☐ is ☐ is not currently listed ~~OR~~ ☐ is presently in escrow with \_\_\_\_\_

Escrow Number: \_\_\_\_\_ Proposed Closing Date: \_\_\_\_\_

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

**4. FIXTURES AND PERSONAL PROPERTY:** The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: \_\_\_\_\_

## 5. ESCROW:

**A. OPENING OF ESCROW:** The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Jaimie Gioiosa title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Equity Title ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angeline Burkow

BUYER(S) INITIALS: CB

Property Address: 1960 ROSEMEERE CT

SELLER(S) INITIALS: \_\_\_\_\_

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1 the Escrow Number.

2  
3 **B. EARNEST MONEY:** Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of  
4 this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

5  
6 **C. CLOSE OF ESCROW:** Close of Escrow ("COE") shall be on or before:  
7 12/30/15 (date). If the designated date falls on a weekend or holiday, COE shall be the next business  
8 day.

9  
10 **D. IRS DISCLOSURE:** Seller is hereby made aware that there is a regulation that requires all ESCROW  
11 HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction  
12 and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this  
13 information to the Internal Revenue Service after COE in the manner prescribed by federal law.

14  
15 **6. TITLE INSURANCE:** This Purchase Agreement is contingent upon the Seller's ability to deliver, good and  
16 marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase  
17 price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate  
18 marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

19  
20 **7. BUYER'S DUE DILIGENCE:** Buyer's obligation is X is not \_\_\_\_\_ conditioned on the Buyer's Due Diligence as  
21 defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative,  
22 Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 15 calendar days from Acceptance (as  
23 defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence.  
24 Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's  
25 investigations and through the close of escrow.

26  
27 **A. PROPERTY INSPECTION/CONDITION:** During the Due Diligence Period, Buyer shall take such  
28 action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to,  
29 whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise  
30 affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or  
31 hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other  
32 concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/  
33 non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning,  
34 water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors  
35 or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors.  
36 Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at  
37 Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not  
38 apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross  
39 negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to  
40 consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools;  
41 proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire  
42 protection; other governmental services; existing and proposed transportation; construction and development; noise or odor  
43 from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection  
44 report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and  
45 telephone number of the inspector.

46  
47 **B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer determines, in Buyer's sole  
48 discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence  
49 Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller,  
50 whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of  
51 further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in  
52 writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

53  
54 **C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS:** If Buyer fails to cancel the Residential  
55 Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as  
56 provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

57 \_\_\_\_\_ Buyer's Initials \_\_\_\_\_ Buyer's Initials

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angeline Burkow

BUYER(S) INITIALS: CB / AB

Property Address: 1860 ROSEMERE CT

SELLER(S) INITIALS: \_\_\_\_\_

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**D. INSPECTIONS:** Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	Waived	Fungal Contaminant Inspection	Waived	Well Inspection (Quantity)	N/A
Home Inspection	Buyer	Mechanical Inspection	Buyer	Well Inspection (Quality)	N/A
Termite/Pest Inspection	Waived	Pool/Spa Inspection	Buyer	Wood-Burning Device/Chimney Inspection	N/A
Roof Inspection	Buyer	Soils Inspection	Waived	Septic Inspection	N/A
Septic Lid Removal	N/A	Septic Pumping	N/A	Structural Inspection	Buyer
Survey (type):	N/A	Other:		Other:	

**E. CERTIFICATIONS:** In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

**F. BUYER'S REQUEST FOR REPAIRS:** It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

**8. FEES, AND PRORATIONS** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

**A. TITLE, ESCROW & APPRAISAL FEES:**

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50/50	Lender's Title Policy	N/A	Owner's Title Policy	Seller
Real Property Transfer Tax	Seller	Appraisal	Waived	Other:	

**B. PRORATIONS:** Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

**C. PRELIMINARY TITLE REPORT:** Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB AB

Property Address: 1960 ROSEMEDE CT

SELLER(S) INITIALS: /

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exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

**D. LENDER AND CLOSING FEES:** In addition to Seller's expenses identified herein, Seller will contribute \$ 0 to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including ~~OR~~ ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

**E. HOME PROTECTION PLAN:** Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives ~~OR~~ ☒ requires a Home Protection Plan with TBD ☐ Seller ~~OR~~ ☒ Buyer will pay for the Home Protection Plan at a price not to exceed \$ 595.00. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

**9. TRANSFER OF TITLE:** Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

**10. COMMON-INTEREST COMMUNITIES:** If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide **AT SELLER'S EXPENSE** the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

**A. CIC RELATED EXPENSES:** (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	N/A	CIC Capital Contribution	N/A	CIC Transfer Fees	N/A
Other: _____					

**11. DISCLOSURES:** Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) \_\_\_\_\_

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB

Property Address: 1980 ROSEMEAD CT

SELLER(S) INITIALS: /

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Instone/0605



12. **FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES:** All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. **WALK-THROUGH INSPECTION OF PROPERTY:** Buyer is entitled under this Agreement to a walk-through of the Property within 5 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.

14. **DELIVERY OF POSSESSION:** Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than COE ☒ OR ☐ \_\_\_\_\_. In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

15. **RISK OF LOSS:** Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

16. **ASSIGNMENT OF THIS AGREEMENT:** Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. **CANCELLATION OF AGREEMENT:** In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

18. **DEFAULT:**

A. **MEDIATION:** Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initiating below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS: CB / AD SELLER(S) INITIALS: \_\_\_\_\_ / \_\_\_\_\_

B. **IF SELLER DEFAULTS:** If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. **IF BUYER DEFAULTS:** If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angeline Burkow

BUYER(S) INITIALS: CB / AD

Property Address: 1960 ROSEMEAD CT

SELLER(S) INITIALS: \_\_\_\_\_ / \_\_\_\_\_

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LorraineBaylath@gmail.com

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## Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement, and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

## Brokers

21. **BROKER'S COMPENSATION/FEES:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will --OR-- ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

## Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

BUYER(S) INITIALS: CB / AB

Property Address: 1960 ROSEMERE CT

SELLER(S) INITIALS: /

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1 developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a  
 2 written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional.  
 3 "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property.  
 4 "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents  
 5 associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar  
 6 day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common  
 7 Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-  
 8 time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means  
 9 the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of  
 10 recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material  
 11 obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by  
 12 facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price  
 13 less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will  
 14 handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association  
 15 of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance  
 16 with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District.  
 17 "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as  
 18 Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance.  
 19 "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in  
 20 effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal  
 21 property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means  
 22 Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property.  
 23 "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is  
 24 the United States Code. "VA" is the Veterans Administration.

#### 25 24. SIGNATURES, DELIVERY, AND NOTICES:

26 A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each  
 27 signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be  
 28 signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

29 B. Except as otherwise provided in Section 16, when a Party wishes to provide notice as required in this  
 30 Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the  
 31 Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read  
 32 receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be  
 33 delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to  
 34 Escrow in the same manner.

35 25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party  
 36 electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost  
 37 to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

38 26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement  
 39 shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This  
 40 Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and  
 41 intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties  
 42 agree that the county and state in which the Property is located is the appropriate forum for any action relating to this  
 43 Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of  
 44 any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing  
 45 party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by  
 46 such prevailing party.

47 THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review  
 48 the terms of this Agreement.

49 Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is  
 50 otherwise modified by addendum or counteroffer.

51 Buyer's Name: Burkow Living Trust Carl & Angelina Burkow

52 BUYER(S) INITIALS: CB AB

53 Property Address: 1980 ROSEMEAD CT

54 SELLER(S) INITIALS: /

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 lorrainebayliss@gmail.com

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27. ADDENDUM(S) ATTACHED: \_\_\_\_\_

28. ADDITIONAL TERMS:

1. To verify if any written documentation exists between the homeowners concerning the costs and maintenance of the cul-de-sac, if not, is there any other explanation how these matters are handled.

### Buyer's Acknowledgement of Offer

Confirmation of Representation: The Buyer is represented in this transaction by:

Buyer's Broker: <u>Forrest Barbes</u>	Agent's Name: <u>Lorree D Baylatis</u>
Company Name: <u>BHHS Nevada Properties</u>	Agent's License Number: <u>S.051466.LLC</u>
Broker's License Number: _____	Office Address: <u>8850 W Sunset Rd Ste 200</u>
Phone: <u>702-250-5735</u>	City, State, Zip: <u>Las Vegas NV 89148</u>
Fax: <u>702-317-3274</u>	Email: <u>LorreeBaylatis@gmail.com</u>

BUYER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ DOES NOT have an interest in a principal to the transaction. --OR--

☐ DOES have the following interest, direct or indirect, in this transaction: ☐ Principal (Buyer) --OR-- ☐ family or firm relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship) \_\_\_\_\_

Seller must respond by: 5:00 ☐ AM ☒ PM on (month) November, (day) 9, (year) 2015. Unless this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

<u>Carl Burkow</u>	Burkow Living Trust	<u>11/9/15</u>	<u>10:45</u>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Buyer's Signature	Buyer's Printed Name	Date	Time	
<u>Angeline Burkow</u>	Carl & Angeline Burkow	<u>11/9/15</u>	<u>10:45</u>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
Buyer's Signature	Buyer's Printed Name	Date	Time	

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: <u>Burkow Living Trust</u>	<u>Carl &amp; Angeline Burkow</u>	BUYER(S) INITIALS: <u>CB</u>
Property Address: <u>1960 ROSEMERE CT</u>		SELLER(S) INITIALS: <u>/</u>

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## Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: <u>Kenneth Lowman</u>	Agent's Name: <u>Kenneth Lowman</u>
Company Name: <u>Luxury Homes of Las Vegas</u>	Agent's License Number: <u>E.0035725</u>
Broker's License Number: _____	Office Address: <u>7854 W Sahara Ave # 100</u>
Phone: <u>702-216-4663</u>	City, State, Zip: <u>Las Vegas NV 89117-4546</u>
Fax: <u>702-216-4664</u>	Email: <u>klowman@luxuryhomeslv.com</u>

**SELLER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

☒ **DOES NOT** have an interest in a principal to the transaction. --OR--

☐ **DOES** have the following interest, direct or indirect, in this transaction: ☐ Principal (Seller) --OR-- ☐ family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity); (specify relationship)

**FIRPTA:** If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at [www.irs.gov](http://www.irs.gov). Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ☐ is not --OR-- ☐ is a foreign person therefore subjecting this transaction to FIRPTA withholding. SELLER(S) INITIALS: \_\_\_\_\_

**ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

**COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

**REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein is not accepted.

_____	_____	_____	_____	<input type="checkbox"/> AM <input type="checkbox"/> PM
Seller's Signature	Seller's Printed Name	Date	Time	
_____	_____	_____	_____	<input type="checkbox"/> AM <input type="checkbox"/> PM
Seller's Signature	Seller's Printed Name	Date	Time	

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendums or counteroffer.

Buyer's Name: <u>Burkow Living Trust</u>	<u>Carl &amp; Angeline Burkow</u>	BUYER(S) INITIALS: <u>CB / AB</u>
Property Address: <u>1960 ROSEMEERE CT</u>		SELLER(S) INITIALS: _____

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11/6/2016

Matrix

## Tax Report

Clark County Property					
Parcel #:	163-03-313-008	Address:	1960 ROSEMERE CT	Zip Code:	89117-2060
YN-RG-SE:	21 - 60.0 - 3	PropCity:	LAS VEGAS	ReAssd:	2017
Tot Value:	\$213,606	Tax Dist:	LAS VEGAS CITY	Update:	10/24/2016
GEO ID:	N2 SW4 21-60.0-3	Land Use:	1100010001/SPR		
		Census Tract:	2916		
Assessor Description					
File-Page:	PS 0059-0058	Subdivision:	/ROSEMERE COURT		
Assr Lot:	8	Block:		Phase:	
Assr Apt:		Parcel:		Bldg:	
Assr Desc:	ROSEMERE COURT PLAT BOOK 59 PAGE 58 LOT 8	Area:	502	Tract:	
		Unit:		Outlot:	
Owner & Doc Information					
Owner Name:	BOULDEN MARJORIE B TRUST	ETAL	DOC DATE	DOC NUMBER	OV MUL
2nd Owner:	BOULDEN MARJORIE B TRS	N	07/31/1996	1996073101459	
Address(S):	1960 ROSEMERE Court -		05/19/1994	1994051901300	
City:	LAS VEGAS	State:	NV	Zip Code:	89117
Prev Owner:	CANTOR CARL				
Own Phone:					
Land & Building Information					
Land Value:	\$47,250	Irregular:		Adq Parking:	
FrontDpth:		Undrg Util:		Rec Area:	
Acres:	0.46	Str Paved:		Sidewalks:	
Lot SqFt:	20,038	View:		Metro Map:	53 - A2
Topography:		Act Yr Blt:	1995		
Schools:		Eff Yr Blt:	1995		
Shopping:		Cost Class:	Good		
Impr Value:	\$166,356			Carpet:	60 %
Type Style:	1 STORY			Ceramic Ti:	40 %
Architect:				Vinyl Tile:	
Ext Wall:	Frm Stucco	Units:		Hardwood:	
Roof Matrl:	Conc Tile	Home Auto:		Centrl Vac:	Y
Flooring:	Conc	Security:	Y	Bl Refrig:	Y
Heat Systm:	Force Air	Intercom:	Y	Bl Micro:	N
Air Cond:	Cent Cool	Range Fan:		Trash Cmptr:	N
Centrl Air:		Range Oven:			
Property Sub-Areas SqFt					
LivingArea:	4,130	First Flr:	4,130	Porch 1:	
Building 1:	4,130	Second Flr:		Porch 2:	
Total Bldg:	4,911	Abv Second:		Porch 3:	
Apprx Addl Liv Area:		Apprx Total Liv Area:	4,130		
Pool:	450	Basement Fl:		Paving 1:	2/108
Fence:		Basement U:		Paving 2:	1/2,550
Extra Features Information					
Pool Heatr:	Y	Tennis Ctr:		Prch/Patio:	
Jacuzi/SepJ:		Tns Lights:		Prch Cover:	
Decks:		Tns Fence:		Prch Deck:	
Fence:					
Sales & Loan Information					
	PRICE	DATE	TYPE	PCT OWN	DT
MLS Sale:					
County 1:	\$535,000	07/01/1996	R/ RECORDED VALUE		
County 2:	\$97,500	05/19/1994	R/ RECORDED VALUE		
County 3:	\$97,500	05/01/1994	R/ RECORDED VALUE		
	LOAN AMOUNT	LENDER	TYPE	INT	TITLE
	TOTAL TAX	TOTAL ASSE	IMPRV	LAND	PERS PROP
Currt:	\$5,186.25	\$213,606	\$166,356	\$47,250	2017
Prev:	\$5,177.59	\$196,321	\$161,321	\$35,000	2016
Y Rate:	3.28	Tot SA Sal:		PP Codes:	
Delinq:		Transfer/R:	/	Deeded/R:	/
INFORMATION DEEMED RELIABLE BUT NOT GUARANTEED				11/06/2016 10:18:10 AM	

GLVAR DEEMS INFORMATION RELIABLE BUT NOT GUARANTEED. IT IS A VIOLATION TO PROVIDE DETAIL PRINTOUTS TO A CUSTOMER/CLIENT.



## DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

*This form does not constitute a contract for services nor an agreement to pay compensation.*

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is <u>Lorree D Baylatis</u>	
whose license number is <u>S. 0051466, LLC</u> . The licensee is acting for [client's name(s)] <u>Burkow Living Trust</u>	
<u>Carl &amp; Angeline Burkow</u>	who is/are the <input type="checkbox"/> Seller/Landlord; <input checked="" type="checkbox"/> Buyer/Tenant.
Broker: The broker is <u>Forrest Barbes</u> , whose	
company is <u>RRRS Nevada Properties</u>	

### Licensee's Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
  - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
  - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

### Licensee's Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement;
2. Not disclose, except to the licensee's broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

**Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.**

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

### Licensee Acting for Both Parties:

The Licensee

MAY (\_\_\_\_\_/\_\_\_\_\_) OR MAY NOT (\_\_\_\_\_/\_\_\_\_\_)

in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent to Act" form to sign.

**I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.**

Seller/Landlord: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Seller/Landlord: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

OR

Buyer/Tenant: Carl Burkow Date: \_\_\_\_\_ Time: \_\_\_\_\_

Buyer/Tenant: Angeline Burkow Date: \_\_\_\_\_ Time: \_\_\_\_\_

Buyer/Tenant: Carl & Angeline Burkow Date: \_\_\_\_\_ Time: \_\_\_\_\_

Approved Nevada Real Estate Division  
Replaces all previous versions

525  
Revised 7/13/2016

This form presented by Ms. Lorree D Baylatis : RRRS Nevada Properties : 702-259-5735 ( LorreeBaylatis@gmail.com )

Instructions



11/6/2016

Matrix

GLVAR		Single Family Residential		Ownership		11/06/2016 10:18 AM			
ML#	1834412	Offc	LHLV	PubID	010458	Status	A-ER	Area	SD2
Address	1960 / ROSEMERE / Court		Unit	StatusUpdate		L/Price		\$619,900	
Building #	Bldg/Manf		Model	CondoCnv		Zip		89117	
County	CLARK	Parcel#	183-03-313-008	Zoning	SINGLE	Studio	YrBuilt	1995/RE	
Crnty	NONE	Subdiv	ROSEMERE COURT	City/Town	Las Vegas	State	NV		
Assoc/Comm Feat Desc	CC&RS, Gated		Gated		Yes				
Elem K-2 DERF		Elem 3-5 DERF		YrRound	N	Junior	JOHN	Highsch	BNZA
				Subdiv#		CensTrct	2916	NeiroMap	53-A2
PROPERTY INFORMATION				#Baths	FB	3/4	NB	Tot	
Bldg Desc	1STORY		Prop Desc	3		1	1	5	
Type	DETACHED		Conv						
Roof	PITCHED, TILE		Unit Desc	#bedrms	5	#Den/Oth	0	#Loft	
Garage	3/ATTACHED, AUTODR, ENTRYHS		Converted Garage	N	Prkng Desc				
AppxLivArea	4,130	#Acres +/-	0.460	Lot SqFt	20,038	Lot Desc	14TQ1AC	Carports	
ApprxAddLivArea			ApprxTotalLivArea	4,130	ConvertRealProp				
Manuf	Length		Width	MH-YrBlt					
PvSpa	Yes/INGRD, OUTDOOR		PvPool	Y/INGRND, POOLSPA		Pool Size +/-	30X60		
Dir	West on Sahara to Tenaya, Right on Tenaya, Left at Rosemere (gate), Left on Rosemere								
Public Remarks	Large single story in quiet, privately gated community with a cozy gated courtyard entry and electronically gated area for the 3 car garages. The interior boasts a large living room, dining room and family room with a fireplace, spacious kitchen with granite counters, enormous island, nook, pantry and pot sink. the master bedroom has a fireplace, jetted tub, separate shower and French doors to the spacious backyard with								
Ag/Ag Remarks	sparkling swimming pool, spa, built-in BBQ and lush, well established landscaping! With 5 bedrooms, 4 1/2 bathrooms, this home is ideal for family living.								
Master Bed Room	22x18	CEILIT, SEPRAT, WICLOS	Master Bath	DBLSNK, MAKEUP, SEPSHW, TUBJECT					
2nd Bedroom	17x15	DNSTRS, WICLOS	3rd Bedroom	13x12	DNSTRS, MIRRDR, WBATH				
4th Bedroom	15x15	DNSTRS, WICLOS, WBATH	5th Bedroom	19x17	DNSTRS, WICLOS, WBATH				
Dining Room	13x11	FORDIN	Family Room	22x20	DNSTRS, SEPFAM				
Kitchen	BRKBAR, NOOK, GRNCTP, ISLAND, RECESS, PANTRY, TILE		Living Room	15x14	ENTFOY, FORMAL				
MBR Down?	Bed Dn	Y	Ba Dn	Y	Ba Dn Desc	F			
Constructn			Furnished Desc						
Refrg Y	Dispos Y	Dishw	Washer Inc	N	Dryer Inc	N	DryerUtil	E	Location
OthApplnces	NONE								
Interior	BLINDS, CEILFN		Oven Desc	COXTOPG, DBLOWNE					
Firepl	2/GAS, TWOWAY		Flooring	CARPET, CERAMIC					
Firepl Loc	FAMILY, MBRBA, MASTER		Fence	BF/BLOCK					
House Face	East		House Views			Equest	NONE		
Exterior	BITOBBQ, COURTYD, CVPATIO, PATIO, PRIVYRD					Miscal	HPP		
Landscape	SUBDRIP, LAWNFR, FRNSPR, MATURE, RERSPR, SHRUBS					Water	PUBLIC		
Heat Sys	2PLUSUNITS, CENTRAL		HFuel	GAS		Sewer	PUBLIC		
Cool Sys	2UNITSPLUS, CENTRAL		CLFuel	ELEC		Grd Mounted	Y		
Utility Info	CABAVL, SATDISH, UNDRND		Energy	DUALPNE		Sol Elec	None		
VOW/FINANCIAL/LISTING OFFICE INFORMATION				Internet	Y	Public Address	Y	AVM	Y
Assoc Fee	N	AssocName	Assoc Ph			Master Plan Fee	\$0		
Assoc Fee1	Assoc Fee2		Assessmt	N		Assessment Amt			
Assoc Fee Includes			SID/LID?	N		SID/LID	SID/LID Ann		
Earn Dep	\$38,000	Ann Tax	\$5,186	Court App	N	Short Sale	N	Foreclo	N
Finance Consid	CASH, CONV		FIRPTA?	N		NOB	Rent	Poss	
Lockbox	E	LockboxLocation	front	TempOffMktStatus			T Status Date		
L/Agent	Kenneth Lowman		L/Ph	702-216-4663	REALTOR	Y	PhotExcl	LeaseEnd	
Office	Luxury Homes of Las Vegas		OffcPh	702-216-4663	Bonus SO	CoOp	3.000%	Flat Fee	
Off Add	7854 W Sahara Ave # 100, Las Vegas 89117-1944		BrokerName	Kenneth Lowman		Vr	Ex	N	
Ag Fax #	702-974-4984	Email	klowman@luxuryhomeslv.com		VTour	Y	OwnLc	N	
Contact	Kenneth Lowman		ContPh	702-281-3337	Email	klowman@luxuryhomeslv.com			
Resident	Call Listing	ResPh	702-216-4663	Occup	VAC	Power ON	AuctTyp	ListDt	
Agent								09/15/2016	
Showing	REYANY		GateCode	#0629	Act DOM	52	AuctDr	ExpDt	
ContDesc	Comb08		GateCode2			OrigListPrice	\$619,900	WD	
Book a Showing									

Energy-Efficient/GREEN Information:

Green Building Certification No

Presented by: Office Name

BHMS Nevada Properties

Agent: Lornee D. Baylatis

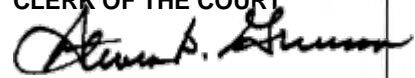
GLVAR DEEMS INFORMATION RELIABLE BUT NOT GUARANTEED. IT IS A VIOLATION TO PROVIDE DETAIL PRINTOUTS TO A CUSTOMER/CLIENT.



# Exhibit 10

# Exhibit 10





**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.

///







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

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

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

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

## ORDER

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

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

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

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

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

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

///



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.

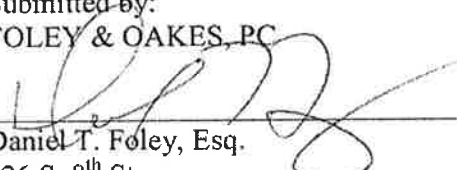
IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation.

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.

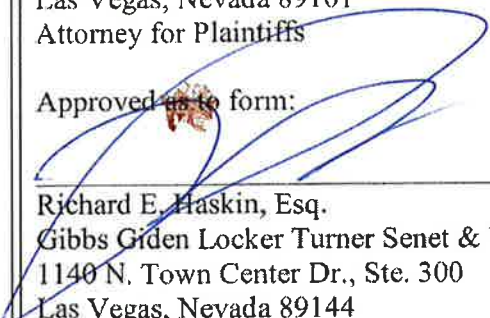
DATED this 19<sup>th</sup> day of July 2017

  
DISTRICT COURT JUDGE

Submitted by:  
FOLEY & OAKES, PC

  
Daniel T. Foley, Esq.  
626 S. 8<sup>th</sup> 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

000322



# Exhibit 11

# Exhibit 11



**RECORDING REQUESTED BY**

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

**AND WHEN RECORDED MAIL TO**

Richard E. Haskin  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596

THIS SPACE FOR RECORDER'S

Inst #: 20170510-0002237

Fees: \$19.00

N/C Fee: \$25.00

05/10/2017 12:02:06 PM

Receipt #: 3080272

Requestor:

NATIONWIDE LEGAL

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN No.: 163-03-313-002

APN No.: 163-03-313-008

---

## RELEASE OF ABSTRACT OF JUDGMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Govt. Code 27361.6)  
(Additional recording fee applies)



**RELS**

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 Plaintiff  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**RELEASE OF ABSTRACT OF  
JUDGMENT**

Judgment creditor and Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") hereby withdraw and release the Abstract of Judgment recorded in Clark County Recorder's Office on or about August 18, 2016 as instrument number 201660818-0001198 only as to the real properties identified as APN 163-03-313-002 and APN 163-03-313-008.

DATED: May 9, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
1140 N. Town Center Drive, Suite 30  
Las Vegas, Nevada 89144  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE



1 STATE OF NEVADA )

2 COUNTY OF CLARK )

3 On May 9, 2017, before me, Shara Berry, Notary Public, personally appeared  
4 Richard E. Haskin, the person(s) whose name(s) is/are subscribed  
5 to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
6 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

7 I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing  
8 paragraph is true and correct.

9 WITNESS my hand and official seal.

10 Signature

Shara Berry

(seal)



GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP



**RECORDING REQUESTED BY**

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

**AND WHEN RECORDED MAIL TO**

Richard E. Haskin  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596

3

THIS SPACE FOR RECORDER'S

Inst #: 20170510-0002235

Fees: \$19.00

N/C Fee: \$25.00

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Receipt #: 3080272

Requestor:

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DEBBIE CONWAY

CLARK COUNTY RECORDER

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## RELEASE OF ABSTRACT OF JUDGMENT

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(Govt. Code 27361.6)  
(Additional recording fee applies)



**RELS**

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 Plaintiff  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**RELEASE OF ABSTRACT OF  
JUDGMENT**

Judgment creditor and Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as  
Trustees of the Lytle Trust ("Plaintiffs") hereby withdraw and release the Abstract of Judgment  
recorded in Clark County Recorder's Office on or about September 2, 2016 as instrument number  
20160902-0002684.

DATED: May 9, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
1140 N. Town Center Drive, Suite 30  
Las Vegas, Nevada 89144  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE



1 STATE OF NEVADA )

2 COUNTY OF CLARK )

3 On May 9, 2017, before me, Shara Berry, Notary Public, personally appeared  
 4 Richard E. Haskin, the person(s) whose name(s) is/are subscribed  
 5 to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
 6 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the  
 7 entity upon behalf of which the person(s) acted, executed the instrument.

8 I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing  
 9 paragraph is true and correct.

10 WITNESS my hand and official seal.

11 Signature Shara Berry

(seal)



GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP



**RECORDING REQUESTED BY**

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

**AND WHEN RECORDED MAIL TO**

Richard E. Haskin  
GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596

3

THIS SPACE FOR RECORDER

Inst #: 20170510-0002236

Fees: \$19.00

N/C Fee: \$25.00

05/10/2017 12:02:06 PM

Receipt #: 3080272

Requestor:

NATIONWIDE LEGAL

Recorded By: MAYSM Pgs: 3

DEBBIE CONWAY

CLARK COUNTY RECORDER

---

## RELEASE OF ABSTRACT OF JUDGMENT

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(Govt. Code 27361.6)  
(Additional recording fee applies)



**RELS**

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 Plaintiff  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

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

**RELEASE OF ABSTRACT OF  
JUDGMENT**

Judgment creditor and Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as  
Trustees of the Lytle Trust ("Plaintiffs") hereby withdraw and release the Abstract of Judgment  
recorded in Clark County Recorder's Office on or about September 2, 2016 as instrument number  
20160902-0002690.

DATED: May 9, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: 

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
1140 N. Town Center Drive, Suite 30  
Las Vegas, Nevada 89144  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE



1 STATE OF NEVADA )

2 COUNTY OF CLARK )

3 On May 9, 2017, before me, Shara Berry, Notary Public, personally appeared  
4 Richard E. Haskin, the person(s) whose name(s) is/are subscribed  
5 to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
6 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the instrument.

7 I certify under PENALTY OF PERJURY under the laws of the State of Nevada that the foregoing  
8 paragraph is true and correct.

9 WITNESS my hand and official seal.

10 Signature

Shara Berry

(seal)



GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

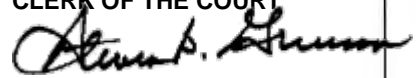


# Exhibit 12

000333

# Exhibit 12





Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
**GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP**  
1140 N. Town Center Drive, Suite 300  
Las Vegas, Nevada 89144-0596  
Telephone: (702) 836-9800  
E-mail: rhaskin@gibbsgiden.com

Attorneys for Plaintiffs  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

**ABSTRACT OF JUDGMENT**

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

Counterclaimants,

v.

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

Counterdefendants.

///

///

///

///

JUL 12 2017



In the District Court of Clark County, State of Nevada, on November 14, 2016, an Order Granting Summary Judgment was entered in favor of Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") and against Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION ("Defendant").

On April 14, 2017, the District Court entered an Order Awarding Attorneys' Fees in the amount of \$274,608.28, and \$4,725.00 in costs, all in favor of Plaintiff and against Defendant.

On May 11, 2017, the District Court entered an Order Awarding Plaintiffs' Punitive Damages Following Prove-Up Hearing against Defendant in the amount of \$823,824.84, pursuant to NRS 42.005.

Pursuant to the foregoing, the total amount of the Judgment, including attorneys' fees and costs, is \$1,103,158.12.

In addition, Plaintiffs are 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: July 20, 2017

  
DISTRICT COURT JUDGE

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

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 Plaintiffs  
JOHN ALLEN LYTLE and TRUDI LEE  
LYTLE



# Exhibit 13

000336

000336

# Exhibit 13



A- 15- 716420- C

## DISTRICT COURT CIVIL COVER SHEET

XXX

County, Nevada

Case No. \_\_\_\_\_

(Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust

Defendant(s) (name/address/phone):

Rosemere Estates Property Owners' Association

Attorney (name/address/phone):

Richard E. Haskin, Esq.

7450 Arroyo Crossing Parkway, Suite 270

Las Vegas, Nevada 89113

(702) 836-9800

Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types****Real Property****Landlord/Tenant**

- ☐ Unlawful Detainer  
☐ Other Landlord/Tenant

**Title to Property**

- ☐ Judicial Foreclosure  
☐ Other Title to Property

**Other Real Property**

- ☐ Condemnation/Eminent Domain  
☐ Other Real Property

**Negligence**

- ☐ Auto  
☐ Premises Liability  
☐ Other Negligence

**Malpractice**

- ☐ Medical/Dental  
☐ Legal  
☐ Accounting  
☐ Other Malpractice

**Torts****Other Torts**

- ☐ Product Liability  
☐ Intentional Misconduct  
☐ Employment Tort  
☐ Insurance Tort  
☐ Other Tort

**Probate**

(select case type and estate value)

- ☐ Summary Administration  
☐ General Administration  
☐ Special Administration  
☐ Set Aside  
☐ Trust/Conservatorship  
☐ Other Probate

**Estate Value**

- ☐ Over \$200,000  
☐ Between \$100,000 and \$200,000  
☐ Under \$100,000 or Unknown  
☐ Under \$2,500

**Construction Defect & Contract****Construction Defect**

- ☐ Chapter 40  
☐ Other Construction Defect

**Contract Case**

- ☐ Uniform Commercial Code  
☐ Building and Construction  
☐ Insurance Carrier  
☐ Commercial Instrument  
☐ Collection of Accounts  
☐ Employment Contract  
☐ Other Contract

**Judicial Review/Appeal****Judicial Review**

- ☐ Foreclosure Mediation Case  
☐ Petition to Seal Records  
☐ Mental Competency

**Nevada State Agency Appeal**

- ☐ Department of Motor Vehicle  
☐ Worker's Compensation  
☐ Other Nevada State Agency

**Appeal Other**

- ☐ Appeal from Lower Court  
☐ Other Judicial Review/Appeal

**Civil Writ****Civil Writ**

- ☐ Writ of Habeas Corpus  
☐ Writ of Mandamus  
☐ Writ of Quo Warrant

- ☐ Writ of Prohibition  
☐ Other Civil Writ

**Other Civil Filing****Other Civil Filing**

- ☐ Compromise of Minor's Claim  
☐ Foreign Judgment  
☒ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

April 1, 2015

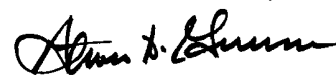
Date

Signature of initiating party or representative

See other side for family-related case filings.



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CLERK OF THE COURT

**COMP**

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS'  
ASSOCIATION; SHERMAN L. KEARL, an  
individual, GERRY G. ZOBRIST, an individual,  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO. A- 15- 716420- C  
Dept.: XXX

**COMPLAINT FOR DECLARATORY  
RELIEF**

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, GIBBS GIDEN LOCHER TURNER, SENET & WITTBRODT, LLP, and Richard E. Haskin, Esq., and for its Complaint against ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION (the "Association"), states unto this Court as follows:

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GENERAL ALLEGATIONS

1  
2           1.       Plaintiff, the Lytle Trust ("Plaintiff"), is the current owner of real property located  
3 1930 Rosemere Court, in Clark County, Nevada, APN 163-03-313-009, and described as:

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

7           Plaintiff's Property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current  
8 Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996. A true  
9 copy of said deed is attached hereto, and incorporated herein, as Exhibit "1."

10           2.       Defendant, the Association, at all times herein mentioned is comprised of nine (9)  
11 owners of single family lots all as more particularly described in the recorded Declaration of  
12 Covenants, Conditions and Restrictions, dated January 4, 1994 (the "CC&Rs") for the Association,  
13 as recorded in the official records of the Clark County Nevada Recorder's office. A true and correct  
14 copy of the CC&Rs is attached hereto, and incorporated herein, as Exhibit "2."

15           3.       The true names and capacities of Defendants sued herein as DOES 1 through 10,  
16 inclusive, and each of them, are presently unknown to Plaintiff, and, therefore, they are sued herein  
17 under fictitious names, and when the true names are discovered, Plaintiff will seek leave to amend  
18 this Complaint and proceedings herein to substitute the true names of said Defendants. Plaintiff is  
19 informed and believes and based thereon alleges that each of the Defendants designated herein as a  
20 DOE is negligent or responsible in some manner for the events herein referred to and negligently,  
21 carelessly, recklessly and in a manner that was grossly negligent and willful and wanton, caused  
22 damages proximately thereby to the Plaintiff as herein alleged.

23           4.       Plaintiff's Property is located within Rosemere Estates.

24           5.       That since the Association is comprised of only nine (9) units, the Association is  
25 classified as a small planned community pursuant to NRS 116.1203, and is exempt from many of the  
26 provisions of NRS Chapter 116. Further, the Association is a *limited purpose association* pursuant  
27 to NRS 116.1201.

28       ///



1           6.       The CC&Rs provide, in pertinent part:

2                   a)       Establishment of a "property owners committee" responsible for (a)  
3                           determining the type and cost of landscaping exterior wall planters,  
4                           entrance way planters, which cost is equally divided amongst the nine (9)  
5                           owners; (b) maintaining the exterior perimeter and frontage; (c)  
6                           maintaining the entrance gate; and (d) maintaining the private drive and  
7                           the sewer system.

8                   b)       "...an owner or owners of any of the lots shall have the right to enforce  
9                           any or all of the provisions of the covenants, conditions and restrictions  
10                           upon any other owner or owners."

11           7.       Pursuant to the direction of the CC&Rs, the Rosemere Estates owners formed the  
12       "owners' committee," tasked with the limited landscape maintenance duties set forth in the CC&Rs.

13           8.       On February 25, 1997, the Rosemere Estates homeowners on the "owners'  
14       committee" (as referenced in paragraph 21 of the CC&Rs) formed the Association as a NRS,  
15       Chapter 82 non-profit corporation. The homeowners did not convey any of the Rosemere Estates  
16       lots to the Association, as the intent of the Association was and is a limited purpose association  
17       pursuant to the CC&Rs and 116.1201.

18           9.       NRS 116.1201, 116.31083, and 116.31152 requires that a limited purpose association,  
19       such as the Association, maintain a Board of Directors.

20           10.       The Association at all times has been governed by a three (3) person Board of  
21       Directors, consisting of a President, Secretary and Treasurer.

22           11.       The Association consistently held Board elections through March 2010, pursuant to  
23       the protocols and methodology of NRS 116.31034, even though the Association is a limited purpose  
24       association, and Chapter 116 fails to provide for a method of election of a Board.

25           12.       The Board last held an election on March 24, 2010. The Board members in place  
26       from 2010 through July 2013 were as follows: Ray Sandoval (President), Orville McCumber  
27       (Secretary), and Johnnie McCumber (Treasurer).

28       ///



1           13.     On January 27, 2014, during an unrelated court hearing involving the Association,  
2 Orville McCumber, former Board Secretary, testified under oath that he no longer sat on the  
3 Association's Board. In August 2015, Ray Sandoval, former Board President, told Plaintiff that the  
4 Board "dissolved" and had not conducted any business since July 29, 2013. During this  
5 conversation, Mr. Sandoval stated that the Board had not conducted any meetings since July 2013,  
6 and did not intend on conducting any future meetings or conducting any future Association business.  
7 It was abundantly clear from this conversation that the Board simply does not exist, and all former  
8 officers abandoned their positions.

9           14.     Presently, there is no sitting and acting Board for the Association, even though such a  
10 board is mandated pursuant to NRS 116.1201, 116.31083, 116.31152.

11           15.     As a result of not having a Board, the Association cannot conduct business and  
12 maintain the community as required by the CC&RS, and Chapters 82 and 116 of the Nevada  
13 Revised Statutes. Therefore, the Rosemere Estates community has begun to dilapidate. Further, the  
14 Association has not paid its annual dues to the Nevada Secretary of State, the Nevada Department of  
15 Real Estate or filed any of the required forms with these agencies. As it stands, the Association is in  
16 "default" status with the Nevada Secretary of State.

17           16.     Further, the Association presently is defending and maintaining appeals with the  
18 Nevada Supreme Court, and the attorneys for the Association are acting without any direction or  
19 control. There is no Board to enjoy the attorney client privilege, direct counsel, or review and pay  
20 attorneys' fee bills and court costs.

21           17.     It also is unknown at this time to Plaintiff or the Association members who possesses  
22 the Association's checkbook and is maintaining the Association's business and attorney-client  
23 records. Pursuant to NRS 116.311395, only a Board member or a community manager is authorized  
24 to deposit, maintain, or invest community funds. As such, an election needs to be held immediately  
25 in order to place a Board and re-commence the maintenance and affairs of the Association.

26           18.     Plaintiff has demanded that the Association's attorneys conduct an election for a  
27 Board for the reasons set forth above, which demands have been rejected.

28     ///



**FIRST CAUSE OF ACTION**

**(For Declaratory Relief Against The Association and DOES 1 through 10)**

19. Plaintiff incorporates the allegations contained in Paragraphs 1 through 18 herein as though set forth in full.

20. There exists a controversy between Plaintiff and Defendants regarding the interpretation, application and enforcement of the CC&Rs and Chapter 116 with respect to holding and conducting an election for the Board of Directors, requiring a determination by this Court and entry of declaratory relief.

21. Plaintiff contends that an election must be held immediately so Directors can be elected to the Board and transact the business of the Association and carry out the mandatory maintenance duties and pay the essential bills (*e.g.* Secretary of State and NRED fees). The Association, through its attorneys, however, have refused to conduct an election despite repeated demands.

22. Plaintiff desires a judicial determination of the parties' rights and duties and a declaration that the CC&Rs, and Chapters 82 and 116 of the Nevada Revised Statutes require an election to take place immediately.

23. Plaintiff further seeks a declaration from the Court that the election should be conducted pursuant to NRS 82.271, 82.276, 82.286 and 82.306, which require that the Association (or Chapter 82 corporation) conduct an election at each annual meeting, or no later than 18 months after the last election. Further, if the Association, as a Chapter 82 corporation, fails or refuses, as is the case here, to hold an election within 18 months after the last election, "the district court has jurisdiction in equity, upon application of any one or more of the members of the corporation representing 10 percent of the voting power of the members entitled to vote for the election of directors or for the election of delegates who are entitled to elect directors..." NRS 82.306. Here, there has been no Board election for over five (5) years. Further, all past Board Directors resigned their positions in July 2013. Plaintiff, as the owner of one of the nine lots, represents 11% of the voting power. Thus, Plaintiff may apply to the district court to hold an election, and as set forth below, fully intend to do so if needed.



24. A judicial declaration requiring an election for the Board of Directors is necessary and appropriate at this time so that a Board of Directors can be elected and maintain the community as required by the CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes.

25. That the CC&Rs provide for the award of reasonable attorney fees and costs to a prevailing party.

**WHEREFORE**, Plaintiff prays that this Court:

**FIRST CAUSE OF ACTION**

**(For Declaratory Relief Against the Association and DOES 1 through 10)**

A. Enter a Declaratory Judgment in favor of Plaintiff and against the Association finding and declaring that (1) Chapter 116 requires the Association to have a Board of Directors at all times; (2) that the Association currently does not have a Board of Directors, and (3) that an election must be immediately conducted by the Association to fill all three positions for the Association's Board of Directors;

B. That because Chapter 116 does not prescribe a method of election for a limited purpose association, that the election shall be conducted in the manner and methods prescribed by Chapter 82 of the Nevada Revised Statutes;

C. That this Court appoint a neutral third party to maintain and monitor the election pursuant to this Court's order;

D. Enter an injunction mandating that the foregoing election take place immediately;

E. For an order directing a neutral third party to locate and maintain the Association's records, files, documents, and checkbooks until such time as a new Board of Directors is elected pursuant to this Court's order;

F. For attorneys' fees and costs pursuant to the CC&Rs and NRS 116.4117; and

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G. Award Plaintiff such further or other relief as this Court finds it just and proper in the premises for a complete administration of justice.

DATED: April 1, 2015

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

By: \_\_\_\_\_

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059 Attorneys for JOHN  
ALLEN LYTLE and TRUDI LYTLE, as Trustees of the  
Lytle Trust

**COMPLETION OF NRS CHAPTER 38 DISPUTE RESOLUTION PROGRAM**

I, John and Allen and Trudi Lee Lytle, Trustees of the Lytle Trust, do hereby swear, under penalty of perjury and under the laws of the State of Nevada, that the issues addressed in the this Complaint have been referred to mediation pursuant to the provisions of NRS 38.300 to 38.360, inclusive.

Dated: April \_\_, 2015

\_\_\_\_\_  
John Allen Lytle, as Co-Trustee of the  
Lytle Trust

Dated: April \_\_, 2015

\_\_\_\_\_  
Trudi Lee Lytle, as Co-Trustee of the  
Lytle Trust



G. Award Plaintiff such further or other relief as this Court finds it just and proper in the premises for a complete administration of justice.

DATED: April 1, 2015

GIBBS, GIDEN, LOCHER, TURNER & SENET LLP

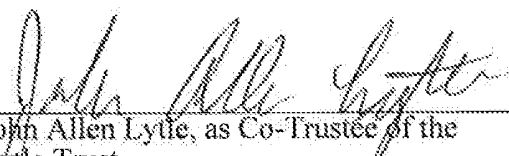
By:

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059 Attorneys for JOHN  
ALLEN LYTLE and TRUDI LYTLE, as Trustees of the  
Lytle Trust

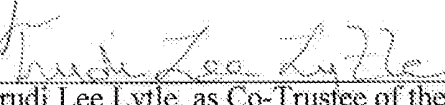
**COMPLETION OF NRS CHAPTER 38 DISPUTE RESOLUTION PROGRAM**

I, John Allen and Trudi Lee Lytle, Trustees of the Lytle Trust, do hereby swear, under penalty of perjury and under the laws of the State of Nevada, that the issues addressed in the this Complaint have been referred to mediation pursuant to the provisions of NRS 38.300 to 38.360, inclusive.

Dated: April 1, 2015

  
John Allen Lytle, as Co-Trustee of the  
Lytle Trust

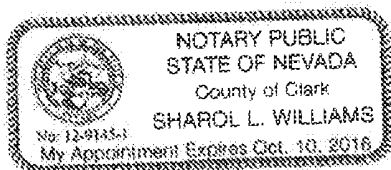
Dated: April 1, 2015

  
Trudi Lee Lytle, as Co-Trustee of the  
Lytle Trust

State of Nevada  
County of Clark

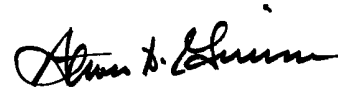
This instrument was acknowledged before  
me this 1 day of APRIL 2015  
by J ALLEN LYTLE

  
Notary Public





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CLERK OF THE COURT

1 **ERR**

2 Richard E. Haskin, Esq.  
3 Nevada State Bar # 11592  
4 GIBBS GIDEN LOCHER TURNER  
5 SENET & WITTBRODT LLP  
6 7450 Arroyo Crossing Parkway, Suite 270  
7 Las Vegas, Nevada 89113-4059  
8 (702) 836-9800

9 Attorneys for Plaintiff  
10 JOHN ALLEN LYTLE and TRUDI LEE  
11 LYTLE, as Trustees of the Lytle Trust

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

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

16 Plaintiff,

17 v.

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

21 Defendants;

22 CASE NO. A-15-716420-C  
23 Dept.: XXX

24 **PLAINTIFFS' ERRATA TO COMPLAINT**  
25 **FOR DECLARATORY RELIEF**

26 ARBITRATION EXEMPT  
27 (Declaratory Relief Requested)

28 ///

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1 COMES NOW Plaintiff, the LYTLE TRUST, by and through its Trustees, John Allen Lytle  
2 and Trudi Lee Lytle, herein by and through their attorneys, GIBBS GIDEN LOCHER TURNER,  
3 SENET & WITTBRODT, LLP, and Richard E. Haskin, Esq., hereby files an Errata to Its Complaint  
4 for Declaratory Relief. Plaintiff inadvertently included individuals in the Caption of the Complaint  
5 that are not named or included as Defendants in the Complaint. Plaintiff respectfully amends its  
6 Complaint, specifically the Caption, so that all references to GERRY G. ZOBRIST and SHERMAN  
7 KEARL, individuals, are eliminated.

8  
9  
10 GIBBS GIDEN LOCHER TURNER  
11 SENET & WITTBRODT LLP

12 By: \_\_\_\_\_

13 Richard E. Haskin, Esq.  
14 Nevada State Bar # 11592  
15 7450 Arroyo Crossing Parkway, Suite 270  
16 Las Vegas, Nevada 89113-4059  
17 Attorneys for JOHN ALLEN LYTLE and TRUDI LYTLE,  
18 as Trustees of the Lytle Trust  
19  
20  
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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

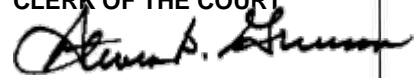
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# Exhibit 14

# Exhibit 14





**ORD**

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,

Plaintiff,

v.

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

Defendants.

CASE NO. A-15-716420-C  
Dept.: XXX

**ORDER GRANTING SUMMARY  
JUDGMENT**

PLEASE TAKE NOTICE that on May 10, 2016, the Court heard Plaintiffs JOHN ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust (hereinafter "Plaintiff" or the "Lytles") MOTION FOR SUMMARY JUDGMENT in the above-captioned matter, filed on September 14, 2016. After considering the First Amended Complaint, deemed filed by Order of this Court on April 7, 2016, the Motion for Summary Judgment, the Declaration of Trudi Lytle, and evidence submitted therewith, and hearing oral argument, and no opposition having been filed by Defendant and Counterclaimant ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION ("Defendant"), the Court grants Plaintiffs' Motion for Summary Judgment.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration



1  
2 **I. FINDINGS OF FACT**

3 1. At all relevant times, Plaintiff has owned real property located at 1930 Rosemere  
4 Court, Las Vegas, Nevada, Assessor Parcel No. 163-03-313-009, which was and is part of Rosemere  
5 Estates ("Rosemere Estates").

6 2. Rosemere Estates consists of nine (9) properties, which originally were sold as  
7 undeveloped lots.

8 3. As an owner of one (1) of nine (9) lots, the Plaintiff represents 11% of the voting  
9 power.

10 4. Rosemere Estates is governed by the community's CC&Rs, which were drafted by  
11 the Developer, and dated January 4, 1994 (the "CC&Rs").

12 5. The CC&Rs created a "property owners' committee" ("Owners Committee").

13 6. On February 25, 1997, the Owners Committee, unanimously formed "Rosemere  
14 Estates Property Owners' Association" (the "Association") on February 25, 1997, a NRS 82 non-  
15 profit corporation, for the purpose of acting as a limited purpose association pursuant to Nevada  
16 Revised Statutes, Chapter 116.

17 7. Each property within Rosemere Estates is part of the Association.

18 8. The Owners Committee has consisted of three members, a President, Secretary and  
19 Treasurer.

20 9. The Association held Board elections every three (3) years through March 2010.

21 10. Each election cycle, homeowners would be invited to submit applications to run for  
22 the Board. Thereafter, election forms would be distributed, and an election would take place  
23 wherein three (3) Board members were elected.

24 11. The last election took place on March 24, 2010.

25 12. Presently, there is no sitting and acting Board for the Association.

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1 **II. CONCLUSIONS OF LAW**

2 **A. Summary Judgment Standard**

3 1. Summary judgment shall be rendered in favor of a moving party if the pleadings,  
4 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
5 show that there is no genuine issue as to any material fact and that the moving party is entitled to  
6 judgment as a matter of law. NRCP Rule 56(c).

7 2. "Summary Judgment is appropriate and shall be rendered forthwith when the  
8 pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact  
9 [remains] and that the moving party is entitled to judgment as a matter of law.'" Wood v. Safeway,  
10 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(quoting NRCP 56(c)). In Wood, the Nevada  
11 Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary judgment  
12 jurisprudence, Id. at 1037, and adopted the summary judgment standard which had been articulated  
13 by the United States Supreme Court in its 1986 Trilogy: Celotex Corp. v. Catrett, 477 U.S. 317  
14 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Electrical Industrial  
15 Company v. Zenith Radio Corporation, 475 U.S. 574 (1986).

16 3. The application of the standard requires the non-moving party to respond to the  
17 motion by "Set[ting] forth specific facts demonstrating existence of a genuine issue for trial."  
18 Wood, 121 p.3d at 1031. This obligation extends to every element of every claim made, and where  
19 there is a failure as to any element of a claim, summary judgment is proper. Barnettler v. Reno Air,  
20 Inc., 114 Nevada 441, 447, 956, P2d. 1382, 1386 (1998).

21 4. The Nevada Supreme Court held that "Rule 56 should not be regarded as a  
22 "disfavored procedural shortcut" but instead as an integral important procedure which is designed  
23 "to secure just, speedy and inexpensive determination in every action." Wood, 121, p.3d at 1030  
24 (quoting Celotex, 477 U.S. at 327). In Liberty Lobby, the U.S. Supreme Court noted that:

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

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



**B. The District Court Has The Authority To Order An Election**

5. The Association is a *limited purpose association* per NRS 116. While a limited purpose association is not restricted by all of the provisions of Chapter 116, a limited purpose association must have a Board of Directors. NRS 116.1201, 116.31083, 116.31152.

6. Pursuant to the provisions of Chapter 116 applicable to limited purpose associations, the Board must conduct noticed meetings at least once every quarter, review pertinent financial information, discuss civil actions, revise and review assessments for the common area expenses, establish adequate reserves, conduct and publish a reserve study, and maintain the common areas as required. NRS 116.31083 – 116.31152, 116.31073.

7. Further, the CC&Rs require the Board to oversee and conduct the maintenance of defined common areas.

8. Chapter 116 does not provide for a method of elections for a limited purpose association Board. However, a Board must exist and, as a consequence, so must elections. See generally NRS 116.1201, 116.31083, 116.31152.

9. While Chapter 116 is silent, Chapter 82, provides needed guidance in this regard. NRS 82.286 states that “[i]f a corporation has members entitled to vote for the election of directors, or for the election of delegates who vote for the election of directors...the directors or delegates of every corporation must be chosen at the annual meeting of the members or delegates, to be held on a date and at a time and in the manner provided for in the bylaws, by a plurality of the votes cast at the election. If for any reason the directors are not elected pursuant to NRS 82.271 or 82.276 or at the annual meeting of the members or delegates, they may be elected at any special meeting of the members which is called and held for that purpose.”

10. Further, if a non-profit corporation fails to conduct an election, as required, the directors then in office maintain their respective positions until an election takes place, as required by NRS 82.296. See NRS 82.301.

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11. If the corporation fails or refuses, as is the case here, to hold an election within 18 months after the last election, “the district court has jurisdiction in equity, upon application of any one or more of the members of the corporation representing 10 percent of the voting power of the members entitled to vote for the election of directors or for the election of delegates who are entitled to elect directors...” NRS 82.306.

12. Here, there has been no Board election for well over six (6) years. Further, the Board directors abandoned their positions in 2013.

13. Plaintiff, as the owner of one of the nine lots, represents 11% of the voting power. Thus, Plaintiff may apply to the District Court to hold an election, as Plaintiff has done so in this action.

14. When interpreting a statute, legislative intent “is the controlling factor.” Robert E. v. Justice Court, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). The starting point for determining legislative intent is the statute’s plain meaning. Id. When a statute “is clear on its face, a court cannot go beyond the statute in determining legislative intent.” Id.; see also State v. Catanio, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004). But when “the statutory language lends itself to two or more reasonable interpretations,” the statute is ambiguous, and we may then look beyond the statute in determining legislative intent. Catanio, 120 Nev. at 1033, 102 P.3d at 590. Internal conflict can also render a statute ambiguous. Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 367, 184 P.3d 378, 387 (2008).

15. To interpret an ambiguous statute, we look to the legislative history and construe the statute in a manner that is consistent with reason and public policy. Great Basin Water Network v. State Eng’r, 126 Nev. —, —, 234 P.3d 912, 918 (2010); see also Moore v. State, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006); Robert E., 99 Nev. at 445–48, 664 P.2d at 959–61.

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1           16. The Legislature's intent is the primary consideration when interpreting an ambiguous  
2 statute. Cleghorn v. Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993). When construing an  
3 ambiguous statutory provision, "this court determines the meaning of the words used in a statute by  
4 examining the context and the spirit of the law or the causes which induced the [L]egislature to enact  
5 it." Leven v. Frey, 123 Nev. 399, 404, 168 P.3d 712, 716 (2007). In conducting this analysis, "[t]he  
6 entire subject matter and policy may be involved as an interpretive aid." Id. (internal quotation  
7 marks omitted). Accordingly, a court will consider "the statute's multiple legislative provisions as a  
8 whole." Id.

9           17. Chapter 116 is ambiguous with respect to the election of Board for a limited purpose  
10 association. While a Board is required, the election process normally required for a Board is not  
11 included in the limited purpose association statutory framework. See generally NRS 116.1201,  
12 116.31083, 116.31152.

13           18. In 1997, the Nevada Legislature passed Senate Bill 314 (SB 314), and in 1999, the  
14 Legislature expanded legislation in Senate Bill 451 (SB 451), to provide protection, rights, and  
15 obligations of homeowners living in common interest communities, known as the Common-Interest  
16 Ownership Act, presently set forth in Chapter 116. SB 451 included several additional provisions  
17 intended to protect homeowners' rights to serve on an association's board and elect those board  
18 members, including 2-year terms, notification, secret balloting, proxies and public voting.

19           19. Further, SB 451 offered additional protections regarding the financial accountability  
20 of the Board of Directors. See generally NRS 116.31038, 31151, 31152.

21           20. There is no question that these additional financial safeguards and requirements of the  
22 board apply to a limited purpose association. However, the legislature did not include any election  
23 protocol for the limited purpose association. The Court is tasked with resolving this obvious  
24 ambiguity.

25           21. The Court has concluded in this matter that the election must proceed in the manner  
26 in which elections always have been held by the Association, every three (3) years.

27           22. The Court grants Plaintiff's First Cause of Action for Declaratory Relief that an  
28 election must be held pursuant to NRS 82.271, 82.276, and 82.306.



23. Plaintiff has provided good cause for this Court to order that the election be administered by a neutral third party selected by Plaintiff, and the neutral shall be paid for by the Association after the election is held and directors put in place.

### III. JUDGMENT

#### IT IS HEREBY ADJUDGED AND DECREED

1. The Association shall hold an election within ninety (90) days from the date of this order.

2. Plaintiff is directed to retain a neutral third party, either a licensed community manager or attorney, to administer the election, which shall include all items required of a homeowners' election, including, but not necessarily limited to, the preparation and collection of nomination forms, preparation, mailing and collective of ballots, and counting of ballots at a duly notice Association election meeting. The neutral third party is ordered to look to NRS 116.31034 for guidance in the administration of the election.

3. The Association shall pay the neutral third party for its efforts in administering the election after the election takes place and directors take office.

4. This Court shall retain jurisdiction until this Order has been fully complied with, including but not limited to, the election has occurred, a Board is sitting, and the neutral third party has been paid by the Association.

5. Plaintiff is the prevailing party in this litigation and is ordered to submit a separation application for attorneys' fees and costs.

IS SO ORDERED this 13 day of Sept, 2017.

  
HONORABLE JERRY A. WIESE  
District Court Judge, Dept. XXX



1 DATED: September 8, 2017

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

2  
3 By:

4 Richard E. Haskin, Esq.  
5 Nevada State Bar # 11592  
6 7450 Arroyo Crossing Parkway, Suite 270  
7 Las Vegas, Nevada 89113-4059  
8 Attorneys for Plaintiff  
9 JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as  
10 Trustees of the Lytle Trust  
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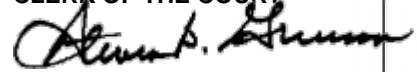
GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP



# Exhibit 15

# Exhibit 15





1 **ORD**

2 Richard E. Haskin, Esq.

3 Nevada State Bar # 11592

4 **GIBBS GIDEN LOCHER TURNER**

5 **SENET & WITTBRODT LLP**

6 1140 N. Town Center Dr., Suite 300

7 Las Vegas, Nevada 89144

8 (702) 836-9800

9 Attorneys for Plaintiff

10 JOHN ALLEN LYTLE AND TRUDI LEE

11 LYTLE

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

18 ROSEMERE ESTATES PROPERTY OWNERS'  
19 ASSOCIATION; SHERMAN L. KEARL, an  
20 individual; GERRY G. ZOBRIST, an individual;  
21 and DOES 1 through 10, inclusive,

22 Defendants.

23 CASE NO.: A-15-716420-C  
24 Dept.: XXX

25 **ORDER GRANTING PLAINTIFF JOHN**  
26 **ALLEN LYTLE AND TRUDI LEE**  
27 **LYTLE'S, AS TRUSTEES OF THE LYTLE**  
28 **TRUST, MOTION FOR ATTORNEYS'**  
**FEES**

1 On November 2, 2017, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion  
2 for Attorneys' Fees and Costs came on regularly for hearing, the Honorable Jerry A. Wiese  
3 presiding. Plaintiffs appeared through counsel, Richard E. Haskin, Esq. of Gibbs Giden Locher  
4 Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates  
5 Property Owners' Association ("Defendant"). Defendant did not file an opposition to the Motion  
6 and did not make an appearance at the hearing. Having considered the Motion, the arguments of  
7 counsel, the pleadings and papers on file herein, and good cause appearing therefore, the Court finds:

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

10 ///

11 ///



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

3                   24.       Except as otherwise provided herein, Subdivider or any owner or  
4 owners of any of the lots shall have the right to enforce any or all of the  
5 provisions of the covenants, conditions, and restrictions upon any other  
6 owner or owners. In order to enforce said provision or provisions, any  
appropriate judicial proceeding in law or in equity may be initiated and  
prosecuted by any lot owners or owners against any other owner or  
owners.

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

10       *See* Original CC&Rs, ¶¶ 24, 25.

11           3.       Plaintiffs prevailed in this action, and the Court granted Plaintiffs' motion for  
12 summary judgment, in its entirety. Accordingly, Plaintiffs are entitled to an award of attorney fees,  
13 pursuant to the terms of the Original CC&Rs.

14           4. Further, Plaintiffs are also entitled to an award of attorney fees pursuant to NRS 116.4117.  
15 NRS 116.4117 provides as follows:

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

19                   4. The court may award reasonable attorney's fees to the prevailing  
20 party.

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

27       ///

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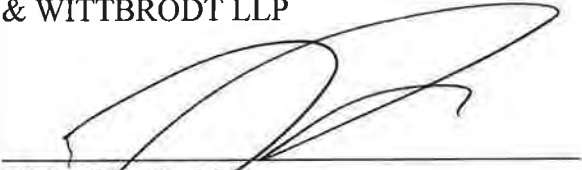
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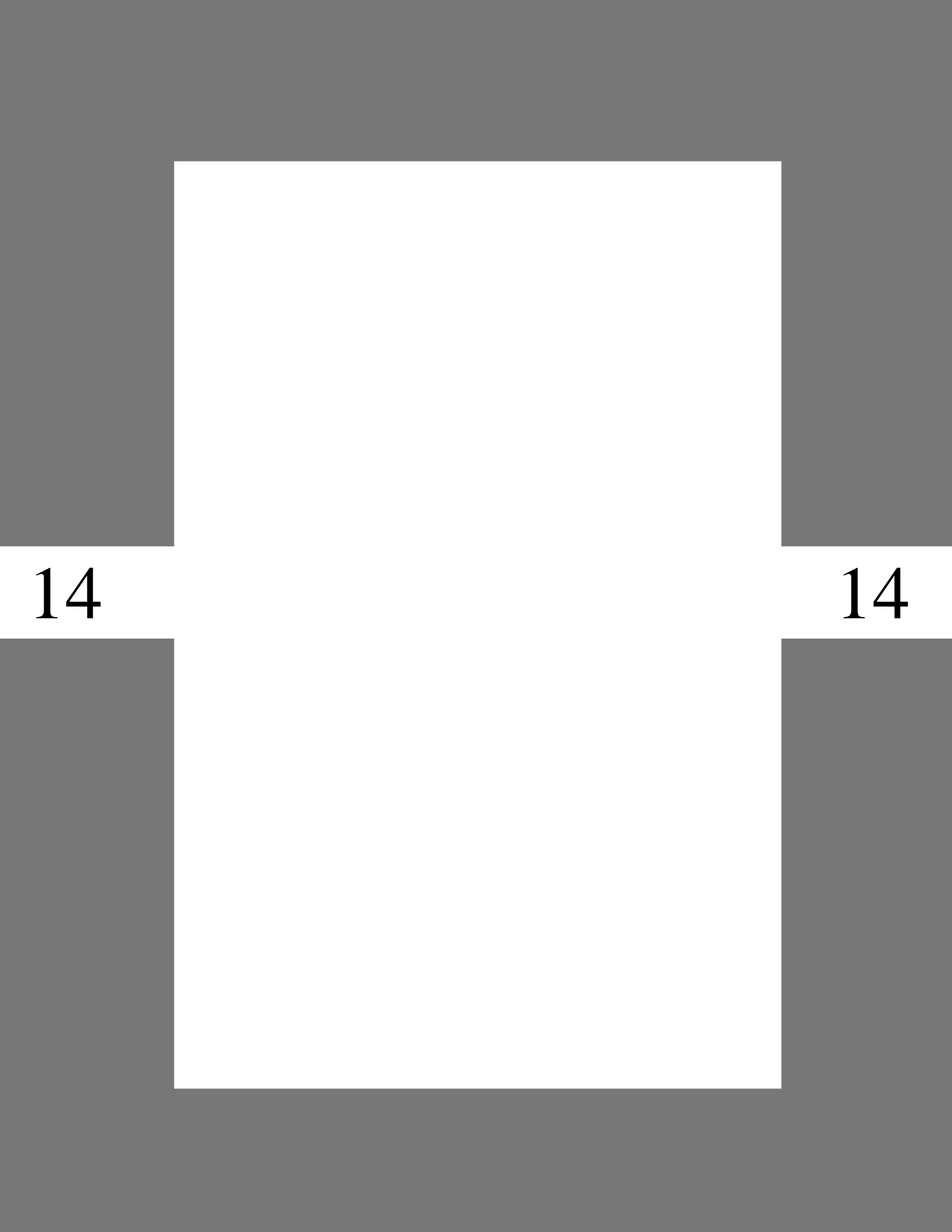
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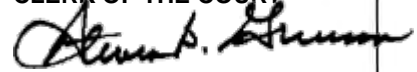




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**OPPC**

Richard E. Haskin, Esq.  
Nevada State Bar # 11592

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Attorneys for Defendant  
TRUDI LEE LYTLE AND JOHN ALLEN  
LYTLE, AS TRUSTEES OF THE LYTLE  
TRUST

**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,

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS TRUDI LEE LYTLE,  
JOHN ALLEN LYTLE, THE LYTLE  
TRUST (1) OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT, OR, IN  
THE ALTERNATIVE, MOTION FOR  
JUDGMENT ON THE PLEADINGS; AND  
(2) COUNTERMOTION FOR SUMMARY  
JUDGMENT**

Date: March 28, 2018  
Time: 9:00 a.m.

COMES NOW Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, and THE LYTLE  
TRUST (the "Lyttles"), by and through their counsel of record, Richard E. Haskin, Esq., and  
Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &  
WITTBRODT, LLP, and hereby files the Lyttles' Opposition to Plaintiffs 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



1 G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY  
2 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT  
3 TENANTS (collectively "Plaintiffs") Motion for Summary Judgment, or, in the Alternative, Motion  
4 for Judgment on the Pleadings, and Countermotion for Summary Judgment.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. INTRODUCTION**

7 The Lytles prevailed in three separate (3) lawsuits against Rosemere Estates Homeowners'  
8 Association (the "Association"), all related to the Association's egregious and vindictive violations  
9 of Nevada common-interest community property law. The entire ordeal began in mid-2007 when  
10 the Association's executive Board of Directors (the "Board") unilaterally, and without the consent of  
11 each homeowner, amended the original Declaration of Covenants, Conditions, and Restrictions  
12 ("Original CC&Rs), which was limited in scope, to an "amended" and expanded set of governing  
13 documents that were intended to drive the Lytles from the Association and community. The Board  
14 then quickly acted to use the amended governing documents to assess the Lytles, lien their property,  
15 and commence foreclosure proceedings.

16 To protect their property rights, the Lytles were forced into years of litigation and multiple  
17 lawsuits at a tremendous monetary and emotional expense. The Lytles prevailed in each instance,  
18 and were awarded damages, punitive damages to the maximum extent of the law, attorneys' fees and  
19 costs.

20 After receiving the aforementioned monetary awards, the Lytles exercised their rights as a  
21 judgment creditor against the Association under Nevada's Uniform Common-Interest Development  
22 Act, NRS Chapter 116, as well as the amended governing documents. NRS 116.3117 provides that a  
23 judgment creditor, such as the Lytles, with a judgment against the Association may place a lien  
24 against each unit in the Association and pursue collection thereon. The amended governing  
25 documents adopted by the Association provide an identical right (as discussed herein).

26 Plaintiffs, who own property within the Association, contest the liens against these  
27 properties, claiming the Lytles are not afforded said rights because the Association is a *limited*  
28 *purpose association*. Plaintiffs are wrong.



1 The statutory construction of NRS Chapter 116 and principles of common-interest  
2 community law provide a judgment creditor with the right to record a lien against all units in the  
3 Association because such units, whether they be owned or unowned, are defined as a physical  
4 portion of the common-interest community. Thus, the Association includes all units therein. NRS  
5 116.021, NRS 116.093.

6 Second, at all times during the underlying litigation from which the monetary judgment was  
7 awarded, the Association operated as a unit owners' association and enjoyed all of the rights and  
8 benefits of NRS Chapter 116 and also undertook the Chapter's burdens and obligations. Indeed, in  
9 one of the lawsuits, the parties stipulated that the amended governing documents and the entirety of  
10 Chapter 116 applied and defined the rights, duties and obligations of the parties.

11 Simply stated, the Lytles are judgment creditors against the Association. Nevada common-  
12 interest community law (as discussed herein) provides such creditors with the right to lien property  
13 in the Association, whether that property belongs exclusively to the Association or to third parties  
14 who were not litigants but still members of the Association. As a judgment creditor, the Lytles have  
15 the right to lien Plaintiffs' properties and pursue collection.

## 16 **II. BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS**

17 The essential facts in this case are undisputed. Thus, summary judgment is appropriate in  
18 favor of the Lytles. Once more, Plaintiffs' request for summary judgment should be denied.

### 19 **A. Rosemere Estates**

20 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider  
21 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las  
22 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,  
23 Conditions, and Restrictions ("Original CC&Rs"). Original CC&Rs, Request for Judicial Notice  
24 ("RJN"), Exhibit A. The Lytles purchased their property, Lot 163-03-313-009 (the "Lytle  
25 Property") on November 6, 1996, from the original buyer who first purchased it from the Developer  
26 on August 25, 1995.

27 ///

28 ///



1           **B. The Original CC&Rs and Formation of the Association**

2           Of note to the instant controversy, the Original CC&Rs, in the first paragraph, defines  
3           Rosemere Estates as “Lots 1 through 9 of Rosemere Court, a subdivision...” Original CC&Rs,  
4           Exhibit A. The document adds that “it is the desire and intention of the Subdivider to sell the land  
5           described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under  
6           a general plan or scheme of improvement for the benefit of all of the land described above and the  
7           future owners of the lots comprising said land.” *Id.* Thus, the Association includes each and every  
8           lot therein.

9           Sometime after the Lytles purchased their property, a group of homeowners formed the  
10          Association. In 1997, Linda Lamothe and Marge Boulden, two homeowner acting on behalf of all  
11          owners, filed Non-Profit Articles of Incorporation (the “Articles”) pursuant to Nevada Revised  
12          Statutes (“NRS”) 82, which formalized the property owners’ committee and named it “Rosemere  
13          Estates Property Owners Association.” Articles of Incorporation, Exhibit B.

14          **C. The Amended CC&Rs**

15          Without warning or consult with the homeowners, the Board for the Association, on July 2,  
16          2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the “Amended  
17          CC&Rs”) to the Association membership. Order Granting Summary Judgment in NRED 1  
18          Litigation, FOF Nos. 23, 24, Exhibit D. The proposed Amended CC&Rs were far more restrictive  
19          than the Original CC&Rs and changed the very nature of property ownership within Rosemere  
20          Estates. *Id.* at FOF No. 25. The Amended CC&Rs contained numerous and onerous new use  
21          restrictions including the drastic expansion of the powers, rights, and duties of the Association, a  
22          section entitled “Restrictions on Use, Alienation, and Occupancy,” pet restrictions, parking  
23          restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered  
24          discretion, and a new and expansive definition of “nuisance.” *Id.* The Amended CC&Rs also  
25          contained a morality provision. *Id.* at FOF Nos. 26. Finally, the Amended CC&Rs contained a  
26          construction timeline that would require the Lytles, and only the Lytles, to complete the construction  
27          of a custom home on the lot within a mere *60 days* of receipt of approval from the proposed *Design*  
28          *Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere



1 to. *Id.* at FOF No. 28. Failure to comply would cost the Lytles \$50.00 per day. *Id.* at 30. Despite  
 2 failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended  
 3 CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada. *Id.* at FOF Nos.  
 4 34, 35, *see also* Amended CC&Rs, Exhibit B.

5 Important to the case at hand, the Amended CC&Rs provide as follows:

6 Section 1.1. “‘Act’ shall mean and refer to the State of Nevada’s version  
 7 of the Uniform Common-Interest Ownership Act, codified in NRS  
 8 Chapter 116, as it may be amended from time to time, or any portion  
 9 thereof.”

10 Section 1.14(e). “...the Property is a common interest community  
 11 pursuant to the Act.”

12 Section 1.38. “‘Property’ shall refer to the Property as a whole, including  
 13 the Lots and Common Elements, as restricted by and marketed and sold to  
 14 third parties in accordance with this Declaration.”

15 Section 1.24. “‘Governing Documents includes the Amended CC&Rs.

16 Article 2: “The Association is charged with the duties and vested with the  
 17 powers prescribed by law and set forth in the Governing Documents.”

18 Section 10.2(c). “An Assessment to pay a judgment against the  
 19 Association may be made only against the lots in the Property at the time  
 20 the judgment was entered, in proportion to the respective Liability for  
 21 Common Expense.”

22 Amended CC&Rs, Exhibit C.

23 **D. The Association Records Unlawful Liens Under the Amended CC&Rs and**  
 24 **Chapter 116 and Initiates Foreclosure Against the Lytles**

25 After the Amended CC&Rs were adopted, at a September 15, 2008 Executive Board meeting  
 26 of the Association, the Association’s membership voted to approve a Board proposal that, first, each  
 27 member of the Association should be assessed \$10,000.00 “in conjunction with [the Lytles’]  
 28 actions” in bringing the NRED 1 litigation and in pursuing litigation against Plaintiff for  
 unarticulated and nebulous reasons, and, second, that “the Association should bring foreclosure  
 proceedings against any lots with outstanding assessments due the Association.” Order Granting  
 Summary Judgment in NRED 2 Litigation, FOF No. 10, Exhibit L. The Association then initiated  
 non-judicial foreclosure proceedings against the Lytles. *Id.* at FOF Nos. 11, 20. In addition to  
 instituting the non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended



1 CC&Rs, the Board recorded additional, unlawful liens without right against the Lytles. *Id.* at FOF  
2 Nos. 12 – 18, 22. The total of the three (3) unlawfully recorded liens was \$209,883.19. *Id.* at FOF  
3 Nos. 25, 26

4 **E. NRED 1 Litigation**

5 In 2007, the Lytles filed an NRS 38.310 mandated non-binding arbitration before the Nevada  
6 Real Estate Division (“NRED”), naming the Association as respondent. The Lytles sought a  
7 declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the  
8 Association against the Lytles.

9 After the arbitrator found in favor of the Association, the Lytles filed for a trial de novo in  
10 this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in  
11 Department XII. After the matter was initially dismissed, the Lytles appealed to the Supreme Court,  
12 prevailed, and the matter was then remanded back to the District Court.

13 The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles  
14 summary judgment on July 29, 2013. Order Granting Summary Judgment in NRED 1 Litigation,  
15 COL No. 11, Exhibit D. The court made the following pertinent findings:

- 16 • The Association was formed by the homeowners on February 25, 1997. Order  
17 Granting Summary Judgment in NRED 1 Litigation, COL No. 11, Exhibit D.
- 18 • The Association is a limited purpose association as defined by NRS 116.1201. *Id.* at  
19 COL Nos. 13, 19.
- 20 • The Amended CC&Rs were improperly recorded, were invalid, and the Amended  
21 CC&Rs were ordered released. *Id.* at COL Nos. 25, 26.
- 22 • From July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the  
23 Association and its members. *See generally id.*

24 The matter was once again appealed, and the Nevada Supreme Court affirmed the district  
25 court’s Order granting the Lytles summary judgment. The Supreme Court remanded the case to the  
26 District Court for redetermination of costs, attorneys’ fees and damages on October 19, 2015.  
27 Supreme Court Order in NRED 1 Litigation, Exhibit U.

28 ///



1 On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the  
2 Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and  
3 NRS 116.4117. Order Awarding Attorneys' Fees in NRED 1 Litigation, Exhibit E.

4 On June 17, 2016, the Court awarded the Lytles damages, after a prove-up hearing, in the  
5 amount of \$63,566.93. Order Awarding Damages in NRED 1 Litigation, Exhibit F. These  
6 damages included amounts expended by the Lytles in the design, engineering, and other costs  
7 associated with the construction of their home for Rosemere Estates, all of which were now stale and  
8 useless.

9 Finally, on July 22, 2016, the Court awarded the Lytles costs in the amount of \$599.00.  
10 Order Awarding Costs in NRED 1 Litigation, Exhibit G. Previously, the Court had awarded  
11 \$1,962.80 in costs.

12 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property  
13 within the Association pursuant to the law set forth herein. Abstracts of Judgment from NRED 1  
14 Litigation, Exhibit R.

15 **F. NRED 2 Litigation**

16 On March 16, 2010, the Lytles initiated another NRS 38.310 mandated non-binding  
17 arbitration before NRED, naming the Association as respondent (the "NRED 2 Litigation"). The  
18 purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the  
19 Association against the Lytles pursuant to NRS, Chapter 116 and the Amended CC&Rs. *See*  
20 Complaint in NRED 2 Litigation, Exhibit I. The Lytles also sought an order from the Court directing  
21 the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association  
22 had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* In that arbitration, all  
23 parties stipulated that the Amended CC&Rs were valid and enforceable for the purpose of the NRED  
24 2 Litigation. Stipulation, Exhibit H.

25 After the Association prevailed in the Arbitration (in November 2010), the Lytles promptly  
26 and timely filed a lawsuit (for trial de novo) on December 13, 2010. Complaint in NRED 2  
27 Litigation, Exhibit I. The Association filed a counterclaim, seeking to enforce the assessments the  
28 Association levied against the Lytles property.



1 The Lytles included the following language in their Complaint:

2 Pursuant to a stipulation and/or agreement between the Plaintiff TRUST  
3 and the Defendant ASSOCIATION in the NRED action, the parties to the  
4 NRED action agreed that the Amended CC and R's and Bylaws of the  
5 Defendant ASSOCIATION [were] valid and enforceable only for the  
6 purpose of the NRED action and because this is a trial de novo of the  
7 NRED action the Plaintiff TRUST once again agrees that for the purpose  
8 of this litigation only that the Amended CC and R's and bylaws of the  
9 defendant ASSOCIATION are valid and enforceable.

10 Complaint in NRED 2 Litigation, ¶ 11, Exhibit I.

11 On November 14, 2011, the Court granted the Association's Motion for Summary Judgment.  
12 *See* Order Granting Summary Judgment in NRED 2 Litigation, Exhibit L. The Court also awarded  
13 the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended  
14 CC&Rs, with an amount to be determined at a subsequent hearing. *Id.* The Court then entered two  
15 orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the  
16 Amended CC&Rs. Order Granting Assoc. Fees in NRED 2 Litigation, Exhibit J. Thereafter, the  
17 Court awarded an additional \$7,068.00 in attorneys' fees to the Association pursuant to NRS  
18 116.4117 and the Amended CC&Rs. *See* Order Granting Supplement Fees in NRED 2 Litigation,  
19 Exhibit K.

20 On July 16, 2012, the Lytles filed a Notice of Appeal. On December 21, 2015, the Nevada  
21 Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this  
22 Court for determination. Specifically, the Supreme Court held that the

23 Lytles' actions during the NRED arbitration were sufficient to 'submit'  
24 their slander of title claim to the NRED arbitrator for the purposes of NRS  
25 38.330(5). We also conclude that the Lytles did not need to establish that  
26 they suffered monetary damages for their remaining claims to be viable.

27 Supreme Court Order Re: NRED 2 Litigation, Exhibit T. The Supreme Court also vacated the order  
28 awarding attorneys' fees, costs, and damages to the Association. *Id.* In the second footnote of the  
foregoing Supreme Court Order, and an item of importance to the present case, the Court noted that  
its ruling was "premised in part on the Lytles' stipulation as to the amended CC&Rs validity." *Id.*

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1           Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016,  
2 the Court granted the Lytles' Motion for Summary Judgment as to each and every cause of action  
3 and against the Association's Counterclaim. *See* Order Granting Summary Judgment in NRED 2  
4 Litigation, Exhibit L. The district court then awarded the Lytles the following: \$274,608.28 in  
5 attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005.  
6 *See* Order Granting Attorneys' Fees and Costs in NRED 2 Litigation, Exhibit M; *see also* Order  
7 Granting Punitive Damages in NRED 2 Litigation, Exhibit N. Pursuant to the foregoing, the total  
8 amount of the judgment against the Association and in favor of the Lytles in the NRED 2 Litigation,  
9 including attorneys' fees and costs, is \$1,103,158.12.

10           **G. NRED 3 Litigation**

11           On April 2, 2015, the Lytles filed an action against the Association in the Eighth Judicial  
12 District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an  
13 election, as it has not held such an election since March 24, 2010, despite the legal obligation to do  
14 so. *See* Complaint in NRED 3 Litigation, Exhibit O. On September 13, 2017, the Court granted the  
15 Lytles' Motion for Summary Judgment in the NRED 3 Litigation, and ordered that election take  
16 place before a neutral third party. *See* Order Granting Summary Judgment in NRED 3 Litigation,  
17 Exhibit P.

18           On November 7, 2017, the Court awarded the Lytles \$14,807.50 in attorneys' fees and  
19 \$655.10 in costs. Order Granting Attorneys' Fees and Costs in NRED 3 Litigation, Exhibit Q.

20           All of the foregoing orders in NRED 1, 2 and 3 Litigations are final and not subject to appeal,  
21 and all monetary orders are accruing interest.

22           **H. Recording Of The Abstracts**

23           Pursuant to authority cited herein, the Lytles recorded various abstracts of judgment all  
24 stemming from the judgment issued in the NRED 1 Litigation against each unit (property) within the  
25 Association, including Plaintiffs' properties. *See* Abstracts of Judgment from NRED 1 Litigation,  
26 Exhibit R.

27       ///

28       ///



1 The Lytles obtained an Abstract of Judgment in the NRED 2 Litigation as well, but at this  
 2 time have only recorded that Abstract against the Association. *See* Abstract of Judgment from  
 3 NRED 2 Litigation, Exhibit S.

### 4 **III. LEGAL ARGUMENT**

5 As set forth below, the Lytles rightfully recorded the Abstracts of Judgments, including those  
 6 against Plaintiffs, pursuant to the Original CC&Rs, Amended CC&Rs and the Common-Interest  
 7 Community Act, specifically NRS 116.3117.<sup>1</sup>

#### 8 **A. Summary Judgment Standard**

9 Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions,  
 10 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that  
 11 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a  
 12 matter of law. NRCP Rule 56(c). “Summary Judgment is appropriate and shall be rendered  
 13 forthwith when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any  
 14 material fact [remains] and that the moving party is entitled to judgment as a matter of law.” *Wood*  
 15 *v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005) (*quoting* NRCP 56(c)). In *Wood*,  
 16 the Nevada Supreme Court rejected the “slightest doubt” standard from Nevada’s prior summary  
 17 judgment jurisprudence, *Id.* at 1037, and adopted the summary judgment standard which had been  
 18 articulated by the United States Supreme Court in its 1986 Trilogy: *Celotex Corp. v. Catrett*, 477  
 19 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electrical*  
 20 *Industrial Company v. Zenith Radio Corporation*, 475 U.S. 574 (1986). The application of the  
 21 standard requires the non-moving party to respond to the motion by “Set[ting] forth specific facts  
 22 demonstrating existence of a genuine issue for trial.” *Wood*, 121 p.3d at 1031. This obligation  
 23 extends to every element of every claim made, and where there is a failure as to any element of a  
 24 claim, summary judgment is proper. *Barmettler v. Reno Air, Inc.*, 114 Nevada 441, 447, 956, P2d.  
 25 1382, 1386 (1998).

26 ///

27 \_\_\_\_\_  
 28 <sup>1</sup> Plaintiffs do not appear to dispute that such a recording would be appropriate pursuant to the  
 Amended CC&Rs.



The Nevada Supreme Court held that “Rule 56 should not be regarded as a “disfavored procedural shortcut” but instead as an integral important procedure which is designed “to secure just, speedy and inexpensive determination in every action.” *Wood*, 121, p.3d at 1030 (*quoting Celotex*, 477 U.S. at 327). In *Liberty Lobby*, the U.S. Supreme Court noted that:

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

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

**B. The District Court’s Order In Case No. A-16-747800-C Is Interlocutory, Not Final, And Not Binding On This Court**

Plaintiffs argue that the Order Granting Partial Summary Judgment and entering an injunction in Case A-16-747800-C, by Judge Timothy C. Williams, is res judicata and necessarily binding on this Court. Plaintiffs, however, are incorrect as the referenced order is not final, rather it is partial and interlocutory.

The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.” *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final determination** by a court of competent jurisdiction. *Id.* An order granting partial summary judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v. Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final judgment under NRCP 54(b).

A “final order” resolves all claims against all parties, leaving nothing for further consideration except for post-judgment issues, *i.e.* attorneys’ fees. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); *see also Cox v. Gilcrease Well Corp.*, 2014 WL 2466229 (2014). The Order Granting Partial Summary Judgment is not a final order as claims remain in that case. *See generally* Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law, Exhibit V.

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**C. The Distinction Between The Various NRED Litigation**

Plaintiffs attempt to group all of the Lytles' litigation against the Association into two primary arguments, specifically (1) that the Amended CC&Rs do not provide the Lytles with relief because they were declared *void ab initio*, and (2) that NRS 116.3117 does not apply because the Association was declared a *limited purpose association*. While the Lytles disagree that these rulings prohibit them from exercising the lien rights, as more fully set forth herein, there is a key distinction between the litigation, however, that cannot be ignored - in the NRED 2 Litigation, the Lytles and the Association stipulated that the Amended CC&Rs were valid and enforceable. *See* Stipulation, Exhibit H, *see also* Complaint in NRED 2 Litigation, ¶ 11, Exhibit I. Thus, in issuing an order in the NRED 2 appeal that was seemingly inconsistent with its affirmation of the district court's order in the NRED 1 Litigation declaring the Amended CC&Rs *void ab initio*, the Nevada Supreme Court explained the parties' stipulation to the Amended CC&Rs as binding and authoritative. Supreme Court Order Re: NRED 2 Litigation, Fn. 2, Exhibit U.

The distinction provides a qualitative difference in facts. Specifically, there is no declaration that the Amended CC&Rs were *void ab initio* in NRED 2 Litigation. Indeed, for the purposes of that litigation only, the Amended CC&Rs unquestionably define the rights, liabilities and obligations of the parties. The Lytles obtained a judgment in the NRED 2 Litigation in the total amount of \$1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter 116.

While the Lytles contend, as set forth herein, that all the rights provided to creditors of the Association under the Amended CC&Rs and NRS 116.3117 apply in each of the NRED Litigation matters, the stipulation in the NRED 2 Litigation alleviates any argument to the contrary.

**D. NRS 116.3117 Provides That Defendants Can Record Abstracts Of Judgment Against Plaintiffs' Properties Within The Association**

The Lytles are within their rights, as judgment creditors of the Association, to record a lien against each unit within the Association because (1) NRS 116.3117 provides this specific right to judgment creditors of a unit owners' association, (2) the Lytles may invoke all of the rights set forth in the entirety of Chapter 116 because the Association invoked such rights during the underlying



litigation (and prior thereto), (3) Chapter 116's statutory mechanism provides such rights to the  
 Lytles as judgment creditors against the Association, and (4) in the case of the NRED 2 Litigation,  
 all parties stipulated that the Amended CC&Rs governed and were valid and enforceable.

**1. NRS 116.3117 Permits a Judgment Creditor to Record a Lien Against All  
 Units Within an Association**

When a statute is facially clear, the Court should give effect to the statute's plain meaning.  
*D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I)*, 123 Nev. 468, 476, 168 P.3d 731,  
 737 (2007). "[W]hen a term is defined in NRS Chapter 116, the statutory definition controls and any  
 definition that conflicts will not be enforced." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters.,  
 LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009). Further, NRS 116.003 states that "the words and  
 terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those  
 sections." *Id.*

NRS 116.3117 provides, in pertinent part:

1. In a condominium or planned community:

(a) Except as otherwise provided in paragraph (b), **a judgment for money  
 against the association**, if a copy of the docket or an abstract or copy of the  
 judgment is recorded, is not a lien on the common elements, but **is a lien in  
 favor of the judgment lienholder against all of the other real property of  
 the association and all of the units in the common-interest community at  
 the time the judgment was entered**. No other property of a unit's owner is  
 subject to the claims of creditors of the association.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in  
 Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest  
 community at the time the judgment was entered." NRS 116.3117(1)(a).

The comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) —  
 the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear from  
 the plain language of the statute: "the Act makes the judgment lien a direct lien against each  
 individual unit . . ." See UCIOA § 3-117, cmt. 2, *see also, e.g., Ensberg v. Nelson*, 320 P.3d 97, 102  
 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment  
 lienholder against all of the units in the condominium."); *Summit House Condominium v. Com.*, 523  
 A.2d 333, 336 (Pa. 1987) ("[A] judgment against the Council would have constituted a lien against



each individual condominium unit owner.”); *Interlaken Service Corp. v. Interlaken Condominium Ass’n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) (“[A]ny money judgment obtained by [the plaintiff as against the association] would result in a lien against each of the condominium units.”).

The purpose of the statute, however, is not to provide a remedy to creditors. This remedy exits regardless of this subsection (as explained below). Rather, it protects unit owners within an association and limits the extent to which a creditor can collect on a judgment against an association as to each unit owner. NRS 116.3117 provides that a creditor must first collect against any security interest the creditor may have in common elements before pursuing units. NRS 116.3117(1)(b).

**2. The Association is Afforded All Rights and Remedies of NRS, Chapter 116, Because Prior to Final Determination in the NRED Litigation, the Association Enjoyed Such Benefits to the Detriment of Defendants**

For a myriad of reasons set forth herein, NRS 116.3117 applies in this case and affords the Lytles the right to lien Plaintiffs’ properties.

**a. Background on the Different Types of Common Interest Communities**

The term “homeowners’ association” is often misused and, indeed, in the State of Nevada has no true statutory definition. Rather, a “homeowners’ association” is more of an informal, catch-all term for all types of common interest communities.

Chapter 116 applies to all types of governing bodies of residential common interest communities created in Nevada. NRS 116.1201. A “common-interest community” is defined as “real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.” NRS 116.021. The types of common interest communities include: (1) unit owners’ association, (2) limited purpose associations (NRS 116.1201(2)(a)), (3) small planned communities (NRS 116.1203), (4) nonresidential planned communities (NRS 116.1201(2)(b)), (5) time shares (NRS 116.1201(2)(e)), and condominiums (NRS 116.027).



Chapter 116 applies to “all common interest communities” created within Nevada, with defined limitations for limited purpose associations, small planned communities, and nonresidential planned communities. NRS 116.1201.

**b. From July 3, 2007 Through July 29, 2013, the Association Was a Unit Owners’ Association, for Which the Entirety of NRS, Chapter 116 Applied**

While the district court in the NRED 1 Litigation held that the Association was a limited purpose association, the district court in that case found that the Amended CC&Rs were recorded on July 3, 2007, in the office of the Recorder for Clark County, Nevada, and from July 3, 2007, through July 29, 2013, when the court granted the Lytles summary judgment in that case, the Association was a full-blown unit owners’ association, subject to and taking advantages of all rights, privileges and remedies afforded by the entirety of Chapter 116, including the right to assess and initiate Chapter 116 foreclosure proceedings for failure to pay assessments, which is exactly what the Association did to the Lytles. *See generally* Order Granting Summary Judgment in NRED 1 Litigation, Exhibit D. Further, in the NRED 2 Litigation, the parties stipulated to the enforceability of the Amended CC&Rs. *See* Complaint in NRED 2 Litigation, Exhibit I; *see also* Stipulation, Exhibit H.

The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. Amended CC&Rs, at Article I, Exhibit C. The Amended CC&Rs define the Association pursuant to the Uniform Common-Interest Ownership Act. *Id.* at 1.1. The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116). Finally, the Amended CC&Rs prescribe a remedy equal to NRS 116.3117 within Section 10.2, specifically, that any judgment against the Association is a judgment against each unit within the Association on a pro rata basis. Amended CC&Rs, § 10.2(e).

In the NRED 2 Litigation, the Lytles and the Association stipulated that Amended CC&Rs were valid and enforceable. Stipulation, Exhibit H, *see also* Complaint in NRED 2 Litigation, Exhibit I.

///



1 In granting the Lytles' Motion for Attorneys' Fees in the NRED 1 Litigation, the court cited  
2 *Mackintosh*, 113 Nev. at 405-406, 935 P.2d at 1162, and held that the Lytles could recover  
3 attorneys' fees under the Amended CC&Rs because that document, while declared *void ab initio* by  
4 the district court, was in effect and enforced by the Association against the Lytles at all times during  
5 the underlying litigation. *See generally*, Order Granting Attorneys' Fees in NRED 1 Litigation,  
6 Exhibit E.

7 In *Mackintosh, supra*, the purchasers of real property sued a savings and loan association for  
8 rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d  
9 at 1157. The Supreme Court upheld a district court's granting of summary judgment and  
10 determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406,  
11 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the  
12 purchasers' request for attorneys' fees, which request was based on the attorney fee provision in the  
13 rescinded agreement. *Id.* The district court, in denying attorneys' fees stated that the rescinded  
14 agreement was "void from its date of inception, just as if the contract had never existed." *Id.* The  
15 Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d  
16 1047 (Fla. 1989), which held:

17 We hold that when parties enter into a contract and litigation later ensues over  
18 that contract, attorney's fees may be recovered under a prevailing-party  
19 attorney's fee provision contained therein even though the contract is  
20 rescinded or held to be unenforceable. The legal fictions which accompany a  
21 judgment of rescission do not change the fact that a contract did exist. It  
22 would be unjust to preclude the prevailing party to the dispute over the  
23 contract which led to its rescission from recovering the very attorney's fees  
24 which were contemplated by that contract.

25 *Id.* at 1049.

26 Similarly, in the present case, the "legal fictions" that accompany the court's determination  
27 in the NRED 1 Litigation that the Amended CC&Rs were *void ab initio* cannot change the fact that  
28 they did, indeed, exist from July 3, 2007, through July 29, 2013, and were enforced against the  
Lytles. Once more, in the NRED 2 Litigation, the parties stipulated that the Amended CC&Rs were  
valid and enforceable, so the "legal fiction" did not even exist, rather enforceability was actual.

///



1 The foregoing is akin to the evidentiary “sword and shield” doctrine. Therein, it is held that  
2 a party may not use a privilege as both a sword to assert a claim and a shield to protect the content  
3 related to the claim. *Molina v. State* 120 Nev. 185, 194, 87 P.3d 533, 539 (2004). A party  
4 attempting to enforce a contract against another cannot argue that a court’s determination that it was  
5 void shields the party from the provisions that would be detrimental, *e.g.* an attorneys’ fee provision.  
6 Or, in the present case, members of the Association should not be permitted to shield themselves  
7 from certain provisions of Chapter 116, namely NRS 116.3117, once the court in the NRED 1  
8 Litigation declared the Amended CC&Rs void after years of those same Amended CC&Rs being  
9 recorded and enforced against the Lytles. In fact, the Amended CC&Rs’ restrictions were so severe  
10 that they prevented the Lytles from building their dream home in the Rosemere Estates community  
11 and thrust the Lytles into years of litigation that exhausted the Lytles’ retirement savings and created  
12 emotional turmoil. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 25 – 31,  
13 Exhibit D. Indeed, the Lytles, as the only undeveloped lot, were the only targets of the Amended  
14 CC&Rs and the prohibitive building restrictions. *Id.*

15 There are other instances during which the Association took clear advantage of the entirety of  
16 Chapter 116 during this operative time period despite a subsequent finding that the Association is a  
17 limited purpose association and the Amended CC&Rs are void. For example, the Association filed a  
18 countersuit against the Lytles in the NRED 2 Litigation, something a limited purpose association is  
19 not permitted to do. NAC 116.090(1)(c)(1), (prohibiting a limited purpose association from  
20 enforcing restrictions against unit owners). The Association moved to dismiss and had the  
21 Complaint dismissed in the NRED 1 Litigation, purportedly as a result of a failure to timely file  
22 under Chapter 38, which does not apply to limited purpose associations. The Association was  
23 initially awarded attorneys’ fee in the NRED 2 Litigation pursuant to the Amended CC&Rs and  
24 provisions of Chapter 116. *See* Order Awarding Attorneys’ Fees in NRED 2 Litigation, Exhibit J;  
25 *see also* Supplemental Order Awarding Attorneys’ Fees in NRED 2 Litigation, Exhibit K.

26 The Lytles obtained judgments against the Association due to the Association’s actions taken  
27 in order to both defend and impose its position as a unit owners’ association. During the entire  
28 pendency of the NRED Litigation (and indeed well before), the Association operated pursuant to the



1 statutory luxuries afforded to it as a litigant by NRS Chapter 116. And had the Association, and not  
 2 the Lytles, prevailed in the NRED Litigation, the Association would enjoy all of the benefits as a  
 3 judgment creditor against the Lytles, including the right to lien the Lytles' property and foreclose  
 4 thereon.

5 A ruling in favor of Plaintiffs in the instant case would provide the Association with  
 6 forgiveness to utilize NRS Chapter 116 and the Amended CC&Rs as swords to impose the  
 7 Association's will during the NRED Litigation and prior thereto, but as shields from liability and  
 8 collection once the Association's position was declared invalid. The public policy underlying  
 9 *Mackintosh* and its progeny is that such two-faced positions cannot stand the test of equities.

10 **c. NRS 116.3117 Applies To Limited Purpose Associations**

11 As set forth in Chapter 116 and explained above, the Association is a common interest  
 12 community consisting of nine (9) units, as that term is defined by Chapter 116, and organized as a  
 13 limited purpose association. Order Granting Summary Judgment in NRED 1 Litigation, FOF No. 6,  
 14 COL Nos. 7 – 19, Exhibit D, *see also* NRS 116.021, NRS 116.093. NRS 116.1201(2)(a)(4)  
 15 provides, in pertinent part, that Chapter 116 does not apply to a limited purpose association, "except  
 16 that a limited purpose association shall comply...with the provisions of NRS 116.4101 to 116.412."  
 17 Included within the scope of these provisions is NRS 116.4117, which addresses civil actions for  
 18 damages for failure or refusal to comply with provisions of Chapter 116 or an association's  
 19 governing documents. NRS 116.4117(2) provides:

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

(a) By the association against:

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

(b) By a unit's owner against:

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

(c) By a class of units' owners constituting at least 10 percent of the  
 total number of voting members of the association against a  
 community manager.

28 ///



1 Thus, an owner in a limited purpose association may pursue a civil action against an  
2 association as set forth in NRS 116.4117, as the Lytles did in the NRED Litigation.

3 Following the linear statutory reference, then, from NRS 116.4117, NRS 116.3111(3)  
4 provides, among other things, that “[l]iens resulting from judgments against the association are  
5 governed by NRS 116.3117.” NRS 116.3117 then provides:

6 a judgment for money against the association, if a copy of the docket or an  
7 abstract or copy of the judgment is recorded, is not a lien on the common  
8 elements, but is a lien in favor of the judgment lienholder against all of the  
9 other real property of the association and all of the units in the common-  
interest community at the time the judgment was entered. No other property of  
a unit’s owner is subject to the claims of creditors of the association.

10 As a judgment creditor and lienholder in a proper civil action brought under NRS 116.4117,  
11 the Lytles have a lien on all units in the Association, a common interest community. Pursuant to this  
12 right as set forth in NRS, Chapter 116, Sections 4117(2), 3111 and 3117, the Lytles recorded the  
13 abstracts of judgment

14 E. General Common-Interest Community Principles Define The Association As  
15 Including Each Unit Therein, and Defendants May Record a Lien/Abstract  
16 Against Each Unit Within the Association

17 NRS 17.150(2) provides, in pertinent part:

18 A transcript of the original docket or an abstract or copy of any judgment or  
19 decree of a district court of the State of Nevada or the District Court or other  
20 court of the United States in and for the District of Nevada, the enforcement  
21 of which has not been stayed on appeal, certified by the clerk of the court  
22 where the judgment or decree was rendered, 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.

23 [Emphasis added.]

24 In recording the abstracts of judgment against the units within the Association, the abstracts  
25 became a lien upon all the real property of the Association, as the judgment debtor. Each unit,  
26 owned or unowned, within the Association is property of the Association, as set forth in Chapter  
27 116. NRS 116.3117 mirrors the foregoing by encapsulating the lien framework within a single  
28 statute.



1 NRS 116.021 defines a “common interest community” as all “real estate described in a  
 2 declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated  
 3 to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or  
 4 services or other expenses related to, common elements, other units or other real estate described in  
 5 that declaration.” NRS 116.093 defines a “unit” as the “physical portion of the common-interest  
 6 community designated for separate ownership or occupancy...” Thus, an association, or common  
 7 interest community, includes each unit in the community, including those owned by third parties.

8 This Nevada Supreme Court concluded as much in granting standing to homeowners’  
 9 associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc.*  
 10 *v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that  
 11 “provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest  
 12 community includes individual units...” *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the Supreme  
 13 Court concluded that a homeowners’ association has standing to file representative actions on behalf  
 14 of its members for construction defects of units.

15 NRS 116.3117, clarifies that a judgment may be recorded against each unit. This is not a  
 16 special rule of any sort in favor of creditors, rather it adds statutory clarity that a judgment against  
 17 the common-interest community can be recorded against all property within that community,  
 18 including units defined as being included in the community. These definitions are echoed in the  
 19 Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

20 **a. The Original CC&Rs Define the Association as Including Each**  
 21 **Lot Therein**

22 Pursuant to the Original CC&Rs, a lien or judgment against the Association established  
 23 under the Original CC&Rs attaches to each lot within the Association. As a result, the individual  
 24 property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

25 ///

26 ///

27 ///

28 ///



1 The Original CC&Rs provide as follows:

2 WHEREAS, it is the desire and intention of Subdivider to sell the land  
3 described above and to impose on it mutual, beneficial covenants,  
4 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.

5 Original CC&Rs, ¶2, Exhibit A. (referring to the “Lots 1 through 9 of Rosemere Court” in the  
6 definition above, thereby including Respondents lots, which Respondents do not dispute).

7 A breach or violation of these CC&R’s or any re-entry by reason of such breach **or any liens**  
8 **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**  
9 **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  
10 or otherwise.

11 *Id.* at ¶ 4 (emphasis added).

12 The Original CC&Rs were recorded against each of the nine (9) lots within the Association,  
13 and each owner, or prospective owner, including Respondents, purchased property with record and  
14 actual notice of the foregoing rights and remedies.<sup>2</sup> Order Granting Summary Judgment in NRED 1  
15 Litigation, FOF No. 1, Exhibit D.

16 The second provision cited above specifically attaches liens established under the Original  
17 CC&Rs “to said lots or Property.” The attorneys’ fee award in both the NRED 1 and NRED 2  
18 Litigation, in relevant part, specifically find the Lytles’ lien or judgment is established under the  
19 Original CC&Rs. Order Granting Attorneys’ Fees in NRED 1 Litigation, at 2:1-15, Exhibit E; *see*  
20 *also* Order Granting Attorneys’ Fees in NRED 2 Litigation, at 2:6-19, Exhibit M. If liens under the  
21 Original CC&Rs could not attach to the lots, there would be absolutely no need to include this  
22 provision, *i.e.* there would be no need for the Original CC&Rs to state that such a lien could not  
23 extinguish the first deed of trust or any other mortgage. Again, the Association has no property to  
24 even secure any loan as the only property that exists is Lots 1 through 9, which includes Plaintiffs’

25 \_\_\_\_\_  
26 <sup>2</sup> While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz*  
27 *v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive  
28 covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass’n*,  
2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing  
contracts apply to the CC&Rs). “A court should not interpret a contract so as to make meaningless  
its provisions.” *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).



1 properties. Nowhere in the Original CC&Rs is there any inclusion of property owned by the  
2 Association or subject to the Original CC&Rs other than "Lots 1 through 9."

3 Nothing under this provision distinguishes the Lytles' liens or judgment pursuant to the  
4 attorneys' fees provision from any other provision or lien or judgment in the Original CC&Rs. The  
5 Original CC&Rs simply state "any liens established hereunder." RJN, Original CC&Rs. This  
6 necessarily includes the Lytles' liens.

7 **2. The Fact That Plaintiffs Were Not Parties To The NRED Litigation Is**  
8 **Irrelevant**

9 Plaintiffs make exceptional note that they were not named parties to any NRED Litigation.  
10 The Lytles readily admit this; however, the argument is the proverbial red herring. The Lytles assert  
11 herein, and in recording the Abstracts of Judgment, that the basis for asserting a lien against each  
12 unit (property) within the Association is a prescribed right and remedy afforded to creditors by NRS  
13 116.3117, the Amended CC&Rs, and general common-interest community principles as argued  
14 herein. Neither NRS 116.3117 nor Section 10.2(e) of the Amended CC&Rs mandate that an  
15 individual unit owner must be a party to the underlying litigation. Indeed, quite the opposite is true.  
16 Each unit, not each owner of the unit, is liable up to a pro rata share of any judgment obtained  
17 against the Association. NRS 116.3117, *see also* Amended CC&Rs, § 10.2(e).

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1 **IV. CONCLUSION**

2 For the reasons set forth herein, the Lytles respectfully request that the Court deny Plaintiffs'  
3 Motion for Summary Judgment, or in the alternative, for Judgment on the Pleadings. The Lytles  
4 also respectfully request that the Court grant summary judgment in favor of the Lytles on the  
5 grounds that the Abstracts of Judgment are lawfully recorded pursuant to the Amended CC&Rs and  
6 NRS, Chapter 116, and that the Lytles be permitted to record abstracts of judgment obtained in the  
7 NRED 2 and NRED 3 Litigation. The Lytles also request an award of attorneys' fees and costs and  
8 such other relief as the Court deems proper.

9 DATED: February 9, 2018

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

11 By: \_\_\_\_\_

12 Richard E. Haskin, Esq.  
13 Nevada State Bar # 11592  
14 1140 N. Town Center Drive, Suite 300  
15 Las Vegas, Nevada 89144  
16 Attorneys for Defendants

17 TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS  
18 TRUSTEES OF THE LYTLE TRUST  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



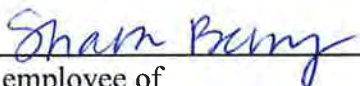
**CERTIFICATE OF MAILING**

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on February 9, 2018, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST (1) OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR , IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS; AND (2) COUNTERMOTION FOR SUMMARY JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Kevin B. Christensen, Esq.  
Wesley J. Smith, Esq.  
Laura J. Wolff, Esq.  
CHRISTENSEN JAMES & MARTIN  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117

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An employee of  
Gibbs Giden Locher Turner  
Senet & Wittbrodt LLP

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

000385



# EXHIBIT “A”



§ 2 - 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 4<sup>th</sup> 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 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.



S C A I C 3 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.

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 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 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.



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 FHIA 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 Oakey, 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.



# EXHIBIT “B”



**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

FEB 25 1997

**Non-Profit**  
**Articles of Incorporation**  
(PURSUANT TO NRS 82)

Filing Fee: \$25.00

Receipt #:

1-MF-9-56

2-14-97  
9:50 AM  
Paid  
205.00

No. C2724 97  
STATE OF NEVADA  
Secretary of State  
(For filing office use)  
IMPORTANT: Read instructions on reverse side before completing this form.  
TYPE OR PRINT (BLACK INK ONLY)

1. NAME OF CORPORATION: ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION nonprofit corporation  
2. RESIDENT AGENT: MARJORIE BOULDEN (Designated and that agent and his STREET ADDRESS in Nevada where process may be served)

Name of Resident Agent: MARJORIE BOULDEN  
Street Address: 1960 ROSEMERE COURT LAS VEGAS NV 89117

3. PURPOSE: HOMEOWNERS' ASSOCIATION  
4. GOVERNING BOARD: As follows (check one) ☒ Directors ☐ Trustees

The FIRST BOARD OF DIRECTORS shall consist of 2 members. The names and addresses are as follows (attach additional page if necessary):

LINDA LAMOTHE Address: 1930 ROSEMERE COURT LAS VEGAS, NV 89117  
City/State/Zip: Las Vegas NV 89117

MARJORIE BOULDEN Address: 1960 ROSEMERE COURT LAS VEGAS, NV 89117  
City/State/Zip: Las Vegas NV 89117

Proposed to change the number of directors: N/A

5. OTHER MATTERS: This form includes the minimal statutory requirements to incorporate under NRS 82. You may attach additional information in pertinent to NRS 82.091 or any other information you deem appropriate. If any of the additional information is contradictory to this form, it cannot be filed and will be returned to you for correction. Number of pages attached: 0

6. SIGNATURES OF INCORPORATORS: Indicate the names and addresses of each incorporator signing the articles. (Each signature is at the bottom of the page. Attach additional pages if there are more than five incorporators.)

MARJORIE B. BOULDEN  
Name (print)  
1960 Rosemere Ct. Las Vegas, NV 89117  
Address City/State/Zip

Maryorie B. Boulden  
Signature

State of NEVADA County of CLARK

This instrument was acknowledged before me on February 6<sup>th</sup> 1997

MARJORIE B. BOULDEN  
Name of Person

to incorporate of

(Name of party on behalf of whom instrument was executed)

7. CERTIFICATE OF ACCEPTANCE OF APPOINTMENT OF RESIDENT AGENT

MARJORIE B. BOULDEN hereby accept appointment as Resident Agent for the

Maryorie B. Boulden  
Signature of Resident Agent

LINDA LAMOTHE  
Name (print)  
1930 Rosemere Ct  
Address City/State/Zip

Linda Lamoth  
Signature

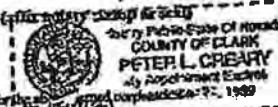
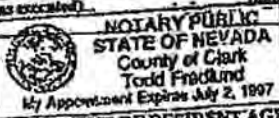
State of NEVADA County of CLARK

This instrument was acknowledged before me on February 13, 1997

Linda Lamoth  
Name of Person

to incorporate of

(Name of party on behalf of whom instrument was executed)



000020



# EXHIBIT “C”



(39)

  
 20070703-0001934

Fee: \$52.00  
 H/C Fee: \$0.00

07/03/2007

12:14:52

T20070119159

Requestor:  
 S KEARL

Debbie Conway  
 Clark County Recorder

STW  
 Pgs: 39

WITEN RECORDED  
 RETURN TO:

SHERMAN L. KEARL  
 1861 ROSEMERE CT.  
 LAS VEGAS NEVADA  
 89117

**AMENDED AND RESTATED  
 DECLARATION OF COVENANTS,  
 CONDITIONS, AND RESTRICTIONS  
 FOR ROSEMERE ESTATES**

000088



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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR ROSEMERE ESTATES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OR ROSEMERE ESTATES (the "Amended Declaration") is made as of this \_\_\_\_\_ day of June, 2007, by Rosemere Estates Property Owners Association, a Nevada non-profit corporation (the "Association").

**RECITALS**

WHEREAS, on January 4, 1994, Baughman & Turner Pension Trust (the "Declarant") recorded the Declaration of Covenants, Conditions and Restrictions for Rosemere Estates (the "Original Declaration") in the Office of the County Recorder, Clark County, Nevada in Book No. 940104, as Instrument No. 01241;

WHEREAS, the Declaration applies to that certain real property described more particularly on Exhibit "A" attached hereto,

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

WHEREAS, the Original Declaration does not specify the percentage of votes necessary to amend the same;

WHEREAS, NRS 116.2117 requires that a majority vote or agreement of the owners within the Association vote in favor of any proposed amendments in order for them to be adopted;

WHEREAS, all the changes contained in this Amended Declaration have been approved by more than fifty-one percent (51%) of the owners in accordance with NRS 116.2117.

NOW, THEREFORE, the Association hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the limitations, restrictions, reservations, rights, easements, conditions, and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, maintenance, and improvement, of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including, without limitation, the easements, uses, obligations, covenants, conditions, and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons, as hereinafter defined, having or acquiring any right, title, or interest in the Property, or any part thereof, and their successors in interest and assigns. The development plan of the Property shall be consistent with the overall development plan, if any, submitted to the VA and/or FHA, as hereinafter defined.



## ARTICLE 1

### DEFINITIONS

1.1 **Act:** "Act" shall mean and refer to the State of Nevada's version of the Uniform Common-Interest Ownership Act, codified in NRS Chapter 116, as it may be amended from time to time, or any portion thereof.

1.2 **Allocated Interests:** "Allocated Interests" shall mean the fraction or percentage of the Common Expenses and the portion of the votes in the Association allocated to each Lot as set forth in Article 12, Section 12.1 and Article 18, Section 18.1 of this Declaration.

1.3 **Articles of Incorporation or Articles:** "Articles of Incorporation" or "Articles" shall mean the articles of incorporation of the Association, as they may be amended from time to time.

1.4 **Assessment:** "Assessment" shall mean Capital Improvement Assessments, Common Expense Assessments, and Special Assessments that may be charged against each Owner and Owner's Lot in accordance with the provisions of this Declaration.

1.5 **Assessment, Capital Improvement:** "Capital Improvement Assessment" shall mean a charge against each Owner and the Owner's Lot representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to Article 12, Sections 12.5 of this Declaration.

1.6 **Assessment, Common Expense:** "Common Expense Assessment" shall mean the annual charge against each Owner and the Owner's Lot representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements or any Improvements thereon or other Common Expenses, which are to be paid by each Owner to the Association as provided in Article 12 of this Declaration, or as otherwise authorized by the Act or this Declaration.

1.7 **Assessment, Special:** "Special Assessment" shall mean a charge against a particular Owner and the Owner's Lot, directly attributable to or reimbursable by the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration (including, if applicable, the amount of any deductible payable in connection with an insured loss), or levied by the Board as a reasonable fine or penalty for non-compliance with the restrictions contained in this Declaration, plus interest and other charges on such Special Assessment that will be imposed in the manner described in Article 12 of this Declaration, or as otherwise authorized by the Act or this Declaration.

1.8 **Association:** "Association" shall mean Rosemere Estates Property Owners Association, a Nevada nonprofit corporation, organized under NRS Chapter 82 as the association of Owners pursuant to the Act.

1.9 **Board of Directors or Board:** "Board of Directors" or "Board" shall mean the board of directors of the Association.

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1.10 **Budget:** "Budget" shall mean the Operating Budget and the Reserve Budget for the Association as defined in Article 12 Section 12.4 of this Declaration.

1.11 **Bylaws:** "Bylaws" shall mean the Bylaws of Rosemere Estates Property Owners Association, as they may be amended from time to time.

1.12 **Commercial Vehicle:** "Commercial Vehicle" shall mean any dump truck, cement mixer truck, delivery truck, oil or gas truck, or any other vehicle that meets at least two (2) of the following:

1. Such vehicle is designed, maintained or used primarily for the transportation of property or passengers in furtherance of any commercial purpose. For purposes of this Section, "commercial purpose" shall mean any task in furtherance of a business enterprise that is required to hold a business license issued by pertinent government authorities;
2. Such vehicle weighs over Eight Thousand Five Hundred (8,500) pounds gross when unloaded;
3. Such vehicle bears commercial insignia, names or other common indicia indicating that the vehicle is used for commercial purposes; or
4. Such vehicle is larger than a nineteen foot (19') foot van or a three-quarter (3/4) ton pickup truck.

1.13 **Common Elements:** "Common Elements" shall have the meaning ascribed to such term in NRS 116.017. The anticipated Common Elements for which the Association will be responsible include the streets, sidewalks, non-exclusive use and/or utility easements, exterior wall planters, entrance-way planters, perimeter landscaping, perimeter walls along Oakley, Tenaya and El Parque, landscaping located in cul-de-sacs, each as may be located within the Property, and all other parts of the Property designated by Declarant (through the Final Map or in amendment to this Declaration) as Common Elements and existing for the use of one or more of the Owners, but specifically excluding any Lot.

1.14 **Common Expense:** "Common Expenses" shall have the meaning ascribed to such term in NRS 116.019 and shall include the expenses or financial liabilities for the operation of the Property, together with any allocations to reserves and shall include:

- (a) Expenses of administration, insurance, operation, maintenance, repair or replacement of the Common Elements except to the extent such repairs and replacements are the responsibility of a particular Owner pursuant to the terms of this Declaration; and
- (b) Expenses declared to be Common Expenses under the Governing Documents or the Act; and
- (c) Expenses agreed upon as Common Expenses by the Members of the Association;



(d) Allocation for reserves established by the Association for repair, replacement and restoration of the major components of the Common Elements pursuant to the Act; and

(e) Expenses, fees, and other charges imposed upon the Association by any governmental entity because the Property is a common interest community pursuant to the Act.

1.15 **Declarant:** "Declarant" shall mean, Baughman & Turner Pension Trust, and its successors and assigns.

1.16 **Declaration:** "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Rosemere Estates, recorded in the Office of the County Recorder, Clark County, Nevada, as may be amended from time to time.

1.17 **Design Review Committee:** "Design Review Committee" or "DRC" shall mean the committee that is appointed or that may be appointed to review written requests from Owners pertaining to additions, alterations, or improvements that Owner wishes to construct in the Property.

1.18 **Design Review Guidelines:** "Design Review Guidelines" shall mean the rules adopted by the Design Review Committee and approved by the Board of Directors, pursuant to Article 8, Section 8.6 of this Declaration.

1.19 **Director:** "Director" shall mean and refer to a member of the Board of Directors.

1.20 **Final Map:** "Final Map" shall mean the Final Map of Rosemere Court, Recorded in the Office of the County Recorder, Clark County, Nevada, on December 16, 1993, in Book 59, Page 58 of Plats (Official Book Records No. 931216, as Instrument No. 01474), together with any amendments to the foregoing.

1.21 **Fiscal Year:** "Fiscal Year" shall mean the twelve (12) month period used by the Association for preparing its annual financial reports. Unless otherwise specified by the Board of Directors, the Fiscal Year for the Association shall commence on January 1<sup>st</sup> and end on December 31<sup>st</sup>.

1.22 **FNMA:** "FNMA" shall mean the Federal National Mortgage Association.

1.23 **FHLMC:** "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.24 **Governing Documents:** "Governing Documents" shall mean the Declaration, the Articles, the Bylaws, and any Rules or Design Review Guidelines that may be adopted or approved by the Board, as they may be amended from time to time, including any exhibits, schedules or certifications attached thereto.

1.25 **HUD:** "HUD" shall mean the U.S. Department of Housing and Urban Development.



1.26 **Improvements:** "Improvements" shall mean any construction, structure, fixture or facilities existing or to be constructed on the real property which is included in the Property, including, but not limited to: Residences, buildings, walkways, sprinklers, recreational facilities, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, patio covers, railings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.27 **Invitee:** "Invitee" shall mean a tenant, guest, contractor, occupant, employee, family member, agent, or any other Person on the Property at the request of, with the consent or approval of, or for the benefit of Owner.

1.28 **Liability for Common Expenses:** "Liability for Common Expenses" shall mean the liability for common expenses allocated to each Lot pursuant to Article XII, Section 12.1 of this Declaration.

1.29 **Lot:** "Lot" shall mean the real property within the Property, excluding the Common Elements, shown on the Final Map as individual lots, and including any Residence and any other Improvements erected, constructed or located thereon. The boundaries of each Lot created by this Declaration are the lot lines depicted on the Final Map.

1.30 **Manager:** "Manager" shall mean a Person, firm or corporation possessing all pertinent licenses and certifications required to engage in management work on the Association's behalf, including all permits and/or certifications required by NRS 116.700 and NRS 116.705, as may be amended from time to time.

1.31 **Member:** "Member" shall mean a Person entitled to membership in the Association as provided in the Governing Documents. A "Member in Good Standing" is defined in Article II, Section 2.02 of the Bylaws.

1.32 **Membership:** "Membership" shall mean the Members of the Association.

1.33 **NRS:** "NRS" shall mean the Nevada Revised Statutes, as it may be amended from time to time. Any reference to any particular section of the NRS shall be deemed to include that section of the NRS, as well as any amendment thereto from time to time and any successor statute.

1.34 **Operating Budget:** "Operating Budget" is defined in Article XII, Section 12.4 of this Declaration.

1.35 **Owner:** "Owner" shall mean the Declarant or other Person who owns a Lot, however, Owner does not include a Person merely having a Security Interest in a Lot.

1.36 **Perimeter Wall:** "Perimeter Wall" shall mean those walls, if any, all or a part of which are located on the Common Elements or denote the boundary between a Lot and the Common Elements.

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1.37 **Person:** "Person" shall include an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

1.38 **Property:** "Property" shall refer to the Property as a whole, including the Lots and Common Elements, as restricted by and marketed and sold to third parties in accordance with this Declaration.

1.39 **Record, Recording, Recorded, or Recordation:** "Record," "Recording," "Recorded," or "Recordation" (including any derivation or tense thereof), unless otherwise specifically provided, shall mean or signify to file or have filed with the Office of the County Recorder, Clark County, Nevada.

1.40 **Recreational Vehicle:** "Recreational Vehicle" shall mean any motorized scooter, camper unit, house car, motor home, motor coach, trailer, trailer coach or camp trailer, watercraft, jet ski, canoe, kayak or boat, four-wheel, all terrain vehicle, dune buggy, or aircraft, or any other vehicle that is ordinarily used for purposes other than ordinary commuting.

1.41 **Reserve Budget:** "Reserve Budget" is defined in Article XII, Section 12.4 of this Declaration.

1.42 **Residence:** "Residence" shall mean a single family dwelling and related Improvements located upon a Lot.

1.43 **Rules:** "Rules" shall mean the rules and regulations for the use of Common Elements and the conduct of Persons in connection therewith within the Property as adopted by the Board of Directors from time to time pursuant to this Declaration and the Bylaws.

1.44 **Security Interest:** "Security Interest" shall mean an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien on a Lot created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, or any other consensual lien or title retention contract intended as security for any obligation.

1.45 **Supermajority of Owners or Supermajority of Members:** "Supermajority of Owners" or "Supermajority of Members" shall mean the Owners (including, as applicable, Declarant) of more than sixty-six percent (66%) of the total number of Lots contained in the Property.

1.46 **VA:** "VA" shall mean and refer to the U.S. Department of Veterans Affairs.

## ARTICLE 2 ASSOCIATION

The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. None of the Governing Documents shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If any

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ambiguity exists in any provision of the Governing Documents, then such provision shall be construed in such a way that it is consistent with the provisions of this Declaration.

### ARTICLE 3 ASSOCIATION PROPERTY

**3.1 Ownership of Common Elements:** The Common Elements shall be owned by the Association in fee simple (except for those held as easements or other property rights) for the use, enjoyment, and convenience of the Owners and shall include all portions of the Property as defined in Article I, Section 1.13 of this Declaration, and specifically excludes Lots. Each Lot and its Owner shall have an easement over all of the Common Elements, and such easement is hereby granted, transferred, and conveyed to all Owners for the benefit of the Lots, the Owners, and each of them, and for their respective Invitees.

**3.2 Use of Common Elements:** Each Owner and Owner's Invitees shall be entitled to use the Common Elements, subject to the following:

(a) The right of the Association to suspend the rights of an Owner and/or an Owner's Invitees to use the Common Elements, excluding any vehicular or pedestrian ingress or egress to or from a Lot, and any area used for parking, for any period during which any Assessment against the Owner's Lot remains past due and unpaid, and after notice and hearing by the Board in accordance with the provisions of this Declaration;

(b) Such rights to use the Common Elements as may have been granted by the Association to others;

(c) Such Rules for the use of the Common Elements as may be imposed by the Association from time to time; and

### ARTICLE 4 MAINTENANCE

**4.1 Common Elements:** The Association shall maintain and repair all of the Common Elements. Such duty to maintain and repair includes, but is not limited to, the following:

(a) Periodic trimming and/or pruning of any trees or shrubbery located on or comprising part of the Common Elements;

(b) Replacement of injured or diseased shrubbery, trees or other vegetation located on or comprising part of the Common Elements to the extent that the Board, in its sole and absolute discretion, deems necessary for the conservation of water and soil, and for aesthetic purposes;

(c) Maintenance and repair of any Improvements located on the Common Elements, including but not limited to the street sidewalk and the gate;

(d) Removal of all papers, debris, and refuse from the Common Elements.

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**4.2 Lots:** Each Owner shall, at Owner's sole cost and expense and subject to the limitations set forth in this Declaration, maintain, repair, replace, and restore the Residence and any landscaping and Improvements located on the Owner's Lot. Furthermore, each Owner shall keep the Lot, Residence, and Improvements in a neat, sanitary, and attractive condition and in accordance with all restrictions contained in this Declaration. If any Owner permits the Residence, and any Improvements on the Lot or the Lot itself to fall into disrepair or to become unsafe, unsightly or unattractive as determined by the Board in its sole and absolute discretion, or permits any Residence, Improvements or Lot to otherwise violate the restrictions contained in this Declaration, the Association shall have the right to seek any remedies at law or in equity it may have. In addition, the Board shall have the right, but not the obligation, if such unacceptable maintenance is not corrected within thirty (30) days' written notice from the Association (or such longer period if reasonably necessary under the circumstance, provided that Owner is diligently performing such repairs or maintenance), to enter upon Owner's Lot and make such repairs and perform such maintenance and charge the costs thereof to Owner. Such costs shall be enforced, including penalty fees and costs, as an Assessment on the Lot pursuant to Article XII of this Declaration.

**4.3 Right of Access:** In addition to all other easements reserved or granted herein, there is hereby reserved to the Association an easement across each Lot as is necessary to permit a reasonable right of entry onto each Lot for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Property, or any other work that the Association is authorized to perform pursuant to this Declaration.

**4.4 Repairs Resulting From Negligence:** Each Owner will reimburse the Association for any damages to any other Lot or to any Common Elements caused intentionally, negligently or by the Owner's or the Owner's Invitee's failure to properly maintain, repair or make replacements to his or her Lot. If such damage is caused by misconduct, it will be imposed as a Special Assessment to the association account of the Owner deemed to be responsible for such misconduct, following notice and hearing, and may include attorneys' fees and costs.

**4.5 Improvements to Common Elements:** No land within the Common Elements may be improved by any Improvement, used, or occupied except in such manner as shall have been approved by the Board in its sole and absolute discretion. No approval shall be granted that would be in contravention of the zoning or other local regulation then in effect for the area in question.

**4.6 Professional Management:** The Board of Directors, on behalf of the Association, may contract with one or more Managers to conduct certain activities on behalf of the Association, as may be determined by the Board. Each such contract shall provide for the termination by the Association without cause and without payment of a termination fee upon at least thirty (30) days' written notice to the Manager.

## ARTICLE 5 RESTRICTIONS ON USE, ALIENATION, AND OCCUPANCY

**5.1 Use Restrictions:** The following use restrictions apply to all Lots and to the Common Elements:

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(a) Single Family Residence. The use of each Lot is restricted to that of a single-family Residence and accessory uses as permitted herein. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with the City of Las Vegas Zoning Ordinances. 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 house. No industry, business, trade or commercial activities shall be conducted, maintained or permitted on a Lot. The provisions of this subsection 5.1(a) shall not preclude any of the above-described activities so long as such activities cannot be observed from the Common Elements and provided that all of the following conditions are fulfilled:

- (i) Such activities are conducted in conformance with all applicable laws;
- (ii) The patrons or clientele of such activities do not park automobiles or other vehicles within the Property, except during brief and limited drop-off and pick-up periods;
- (iii) No such activity increases the liability or casualty insurance obligation or premium of the Association; and
- (iv) Such activities are consistent with the residential character of the Property and conform with all provisions of the Governing Documents.

(b) Parking.

- (i) 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.
- (ii) 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.
- (iii) No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.
- (iv) No repairs to any vehicle may be conducted on the Property except within the confines of a closed garage and then only if such repairs do not otherwise violate the laws or any of the provisions of the Governing Documents.



(c) Nuisances. No noxious, offensive, dangerous or unsafe activity shall be conducted anywhere in the Property, nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to, or poses a threat to the health, safety, and/or welfare of the other Owners or Invitees of Lots. No Owner or Invitee of a Lot shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, quiet use and enjoyment of other Owners or Invitees. No use that is reasonably deemed immoral, improper, offensive or unlawful by the Board of Directors may be made of the Property or any portion thereof. Owners shall comply with and conform to all applicable laws. The violating Owner shall hold harmless the Association and other Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

(d) Pets. No animals of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats or other pets deemed by the Board in its sole and absolute discretion as household pets may be kept on a Lot, provided that they are not kept, bred or maintained for commercial purposes or in violation of applicable laws or other provisions of this Declaration. No horses shall be allowed within the Association at any time. As used in this subsection, a "reasonable number" shall mean four (4) or fewer pets per Lot and does not apply to fish. It shall be the absolute duty and responsibility of each Owner or Invitee to remove any solid waste after such animals have used any portion of the Property. All pets shall be leashed when not within an enclosed area of a Lot. Any animal found in the Common Elements of the Property without a leash may be placed by the Association or any Owner in the custody of the appropriate governmental agency for animal control, with all costs associated therewith paid by the owner of the animal. Any pet causing or creating a nuisance or unreasonable disturbance or noise as determined by the Board shall be permanently removed from the Property upon three (3) days' written notice following notice and hearing from the Board of Directors in accordance with the provisions of this Declaration. Each Owner shall indemnify and hold the Association harmless from any claim resulting from any action of their pets.

(e) Signs. No signs, window displays or advertising visible from any other Lot, any public street or the Common Elements may be placed on any Lot without the prior written consent of the Board. Owners may display one (1) sign in the front yard of a Lot advertising the Lot for sale or rent, provided that such sign does not exceed twenty-four (24) inches by twenty-four (24) inches. In addition, one political sign may be placed in the front yard of a Lot but may not exceed twenty-four (24) inches by thirty-six (36) inches. As used herein, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question. No signs shall be displayed anywhere on the Common Elements.

(f) Flags.

(i) Except as otherwise provided in subsection (ii) below, the Association shall not prohibit an Owner from engaging in the display of the flag of the United States within such physical portion of the Association as the Owner has a right to occupy and use exclusively.



(ii) The provisions of subsection (i) do not apply to the display of the flag of the United States for commercial advertising purposes or preclude the Association from adopting Rules that reasonably restrict the placement and manner of the display of the flag of the United States by an Owner.

(iii) As used in this section, "display of the flag of the United States" means a flag of the United States that is made of cloth, fabric, or paper; displayed from a pole or staff or in a window; and displayed in a manner that is consistent with 4 United States Code Chapter 1. The term does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding, or any other similar building, decorative, or landscaping component.

(iv) Any flag displayed on a Lot may not exceed four (4) feet by six (6) feet. In addition, if pole is used to display the flag, the pole may not exceed ten (10) feet in length.

(g) Antennas and Satellite Dishes. Subject to the Telecommunications Act of 1995, and the provisions of 47 Code of Federal Regulations ("C.F.R.") 1.4000, as may be amended from time to time, or any subsequent federal or state law applicable to common-interest communities, no television antennas or satellite dishes, or radio towers, except as set forth herein, may be erected on any part of the Lot or the Common Elements. Satellite dishes that are one (1) meter or less in diameter and that fall under the scope of the Telecommunications Act of 1995 and the provisions of 47 C.F.R. 1.4000 may be installed on the Lot subject to the preferred placement locations adopted by the Board from time to time, so long as such placement does not unreasonably delay or prevent the installation, maintenance or use of the satellite dish; does not unreasonably increase the cost of installation, maintenance or use; and does not preclude reception or transmission of an acceptable quality signal.

(h) Exterior Holiday Decorations. Lights or decorations may be erected on a Lot in commemoration or celebration of publicly observed holidays, provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of Owners of adjacent Lots by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly-observed holiday between December 1 and December 31 of any year may not be displayed before November 15 of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday, and must be removed no more than two (2) weeks after the holiday. The Board shall have the right, upon thirty (30) days' prior written notice to designate a party to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Board, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence.

(i) Utility Service. No lines, wires or other devices from the communication or transmission of electric current or power, including telephone, television, and radio signals shall be erected, placed or maintained anywhere in or on any Lot, unless the same



shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved in writing by the Board. No provision hereof shall be deemed to forbid the erection of the temporary power or telephone installations incident to the construction of approved buildings or structures.

(j) Laundry. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot. No washing machine or dryer shall be kept on any Lot, except within a Residence, without the prior written approval of the Board.

(k) Garbage. No rubbish, trash, garbage or other waste shall be kept on any Lot except in sanitary containers. All garbage bags must be placed in receptacles with lids. No rubbish, trash, garbage or other waste shall be permitted to accumulate on any Lot in a manner which may permit the spread of fire, odors, seepage or encouragement of vermin. All equipment for the storage or disposal of waste materials shall be kept in a clean and sanitary condition and shall be stored so as not to be visible from any public street or from any other Lot or the Common Elements. Waste containers may be placed on the sidewalks no sooner than twelve (12) hours prior to a scheduled pick-up and must be stored out of sight no later than (12) hours after pick up.

(l) Window Coverings. No aluminum foil, sheets or blankets or any other unsightly material as determined by the Board may be used as window coverings in any Residence.

(m) Leasing of Residences: An Owner is permitted to lease Owner's Residence subject to the following conditions:

- (i) A Lot may not be used for hotel or transient purposes;
- (ii) A Lot may not be leased or rented for an initial term of less than six (6) months;
- (iii) Owner and tenant must enter into a written lease agreement which provides that the terms of the lease shall be subject in all respects to the provisions of the Association's Governing Documents, and that failure by the tenant to comply with the terms of the Governing Documents and the shall be deemed a default of the lease agreement;
- (iv) Owner provides a copy of the written lease agreement to the Board; and
- (v) Owner provides the tenant with a copy of the Association's Governing Documents.

(n) Additions, Alterations, and Improvements: No Owner may make any structural addition, alteration or Improvement to his or her Lot or to the Property without the prior written consent of the Board or the DRC. The procedures for obtaining approval from the Board or DRC are explained in detail in Article 7 of this Declaration.



(o) Front Yard Landscaping. Landscaping in the front yard of a Residence shall be completed within three (3) months from completion of construction of the Residence. Landscaping shall meet or surpass VA and FHA standards.

5.2 **Laws and Insurance Requirements:** Nothing shall be done to or kept on any Lot that might increase the rate of, or cause the cancellation of, insurance for the Property, or any portion of the Property, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in that Owner's Lot that violates any of the restrictions contained in this Declaration or any laws.

## ARTICLE 6 EASEMENTS AND LICENSES

6.1 **Easements of Record:** The Property is presently subject to all easements and licenses of Record, including those shown on the Final Map or otherwise contained herein. The Property contains easements which have been granted to the City of Las Vegas, Clark County, Nevada or other interested parties. Easements for open space, landscaping, street lights, drainage, utilities, future streets, etc. may have some restricting effect on the use of the Common Elements within the Property. Known easements of this sort as of the date of Recordation of the Final Map are referenced on the same.

6.2 **Encroachment Easement:** The Property, and all portions thereof, shall be subject to an easement from the Lot's or Common Element's boundaries for the actual extent of encroachments created by construction as designed or constructed by Declarant and for settling, shifting, and movement of any portion of the Property, except that no such easement is created for an encroachment which is the result of willful conduct on the part of Declarant, an Owner, Owner's Invitee, the Association, or any other Person. A valid easement for said encroachments and for the maintenance thereof shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Property. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of improvements constructed on any Lot, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvements on the Property.

6.3 **Association Easement:** The Association shall have an easement over the Common Elements for performing its duties and exercising its powers described in this Declaration. In addition, the Association shall have an easement over each Lot for the purpose of maintaining or repairing the Common Elements, including any portion of the Common Elements that may encroach upon a Lot.

6.4 **Member's Easement in Common Elements:** Subject to the provisions of this Declaration, every Owner shall have a non-exclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Elements.

6.5 **Extent of Member's Easements:** The rights and easements of use and enjoyment of the Common Elements created by this Declaration shall be subject to the Governing Documents, which include, without limitation, the following:

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(a) The right of the Board to consent to or otherwise cause the construction of additional Improvements on the Common Elements and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Elements for the benefit of the Owners.

(b) The right of the Association acting through the Board and pursuant to an agreement executed by a majority of Owners, which agreement must be Recorded and which must specify a date after which the agreement will be void unless Recorded, to convey the Common Elements or to subject the Common Elements to a Security Interest;

(c) The right of the Board to grant easements, leases, licenses and concessions through or over the Common Elements, including easements for water drainage;

(d) The right of the Board to reasonably restrict access to easements for which the Association is responsible for maintenance;

(e) The right of the Board to establish uniform Rules for the use of the Common Elements; and

#### ARTICLE 7 ADDITIONS, ALTERATIONS, AND IMPROVEMENTS

**7.1 Requisite Approvals and Procedures for Owner Alteration:** No Owner may make or commence any structural addition, alteration or Improvement on his or her lot or anywhere in the Property, including without limitation, the alteration or construction of any building, fence, wall or structure, or the planting of any tree, shrubbery, or other foliage, without the prior written consent of the Board of Directors or the DRC.

(a) Any request for approval of anything prohibited under Section 7.1 or Section 7.1(b) must be submitted in writing to the Board of Directors or the DRC, as applicable. The Board of Directors or the DRC shall answer any written request for approval within sixty (60) days after the request. Failure to answer the request within this time shall constitute a denial by the Board of Directors or the DRC of the proposed action. Any such request shall be reviewed in accordance with any Design Review Guidelines then in effect, this Declaration, and any Development Regulations, as defined in the Master Declaration, adopted by the Master Association.

(b) Subject to this Section 7.1, an Owner:

(i) May make any Improvements or alterations to the interior of such Owner's Residence that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Property. Owner is responsible for submitting any and all applications to any department or governmental authority necessary for obtaining permits to make any addition, alteration or Improvement.



(ii) May not make any Improvements or alterations to the Common Elements or any other portion of the Property, unless at the direction of the Board of Directors.

(c) Any member or authorized consultant of the Board of Directors or the DRC, or any authorized officer, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or Improvement constructed or under construction on the Lot to determine whether the work has been or is being built in compliance with the plans and specifications approved by the Board of Directors or the DRC.

(d) All additions, alterations and Improvements to the Lots and Common Elements shall not, except pursuant to prior approval by the Board of Directors, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Lots other than those affected by such change.

**7.2 Construction Timelines:** Upon approval by the Board or the DRC of an architectural request submitted by an Owner, the Owner shall have sixty (60) days from the date that he or she receives the written approval from the Board or DRC within which to construct the alteration or Improvement, unless the Board agrees in writing to extend the time period. Failure by an Owner to construct an addition or Improvement within the prescribed timeframe shall result in the assessment of a penalty of Fifty Dollars (\$50.00) per day until construction has been completed. The Board or DRC shall not assess any penalties until the Owner has been provided with notice and a hearing in accordance with Article XIV of this Declaration.

**7.3 Members of the Committee:** The DRC shall consist of at least three (3) members, all of whom shall be appointed by the Board. Each member of the DRC shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the DRC may be removed at any time without cause. The Board shall have the power to appoint and remove all members of the DRC. Members of the DRC need not be Members of the Association.

**7.4 Meetings of the DRC:** The DRC shall meet from time to time as necessary to perform its duties hereunder, but such meetings shall be held at least annually. The DRC may from time to time by resolution unanimously adopted in writing designate one of its members to take any action or perform any duties for and on behalf of the DRC. In the absence of such designation, the vote of a majority of all of the members of the DRC or the written consent of a majority of all of the members of the DRC taken without a meeting shall constitute an act of the DRC.

**7.5 Limitation on Liability of Design Review Committee:** Provided that the DRC or a particular member of the DRC has acted in good faith on the basis of the information as may be possessed by the DRC or the member, as the case may be, then neither the DRC nor any member thereof shall be liable to the Association, to any Owner, or any other Person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the



development of any property subject to this Declaration. Without limiting the generality of the foregoing, the DRC and any member thereof may, with the approval of the Board, consult with knowledgeable third parties with respect to any plans, drawings, specifications, or any other proposal submitted to the DRC.

**7.6 Design Review Guidelines:** The DRC may, upon request of the Board of Directors and subject to the approval of the Board of Directors, prepare and promulgate Design Review Guidelines containing guidelines and review procedures on behalf of the Association. The Design Review Guidelines shall be those of the Association, and the DRC shall have sole and full authority to prepare and to amend the Design Review Guidelines, provided the Design Review Guidelines are otherwise in compliance with the Articles, the Bylaws, and this Declaration. The DRC shall make copies of the Design Review Guidelines available to Owners upon request.

**7.7 Board of Directors and Design Review Committee Discretion:** Except as may be expressly provided in this Declaration, any consent or approval of the Board of Directors, DRC or Association that is required under the provisions hereof may be granted or withheld in the sole and absolute discretion of the Board of Directors, DRC, or Association, as applicable. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise; provided, however, that the decision of the Board of Directors, DRC, or Association shall be consistent with the Governing Documents, including the Design Review Guidelines, as may be in effect at the time of such granting or withholding of consent or approval. Furthermore, the approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

**7.8 No Applicability to Board of Directors:** Subject only to the express limitations in this Declaration or the Act, the Board of Directors may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

## ARTICLE 8 AMENDMENTS TO DECLARATION

**8.1 In General:** Except in cases of amendments that may be executed by certain Owners under the Act, including, without limitation, NRS 116.2113(2), and NRS 116.2118, and except as limited by Articles 8 and 10 of this Declaration, this Declaration, including the Final Map, may be amended only by vote or agreement of a majority of Owners. The procedure for amendment must follow the procedures set forth in NRS 116.2117.

**8.2 Limitation of Challenges:** An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is Recorded.

**8.3 Recordation of Amendments:** Each amendment to this Declaration must be Recorded and the amendment is effective only upon being Recorded.

**8.4 Unanimous Consent:** Except to the extent expressly permitted or required by other provisions of this Declaration or the Act, no amendment may change the boundaries of any Lot,

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the Allocated Interests of a Lot or the uses to which any Lot is restricted in the absence of unanimous consent of the Owners affected and consent of a majority of Owners. For purposes of this subsection 9.4, "change in the use to which a Lot is restricted" refers to an amendment that would alter the land use designation or classification of a Lot or would alter the character of the Property (for example, changing a Lot from residential use to commercial use or changing the Property from single-family residential use to commercial use). However, it does not include any amendment to an existing use restriction set forth in Article VI of this Declaration or any new restriction that does not affect the designation or classification of a Lot or the Property.

**8.5 Execution of Amendments:** An amendment to this Declaration required by the Act to be Recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, Recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

**8.6 Consent of Holders of Security Interests:** Amendments are subject to the consent requirements of Article 10 of this Declaration, and, to the extent that any Security Interests are held by or insured by FNMA, FHLMC, VA, or HUD, such amendments shall be in accordance with applicable rules and regulations of FNMA, FHLMC, VA, or HUD.

## **ARTICLE 9 TERMINATION**

Termination of the Property may be accomplished only upon the approval of the Owners of Eighty Percent (80%) of the total number of Lots within the Property, and then in accordance with the provisions of the Act.

## **ARTICLE 10 ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

**10.1 Liability for Common Expenses:** The percentage of liability for Common Expenses allocated to each Lot (except as otherwise set forth herein) is a fraction, the numerator being one (1) and the denominator being the total number of Lots within the Property. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Lots under this Declaration.

**10.2 Common Expenses Attributable to Fewer than all Lots; Exempt Property:**

- (a) Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited.
- (b) The costs of insurance and utilities shall be assessed equally amongst all Lots.
- (c) An Assessment to pay a judgment against the Association may be made only against the Lots in the Property at the time the judgment was entered, in proportion to the respective Liability for Common Expense.

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(d) If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Lot.

(e) If the Liability for Common Expenses is reallocated, Common Expenses Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

### 10.3 Lien:

(a) The Association has a lien on a Lot for an Assessment levied against the Lot or fines imposed against its Owner from the time the Assessment or fine becomes due. Fees, charges, late charges, fines, attorneys' fees, and interest charged pursuant to the Act and the Governing Documents are enforceable as Assessments under this Section; provided, however, that unless otherwise permitted by law, the Association may not foreclose upon a lien for unpaid Assessments which is comprised solely of fines levied against an Owner for violation of the Governing Documents unless the violation is of a type that poses an imminent threat of causing a substantial adverse effect on the health, safety and/or welfare of the Owners or Invitees of the Property. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

(b) Except to the extent permitted under the Act, a lien under this section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances Recorded before the Recordation of this Declaration; (2) a first Security Interest on the Lot Recorded before the date on which the Assessment sought to be enforced became delinquent, except that a lien under this Section is prior to such Security interests to the extent of the Assessments for Common Expenses based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other Assessments made by the Association.

(c) Recording of the Declaration constitutes record notice and perfection of the lien. Further Recording of a claim of lien for Assessment under this Section is not required.

(d) A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due, except that if an Owner of a Lot subject to a lien under this section files a petition for relief under the United States Bankruptcy Code ("Bankruptcy Code"), the time period for instituting proceedings to enforce the Association's lien shall be tolled until the later of the time period allowed hereunder or thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

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(e) This section does not prohibit an action to recover sums for which subsection (a) of this section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(g) The Association's lien must be foreclosed by the same procedure set forth in NRS 116.31162 through NRS 116.31164.

(h) In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due to that Owner from third parties prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments, based on a periodic budget adopted by the Association pursuant to Section 10.4 below.

(i) If a holder of a first Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Assessments against that Lot which became due before the sale, other than the Assessments which are prior to that Security Interest under Subsection (b) of this section of this Declaration and as provided in NRS 116.3116(2)(c). Any unpaid Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

(j) Any Person who has or claims any right, title or interest in, or lien or charge upon a Lot or any other Person who is or may be held liable for any debt secured by a lien on the Lot may request a copy of a Notice of Default and Sale. Such request must be Recorded in accordance with NRS 107.090 and shall apply to the foreclosure of an Association lien. The request must identify the lien by stating the names of the Owner and the Property.

(k) In accordance with NRS 116.31162 through NRS 116.31164, the Association shall provide notice of its intent to foreclose a lien to each lien holder of the affected Lot known to the Association.

(l) Any payments received by the Association in the discharge of an Owner's obligation may be applied to the oldest balance due; provided, however, that the Association may not apply any Assessment, fee or other charge that is paid by an Owner toward a fine imposed against the Owner by the Association unless otherwise directed by the Owner or as permitted by law.

#### **10.4 Budget Adoption and Ratification:**

Prior to the commencement of each Fiscal Year, the Board shall determine the Budget for the Association for such Fiscal Year in the following manner:

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(a) The Board shall, not less than thirty (30) days nor more than sixty (60) days before the beginning of each Fiscal Year of the Association, prepare and distribute to each Owner a copy of the budget for the daily operation of the Association (the "Operating Budget"). The Operating Budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve fund established by this Article 10. In lieu of distributing copies of the Operating Budget, the Board may distribute summaries of the Operating Budget, accompanied by a written notice that the Operating Budget is available for review at the business office of the Association or other suitable location and that copies of the Operating Budget will be provided upon request.

(b) The Association shall also establish adequate reserves, funded upon a reasonable basis, for the repair, replacement, and restoration of the major components of the Common Elements. The reserve funds may be used only for those purposes and not for daily maintenance. Money in the reserve accounts may not be withdrawn without the signatures of at least two (2) members of the Board or the signatures of at least one (1) member of the Board and one (1) officer of the Association who is not a member of the Board.

(c) The Board shall, not less than thirty (30) days or more than sixty (60) days before the beginning of the Fiscal Year of the Association prepare and distribute to each Owner a copy of the reserve budget (the "Reserve Budget"). In lieu of distributing copies of the Reserve Budget, the Board may distribute summaries of the Reserve Budget, accompanied by a written notice that the Reserve Budget is available for review at the business office of the Association or other suitable location and that copies of the budget will be provided upon request.

The Reserve Budget must include, without limitation: (a) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Elements; (b) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace, or restore the major components of the Common Elements; (c) a statement as to whether the Board has determined or anticipates that the levy of one or more Assessments will be required to repair, replace, or restore any major component of the Common Elements or to provide adequate reserves for that purpose; and (d) a general statement describing the procedures used for the estimation and accumulation of cash reserves, including, without limitation, the qualifications of the Person responsible for the preparation of the reserve study required under this Section.

The Board shall cause to be conducted at least once every five (5) years, a study of the reserves required to be maintained by this Section, review the results of that study at least annually to determine if those reserves are sufficient, and make any adjustments it deems necessary to maintain the required reserves. The reserve study must be conducted by a Person licensed to conduct such a study (as determined pursuant to the Act). The study must include, without limitation: (i) a summary of an inspection of the major components of the Common Elements that the Association is obligated to repair, replace, or restore; (ii) an identification of the major components of the Common Elements that the Association is obligated to repair, replace, or



restore which have a remaining useful life of less than thirty (30) years; (iii) an estimate of the remaining useful life of each major component so identified; (iv) an estimate of the cost of repair, replacement, or restoration of each major component so identified; (v) an estimate of the total Common Assessments that may be required to cover the cost of repair, replacement, or restoration of the major components so identified after subtracting the reserves of the Association as of the date of the study; and (vi) an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves. As used herein, "major component" shall mean any component of the Common Elements, including, without limitation, any amenity, improvement, furnishing, fixture, finish, system or equipment, that may, within 30 years after its original installation, require repair, replacement or restoration in excess of routine annual maintenance which is included in the annual operating budget of the Association.

In the event a reserve study shows a deficiency in the reserve account for the Association, the Association may establish a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the Common Elements over a period of years; provided the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the Common Elements are necessary.

(d) Upon determination of the Budget for a Fiscal Year, the Board shall furnish a copy of the Budget to each Owner as herein provided (which Budget shall separately identify amounts attributable to the Operating Budget and the Reserve Budget) together with a written statement of the amount of the Common Assessment to be assessed against the Owner's Residence for the applicable Fiscal Year. The Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after the mailing of the budget. Unless at that meeting a majority of all Owners reject the Budget, the Budget is ratified, whether or not a quorum is present. If the proposed Budget is rejected, the periodic Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

(e) The amount to be raised by Common Assessments during a Fiscal Year shall be equal to (a) the Operating Budget for such period, plus (b) the Reserve Budget to be set aside for said period, less the amount attributable to the Operating Budget collected but not disbursed in the immediately preceding Fiscal Year or partial Fiscal Year; provided, however, that in lieu of such subtraction the Board may elect to refund said surplus to the Owners or deposit the funds into the reserve account.

If the Board fails to determine or cause to be determined the total amount to be raised by Common Assessments in any Fiscal Year and/or fails to notify the Owners of the amount of such Common Assessments for any Fiscal Year, then the amounts of Common Assessments shall be deemed to be the amounts assessed in the previous Fiscal Year.

Except as emergencies may require, the Association shall make no commitments or expenditures in excess of the funds reasonably expected to be available to the Association.

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**10.5 Capital Improvement Assessments:** If the Board of Directors votes to levy a Capital Improvement Assessment, the Owners shall be provided with written notice of a meeting at which the Capital Improvement Assessment is to be considered or action is to be taken on such Assessment at least twenty-one (21) days before the date of the meeting. The Board of Directors shall submit the Assessment to the Owners for ratification in the same manner as a budget under Section 12.4(d). A Capital Improvement Assessment levied pursuant to this Section 12.5 shall include: (a) an assessment not included in the current Budget, other than one enumerated in Section 12.2 of this Declaration, in an amount greater than fifteen percent (15%) of the current annual operating budget; or (b) an assessment for the cost of construction, reconstruction, repair or replacement of a new capital improvement upon the Common Elements.

**10.6 Certificate of Payment of Common Expense Assessments:** The Association, upon written request, shall furnish an Owner with a statement, in Recordable form, setting out the amount of unpaid Assessments against the Lot. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association the Board of Directors and each Owner.

**10.7 Monthly Payment of Common Expenses:** Subject to Board decision, all Common Expense Assessments assessed under Sections 10.1 and 10.2 of this Declaration shall be due and payable monthly, at 1/12th of the annual total (in cases where an annual total is applicable).

**10.8 Acceleration of Common Expense Assessments and Late Fee:** In the event of default in which any Owner does not make the payment of any Common Expense Assessment levied against his or her Lot within ten (10) days after the date due, the Board of Directors shall have the right, after notice and hearing, to declare all unpaid Assessments for the pertinent Fiscal Year immediately due and payable. A late fee in the amount of Ten Dollars (\$10.00) will be imposed against the Owner's association account if a Common Expense Assessment is not received by 5:00 PM on the tenth (10<sup>th</sup>) calendar day of the month. In addition, if a Common Expense Assessment is not paid by the 5:00 PM on the last calendar day of a particular month, interest charges in the maximum amount permitted by the Act will be imposed against the Owner's association account.

**10.9 Commencement of Common Expense Assessments:** The Common Expense Assessments provided for herein shall begin as to all Lots in the Property and subject to this Declaration (other than unsold Lots owned by Declarant if a Subsidy Agreement is in effect) on the first day of the month following recordation of this Declaration.

**10.10 No Waiver of Liability for Common Expenses:** No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lots against which the Assessments are made.

**10.11 Personal Liability of Owners:** The Owner of a Lot, at the time a Common Expense Assessment or portion thereof is due and payable, is personally liable for the Common Expense Assessment. Additionally, the Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association: (a) annual Common Expense Assessments; (b) Capital Improvement Assessments; and (c) Special Assessments, such assessments to be



established and collected as herein provided. All Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such Assessment is made.

(a) No Owner may be exempt from the personal liability for any Assessments described in this Declaration, nor release the Lot owned by the Owner from the liens and charges thereof by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Owner's Lot.

(b) Personal liability for the Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. The successor in title shall be personally liable for any Common Expense Assessments thereafter due.

### ARTICLE 11 RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense Assessments, only upon the approval of a majority of Owners, at a meeting called for that purpose, and with Eligible Mortgagees' consent described in Article XI.

### ARTICLE 12 PERSONS AND LOTS SUBJECT TO GOVERNING DOCUMENTS

12.1 Compliance with Governing Documents: All Owners and Invitees of Lots shall comply with the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of the Governing Documents are accepted and ratified by that Owner or Invitee. All provisions of the Governing Documents that are Recorded are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

12.2 Responsibility for Violations: Consistent with the Governing Documents and the Act, an Owner is responsible for the actions and conduct of his or her Invitees.

(a) Upon receipt of a written complaint from an Owner or Invitee or observation by a member of the Board of Directors or management regarding a potential violation of the Governing Documents, the Association's Manager or other authorized agent of the Association, acting on behalf of the Board of Directors, shall issue a notice to the Owner of the alleged violation (the "Initial Notice"). The Initial Notice shall be in writing, and must be signed by a representative of the Board, the Manager, legal counsel, or some authorized agent of the Association. A copy of the Initial Notice may also be mailed to an Invitee residing on the Lot.

(b) If the alleged violation is not remedied within the time period set forth in the Initial Notice, the Board of directors, or any Person designated by the Board to act on its behalf may serve a "Notice of Violation" against the Owner for any alleged violation of any provisions of the Governing Documents by the Owner or his or her Invitee. A copy

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of the Notice of Violation may also be mailed to an Invitee residing on the Lot. The Notice of Violation must contain the following information:

- (i) A description of the violation;
- (ii) The approximate time and place at which the violation was observed;
- (iii) The amount of the fine that may be assessed against the Owner's association account for the violation;
- (iv) The name of the issuer of the Notice of Violation;
- (v) A statement advising the Owner of the date, time, and location of a hearing scheduled before the Board of Directors; and
- (vi) Notice that if the violation is not cured within the time period set forth in the Notice of Violation, the Association may Record a Notice of Non-Compliance against the Lot.

(c) If the nature of the alleged violation is such that, in the sole discretion of the Board of Directors, it poses an imminent threat to the health, safety, and/or welfare of the Owners or Invitees of the Association, then the Board may immediately send a Notice of Violation, as set forth in subsection (b) above, without first sending the Initial Notice as required by subsection (a) above. A copy of the Notice of Violation may also be mailed to an Invitee residing on the Lot.

(d) Any hearing which discussed a violation of the Governing Documents including, without limitation, the failure to pay an Assessment, shall be conducted in an executive session of the Board of Directors. If the Board concludes, after notice and a hearing, that an Owner has violated a provision of the Governing Documents, then the Board may impose one or all of the following sanctions:

- (i) Fines imposed consistent with the Act and the Rules, if any, adopted by the Board;
- (ii) Suspension of any right to use the Common Elements during the term of the violation;
- (iii) Suspension of the right of the Owner to vote on any matter affecting the Association;
- (iv) A declaration that the Owner is not in good standing;
- (v) Declaratory or injunctive relief against the Owner of the Lot, or against the Invitee residing on the Lot;



(vi) Assessments, including any attorneys' fees, due to the misconduct of the Owner or Invitee, which were incurred to bring the Lot into compliance with the Governing Documents; and

(vii) Any other legal or equitable remedies available to the Association for said violations.

(e) Within thirty (30) days of the hearing, the Board shall issue a letter to the Owner outlining the hearing result, including any penalties imposed by the Board.

(f) Any fines imposed by the Association for a violation of the Governing Documents that does not pose an imminent threat to the health, safety, and/or welfare of the Owners or Invitees of the Association may not exceed One Hundred Dollars (\$100.00) for each violation.

(g) Any fines imposed by the Association for a violation of the Governing Documents that poses an imminent threat to the health, safety, and/or welfare of the Owners or Invitees of the Association must be commensurate with the severity of the violation as shall be determined by the Board in accordance with the Governing Documents, but is otherwise not subject to the limitation on the amount set forth in subsection (f), above.

(h) A fine may not be imposed unless the against whom the fine will be imposed has been provided with written notice of the applicable provisions of the Governing Documents that form the basis of the violation and within a reasonable time after discovery of the violation, the against whom the fine may be imposed has been provided with a Notice of Violation pursuant to subsection (c) and a reasonable opportunity to contest the violation at the hearing.

(i) If a fine is imposed pursuant to subsections (f) or (g) above and the violation is not cured within fourteen (14) days, or within any longer period that may be established by the Board, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for every seven (7) days or portion thereof that the violation remains uncured. Any additional fine may be imposed without an additional notice and opportunity to be heard.

(j) Any fine which is not paid within thirty (30) days of the notice of fine shall be considered past due and shall bear interest at the maximum rate permitted by the Act.

(k) If any fine is not paid within thirty (30) days of notice of the fine, then, in addition to any other remedies that may be pursued by the Board, the Association may Record a lien against the Lot in the Office of the County Recorder, Clark County, Nevada.

(l) If the violation giving rise to the fine is determined by the Board to be a violation that poses an imminent threat to the health, safety, and/or welfare of the Owners or Invitees in the Association, then in addition to Recording a lien against the Lot, the Association may initiate foreclosure proceedings against the Lot.



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

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

### ARTICLE 13 INSURANCE

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

**13.2 Property Insurance Coverage:**

(a) Coverage. Property insurance will cover:

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

(ii) All personal property owned by the Association.

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

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

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

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

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

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

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

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

(v) Losses must be adjusted with the Association.

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

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

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

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

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

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

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



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

Insurance policies carried pursuant to this Section shall provide that:

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

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



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

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

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

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

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

#### ARTICLE 14 DAMAGE TO OR DESTRUCTION OF PROPERTY

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

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

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

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



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

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

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

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

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

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

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

## ARTICLE 15 CONDEMNATION

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



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

## ARTICLE 16 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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



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

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

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

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

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



**CERTIFICATE OF OFFICERS**

We, the undersigned, hereby certify as follows:

1. We are the duly elected and acting President and Secretary for ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION, a Nevada non-profit corporation.

2. The foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Rosemere Estates, duly adopted by the members of the Association on July 2, 2007.

3. Members representing more than sixty-seven percent (67%) of the voting power of the Members of the Association voted in favor of the First Amendment.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of this 2nd day of July, 2007.

June

**ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION**

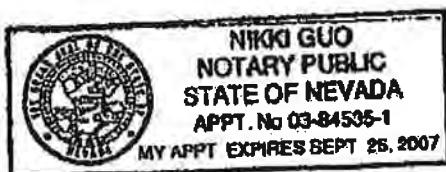
By: [Signature]  
Its: GERRY ZOBRIEST  
President

By: [Signature]  
Its: SHERMAN L. KEARL  
Secretary

STATE OF NEVADA )  
 )ss.  
COUNTY OF CLARK )

On this 2 day of June, 2007, before me the undersigned Notary Public, in and for said County and State, personally appeared Gerry Zobriest, Sherman Kearl, known or proved to me to be the President of Rosemere Estates Property Owners Association, who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein provided.

[Signature]  
NOTARY PUBLIC



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**EXHIBIT "A"****Legal Description of the Property:**

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

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**EXHIBIT "A"****LEGAL DESCRIPTION:**

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

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

Containing 5.346 acres, more or less.

Total number of lots - 9 (nine)

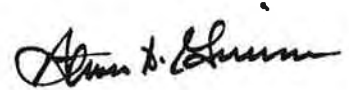
000126



# EXHIBIT “D”



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CLERK OF THE COURT

**OGSJ**  
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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.

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JUL 25 2013



Pursuant to NRCP 56(c), the Court's findings with respect to the undisputed material facts and legal determinations on which the court granted summary judgment are set forth herein and as follows:

**I. FINDINGS OF UNDISPUTED MATERIAL FACTS**

1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs.")

2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

3. The Original CC&Rs create a "property owners' committee" with very limited maintenance duties over specific common area items (exterior walls and planters, entrance way and planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the Original CC&Rs.

4. The Original CC&Rs then grant each homeowner, and not any homeowners' association, the power to enforce the Original CC&Rs against one another.

5. Among other things, there are no rental or pet restrictions or construction deadline in the Original CC&Rs.

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

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

8. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lyttles"), purchased a Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995.

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

///



1           10. The Lytles purchased the property with the sole purpose of building a custom home  
2 thereon.

3           11. The primary reasons that the Lytles selected the property were the limited restrictions  
4 contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally  
5 defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

6           12. Further, the Lytles could not meet any restrictive deadline on construction, so  
7 Plaintiff purposefully selected in a community with no construction deadline.

8           13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff  
9 had developed preliminary plans that were approved by the Developer.

10           14. Sometime after Plaintiff purchased its property, a group of property owners formed  
11 the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of  
12 maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

13           15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of  
14 Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners'  
15 committee and named it "Rosemere Estates Property Owners Association."

16           16. The property owners recognized that the Association did not have powers granted to  
17 it other than those granted by the Original CC&Rs. For example, the Association had no power to  
18 assess, fine, issue rules and regulations, or undertake other actions commonly reserved for  
19 homeowners' associations.

20           17. In 1997, some of the property owners prepared and distributed a proposed set of  
21 amended CC&Rs, which proposed to empower the Association and drastically increase the scope of  
22 the Original CC&Rs.

23           18. The property owners determined that unanimous consent was required to amend the  
24 Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs  
25 were not adopted.

26 ///

27 ///

28 ///



1           19. At a February 23, 2004 Association meeting, two Board members presented a set of  
2 proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within  
3 the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations,  
4 prohibitions against "unsightly articles," and other use restrictions and obligations.

5           20. The proposed amended CC&Rs were not unanimously approved at the February 23,  
6 2004 meeting and, therefore, not adopted.

7           21. Without warning, consultation or advisement to the Rosemere property owners, on or  
8 about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by  
9 the Board.

10          22. This third set of proposed amended CC&Rs increased the complexity, scope, and size  
11 of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the  
12 property owners.

13          23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the  
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated  
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a  
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February  
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"  
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated  
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the  
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on  
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration  
22 and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions  
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24          24. The binders containing all of the foregoing documents were presented to each  
25 homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of  
26 Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for  
27 amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada  
28 Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed



1 to conform to NRS Chapter 116 “without complying with the procedural requirements generally  
2 applicable to the adoption of an amendment...,” and (5) all of the changes made were under NRS  
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs  
5 and changed the very nature of property ownership within Rosemere Estates. The Amended  
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the  
7 powers, rights, and duties of the Association, a section entitled “Restrictions on Use, Alienation,  
8 and Occupancy,” pet restrictions, parking restrictions, lease restrictions, the establishment of a  
9 Design Review Committee with unfettered discretion, and a new and expansive definition of  
10 “nuisance.”

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,  
13 offensive, or unlawful by the Board of Directors may be  
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found  
16 off a leash to immediately be turned over to animal control, and any animal causing a “nuisance,” a  
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days  
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would  
20 require Plaintiff to complete the construction of the custom home on the lot within a mere *60 days*  
21 of receipt of approval from the proposed Design Review Committee—something never envisioned  
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff’s property is the only Property subject to this restriction as Plaintiff’s  
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined  
26 \$50.00 per day for failure to comply with this impossible deadline.

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1           31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within  
2 the Board's discretion, (2) based on Design Review Guidelines that have never been published, and  
3 (3) not subject "to any objective standards of reasonableness."

4           32. After the Board presented the proposed Amended CC&Rs to the owners, together  
5 with the written misrepresentations set forth above, the Board did not provide the owners with a  
6 reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice.  
7 Rather, the Board insisted that the amendment was "a done deal."

8           33. Despite the misrepresentations introducing the governing documents, the vast  
9 expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that  
10 the amendment was a "done deal," the Board asked the property owners to sign documents  
11 acknowledging their approval, with a notary retained by the Board present to verify signatures.

12           34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007  
13 meeting. In fact, only five of the property owners approved, with three property owners who  
14 refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not  
15 counted by the Board.

16           35. Despite the failure to obtain the required unanimous approval for amending the  
17 Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the  
18 office of the Recorder for Clark County, Nevada.

## 19   **II. LEGAL DETERMINATIONS**

### 20   **A. Summary Judgment Standard**

21           1. Summary judgment shall be rendered in favor of a moving party if the pleadings,  
22 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
23 show that there is no genuine issue as to any material fact and that the moving party is entitled to  
24 judgment as a matter of law. NRCP Rule 56(c).

25           2. "Summary Judgment is appropriate and shall be rendered forthwith when the  
26 pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact  
27 [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*,  
28 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting NRCP 56(c).)



3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

**B. Plaintiff Is Entitled To Summary Judgment In Its Favor**

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

**C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116**

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

**Organization of unit-owners' association.**

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq.*

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1           9. There is a strong public policy in protecting property owners in common-interest  
2 communities against any alteration of the burdens of character of the community. Rest. 3d,  
3 Property – Servitudes, § 6.10, Comments.<sup>1</sup>

4           10. A buyer is said to have “record notice” of the recorded covenants, conditions and  
5 restrictions on the property, thus the mandate that the homeowners’ association be formed prior to  
6 conveyance of the first unit in the community, together with the requirement that the CC&Rs be  
7 recorded. NRS 116.3101.

8           11. Here, no Chapter 116 unit-owners’ association was formed because no association  
9 was organized prior to the date the first unit was conveyed. The Association was not formed until  
10 February 25, 1997, more than three years after Rosemere Estates was formed and the Original  
11 CC&Rs were recorded.

12           12. Further, the Association did not have any powers beyond those of the “property  
13 owners committee” designated in the Original CC&Rs—simply to care for the landscaping and  
14 other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

15           13. The Original CC&Rs provide for the creation of a “property owners’ committee,”  
16 which is a “limited purpose association,” as defined by the 1994 version of NRS 116.1201, then in  
17 effect. That provision provided that Chapter 116 did not apply to “Associations created for the  
18 limited purpose of maintaining. . . “[t]he landscape of the common elements of a common interest  
19 community. . . .”

20           14. In 1997, Rosemere Estates’ owners formed the Association for the express and  
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original  
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the  
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability  
24 insurance. The intent was never to form a unit-owners’ association within the meaning of Chapter  
25 116.

26       ///

27  
28 <sup>1</sup> “Property owners in common-interest communities are protected against amendments that unfairly  
change the allocation of burdens in the community or change the character of the community.” Rest.  
Law 3d, Property – Servitudes, § 6.10, Comments.



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

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

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

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

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

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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.

\* \* \*

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

6 (Emphasis added.)

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

### 9 **III. JUDGMENT**

10 IT IS HEREBY ADJUDGED AND DECREED:

#### 11 **A. Declaration**

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

#### 16 **B. Injunctive Relief**

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

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

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

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

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

#### 26 **E. Costs**

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

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GIBBS GIDEN LOCHER TURNER SENET &amp; WITTBRODT

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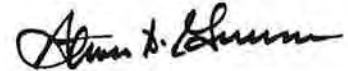
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# EXHIBIT “E”



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CLERK OF THE COURT

**ORDR**

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Bryan M. Gragg, Esq.  
Nevada State Bar # 13134

**GIBBS GIDEN LOCHER TURNER  
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(702) 836-9800

Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

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

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

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

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

3 24. Except as otherwise provided herein, Subdivider or any owner or  
4 owners of any of the lots shall have the right to enforce any or all of the  
5 provisions of the covenants, conditions, and restrictions upon any other  
6 owner or owners. In order to enforce said provision or provisions, any  
appropriate judicial proceeding in law or in equity may be initiated and  
prosecuted by any lot owners or owners against any other owner or  
owners.

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

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

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

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

22 See Amended CC&Rs, § 16.1(a).

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

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

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

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

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

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

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

22 The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs'  
 23 attorneys, as set forth in the various affidavits and declarations presented to this Court with the  
 24 moving papers. The Court finds that Plaintiffs are entitled to an award of \$297,072.66 in attorneys'  
 25 fees as the prevailing party in this action, having achieved the revocation of the Amended CC&Rs  
 26 and removing the cloud on title to their property.

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1 Therefore, the Court orders as follows:

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

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

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HONORABLE MICHELLE LEAVITT

District Court Judge, Dept. XII

RL

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13 DATED: May 19, 2016

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

14  
15 By: 

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
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Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

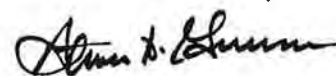
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# EXHIBIT “F”



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CLERK OF THE COURT

**ORDER**

Richard E. Haskin, Esq.  
Nevada State Bar # 11592  
Bryan M. Gragg, Esq.  
Nevada State Bar # 13134  
**GIBBS GIDEN LOCHER TURNER  
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(702) 836-9800

Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

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

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

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

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

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

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<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input checked="" type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT


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1 Therefore, the Court orders as follows:

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

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

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HONORABLE MICHELLE LEAVITT  
District Court Judge, Dept. XII  
RL

DATED: June 6, 2016

GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP

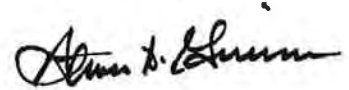
By: 

Richard E. Haskin, Esq.  
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7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
Attorneys for Plaintiff  
JOHN ALLEN LYTLE and TRUDI LEE LYTLE



# EXHIBIT “G”





CLERK OF THE COURT

**ORDR**Richard E. Haskin, Esq.  
Nevada State Bar # 11592Bryan M. Gragg, Esq.  
Nevada State Bar # 13134**GIBBS GIDEN LOCHER TURNER  
SENET & WITTBRODT LLP**7450 Arroyo Crossing Parkway, Suite 270  
Las Vegas, Nevada 89113-4059  
(702) 836-9800Attorneys for Plaintiff  
JOHN ALLEN LYTLE and  
TRUDI LEE LYTLE**DISTRICT COURT****CLARK COUNTY, NEVADA**JOHN ALLEN LYTLE and TRUDI LEE LYTLE,  
as Trustees of the Lytle Trust,

Plaintiffs,

v.

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

Defendants.

CASE NO. A-09-593497-C  
Dept.: XII**ORDER AWARDING COSTS**

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

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

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

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4  
5 IT IS SO ORDERED this 22 day of July, 2016.

6  
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8   
9 HONORABLE MICHELLE LEAVITT  
10 District Court Judge, Dept. XII  
11

12 DATED: May 3, 2016

13 GIBBS GIDEN LOCHER TURNER  
14 SENET & WITTBRODT LLP

15 By: 

16 Richard E. Haskin, Esq.  
17 Nevada State Bar # 11592  
18 7450 Arroyo Crossing Parkway, Suite 270  
19 Las Vegas, Nevada 89113-4059  
20 Attorneys for Plaintiff  
21 JOHN ALLEN LYTLE and TRUDI LEE LYTLE  
22  
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24  
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28



# EXHIBIT “H”



SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

**SDW**

**STIP**

JASON D. SMITH, ESQ.

Nevada Bar No. 9691

JENNIFER LYNNE SANDERS, ESQ.

Nevada Bar No. 10980

SANTORO, DRIGGS, WALCH,

KEARNEY, HOLLEY & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Facsimile: 702/791-1912

*Attorneys for Respondent*

**STATE OF NEVADA**

**DEPARTMENT OF BUSINESS AND INDUSTRY**

**REAL ESTATE DIVISION**

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

Claimant.

Case No.: NRED Control No. 09-33

v.

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

Respondent.

**STIPULATED FACTS AND EXHIBITS**

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

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

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



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

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

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

6. On or about January 4, 1994, Developer recorded a certain Declaration of Covenants, Conditions and Restrictions, a true and correct copy of which is attached as **EXHIBIT 1** hereto (the "Original CC and R's").

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

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

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

\* \* \*

(b) 8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture...contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes...

\* \* \*

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

\* \* \*

(d) 21. A property owners committee shall be established by all owners of lots within the subdivision

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Fenaya and El Pargue frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.



c. The Entrance Gate and its 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 lot owners of lots within the subdivision.

\* \* \*

(c) 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. . .

\* \* \*

(f) 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 shall pay in such amount as may be fixed by the court in any such proceeding.

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

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

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

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

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

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



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

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

8           16.    The Lytle Property remains undeveloped.

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

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

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

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

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

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

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

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

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

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

SDW



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

Dated this 14 day of April, 2009.

Dated this 14 day of April, 2009.

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

**THOMAS D. HARPER, LTD.**

JASON D. SMITH, ESQ.

Nevada Bar No. 9691

JENNIFER LYNN SANDERS, ESQ.

Nevada Bar No. 10980

400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

*Attorneys for Respondent*

THOMAS D. HARPER, ESQ.

Nevada Bar No. 1878

606 South Ninth Street

Las Vegas, Nevada 89101

*Attorney for Claimant*



SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

**SDW**

**ROC**  
JASON D. SMITH, ESQ.  
Nevada Bar No. 9691  
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400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702/791-0308  
Facsimile: 702/791-1912

*Attorneys for Respondent*

**STATE OF NEVADA**

**DEPARTMENT OF BUSINESS AND INDUSTRY**

**REAL ESTATE DIVISION**

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

Claimant,

Case No: NRED Control No. 09-33

v.

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

Respondent.

**RECEIPT OF COPY OF STIPULATED FACTS AND EXHIBITS**

RECEIPT OF COPY of the foregoing **Stipulated Facts and Exhibits** is hereby  
acknowledged this 11<sup>th</sup> day of April, 2009.

THOMAS D. HARPER, LTD.

  
THOMAS D. HARPER, ESQ.

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

*Attorney for Claimant*



# EXHIBIT “I”



## CIVIL COVER SHEET

A-10-631355-C

XXIV

County, Nevada

Case No.

(Assigned by Clerk's Office)

**I. Party Information**

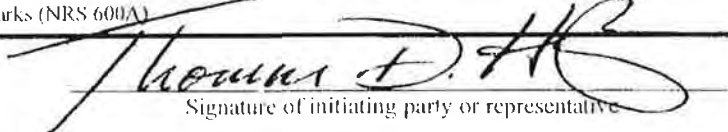
Plaintiff(s) (name/address/phone):	Lytle Trust	Defendant(s) (name/address/phone):	Rosemere Estates Property Owners Association
Attorney (name/address/phone):	Thomas D. Harper, Esq. 606 S. Ninth St. Las Vegas NV 89101	Attorney (name/address/phone):	

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

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

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

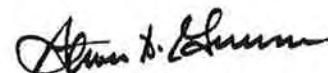
<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt-Business <input type="checkbox"/> Other Business Court Matters
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12/10/10  
Date
  
 Signature of initiating party or representative

See other side for family-related case filings.



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CLERK OF THE COURT

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

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 -0-

A-10-631355-C

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

CASE NO.  
DEPT. NO. XXIV

15 Plaintiff,

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

16 v.

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

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

18 Defendants.

19  
20  
21 COMES NOW Plaintiff, LYTLE TRUST and its Trustees JOHN ALLEN LYTLE and TRUDI  
22 LEE LYTLE and for its causes of action against Defendants complains, asserts and alleges as  
23 follows:

24 GENERAL ALLEGATIONS

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



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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

25 **FIRST CLAIM FOR RELIEF**

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

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



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

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

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

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

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

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

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

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



1 Defendant ASSOCIATION's lien on the Property.

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

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

14 **SECOND CLAIM FOR RELIEF**

15 **(Slander of Title)**

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

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

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



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

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

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

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

### 19 **THIRD CLAIM FOR RELIEF**

#### 20 **(Injunctive Relief)**

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

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

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



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

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

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

9 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

23 **FIFTH CLAIM FOR RELIEF**

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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


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

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

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

21 DATED this 10<sup>th</sup> day of December, 2010.

22 THOMAS D. HARPER, LTD.

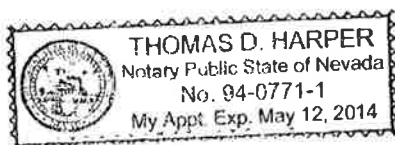
23  
 24 By   
 25 THOMAS D. HARPER, ESQ.  
 26 Nevada Bar No. 001878  
 27 606 South Ninth Street  
 28 Las Vegas NV 89101  
 Attorney for Plaintiff TRUST



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John Allen Lytle

Thomas D. H. 2  
Notary Public





1 VERIFICATION

2 STATE OF NEVADA )

: ss

3 COUNTY OF CLARK )

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

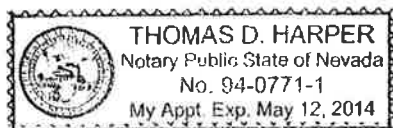
5 That she is the Trustee of the LYTFE TRUST and is familiar with the books and records  
6 of said Trust; that she has read the foregoing Complaint, and knows the contents thereof; that  
7 the same is true of her own knowledge except for those matters stated therein on information  
8 and belief, and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

9  
10 Trudi Lee Lytle  
11 TRUDI LEE LYTFE

12 Subscribed and sworn to before me

13 this 10<sup>th</sup> day of December, 2010.

14  
15 Thomas D. Harper  
16 Notary Public





# EXHIBIT “J”



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

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

## DISTRICT COURT

## CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants

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

Counterclaimant

vs.

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

Counterdefendant

Case No.: A-10-631355-C

Dept. No.: XXXII

**NOTICE OF ENTRY ORDER  
AWARDING ATTORNEYS' FEES AND  
DAMAGES**

Client Lytle v Rosemere  
Matter No. 7389-1052  
Client correspondence ☐ Other correspondence ☐  
Other filing ☒ Miscellaneous ☐  
☒ Discovery ☐ Disclosures ☐  
☐ Exhibits ☐ Exhibits



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

4 DATED this 8th day of June, 2012.

5 LEACH JOHNSON SONG & GRUCHOW

6  
7 By: 

8 Sean L. Anderson  
9 Nevada Bar No. 7259  
10 Ryan W. Reed  
11 Nevada Bar No. 11695  
12 8945 West Russell Road, Suite 300  
13 Las Vegas, Nevada 89148  
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LEACH JOHNSON SONG & GRUCHOW  
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148  
Telephone: (702) 538-9074 ~ Facsimile (702) 538-9113



**CERTIFICATE OF SERVICE**

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

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

\_\_\_\_\_ Personal Delivery

\_\_\_\_\_ Facsimile

\_\_\_\_\_ Federal Express/Airborne Express/Other Overnight Delivery

\_\_\_\_\_ Las Vegas Messenger Service

addressed as follows:

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



An Employee of LEACH JOHNSON SONG & GRUCHOW

LEACH JOHNSON SONG & GRUCHOW  
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CLERK OF THE COURT

**ORDR**  
**LEACH JOHNSON SONG & GRUCHOW**  
SEAN L. ANDERSON  
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Telephone: (702) 538-9074  
Facsimile: (702) 538-9113  
*Attorneys for Rosemere Estates Property  
Owners Association*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Case No.: A-10-631355-C

Dept. No.: XXXII

Plaintiff,

vs.

**ORDER AWARDING ATTORNEYS'  
FEES AND DAMAGES**

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

Defendants

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

Counterclaimant

vs.

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

Counterdefendant

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

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

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

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

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



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1 attorneys' fees and costs pursuant to NRS 116.4117 and Section 16 of  
 2 the Amended Covenants, Conditions and Restrictions. @

3 2. The Association requested attorneys' fees and costs in the amount of \$89,483.65  
 4 and costs in the amount of \$1,130.77.

5 3. Lytle did not file a motion to retax costs.

6 4. The Court conducted an analysis of the requested fees and costs pursuant to  
 7 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) and, based on  
 8 that analysis, finds that the fees requested by the Association should be reduced by \$10,000. as  
 9 there is overlap in the billing records. @

10 5. The Court previously ruled that the special assessment liens recorded against the  
 11 Lytle Property were valid.

12 6. The principal aggregate amount of those liens is \$17,000 and, together with  
 13 interest, late fees and the costs of collection, the total amount of the lien is \$23,409.32.

14 Based on the foregoing,

15 **IT IS HEREBY ADJUDGED ORDERED AND DECREED** that the Association is  
 16 awarded its attorneys' fees in the amount of \$79,483.65 as against Lytle.

17 **IT IS FURTHER ORDERED** that the Association is awarded damages in the amount of  
 18 \$23,409.32 as against Lytle.

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1 **IT IS FURTHER ORDERED** that the Association is awarded its costs in the amount of  
 2 \$1,130.77 as against Lytle.

3 DATED this 22 day of May, 2012.

4   
 5 \_\_\_\_\_  
 6 DISTRICT COURT JUDGE

7 Prepared and submitted by:

8 **LEACH JOHNSON SONG & GRUCHOW**

9 By:   
 10 \_\_\_\_\_

11 Sean L. Anderson  
 12 Nevada Bar No. 7259  
 13 Ryan W. Reed  
 14 Nevada Bar No. 11695  
 15 8945 West Russell Road, Suite 330  
 16 Las Vegas, Nevada 89148

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# EXHIBIT “K”



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CLERK OF THE COURT

**ORDER**  
**LEACH JOHNSON SONG & GRUCHOW**  
**SEAN L. ANDERSON**  
Nevada Bar No. 7259  
**RYAN W. REED**  
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*Attorneys for Rosemere Estates Property  
Owners Association*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

Counterclaimant

vs.

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

Counterdefendant

Case No.: A-10-631355-C

Dept. No.: XXXII

**SUPPLEMENTAL ORDER  
AWARDING ATTORNEYS' FEES**

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

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

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

23 The Evidentiary Hearing was held on April 27, 2012. Sean Anderson, of Leach Johnson  
 24 Song & Gruchow, appeared on behalf of the Association. Richard Haskin, of Gibbs, Giden,  
 25 Locher, Turner & Senet, appeared on behalf of Lytle. The Court, having considered all of the  
 26 pleadings and papers on file and considering the oral argument of counsel, found and ordered  
 27 that as the prevailing party in this action, the Association was entitled to recover its attorneys'  
 28 fees and costs pursuant to NRS 116.4117 and Section 16 of the Amended Covenants, Conditions



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1 and Restrictions.

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

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

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

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

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

3 DATED this 60 day of August, 2012.

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

7 ROB BARE  
 JUDGE, DISTRICT COURT, DEPARTMENT 32

8 Prepared and submitted by:

9 LEACH JOHNSON SONG & GRUCHOW

10 By: 

11 Sean L. Anderson  
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# EXHIBIT “L”





CLERK OF THE COURT

1 **ORD**2 Richard E. Haskin, Esq.  
3 Nevada State Bar # 115924 **GIBBS GIDEN LOCHER TURNER**  
5 **SENET & WITTBRODT LLP**6 1140 N. Town Center Drive, Suite 300  
7 Las Vegas, Nevada 89144-0596  
8 (702) 836-98009 Attorneys for Plaintiffs and Counterdefendants  
10 JOHN ALLEN LYTLE and TRUDI LYTLE11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**13 JOHN ALLEN LYTLE and TRUDI LYTLE, as  
14 Trustees of the Lytle Trust,

15 Plaintiffs,

16 v.

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

20 Defendants.

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

24 Counterclaimants,

25 v.

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

28 Counterdefendants.

CASE NO. A-10-631355-C  
Dept.: XXXII**ORDER GRANTING PLAINTIFF JOHN  
ALLEN LYTLE AND TRUDI LEE  
LYTLE'S, AS TRUSTEES OF THE LYTLE  
TRUST, MOTION FOR SUMMARY  
JUDGMENT**

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NOV 10 2016



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

**I. FINDINGS OF FACT**

1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs.).

2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

3. The Original CC&Rs create a "property owners' committee" with very limited maintenance duties over specific common area items (exterior walls and planters, entrance way and planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the Original CC&Rs.

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

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

6. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lytles"), purchased a Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

28       ///



1           20.     On or about November 19, 2009, the Association (through its collection agency)  
2 notified Plaintiff that the payoff amount on the First Lien had increased to \$21,045.00 and that the  
3 Association was going to foreclose on the property. The increase in the lien amount included a  
4 \$1,000.00 late fee, when only \$10.00 was permissible pursuant to the Amended CC&Rs. Also, the  
5 Association demanded a special assessment interest amount of \$900.00 at 12% interest per annum,  
6 when the allowable interest rate is 3.25% per NRS 99.040(1) on this date.

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

10          22.     While the arbitration matter was pending and five (5) days after the Complaint was  
11 filed in this action, the Association recorded yet another lien against Plaintiff's property on March  
12 22, 2010, in the amount of \$136,583.00, without any justification for doing so. The March 22, 2010  
13 lien shall be referred to as the "Third Lien."

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

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

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

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

## 23     II.     CONCLUSIONS OF LAW

### 24         A.     Summary Judgment Standard

25           1.     Summary judgment shall be rendered in favor of a moving party if the pleadings,  
26 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
27 show that there is no genuine issue as to any material fact and that the moving party is entitled to  
28 judgment as a matter of law. NRCP Rule 56(c).