

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZURICH AMERICAN INS. CO.,  
et al.

*Plaintiffs - Appellants*

v.

IRONSHORE SPECIALTY INS.  
CO.

*Defendant - Respondent*

Case No.: 81428

Electronically Filed  
Nov 12 2020 10:40 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

---

APPELLANTS' APPENDIX  
Volume VII

---

William Reeves  
State Bar No.: 8235  
MORALES FIERRO & REEVES  
600 S. Tonopah Drive, Suite 300  
Las Vegas, NV 89106  
Tel: 702/699-7822  
Fax: 702/699-9455  
Email: wreeves@mfrlegal.com

*Attorneys for Appellants*

*Assurance Co. of America v. Ironshore Spec. Ins. Co.*  
Case No. 81428

**Appellants' Appendix – Index**

<u>Volume</u>	<u>Description</u>	<u>Page</u>
6	Amended Third Party Complaint filed in Seven Hills, Exhibit 36 in Support of Zurich's Motion for Summary Judgment	1259-1272
16-17	Answer and Third Party Complaint in the <i>Garcia</i> action dated September 30, 2010, Exhibit 98 in Support of Ironshore's Motion for Summary Judgment	3999-4021
13	Answer and Third-Party Complaint filed by William Lyon Homes, Inc. on February 18, 2011, in the <i>Stallion Mountain</i> action, Exhibit 58 in Support of Ironshore's Motion for Summary Judgment	3191-3208
1	Answer of Ironshore to First Amended Complaint filed 04/02/15	0046-0087
1	Answer of Ironshore to Second Amended Complaint filed 10/14/15	0132-0180
18	Answer of KB Home Nevada Inc. and Third-Party Complaint filed on November 23, 2010, in the <i>Sanchez</i> action , Exhibit 118 in Support of Ironshore's Motion for Summary Judgment	4272-4309
16	Answer to Complaint for Damages and Third-Party Complaint filed by D.W. Arnold, Inc. on May 31, 2013, in the <i>Clark</i> action, Exhibit 91 in Support of Ironshore's Motion for Summary Judgment	3848-3871
8-20	Appendix (Exs. 1-162) In Support of Ironshore's Motion for Summary Judgment filed 09/19/16	1955-1970 3085-3100 4071-4086
1-8	Appendix (Exs. 1-75) In Support of Zurich's Motion for Partial Summary Judgment filed 09/16/16	0211-0214
9	Burkett & Wong preliminary defects list August 1, 2008, Exhibit 8 in Support of Ironshore's Motion for Summary Judgment	2151-2154
5	Chapter 40 Notice served in Mohan, Exhibit 33 in Support of Zurich's Motion for Summary Judgment	1236-1238

20	Claim Summary Report for Cedco/ <i>Anthem</i> dated November 11, 2013 , Exhibit 142 in Support of Ironshore's Motion for Summary Judgment	4756-4762
20	Claim Summary Report for Cedco/ <i>Mohan</i> dated February 1, 2012 , Exhibit 144 in Support of Ironshore's Motion for Summary Judgment	4769-4773
20	Claim Summary Report for Cedco/ <i>Seven Hills</i> dated February 4, 2013 , Exhibit 143 in Support of Ironshore's Motion for Summary Judgment	4763-4768
20	Claim Summary Report for Champion Masonry/ <i>Marcel</i> dated August 11, 2014 , Exhibit 158 in Support of Ironshore's Motion for Summary Judgment	4880-4884
20	Claim Summary Report for Debard Plumbing/ <i>Drost</i> dated November 21, 2012 , Exhibit 145 in Support of Ironshore's Motion for Summary Judgment	4774-4778
20	Claim Summary Report for Debard Plumbing/ <i>Lino</i> dated August 26, 2014 , Exhibit 147 in Support of Ironshore's Motion for Summary Judgment	4800-4804
20	Claim Summary Report for Debard Plumbing/ <i>Wikey</i> dated December 2, 2013 , Exhibit 149 in Support of Ironshore's Motion for Summary Judgment	4837-4842
20	Claim Summary Report for JP Construction/ <i>Casallas</i> dated August 20, 2014 , Exhibit 156 in Support of Ironshore's Motion for Summary Judgment	4872-4875
20	Claim Summary Report for Laird Whipple/ <i>Bennett</i> dated September 27, 2012 , Exhibit 151 in Support of Ironshore's Motion for Summary Judgment	4845-4850
20	Claim Summary Report for PR Construction/ <i>Boyer</i> dated May 19, 2014 , Exhibit 160 in Support of Ironshore's Motion for Summary Judgment	4891-4895
20	Claim Summary Report for R.A.M.M. Corporation/ <i>Sanchez</i> dated February 25, 2013 , Exhibit 159 in Support of Ironshore's Motion for Summary Judgment	4885-4890
20	Claim Summary Report for Stewart & Sundell/ <i>Anthem</i> dated February 10, 2014 , Exhibit 153 in Support of Ironshore's Motion for Summary Judgment	4854-4859
20	Claim Summary Report for Stewart & Sundell/ <i>Stallion Mountain</i> dated July 8, 2011 , Exhibit 154 in Support of Ironshore's Motion for Summary Judgment	4860-4865

20	Claim Summary Report for Stewart & Sundell/ <i>Sun City</i> dated July 24, 2012 , Exhibit 155 in Support of Ironshore's Motion for Summary Judgment	4866-4871
20	Claim Summary Report for Universal Framing/ <i>Clark</i> dated November 14, 2013 , Exhibit 157 in Support of Ironshore's Motion for Summary Judgment	4876-4879
18	Close of Escrow Matrix , Exhibit 128 in Support of Ironshore's Motion for Summary Judgment	4496-4498
5	Complaint filed in Anthem, Exhibit 31 in Support of Zurich's Motion for Summary Judgment	1192-1216
7	Complaint filed in Anthem, Exhibit 56 in Support of Zurich's Motion for Summary Judgment	1597-1621
6-7	Complaint filed in Bennett, Exhibit 52 in Support of Zurich's Motion for Summary Judgment	1499-1534
6	Complaint filed in Casallas, Exhibit 50 in Support of Zurich's Motion for Summary Judgment	1456-1479
7-8	Complaint filed in Clark, Exhibit 62 in Support of Zurich's Motion for Summary Judgment	1717-1753
6	Complaint filed in Drost, Exhibit 44 in Support of Zurich's Motion for Summary Judgment	1369-1382
6	Complaint filed in Marcel, Exhibit 42 in Support of Zurich's Motion for Summary Judgment	1341-1355
5-6	Complaint filed in Seven Hills, Exhibit 35 in Support of Zurich's Motion for Summary Judgment	1242-1258
7	Complaint filed in Stallion Mountain, Exhibit 58 in Support of Zurich's Motion for Summary Judgment	1641-1651
7	Complaint filed in Sun City, Exhibit 60 in Support of Zurich's Motion for Summary Judgment	1672-1683
6	Complaint filed in Wikey, Exhibit 48 in Support of Zurich's Motion for Summary Judgment	1427-1439
11	Complaint filed on December 29, 2011, in the Lino action, Exhibit 27 in Support of Ironshore's Motion for Summary Judgment	2588-2599
9	Complaint filed on February 3, 2011, in <i>Anthem</i> action, Exhibit 5 in Support of Ironshore's Motion for Summary Judgment	2104-2128



14	Complaint filed on January 22, 2010, in the <i>Sun City</i> action, Exhibit 66 in Support of Ironshore's Motion for Summary Judgment	3285-3296
17	Complaint filed on January 5, 2012, in the <i>Marcel</i> action, Exhibit 110 in Support of Ironshore's Motion for Summary Judgment	4121-4135
12	Complaint filed on March 3, 2008 in the <i>Bennett</i> action, Exhibit 40 in Support of Ironshore's Motion for Summary Judgment	2835-2899
16	Complaint filed on May 20, 2013, in the <i>Clark</i> action, Exhibit 90 in Support of Ironshore's Motion for Summary Judgment	3810-3847
11	Complaint filed on October 23, 2012, in the <i>Drost</i> action, Exhibit 22 in Support of Ironshore's Motion for Summary Judgment	2543-2554
13	Complaint filed on September 18, 2009, in the <i>Stallion Mountain</i> action, Exhibit 57 in Support of Ironshore's Motion for Summary Judgment	3180-3190
13	Complaint for Damages filed on February 3, 2011, in the <i>Anthem</i> action, Exhibit 52 in Support of Ironshore's Motion for Summary Judgment	3113-3137
17	Correspondence between Midlands and Ironshore dated November 1, 2012, Exhibit 106 in Support of Ironshore's Motion for Summary Judgment	4087-4090
8	Declaration of Mary Frances Nolan In Support of Ironshore's Motion for Summary Judgment filed 09/19/16	1896-1948
8	Declaration of Philip D. Witte In Support of Ironshore's Motion for Summary Judgment filed 09/19/16	1949-1954
1	Declaration of William Reeves In Support of Zurich's Motion for Partial Summary Judgment filed 09/16/16	0205-0210
8	Declaration William C. Morison In Support of Ironshore's Motion for Summary Judgment filed 09/19/16	1890-1895
5	Denial Letter (Cedco/Anthem), Exhibit 14 in Support of Zurich's Motion for Summary Judgment	1005-1017

5	Denial Letter (Cedco/Mohan), Exhibit 15 in Support of Zurich's Motion for Summary Judgment	1018-1026
5	Denial Letter (Cedco/Seven Hills), Exhibit 16 in Support of Zurich's Motion for Summary Judgment	1027-1035
5	Denial Letter (Centex Homes/Garcia), Exhibit 17 in Support of Zurich's Motion for Summary Judgment	1036-1049
5	Denial Letter (Champion Masonry/Marcel), Exhibit 18 in Support of Zurich's Motion for Summary Judgment	1050-1059
5	Denial Letter (Debard Plumbing/Drost), Exhibit 19 in Support of Zurich's Motion for Summary Judgment	1060-1072
5	Denial Letter (Debard Plumbing/Lino), Exhibit 20 in Support of Zurich's Motion for Summary Judgment	1073-1081
5	Denial Letter (Debard Plumbing/Wikey), Exhibit 21 in Support of Zurich's Motion for Summary Judgment	1082-1090
5	Denial Letter (JP Construction/Casallas), Exhibit 22 in Support of Zurich's Motion for Summary Judgment	1091-1103
5	Denial Letter (JP Construction/Casallas), Exhibit 23 in Support of Zurich's Motion for Summary Judgment	1104-1116
5	Denial Letter (Laird Whipple/Bennett), Exhibit 24 in Support of Zurich's Motion for Summary Judgment	1117-1125
5	Denial Letter (Laird Whipple/Bennett), Exhibit 25 in Support of Zurich's Motion for Summary Judgment	1126-1134
5	Denial Letter (PR Construction/Boyer), Exhibit 26 in Support of Zurich's Motion for Summary Judgment	1135-1147
5	Denial Letter (Stewart & Sundell), Exhibit 29 in Support of Zurich's Motion for Summary Judgment	1172-1180
5	Denial Letter (Stewart & Sundell/Anthem), Exhibit 27 in Support of Zurich's Motion for Summary Judgment	1148-1159
5	Denial Letter (Stewart & Sundell/Stallion Mountain), Exhibit 28 in Support of Zurich's Motion for Summary Judgment	1160-1171
5	Denial Letter (Universal Framing/Clark), Exhibit 30 in Support of Zurich's Motion for Summary Judgment	1181-1191
16	Disclaimer letter from Certus to Universal Framing dated July 12, 2013, Exhibit 94 in Support of Ironshore's Motion for Summary Judgment	3880-3890

10	Disclaimer letter from Midlands to Cedco dated December 21, 2011, Exhibit 20 in Support of Ironshore's Motion for Summary Judgment	2472-2480
9-10	Disclaimer letter from Midlands to Cedco dated March 11, 2013, Exhibit 11 in Support of Ironshore's Motion for Summary Judgment	2240-2252
17	Disclaimer letter from Midlands to Champion Masonry dated September 15, 2010, Exhibit 103 in Support of Ironshore's Motion for Summary Judgment	4060-4068
11	Disclaimer letter from Midlands to Debard Plumbing dated January 25, 2011, Exhibit 36 in Support of Ironshore's Motion for Summary Judgment	2665-2673
11	Disclaimer letter from Midlands to Debard Plumbing dated November 5, 2012, Exhibit 26 in Support of Ironshore's Motion for Summary Judgment	2575-2587
11	Disclaimer letter from Midlands to Debard Plumbing dated December 13, 2011, Exhibit 33 in Support of Ironshore's Motion for Summary Judgment	2630-2638
14	Disclaimer letter from Midlands to Helm & Associates dated August 26, 2010, Exhibit 62 in Support of Ironshore's Motion for Summary Judgment	3256-3264
10	Disclaimer letter from Midlands to Helm & Associates dated April 26, 2010, Exhibit 17 in Support of Ironshore's Motion for Summary Judgment	2388-2396
15	Disclaimer letter from Midlands to JP Construction dated June 21, 2012, for policy effective February 18, 2008-2009, Exhibit 85 in Support of Ironshore's Motion for Summary Judgment	3656-3668
15	Disclaimer letter from Midlands to JP Construction dated June 21, 2012, for policy effective February 18, 2009-2010, Exhibit 86 in Support of Ironshore's Motion for Summary Judgment	3669-3681
15	Disclaimer letter from Midlands to JP Construction dated June 21, 2012, for policy effective February 18, 2010-2011, Exhibit 87 in Support of Ironshore's Motion for Summary Judgment	3682-3694
14	Disclaimer letter from Midlands to Koeller Nebeker and disclaimer letter from Midlands to Helm & Associates dated May 28, 2010, Exhibit 70 in Support of Ironshore's Motion for Summary Judgment	3340-3356

17	Disclaimer letter from Midlands to Lee, Hernandez law firm dated November 6, 2012 , Exhibit 107 in Support of Ironshore's Motion for Summary Judgment	4091-4104
12	Disclaimer letter from Midlands to Southwest Foundations dated May 27, 2011 for policy effective April 15, 2010-2011, Exhibit 46 in Support of Ironshore's Motion for Summary Judgment	2941-2950
12	Disclaimer letter from Midlands to Southwest Foundations dated May 27, 2011 for policy effective April 15, 2009-2010, Exhibit 45 in Support of Ironshore's Motion for Summary Judgment	2933-2941
13	Disclaimer letter from Midlands to Stewart & Sundell dated November 17, 2009, Exhibit 51 in Support of Ironshore's Motion for Summary Judgment	3101-3112
11	Email from Zurich to Midlands dated November 29, 2011, Exhibit 31 in Support of Ironshore's Motion for Summary Judgment	2624-2625
20	Excerpt from claim notes of Plaintiffs' adjuster regarding Debard Plumbing/ <i>Lino</i> dated January 25, 2012 , Exhibit 161 in Support of Ironshore's Motion for Summary Judgment	4896-4897
13	Excerpt from Claim Notes recording receipt of November 24, 2008 letter from counsel for Terravita Home Construction Company to Stewart & Sundell, Exhibit 49 in Support of Ironshore's Motion for Summary Judgment	3077-3079
18	Excerpt from the Midlands adjuster's claim notes incorporating an email dated August 22, 2012 , Exhibit 127 in Support of Ironshore's Motion for Summary Judgment	4494-4495
19	Excerpt from the Midlands adjuster's claim notes incorporating an email dated August 22, 2012 , Exhibit 130 in Support of Ironshore's Motion for Summary Judgment	4517-4518
13	Excerpt of Midlands Claim Notes for this claim, Exhibit 55 in Support of Ironshore's Motion for Summary Judgment	3162-3165
14	Excerpt of Midlands Claim Notes, Exhibit 64 in Support of Ironshore's Motion for Summary Judgment	3269-3271
8	Excerpts of Deposition of Ironshore PMK taken in NV1, Exhibit 66 in Support of Zurich's Motion for Summary Judgment	1786-1801

8	Excerpts of Deposition of Ironshore PMK taken in this case, Exhibit 67 in Support of Zurich's Motion for Summary Judgment	1802-1836
19	Excerpts of October 2, 2015 certified deposition transcript of Bettyann Canzone , Exhibit 140 in Support of Ironshore's Motion for Summary Judgment	4714-4722
19-20	Excerpts of October 2, 2015 certified deposition transcript of Bryan Key , Exhibit 141 in Support of Ironshore's Motion for Summary Judgment	4723-4755
19	Excerpts of September 28, 2015 certified deposition transcript of Andra Byrd , Exhibit 135 in Support of Ironshore's Motion for Summary Judgment	4559-4579
19	Excerpts of September 28, 2015 certified deposition transcript of Brett Richardt , Exhibit 136 in Support of Ironshore's Motion for Summary Judgment	4580-4632
19	Excerpts of September 28, 2015 certified deposition transcript of Douglas Westhoff , Exhibit 137 in Support of Ironshore's Motion for Summary Judgment	4633-4662
19	Excerpts of September 29, 2015 certified deposition transcript of Rachael Crammer , Exhibit 138 in Support of Ironshore's Motion for Summary Judgment	4663-4687
19	Excerpts of September 29, 2015 certified deposition transcript of Elizabeth Del Rosario , Exhibit 139 in Support of Ironshore's Motion for Summary Judgment	4688-4713
9	Excerpts of various Subcontracts between Cedco and Terravita Home Construction, Exhibit 9 in Support of Ironshore's Motion for Summary Judgment	2155-2235
15	First Amended Class Action Construction Defect Complaint filed on January 7, 2011, in the <i>Casallas</i> action, Exhibit 74 in Support of Ironshore's Motion for Summary Judgment	3520-3534
6	First Amended Complaint filed in Garcia, Exhibit 37 in Support of Zurich's Motion for Summary Judgment	1273-1304
6	First Amended Complaint filed in Lino, Exhibit 46 in Support of Zurich's Motion for Summary Judgment	1396-1408
17-18	First Amended Complaint filed on November 1, 2010, in the <i>Sanchez</i> action , Exhibit 117 in Support of Ironshore's Motion for Summary Judgment	4240-4271

16	First Amended Construction Complaint filed on September 8, 2010, in the <i>Garcia</i> action, Exhibit 97 in Support of Ironshore's Motion for Summary Judgment	3957-3998
20	First page of declaration pages of policies insuring Tom Hopson dba Universal Framing or Universal Framing LLC issued by one or more Plaintiffs , Exhibit 162 in Support of Ironshore's Motion for Summary Judgment	4898-4903
20	Homeowner Matrix for Laird Whipple/ <i>Bennett</i> , Exhibit 152 in Support of Ironshore's Motion for Summary Judgment	4851-4853
15	Homeowners Matrixes (2) , Exhibit 81 in Support of Ironshore's Motion for Summary Judgment	3621-3643
17	Homeowners/Close of Escrow Matrix, Exhibit 99 in Support of Ironshore's Motion for Summary Judgment	4022-4036
4	Ironshore Policy No. 000115801 (PR Construction), Exhibit 10 in Support of Zurich's Motion for Summary Judgment	0762-0818
18	Ironshore policy no. 000115801, issued to PR Construction Corporation, for the policy period of January 31, 2010, to January 31, 2011 , Exhibit 123 in Support of Ironshore's Motion for Summary Judgment	4392-4449
3	Ironshore Policy No. 000143201 (JP Construction), Exhibit 6 in Support of Zurich's Motion for Summary Judgment	0521-0573
14-15	Ironshore policy no. 000143201 for policy period of February 18, 2010, to February 18, 2011, Exhibit 73 in Support of Ironshore's Motion for Summary Judgment	3466-3519
4	Ironshore Policy No. 000167401 (Stewart & Sundell), Exhibit 12 in Support of Zurich's Motion for Summary Judgment	0880-0942
2	Ironshore Policy No. 000194200 (Cedco), Exhibit 2 in Support of Zurich's Motion for Summary Judgment	0278-0340
8-9	Ironshore policy no. 000194200 for policy period of April 1, 2010, to April 1, 2011, Exhibit 3 in Support of Ironshore's Motion for Summary Judgment	1976-2039
9	Ironshore policy no. 000194200 for policy period of June 1, 2009, to April 1, 2010, Exhibit 4 in Support of Ironshore's Motion for Summary Judgment	2040-2103

3	Ironshore Policy No. 000242101 (Laird Whipple), Exhibit 8 in Support of Zurich's Motion for Summary Judgment	0637-0702
12	Ironshore policy no. 000242101 for policy period of April 15, 2010, to April 15, 2011, Exhibit 39 in Support of Ironshore's Motion for Summary Judgment	2768-2834
13	Ironshore policy no. 00167401 for policy period of March 1, 2010, to March 1, 2011, Exhibit 48 in Support of Ironshore's Motion for Summary Judgment	3013-3076
2-3	Ironshore Policy No. 00CQE0905001 (JP Construction), Exhibit 5 in Support of Zurich's Motion for Summary Judgment	0465-0520
14	Ironshore policy no. 00CQE0905001 for policy period of February 18, 2009, to February 18, 2010, Exhibit 72 in Support of Ironshore's Motion for Summary Judgment	3408-3465
4-5	Ironshore Policy No. 00T960905001 (Universal Framing), Exhibit 13 in Support of Zurich's Motion for Summary Judgment	0943-1004
15-16	Ironshore policy no. 00T960905001 for policy period of October 13, 2009, to October 13, 2010, Exhibit 89 in Support of Ironshore's Motion for Summary Judgment	3747-3809
3-4	Ironshore Policy No. 00XXV0905001 (PR Construction), Exhibit 9 in Support of Zurich's Motion for Summary Judgment	0703-0761
18	Ironshore policy no. 00XXV0905001, issued to PR Construction Corporation, for the policy period of January 31, 2009, to January 31, 2010, Exhibit 122 in Support of Ironshore's Motion for Summary Judgment	4332-4391
2	Ironshore Policy No. 011040905001 (Champion Masonry), Exhibit 3 in Support of Zurich's Motion for Summary Judgment	0341-0403
16	Ironshore policy no. 011040905001 for policy period of May 31, 2009, to May 31, 2010, Exhibit 95 in Support of Ironshore's Motion for Summary Judgment	3891-3954
2	Ironshore Policy No. 0110N0905001 (Debard Plumbing), Exhibit 4 in Support of Zurich's Motion for Summary Judgment	0404-0464

10-11	Ironshore policy no. 0110N0905001 for policy period of April 6, 2009, to April 6, 2010, Exhibit 21 in Support of Ironshore's Motion for Summary Judgment	2481-2542
4	Ironshore Policy No. 012A80905001 (Stewart & Sundell), Exhibit 11 in Support of Zurich's Motion for Summary Judgment	0819-0879
12-13	Ironshore policy no. 012A80905001 for policy period of March 1, 2009, to March 1, 2010, Exhibit 47 in Support of Ironshore's Motion for Summary Judgment	2951-3012
3	Ironshore Policy No. 017BW0905001 (Laird Whipple), Exhibit 7 in Support of Zurich's Motion for Summary Judgment	0574-0636
11-12	Ironshore policy no. 017BW0905001 for policy period of April 15, 2009, to April 15, 2010, Exhibit 38 in Support of Ironshore's Motion for Summary Judgment	2704-2767
1-2	Ironshore Policy No. 018ER0905001 (Cedco), Exhibit 1 in Support of Zurich's Motion for Summary Judgment	0215-0277
17	Ironshore policy no. IRH 00V6P085001, issued to R.A.M.M. Corporation, for the policy period of November 15, 2008, to November 15, 2009 , Exhibit 115 in Support of Ironshore's Motion for Summary Judgment	4168-4224
19	Ironshore's Amended Notices of Deposition dated August 28, 2015, Exhibit 133 in Support of Ironshore's Motion for Summary Judgment	4537-4549
19	Ironshore's Notice of Deposition dated September 11, 2015 , Exhibit 134 in Support of Ironshore's Motion for Summary Judgment	4550-4558
8	Judgment entered in NV1, Exhibit 65 in Support of Zurich's Motion for Summary Judgment	1784-1785
21	Judgment filed 08/24/17	5050-5050
11	Letter from Castronova Law Offices to Ironshore dated September 27, 2011, Exhibit 29 in Support of Ironshore's Motion for Summary Judgment	2617-2620
17	Letter from Certus Claims to Lukestar Corp. dba Champion Masonry dated August 6, 2013 , Exhibit 114 in Support of Ironshore's Motion for Summary Judgment	4155-4167



	Letter from Certus to Ironshore dated August 6, 2013 , Exhibit 113 in Support of Ironshore's Motion for Summary Judgment	4152-4154
16	Letter from Certus to Ironshore dated July 12, 2013, Exhibit 93 in Support of Ironshore's Motion for Summary Judgment	3877-3879
17	Letter from counsel for Centex to Champion Masonry dated November 20, 2009, Exhibit 100 in Support of Ironshore's Motion for Summary Judgment	4037-4053
11	Letter from counsel for K&M Homes to Debard Plumbing dated October 11, 2010, Exhibit 34 in Support of Ironshore's Motion for Summary Judgment	2639-2660
19	Letter from counsel for PR Construction to Midlands dated October 4, 2012 , Exhibit 132 in Support of Ironshore's Motion for Summary Judgment	4532-4536
15	Letter from Dallas National Insurance Company's counsel to United Specialty Insurance Company dated June 12, 2012, Exhibit 77 in Support of Ironshore's Motion for Summary Judgment	3579-3582
10	Letter from Helm & Associates to Ironshore and others dated September 24, 2009, Exhibit 14 in Support of Ironshore's Motion for Summary Judgment	2285-2380
13	Letter from Helm & Associates to Ironshore date September 18, 2009, Exhibit 56 in Support of Ironshore's Motion for Summary Judgment	3166-3179
19	Letter from Ironshore to PR Construction dated August 29, 2012, Exhibit 131 in Support of Ironshore's Motion for Summary Judgment	4519-4531
17	Letter from KB Home Nevada, Inc.'s counsel to Midlands Claim Administrators dated October 29, 2012, Exhibit 116 in Support of Ironshore's Motion for Summary Judgment	4225-4239
14	Letter from Koeller Nebeker to Stewart & Sundell dated September 25, 2008, Exhibit 65 in Support of Ironshore's Motion for Summary Judgment	3272-3284
10	Letter from Midlands to Ironshore dated April 26, 2010, Exhibit 16 in Support of Ironshore's Motion for Summary Judgment	2384-2387
14	Letter from Midlands to Ironshore dated August 26, 2010, Exhibit 61 in Support of Ironshore's Motion for Summary Judgment	3252-3255

11	Letter from Midlands to Ironshore dated December 13, 2011, Exhibit 32 in Support of Ironshore's Motion for Summary Judgment	2626-2629
10	Letter from Midlands to Ironshore dated December 21, 2011, Exhibit 19 in Support of Ironshore's Motion for Summary Judgment	2468-2471
11	Letter from Midlands to Ironshore dated January 25, 2011, Exhibit 35 in Support of Ironshore's Motion for Summary Judgment	2661-2664
15	Letter from Midlands to Ironshore dated June 20, 2012, for policy effective February 18, 2010-2011, Exhibit 84 in Support of Ironshore's Motion for Summary Judgment	3652-3655
15	Letter from Midlands to Ironshore dated June 21, 2012, for policy effective February 18, 2008-2009, Exhibit 82 in Support of Ironshore's Motion for Summary Judgment	3644-3647
15	Letter from Midlands to Ironshore dated June 21, 2012, for policy effective February 18, 2009-2010, Exhibit 83 in Support of Ironshore's Motion for Summary Judgment	3648-3651
9	Letter from Midlands to Ironshore dated March 11, 2013, Exhibit 10 in Support of Ironshore's Motion for Summary Judgment	2236-2239
12	Letter from Midlands to Ironshore dated May 27, 2011 for policy effective April 15, 2009- 2010, Exhibit 43 in Support of Ironshore's Motion for Summary Judgment	2925-2928
12	Letter from Midlands to Ironshore dated May 27, 2011 for policy effective April 15, 2010-2011, Exhibit 44 in Support of Ironshore's Motion for Summary Judgment	2929-2932
18	Letter from Midlands to Ironshore dated November 14, 2012 , Exhibit 119 in Support of Ironshore's Motion for Summary Judgment	4310-4313
13	Letter from Midlands to Ironshore dated November 17, 2009, Exhibit 50 in Support of Ironshore's Motion for Summary Judgment	3080-3084
11	Letter from Midlands to Ironshore dated November 5, 2012, Exhibit 25 in Support of Ironshore's Motion for Summary Judgment	2571-2574

17	Letter from Midlands to Ironshore dated September 15, 2010, Exhibit 102 in Support of Ironshore's Motion for Summary Judgment	4056-4059
18	Letter from Midlands to R.A.M.M. Corporation dated November 14, 2012 , Exhibit 120 in Support of Ironshore's Motion for Summary Judgment	4314-4326
13	Letter from Stallion Mountain Homeowners' Association's counsel to William Lyon Homes, Inc. dated August 4, 2004, Exhibit 59 in Support of Ironshore's Motion for Summary Judgment	3209-3237
11	Letter from Zurich to Ironshore and others dated October 17, 2012, Exhibit 24 in Support of Ironshore's Motion for Summary Judgment	2568-2570
14	Letter from Zurich to Ironshore dated April 27, 2010, Exhibit 68 in Support of Ironshore's Motion for Summary Judgment	3330-3333
12	Letter from Zurich to Ironshore dated April 29, 2011, Exhibit 42 in Support of Ironshore's Motion for Summary Judgment	2922-2924
18	Letter from Zurich to Ironshore dated August 1, 2012 , Exhibit 126 in Support of Ironshore's Motion for Summary Judgment	4491-4493
9	Letter from Zurich to Ironshore dated August 18, 2011 without attachments (attachments are Exhs. 5, 6 and 8) , Exhibit 7 in Support of Ironshore's Motion for Summary Judgment	2148-2150
14	Letter from Zurich to Ironshore dated December 13, 2010, Exhibit 63 in Support of Ironshore's Motion for Summary Judgment	3265-3268
10	Letter from Zurich to Ironshore dated December 2, 2011, Exhibit 18 in Support of Ironshore's Motion for Summary Judgment	2397-2467
10	Letter from Zurich to Ironshore dated December 22, 2009, Exhibit 15 in Support of Ironshore's Motion for Summary Judgment	2381-2383
17	Letter from Zurich to Ironshore dated June 27, 2013 , Exhibit 108 in Support of Ironshore's Motion for Summary Judgment	4105-4107
11	Letter from Zurich to Ironshore dated March 1, 2012, Exhibit 37 in Support of Ironshore's Motion for Summary Judgment	2674-2703

11	Letter from Zurich to Ironshore dated November 10, 2011, Exhibit 30 in Support of Ironshore's Motion for Summary Judgment	2621-2623
16	Letter from Zurich to Ironshore dated November 17, 2011, Exhibit 96 in Support of Ironshore's Motion for Summary Judgment	3955-3956
18	Letter from Zurich to Midlands dated December 5, 2012 , Exhibit 121 in Support of Ironshore's Motion for Summary Judgment	4327-4331
13	Letter from Zurich to Midlands dated January 10, 2012, Exhibit 54 in Support of Ironshore's Motion for Summary Judgment	3157-3161
17	Litigation Escrow Matrix , Exhibit 112 in Support of Ironshore's Motion for Summary Judgment	4149-4151
17	Midlands claim note dated September 3, 2010, Exhibit 101 in Support of Ironshore's Motion for Summary Judgment	4054-4055
13-14	Midlands claim notes October 27, 2009-July 28, 2010, Exhibit 60 in Support of Ironshore's Motion for Summary Judgment	3238-3251
1	Motion for Partial Summary Judgment filed by Zurich filed 09/16/16	0181-0204
21	Motion for Relief From Judgment Filed by Zurich filed 09/20/17	5051-5056
8	Motion for Summary Judgment Filed by Ironshore filed 09/19/16	1860-1889
8	Notice of Acceptance of Offer filed in NV1, Exhibit 64 in Support of Zurich's Motion for Summary Judgment	1778-1783
21	Notice of Appeal filed 10/08/18	5083-5083
21	Notice of New Case Authority Filed by Ironshore filed 11/02/16	5012-5042
1	Notice of Removal filed 03/12/15	0001-0045
20-21	Opposition of Ironshore To Zurich's Motion for Partial Summary Judgment filed 10/11/16	4936-4965
21	Opposition of Ironshore to Zurich's Motion for Relief filed 10/04/17	5057-5066

20	Opposition of Zurich To Ironshore's Motion for Summary Judgment filed 10/11/16	4904-4935
21	Order Accepting Certified Questions filed 09/11/20	5103-5104
21	Order Certifying Question filed 07/02/20	5084-5102
21	Order Denying Motion filed 09/18/18	5076-5082
21	Order on Motions for Summary Judgment filed 08/24/17	5043-5049
10	Plaintiffs' Complaint filed on April 12, 2011, in <i>Seven Hills</i> action, Exhibit 12 in Support of Ironshore's Motion for Summary Judgment	2253-2269
8	Plaintiffs' Supplemental Disclosures, dated October 14, 2015, Exhibit 2 in Support of Ironshore's Motion for Summary Judgment	1972-1975
18-19	Portions of subcontracts stating PR Construction Corporation's scope of work , Exhibit 129 in Support of Ironshore's Motion for Summary Judgment	4499-4516
20	Preliminary Cost of Repair for Claim Summary Report for Debard Plumbing/ <i>Drost</i> , Exhibit 146 in Support of Ironshore's Motion for Summary Judgment	4779-4799
8	Printout - Nevada Secretary of State website, Exhibit 75 in Support of Zurich's Motion for Summary Judgment	1857-1859
8	Printout - Nevada State Contractors Board website, Exhibit 74 in Support of Zurich's Motion for Summary Judgment	1855-1856
8	Proof of Service of Subpoena - Centex Homes, Exhibit 71 in Support of Zurich's Motion for Summary Judgment	1845-1846
8	Proof of Service of Subpoena - Champion Masonry, Exhibit 70 in Support of Zurich's Motion for Summary Judgment	1843-1844
20	Reconstruction Cost Guides and Estimates for Debard Plumbing/ <i>Lino</i> June 2013 , Exhibit 148 in Support of Ironshore's Motion for Summary Judgment	4805-4836
20-21	Reply of Ironshore To Zurich's Motion for Summary Judgment filed 10/28/16	4992-5011

21	Reply of Zurich To Ironshore's Motion for Summary Judgment filed 10/28/16	4966-4991
21	Reply of Zurich to Opposition To Motion for Relief filed 10/11/17	5067-5075
6	Report issued as to Garcia, Exhibit 41 in Support of Zurich's Motion for Summary Judgment	1337-1340
17	Reserved, Exhibit 104 in Support of Ironshore's Motion for Summary Judgment	4069-4069
17	Reserved, Exhibit 105 in Support of Ironshore's Motion for Summary Judgment	4070-4070
8	Response to Subpoena - Centex Homes, Exhibit 73 in Support of Zurich's Motion for Summary Judgment	1849-1854
8	Response to Subpoena - Champion Masonry, Exhibit 72 in Support of Zurich's Motion for Summary Judgment	1847-1848
1	Second Amended Complaint filed 09/28/15	0088-0131
8	Second Amended Complaint, filed September 28, 2015. (See Docket No. 25.), Exhibit 1 in Support of Ironshore's Motion for Summary Judgment	1971-1971
16	Subcontract Agreement (excerpts) between D.W. Arnold, Inc. and Universal Framing, Exhibit 92 in Support of Ironshore's Motion for Summary Judgment	3872-3876
15	Subcontract Agreement between Coleman Development and J.P Construction Co., Inc. dated April 7, 2000, Exhibit 78 in Support of Ironshore's Motion for Summary Judgment	3583-3599
15	Subcontract Agreement between Coleman Development and J.P. Construction Co., Inc. dated September 27, 2000, Exhibit 79 in Support of Ironshore's Motion for Summary Judgment	3600-3611
15	Subcontract Agreement between Coleman Development and J.P. Construction Co., Inc. dated February 12, 2002, Exhibit 80 in Support of Ironshore's Motion for Summary Judgment	3612-3620
17	Subcontract between The Developers of Nevada, LLC and Champion Masonry dated April 20, 2001 , Exhibit 109 in Support of Ironshore's Motion for Summary Judgment	4108-4120

20	Subcontractor Allocation (cost of repair) for Debard Plumbing/ <i>Wikey</i> dated December 17, 2012 , Exhibit 150 in Support of Ironshore's Motion for Summary Judgment	4843-4844
8	Subpoena - Centex Homes, Exhibit 69 in Support of Zurich's Motion for Summary Judgment	1840-1842
8	Subpoena - Champion Masonry, Exhibit 68 in Support of Zurich's Motion for Summary Judgment	1837-1839
14	Sun City Anthem – Lot Listing – Duplexes, Exhibit 69 in Support of Ironshore's Motion for Summary Judgment	3334-3339
6	Tender Letter in Garcia, Exhibit 39 in Support of Zurich's Motion for Summary Judgment	1328-1331
6	Tender Letter in Garcia, Exhibit 40 in Support of Zurich's Motion for Summary Judgment	1332-1336
5	Tender Letter served in Mohan, Exhibit 34 in Support of Zurich's Motion for Summary Judgment	1239-1241
15	Third Amended Class Action Construction Defect Complaint filed on August 29, 2011, in the <i>Casallas</i> action, Exhibit 75 in Support of Ironshore's Motion for Summary Judgment	3535-3559
7	Third Amended Complaint filed in Boyer, Exhibit 54 in Support of Zurich's Motion for Summary Judgment	1557-1579
18	Third Amended Complaint filed May 14, 2012, in the <i>Boyer</i> action , Exhibit 124 in Support of Ironshore's Motion for Summary Judgment	4450-4473
18	Third Party Complaint filed by PN II, Inc., on May 22, 2012, in the <i>Boyer</i> action , Exhibit 125 in Support of Ironshore's Motion for Summary Judgment	4474-4490
5	Third Party Complaint filed in Anthem, Exhibit 32 in Support of Zurich's Motion for Summary Judgment	1217-1235
7	Third Party Complaint filed in Anthem, Exhibit 57 in Support of Zurich's Motion for Summary Judgment	1622-1640
7	Third Party Complaint filed in Bennett, Exhibit 53 in Support of Zurich's Motion for Summary Judgment	1535-1556
7	Third Party Complaint filed in Boyer, Exhibit 55 in Support of Zurich's Motion for Summary Judgment	1580-1596

6	Third Party Complaint filed in Casallas, Exhibit 51 in Support of Zurich's Motion for Summary Judgment	1480-1498
8	Third Party Complaint filed in Clark, Exhibit 63 in Support of Zurich's Motion for Summary Judgment	1754-1777
6	Third Party Complaint filed in Garcia, Exhibit 38 in Support of Zurich's Motion for Summary Judgment	1305-1327
6	Third Party Complaint filed in Lino, Exhibit 47 in Support of Zurich's Motion for Summary Judgment	1409-1426
6	Third Party Complaint filed in Marcel, Exhibit 43 in Support of Zurich's Motion for Summary Judgment	1356-1368
7	Third Party Complaint filed in Stallion Mountain, Exhibit 59 in Support of Zurich's Motion for Summary Judgment	1652-1671
7	Third Party Complaint filed in Sun City, Exhibit 61 in Support of Zurich's Motion for Summary Judgment	1684-1716
6	Third Party Complaint filed in Wikey, Exhibit 49 in Support of Zurich's Motion for Summary Judgment	1440-1455
6	Third Party Complaint, Exhibit 45 in Support of Zurich's Motion for Summary Judgment	1383-1395
12	Third-Party Complaint filed by American West Homes, Inc. on November 14, 2008 in the <i>Bennett</i> action, Exhibit 41 in Support of Ironshore's Motion for Summary Judgment	2900-2921
10	Third-Party Complaint filed by Cedco, Inc. on March 27, 2012, in the <i>Seven Hills</i> action, Exhibit 13 in Support of Ironshore's Motion for Summary Judgment	2270-2284
14	Third-Party Complaint filed by Del Webb Communities, Inc., on March 18, 2010, in the <i>Sun City</i> action, Exhibit 67 in Support of Ironshore's Motion for Summary Judgment	3297-3329
11	Third-Party Complaint filed by Lakemont Copper Hills, LLC on August 1, 2012 in the Lino action, Exhibit 28 in Support of Ironshore's Motion for Summary Judgment	2600-2616
11	Third-Party Complaint filed by Silverwing Development on December 21, 2012, in the <i>Drost</i> action, Exhibit 23 in Support of Ironshore's Motion for Summary Judgment	2555-2567



9	Third-Party Complaint filed by Terravita Home Construction Company, Inc. on June 23, 2011, in the <i>Anthem</i> action, Exhibit 6 in Support of Ironshore's Motion for Summary Judgment	2129-2147
13	Third-Party Complaint filed by Terravita Home Construction Company, Inc. on June 23, 2011, in the <i>Anthem</i> action, Exhibit 53 in Support of Ironshore's Motion for Summary Judgment	3138-3156
17	Third-Party Complaint filed by The Developers of Nevada, LLC on May 28, 2013, in the <i>Marcel</i> action , Exhibit 111 in Support of Ironshore's Motion for Summary Judgment	4136-4148
15	Third-Party Complaint filed on February 9, 2012 by Baker-Coleman Construction, Inc., in the <i>Casallas</i> action, Exhibit 76 in Support of Ironshore's Motion for Summary Judgment	3560-3578
14	United Specialty policy no. IRH00CQE0805001 for policy period of February 18, 2008, to February 18, 2009, Exhibit 71 in Support of Ironshore's Motion for Summary Judgment	3357-3407
15	United Specialty policy no. IRH00T960805001 for policy period of October 13, 2008, to October 13, 2009, Exhibit 88 in Support of Ironshore's Motion for Summary Judgment	3695-3746

1 vs.

2 AMERICAN WEST HOMES, INC., a  
 3 Nevada corporation; AMERICAN WEST  
 4 HOMES INC., a Nevada corporation;  
 5 AMERICAN WEST DEVELOPMENT, a  
 6 Nevada corporation; and DOES 1 through  
 100;

Defendants.

7 COME NOW LINDA BENNETT; JOSEPH GRAYSON AND PATRICE COLEMAN-  
 8 GRAYSON; STEVEN AND BARBARA CORWIN; DONALD AND JENNIFER DERMER;  
 9 PHILLIP DICKINSON, TRUSTEE OF THE P.W. DICKINSON QUALIFIED PERSONAL  
 10 RESIDENTIAL TRUST; EVELYN FELICIANO; ROBERT GREEN; GEORGE AND ELISA  
 11 HASSE; CHARLOTTE HUFFMAN; WILLIAM AND LYNN JACKSON; CHRISTOPHER AND  
 12 ZOE LAW; JOHN AND CATHERINE LETUS, TRUSTEES OF THE LETUS TRUST; MARK  
 13 AND BECKY LILLEY, TRUSTEES OF THE LILLEY FAMILY TRUST; THEODORE AND  
 14 ILEENE MANAHAN; GARY MEDINA; CONNIE MARTIN; RUTH PRANGE; JEANENE  
 15 RUSSELL; BRETT SCOVIL; GLORIA AND ALMA SMITH; ALEXANDER AND JOYCE  
 16 STELLA; EDDIE AND SHARON STUBBS; ROGER AND JANAN THOMPSON, Plaintiffs  
 17 (hereinafter collectively, "Plaintiffs"), and all others similarly situated, who are also included as  
 18 Plaintiffs, by and through their attorneys, THE LoBELLO LAW FIRM, and MARK A. LoBELLO  
 19 and FULLER JENKINS and CRAIG D. FULLER, and for their causes of action against Defendants,  
 20 AMERICAN WEST HOMES, INCORPORATED, AMERICAN WEST HOMES  
 21 INCORPORATED and AMERICAN WEST DEVELOPMENT (collectively, "AMERICAN WEST  
 22 HOMES, INC.") and DOES 1 through 100, inclusive, and each of them (collectively, "Defendants")  
 23 allege as follows:

24 1. Plaintiff LINDA BENNETT is a resident of Clark County, Nevada and is the  
 25 beneficial owner of the real property within the American West Classics Development (hereinafter  
 26 "Classics"), located at, 3717 Heather Lily Court, Las Vegas, Nevada;

27 ///

28 ///

1           2.     Plaintiffs JOSEPH GRAYSON and PATRICE COLEMAN-GRAYSON are residents  
2 of Clark County, Nevada and are the beneficial owners of the real property within the Classics  
3 Development located at 9056 Lawton Pine Avenue, Las Vegas, Nevada;

4           3.     Plaintiffs STEVEN and BARBARA CORWIN are residents of Clark County,  
5 Nevada, and are the beneficial owners of the real property within the Classics Development located  
6 at 3708 Plum Blossom Court, Las Vegas, Nevada;

7           4.     Plaintiffs DONALD and JENNIFER DERMER are residents of Clark County, Nevada  
8 and are the beneficial owners of the real property within the Classics Development located at 3716  
9 Heather Lily Court, Las Vegas, Nevada;

10          5.     Plaintiff PHILLIP DICKINSON is the Trustee of the P.W. DICKINSON Qualified  
11 Personal Residential Trust. Plaintiff DICKINSON is a resident of Clark County, Nevada and the  
12 beneficial owner of the real property within the Classics Development located at 3725 Dorrington  
13 Drive, Las Vegas, Nevada;

14          6.     Plaintiff EVELYN FELICIANO is a resident of Clark County, Nevada, and the  
15 beneficial owner of the real property within the Classics Development located at 9080 Lawton Pine  
16 Avenue, Las Vegas, Nevada;

17          7.     Plaintiff ROBERT GREEN is a resident of Clark County, Nevada and the beneficial  
18 owner of the real property within the Classics Development located at 9172 Lawton Pine Avenue,  
19 Las Vegas, Nevada;

20          8.     Plaintiffs GEORGE and ELISA HASSE are residents of Clark County, Nevada, and  
21 the beneficial owners of the real property within the Classics Development located at 3728 Deer  
22 Flats Street, Las Vegas, Nevada;

23          9.     Plaintiff CHARLOTTE HUFFMAN is a resident of Clark County, Nevada, and the  
24 beneficial owner of the real property within the Classics Development located at 3721 Deer Flats  
25 Street, Las Vegas, Nevada;

26 ///

27 ///

28 ///

1           10.     Plaintiffs WILLIAM and LYNN JACKSON are residents of Clark County, Nevada,  
2 and the beneficial owners of the real property within the Classics Development located at 3732  
3 Dorrington Drive, Las Vegas, Nevada;

4           11.     Plaintiffs CHRISTOPHER and ZOE LAW are residents of Clark County, Nevada,  
5 and the beneficial owners of the real property within the Classics Development located at 3729  
6 Dorrington Drive, Las Vegas, Nevada.

7           12.     Plaintiffs JOHN and CATHERINE LETUS are the Trustees of the LETUS Trust.  
8 The LETUS are residents of Clark County, Nevada, and the beneficial owners of the real property  
9 within the Classics Development located at 3712 Fisherking Drive, Las Vegas, Nevada;

10          13.     Plaintiffs MARK and BECKY LILLEY are the Trustees of the LILLEY Family  
11 Trust. The LILLEYS are residents of Clark County, Nevada, and the beneficial owners of the real  
12 property within the Classics Development located at 3632 Deer Flats Street, Las Vegas, Nevada;

13          14.     Plaintiffs THEODORE and ILEENE MANAHAN are residents of Clark County,  
14 Nevada, and the beneficial owners of the real property within the Classics Development located at  
15 9064 Lawton Pine Avenue, Las Vegas, Nevada;

16          15.     Plaintiff GARY MEDINA is a resident of Clark County, Nevada, and the beneficial  
17 owner of the real property within the Classics Development located at 9101 Songwood Court, Las  
18 Vegas, Nevada;

19          16.     Plaintiff CONNIE MERTIN is a resident of Clark County, Nevada, and the beneficial  
20 owner of the real property within the Classics Development located at 3725 Deer Flats Street, Las  
21 Vegas, Nevada;

22          17.     Plaintiff RUTH PRANGE is a resident of Clark County, Nevada, and the beneficial  
23 owner of the real property within the Classics Development located at 3705 Heather Lily Court, Las  
24 Vegas, Nevada;

25 ///

26 ///

27 ///

28 ///

1  
2 18. Plaintiff JEANENE RUSSELL is a resident of Clark County, Nevada, and the  
3 beneficial owner of the real property within the Classics Development located at 3709 Heather Lily  
4 Court, Las Vegas, Nevada;

5 19. Plaintiff BRETT SCOVIL is a resident of Clark County, Nevada, and the beneficial  
6 owner of the real property within the Classics Development located at 9148 Lawton Pine Avenue,  
7 Las Vegas, Nevada;

8 20. Plaintiffs GLORIA and ALMA SMITH are residents of Clark County, Nevada, and  
9 the beneficial owners of the real property within the Classics Development located at 3720 Deer  
10 Flats Street, Las Vegas, Nevada;

11 21. Plaintiffs ALEXANDER and JOYCE STELLA are residents of Clark County,  
12 Nevada and the beneficial owners of the real property within the Classics Development located at  
13 3736 Dorrington Drive, Las Vegas, Nevada;

14 22. Plaintiffs EDDIE and SHARON STUBBS are residents of Clark County, Nevada,  
15 and the beneficial owners of the real property within the Classics Development located at 3701  
16 Heather Lily Court, Las Vegas, Nevada;

17 23. Plaintiffs ROBERT and JANAN THOMPSON are residents of Clark County,  
18 Nevada, and the beneficial owners of the real property within the Classics Development located at  
19 3701 Plum Blossom Court, Las Vegas, Nevada;

20 24. Plaintiffs, including, but not limited to Plaintiffs who are members of the putative  
21 class, are informed and believe, and thereon allege that, at all relevant times herein mentioned,  
22 Defendant AMERICAN WEST HOMES INCORPORATED, was a Nevada corporation, engaged  
23 and doing business in Clark County, Nevada, including but not limited to development, construction,  
24 improvement, marketing and/or sale of residential real property, including but not limited to the  
25 homes at the Classics Development which are the subject of this Complaint, as the successor in  
26 interest to Defendant AMERICAN WEST HOMES, INCORPORATED.

27 ///

28 ///

1           25.     Plaintiffs, including, but not limited to Plaintiffs who are members of the putative  
2 class, are further informed and believe, and thereon allege that, at all relevant times herein  
3 mentioned, Defendant AMERICAN WEST HOMES, INCORPORATED a Nevada corporation, was  
4 engaged and doing business in Clark County, Nevada, including but not limited to development,  
5 construction, improvement, marketing and/or sale of residential real property, including but not  
6 limited to the homes at the Classics Development which are the subject of this Complaint, but that  
7 this Nevada Corporation has since dissolved.

8           26.     Plaintiffs, including, but not limited to Plaintiffs who are members of the putative  
9 class, are further informed and believe, and thereon allege that, at all relevant times herein  
10 mentioned, Defendant AMERICAN WEST DEVELOPMENT, INC., was a Nevada corporation,  
11 with its principal place of business in Clark County, Nevada, engaged and doing business in Clark  
12 County, Nevada, including but not limited to development, construction, improvement, marketing  
13 and/or sale of residential real property, including but not limited to the homes at the Classics  
14 Development which are the subject of this Complaint. Plaintiffs are further informed and believe  
15 and based thereon allege that AMERICAN WEST DEVELOPMENT, INC. is a subsidiary and/or  
16 related entity to the other named Defendants, AMERICAN WEST HOMES, INCORPORATED and  
17 AMERICAN WEST HOMES INCORPORATED.

18           27.     Plaintiffs, including but not limited to Plaintiffs who are members of the putative  
19 class, are owners and/or beneficial owners of real property(ies) within the Classics Development  
20 located in Las Vegas, Clark County, Nevada, which was developed, improved, marketed and  
21 constructed by Defendants AMERICAN WEST HOMES, INC.

22           28.     Defendants DOES 1 through 100, inclusive, whether individual, corporate,  
23 partnership, associate or otherwise are sued by these fictitious names as the true names and  
24 capacities of Defendants identified as DOES 1 through 100, inclusive, are, at the time of the filing of  
25 this Complaint, unknown to Plaintiffs. Plaintiffs, inclusive, are informed and believe and thereupon  
26 allege that at all times herein mentioned each of the Defendants sued herein as DOES 1 through 100  
27 were/are the employees, agents, servants, and/or independent contractors of one or more of his, her,  
28 its or their co-Defendants, and in doing the things hereinafter mentioned, the Defendants identified



1 herein as DOES 1 through 100, inclusive were acting within the scope of his, her, its or their  
2 authority as such employees, agents, servants, and/or independent contractors and with the  
3 permission, consent and/or ratification of each one or more of his, her, its or their co-Defendants;  
4 and that each of said fictitiously named Defendants, whether an individual, corporation, association,  
5 or otherwise, are in some way liable or responsible to Plaintiffs, including but not limited to those  
6 Plaintiffs who are members of the putative class, on the facts hereinafter alleged, and caused injuries  
7 and damages proximately thereby as hereinafter alleged. At such time as these Defendants' true  
8 names become known to Plaintiffs, Plaintiffs, inclusive, will seek leave of Court to amend this  
9 Complaint and to thereby insert the true names and capacities of each said DOE Defendant.

10 29. The named Plaintiffs herein bring this action on their own behalf and on behalf of all  
11 persons similarly situated. The class that Plaintiffs represent is composed of homeowners of  
12 approximately 100 homes within the Classics Development. The persons in the class are so  
13 numerous, consisting of approximately 100 sets of homeowners, that the joinder of all such persons  
14 is impractical. Plaintiffs are bringing this action on behalf of approximately 100 sets of homeowners  
15 of approximately 100 homes, who share a common or general interest, and it would be impractical  
16 for those current or former employees to bring the action individually. As such, the disposition of  
17 the Plaintiffs' claims in a class action rather than in individual actions will benefit the parties and the  
18 Court.

19 30. The class members share a community of interest and an injury in fact as Defendants  
20 have negligently built the homes in the Classics Development and/or the homes in the Classics  
21 Development were not properly or adequately prepared, designed, engineered, supervised and/or  
22 constructed, and in violation Nevada building codes, ordinances, and industry standards, thereby  
23 causing injury to Plaintiffs in substantially the same way in each of the homes in the class.

24 31. There is a well-defined community of interest in the questions of law and fact  
25 involved affecting the plaintiff class in that all named and unnamed Plaintiffs purchased defectively  
26 constructed real property within the Classics Development from Defendants AMERICAN WEST  
27 HOMES, INC. and DOES 1 through 100. These questions of law and fact predominate over  
28 questions that affect only individual class members. A common or single state of facts establishes

1 the right of each member of the class to recover.

2 32. The claims of the named Plaintiffs are typical of those of the class Plaintiffs are  
3 representing. Defendants have negligently built the homes of each of the class Plaintiffs in the  
4 Classics Development and/or the homes of the class Plaintiffs in the Classics Development were not  
5 properly or adequately prepared, designed, engineered, supervised and/or constructed, and in  
6 violation Nevada building codes, ordinances, and industry standards. Defendants' tortious acts and  
7 omissions were substantially the same in each home, such that the named Plaintiffs' claims are  
8 typical of those of the entire class of Plaintiffs in the Classics Development.

9 33. The named Plaintiffs will fairly and adequately represent the interests of the class.  
10 Plaintiffs' experience and knowledge of the acts of Defendants, and each of them, entitle them to  
11 fairly and adequately represent the class of Plaintiffs in the Classics Development.

12 34. There is no plain, speedy, or adequate remedy other than by maintenance of this class  
13 action since Plaintiffs are informed and believe that the damage to each plaintiff is relatively small in  
14 relation to the costs necessary to pursue an action against all responsible parties, making it  
15 economically unfeasible for each individual plaintiff to pursue remedies other than a class action.  
16 Consequently, there would be a failure of justice but for the maintenance of the present class action.

17 35. The prosecution of individual remedies by members of the plaintiff class would tend  
18 to establish inconsistent standards of conduct for the Defendants and tend to result in the impairment  
19 of the class members' rights and the disposition of their interests through actions to which they were  
20 not parties.

21 36. The prosecution of individual remedies by members of the plaintiff class would also  
22 create a risk of adjudications with respect to individual members of the class which would as a  
23 practical matter be dispositive of the interests of the other members not parties to the adjudications  
24 or substantially impair or impede their ability to protect their interests in the event of exhaustion of  
25 insurance funds by Defendants.

26 ///

27 ///

28 ///



1           37. Plaintiffs are informed and believe and thereupon allege that starting in or about  
2 1995, AMERICAN WEST HOMES, INC. and/or Defendants named herein as DOES 1 through 100,  
3 inclusive, were, and at all times herein mentioned are, engaged in the mass production of single  
4 family homes in Clark County, Nevada, the improvements and appurtenances thereof or thereto, for  
5 sale and use by members of the general public, including but not limited to Plaintiffs and those  
6 Plaintiffs who are members of the putative class, and each of them. Defendants, and each of them,  
7 including those Defendants named herein as DOES 1 through 100, participated in the development,  
8 construction, marketing and/or sale of the single family homes, appurtenances, and improvements in  
9 and for the Classics Development.

10           38. Plaintiffs are informed and believe and thereupon allege that Defendants  
11 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, as developers, contractors,  
12 sub-contractors, marketers, sellers and/or builders, developed the Classics Development and the  
13 subject residential structures therein, which structures were intended to be used as residential  
14 dwellings; and that at all times herein mentioned, Defendants, and each of them acted as developers  
15 contractors, sub-contractors, marketers, sellers and/or builders of the Development at Classics for the  
16 purposes set forth herein.

17           39. Plaintiffs, including but not limited to those Plaintiffs who are members of the  
18 putative class, are informed and believe and based thereon allege that Defendants AMERICAN  
19 WEST HOMES, INC. and DOES 1 through 100, inclusive, as developers, contractors, sub-  
20 contractors, marketers, sellers and/or builders of the Classics Development, knew that the homes,  
21 appurtenances, and the structures therein were to be sold, and would be sold to and thus be used by  
22 members of the general public, including, but not limited to the Plaintiffs herein, inclusive, as and  
23 for residential purposes.

24           40. Defendants, and each of them, knew or in the exercise of reasonable diligence should  
25 have known, that all persons who planned to purchase and/or who did in fact purchase said  
26 structures would do so without inspection for the defects as are set forth herein.

27 ///

28 ///

1           41. The defects set forth herein include, without limitation, patent defects, latent defects  
2 and/or defects which Defendants, and each of them, knew or in the exercise of reasonable diligence  
3 should have known would occur.

4           42. Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive,  
5 as developers, mass-developers, constructors, mass-constructors, marketers, mass-marketers,  
6 producers, and/or mass-producers of the Classics Development are liable for the defects as herein  
7 mentioned and are, therefore, responsible to Plaintiffs, inclusive, and each of them, for all  
8 damages suffered as a result of the deficiencies set forth herein, in a sum in excess of Ten  
9 Thousand Dollars (\$10,000.00).

10           43. Plaintiffs have properly notified Defendants AMERICAN WEST HOMES, INC. of  
11 the defective conditions of the subject property, in accordance with Nevada Revised Statutes section  
12 40.645 and have complied with all pre-filing requirements of Nevada Revised Statutes sections  
13 40.600 through 40.695, including but not limited to Mediation pursuant to Nevada Revised Statutes  
14 section 40.680 *et seq.* and notwithstanding such notice and procedure, AMERICAN WEST  
15 HOMES, INC. and DOES 1 through 100, inclusive, have failed to and have not made the appropriate  
16 restorations and/or repairs to the structures the subject of this Complaint, at their cost and expense.

17           44. Plaintiffs, at all times herein mentioned, relied on the skill of Defendants  
18 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, in producing homes and  
19 appurtenances thereto that were and are reasonably fit to be used by Plaintiffs, and each of them,  
20 inclusive, for their intended purpose(s).

21           45. Plaintiffs, and each of them, inclusive, are still not fully aware of all of the causes, the  
22 full extent and possible legal significance of the results or causes of the property conditions herein  
23 above-described, due to the loss being continual in nature and the fact that discovery is ongoing.  
24 Plaintiffs, and each of them, inclusive, are lay persons who have required expert consultations to  
25 provide a review of the property conditions. Plaintiffs are still not informed of all causes or entire  
26 results of the full extent of these defects and/or deficiencies, nor are Plaintiffs, and each of them,  
27 inclusive, fully informed of the potential causes of the resultant distress and/or damages due to the  
28 loss being continual in nature and discovery being ongoing.

1           46. Plaintiffs are informed and believe and thereon allege that Defendants AMERICAN  
2 WEST HOMES, INC. and DOES 1 through 100, inclusive, did inspect and market said homes and  
3 appurtenances with full knowledge of the causes and effects of defects in the construction of the  
4 Classics Development, the defects and/or deficiencies in design, installation and supervision thereof  
5 and, in disregard of the defective conditions, causes and results. In particular, Plaintiffs, and each of  
6 them, inclusive, are informed and believe and thereon allege that said Defendants, and each of them,  
7 inclusive, including those Defendants designated herein as DOES 1 through 100, in the inspection,  
8 design, installation and supervision of Classics Development, engaged in a calculated course of  
9 conduct to reduce the costs of development by the use of substandard, deficient and inadequate  
10 design, architectural, plumbing, HVAC, engineering and construction techniques, specifications and  
11 materials.

12           47. These deficiencies and inadequacies may include but are not limited to choices of  
13 windows, window framing, slab foundations, doors, roof structures, footings for wall blocks, toilet  
14 mounting rings (also known as closet rings or closet flanges), tub/shower valve leaks at the trim  
15 assembly, roof mounted forced air units lack provisions for condensate overflow protection,  
16 windows without sealant behind nail fin, roof valleys with obstructed water flow to the roof  
17 perimeter, chimneys with cap top fastened allowing water penetration to the framing, roof ridges and  
18 hips with missing weather blocking, eaves with missing edge metal, b-vents with missing storm  
19 collar, electrical panels with missing flashing, unsealed sliding glass door thresholds, pot shelves  
20 with inadequate waterproofing installation, weather exposed entry doors with missing pan flashing,  
21 failure of basement structure, architecture, wind proofing and/or waterproofing, breach in the one  
22 hour firewall construction, glass block windows with no flashing, sheet metal flashing improperly  
23 installed at deck perimeter, sliding glass doors on balconies with missing pan flashing under  
24 thresholds, OSB sheathing used instead of exterior grade plywood on decks, balcony wall tops and  
25 columns with inadequate waterproofing, oversized anchor bolt holes for securing the framing to the  
26 slab, hold down nailing which missed or split studs, non-code compliant Romex cables, lack of  
27 grounding electrode connections to bond the hot and cold water lines to the electrical ground at the  
28 panel, and fire rated spaces above electrical panels not fire sealed. Plaintiffs are further informed

1 and believe and thereupon allege that the structures may be additionally defective in ways and to an  
2 extent not precisely known, but which will be established at the time of trial, according to proof.

3 48. These deficiencies and inadequacies include violations of local building codes and  
4 ordinances, industry standards, manufacturers' recommendations and other applicable building law  
5 and/or statute(s).

6 49. Plaintiffs, and each of them, inclusive, are informed and believe and thereon allege  
7 Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, ignored curing  
8 the causes of the defects and pursued a course of development and construction of the Classics  
9 Development so as to increase their profit from the project at the expense of the eventual  
10 homeowner(s).

11 50. Plaintiffs are informed and believe and based thereon allege that any and all repair  
12 attempts by Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive,  
13 have failed or will hereafter fail to adequately correct said property damages, defects and  
14 deficiencies thereby resulting in further property damages caused thereby.

15 51. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
16 that instead of causing the necessary and required reconstruction and repair of the Classics  
17 Development, Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive,  
18 have caused cosmetic, temporary or ineffective repairs to be made to various portions of the Classics  
19 Development, if any, for the purpose of leading Plaintiffs to believe that said Defendants were  
20 resolving and correcting all deficiencies. By virtue of such conduct, said Defendants are estopped to  
21 assert that the Plaintiffs have not commenced this action in a timely fashion and are further estopped  
22 to assert that the Plaintiffs may not seek the damages herein sought.

23 52. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
24 that the above-described defects arose out of, were attributable to, and are directly and proximately  
25 caused by the above-described defects and/or deficiencies in the design, specification, planning,  
26 supervision, observation of construction, development and/or improvement and any repairs of the  
27 Classics Development, and that prior to the time when the defects were discovered by Plaintiffs as  
28 set forth herein, could not have been discovered by the exercise of reasonable diligence. Said

1 defects were not apparent or visible from a casual inspection.

2 53. Plaintiffs, and each of them, inclusive, have been compelled to retain counsel to  
3 represent them in this action and are, therefore, entitled to an award of their reasonable attorney's  
4 fees and the costs of suit herein incurred.

5 **FIRST CAUSE OF ACTION**

6 **(Negligence Against All Defendants and DOES 1 - 100)**

7 54. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 53, inclusive of  
8 the Complaint as though fully set forth herein.

9 55. Plaintiffs are informed and believe and based thereon allege that the items generally  
10 referred to and particularly described herein were constructional defects within the meaning of  
11 Nevada Revised Statutes sections 11.203-205 in that the above-described defects arose out of, and  
12 were and are attributable to and are directly and proximately caused by deficiencies in the design,  
13 specifications, planning, supervision, observation of construction, construction, development and/or  
14 improvement of the subject premises and subject structures, and that prior to the time when it was  
15 discovered by Plaintiffs as set forth herein, could not have been discovered by the exercise of  
16 reasonable diligence.

17 56. Plaintiffs are informed and believe and thereon allege that the deficiencies described  
18 herein regarding the analysis, preparation, design, specifications, planning, supervision, observation  
19 of construction, construction, development and/or improvement of the subject premises and subject  
20 structures were known, or in the exercise of reasonable diligence should have been known, by  
21 Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100.

22 57. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
23 that Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, were and  
24 are builders, contractors, general contractors, subcontractors, suppliers, material men, architects  
25 and/or engineers, or other persons, entities, and/or professionals and/or their agents, successors  
26 and/or assigns, who participated in the process of design, engineering, manufacture and/or  
27 construction of homes, appurtenances, buildings, improvements and structures of the Classics  
28 Development and/or who performed works of labor, supplied materials, equipment and/or services



1 necessary for the building and construction, including supervision of construction of the Classics  
 2 Development with the knowledge that the homes and appurtenances thereto would be sold to and  
 3 used by members of the public. In so doing, said Defendants, including Defendants herein named as  
 4 DOES 1 through 100, in the capacity as builders, contractors, subcontractors, suppliers, material  
 5 men, architects, engineers, sellers and/or general contractors or otherwise, caused the subject  
 6 premises and subject structures to be designed, engineered and/or constructed through their own  
 7 works of labor, their supplying of materials, equipment and services, and through causing other  
 8 contractors and subcontractors, including other Defendants to perform works of labor, to supply  
 9 materials, equipment and services in order to properly complete the Classics Development and  
 10 subject structures so that the Development could be marketed, sold to and used by members of the  
 11 public. As a result, Defendants, and each of them, owed Plaintiffs, and each of them, a duty of  
 12 ordinary and reasonable care to prevent defect, injury or other damage to the structures, buildings,  
 13 improvements, and other appurtenances to the real property of Plaintiffs, and each of them.

14 58. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
 15 the Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, whether  
 16 builders, contractors, subcontractors, suppliers, material men, architects, engineers or otherwise,  
 17 negligently, carelessly, tortiously, wrongfully and in breach of their duty to Plaintiffs, failed to use  
 18 reasonable care in the analysis, preparation, design, manufacture, construction, and/or installation of  
 19 the real property and structures thereon, including without limitation: civil engineering, grading,  
 20 foundations, roofs, windows, concrete, framing, stucco, electrical systems, plumbing systems,  
 21 architectural systems, mechanical systems, and walls.

22 59. Plaintiffs, and each of them, inclusive, are informed and believe and thereupon allege  
 23 the Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, whether  
 24 builders, contractors, subcontractors, suppliers, material men, architects, engineers or otherwise,  
 25 performed work, labor and/or services for the construction of the Classics Development, and each  
 26 knew or should have known that if the Classics Development was not properly or adequately  
 27 prepared, designed, engineered, supervised and/or constructed, that the owners and users would be  
 28 substantially damaged thereby, and that the residences, homes appurtenances, buildings,

1 improvements and structures and improvements would be defective within the meaning of Nevada  
2 Revised Statutes section 11.203.

3       60. The Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100,  
4 inclusive, were under a duty to exercise ordinary care as builders, contractors, subcontractors,  
5 suppliers, material men, architects, engineers or otherwise to avoid reasonably foreseeable injury and  
6 damages to users and purchasers of the homes, appurtenances, buildings, improvements and  
7 structures, and knew or should have foreseen with reasonable certainty that purchasers and/or users  
8 would suffer the damages set forth herein if said Defendants, and each of them, failed to perform  
9 their duties to cause the subject premises and subject structures to be designed, engineered and  
10 constructed in a proper workmanlike manner and fashion.

11       61. In performing the works of builders and/or contractors, subcontractors, suppliers,  
12 material men, architects, engineers or otherwise, Defendants AMERICAN WEST HOMES, INC.  
13 and DOES 1 through 100, inclusive, failed and neglected to perform the work, labor and services  
14 properly or adequately in that each said Defendant so negligently, carelessly and in an  
15 unworkmanlike manner performed the aforesaid work, labor and/or services such that the subject  
16 premises and subject structures as described herein were designed, prepared, engineered and/or  
17 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner within the  
18 meaning of Nevada Revised Statutes sections 11.203-205.

19       62. These acts of Defendants and each of them were both the actual and proximate cause  
20 of the damages to Plaintiffs' homes, as set forth herein, because but for these acts, Plaintiffs would  
21 not have suffered these harms.

22       63. In the preceding four (4) years, Plaintiffs and each of them as similarly and/or  
23 identically situated have discovered their homes in the Classics Development have been and are  
24 presently experiencing defective conditions of the real property and structures thereon, including  
25 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
26 stucco, electrical systems, plumbing systems, HVAC, mechanical systems, architectural systems and  
27 walls, and that said homes, residences, structures and/or improvements within the subject  
28 development and the components thereof are not of merchantable quality nor were they designed,

1 erected, constructed or installed in a workmanlike manner but instead, are defective and, as now  
2 known, the subject components demonstrate improper, nonexistent, and/or inadequate design,  
3 construction, manufacture, and/or installation. Plaintiffs, and each of them, inclusive, are informed  
4 and believe and thereupon allege that the structures may be additionally defective in ways and to an  
5 extent not precisely known, but which will be established at the time of trial, according to proof.

6 64. As a direct and proximate result of the conduct of Defendants AMERICAN WEST  
7 HOMES, INC. and DOES 1 through 100 herein alleged, Plaintiffs, and each of them, inclusive, have  
8 suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this  
9 Court in that they have been and will hereafter be required to perform investigations and works of  
10 repair, restoration, and construction to portions of the structures to prevent further damage to the  
11 structures and other property and to restore the structures to their proper condition and/or will suffer  
12 damages in an amount the full nature and extent of which shall be ascertained according to proof at  
13 trial, but believed to be in excess of Ten Thousand Dollars (\$10,000). Plaintiffs, and each of them,  
14 seek damages available pursuant to NRS section 40.655. Those items of damages include but are  
15 not limited to the following:

16 a. For the costs of expert investigation, redesign and reconstruction of the construction  
17 defects, ongoing and/or to be completed, including but not limited to those set forth herein, and for  
18 which Plaintiffs have suffered and/or will suffer damages in an amount the full nature and extent of  
19 which shall be ascertained according to proof at trial;

20 b. For damages to the real property and structures thereon which are the legal/proximate  
21 consequence of the construction defects, including but not limited to those set forth herein, and for  
22 which Plaintiffs have suffered or will suffer damages in an amount the full nature and extent of  
23 which shall be ascertained according to proof at trial;

24 c. For diminution in value and/or lost profit which is the legal/proximate result of the  
25 construction defects involving structural damages, including but not limited to those specified  
26 herein, and for which Plaintiffs have suffered and/or will suffer damages in an amount the full nature  
27 and extent of which shall be ascertained according to proof at trial;

28 ///



e. For relocation costs and related costs when repairs are effectuated, which is the legal/proximate consequence of the construction defects, including but not limited to those specified herein, for which Plaintiffs have suffered and/or will suffer damages the full nature and extent of which shall be ascertained according to proof at trial;

9           f.       For the lost monetary value of property due to the stigma which is the legal/proximate  
10 consequence of the construction defect problems, including but not limited to those specified herein,  
11 and for which Plaintiffs have suffered and/or will suffer damages the full nature and extent of which  
12 shall be ascertained according to proof at trial; and

g. For the costs of certain repairs and expert investigation which were completed which are the legal/proximate consequence of the problems, including but not limited to those specified herein, and for which Plaintiffs have suffered and/or will suffer damages the full nature and extent of which shall be ascertained according to proof at trial.

(Fraudulent Concealment (Fraud In the Inducement) Against All Defendants, Defendant  
AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive)

20            65.     Plaintiffs reallege and incorporate by reference paragraphs 1 through 64 inclusive of  
21     this Complaint as though fully set forth herein.

22 66. Plaintiffs are informed and believe, and based thereon allege, that at all times herein  
23 mentioned, Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100, were the  
24 principals, agents, masters, servants, employers, employees, co-venturers, co-conspirators, and/or  
25 joint venturers of each of the other Defendant(s), and in doing the things hereinafter alleged, were  
26 acting within the scope, course, and authority of such agency, employment, agreement, and/or joint  
27 venture, and with the knowledge, consent, authority, approval, ratification, and/or permission of each  
28 of the other Defendant(s).

1           67. Plaintiffs are further informed and believe, and based thereon allege Defendants  
2 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, individually and through  
3 their agents and employees acting on their behalf, concealed, suppressed, and failed to disclose  
4 material facts pertinent to the defective conditions on the property and structures thereon and the  
5 foreseeable damages that result there from, including but not limited to, defective conditions in the  
6 civil engineering, grading, foundations, roofs, windows, concrete, framing, stucco, electrical  
7 systems, other architectural components, plumbing systems, HVAC, mechanical systems, and walls,  
8 improper, nonexistent, and/or inadequate design, construction, manufacture, and/or installation of  
9 components, as more fully set forth in Plaintiffs' expert reports. Specifically, said Defendants  
10 concealed and suppressed material facts known to Defendants and pertinent to the defective  
11 conditions.

12           68. Specifically, said Defendants engaged in a pattern and practice of misrepresenting the  
13 nature and quality of construction of the homes to the purchasing Plaintiffs. In Defendants' actions,  
14 including but not limited to advertising, marketing, sales techniques, brochures, literature, and/or  
15 sales pitches, Defendants, and each of them, adopted a pattern and practice of misleading  
16 homeowners through both affirmative representations and omissions that the homes were built  
17 soundly, fit for the purposes for which a home is typically used, intended to last, covered by  
18 warranties, that Defendants were building quality homes and/or that the homes complied with  
19 building codes and standards and manufacturer specifications.

20           69. Defendants further represented themselves as trustworthy family company companies  
21 who would do right by the homeowner purchasers.

22           70. By way of illustration, and without limitation, Plaintiff SCOVIL completed a  
23 homeowner survey indicating his home's basement window wells were collapsing in. Defendants'  
24 advertising and/or marketing materials touted the "innovative storage basements" offered in certain  
25 floor plans of the Classics Development, describing them as "spectacular." See American West  
26 Homes Classics brochure, a true and correct copy of which is attached hereto as EXHIBIT A and  
27 incorporated herein by reference, enticing prospective homeowners with the following text:  
28 "American West Homes Exquisite Homes. Unmatched Value. What's your idea of luxury? At

1 American West it is sweeping staircases and spectacular storage basements. It is gourmet kitchens  
2 and opulent master suites. It is five exquisite floorplans built under stunning mountain views. It is  
3 American West Classics. American West Classics offers complete luxury inside and out. You'll  
4 find formal dining rooms made for elegant dinner parties, huge family rooms where you can settle in  
5 with your favorite film and innovative storage basements that are any executive family's dream."  
6 (emphasis added).

7 71. These representations by Defendants were false when made. In addition, by omitting  
8 facts and information for which Defendants owed Plaintiffs a duty to disclose, Defendants further  
9 misled Plaintiffs.

10 72. Said Defendants were under a duty to disclose the true facts concerning the nature of  
11 the construction of the homes in the Classics Development to Plaintiffs.

12 73. Plaintiffs and said Defendants enjoyed a special relationship, wherein Plaintiffs  
13 reasonably imparted special confidences in said Defendants and the Defendants would reasonably  
14 know of this confidence in that the material facts concealed, suppressed, or not disclosed by  
15 Defendants were particularly with Defendants' knowledge and not within the fair and reasonable  
16 reach of Plaintiffs. Plaintiffs are further informed and believe and thereon allege the defective  
17 condition of the property and structures was peculiarly within the knowledge of Defendants and not  
18 within the fair and reasonable reach of Plaintiffs, thereby imposing a duty on Defendants to disclose  
19 said defects to Plaintiffs. As a result of Defendants' failure to disclose the defective condition of the  
20 property and structures, Plaintiffs were prevented from gaining the opportunity to be placed on equal  
21 footing with Defendants.

22 74. Said Defendants intentionally concealed, suppressed, and failed to disclose these facts  
23 with the intent to defraud Plaintiffs for the purpose of inducing Plaintiffs to purchase their homes.

24 75. Plaintiffs are informed and believe and based thereon allege, that Defendants and  
25 each of them, concealed, from Plaintiffs, the nature and extent of the defects. The fraudulent acts  
26 and omissions of Defendants, and each of them, included the failure to inform the Plaintiffs of  
27 defects known to Defendants, for the purpose of reducing Defendants' cost of repair and/or  
28 warranty.

1        76. Plaintiffs are informed and believe and based thereon allege, that Defendants and  
2 each of them, concealed these defects from Plaintiffs in a calculated effort to cause the statute of  
3 repose to run on the homes, so as to avoid the duty to repair the defects, despite advance knowledge  
4 of their existence.

5        77. Plaintiffs are informed and believe and based thereon allege, that Defendants and  
6 each of them, concealed these defects from Plaintiffs in order to increase profits, expedite their  
7 return on investment and meet their obligations to timely deliver residences for sale to the  
8 homeowner market, without consideration for the ultimate damage to homeowners from the  
9 defective construction.

10       78. At the time Defendants AMERICAN WEST HOMES, INC. and DOES 1 - 100  
11 concealed, suppressed, and failed to disclose the material facts set forth above and at the time  
12 Plaintiffs purchased their homes, they were ignorant of the existence of the facts which Defendants  
13 concealed, suppressed, and failed to disclose regarding the defective condition of the property and  
14 structures. Had Plaintiffs known of the defective condition of the property and structures, they  
15 would not have purchased their homes or would not have purchased their homes under the same  
16 terms and conditions.

17       79. In the preceding three (3) years, Plaintiffs and each of them as similarly and/or  
18 identically situated have discovered their homes in the Classics Development have been and are  
19 presently experiencing defective conditions of the real property and structures thereon, including  
20 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
21 stucco, electrical systems, plumbing systems, HVAC, mechanical systems, and walls, and that said  
22 homes, residences, structures and/or improvements within the subject development and the  
23 components thereof are not of merchantable quality nor were they designed, erected, constructed or  
24 installed in a workmanlike manner but instead, are defective and, as now known, the subject  
25 components demonstrate improper, nonexistent, and/or inadequate design, construction,  
26 manufacture, and/or installation. Plaintiffs and each of them did not discover the true nature of these  
27 defects until Plaintiffs' experts completed their inspections. Plaintiffs, and each of them, inclusive,  
28 are informed and believe and thereupon allege that the structures may be additionally defective in

1 ways and to an extent not precisely known, but which will be established at the time of trial,  
2 according to proof.

3 80. As a direct and proximate result of Defendants' concealment, suppression and failure  
4 to disclose the facts, as described above, Plaintiffs sustained damages, in an amount precisely  
5 unknown but believed to be within the jurisdiction of this Court, in that Plaintiffs have been and will  
6 hereafter be required to perform investigations and works of repair, restoration, and construction to  
7 portions of the structures to prevent further damage and to restore the structures to their proper  
8 condition and/or will suffer damages in an amount in excess of Ten Thousand Dollars (\$10,000), the  
9 full nature and extent of which shall be ascertained according to proof at trial.

10 **THIRD CAUSE OF ACTION**

11 **(Fraudulent Concealment Against All Defendants, Defendant AMERICAN WEST HOMES,**  
12 **INC. and DOES 1 through 100, inclusive)**

13 81. Plaintiffs reallege and incorporate by reference paragraphs 1 through 80 inclusive of  
14 this Complaint as though fully set forth herein.

15 82. Plaintiffs are further informed and believe and based thereon allege that Defendants'  
16 acts of fraudulent concealment are not limited to the time of sale. Defendants, in addition,  
17 perpetuated the fraud by concealing the defects in the homes once they were sold and/or passed on to  
18 subsequent purchasers.

19 83. Following purchase, Plaintiffs are informed and believe and based thereon allege, that  
20 Defendants and each of them, concealed, from both original and subsequent purchaser Plaintiffs, the  
21 nature and extent of the defects. The fraudulent acts and omissions of Defendants, and each of them,  
22 included the failure to inform the original and subsequent purchaser Plaintiffs of defects known to  
23 Defendants, for the purpose of reducing Defendants' cost of repair and/or warranty. In addition, the  
24 fraudulent acts and omissions of Defendants, and each of them, may on information and belief  
25 include: doing nothing, stonewalling, charging Plaintiffs for repairs for which Defendants  
26 themselves should have paid, providing "band-aid" type repairs such as paint and patch repairs  
27 which did not address greater underlying structural and other defects, and/or giving Plaintiffs the  
28 runaround, in order to cause the statute of repose to run on the homes, so as to avoid the duty to



1 repair the defects.

2 84. Plaintiffs are further informed and believe and based thereon allege as examples of  
3 the fraud perpetrated by Defendants on Plaintiffs, the following, without limitation:

4 85. In or about Fall 2004, homeowner surveys revealed numerous defects in Plaintiffs'  
5 homes, including but not limited to the following:

6 (a) Homeowners, the CORWINS at 3708 Plum Blossom Court, complained of stucco cracks,  
7 doors not closing properly, block wall cracks, window seal failures, plumbing problems, and large  
8 cracks in the driveway.

9 (b) Homeowner, GREEN, at 9172 Lawton Pine Avenue, complained of drywall cracks,  
10 stucco cracks, window seal failures, water stains on ceilings, windows with moisture between them,  
11 basement leaking, glass block leaking, bedroom, living room and kitchen leaking etc.

12 (c) Homeowner, SCOVIL, at 9148 Lawton Pine Avenue, complained of drywall cracks,  
13 stucco cracks, doors not closing properly, balcony leaks, window seal failures, water stains on  
14 ceiling and window sills, plumbing problems, electrical problems, roof leaks, basement window  
15 wells collapsing in, etc.

16 (d) Additional homeowners offered different statements about defects they began to discover  
17 in their homes, including but not limited to the following: "We have had to contact them [American  
18 West Homes, Inc.] several times and still nothing has been corrected or repaired" by Plaintiff  
19 SCOVIL; "I've complained a lot but have not had results" by Plaintiffs, the THOMPSONS; "had  
20 house repainted to cover cracks" by Plaintiffs the JACKSONS; and "The big storm that took place  
21 last year took out my basement window and I had leaks in several bedrooms, living room, kitchen  
22 and they did take care of some of it. Stucco in living room is all cracking and peeling due to all the  
23 water that came in through the glass block" by Plaintiff GREEN.

24 86. True and correct copies of the homeowner surveys are attached hereto as **EXHIBIT**  
25 **B** and made a part hereof.

26 87. Plaintiffs thereafter sent their respective Chapter 40 Notices to Defendants pursuant  
27 to NRS section 40.645 *et seq.* True and correct copies of Plaintiffs' Chapter 40 Notices are attached  
28 hereto as **EXHIBIT C** and made a part hereof.

1           88. On information and belief, based on similar construction defect cases against the  
2 same Defendants in nearby developments and based on Defendants' responses to the Chapter 40  
3 Notices Plaintiffs sent in this case, Plaintiffs believe the Defendants' expert report and cost of repair  
4 will admit to numerous defects including but not limited to the following categories: roofs, exterior  
5 finishes, balconies, sliding glass doors, fire resistive construction, wall board, fireplaces and chases,  
6 miscellaneous architectural and windows.

7           89. In light of these expected defense reports, the responses to Chapter 40 Notices by  
8 Defendants, the homeowners' surveys and Chapter 40 notices along with prior written and oral  
9 complaints, Defendants knew Plaintiffs' homes were suffering from these types of defects, yet did  
10 not properly act to remedy the defects. Instead, Defendants engaged in a calculated campaign to  
11 delay and conceal the defects through techniques which include but are not limited to  
12 misinformation, posturing, and or providing partial or inadequate response so as to mislead Plaintiffs  
13 to believe nothing was wrong with their homes or that the defects were a result of their own lack of  
14 maintenance or Plaintiffs' additions or changes to the subject property following completion of  
15 construction by Defendants.

16           90. Despite notice of, and knowledge of, these defects and similar defects reported by the  
17 Plaintiffs to Defendants, Defendants failed and refused to repair the defects. Instead, Defendants  
18 failed to respond and/or failed to adequately respond to homeowner concerns, for the purpose of  
19 reducing Defendants' cost of repair and/or warranty. In addition, the fraudulent acts and omissions  
20 of Defendants, and each of them, included doing nothing, stonewalling, charging Plaintiffs for  
21 repairs for which Defendants themselves should have paid, providing "band-aid" type repairs such as  
22 paint and patch repairs which did not address greater underlying structural and other defects, and/or  
23 giving Plaintiffs the runaround, in order to cause the statute of repose to run on the homes, so as to  
24 avoid the duty to repair the defects.

25           91. To further illustrate Defendants' lack of response, starting in or about mid-March  
26 2007, Defendants responded to certain of Plaintiffs' NRS Chapter 40 Notices concerning these  
27 defects as follows, without limitation:

28 ///

1 (a) With respect to the CORWIN residence, Defendants responded that the Chapter 40 notice  
2 was insufficient and that many of the items alleged to be defective were not observed during  
3 inspection or voiced by the homeowner. Defendants further responded that they would repair  
4 various conditions "to the extent it can be ascertained to exist and result from original construction."  
5 Numerous other defects received a response from Defendants that the defective condition was due to  
6 a "homeowner maintenance issue" Defendants alleged was attributable to the actions of the  
7 homeowner and not the acts of Defendants. Defendants further claimed several other defects were  
8 not required by the applicable building codes or were not attributable to the original construction and  
9 declined to repair them. Subsequently, in late April 2007, Defendants claimed to have agreed to  
10 perform certain enumerated repairs, including certain repairs to the tile roofs and doors. However,  
11 the repairs were inadequate, and Plaintiffs' claims remain.

12 (b) With respect to the SCOVIL residence, Defendants similarly responded that the Chapter  
13 40 notice was insufficient and that many of the items alleged to be defective were not observed  
14 during inspection or voiced by the homeowner. Defendants further responded that they would repair  
15 various conditions "to the extent it can be ascertained to exist and result from original construction."  
16 Numerous other defects received a response from Defendants that the defective condition was due to  
17 a "homeowner maintenance issue" Defendants alleged was attributable to the actions of the  
18 homeowner and not the acts of Defendants. Defendants insisted "the majority of the conditions  
19 observed on February 8, 2007, are minor maintenance items not unexpected in a nearly ten (10) year  
20 old home." Defendants further claimed several other defects were not required by the applicable  
21 building codes or were not attributable to the original construction and declined to repair them.  
22 Subsequently, in late April 2007, Defendants claimed to have agreed to perform certain enumerated  
23 repairs, including certain repairs to the tile roofs and doors. Conspicuously absent from Defendants'  
24 response to Plaintiff SCOVIL's homeowner survey and Chapter 40 notice is any response to the  
25 issues Plaintiff raised concerning leaking windows and/or window defects (Category 16.0 in the  
26 RHA Incorporated Preliminary Defect Report attached to and incorporated by reference in Plaintiff  
27 SCOVIL's Chapter 40 Notice). Shockingly, Defendants failed to address Plaintiff SCOVIL's  
28 statement in his homeowner survey that his basement window wells were collapsing in. Defendants'



1 repairs were, for these and other reasons, inadequate, and Plaintiff's claims remain.

2 (c) With respect to the JACKSON residence, Defendants similarly responded that the  
3 Chapter 40 notice was insufficient. Defendants further responded that they would repair various  
4 conditions "to the extent it can be ascertained to exist and result from original construction."  
5 Numerous other defects received a response from Defendants that the defective condition was due to  
6 a "homeowner maintenance issue" Defendants alleged was attributable to the actions of the  
7 homeowner and not the acts of Defendants. Defendants further claimed several other defects were  
8 not required by the applicable building codes or were not attributable to the original construction and  
9 declined to repair them. Subsequently, in late April 2007, Defendants claimed to have agreed to  
10 perform certain enumerated repairs, including certain repairs to the tile roofs, doors and wallboard.  
11 Defendants did not address the fact that Plaintiffs the JACKSONS "had house repainted to cover  
12 cracks" at their own expense or otherwise address these cracks. In March 2007, Defendants further  
13 noted a "ceiling shadow" Defendants claimed might be a stain. Defendants represented that if they  
14 determined the "shadow" was indeed a stain, then the "condition will be addressed." However,  
15 Defendants did not address this issue in the subsequent April 2007 repairs. Defendants' repairs  
16 were, for these and other reasons, inadequate, and Plaintiffs' claims remain.

17 92. True and correct copies of Defendants' March 2007 and April 2007 Chapter 40  
18 Notice response letters are attached hereto as **EXHIBITS D** and **E**, respectively, and are made a part  
19 hereof.

20 93. Despite oral and written notice of these and similar defects throughout the Classics,  
21 Development, Defendants continued to deny their existence or properly investigate or repair. This  
22 lack of action on Defendants' part represents a pattern and practice Defendants engaged in both  
23 before and after Plaintiffs gave their Chapter 40 notices, in a calculated effort to cause the statute of  
24 repose to run on the homes, so as to avoid the duty to repair the defects, despite advance knowledge  
25 of their existence.

26 94. In or about the end of August 2006, Plaintiffs, through their experts, became aware of  
27 the extent of the defects Defendants had been concealing.

28 ///

1           95. Plaintiffs are further informed and believe and based thereon allege Defendants knew  
 2 of various violations of the industry standards, manufacturer specifications and building code when  
 3 they built the subject homes at Classics. Nonetheless, Defendants proceeded to build the homes in  
 4 violation of these codes, standards and specifications in order to increase profits, expedite their  
 5 return on investment and meet their obligations to timely deliver residences for sale to the  
 6 homeowner market, without consideration for the ultimate damage to homeowners from the  
 7 defective construction. These violations include but are not limited to the following:

8           (a) With respect to Windows: 1991 Uniform Building Code Chapter 17 Section 1708(a)-(a)  
 9 "All weather exposed surfaces shall have a weather-resistive barrier to protect the interior wall  
 10 covering."; 1991 Handbook to the Uniform Building Code "An Illustrative Commentary" Chapter  
 11 17, Section 1708; AAMA 502 Specifications for Field Testing of Windows and Sliding Glass  
 12 Doors."; and various other codes, specifications, manufacturers specifications etc., referenced in  
 13 Plaintiffs' Expert Reports attached to their Chapter 40 Notices.

14           (b) With respect to Wallboard: Plaster and Drywall Systems Manual, 3<sup>rd</sup> Edition, 1988,  
 15 Chapter 12, pages 110-112 and 226-227, 229; 1997 Uniform Building Code Chapter 14 Section  
 16 1402.1 and 1994 Uniform Building Code Chapter 14 Section 1402.2-.1; 1997 Handbook to the  
 17 Uniform Building Code; and various other codes, specifications, manufacturers specifications etc.,  
 18 referenced in Plaintiffs' Expert Reports attached to their Chapter 40 Notices.

19           (c) With respect to Balconies: 1994 Uniform Building Code Chapter 14 Section 1402.3; 1994  
 20 Uniform Building Code Chapter 15 Section 1506.1-.3; 1994 Handbook to the Uniform Building Code,  
 21 Chapter 14 Section 1402; and various other codes, specifications, manufacturers specifications etc.,  
 22 referenced in Plaintiffs' Expert Reports attached to their Chapter 40 Notices.

23           (d) With respect to Roofs: 1991 Uniform Building Code, Chapter 17, Section 1708(a),  
 24 Chapter 32, Sections 3201(a), 3208(b)5, 3208(c)1C, Table 32-D-2; 1994 Uniform Building Code,  
 25 Chapter 14, Section 1402.1, Chapter 15, Section 1501.1, 1507.7, Table 15-D-2; 1997 Uniform  
 26 Building Code, Chapter 14, Section 1402.1, Chapter 15, Sections 1503, 1507.7, Table 15-D-2; and  
 27 various other codes, specifications, manufacturers specifications etc., referenced in Plaintiffs' Expert  
 28 Reports attached to their Chapter 40 Notices.

1           96. These examples do not represent the only instances of fraudulent activity alleged by  
 2 Plaintiffs. These instances are offered for purposes of illustration. Out of an abundance of caution,  
 3 Plaintiffs further incorporate by reference the facts and circumstances set forth in the homeowner  
 4 surveys, Chapter 40 defect notices and defense responses to the Chapter 40 notices and Plaintiffs'  
 5 expert reports, attached thereto.

6           97. Furthermore, as much of the pattern of fraudulent concealment by Defendants  
 7 involves omissions, Plaintiffs are informed and believe and based thereon allege that additional  
 8 specific facts are not available to them. However, Plaintiffs reserve the right to amend to allege  
 9 additional specific facts as they become known through written discovery and/or depositions.  
 10 Plaintiffs further aver they are entitled to a relaxed pleading standard as additional information is in  
 11 the Defendants' possession.

12           98. Plaintiffs are further informed and based thereon allege that Defendants further  
 13 committed fraud on original and subsequent purchaser Plaintiffs by employing company  
 14 representatives, who may include but are not limited to Ms. Tina Goode<sup>1</sup> to wage a campaign to  
 15 dissuade homeowners from maintaining actions against Defendants, and each of them.

16           99. Specifically, Plaintiffs are informed and believe and based thereon allege that on or  
 17 about August 6, 2003, Defendants filed a Motion to Dismiss or for Summary Judgment in the matter  
 18 entitled, *Price, et al. v. American West Homes, Inc., et al.*, Case No. A468301, in the District Court,  
 19 Clark County, Nevada. Plaintiffs in the current case, the COLEMAN-GRAYSONS were  
 20 inadvertently included in the *Price* case, which was one of the bases for Defendants' Motion.  
 21 Defendants attached to their Motion in the *Price* case, statements by AMERICAN WEST HOMES  
 22 to Plaintiffs, the COLEMAN-GRAYSONS, in a letter dated July 3, 2003. In that letter, Defendants'  
 23 agent and/or employee, Ms. Tina Goode, who to Defendants' knowledge, is not an Attorney,  
 24 purports to advise Plaintiffs, the COLEMAN-GRAYSONS of their disclosure duties pursuant to  
 25 NRS 40.688. This letter from Defendants is clearly calculated and intended on Defendants' part, to

26  
 27 <sup>1</sup> Plaintiffs are informed and believe and based thereon allege that Ms. Tina Goode was an employee of American  
 28 West Homes. Plaintiffs are further informed and believe and based thereon allege that Ms. Goode was, at all times  
 pertinent hereto, acting within the course and scope of her duties to Defendants, directly and/or through its subsidiary or  
 related entity.

1 dissuade Plaintiffs the COLEMAN-GRAYSONS from pursuing their construction defect claims.<sup>2</sup>  
 2 A true and correct copy of the July 3, 2003 letter to the COLEMAN-GRAYSONS is attached hereto  
 3 as EXHIBIT F and made a part hereof.

4 100. On or about September 8, 2003, at the Court's Hearing on the Motion in the *Price*  
 5 case, the Honorable Michael Cherry noted concern over defense contacts with represented Plaintiffs.

6 101. These events reveal a pattern of Defendants, and each of them, applying pressure to  
 7 represented Plaintiffs to attempt to garner an advantage in proceedings then before the Court. Ms.  
 8 Goode contacted represented Plaintiffs in a situation in which they did not have advice of counsel to  
 9 evaluate her statements. On information and belief, at no time did Ms. Goode represent to the  
 10 Plaintiffs that her letter would be used for the purpose of supporting a motion adverse to their  
 11 interest, i.e. Defendants' Motion to Dismiss in the *Price* matter. Defendants' efforts aimed to limit  
 12 their liability in the *Price* matter as well as in this matter.

13 102. These acts reveal a pattern of conduct calculated to escape liability to the entire class  
 14 of approximately 100 residences in the Classics Development by improperly convincing Plaintiffs  
 15 not to pursue litigation, accept inadequate repairs and/or to run out the statute of repose.

16 103. Plaintiffs are further informed and believe, and based thereon allege Defendants  
 17 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, in doing these further acts  
 18 of fraudulent concealment as set forth in paragraphs 75-102, above, individually and through their  
 19 agents and employees acting on their behalf, concealed, suppressed, and failed to disclose material  
 20 facts pertinent to the defective conditions on the property and structures thereon and the foreseeable  
 21 damages that result there from, including but not limited to, defective conditions in the civil  
 22 engineering, grading, foundations, roofs, windows, concrete, framing, stucco, electrical systems,  
 23 plumbing systems, HVAC, mechanical systems, and walls, improper, nonexistent, and/or inadequate  
 24 design, construction, manufacture, and/or installation of components, as further set forth in  
 25 Plaintiffs' expert reports. Specifically, said Defendants concealed and suppressed material facts  
 26

27 <sup>2</sup> At the time of Defendants' Motion in the *Price* matter, Plaintiffs' counsel in the *Price* matter were not aware  
 28 that there were two separate developments, the Classics Development, which is the subject of this action, and the  
 Diamond Ridge Development, which is the subject of the *Price* action. Defendants successfully dismissed the  
 COLEMAN-GRAYSONS from the *Price* action.

1 pertinent to defective conditions.

2 104. Plaintiffs are further informed and believe and based thereon allege that when doing  
3 these further acts of fraudulent concealment as set forth in paragraphs 75-102, said Defendants were  
4 under a duty to disclose these facts to Plaintiffs.

5 105. Plaintiffs are further informed and believe and based thereon allege that in doing  
6 these further acts of fraudulent concealment as set forth in paragraphs 75-102, said Defendants  
7 intentionally concealed, suppressed, and failed to disclose these facts with the intent to defraud  
8 Plaintiffs for the purpose of inducing Plaintiffs not to take legal action, to unwittingly curtail their  
9 legal rights and/or to run out their respective statutes of repose.

10 106. Plaintiffs are further informed and believe and based thereon allege at the time  
11 Defendants AMERICAN WEST HOMES, INC. and DOES 1 – 100 concealed, suppressed, and  
12 failed to disclose the material facts set forth above, Plaintiffs were ignorant of the existence of the  
13 facts which Defendants concealed, suppressed, and failed to disclose regarding the defective  
14 condition of the property and structures. Had Plaintiffs known of the defective condition of the  
15 property and structures, they would have told Plaintiffs' counsel and pursued their legal rights to the  
16 fullest extent.

17 107. Plaintiffs and said Defendants enjoyed a special relationship, wherein Plaintiffs  
18 reasonably imparted special confidences in said Defendants and the Defendants would reasonably  
19 know of this confidence in that the material facts concealed, suppressed, or not disclosed by  
20 Defendants were particularly with Defendants' knowledge and not within the fair and reasonable  
21 reach of Plaintiffs. Plaintiffs are further informed and believe and thereon allege the defective  
22 condition of the property and structures was peculiarly within the knowledge of Defendants and not  
23 within the fair and reasonable reach of Plaintiffs, thereby imposing a duty on Defendants to disclose  
24 said defects to Plaintiffs. As a result of Defendants failure to disclose the defective condition of the  
25 property and structures, Plaintiffs were prevented from gaining the opportunity to be placed on equal  
26 footing with Defendants.

27 ///

28 ///



109. As a direct and proximate result of Defendants' concealment, suppression and failure to disclose the facts, as described above, both original and subsequent purchaser Plaintiffs sustained damages, in an amount precisely unknown but believed to be in excess of Ten Thousand Dollars (\$10,000) and within the jurisdiction of this Court, in that Plaintiffs have been and will hereafter be required to perform investigations and works of repair, restoration, and construction to portions of the structures to prevent further damage and to restore the structures to their proper condition and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

**(Willful Misconduct Against All Defendants and DOES 1 - 100)**

110. Plaintiffs reallege and incorporate by reference paragraphs 1 through 109, inclusive of this Complaint as though fully set forth herein.

111. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned, Defendants AMERICAN WEST HOMES, INC. and DOES 1 through 100 were the

1 principals, agents, masters, servants, employers, employees, co-venturers, co-conspirators, and/or  
 2 joint venturers of each of the other Defendant(s), and in doing the things hereinafter alleged, were  
 3 acting within the scope, course, and authority of such agency, employment, agreement, and/or joint  
 4 venture, and with the knowledge, consent, authority, approval, ratification, and/or permission of each  
 5 of the other Defendant(s).

6 112. Plaintiffs are informed and believe, and based thereon allege Defendants  
 7 AMERICAN WEST HOMES, INC. and DOES 1 through 100, inclusive, individually and through  
 8 their agents and employees acting on their behalf, knew of the defective conditions on the property  
 9 and structures thereon and the foreseeable serious injury that would probably result there from,  
 10 including but not limited to, the defective conditions in the civil engineering, grading, foundations,  
 11 roofs, windows, concrete, framing, stucco, other architectural components, electrical systems,  
 12 plumbing systems, HVAC, mechanical systems, and walls, and improper, nonexistent, and/or  
 13 inadequate design, construction, manufacture and/or installation of components.

14 113. Despite such knowledge, Defendants AMERICAN WEST HOMES, INC. and DOES  
 15 1 through 100, inclusive, intentionally built and sold, and intentionally continued to build and sell,  
 16 the defective property and structures with wanton and reckless disregard for the consequences of  
 17 building and selling such defective property and structures to Plaintiffs who were initial purchasers  
 18 and to any subsequent purchasers who owned the homes thereafter.

19 114. For example, Defendants engaged in a deliberate pattern and practice of violating  
 20 applicable building codes and ordinances and manufacturers' and industry standards, including but  
 21 not limited to those referenced below.

22 115. With respect to windows, Defendants violated, without limitation, 1991 Uniform  
 23 Building Code Chapter 17 Section 1708(a)-(a) "All weather exposed surfaces shall have a weather-  
 24 resistive barrier to protect the interior wall covering."; 1991 Handbook to the Uniform Building  
 25 Code "An Illustrative Commentary" Chapter 17, Section 1708; AAMA 502 Specifications for Field  
 26 Testing of Windows and Sliding Glass Doors."; and various other codes, specifications,  
 27 manufacturers specifications, industry standards, etc., referenced in Plaintiffs' Expert Reports  
 28

1 attached to their Chapter 40 Notices.

2 116. With respect to wallboard, Defendants violated, without limitation, Plaster and  
3 Drywall Systems Manual, 3<sup>rd</sup> Edition, 1988, Chapter 12, pages 110-112 and 226-227, 229; 1997  
4 Uniform Building Code Chapter 14 Section 1402.1 and 1994 Uniform Building Code Chapter 14  
5 Section 1402.2-.1; 1997 Handbook to the Uniform Building Code; and various other codes,  
6 specifications, manufacturers specifications, industry standards, etc., referenced in Plaintiffs' Expert  
7 Reports attached to their Chapter 40 Notices.

8 117. With respect to balconies, Defendants violated, without limitation, 1994 Uniform  
9 Building Code Chapter 14 Section 1402.3; 1994 Uniform Building Code Chapter 15 Section 1506.1-  
10 .3; 1994 Handbook to the Uniform Building Code, Chapter 14 Section 1402; and various other codes,  
11 specifications, manufacturers specifications, industry standards etc., referenced in Plaintiffs' Expert  
12 Reports attached to their Chapter 40 Notices.

13 118. With respect to roofs, Defendants violated, without limitation, 1991 Uniform  
14 Building Code, Chapter 17, Section 1708(a), Chapter 32, Sections 3201(a), 3208(b)5, 3208(c)1C,  
15 Table 32-D-2; 1994 Uniform Building Code, Chapter 14, Section 1402.1, Chapter 15, Section  
16 1501.1, 1507.7, Table 15-D-2; 1997 Uniform Building Code, Chapter 14, Section 1402.1, Chapter  
17 15, Sections 1503, 1507.7, Table 15-D-2; and various other codes, specifications, manufacturers  
18 specifications, industry standards, etc., referenced in Plaintiffs' Expert Reports attached to their  
19 Chapter 40 Notices.

20 119. These building code, industry standard and manufacturers' specification violations  
21 constitute a deliberate effort by Defendants, and each of them, to increase their profits, expedite  
22 Defendants' return on investment and meet their obligations to deliver the residences for sale, all to  
23 both the original and subsequent purchaser Plaintiffs' detriment and expense.  
24

25 120. In addition to the foregoing, Defendants and each of them intentionally misled  
26 Plaintiffs by falsely accusing Plaintiffs of being the ones responsible for the defects because of their  
27 own lack of maintenance on the homes, or their additions or alterations to the homes, when in fact  
28 Plaintiffs' experts define these defects as construction defects, which therefore existed from the time



1 of construction.

2 121. These acts of Defendants constitute willful and wanton misconduct that Defendants  
3 knew or should have known would very probably cause harm to Plaintiffs.

4 122. Furthermore, special circumstances exist with regard to the willful and intentional  
5 acts and pattern and practice of Defendants in constructing Plaintiffs' residences in the Classics  
6 Development. Numerous defects identified by Plaintiffs expert pose life safety risks creating a  
7 serious risk of harm to Plaintiffs of which Defendants knew or had reason to know due to their  
8 willful violations of statutes and deliberate course of conduct in building substandard housing  
9 motivated by profits. *See* Plaintiffs' expert reports regarding life safety issues, e.g., without  
10 limitation, missing protection bollard in front of garage water heaters, attic access size inadequate,  
11 unsealed plumbing protections, etc. As such, Defendants knew or should of know of the dangers  
12 posed by building in such a defective manner yet built Plaintiffs' homes and placed them in the  
13 stream of commerce in a defective condition nonetheless.

14 123. At the time Plaintiffs purchased their homes, they were ignorant of the defective  
15 condition of the property and structures. Had Plaintiffs known of the defective condition of the  
16 property and structures, they would not have purchased their homes or would not have purchased  
17 their homes under the same terms and conditions.

18 124. In the preceding three (3) years, Plaintiffs and each of them as similarly and/or  
19 identically situated have discovered their homes in the Classics Development have been and are  
20 presently experiencing defective conditions of the real property and structures thereon, including  
21 without limitation: civil engineering, grading, foundations, roofs, windows, concrete, framing,  
22 stucco, other architectural components, electrical systems, plumbing systems, HVAC, mechanical  
23 systems, and walls, and that said homes, residences, structures and/or improvements within the  
24 subject development and the components thereof are not of merchantable quality nor were they  
25 designed, erected, constructed or installed in a workmanlike manner but instead, are defective and,  
26 as now known, the subject components demonstrate improper, nonexistent, and/or inadequate  
27 design, construction, manufacture, and/or installation. Plaintiffs, and each of them, inclusive, are  
28 informed and believe and thereupon allege that the structures may be additionally defective in ways

1 and to an extent not precisely known, but which will be established at the time of trial, according to  
2 proof.

3 125. As a direct and proximate result of Defendants' willful misconduct, as described  
4 above, Plaintiffs sustained damages, in an amount precisely unknown but believed to be within the  
5 jurisdiction of this Court, in that Plaintiffs have been and will hereafter be required to perform  
6 investigations and works of repair, restoration, and construction to portions of the structures to  
7 prevent further damage and to restore the structures to their proper condition and/or will suffer  
8 damages in an amount in excess of Ten Thousand Dollars (\$10,000), the full nature and extent of  
9 which shall be ascertained according to proof at trial.

10  
11 WHEREFORE, judgment is prayed for herein against Defendants AMERICAN WEST  
12 HOMES, INC. and DOES 1 through 100, inclusive, and each of them, as follows:

13  
14 **ON THE FIRST, SECOND, THIRD AND FOURTH**

15 **CAUSES OF ACTION**

- 16 1. For general and special damages in excess of \$10,000.00, according to proof;  
17 2. For prejudgment interest;  
18 3. For cost of suit and reasonable attorneys' fees incurred by Plaintiffs herein; and  
19 4. For such other and further relief as the Court may deem just and proper.

20 DATED: February 29, 2008

FULLER JENKINS

21  
22 By: 

23 CRAIG D. FULLER,  
24 Nevada Bar # 8075  
4250 Executive Square, Suite 555  
La Jolla, CA 92037

25 MARK A. LOBELLO  
26 (Nevada State Bar No. 3994)  
27 The LoBello Law Firm  
28 2061 E. Sahara, 2<sup>nd</sup> Floor  
Las Vegas, NV 89104  
(702) 870-8000  
Attorneys for Plaintiffs

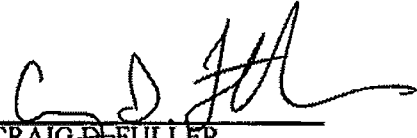
**DEMAND FOR JURY TRIAL**

TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

PLAINTIFFS, by and through their undersigned counsel hereby demand that a trial of the  
above entitled action be heard before a jury.

DATED THIS 29th day of February, 2008.

By:

  
CRAIG D. FULLER,  
Nevada Bar # 8075  
4250 Executive Square, Suite 555  
La Jolla, CA 92037

MARK A. LOBELLO  
(Nevada State Bar No. 3994)  
The LoBello Law Firm  
2061 E. Sahara, 2<sup>nd</sup> Floor  
Las Vegas, NV 89104  
(702) 870-8000  
Attorneys for Plaintiffs

FourthAmended.Revised.Price.COMPLAINT.FINAL.doc

# Exhibit 53

# Exhibit 53

Electronically Filed  
11/14/2008 01:57:29 PM

  
CLERK OF THE COURT

1 **TPC**

2 Adam H. Springel, Esq., (NBN 7187)

3 Darlene M. Cartier, Esq., (NBN 8775)

4 **SPRINGEL & FINK LLP**

5 2475 Village View Dr., Suite 250

6 Henderson, NV 89074

7 Telephone: (702) 804-0706

8 David S. Lee, Esq., (NBN 6033)

9 Jeffery A. Garofalo, Esq. (NBN 7345)

10 **LEE, HERNANDEZ, KELSEY, BROOKS**

11 **GAROFALO & BLAKE**

12 7575 Vegas Drive, Suite 150

13 Las Vegas, NV 89128

14 Telephone: (702) 880-9750

15 Attorneys for Defendants/Third-Party Plaintiffs

16 AMERICAN WEST HOMES, INC.,

17 AMERICAN WEST HOMES INC., and

18 AMERICAN WEST DEVELOPMENT

19 **DISTRICT COURT**

20 **CLARK COUNTY, NEVADA**

21 \*\*\*\*\*

22 LINDA BENNETT, JOSEPH GRAYSON AND ) CASE NO.: A558243

23 PATRICE COLEMAN-GRAYSON; STEVEN ) DEPT. NO.: XXII

24 AND BARBARA CORWIN; DONALD AND )

25 JENNIFER DERMER; PHILLIP DICKINSON, ) **DEFENDANTS'/THIRD-PARTY**

26 TRUSTEE OF THE P.W. DICKINSON ) **PLAINTIFFS' THIRD-PARTY COMPLAINT**

27 QUALIFIED PERSONAL RESIDENTIAL )

28 TRUST; EVELYN FELICIANO; ROBERT )

29 GREEN; GEORGE AND ELISA HASSE; )

30 CHARLOTTE HUFFMAN; WILLIAM AND ) **[Filed Concurrently with Defendants' Answer**

31 LYNN JACKSON; CHRISTOPHER AND ZOE ) **To Plaintiffs' Complaint]**

32 LAW; JOHN AND CATHERINE LETUS; )

33 TRUSTEES OF THE LETUS TRUST; MARK )

34 AND BECK LILLEY, TRUSTEES OF THE )

35 LILLEY FAMILY TRUST; THEODORE AND )

36 ILEENE MANAHAN; GARY MEDINA; )

37 CONNIE MERTIN; RUTH PRANGE; JEANENE )

38 RUSSELL; BRETT SCOVIL; GLORIA AND )

39 ALMA SMITH; ALEXANDER AND JOYCE )

40 STELLA; EDDIE AND SHARON STUBBS; )

1 ROGER AND JANAN THOMPSON, )

2 Plaintiffs, )

3 vs. )

4 AMERICAN WEST HOMES, INC., a Nevada )  
 5 corporation, AMERICAN WEST HOMES INC., )  
 6 a Nevada corporation; AMERICAN WEST )  
 7 DEVELOPMENT, a Nevada corporation; and )  
 8 DOES 1 through 100 )

9 Defendants. )

10 AMERICAN WEST HOMES, INC., a Nevada )  
 11 corporation, AMERICAN WEST HOMES INC., )  
 12 a Nevada corporation; AMERICAN WEST )  
 13 DEVELOPMENT, )

14 Third-Party Plaintiff, )

15 vs. )

16 A & S TILLY MARBLE & GRANITE, a Nevada )  
 17 Corporation; NATIONS FLOORING, INC. dba )  
 18 CARPET BARN, a Revoked Foreign Corporation; )  
 19 CENTRAL VALLEY INSULATION, INC., a )  
 20 Dissolved Nevada Corporation; CLASSIC DOOR )  
 21 AND TRIM, INC., a Nevada Corporation; CLEAR )  
 22 VIEW DISTRIBUTING, LLC, a Nevada Limited )  
 23 Liability Company; DAN BRADLEY GLASS )  
 24 SHOP, INC., a Nevada Corporation; DAVEY )  
 25 ROOFING, a Foreign Corporation; DESERT )  
 26 FIREPLACES PLUS, INC., a Dissolved Nevada )  
 27 Corporation; DESERT SHORE TILE, INC., a )  
 28 Nevada Corporation; NEV-CAL INVESTORS, )  
 INC. DBA FAST TRAC ELECTRIC, a Nevada )  
 Corporation; FRADELLA IRON WORKS, a )  
 Dissolved Nevada Corporation; HAMMOND )  
 CAULKING, INC., a Nevada Close Corporation; )  
 INTERSTATE PLUMBING & AIR )  
 CONDITIONING, dba INTERSTATE )  
 SERVICES, a Nevada Limited Liability Company; )  
 LEE COPHER INDIVIDUALLY and dba L&L )  
 CONSTRUCTION; PHILLIPS PRODUCTS, INC., )  
 a Foreign Corporation; RAYMOND LAIRD )

1 WHIPPLE INDIVIDUALLY and dba WHIPPLE )  
 2 CONCRETE CONSTRUCTION; REPUBLIC )  
 3 ELECTRIC, INC., a Nevada Corporation; )  
 4 REYBURN LAWN & LANDSCAPE )  
 5 DESIGNERS, INC., a Dissolved Nevada )  
 6 Corporation; SIERRA AIR CONDITIONING, )  
 7 INC., a Nevada Corporation; SIERRA TAHOE, a )  
 8 Revoked Nevada Corporation; LARRY )  
 9 SILECCHIO, INDIVIDUALLY and dba )  
 10 SILECCHIO MASONRY; TRB )  
 11 CONSTRUCTION, INC., a Revoked Nevada )  
 12 Corporation; VEGAS GENERAL )  
 CONSTRUCTION CO., a Merge Dissolved )  
 Nevada Corporation; MOES 1 through 100; MOE )  
 DESIGN PROFESSIONALS 101 through 200; and )  
 MOE INSURERS 201 through 300, )

Third-Party Defendants. )

### **DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT**

COMES NOW, Defendants, AMERICAN WEST HOMES, INC., AMERICAN WEST  
 HOMES INC., and AMERICAN WEST DEVELOPMENT (hereinafter collectively "AMERICAN  
 WEST"), by and through their attorneys of record, the law firms of LEE, HERNANDEZ, KELSEY,  
 BROOKS, GAROFALO & BLAKE, and SPRINGEL & FINK LLP, and for its Third-Party  
 Complaint against Third-Party Defendants A & S TILLY MARBLE & GRANITE, a Nevada  
 Corporation; NATIONS FLOORING, INC. dba CARPET BARN, a Revoked Foreign Corporation;  
 CENTRAL VALLEY INSULATION, INC., a Dissolved Nevada Corporation; CLASSIC DOOR  
 AND TRIM, INC., a Nevada Corporation; CLEAR VIEW DISTRIBUTING, LLC, a Nevada Limited  
 Liability Company; DAN BRADLEY GLASS SHOP, INC., a Nevada Corporation; DAVEY  
 ROOFING, a Foreign Corporation; DESERT FIREPLACES PLUS, INC., a Dissolved Nevada  
 Corporation; DESERT SHORE TILE, INC., a Nevada Corporation; NEV-CAL INVESTORS, INC.  
 dba FAST TRAC ELECTRIC, a Nevada Corporation; FRADELLA IRON WORKS, a Dissolved  
 Nevada Corporation; HAMMOND CAULKING, INC., a Nevada Close Corporation; INTERSTATE  
 PLUMBING & AIR CONDITIONING, dba INTERSTATE SERVICES, a Nevada Limited Liability  
 Company; LEE COPHER INDIVIDUALLY and dba L&L CONSTRUCTION; PHILLIPS



1 PRODUCTS, INC., a Foreign Corporation; RAYMOND LAIRD WHIPPLE INDIVIDUALLY and  
 2 dba WHIPPLE CONCRETE CONSTRUCTION; Republic Electric, Inc., a Nevada Corporation;  
 3 REYBURN LAWN & LANDSCAPE DESIGNERS, INC., a Dissolved Nevada Corporation;  
 4 SIERRA AIR CONDITIONING, INC., a Nevada Corporation; SIERRA TAHOE, a Revoked Nevada  
 5 Corporation; LARRY SILECCHIO, INDIVIDUALLY and dba SILECCHIO MASONRY; TRB  
 6 CONSTRUCTION, INC., a Revoked Nevada Corporation; VEGAS GENERAL CONSTRUCTION  
 7 CO., a Merge Dissolved Nevada Corporation; MOES 1 through 100, inclusive; MOE DESIGN  
 8 PROFESSIONALS 101 through 200; and MOE INSURERS 201 through 300, inclusive, complains  
 9 and alleges as follows:

#### 10 GENERAL ALLEGATIONS

11 1. At all times relevant herein, Third-Party Defendants A & S TILLY MARBLE &  
 12 GRANITE, a Nevada Corporation; NATIONS FLOORING, INC. dba CARPET BARN, a Revoked  
 13 Foreign Corporation; CENTRAL VALLEY INSULATION, INC., a Dissolved Nevada Corporation;  
 14 CLASSIC DOOR AND TRIM, INC., a Nevada Corporation; CLEAR VIEW DISTRIBUTING, LLC,  
 15 a Nevada Limited Liability Company; DAN BRADLEY GLASS SHOP, INC., a Nevada  
 16 Corporation; DAVEY ROOFING, a Foreign Corporation; DESERT FIREPLACES PLUS, INC., a  
 17 Dissolved Nevada Corporation; DESERT SHORE TILE, INC., a Nevada Corporation; NEV-CAL  
 18 INVESTORS, INC. DBA FAST TRAC ELECTRIC, a Nevada Corporation; FRADELLA IRON  
 19 WORKS, a Dissolved Nevada Corporation; HAMMOND CAULKING, INC., a Nevada Close  
 20 Corporation; INTERSTATE PLUMBING & AIR CONDITIONING, dba INTERSTATE  
 21 SERVICES, a Nevada Limited Liability Company; LEE COPHER INDIVIDUALLY and dba L&L  
 22 CONSTRUCTION; PHILLIPS PRODUCTS, INC., a Foreign Corporation; RAYMOND LAIRD  
 23 WHIPPLE INDIVIDUALLY and dba WHIPPLE CONCRETE CONSTRUCTION; REPUBLIC  
 24 ELECTRIC, INC., a Nevada Corporation; REYBURN LAWN & LANDSCAPE DESIGNERS, INC.,  
 25 a Dissolved Nevada Corporation; SIERRA AIR CONDITIONING, INC., a Nevada Corporation;  
 26 SIERRA TAHOE, a Revoked Nevada Corporation; LARRY SILECCHIO, INDIVIDUALLY and  
 27 dba SILECCHIO MASONRY; TRB CONSTRUCTION, INC., a Revoked Nevada Corporation;  
 28 VEGAS GENERAL CONSTRUCTION CO., a Merger Dissolved Nevada Corporation(hereinafter



1 collectively "Third-Party Defendants"); MOES 1 through 100, inclusive; and MOE DESIGN  
2 PROFESSIONALS 101 through 200, inclusive, and each of them, were legal entities or individuals  
3 doing business in the State of Nevada, and performed work, installed, designed, constructed and/or  
4 supplied material for improvements to the real property that is the subject of Plaintiffs' underlying  
5 Complaint.

6 2. At all times relevant herein, Third-Party Defendants, MOES 1 through 100, inclusive,  
7 and MOE DESIGN PROFESSIONALS 101 through 200, inclusive, and each of them, were  
8 developers, contractors, subcontractors and/or design professionals, who performed construction  
9 activities for AMERICAN WEST at certain single-family homes located in the community  
10 commonly known as "Classics", the subject property, and/or were material suppliers to AMERICAN  
11 WEST or one of its subcontractors, who provided materials and/or other items, which were installed  
12 into and/or became a part of said subject property.

13 3. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
14 Party Defendants, MOES 1 through 100, inclusive, and MOE DESIGN PROFESSIONALS 101  
15 through 200, inclusive, and each of them are, and at all times relevant were, sole proprietors,  
16 partnerships, corporations or other business entities doing business in Clark County, Nevada.

17 4. AMERICAN WEST is informed and believes, and on that basis alleges, that the true  
18 names and capacities, whether individual, corporate, associate or otherwise of Third-Party Defendant  
19 MOES 1 through 100 (hereinafter "MOES"), inclusive, are unknown to AMERICAN WEST who  
20 therefore sues said parties as Third-Party Defendants by such fictitious names. Third-Party  
21 Defendants designated as MOES are responsible in some manner as an entity performing  
22 construction related activities and/or providing materials for construction of the subject property and  
23 are responsible for the events and happenings described in Plaintiffs' Complaint and in this Third-  
24 Party Complaint, which proximately caused damages to AMERICAN WEST as alleged herein.  
25 AMERICAN WEST is informed and believes that each of the Third-Party Defendants designated as  
26 MOES in some manner performed work, installed, designed, constructed or supplied materials to the  
27 subject property, pursuant to subcontract agreements, purchase orders, or other written or oral  
28 agreements entered into between AMERICAN WEST, Third-Party Defendants, and each of them, or

1 otherwise, AMERICAN WEST will ask leave of this Court to amend its Third-Party Complaint to  
2 insert the true names and capacities of the MOES and state appropriate charging allegations, when  
3 that information has been ascertained.

4 5. AMERICAN WEST is informed and believes, and on that basis alleges, that the true  
5 names and capacities, whether individual, corporate, associate or otherwise of Third-Party Defendant  
6 MOE DESIGN PROFESSIONALS 101 through 200 (hereinafter "MOE DESIGN  
7 PROFESSIONALS"), inclusive, are unknown to AMERICAN WEST who therefore sues said parties  
8 as Third-Party Defendants by such fictitious names. Third-Party Defendants designated as MOE  
9 DESIGN PROFESSIONALS are responsible in some manner as an entity performing design related  
10 activities and/or professional services for the subject property and are responsible for the events and  
11 happenings described in Plaintiffs' Complaint and in this Third-Party Complaint, which proximately  
12 caused damages to AMERICAN WEST as alleged herein. AMERICAN WEST is informed and  
13 believes that each of the Third-Party Defendants designated as MOE DESIGN PROFESSIONALS  
14 provided professional services at the subject property, pursuant to subcontract agreements or other  
15 written or oral agreements entered into between AMERICAN WEST, Third-Party Defendants, and  
16 each of them, or otherwise. AMERICAN WEST will ask leave of this Court to amend its Third-Party  
17 Complaint to insert the true names and capacities of the MOE DESIGN PROFESSIONALS and state  
18 appropriate charging allegations, when that information has been ascertained.

19 6. AMERICAN WEST is informed and believes, and on that basis alleges, that the true  
20 names and capacities, whether individual, corporate, associate or otherwise of Third-Party Defendant  
21 MOE INSURERS 201 through 300 (hereinafter "MOE INSURERS"), inclusive, are unknown to  
22 AMERICAN WEST who therefore sues said parties as Third-Party Defendants by such fictitious  
23 names. Third-Party Defendants designated as MOE INSURERS are responsible in some manner for  
24 insuring AMERICAN WEST and/or its subcontractors for completed operations at the property and  
25 are obligated to defend and indemnify AMERICAN WEST and/or its subcontractors for the claims  
26 alleged in the Complaint or this Third-Party Complaint but have failed or refused to do so which has  
27 proximately caused damages to AMERICAN WEST as alleged herein. AMERICAN WEST will ask  
28 leave of the Court to amend the Third-Party Complaint to insert the true names and capacities of the

1 MOE INSURERS and state appropriate charging allegations, when that information has been  
2 ascertained.

3 7. AMERICAN WEST specifically complains and alleges a cause of action against the  
4 entity, or entities, that performed work, installed, designed, constructed, supplied materials and/or  
5 were otherwise responsible for the subject property and the improvements made thereon. As of the  
6 filing of this Third-Party Complaint, AMERICAN WEST is unsure as to whether those entities are  
7 individuals, a partnership, a limited partnership, a corporation, an association of individuals or  
8 businesses, or some other form of business ownership. As soon as the exact nature of the entity or  
9 entities that performed work, installed, designed, constructed, supplied materials and/or were  
10 otherwise responsible for the subject property and the improvements made thereon is known,  
11 AMERICAN WEST will amend its Third-Party Complaint and will substitute the exact name of the  
12 proper Third-Party Defendants in place of MOES and MOE DESIGN PROFESSIONALS.

13 8. Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS, were at all  
14 times material hereto, entities doing business in Nevada and who performed work, installed,  
15 designed, constructed, supplied materials, provided professional services and/or were otherwise  
16 responsible for the subject property in Clark County, Nevada.

17 9. The work done or materials supplied by each of the Third-Party Defendants, MOES,  
18 and MOE DESIGN PROFESSIONALS was pursuant to a subcontract agreement, purchase order, or  
19 other written or oral agreement entered into between AMERICAN WEST and Third-Party  
20 Defendants or by way of a subcontract agreement or purchase order between Third-Party Defendants  
21 and Plaintiff or another Third-Party Defendant.

22 10. That while working at the subject property, Third-Party Defendants, MOES and MOE  
23 DESIGN PROFESSIONALS, according to the allegations of the Plaintiffs' underlying Complaint,  
24 acted in a negligent and/or careless manner and performed acts or failed to perform acts, which  
25 resulted in breached warranties to Plaintiffs and/or others, including, but not limited to those of  
26 fitness, merchantability, quality, workmanship and habitability, created a nuisance, and/or supplied  
27 defective products in an unreasonably dangerous and/or defective condition, which allegedly injured  
28 and/or caused damages to Plaintiffs, as alleged in Plaintiffs' underlying Complaint. Said acts and/or

1 omissions have also resulted in damages to AMERICAN WEST by subjecting AMERICAN WEST  
2 to suit by Plaintiffs.

3 11. According to the allegations of the Plaintiffs' underlying Complaint, AMERICAN  
4 WEST, individually and through their agents and employees acting on their behalf, failed to disclose  
5 known defects and acted with willful and wanton misconduct in the installation, design, and  
6 construction of the subject property and the improvements made thereon, which allegedly injured  
7 and/or caused damages to Plaintiffs, and which results in either a limitless statutes of limitation and  
8 repose or tolled statutes of limitation and repose. AMERICAN WEST is informed and believes, and  
9 on that basis alleges, that to the extent Plaintiff can prove these allegations of failure to disclose  
10 and/or willful and wanton misconduct, that such failure to disclose and/or willful and wanton  
11 misconduct was actually and proximately caused by the conduct of Third-Party Defendants, MOES,  
12 and MOE DESIGN PROFESSIONALS, while working at the subject property. AMERICAN WEST  
13 alleges that to the extent such failure to disclose and/or willful and wanton misconduct results in  
14 either a limitless statutes of limitation and repose or tolled statutes of limitation and repose, that such  
15 limitless statutes of limitation and repose or tolled statutes of limitation and repose should also apply  
16 to Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS. AMERICAN WEST  
17 further alleges that such conduct by Third-Party Defendants, MOES, and MOE DESIGN  
18 PROFESSIONALS has resulted in damages to AMERICAN WEST by subjecting AMERICAN  
19 WEST to suit by Plaintiffs.

#### 20 FIRST CAUSE OF ACTION

21 (Negligence Against All Third-Party Defendants, MOES 1 through 100, and MOE DESIGN  
22 PROFESIONALS 101 through 200)

23 12. AMERICAN WEST repeats and realleges the allegations set forth in Paragraphs 1  
24 through 11 of this Third-Party Complaint as though fully set forth herein.

25 13. Third-Party Defendants, MOES, and MOE DESIGN PROFESIONALS owed a  
26 contractual and/or legal duty to AMERICAN WEST to exercise due and reasonable care in the  
27 design, construction and/or development of the subject property. Third-Party Defendants, MOES,  
28 and MOE DESIGN PROFESIONALS also had a legal duty to abide by local construction practices,

1 industry standards, governmental codes and restrictions, manufacturer requirements, Clark County  
2 Building Codes, product specifications and/or the laws of the State of Nevada.

3 14. If the subject property is defectively designed, developed and/or constructed, as it has  
4 been alleged by Plaintiffs in the main action herein, Third-Party Defendants, MOES, and MOE  
5 DESIGN PROFESIONALS, and each of them, are responsible for such defects in that they failed to  
6 act reasonably in the design, development and construction of the subject property, thereby breaching  
7 their duty owed to AMERICAN WEST.

8 15. If the subject property is defectively designed, developed and/or constructed, as it has  
9 been alleged by Plaintiffs in the main action herein, the acts or omissions of Third-Party Defendants,  
10 MOES, and MOE DESIGN PROFESIONALS, and each of them, were the direct and proximate  
11 cause of any and all damages incurred by Plaintiffs.

12 16. AMERICAN WEST is informed and believes, and on that basis alleges, that  
13 Plaintiffs' damages, if any, were proximately caused by Third-Party Defendants, MOES, and MOE  
14 DESIGN PROFESIONALS, and each of them, and that said Third-Party Defendants, MOES, and  
15 MOE DESIGN PROFESIONALS, and each of them, are liable for the damages sought by Plaintiffs  
16 in their underlying Complaint.

17 17. The breach(es) of the aforementioned duties by each Third-Party Defendant, MOES,  
18 and MOE DESIGN PROFESIONALS as described in Paragraphs 12 through 16 above was and is the  
19 actual and proximate cause of damages to AMERICAN WEST in excess of \$10,000.00.

20 18. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
21 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
22 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
23 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

24 **SECOND CAUSE OF ACTION**

25 **(Breach of Express and Implied Warranties**  
26 **Against All Third-Party Defendants and MOES 1 through 100)**

27 19. AMERICAN WEST repeats and realleges the allegations set forth in Paragraphs 1  
28 through 18 of this Third-Party Complaint as though fully set forth herein.



1           20. AMERICAN WEST is informed and believes, and on that basis alleges, that pursuant  
2 to the agreements between AMERICAN WEST and Third-Party Defendants, and AMERICAN  
3 WEST and MOES, Third-Party Defendants and MOES impliedly and expressly warranted that the  
4 work performed by them at the subject property would be done in a good, workmanlike, and  
5 substantial manner, in full accordance with the provisions and conditions of the agreements and the  
6 plans and specifications.

7           21. AMERICAN WEST relied upon said warranties and believed that said work was  
8 performed pursuant to said agreements and would be of a first class and workmanlike manner for its  
9 intended use and purpose.

10          22. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
11 Party Defendants and MOES, and each of them, breached said agreements as it has been alleged by  
12 Plaintiffs in the main action herein, and that numerous deficiencies exist at the subject property as set  
13 forth in Plaintiffs' Complaint, which alleged deficiencies are incorporated herein by reference.

14          23. As a proximate result of the breach of express and implied warranties by Third-Party  
15 Defendants and MOES, and each of them, AMERICAN WEST alleges it will suffer damages in a  
16 sum equal to any sums paid by way of settlement, or in the alternative, judgment rendered against  
17 AMERICAN WEST in the underlying action based on Plaintiffs' Complaint.

18          24. This Third-Party Complaint will serve as notice of such defective conditions and  
19 AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants  
20 and MOES, and each of them, declined to acknowledge their responsibilities to repair the alleged  
21 deficiencies as referenced above.

22          25. The breach(es) of the aforementioned warranties by each Third-Party Defendant and  
23 MOES as described in Paragraphs 19 through 24 above was and is the actual and proximate cause of  
24 damages to AMERICAN WEST in excess of \$10,000.00.

25          26. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
26 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
27 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
28 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

**THIRD CAUSE OF ACTION**

**(Breach of Contract Against All Third-Party Defendants, MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

27. AMERICAN WEST repeats and realleges the allegations set forth in Paragraphs 1 through 26 of this Third-Party Complaint as though fully set forth herein.

28. AMERICAN WEST is informed and believes, and on that basis alleges, that AMERICAN WEST entered into written agreements with the Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS.

29. AMERICAN WEST has fully performed all conditions, covenants, and promises required by it to be performed in accordance with the terms and conditions of said written agreements.

30. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants, MOES, and MOE DESIGN PROFESSIONALS, and each of them, have breached said agreements, which were made with AMERICAN WEST by failing to perform their work (a) in compliance with the applicable standard of care, (b) in a good and workmanlike manner, and (c) in a manner that was consistent with their legal obligations as set forth in the various written agreements. Further, AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants, MOES, MOE DESIGN PROFESSIONALS, and each of them, have breached their agreements by: (1) failing to defend and indemnify AMERICAN WEST as a result of Plaintiffs' Complaint, (2) failing to name AMERICAN WEST as an additional insured as required under the written agreements, and (3) by failing to take proper steps to ensure that appropriate additional insured endorsements and insurance coverage had been obtained for AMERICAN WEST'S benefit.

31. As a direct and proximate result of Third-Party Defendants', MOES', and MOE DESIGN PROFESSIONALS' breach of their agreements, AMERICAN WEST has been damaged in a sum which is currently unascertainable. AMERICAN WEST will seek leave of this Court to amend its Third-Party Complaint when such sums can be reasonably ascertained.

32. As a direct and proximate result of the breach of the agreements by Third-Party Defendants, MOES, MOE DESIGN PROFESSIONALS, and each of them, it is alleged that

1 AMERICAN WEST has incurred and continues to incur costs and expenses including, but not limited  
 2 to, litigation costs, attorneys' fees, and consultants' fees in connection with Plaintiffs' underlying  
 3 Complaint, to the general damage of AMERICAN WEST, as will be shown according to proof at the  
 4 time of the trial in this matter. AMERICAN WEST will seek recovery of its attorneys' fees,  
 5 consultants' fees and litigation costs incurred to defend against Plaintiffs' claims and to prosecute this  
 6 action.

#### 7 **FOURTH CAUSE OF ACTION**

8 **(Equitable Indemnity Against All Third-Party Defendants,**  
 9 **MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

10 33. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 32  
 11 of this Third-Party Complaint as though fully set forth herein.

12 34. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
 13 Party Defendants, MOES, and MOE DESIGN PROFESSIONALS at all times herein mentioned  
 14 were, either individuals, sole proprietorships, partnerships, registered professionals, corporations, or  
 15 other legal entities which are licensed to do and are doing business in the County of Clark, State of  
 16 Nevada, at all times relevant to the subject matter of this action.

17 35. AMERICAN WEST is informed and believes, and on that basis alleges, that the  
 18 defects and damages sustained by Plaintiffs in their Complaint involve defects and damages or  
 19 destruction of property. AMERICAN WEST is further informed and believes, and on that basis  
 20 alleges, that said damages were caused by Third-Party Defendants, MOES, MOE DESIGN  
 21 PROFESSIONALS, and each of them, arising out of and in connection with, the performance of their  
 22 operations and work at the subject property.

23 36. In equity and good conscience, if Plaintiffs recovers against AMERICAN WEST  
 24 herein, then AMERICAN WEST is entitled to equitable indemnity, apportionment of liability and  
 25 contribution among and from the Third-Party Defendants, MOES, MOE DESIGN  
 26 PROFESSIONALS, and each of them, according to their respective faults for the injuries and  
 27 damages allegedly sustained by Plaintiffs, if any, by way of sums paid by settlement, or in the  
 28 alternative, judgment rendered against AMERICAN WEST based upon Plaintiffs' Complaint.





1 AMERICAN WEST is entitled to contribution from each of the Third-Party Defendants, MOES and  
 2 MOE DESIGN PROFESSIONALS, in an amount proportionate to the amount of negligence and/or  
 3 fault attributable to each of the Third-Party Defendants, MOES and MOE DESIGN  
 4 PROFESSIONALS.

5 44. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 6 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 7 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
 8 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 9 **SEVENTH CAUSE OF ACTION**

10 **(Apportionment Against All Third-Party Defendants,**  
 11 **MOES 1 through 100, and MOE DESIGN PROFESSIONALS 101 through 200)**

12 45. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 44  
 13 of this First Amended Third-Party Complaint as though fully set forth herein.

14 46. AMERICAN WEST is entitled to an apportionment of liability among the Third-Party  
 15 Defendants, MOES and MOE DESIGN PROFESSIONALS, and each of them.

16 47. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 17 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 18 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
 19 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 20 **EIGHTH CAUSE OF ACTION**

21 **(Express Indemnity Against All Third-Party Defendants and MOES 1 through 100)**

22 48. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 47  
 23 of this Third-Party Complaint as though fully set forth herein.

24 49. AMERICAN WEST is informed and believes, and on that basis alleges, that Third-  
 25 Party Defendants and MOES entered into express written indemnity agreements with AMERICAN  
 26 WEST.

27 50. Pursuant to the agreements entered into between AMERICAN WEST and Third-Party  
 28 Defendants, and AMERICAN WEST and MOES, AMERICAN WEST is informed and believes, and

on that basis alleges, that it has rights of express indemnification from the Third-Party Defendants and MOES, and each of them as set forth in relevant part below:

**12.0 INDEMNIFICATION AND ATTORNEY FEES.**

Subcontractor shall forever indemnify, save, and hold Contractor harmless from and against any obligations, loss, liability, lien, claim, demand, cause and causes of action whatsoever arising out of or relating to, or in connection with the performance by the Subcontractor of the Work, including but not limited to defects in workmanship or materials, and/or the doing or failure to do anything by Subcontractor, his agents, servants, employees or invitees. Said indemnification shall include the reasonable costs of attorneys' fees necessarily incurred in defending against claims by third parties. In the event Contractor engages the services of an attorney for any action brought on under this contract, or for its enforcement, or in defending any action brought by the owner, for whom this building or buildings are being erected, or by any other subcontractor due to the fault of this Subcontractor, Subcontractor agrees to pay a reasonable attorney's fee to Contractor.

51. Pursuant to the terms of the agreements entered into between AMERICAN WEST and Third-Party Defendants, and AMERICAN WEST and MOES, AMERICAN WEST is informed and believes, and on that basis alleges, that Third-Party Defendants and MOES have duties to defend and indemnify AMERICAN WEST in the underlying action filed by Plaintiffs.

52. It has been necessary for AMERICAN WEST to retain the services of an attorney to defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

**NINTH CAUSE OF ACTION**

**(Declaratory Relief Re Indemnification Against All Third-Party Defendants and MOES 1 through 100)**

53. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 52 of this Third-Party Complaint as though fully set forth herein.

54. A dispute has arisen and an actual controversy now exists between AMERICAN WEST and Third-Party Defendants and MOES, and each of them with respect to the right to receive, or duty to give, indemnification in full or in proportion to their comparative fault, if any.

1 AMERICAN WEST contends that it is entitled to be indemnified by Third-Party Defendants and  
 2 MOES and to judgment over and against them. AMERICAN WEST is informed and believes that  
 3 Third-Party Defendants and MOES contend to the contrary. Therefore, an actual controversy exists  
 4 relative to the legal duties and rights of the respective parties pursuant to their written agreements,  
 5 which controversy AMERICAN WEST requests the Court to resolve.

6 55. All of the rights and obligations of the parties hereto arose out of what is actually one  
 7 transaction or one series of transactions, happenings or events, all of which can be settled and  
 8 determined in a judgment in this one action. AMERICAN WEST alleges that an actual controversy  
 9 exists between the parties under the circumstances alleged. A declaration of rights, responsibilities  
 10 and obligation of AMERICAN WEST and Third-Party Defendants and MOES, and each of them, is  
 11 essential to determine their respective obligations in connection with the Third-Party Complaint.  
 12 AMERICAN WEST has no true and speedy remedy at law of any kind.

13 56. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 14 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 15 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, NRS 40.600  
 16 et seq., the contractual provisions of the subcontract agreements, and Nevada law.

#### 17 TENTH CAUSE OF ACTION

#### 18 (Declaratory Relief Re Duty to Defend Against All Third-Party Defendant and 19 MOES 1 through 100 Only)

20 57. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 56  
 21 of this Third-Party Complaint as though fully set forth herein.

22 58. A dispute has arisen and an actual controversy now exists between AMERICAN  
 23 WEST and Third-Party Defendants and MOES, and each of them, with respect to AMERICAN  
 24 WEST'S right to receive, and Third-Party Defendants' and MOES' duty to give, a defense (via  
 25 contractual obligation) to AMERICAN WEST, whether immediately upon giving notice or  
 26 retroactively upon proof of liability. AMERICAN WEST contends that it is entitled to be defended  
 27 by Third-Party Defendants and MOES and to judgment over and against them. AMERICAN WEST  
 28 is informed and believes that Third-Party Defendants and MOES contend to the contrary. Therefore,

1 an actual controversy exists relative to the legal duties and rights of the respective parties pursuant to  
2 their written agreements, which controversy AMERICAN WEST requests the Court to resolve.

3 59. All of the rights and obligations of the parties hereto arose out of what is actually one  
4 transaction or one series of transactions, happenings or events, all of which can be settled and  
5 determined in a judgment in this one action. AMERICAN WEST alleges that an actual controversy  
6 exists between the parties under the circumstances alleged. A declaration of rights, responsibilities  
7 and obligation of AMERICAN WEST and Third-Party Defendants and MOES, and each of them, is  
8 essential to determine their respective obligations in connection with the Third-Party Complaint.  
9 AMERICAN WEST has no true and speedy remedy at law of any kind.

10 60. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
11 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
12 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, the insurance  
13 contracts, and Nevada law.

#### 14 **ELEVENTH CAUSE OF ACTION**

##### 15 **(Declaratory Relief Re Duty of Insurers to Defend and Indemnify** 16 **Against MOE INSURERS 201 through 300 Only)**

17 61. AMERICAN WEST repeats and realleges the allegations of Paragraphs 1 through 60  
18 of this Third-Party Complaint as though fully set forth herein.

19 62. A dispute has arisen and an actual controversy now exists between AMERICAN  
20 WEST and the MOE INSURERS, and each of them, as to their duties to defend and indemnify both  
21 AMERICAN WEST as an additional insured or third-party beneficiary and their named insureds for  
22 the claims in this lawsuit. MOE INSURERS, and each of them, contend that their applicable  
23 insurance policies do not provide coverage for this claim while AMERICAN WEST alleges that these  
24 insurers have improperly denied coverage which will prevent the fair and prompt resolution of this  
25 lawsuit in violation of state law and public policy. Therefore, an actual controversy exists regarding  
26 these coverage issues, which controversy AMERICAN WEST requests the Court to resolve.

27 63. All of the rights and obligations of the parties hereto arose out of what is actually one  
28 transaction or one series of transactions, happenings or events, all of which can be settled and

1 determined in a judgment in this one action. AMERICAN WEST alleges that an actual controversy  
 2 exists between the parties under the circumstances alleged. A declaration of rights, responsibilities  
 3 and obligation of AMERICAN WEST and MOE INSURERS, and each of them, is essential to  
 4 determine their respective obligations in connection with the Third-Party Complaint. AMERICAN  
 5 WEST has no true and speedy remedy at law of any kind.

6 64. It has been necessary for AMERICAN WEST to retain the services of an attorney to  
 7 defend AMERICAN WEST against Plaintiffs' claims and to bring this action. AMERICAN WEST  
 8 is entitled to recover attorneys' fees and costs incurred herein pursuant to NRS 18.010, the insurance  
 9 contracts, and Nevada law.

10 WHEREFORE, AMERICAN WEST prays for judgment against Third-Party Defendants, and  
 11 each of them, as follows:

- 12 1. For general damages in excess of \$10,000.00;
- 13 2. For special damages according to proof;
- 14 3. For indemnity for all damages and/or economic losses that Plaintiffs recover against  
 15 AMERICAN WEST by way of judgment, order, settlement, compromise or trial;
- 16 4. For reasonable attorneys' fees, costs, expert costs and expenses, pursuant to statutory  
 17 law, common law, and contract law;
- 18 5. For prejudgment interest;
- 19 6. For consequential damages in excess of \$10,000.00;
- 20 7. For incidental damages in excess of \$10,000.00;
- 21 8. For an apportionment of liability among the Third-Party Defendants, and each of  
 22 them;

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///







**LINDA BENNETT, ET AL. V. AMERICAN WEST HOMES**

**District Case No. A558243**

**CERTIFICATE OF MAILING**

I, Lisa Spahr, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 2475 Village View Drive, Suite 250, Henderson, NV 89074.

On November 14, 2008, I served the documents described as **DEFENDANTS'/THIRD-PARTY PLAINTIFFS' THIRD-PARTY COMPLAINT** on the following parties:

**SEE ATTACHED SERVICE LIST**

XX

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Henderson, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Henderson, Nevada in the ordinary course of business

XX

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

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

Executed at Henderson, Nevada, on November 14, 2008.

  
\_\_\_\_\_  
Lisa Spahr

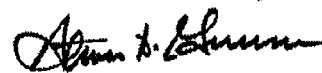
Service List  
Linda Bennett v. American West Homes, Inc.  
Case No.: A558243

<b>Party</b>	<b>Attorney of Record/Contact</b>	<b>Telephone / Fax</b>
Plaintiff	Craig D. Fuller, Esq Fuller Glaser Jenkins 4250 Executive Square, Suite 555 La Jolla, CA 92037	(858) 450-4050 (858) 450-4051 FAX
Plaintiff	Mark A. LoBello, Esq. The LoBello Law Firm 2061 East Sahara Avenue Second Floor Las Vegas, NV 89104	(702) 870-8000 (702) 733-7761 FAX
American West Homes, Inc.; American West Homes Inc.; American West Development	Jeffery A. Garofalo, Esq. Lee, Hernandez, Kelsey, Brooks, Garofalo & Blake 7575 Vegas Drive, Suite 150 Las Vegas, NV 89128  Co-Counsel	(702) 880-9750 (702) 314-1210 FAX

# Exhibit 54

# Exhibit 54

Electronically Filed  
05/14/2012 03:17:14 PM



CLERK OF THE COURT

1 ACOM  
DAVID T. PURSIANO, ESQ.  
2 Nevada Bar No. 5484  
LAUREL L. BARRY, ESQ.  
3 Nevada Bar No. 10311  
JAMES V. LAVELLE, ESQ.  
4 Nevada State Bar No. 555  
PURSIANO BARRY LAVELLE BRUCE HASSIN, LLP  
5 851 S. Rampart Blvd., Suite 260  
Las Vegas, NV 89145  
6 (702) 233-3063

7 JONATHAN G. LATTIE, ESQ.  
Nevada State Bar No. 7058  
8 TERESA A. LIBERTINO, ESQ.  
Nevada State Bar No. 9103  
9 LATTIE | MALANGA | LIBERTINO, LLP  
7935 West Sahara Avenue, Suite 106  
10 Las Vegas, Nevada 89117  
(702) 655-4949

11 Attorneys for Plaintiffs

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA  
14

15 RONALD BOYER, as owner/manager of  
ROYAL VELVET, LLC and ROYAL  
16 VELVET 8, LLC; JEFFREY and TERESA  
BUTTON, husband and wife; ALFRED and  
17 GLORIA PITTS, husband and wife; EONA  
NOVAK; LUIS and JEANETTE  
18 VELASQUEZ, husband and wife; M&R  
SPECIALIST SVC, LLC; DANIEL and  
19 SHARON RUFF, husband and wife; LISA  
TEJEDA; DANIEL DOUGHERTY; NENA  
20 GARMA; THOMAS and AMY CABRERA,  
husband and wife; MARK and YU JUAN  
21 WIEGAND, husband and wife; CAYL  
LYKINS; RICHARD WILLIS; LEE ANN  
22 BURTON; TIMOTHY FOX; RICHARD  
TOWNSEND; KINDLER WILLIAMS;  
23 JUDITH TABAT; CHARLES and ANNE  
COOK, husband and wife; JASON and  
24 MANDY PHELPS, husband and wife;  
EMILY LANDERS; GREG and ANITA  
25 HOLLAND, husband and wife; DENNIS and  
LORRAINE HAGEN, husband and wife;  
26 PATRICIA NASHICK; NICHOLAS  
KOVALEVSKY; CHRIS GEIGER; VINCENT  
27 AND GINA HUDDLE, husband and wife;  
JEFFREY AND JONI MILLER, husband  
28 and wife; ANTOINETTE SCOTA; DEAN

CASE NO. A603841  
DEPT. XXII

ARBITRATION EXEMPTIONS CLAIMED  
Declaratory Relief

PLAINTIFFS' THIRD AMENDED  
COMPLAINT

1. Breach of Implied Warranties
2. Strict Liability
3. Negligence
4. Declaratory Relief

1 AND MARY LUDWIG, husband and wife;  
 2 REBECCA DEHNER; RALPH AND TRACY  
 3 WILLIAMS, husband and wife; PETER AND  
 4 SHARON BROOKS, husband and wife;  
 5 RICHARD LINDSEY; AZRIE AND  
 6 VICTORIA CONN, husband and wife;  
 7 CHARLENE PU; STEVE AND LUISA  
 8 RASMUSSEN, husband and wife; PAUL  
 9 AND LAURA BERTUCCINO, husband and  
 10 wife; MARTIN WOODS; TODD FRENCH;  
 11 SUSAN MORRIS; SAMANTHA WATERS;  
 12 MICHELLE JOHNSON; ROY AND MARY  
 13 NEILL, husband and wife; CHRISTINE  
 14 BOHM; DENNIS AND CHERYL  
 15 CAVANAUGH, husband and wife; JOHN  
 16 AND LYNN EASTON, husband and wife;  
 17 RENE AND LYNDIA VANTIEGHAM,  
 18 husband and wife; ERNEST McGRUFF;  
 19 MARJORIE CERECK; JOHN McAULEY;  
 20 ROBERT AND ERNESTINE SHUMAKER,  
 21 husband and wife; CLIFFORD REEDER;  
 22 CHARLES AND DAWN KROEGEL,  
 23 husband and wife; ERIC AND STACY  
 24 RICCARDI, husband and wife; MICHAEL  
 25 AND ESTELA GREENE, husband and wife;  
 26 CARLOS MIGUEL; CHRISTINE TARALLO;  
 27 JUAN GONZALES; RAYMOND AND  
 28 PAMELA VIGIL, husband and wife; JAMES  
 AND BARBARA STOCKWELL, husband  
 and wife; DANIEL AND LYNNAE SOWERS,  
 husband and wife; and BRIAN  
 OLSHEVSKI,

Plaintiffs,

v.

PN II, INC., a Nevada Corporation; DOES 1  
 through 100

Defendants.

23 COMES NOW, Plaintiffs, RONALD BOYER, as owner/manager of ROYAL  
 24 VELVET, LLC and ROYAL VELVET 8 LLC, JEFFERY AND TERESA BUTTON, husband  
 25 and wife, and ALFRED and GLORIA PITTS, husband and wife, EONA NOVAK; LUIS  
 26 AND JEANETTE VELASQUEZ, husband and wife; M&R SPECIALIST SVC, LLC;  
 27 DANIEL AND SHARON RUFF, husband and wife; LISA TEJEDA; DANIEL

1 DOUGHERTY; NENA GARMA; THOMAS and AMY CABRERA, husband and wife;  
 2 MARK and YU JUAN WIEGAND, husband and wife; CAYL LYKINS; RICHARD WILLIS;  
 3 LEE ANN BURTON; TIMOTHY FOX; RICHARD TOWNSEND; KINDLER WILLIAMS;  
 4 JUDITH TABAT; CHARLES and ANNE COOK, husband and wife; JASON and MANDY  
 5 PHELPS, husband and wife; EMILY LANDERS; GREG and ANITA HOLLAND, husband  
 6 and wife; DENNIS and LORRAINE HAGEN, husband and wife, PATRICIA NASHICK;  
 7 NICHOLAS KOVALEVSKY; CHRIS GEIGER; VINCENT AND GINA HUDDLE, husband  
 8 and wife; JEFFREY AND JONI MILLER, husband and wife; ANTOINETTE SCOTA;  
 9 DEAN AND MARY LUDWIG, husband and wife; REBECCA DEHNER; RALPH AND  
 10 TRACY WILLIAMS, husband and wife; PETER AND SHARON BROOKS, husband and  
 11 wife; RICHARD LINDSEY; AZRIE AND VICTORIA CONN, husband and wife;  
 12 CHARLENE PU; STEVE AND LUISA RASMUSSEN, husband and wife; PAUL AND  
 13 LAURA BERTUCCINO, husband and wife; MARTIN WOODS; TODD FRENCH; SUSAN  
 14 MORRIS; SAMANTHA WATERS; MICHELLE JOHNSON; ROY AND MARY NEILL,  
 15 husband and wife; CHRISTINE BOHM; DENNIS AND CHERYL CAVANAUGH, husband  
 16 and wife; JOHN AND LYNN EASTON, husband and wife; RENE AND LYNDIA  
 17 VANTIEGHAM, husband and wife; ERNEST McGRUFF; MARJORIE CERECK; JOHN  
 18 McAULEY; ROBERT AND ERNESTINE SHUMAKER, husband and wife; CLIFFORD  
 19 REEDER; CHARLES AND DAWN KROEGEL, husband and wife; ERIC AND STACY  
 20 RICCARDI, husband and wife; MICHAEL AND ESTELA GREENE, husband and wife;  
 21 CARLOS MIGUEL; CHRISTINE TARALLO; JUAN GONZALES; RAYMOND AND  
 22 PAMELA VIGIL, husband and wife; JAMES AND BARBARA STOCKWELL, husband  
 23 and wife; DANIEL AND LYNNAE SOWERS, husband and wife; and BRIAN OLSHEVSKI,  
 24 inclusive, (collectively hereinafter referred to as "Plaintiffs") by and through their  
 25  
 26  
 27  
 28

attorneys, David T. Pursiano, Esq., Laurel L. Barry, Esq., and James V. Lavelle III, Esq. of PURSIANO BARRY LAVELLE BRUCE HASSIN, LLP and Jonathan G. Lattie, Esq. and Teresa A. Libertino, Esq. of LATTIE MALANGA LIBERTINO, LLP, complains of and, for their Second Amended Complaint, allege as causes of action against the Defendants and each of them as follows:

I.

**GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. Plaintiffs have completed the NRS Chapter 40 pre-litigation process as previously ordered by the Court, and file this Second Amended Complaint in compliance with the Case Management Order on file herein.

2. Plaintiffs are the owners of the following homes in the City of North Las Vegas, County of Clark, State of Nevada in a development commonly known as Eagle Creek ("Subject Properties").

Ronald Boyer as owner/manager of Royal Velvet LLC and Royal Velvet 8 LLC,	6229 Eagle Crossing Street
Jeffrey and Teresa Button	6257 Eagle Crossing Street
Alfred and Gloria Pitts	5409 Leadville Avenue
Eona Novak	6209 Grizzly Gorge Street
Jeanette and Luis Velasquez	5613 Bridgehampton Avenue
M&R Specialist Svc, LLC	5504 Eagle Cove Avenue
Daniel and Sharon Ruff	5713 Raven Creek Avenue
Lisa Tejeda	5621 Raven Creek Avenue
Daniel Dougherty	5405 Bridgehampton Avenue
Nena Garma	5416 Leadville Avenue
Thomas and Amy Cabrera	5925 Oakton Street
Mark and Yu Juan Wiegand	5405 Wells Cathedral Avenue



1	Cayl Lykins	5605 Bridgehampton Avenue
2	Richard Willis	5705 Eagle Claw Avenue
3	Lee Ann Burton	5917 Trumbull Street
4	Timothy Fox	6045 Crystal Talon Street
5	Richard Townsend	6233 Eagle Crossing Street
6	Kindler Williams	6101 Crystal Talon Street
7	Judith Tabat	5501 Bridgehampton Avenue
8	Charles and Anne Cook	5904 Oakton Street
9	Jason and Mandy Phelps	5633 Eagle Claw Avenue
10	Emily Landers, and Greg and Anita Holland	5921 Kentlands Street
11	Dennis and Lorraine Hagen	5700 Raven Creek Avenue
12	Patricia Nashick	5908 Kentlands Street
13	Nicholas Kovalesky	5400 Leadville Avenue
14	Chris Geiger	5917 Mount Auburn Street
15	Vincent and Gina Huddle	5632 Pepperpike Avenue
16	Jeffrey and Joni Miller	6024 Crystal Cascade Street
17	Antoinette Scota	6105 Crystal Talon Street
18	Dean and Mary Ludwig	5400 Wells Cathedral Avenue
19	Rebecca Dehner	5924 Oakton Street
20	Ralph and Tracy Williams	5500 Eagle Cove Avenue
21	Peter and Sharon Brooks	6224 Grizzly Gorge Street
22	Richard Lindsey	6220 Grizzly Gorge Street
23	Azrie and Victoria Conn	5916 Naperville Street
24	Charlene Pu	5633 Bridgehampton Avenue
25	Steve and Luisa Rasmussen	5508 Raincreek Avenue
26		
27		
28		

1	Paul and Laura Bertuccino	5901 Mount Auburn Street
2	Martin Woods	5401 Bridgehampton Avenue
3	Todd French	5909 Mount Auburn Street
4	Susan Morris	5420 Leadville Avenue
5	Samantha Waters	6225 Timberwolf Court
6	Michelle Johnson	5908 Mount Auburn Street
7	Roy and Mary Nell	5509 Raven Creek Avenue
8	Christine Bohm	6117 Crystal Talon Street
9	Dennis and Cheryl Cavanaugh	5409 Bridgehampton Avenue
10	John and Lynn Easton	5609 Bridgehampton Avenue
11	Rene and Lynda Vantlegham	6261 Eagle Crossing Street
12	Ernest McGriff	6217 Eagle Crossing Street
13	Marjorie Cereck	5920 Kentlands Street
14	John Mcauley	5408 Eagle Claw Avenue
15	Robert and Ernestine Shumaker	5417 Eagle Claw Avenue
16	Clifford Reeder	5609 Eagle Claw Avenue
17	Charles and Dawn Kroegel	5437 Eagle Claw Avenue
18	Eric and Stacy Riccardi	6136 Crystal Cascade Street
19	Michael and Estela Greene	5704 Eagle Claw Avenue
20	Carlos Miguel	5501 Raincreek Avenue
21	Christine Tarallo	5433 Eagle Claw Avenue
22	Juan Gonzales	6228 Timberwolf Court
23	Raymond and Pamela Vigil	5617 Eagle Claw Avenue
24	James and Barbara Stockwell	5913 Cypress Street
25		
26		
27		
28		

1 Daniel & Lynnae Sowers

5500 Raincreek Avenue

2 Brian Olshevski

5917 Kentlands Street

3 3. No longer used.

4 4. No longer used.

5 5. No longer used.

6  
7 6. The Plaintiffs are informed and believe and on that basis allege that the  
8 defendant PN II, INC. is, and at all relevant times was, a Nevada Corporation authorized  
9 to do business and doing business in Clark County, Nevada, and was the declarant,  
10 developer, Nevada licensed general contractor, builder, marketer and/or seller of the  
11 Subject Properties.

12 7. Defendants sued herein as DOES 1 through 100, inclusive, are fictitious  
13 names of individual Defendants whose true names and capacities, whether individual,  
14 corporate, associate or otherwise at this time, are unknown to Plaintiffs. Plaintiffs are  
15 informed and believe and thereupon allege that at all times herein mentioned each and all  
16 of the Defendants sued herein, including as DOES 1 through 100, inclusive, was acting as  
17 the agent, servant, employee, subcontractor and/or alter ego of his or her co-Defendants,  
18 and in doing the things hereinafter mentioned was acting in the scope of his or her  
19 authority as such agent, servant, employee, subcontractor and/or alter ego and with the  
20 permission and consent of his or her Co-Defendants; and that each of said fictitiously  
21 named Defendants, whether an agent or otherwise, participated in some manner as a  
22 declarant, builder, developer, contractor, subcontractor, material man or supplier of goods  
23 or otherwise in the works of building, constructing, preparing, installing and/or selling of  
24 the Subject Properties, and are in some way liable or responsible to the Plaintiffs on  
25 the facts hereinafter alleged, and caused injuries and damages proximately thereby as  
26  
27  
28

1 hereinafter alleged. At such time as the Defendants' true names become known to  
2 Plaintiffs, Plaintiffs will ask leave of this Court to amend this Complaint to insert said true  
3 names and capacities.

4 8. Plaintiffs are informed and believe and thereupon allege that at all times  
5 herein material the Defendants, including DOES, and each of them, were business  
6 entities and/or organizations who conducted business in the County of Clark and/or  
7 participated in the development, construction, marketing and/or sale of the Subject  
8 Properties.  
9

10 9. Commencing at a date unknown to Plaintiffs, Defendants, including DOES,  
11 and each of them, participated in the manner set forth herein as to each, in the design,  
12 preparation and/or construction of works of improvement, capitalization and the  
13 incorporation of the Subject Properties, all of which are now owned by the Plaintiffs.  
14

15 10. Plaintiffs are informed and believe and thereupon allege that Defendants,  
16 including DOES, and each of them, were and are declarants, builders, engineers,  
17 contractors, subcontractors, suppliers, material men, or other persons, entities or  
18 professionals who participated in the design, planning, construction, supervision,  
19 manufacture, and/or improvement of the Subject Properties, and who performed and  
20 furnished works of labor, supplied materials, equipment and/or services necessary for the  
21 design, preparation, construction, supervision, manufacture and/or improvement of the  
22 Subject Properties, with the knowledge that the Subject Properties would be utilized by  
23 Plaintiffs as residential units. In so doing, said Defendants, including DOES, in their  
24 capacities as declarants, builders, engineers, contractors, subcontractors, suppliers,  
25 material men, or otherwise, caused the Subject Properties to be designed, prepared,  
26 constructed, supervised, manufactured and/or improved through their own works of labor,  
27  
28

1 their supplying of materials, equipment and/or services, and through their causing other  
2 contractors and subcontractors, including other Defendants herein, to perform works of  
3 labor, to supply materials, equipment and/or services, in order to properly complete the  
4 construction of the structures on the Subject Properties, so that the same could and would  
5 be sold to and/or used by members of the public.  
6

7 11. After work at the project was completed, Plaintiffs became informed and  
8 believes and thereupon allege that the Subject Properties, in particular, are not of  
9 merchantable quality but, in fact, are defective and fail to meet all applicable building  
10 codes and industry standards and have caused damage to the Subject Properties. The  
11 damages known to the Plaintiffs at this time are ongoing, progressive and continue to  
12 worsen.  
13

14 12. Plaintiffs are informed and believe and thereupon allege that construction  
15 defects exist in the Subject Properties. Generally, the nature and scope of construction  
16 defects, include but may not be limited to, improperly identified, designed, excavated,  
17 placed, prepared, graded and/or compacted soils, improperly designed or constructed  
18 footings, slabs, post-tensioned cables, anchor bolts, sill plates, walkways, driveways,  
19 pads, foundations, exterior masonry site retaining/fence walls, and landscape. The  
20 Subject Properties also have stucco, roofing, framing, drywall, window, door, architectural,  
21 structural and other specialty trade defects. Additionally, the Subject Properties may be  
22 defective in ways and to the extent not precisely known, but which will be augmented by  
23 expert opinions and inserted here and by way of amendment or will be established at the  
24 time of trial according to proof. Expert reports and Job Files generated to date were  
25 provided during the Chapter 40 pre-litigation proceedings.  
26  
27  
28

1           13. Within the past year, Plaintiffs became aware of facts which thereafter, upon  
2 investigation, resulted in Plaintiffs being informed that portions of the Subject Properties  
3 have been inadequately constructed, developed, designed, supervised or otherwise  
4 improved so that the above-described defective conditions existed and do now exist and  
5 the works of improvement are defective, not of merchantable quality and not fit for the  
6 purpose of permitting persons to reside thereabouts in a proper manner and fashion.  
7 Moreover, Plaintiffs are informed and believe and thereupon allege these defective  
8 conditions were either known or through reasonable diligence and experience with the  
9 construction should have been known to Defendants, and DOES 1 through 100, and each  
10 of them, at the time of substantial completion of construction such that NRS 11.202 and  
11 11.203 are applicable to the facts and circumstances as alleged herein.  
12

13           14. Throughout the time period beginning with the completion of construction of  
14 the Subject Properties, and continuing to the present, the Defendants, including DOES,  
15 and each of them, made repairs and/or representations that repairs would be made to  
16 cure the defective conditions at the Subject Properties.  
17

18           15. Plaintiffs detrimentally relied upon the conduct and representations of the  
19 Defendants, and each of them, and failed to file suit within the statutorily prescribed time  
20 period. Based upon such conduct and representations in making repairs to the Subject  
21 Properties, the statutes of limitations are thus tolled.  
22

23           16. Pursuant to NRS 40.640, Defendants, and each of them, are liable for  
24 damages resulting from construction defects due to its individual acts or omissions or the  
25 acts or omissions of its agents, employees and subcontractors. As a result acts and  
26 omissions of the Defendants, Plaintiffs have been forced to hire counsel to prosecute this  
27 action and to incur attorney's fees and costs.  
28



## II.

FIRST CAUSE OF ACTION**(Breach of Implied Warranties Against All Defendants)**

17. Plaintiffs incorporate herein by reference Paragraphs 1 through 16 of the General Allegations above as though set forth fully herein.

18. Plaintiffs are informed and believe and thereupon allege that as contractors the Defendants, DOES, and each of them, knew that the Subject Properties would be used by members for the purposes of residential homes, and said Defendants knew, or reasonably should have known, that the persons would do so without inspection for the defects set forth herein.

19. Plaintiffs are informed and believe and thereupon allege that Defendants, DOES, and each of them, at all times herein mentioned, were and are merchants with respect to the works of improvement at residential units and the common area thereof and said Defendants impliedly warranted that these works of improvement were of merchantable quality, were constructed in a reasonably workmanlike manner and fit for the purpose as residential dwelling units. In addition to these common law implied warranties, Defendants, and each of them, impliedly warranted in accordance with NRS 116.4114 that the residential units and common areas of Plaintiffs were free from defective materials; constructed in accordance with applicable law in accordance with sound standards of engineering and construction, and done so in a workmanlike manner.

20. Plaintiffs are further informed and believe and thereupon allege that the Defendants, including DOES, entered into agreements, whether in writing or oral, with each other and other Defendants herein for the purpose of acting as builders, developers, designers, subcontractors, material men, suppliers with respect to the construction of the



1 Subject Properties. These contracts were made for the express and immediate benefit of  
2 Plaintiffs. Plaintiffs were third party beneficiaries of the foregoing contracts and any  
3 warranties, express or implied, by the contracts.

4       21. Plaintiffs are informed and believe and thereupon allege that the Subject  
5 Properties were and are not of merchantable quality, nor fit for the purpose as residential  
6 dwelling units and is defective, and other components and sources not yet identified or  
7 ascertained are not performing in the manner intended. The works of improvement at the  
8 Subject Properties are not of merchantable quality, but, in fact, are defective and have  
9 resulted in damage to the common areas and the residential units and structures thereon.

10       22. Plaintiffs are informed and believe and thereupon allege that the Subject  
11 Properties are not of merchantable quality, but instead, is defective in that it demonstrates  
12 improper, nonexistent and/or inadequate design and/or construction of the Subject  
13 Properties and structures thereon. The defective conditions as herein alleged have  
14 resulted in damaged and defective real property. Plaintiffs are informed and believe and  
15 thereupon alleges that the Subject Properties may be additionally defective in ways and to  
16 the extent not precisely known, but which will be inserted herein by way of amendment or  
17 will be established at the time of trial, according to proof.

18       23. Plaintiffs are informed and believe and thereupon allege that the above-  
19 described defects arose out of, were attributable to, and are directly and proximately  
20 caused by the above-described deficient acts or omissions in the design, specification,  
21 planning, supervision, observation of construction, construction, development and/or  
22 improvement of the Subject Properties, and that prior to the time when they were  
23 discovered by Plaintiffs as set forth herein, could not have been discovered by the  
24 exercise of reasonable diligence.

1       24. Plaintiffs are informed and believe and thereupon allege that as a direct and  
2 proximate result of the defects set forth herein and the breach of the aforesaid implied  
3 warranties by Defendants, and each of them, Plaintiffs have suffered damages in an  
4 amount precisely unknown, but believed to be in excess of this Court's jurisdiction in that it  
5 has been, and will hereafter be, required to perform works of repair, restoration and  
6 construction to portions of the Subject Properties to prevent further damage and to restore  
7 the portions of the Subject Properties to their proper condition including reasonable  
8 expenses of temporary housing reasonably necessary during the repair. Further, Plaintiffs  
9 have and will incur expert fees and costs to investigate the defective conditions to  
10 determine the nature, extent, cause of the defects and the reasonable and appropriate  
11 repairs. Finally, Plaintiffs and their members have suffered loss of other property  
12 damaged by the defective conditions which Plaintiffs will establish the precise amount of  
13 such damages at trial, according to proof.  
14

15  
16       25. Plaintiffs are informed and believe and thereupon allege that as a further  
17 direct and proximate result of the defective conditions of the Subject Properties, the  
18 Plaintiffs interests in the Subject Properties and the value thereof have been reduced and  
19 diminished. All of the above-described damages have occurred, but the amount thereof is  
20 precisely unknown, and when the precise amount is known, it will be established by way  
21 of amendment to these pleadings or according to proof at the time of trial.  
22

23       26. Plaintiffs are informed and believe and thereupon allege that as a further  
24 direct and proximate result of the defective conditions of the Subject Properties,  
25 the Plaintiffs have and will continue to lose the use of enjoyment of the Subject Properties  
26 including use of the Subject Properties as a result of restoration required to repair and  
27 cure the defects.  
28

## SECOND CAUSE OF ACTION

10 28. Plaintiffs refer to Paragraphs 1 through 27 of the General Allegations and  
11 First Cause of Action and incorporate the same herein as though fully set forth at this  
12 point.

29. Included as common constructional defects are defective products that have been installed in the Subject Properties for which Defendants are strictly liable. The products include, but may not be limited to, defective windows and sliding glass doors. Subsequent to the completion of the works of improvement at the Subject Properties, the Subject Properties have been defective as herein alleged, including defects in some products used, and the defects were neither known nor apparent to prospective purchasers by reasonable inspection at the time of acquisition by owners of the residential dwellings. Plaintiffs are informed and believe and thereupon allege that the Subject Properties may contain additional defective products not presently known, but which will be inserted by way of amendment or will be established at the time of trial, according to proof.

26 30. The Defendants named herein and DOES 1 through 100, inclusive, knew or  
27 had reason to know that the purchasers of the residential units would rely on the skills,

1 judgment and expertise of each of the Defendants herein named in producing and/or  
2 supplying and/or installing products in the Subject Properties that were reasonably fit for  
3 their intended purpose.

4       31. Plaintiffs have timely notified Defendants of the defective conditions;  
5 notwithstanding such notice, however, Defendants have declined and failed to  
6 acknowledge responsibility for all of the same, or otherwise cause the appropriate  
7 restoration and/or repair to be made to the Subject Properties at their cost.

8       32. Defendants, and each of them, as builders, are within the stream of  
9 commerce with respect to the defective products and are strictly liable and responsible to  
10 Plaintiffs for all damages suffered as a result of the above-described deficiencies.

11       33. Plaintiffs are informed and believe and thereupon allege that as a direct and  
12 proximate result of the defective products installed in the Subject Properties, Plaintiffs  
13 have suffered damages in an amount precisely unknown, but believed to be in excess of  
14 this Court's jurisdiction in that it has been, and now is, required to perform works of  
15 construction, restoration and repair to portions of said Subject Properties to prevent  
16 further damage and to restore portions of the Subject Properties to its proper condition  
17 including reasonable expenses of temporary housing reasonably necessary during the  
18 repair. Further, Plaintiffs have and will incur expert fees and costs to investigate the  
19 defective conditions to determine the nature, extent, cause of the defects and the  
20 reasonable and appropriate repairs. Finally, Plaintiffs have suffered loss of other property  
21 damaged by the defective conditions. Plaintiffs will establish the precise amount of such  
22 damages at trial, according to proof.

23       34. Plaintiffs are informed and believe and thereupon allege that as a further  
24 direct and proximate result of the defective conditions of the Subject Properties, the  
25  
26  
27  
28

1 Plaintiffs interests in the Subject Properties and the value thereof have been reduced and  
2 diminished. All of the above-described damages have occurred, but the amount thereof is  
3 precisely unknown, and when the precise amount is known, it will be established by way  
4 of amendment to these pleadings or according to proof at the time of trial.

5  
6 35. Plaintiffs are informed and believe and thereupon allege that as a further  
7 direct and proximate result of the defective conditions of the Subject Properties, Plaintiffs  
8 will continue to lose the use of enjoyment of the Subject Properties including use of the  
9 Subject Properties as a result of restoration required to repair and cure the defects.

10 36. Plaintiffs are informed and believe and thereupon allege that as a further  
11 direct and proximate result of the defective conditions of the Subject Properties, Plaintiffs  
12 were compelled to retain legal counsel to obtain recovery for the defective conditions.  
13 Therefore, Defendants are liable to for attorneys' fees and costs reasonably necessary  
14 incurred by Plaintiffs in order to obtain compensation in a sum to be determined at trial.  
15

16 IV.

17 THIRD CAUSE OF ACTION

18 (Negligence and Negligence Per Se Against All Defendants)

19 37. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1  
20 through 36 of the General Allegations, First and Second Causes of Action as though fully  
21 set forth at this point.  
22

23 38. Plaintiffs are informed and believe and thereupon allege that Defendants,  
24 and each of them, including DOES, were and are declarants, builders, contractors,  
25 subcontractors, suppliers, material men, architects and/or engineers, or other persons,  
26 entities or professionals who participated in the process of developing design, engineering  
27 and/or construction of the Subject Properties and who performed works of labor, supplied  
28



1 materials, equipment and/or services necessary for the building and construction,  
2 including supervision of construction of the Subject Properties with the knowledge that the  
3 Subject Properties would be sold to and used by members of the public, including the  
4 plaintiffs herein. In so doing, said Defendants, in their capacity as declarant, developer,  
5 builder, contractor, subcontractor, supplier, material man, architect, engineer and/or  
6 general contractor or otherwise, caused the Subject Properties to be designed,  
7 engineered and/or constructed through their own works of labor, and supplying of  
8 materials, equipment and services, and through causing other contractors and  
9 subcontractors, including other Defendants, to perform works of labor, and to supply  
10 materials, equipment and services in order to properly complete the Subject Properties so  
11 that it could be sold to and used by members of the general public.  
12

13  
14 39. Plaintiffs are informed and believe and thereupon allege that all Defendants  
15 named herein, whether declarant, developer, builder, contractor, subcontractor, supplier,  
16 materialman, architect, engineer or otherwise, performed work, labor and/or services upon  
17 the Subject Properties and each knew or should have known that if the Subject Properties  
18 were not properly or adequately designed, engineered, supervised and/or constructed, the  
19 owners and users would be substantially damaged thereby and the Subject Properties  
20 would be defective and not of merchantable quality. Likewise, Defendants knew or  
21 reasonably should have known that if the Subject Properties were not adequately  
22 designed, engineered, constructed, or installed, that the owners and users would be  
23 substantially damaged thereby and that the Subject Properties would be defective and not  
24 of merchantable quality.  
25

26 40. Defendants named herein were under a duty to exercise ordinary care as  
27 declarant, developer, builder, contractor, subcontractor, supplier, materialman, architect,  
28

1 engineer or otherwise to avoid reasonably foreseeable injury to users and purchasers of  
2 the Subject Properties and knew, and should have foreseen with reasonable certainty  
3 that purchasers and/or users would suffer the monetary damages set forth herein if said  
4 Defendants failed to perform their duty to cause the Subject Properties to be designed,  
5 engineered and completed in a proper and workmanlike manner and fashion.  
6

7 41. In performing the works as declarant, developer, builder, contractor,  
8 subcontractor, supplier, materialman, architect, engineer or otherwise, said Defendants  
9 failed and neglected to perform the work, labor and services properly or adequately in that  
10 each of said Defendants has negligently, carelessly and in an unworkmanlike manner  
11 performed the aforesaid work, labor and/or services such that the Subject Properties as  
12 described herein is designed, engineered and/or constructed improperly, negligently,  
13 carelessly and/or in an unworkmanlike manner.  
14

15 42. Plaintiffs are informed and believe and thereon allege that Defendants, and  
16 each of them, in addition to that heretofore alleged, violated the Building Codes and  
17 regulations of the City of North Las Vegas, County of Clark, the Uniform Building Codes  
18 and/or the Nevada Revised Statutes relating to development, common interest  
19 subdivisions, trade professionals, design professionals, construction and sales of real  
20 estate.  
21

22 43. Plaintiffs are informed and believe and thereon allege that, in addition to that  
23 heretofore alleged, the damages sustained by Plaintiffs were proximately caused by the  
24 violations of the Codes alleged above.

25 44. Plaintiffs are informed and believe and thereon allege that the damages  
26 sustained by Plaintiffs are those which the Codes were designed to prevent.  
27  
28



1       45. Plaintiffs are informed and believe and thereon allege that they are members  
2 of the class of persons for whose protection the aforementioned Codes were adopted.

3       46. As a direct and proximate result of the foregoing violations of codes,  
4 negligence, carelessness and unworkmanlike conduct, actions and/or omissions by said  
5 Defendants, Plaintiffs have suffered damages in an amount presently unknown, but  
6 believed to be in excess of this Court's jurisdiction, in order to correct the defective  
7 conditions of the Subject Properties and to restore them to their proper condition including  
8 reasonable expenses of temporary housing reasonably necessary during the repair.  
9 Further, Plaintiffs have and will incur expert fees and costs to investigate the defective  
10 conditions to determine the nature, extent, cause of the defects and the reasonable and  
11 appropriate repairs. Finally, Plaintiffs and their members have suffered loss of other  
12 property damaged by the defective conditions; Plaintiffs are presently unaware of the  
13 precise amount of the damages, but will establish the same at trial, according to proof.  
14

15  
16       47. Plaintiffs are informed and believe and thereupon allege that as a further  
17 direct and proximate result of the defective conditions of the Subject Properties, the  
18 Plaintiffs interests in the Subject Properties and the value thereof have been reduced and  
19 diminished. All of the above-described damages have occurred, but the amount thereof is  
20 precisely unknown, and when the precise amount is known, it will be established by way  
21 of amendment to these pleadings or according to proof at the time of trial.  
22

23       48. Plaintiffs are informed and believe and thereupon allege that as a further  
24 direct and proximate result of the defective conditions of the Subject Properties, Plaintiffs  
25 have and will continue to lose the use of enjoyment of the Subject Properties, including  
26 use of the Subject Properties as a result of restoration required to repair and cure the  
27 defects.  
28

#### FOURTH CLAIM FOR RELIEF

11 50. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1 through  
12 49 of the General Allegations, First, Second and Third Causes of Action as though fully  
13 set forth at this point.

51. Plaintiffs are informed and believe and thereupon allege that an actual controversy now exists between Plaintiffs and Defendants regarding the interpretation of NRS 40.600 *et. seq.* as it relates to the Plaintiffs' claims, the determination of which is essential to the administration of justice in this lawsuit. In particular, Plaintiffs allege the original pleading was necessary and proper to protect their rights and give effect to Chapter 40; that a valid Chapter 40 Common Constructional Defects Notice was provided to Defendants; that Defendants failed to properly respond to claimed defects nor disclose such pursuant to NRS 40.600 *et. seq.*

52. Plaintiffs desire a judicial determination of their respective rights including a stay of any and all applicable statutes of repose or limitation pending further discovery implicating design professionals not yet named pursuant to NRS 40.6884; and a judicial

1 determination of duties owed by the Defendants in connection with the matters herein  
 2 alleged and a judgment in Plaintiffs' favor, as to any obligations by Defendants, and each  
 3 of them, owed to Plaintiffs.

4         53. Plaintiffs are informed and believe and thereupon allege that if it is  
 5 determined that these Defendants did not respond to certain defects, then the Court may  
 6 impose certain penalties against Defendants and not award attorney's fees to these  
 7 Defendants and may not deny an award of attorney's fees to Plaintiffs.

8         54. For the foregoing reasons, Plaintiffs respectfully ask this Court to resolve the  
 9 following issues before the trial of other matters at issue:  
 10

- 11         a. Whether these Defendants' failure to respond to Plaintiffs NRS Chapter 40  
 12             Notice of Common Constructional Defects in good faith or otherwise  
 13             participate in the process in good faith was unreasonable and/or  
 14             constituted a failure to participate in the NRS 40.600 *et. seq.* process  
 15             in good faith and/or  
 16             otherwise violated said Defendant's duties and obligations under NRS  
 17             40.600 *et. seq.*;
- 18         b. Which, if any, statutory penalties provided in NRS 40.600 *et. seq.* should be  
 19             levied against these Defendants; and
- 20         c. Any other further relief that the Court deems necessary and/or appropriate to  
 21             give full force and effect to the provisions of NRS 40.600 *et. seq.*, NRS  
 22             116 *et seq.* and NRS 113 *et seq.*

23         **WHEREFORE**, Plaintiffs allege as damages caused by the conduct of Defendants,  
 24 as set forth above, and pray for damages and other relief against Defendants as follows:  
 25  
 26  
 27  
 28

2. Reasonable attorney's fees, costs, expert costs and expenses, pursuant to NRS 40,600 *et. seq.*, NRS 116 *et. seq.*, and NRS 113 *et. seq.*, and pursuant to statutory and common law as set forth above;

4. For such further relief as is necessary, including punitive damages, to satisfy and punish Defendants' violations of 40.600 *et. seq.* and NRS 116 *et seq.*, including equitable and monetary relief.

**LATTIE MALANGA LIBERTINO, LLP**

11

**JONATHAN G. LATTIE, ESQ.**  
Nevada State Bar No. 7058  
**TERESA A. LIBERTINO, ESQ.**  
Nevada State Bar No. 9103  
7935 West Sahara Ave., Ste. 106  
Las Vegas, Nevada 89117

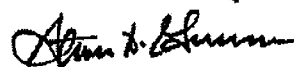
**DAVID T. PURSIANO, ESQ.**  
Nevada Bar No. 5464  
**LAUREL L. BARRY, ESQ.**  
Nevada Bar No. 10311  
**JAMES V. LAVELLE, ESQ.**  
Nevada State Bar No. 555  
**PURSIANO BARRY LAVELLE**  
**BRUCE HASSIN, LLP**  
851 S. Rampart Blvd., Suite 260  
Las Vegas, NV 89145

-22-

# Exhibit 55

# Exhibit 55

Electronically Filed  
05/22/2012 02:40:44 PM



CLERK OF THE COURT

1 TPC  
JASON W. WILLIAMS  
2 Nevada Bar No. 8310  
RICHARD D. YOUNG, ESQ.  
3 Nevada Bar No. 11331  
4 KOELLER NEBEKER CARLSON & HALUCK, LLP  
300 S. Fourth St., Suite 500  
5 Las Vegas, NV 89101  
Phone: (702) 853-5500  
6 Fax: (702) 853-5599  
[jason.williams@knchlaw.com](mailto:jason.williams@knchlaw.com)  
7 Attorneys for Defendant/Third-Party Plaintiff  
8 PN II, INC.

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 RONALD BOYER, as owner/manager of )  
12 ROYAL VELVET, LLC and ROYAL VELVET )  
13 8, LLC; JEFFREY and TERESA BUTTON, )  
husband and wife; ALFRED and GLORIA )  
14 PITTS, husband and wife; EONA NOVAK; )  
LUIS and JEANETTE VELAZQUEZ, husband )  
15 and wife; M&R SPECIALIST SVC, LLC; )  
DANIEL AND SHARON RUFF, husband and )  
16 wife; LISA TEJEDA; DANIEL DOUGHERTY; )  
NENA GARMA; THOMAS and AMY )  
17 CABRERA, husband and wife; MARK and YU )  
18 JUAN WIEGAND, husband and wife; CAYL )  
LYKINS; RICHARD WILLIS; LEE ANN )  
19 BURTON; TIMOTHY FOX; RICHARD )  
TOWNSEND; KINDLER WILLIAMS; )  
20 JUDITH TABAT; CHARLES and ANNE )  
COOK, husband and wife; JASON and MANDY )  
21 PHELPS, husband and wife; EMILY )  
22 LANDERS; GREG and ANITA HOLLAND, )  
husband and wife; DENNIS and LORRAINE )  
23 HAGEN, husband and wife; PATRICIA )  
NASHICK; NICHOLAS KOVALEVSKY; )  
24 CHRIS GEIGER; VINCENT and GINA )  
HUDDLE, husband and wife; JEFFREY and )  
25 JONI MILLER, husband and wife; )  
ANTOINETTE SCORTA; DEAN and MARY )  
26 LUDWIG, husband and wife; REBECCA )  
27 DEHNER; RALPH and TRACY WILLIAMS, )  
husband and wife; PETER and SHARON )  
28 BROOKS, husband and wife; RICHARD )

CASE NO.: A603841  
DEPT. NO.: XXII

THIRD PARTY COMPLAINT

1 LINDSEY; AZRIE and VICTORIS CONN, )  
 husband and wife; CHARLENE PU; STEVE and )  
 2 LUISA RASMUSSEN, husband and wife; )  
 3 PAUL and LAURA BERTUCCINO, husband )  
 and wife; MARTIN WOODS; TODD FRENCH; )  
 4 SUSAN MORRIS; SAMANTHA WATERS; )  
 MICHELE JOHNSON; ROY and MARY )  
 5 NEILL, husband wife; CHRSTINE BOHM; )  
 DENNIS and CHERYL CAVANAUGH, )  
 6 husband and wife; JOHN and LYNN EASTON, )  
 husband and wife; RENE and LYNDA )  
 7 VANTIEGHAM, husband and wife; ERNEST )  
 8 McGRIFF; MARJORIE CERECK; JOHN )  
 McAULEY; ROBERT and ERNESTINE )  
 9 SHUMAKER, husband and wife; CLIFFORD )  
 REEDER; CHARLES and DAWN KROEGEL, )  
 10 husband and wife; ERIC and STACY )  
 11 RICCARDI, husband and wife; MICHAEL and )  
 ESTELLE GREENE, husband and wife; )  
 12 CARLOS MIGUEL; CHRISTINE TARALLO; )  
 JUAN GONZALES; RAYMOND and )  
 13 PAMELA VIGIL, husband and wife; JAMES )  
 and BARBARA STOCKWELL, husband and )  
 14 wife; DANIEL and LYNNAE SOWERS, )  
 husband and wife; and BRIAN OLSHEVSKI, )  
 15  
 Plaintiffs, )  
 16 vs. )  
 17 PN II, INC., a Nevada Corporation; and DOES )  
 1-100 )  
 18 Defendants. )  
 19  
 PN II, INC., a Nevada Corporation, )  
 20  
 Third-Party Plaintiff, )  
 21 vs. )  
 22 ADAMS BROS. INTERIORS OF NEVADA, )  
 23 INC.; APPLE MASONRY, INC.; AVANTI )  
 INDUSTRIES CORPORATION; A R )  
 24 ORNAMENTAL IRON, INC.; ABI GROUP )  
 LV, L.L.C. dba CABINET WEST )  
 25 DISTRIBUTORS, INC.; CAMPBELL )  
 CONCRETE OF NEVADA, INC.; )  
 26 CONCRETE, INC.; DESERT FIREPLACES )  
 27 PLUS, INC.; IES RESIDENTIAL, INC. f/k/a )  
 HOUSTON-STAFFORD ELECTRICAL, INC.; )  
 28 HUTCHINS DRYWALL, INC.; JAYAR )  
 MANUFACTURING, INC.; KNIPP )



1 BROTHERS, INC.; MERILLAT )  
 CORPORATION; MILGARD )  
 2 MANUFACTURING INCORPORATED; )  
 PACIFIC STUCCO, INC.; PIONEER )  
 3 PLUMBING, INC.; P.R. CONSTRUCTION )  
 CO.; SIERRA AIR CONDITIONING, INC.; )  
 4 SOUTHWEST CIVIL CONSTRUCTORS, LLC )  
 d/b/a SOUTHWEST IRON WORKS, LLC; )  
 5 STATE INSULATION LLC; STATEWIDE )  
 6 LIGHTING, INC.; STEWART & SUNDELL )  
 CONCRETE, INC.; SUN CITY LANDSCAPES )  
 7 & LAWN MAINTENANCE, INC.; THE )  
 8 MASONRY GROUP NEVADA INC.; VEGAS )  
 LAMINATES, INC.; WILLIS ROOF )  
 9 CONSULTING, INC.; WINPRO )  
 INTERNATIONAL, INC.; and ROES 1-100, )  
 10 )

11 Third-Party Defendants. )

12 COMES NOW Defendant, PN II, INC., (hereinafter "Third-Party Plaintiff"), by and  
 13 through its attorneys KOELLER, NEBEKER, CARLSON & HALUCK, LLP, and hereby files  
 14 its Third-Party Complaint alleging claims for relief against Third-Party Defendants as follows:

15 1. The true names and capacities, whether individual, corporate, associate, or  
 16 otherwise of the Third-Party Defendants designated herein as ROES 1 through 100, inclusive,  
 17 are unknown to Third-Party Plaintiff, who therefore sues said Third-Party Defendants by such  
 18 fictitious names, and who will seek leave of Court to amend this Third-Party Complaint to set  
 19 forth their true names and capacities, together with the appropriate charging allegations when  
 20 same have been ascertained. Third-Party Plaintiff is informed and believes and based thereon  
 21 alleges Third-Party Defendants, ROES 1 through 100, inclusive, are responsible to Third-Party  
 22 Plaintiff on the facts and theories herein alleged.

23 2. Third-Party Plaintiff is informed and believes, and thereon alleges, Third-Party  
 24 Defendants designated herein as ROES 1 through 100, inclusive, were operated and/or  
 25 organized under the laws of Nevada as domestic or foreign business entities, and/or were at all  
 26 times relevant hereto performing business in Clark County, Nevada.  
 27  
 28

1           3.     At all relevant times, Third-Party Defendants, ROES 1 through 100 were the  
2 agents, servants and/or employees of each of the remaining Third-Party Defendants, and were  
3 acting within the course and scope of said agency, servitude and/or employment.

4           4.     Third-Party Plaintiff is informed and believes, and thereon alleges each of the  
5 Third-Party Defendants ROES 1 through 100 are in some manner responsible for the events  
6 and happenings to which reference is made herein, and that each Third-Party Defendant caused  
7 injury and damage to Third-Party Plaintiff as alleged herein.

8           5.     Third-Party Plaintiff is a corporation organized under the laws of the State of  
9 Nevada and is, and at all times relevant herein, was authorized to do business in the State of  
10 Nevada.

11          6.     At all times relevant herein, each of the Third-Party Defendants were entities  
12 doing business in the State of Nevada and performed architectural, engineering, or  
13 construction related work and/or supplied materials for the construction on or around the  
14 duplex homes, recreation centers, and/or common areas located within the residential  
15 development known as Eagle Creek, located in the City of North Las Vegas, County of Clark,  
16 State of Nevada.

17          7.     Each of the following Third-Party Defendants were architects, engineers,  
18 suppliers, manufacturers or subcontractors who performed engineering, architectural or  
19 construction activities for the residences located within and throughout the Eagle Creek  
20 development (the "Subject Properties"), or who supplied or provided to one of the other  
21 architects, engineers or subcontractors materials and/or other items which were installed into  
22 and/or became a part of one, some, or all of the Subject Properties within and throughout the  
23 Eagle Creek development: ADAMS BROS. INTERIORS OF NEVADA, INC.; APPLE  
24 MASONRY, INC.; AVANTI INDUSTRIES CORPORATION; A R ORNAMENTAL IRON,  
25 INC.; ABI GROUP LV, L.L.C. d/b/a CABINET WEST DISTRIBUTORS, INC.;  
26 CAMPBELL CONCRETE OF NEVADA, INC.; CONCRETE, INC.; DESERT  
27 FIREPLACES PLUS, INC.; IES RESIDENTIAL, INC. f/k/a HOUSTON-STAFFORD  
28 ELECTRICAL, INC.; HUTCHINS DRYWALL, INC.; JAYAR MANUFACTURING, INC.;

1 KNIPP BROTHERS, INC.; MERILLAT CORPORATION; MILGARD  
 2 MANUFACTURING INCORPORATED; PACIFIC STUCCO, INC.; PIONEER  
 3 PLUMBING, INC.; P.R. CONSTRUCTION CO.; SIERRA AIR CONDITIONING, INC.;  
 4 SOUTHWEST CIVIL CONSTRUCTORS, LLC d/b/a SOUTHWEST IRON WORKS, LLC;  
 5 STATE INSULATION LLC; STATEWIDE LIGHTING, INC.; STEWART & SUNDELL  
 6 CONCRETE, INC.; SUN CITY LANDSCAPES & LAWN MAINTENANCE, INC.; THE  
 7 MASONRY GROUP NEVADA INC.; VEGAS LAMINATES, INC.; WILLIS ROOF  
 8 CONSULTING, INC.; and WINPRO INTERNATIONAL, INC.

9 8. Prior to the filing of this Third-Party Complaint, Plaintiffs filed a Third  
 10 Amended Complaint against PN II, Inc., seeking monetary damages. Plaintiffs' Third  
 11 Amended Complaint is incorporated by reference herein. By incorporating Plaintiffs'  
 12 allegations, PN II, Inc. does not make any representations as to the veracity of same.

13 9. Plaintiffs allege in their Third Amended Complaint that they are entitled to  
 14 monetary damages as a result of defective design, preparation, construction, supervision,  
 15 manufacture, and/or improvement of the homes which Plaintiffs own.

16 10. Third-Party Plaintiff is informed and believes, and based thereon alleges Third-  
 17 Party Defendants were hired, retained, and engaged by Third-Party Plaintiff to design, prepare,  
 18 construct, supervise, manufacture, and/or otherwise improve the homes which Plaintiffs own.

19 **FIRST CLAIM FOR RELIEF**  
 20 **(Breach of Contract)**

21 11. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of  
 22 the allegations set forth in Paragraphs 1 through 10.

23 12. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party  
 24 Plaintiff entered into written agreements with Third-Party Defendants which include, among  
 25 others, the following terms: Third-Party Defendants warrant all work will be performed in a  
 26 good and workmanlike manner; Third-Party Defendants guarantee the work and all materials  
 27 furnished shall be free from faults or defects; prior to starting the work Third-Party Defendants  
 28 shall obtain and maintain insurance; and Third-Party Defendants shall protect, hold free and

1 harmless, defend and indemnify Third-Party Plaintiff from all liability, penalties, costs, losses,  
2 damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting  
3 from injury to, or death sustained by any person (including contractor's employees), or damage  
4 to property of any kind.

5 13. Third-Party Plaintiff is informed and believes, and thereon alleges, pursuant to  
6 the terms of the written agreements as alleged above herein, each Third-Party Defendant  
7 undertook obligations, including but not limited to maintenance of liability insurance policies,  
8 to name Third-Party Plaintiff as an additional insured under its respective policies of liability  
9 insurance, to indemnify Third-Party Plaintiff, to defend Third-Party Plaintiff and to perform its  
10 work in a good and workmanlike manner in accordance with the plans and specifications.

11 14. Third-Party Plaintiff has fully performed all conditions, covenants and promises  
12 required by it to be performed in accordance with the terms and conditions of said written  
13 agreements.

14 15. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party  
15 Defendants have breached said written agreements by refusing and failing to comply with their  
16 contractual obligations to maintain liability insurance, to name Third-Party Plaintiff as an  
17 additional insured under said policies of liability insurance, to indemnify Third-Party Plaintiff,  
18 to defend Third-Party Plaintiff, and to perform their work in a good and workmanlike manner,  
19 without defects, and in accordance with said written agreements, solely as alleged by Plaintiff.

20 16. As a direct and proximate result of Third-Party Defendants' breaches of  
21 contract, Third-Party Plaintiff has been damaged in a sum which is currently unascertainable.  
22 Third-Party Plaintiff will seek leave of Court to amend this Third-Party Complaint when such  
23 sum can be reasonably ascertained.

24 17. Third-Party Plaintiff has necessarily engaged the firm of KOELLER,  
25 NEBEKER, CARLSON & HALUCK, LLP, to represent it in the main action herein and in this  
26 Third-Party Complaint, and has incurred legal fees, court costs, investigation costs, and will in  
27 the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted  
28 by Plaintiff.

**SECOND CLAIM FOR RELIEF**  
**(Express Indemnity)**

18. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of the allegations set forth in paragraphs 1 through 17.

19. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party Plaintiff entered into written agreements with Third-Party Defendants, which include, among others, the following terms:

**Exhibit B**

Contractor hereby agrees to save, indemnify, and keep harmless Pulte and its agents and employees against all liability, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to Contractor's performance of the work under this Agreement ("Claims") unless such Claims have been specifically determined by the trier of fact to be the sole negligence of the Pulte. Contractor's duty to indemnify Pulte shall arise at the time written notice of a Claim is first provided to Pulte regardless of whether claimant has filed suit on the Claim. Contractor's duty to indemnify Pulte shall arise even if Pulte is the only party sued by claimant and/or claimant alleges that Pulte's negligence was the sole cause of claimant's damages. Contractor's indemnification obligation shall include, but not be limited to, any Claim made against Pulte by Contractor's employee or Contractor who has been injured on property owned by Pulte. Contractor will defend any and all Claims which may be brought or threatened against Pulte and will pay on behalf of Pulte any expenses incurred by reason of such Claims including, but not limited to, court costs and reasonable attorney fees incurred in defending or investigating such Claims. Such payments on behalf of Pulte shall be in addition to any and all other legal remedies available to Pulte and shall not be considered Pulte's exclusive remedy.

20. Third-Party Plaintiff is informed and believes, and thereon alleges the defects and damages claimed by Plaintiff involved alleged defects in, damage to, or destruction of property, and Third-Party Plaintiff further is informed and believes, and thereon alleges, that said damages were caused by Third-Party Defendants arising out of and connected with the performance of Third-Party Defendants' obligations pursuant to those written agreements herein referred to and entered into by Third-Party Defendants.

21. Third-Party Plaintiff has made demand, and by this action further demands Third-Party Defendants defend, indemnify, release, and hold harmless Third-Party Plaintiff for

1 any sums paid by way of settlement, judgment or otherwise to Plaintiff in the underlying  
2 action.

3 22. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party  
4 Defendants have failed and refused to, and continues to fail and refuse to defend, indemnify,  
5 release and hold harmless Third-Party Plaintiff.

6 23. Third-Party Plaintiff has retained attorneys to defend the underlying action filed  
7 by Plaintiff, thereby incurring costs and attorneys' fees in the defense of this action and in the  
8 prosecution of this Third-Party Complaint. If necessary, Third-Party Plaintiff will seek leave of  
9 Court to amend this Third-Party Complaint to show the amount of said costs and attorneys'  
10 fees when the same becomes known to Third-Party Plaintiff.

11 24. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party  
12 Plaintiff is entitled to express indemnity from Third-Party Defendants, including costs and  
13 attorneys' fees according to proof at the time of trial, pursuant to the terms of the written  
14 agreements entered into between Third-Party Plaintiff and Third-Party Defendants.

15 25. Third-Party Plaintiff has necessarily engaged the firm of KOELLER,  
16 NEBEKER, CARLSON & HALUCK, LLP to represent it in the main action herein and in this  
17 Third-Party Complaint, and has incurred legal fees, court costs, investigation costs, and will in  
18 the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted  
19 by Plaintiff.

20 **THIRD CLAIM FOR RELIEF**

21 **(Breach of Express Warranty)**

22 26. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of  
23 the allegations set forth in paragraphs 1 through 25.

24 27. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party  
25 Plaintiff entered into written agreements with Third-Party Defendants, which include, among  
26 others, the following terms:

27 13. CONTRACTOR warrants and guarantees that all work and materials  
28 furnished by it under this Agreement shall be free from faults or defects for a  
period of two (2) years from the date that PULTE conveys title to the subject



1 of the work (house or condominium unit) to its purchaser, or for the duration  
2 of any warranties afforded by law to purchase of homes or condominium units  
3 in Nevada, or so long as the State CONTRACTORS Board of the State of  
4 Nevada has jurisdiction over PULTE for the work, whichever is longest. In  
5 addition, CONTRACTOR shall deliver any and all applicable manufacturers'  
6 warranties on materials furnished by it to PULTE when the work is completed  
7 or this Agreement terminated. The warranties and guarantees contained  
8 herein shall in all cases survive termination of this Agreement.

9 28. Third-Party Plaintiff relied upon such warranties and believed in good faith that  
10 the Residence and its structures would comply with the approved plans and specifications for  
11 the development of the Residence and would be free from defective construction or  
12 workmanship.

13 29. Third-Party Plaintiff has fully performed all conditions and promises required on  
14 its part to be performed in accordance with the terms and conditions of the agreements.

15 30. Third-Party Plaintiff has provided noticed, and by this Third-Party Complaint  
16 provides further notice to Third-Party Defendants of claims asserted by Plaintiff, which trigger  
17 the warranty provision and all associated obligations referenced and herein above.

18 31. Third-Party Plaintiff has undertaken a defense in the matter in question and,  
19 Third-Party Plaintiff has incurred expenses in the defense of the claims, therefore Third-Party  
20 Plaintiff alleges it is entitled to judgment over and against Third-Party Defendants for all sums  
21 Third-Party Plaintiff incurs by reason of said judgment, settlement and expense of litigation,  
22 including reasonable attorneys' fees and costs as provided by the contractual agreements, the  
23 applicable terms of which have been set forth herein.

24 32. Third-Party Plaintiff has necessarily engaged the firm of KOELLER,  
25 NEBEKER, CARLSON & HALUCK, LLP to represent it in the main action herein and in this  
26 Third-Party Complaint, and has incurred legal fees, Court costs, investigation costs, and will in  
27 the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted  
28 by Plaintiff.

///

///

///



**FOURTH CLAIM FOR RELIEF**  
**(Breach of Implied Warranty)**

33. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of the allegations set forth in Paragraphs 1 through 32.

34. Third-Party Plaintiff is informed and believes, and based thereon alleges that Third-Party Defendants and ROES 1-100, impliedly warranted that the Subject Properties at Eagle Creek were designed and constructed in a reasonably workmanlike manner.

35. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendants and ROES 1-100, impliedly warranted that the Subject Properties at the Eagle Creek community were of merchantable quality and safe and fit for their foreseeable or intended use.

36. Plaintiffs have alleged in their Complaint that the Third-Party Plaintiff is somehow liable for the damage, if any, that they have alleged. Third-Party Plaintiff, by way of Answer to Plaintiff's Complaint, has denied and continues to deny Plaintiffs' allegations and has asserted, by way of Answer, the appropriate affirmative defenses. If at the trial of this action it should be determined that Third-Party Plaintiff is in some manner responsible to Plaintiff, then Third-Party Plaintiff is informed and believes, and thereon alleges, that the proximate cause of Plaintiffs' damage, if any, was a result of Third-Party Defendants' failure to construct the Subject Properties in a reasonably workmanlike manner as warranted by Third-Party Defendants, ROES 1-100, and each of them, and therefore Third-Party Defendants and ROES 1-100 have breached their implied warranty.

37. Third-Party Plaintiff intends this Third-Party Complaint to constitute additional notice to said Third-Party Defendants and ROES 1-100 of the breach of said implied warranty.

38. Third-Party Plaintiff alleges that, by virtue of their breach of implied warranty, Third-Party Defendants and ROES 1-100 are liable to Third-Party Plaintiffs for resulting damages, including, but not limited to the expenses in defending Plaintiffs' Complaint, any judgment or settlement ultimately favoring Plaintiffs, and the expense of maintaining this Third-Party Complaint.



1 rights and duties of the respective parties pursuant to their written agreements, which  
2 controversy Third-Party Plaintiff requests this Court to resolve.

3 46. Third-Party Plaintiff has necessarily engaged the firm of KOELLER,  
4 NEBEKER, CARLSON & HALUCK, LLP to represent it in the main action herein and in this  
5 Third-Party Complaint, and has incurred legal fees, Court costs, investigation costs, and will in  
6 the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted  
7 by Plaintiff.

8 **SIXTH CLAIM FOR RELIEF**  
9 **(Declaratory Relief Regarding Duty to Indemnify)**

10 47. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of  
11 the allegations set forth in Paragraphs 1 through 46.

12 48. An actual controversy exists between Third-Party Plaintiff and Third-Party  
13 Defendants as to their rights and liabilities with respect to any ultimate responsibility for  
14 Plaintiff's claims, and with respect to the rights to receive, or duty to give, full indemnification  
15 or indemnification in proportion to their comparative faults, if any.

16 49. Third-Party Plaintiff contends that, if it suffers judgment in the action brought  
17 by Plaintiff, or if it pays monies by way of a reasonable compromise of said claim, then Third-  
18 Party Plaintiff is entitled to be fully indemnified by Third-Party Defendants, and/or entitled to  
19 judgment over and against Third-Party Defendants to the extent of Third-Party Plaintiff's  
20 financial responsibility to Plaintiff, or to the extent such responsibility exceeds the percentage  
21 of Third-Party Plaintiff's negligence, fault or liability, if any.

22 50. Third-Party Plaintiff is informed and believes, and thereon alleges Third-Party  
23 Defendants contend to the contrary. Therefore, an actual controversy exists relative to the legal  
24 rights and duties of the respective parties pursuant to their written agreements, which  
25 controversy Third-Party Plaintiff requests this Court to resolve.

26 51. Third-Party Plaintiff has necessarily engaged the firm of KOELLER,  
27 NEBEKER, CARLSON & HALUCK, LLP to represent it in the main action herein and in this  
28 Third-Party Complaint, and has incurred legal fees, Court costs, investigation costs, and will in

1 the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted  
2 by Plaintiff.

3 **SEVENTH CLAIM FOR RELIEF**  
4 **(Contribution)**

5 52. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of  
6 the allegations set forth in paragraphs 1 through 51 as though fully set forth herein.

7 53. Third-Party Plaintiff contends it is not responsible legally or otherwise for the  
8 damage created from the defects alleged by Plaintiff in this litigation. Despite this, Third-Party  
9 Plaintiff has incurred expenses investigating and defending the claims asserted by Plaintiff in  
10 this matter, which were caused by Third-Party Defendants, solely as alleged by Plaintiff.

11 54. In the event the trier of fact concludes Plaintiff's allegations are true, and if  
12 Third-Party Plaintiff is held liable to Plaintiff in said action, then Third-Party Plaintiff alleges  
13 any responsibility found on the part of Third-Party Plaintiff will be due to the negligence and/or  
14 fault of Third-Party Defendants.

15 55. By reason of the foregoing, if Plaintiff should recover judgment against Third-  
16 Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with  
17 Plaintiff, then Third-Party Plaintiff will be entitled to contribution over and against Third-Party  
18 Defendants for all costs, expenses and attorneys' fees Third-Party Plaintiff incurs in the  
19 preparation and presentation of its defense of the principal action, and in the preparation,  
20 presentation and prosecution of this Third-Party Complaint, respectively.

21 56. Third-Party Plaintiff has necessarily engaged the firm of KOELLER,  
22 NEBEKER, CARLSON & HALUCK, LLP to represent it in the main action herein and in this  
23 Third-Party Complaint, and has incurred legal fees, Court costs, investigation costs, and will in  
24 the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted  
25 by Plaintiff.

26 ///

27 ///

28 ///

**EIGHTH CLAIM FOR RELIEF**  
**(Apportionment)**

57. Third-Party Plaintiff alleges, and incorporates herein by this reference, each of the allegations set forth in paragraphs 1 through 56 as though fully set forth herein.

58. Third-Party Plaintiff contends it is not responsible legally or otherwise for the damage created from the defects alleged by Plaintiff in this litigation. Despite this, Third-Party Plaintiff has incurred expenses investigating and defending the claims asserted by Plaintiff in this matter, which were caused by Third-Party Defendants solely as alleged by Plaintiff.

59. In the event the trier of fact concludes Plaintiff's allegations are true, and if Third-Party Plaintiff is held liable to Plaintiff in said action, then Third-Party Plaintiff alleges any responsibility found on the part of Third-Party Plaintiff will be due to the negligence and/or fault of Third-Party Defendants.

60. By reason of the foregoing, if Plaintiff should recover judgment against Third-Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with Plaintiff, then Third-Party Plaintiff will be entitled to apportionment over and against Third-Party Defendants for all costs, expenses, and attorneys' fees Third-Party Plaintiff incurs in the preparation and presentation of its defense of the principal action, and in the preparation, presentation and prosecution of this Third-Party Complaint, respectively.

61. Third-Party Plaintiff has necessarily engaged the firm of KOELLER, NEBEKER, CARLSON & HALUCK, LLP to represent it in the main action herein and in this Third-Party Complaint, and has incurred legal fees, court costs, investigation costs, and will in the future incur further fees and costs, as aforesaid, all by reason of said Complaint instituted by Plaintiff.

WHEREFORE, Third-Party Plaintiff respectfully requests that this Honorable Court enter judgment against Third-Party Defendants and ROES 1-100, and each of them, as follows:

1. A determination that each Third-Party Defendant, ROES 1-100 and each of them, contributed in some percentage to the loss, damage and detriment alleged by Third-Party Plaintiff and for a declaration of percentages by which the Third-Party Defendants, ROES 1-

1 100 and each of them, contributed to the loss, damage and detriment, if any, of Third-Party  
2 Plaintiff;

3 2. That if Plaintiffs should recover a sum or judgment against Third-Party Plaintiff,  
4 that Third-Party Plaintiff should have judgment against Third-Party Defendants and ROES 1-  
5 100;

6 3. That Third-Party Plaintiff is entitled to a defense from Third-Party Defendants  
7 and ROES 1-100;

8 4. For general and special damages in an amount to be proven at trial;

9 5. For indemnity of all damages and/or economic losses that Plaintiffs recover  
10 against Third-Party Plaintiff by way of judgment, order, settlement, compromise, or trial;

11 6. For reasonable attorney's fees, expert fees and costs;

12 7. For prejudgment interest and post-judgment interest;

13 8. For contribution pursuant to NRS 17.225; and

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

16 DATED this 22nd day of May, 2012.

17 KOELLER, NEBEKER, CARLSON,  
18 & HALUCK, LLP

19  
20 By: 

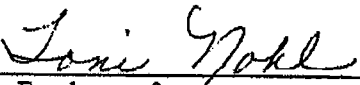
21 RICHARD D. YOUNG, ESQ.  
22 Nevada Bar No. 11331  
23 300 South Fourth Street, Suite 500  
24 Las Vegas, NV 89101  
25 Attorneys for Defendant/Third-Party  
26 Plaintiff  
27 PN II, INC.  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of May, 2012, I served a true and correct copy of the foregoing **THIRD-PARTY COMPLAINT** by depositing a copy in the United States Mail at Las Vegas, Nevada postage fully prepaid, addressed to the following individual:

David T. Pursiano, Esq.  
Laural L. Barry, Esq.  
James V. Lavelle, Esq.  
**PURSIANO BARRY LAVELLE BRUCE HASSIN, LLP**  
851 S. Rampart Blvd., Suite 260  
Las Vegas, Nevada 89145  
Attorneys for Plaintiffs

Jonathan G. Lattie, Esq.  
Teresa A. Libertino, Esq.  
**LATTIE, MALANGA, LIBERTINO, LLP**  
7935 West Sahara Avenue, Suite 106  
Las Vegas, Nevada 89117  
Attorneys for Plaintiffs

  
An Employee of  
**KOELLER, NEBEKER, CARLSON & HALUCK, LLP**



# Exhibit 56

# Exhibit 56

Electronically Filed  
02/03/2011 03:25:15 PM



CLERK OF THE COURT

COMP

Paul P. Terry Jr., SBN 7192  
John Stander, SBN 9198  
Melissa Bybee, SBN 8390  
Asmara Tarar, SBN 10999  
ANGIUS & TERRY LLP  
1120 N. Town Center Drive, Suite 260  
Las Vegas, NV 89144  
Telephone: (702) 990-2017  
Facsimile: (702) 990-2018  
[jstander@angius-terry.com](mailto:jstander@angius-terry.com)  
[mbybee@angius-terry.com](mailto:mbybee@angius-terry.com)  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

ANTHEM COUNTRY CLUB COMMUNITY  
ASSOCIATION, INC., a Nevada non-profit  
mutual benefit corporation,

Plaintiff,

v.

TERRAVITA HOME CONSTRUCTION  
COMPANY, an Arizona corporation; and  
DOES 1 through 300,

Defendants.

Case No. A - 11 - 634626 - D

Dept. No. XXII

**COMPLAINT FOR DAMAGES**

[Chapter 40.600 to 40.695]

**ARBITRATION EXEMPTIONS CLAIMED:**

1. Declaratory Relief
2. Significant Issues of Public Policy
3. Damages Exceed \$50,000 per plaintiff  
exclusive of interests and costs

**JURY TRIAL DEMANDED**

ANGIUS & TERRY LLP  
1120 N. Town Center Dr.  
Suite 260  
Las Vegas, NV 89144  
(702) 990-2017

COMES NOW Plaintiff, by and through its attorneys, ANGIUS & TERRY LLP, and for causes of action against Defendants, and each of them, alleges as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff ANTHEM COUNTRY CLUB COMMUNITY ASSOCIATION, INC. ("Association" or "Plaintiff") is, and at all relevant times was, a Nevada non-profit mutual benefit corporation duly organized and existing by virtue of the laws of the State of Nevada, located in the City of Henderson, Clark County, Nevada.

2. Association is informed and believes and thereon alleges that defendant TERRAVITA HOME CONSTRUCTION COMPANY ("TERRAVITA") is, and at all relevant times was, an Arizona corporation doing business in Clark County, Nevada.

3. The true names and capacities of Does 1 through 300 are unknown to Association, who therefore sues said defendants by such fictitious names. The Association will move to amend this Complaint to show their true names and capacities when the same have been ascertained.

4. Association is also unaware of the basis of liability as to some or all of the fictitious defendants sued herein as Does 1 through 300 but believes that their liability arises out of the same general facts set forth herein. Association will move to amend this Complaint to assert the theories of liability against the fictitiously named defendants when they have been ascertained.

5. Association is informed and believes and thereon alleges that each of the Doe Defendants are legally responsible in some manner for the events and damages referred to herein, and legally and proximately caused damage to Association. Each and every defendant had a duty to Association's members as reasonably foreseeable purchasers and Project residents to use reasonable care in performing the tasks as related to the planning, development, creation, improvement, design, construction, inspection, promotion and sale of the Anthem Country Club Project.

6. Association is informed and believes and thereon alleges that at all relevant times, each defendant was the agent and employee of each of its co-defendants, and in doing the things herein alleged, was acting within the course and scope of his/her authority as such

ANGIUS & TERRY LLP  
1120 N. Town Center Dr.  
Suite 260  
Las Vegas, NV 89144  
(702) 990-2017

1 agent and employee, and each defendant has ratified and approved the acts of his/her agents  
2 and employees.

3 7. Association is informed and believes and thereon alleges that TERRAVITA  
4 owned certain real property located in the City of Henderson, Clark County, Nevada,  
5 consisting of approximately 1647 single family homes, a club house, pool and Common  
6 Areas, commonly known as the Anthem Country Club (hereinafter, "the Project"), but more  
7 particularly described as:

8 Anthem Country Club, Parcel 1 of Parcel Map in Book 084, Page 0057, recorded  
9 June 1, 1998, as Document No. 02189, Parcel 2 of Parcel Map in Book 084, Page 0058,  
10 recorded June 1, 1998, as Document No. 02192, Parcel 30 of Parcel Map in Book 084 Page  
11 0059, recorded June 1, 1998, as Document No. 02196, Parcel 31 of Parcel Map in Book 084,  
12 Page 0060, recorded June 1, 1998, as Document No. 02199, Parcel 32 of Parcel Map in Book  
13 084, Page 0061, recorded June 1, 1998, as Document No. 02202, all of the Official Records of  
14 the Clark County, Nevada recorder.

15 8. Association is informed and believes and thereon alleges that TERRAVITA  
16 and Does 1 through 10 (collectively referred to herein as "Developer Defendants") developed,  
17 planned, improved, designed, constructed, promoted, marketed, advertised and sold the homes  
18 and Common Areas within the Project to individual members of Association, or their  
19 predecessors in title.

20 9. Association is informed and believes and thereon alleges that Developer  
21 Defendants created Association, and caused it to accept management, operation and control of  
22 the Common Areas and various aspects of the Project for the benefit of its members.

23 10. Association is informed and believes and thereon alleges that Developer  
24 Defendants caused and assented to the recordation of certain Covenants, Conditions and  
25 Restrictions ("CC&R's"), recorded in the office of the Clark County Recorder.

26 11. Association is informed and believes and thereon alleges that Developer  
27 Defendants caused and assented to the filing of certain Articles of Incorporation ("Articles")  
28 in the Office of Secretary of State of the State of Nevada and further caused and assented to

ANDREWS & TERRY, LLP  
1120 N. Town Center Dr.,  
Suite 260  
Las Vegas, NV 89144  
(702) 990-2017

1 the preparation and execution of certain By-Laws ("Bylaws") pertaining to the Association.  
 2 (The Bylaws, Articles and CC&R's are referred to collectively as the "Governing  
 3 Documents.")

4 12. As set forth in the Governing Documents and Nevada law, the purpose and  
 5 powers of Association are, and at all relevant times were, to provide administration,  
 6 maintenance, preservation and architectural control of the Common Areas within the Project;  
 7 to preserve the values and amenities in the Project; to promote the general welfare of the  
 8 community comprising the Association; and to possess and exercise all powers of a non-profit  
 9 mutual benefit corporation operating for the benefit and on behalf of the members, subject  
 10 only to the limitations set forth in the Governing Documents.

11 13. As further set forth in the Governing Documents and Nevada law, Association  
 12 is obligated to maintain, repair and replace various elements of the real property and  
 13 improvements thereto, and located within the Project referred to as "Common Areas" for the  
 14 common use and enjoyment of all members of Association.

15 14. Association is informed and believes and thereon alleges that Developer  
 16 Defendants and Does 11 through 25 (collectively referred to herein as "Fiduciary  
 17 Defendants") were employees and/or agents of Developer Defendants, who served as  
 18 directors and officers of Association until such time as Developer Defendants, by virtue of the  
 19 Governing Documents and Nevada law, could no longer elect the Fiduciary Defendants to  
 20 serve as Association's directors and officers.

21 15. Association is informed and believes and thereon alleges that Defendants  
 22 TERRAVITA and Does 26 through 100 were individuals and/or entities and all their  
 23 employees and agents (collectively referred to herein as "Contractor Defendants") who  
 24 performed services as general contractors or subcontractors, and/or provided equipment,  
 25 materials and/or supplies for the construction of the Project.

26 16. Association is informed and believes and thereon alleges that Does 101  
 27 through 125 were individuals and/or entities (collectively referred to herein as "Design  
 28 Professional Defendants") who provided design services to Developer Defendants in

1 connection with the planning, design, specification, inspection, development and construction  
2 of the Project.

3 17. Association is informed and believes and thereon alleges that Does 126  
4 through 150 were individuals and/or entities (collectively referred to herein as "Supplier  
5 Defendants") who supplied, manufactured and/or distributed materials, products and goods  
6 used in or for the construction of the Project.

7 18. Association is informed and believes and thereon alleges that Does 151  
8 through 175 (collectively referred to herein as "Surety Defendants") are individuals and/or  
9 entities who were, and now are, authorized to engage in, and actually engaged in, the surety  
10 insurance business in the State of Nevada.

11 19. Association is informed and believes and thereon alleges that Does 176  
12 through 200 (collectively referred to herein as "Successor Defendants") were individuals  
13 and/or entities who succeeded to the obligations and liabilities of the Developer Defendants  
14 and Contractor Defendants herein pursuant to operation of law, contracts, investment or by  
15 other legal means.

16 20. Association is informed and believes and thereon alleges that there exists, and  
17 at all relevant times there existed, a unity of interest and ownership between and among  
18 Developer Defendants, Fiduciary Defendants and Does 201 through 225 (collectively referred  
19 to herein as "Alter Ego Defendants"), such that any individuality and separateness between  
20 and among the Alter Ego Defendants ceased to exist, and that if the acts that harm Association  
21 are treated as those of said Developer Defendants alone, an inequitable result will follow such  
22 that equity requires that the Alter Ego Defendants be held responsible for the acts of the  
23 Developer Defendants. The circumstances by which such liability should be imposed include,  
24 but are not limited to, failure to adequately capitalize the corporation; the total absence of  
25 corporate assets, or undercapitalization; diversion of assets from the corporation by or to a  
26 stockholder or other person or entity, to the detriment of creditors or other third parties, or  
27 manipulation of assets and liabilities between entities so as to concentrate the assets in one  
28 and the liabilities in another; contracting with another with intent to avoid performance by use

1 of the corporate entity as a shield against personal liability; and formation and use of the  
2 corporation to transfer to it the existing liability of another person or entity.

3 21. Association is informed and believes and thereon alleges that from time to time  
4 during the approximate period 1998 to 2003 (the "Construction Period"), and from 2003 to  
5 the date of this Complaint, but particularly during the actual construction of the Project,  
6 defendants performed inspections and reported on conditions of various elements of the  
7 Project, including the Common Areas, and made recommendations as to said conditions to co-  
8 defendants.

9 22. Association is informed and believes and thereon alleges that defendants or  
10 those who such defendants hired to make inspections did not reveal, disclose or inform  
11 Association or its members of the defective conditions of the Project observed during  
12 inspections conducted by said parties, and Association's members reasonably relied on the  
13 implied and express representation that the Project and Common Areas were free from defects  
14 and that the Association's obligations of maintenance, repair and replacement of the Common  
15 Areas as required by the Governing Documents could be funded by the budget estimates  
16 submitted by defendants to Association.

17 23. Association is presently unaware of when all of the defective conditions  
18 alleged herein first occurred or manifested themselves or caused physical injury to or  
19 destruction of tangible property, or the loss of use of such property, but asserts that the  
20 construction deficiencies at the Project have developed and occurred over a number of years  
21 since substantial completion of the Project, said deficiencies and resulting physical injuries  
22 being continuous and progressive.

23 24. Since the original construction of the Project and for a period of several years  
24 thereafter, defendants promised, agreed to and actually did make certain repairs to the  
25 Project's Common Areas, and in doing so, Association reasonably relied on defendants'  
26 promises, agreements and repairs, and thereby deferred the filing of the within action. During  
27 the period in which defendants made such promises, agreements and repairs, all statutes of  
28 limitations were tolled and defendants are estopped from claiming that the alleged expiration  
of any statutes of limitations bar the within action.

ANGIUS & TERRY LLP  
1120 N. Town Center Dr.  
Suite 260  
Las Vegas, NV 89144  
(702) 990-2017



1           25. Association is informed and believes and thereon alleges that Association and  
 2 its members have sustained and suffered consequential damages resulting from defendants'  
 3 acts and/or omissions including, without limitation, physical injury and/or destruction of  
 4 tangible property and the loss of use of Common Areas; consequential damages to Common  
 5 Areas; damage to separate interests related to Common Area defects; damage to personal  
 6 property related to Common Area defects; and has or will incur relocation expenses.

7           26. Pursuant to the Governing Documents and Nevada Revised Statute Section  
 8 116.3102, Association brings this action individually on its own behalf and in its  
 9 representative capacity for damage to the Common Areas, damages to the separate property  
 10 interests which arise out of or are integrally related to damage in the Common Areas, and  
 11 damages to the separate interests that Association is obligated to maintain or repair. Pursuant  
 12 to said Section, Association has standing to institute this legal action for the damages alleged  
 13 herein in its own name as the real party in interest and without joining with it the individual  
 14 owners of the common interest development, with the exception of those damages or injuries  
 15 that are intangible and inherently personal to the individual members of Association.  
 16 Association commenced this action, in part, to protect the health, safety and welfare of the  
 17 members of the Association.

18           27. Association also brings this action to enforce the personal and property rights  
 19 of the Association members pertaining to the undivided interests in the Common Areas of the  
 20 project, and to enforce the property rights pertaining to the Common Areas. The persons in  
 21 the class are so numerous that the joinder of all such persons is impractical and the disposition  
 22 of their claims in a class action is a benefit to the parties and to the Court. There is a well-  
 23 defined community of interest in the common questions of law and fact affecting the parties to  
 24 be represented in that this action involves construction defects and design deficiencies in the  
 25 Common Areas of the subject property. This action also involves alleged breaches of  
 26 warranties. The common questions of law and fact predominate over questions of law and  
 27 fact which pertain only to individual class members. Proof of a common or single state of  
 28 facts will establish the right of each member of the class to recover. The Association will  
 fairly and adequately represent the interests of the class. Association sues in its representative

ANDERSON & DEERY LLP  
 1120 N. Town Center Dr.  
 Suite 260  
 Las Vegas, NV 89144  
 (702) 990-2017

1 without limitation: cracked and deteriorated concrete curb and gutter; chips in the concrete  
 2 curb and gutter; water ponding in concrete gutters; vertical offset concrete curb; cracked  
 3 concrete drainage swales or cross gutters; cracked, chipped and deteriorated concrete  
 4 sidewalks; vertical offset concrete sidewalk; ponding on concrete sidewalk; cracked and  
 5 eroded asphalt pavement; deteriorated asphalt seal; asphalt pavement below edge of swale;  
 6 brick pavers set below edge of swale; irregular asphalt pavement surface (gouges); sinkhole in  
 7 asphalt pavement; asphalt not sealed for certain communities; ponding on asphalt pavement;  
 8 ponding on pavers; deteriorated concrete utility pad; debris on finish surface; blue reflective  
 9 fire hydrant blue pavement markers omitted; sinkhole has formed in the street; broken utility  
 10 collar; cracked concrete manhole cover; chipped concrete utility pad or manhole cover;  
 11 cracked concrete vault cover or pad; settled concrete utility vault; sinking storm drain inlets;  
 12 efflorescence forming on retaining walls; decorative caps on retaining walls are deteriorating;  
 13 color coat on retaining walls is deteriorating and color is changing; cracked masonry fence;  
 14 short vertical reinforcing in masonry fence; missing vertical and horizontal reinforcing in  
 15 masonry fence; metal fence or post installed in direct contact with soil; metal fencing is not  
 16 properly installed; metal fencing is rusting; cracked concrete landscape curb at base of fence;  
 17 expansion joint filled with stucco or grout; exposed wall footing; deteriorated wall caps;  
 18 incorrect drain inlets at cul-de-sacs; ramp is omitted; mail boxes are too low; pool lights are  
 19 improperly installed; a second "residents only" entry and exit was not provided; and cracks in  
 20 the bottom of the community pool. Said components are not of merchantable quality, nor  
 21 were they designed, erected, constructed or installed in a workmanlike manner, but instead are  
 22 defective and, as now known, the subject components demonstrate improper, nonexistent,  
 23 and/or inadequate design, construction, manufacture, installation, and/or build. Association is  
 24 informed and believes and thereon alleges that the structures may be additionally defective in  
 25 ways and to an extent not precisely known, but which will be established at the time of trial,  
 26 according to proof.

27 34. Association has complied with all prefiling requirements of Nevada Revised  
 28 Statutes 40.600 through 40.695, except to the extent such requirements have been excused,

ANDREAS A. TERRY, LLP  
 1120 N. Town Center Dr.  
 Suite 260  
 Las Vegas, NV 89144  
 (702) 990-2017

1 capacity on all causes of action which are not appropriately the subject of Association claims  
 2 under Nevada Revised Statute Section 116.3102. Association has and/or will receive  
 3 assignments of causes of action against the defendants from each of the members of the  
 4 Association.

5 28. Association is informed and believes and thereon alleges that Defendants  
 6 TERRAVITA and DOES 1 through 100 were, and at all times herein mentioned are, engaged  
 7 in the production of residential structures and appurtenances for sale and use by members of  
 8 the general public, and that said Defendants, and each of them, participated in the  
 9 development, design, construction and/or sale of the Project.

10 29. Association is informed and believes and thereon alleges that Defendants  
 11 TERRAVITA and DOES 1 through 100, as developers, sellers and/or builders developed the  
 12 Project, and it was the intent and understanding of such defendants that the Common Areas of  
 13 the project would be used by members of the public for residential purposes and sold to  
 14 individual members of Association.

15 30. Association is informed and believes and thereon alleges that Defendants  
 16 TERRAVITA and DOES 1 through 100, as developers, designers, sellers and/or builders of  
 17 the Project, knew that the Project and structures thereon, including the Common Areas, would  
 18 be sold to and be used by members of the general public for the purpose of residences, and  
 19 said Defendants knew or reasonably should have known that the persons who would purchase  
 20 said units and Common Areas would do so without inspection for the defects set forth herein.

21 31. Defendants TERRAVITA and DOES 1 through 100, at all times herein  
 22 mentioned, were and are merchants with respect to the Project and structures thereon, and  
 23 represented that the Project and structures thereon, including the Common Areas, were of  
 24 merchantable quality and were erected in a reasonable and workmanlike manner.

25 32. Defendants TERRAVITA and DOES 1 through 100, as developers, mass-  
 26 developers, mass-constructors and mass-producers of the Project, are liable and responsible to  
 27 Plaintiff for all damages suffered as a result of the Common Area deficiencies set forth herein.

28 33. Within the past two years, Association has discovered that the project has been  
 and is experiencing defective conditions of the real property and structures thereon, including

ANOUS & TERRY, LLP  
 1120 N. Town Center Dr.  
 Suite 260  
 Las Vegas, NV 89144  
 (702) 990-2017

1 waived or rendered irrelevant by the actions, failure to act or status of Defendants, and each of  
2 them.

3 35. Association is informed and believes and thereon alleges that the items  
4 generally referred to and particularly described herein were "latent deficiencies" within the  
5 meaning of Nevada Revised Statutes §11.202 through §11.205, in that the above-described  
6 defects arose out of, were attributable to and are directly and proximately caused by the  
7 above-described latent deficiencies in the design, specifications, planning, supervision,  
8 observation of construction, construction, development and/or improvement of the subject  
9 premises and subject structures, and that prior to the time when it was discovered by  
10 Association as set forth herein, could not have been discovered by the exercise of reasonable  
11 diligence. Association, at all times herein mentioned, relied on the skill of Defendants  
12 TERRAVITA and DOES 1 through 100, in producing the Project and structures thereon,  
13 including the Common Areas, that were reasonably fit for their intended purpose.

14 36. Association is still not fully aware of all of the causes, the full extent and  
15 possible legal significance of the results or causes of the property conditions herein above-  
16 described due to the loss being continual and latent in nature. Association is lay individuals  
17 who have required expert consultations to provide a review of the property conditions.  
18 Association is still not informed of all causes or entire results of the full extent of these latent  
19 deficiencies, nor is Association fully informed of the potential causes of the resultant distress  
20 due to the loss being continual and latent in nature.

21 37. Association is informed and believes and thereon alleges that Defendants  
22 TERRAVITA and DOES 1 through 100, did inspect and market the Common Areas with full  
23 knowledge of the causes and effects of defects in the construction of the Common Areas, the  
24 deficiencies in design, installation and supervision thereof and, in willful and reckless  
25 disregard of the defective conditions, causes and results. In particular, Association is  
26 informed and believes and thereon alleges that said Defendants in the inspection, design,  
27 installation and supervision of the Project, engaged in a course of conduct to reduce the costs  
28 of development by the use of substandard, deficient and inadequate design and construction  
techniques and materials.

ANGIUS & TERRY LLP  
1120 N. Town Center Dr.  
Suite 260  
Las Vegas, NV 89144  
(702) 990-2017

38. Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES 1 through 100, ignored curing the causes of the defects and pursued a course of development and construction of the Project so as to increase their profit from the project at the expense of the ultimate purchaser, knowing that the defects were latent and not apparent from a casual inspection, but would only become apparent as time passed.

39. Association is informed and believes and thereon alleges that any and all repair attempts by Defendants TERRAVITA and DOES 1 through 100, failed to adequately correct said property damage and deficiencies, resulting in further property damage.

40. Association is informed and believes and thereon alleges that instead of causing the necessary and required reconstruction and repair of the Project, Defendants TERRAVITA and DOES 1 through 100, have caused cosmetic, temporary or ineffective repairs to be made to various portions of the Project for the purpose of leading Association to believe that said Defendants were resolving and correcting all deficiencies. By virtue of such conduct, said Defendants are estopped to assert that the Association has not commenced this action in a timely fashion and are further estopped to assert that the Plaintiff may not seek the damages herein sought.

41. Association is informed and believes and thereon alleges that the above-described defects arose out of, were attributable to, and are directly and proximately caused by the above-described deficiencies in the design, specification, planning, supervision, observation of construction, development and/or improvement and any repairs to the Project, and that prior to the time when the defects were discovered by Association as set forth herein, they could not have been discovered by the exercise of reasonable diligence.

#### CAUSES OF ACTION

##### **FIRST CAUSE OF ACTION (Breach of Implied Warranties)**

**(Against TERRAVITA, DOES 1 through 100 and DOES 176 through 225)**

42. Association realleges and incorporates by reference paragraphs 1 through 41.

43. At the time each of the homes were purchased by individual members of

Association, Defendants TERRAVITA and Does 1 through 100 impliedly warranted that the

1 Common Areas were constructed in accordance with applicable law, according to sound  
 2 standards of engineering and construction, in a commercially reasonable, habitable and  
 3 workmanlike manner and free from defective materials;

4 44. Defendants TERRAVITA and Does 1 through 100 impliedly warranted that  
 5 the Common Areas were of merchantable quality and were fit for ordinary residential and  
 6 community purposes without significant defective construction or conditions un-remedied or  
 7 unrepaired by said Defendants.

8 45. Association is informed and believes and thereon alleges that the Common  
 9 Areas were not constructed in accordance with applicable law or according to sound standards  
 10 of engineering and construction, were not constructed in a workmanlike manner, were not free  
 11 from defective materials, and were not of proper durability, reliability, habitability,  
 12 merchantability, and/or general quality and not fit for their intended use.

13 46. Association is informed and believes and thereon alleges that as a direct and  
 14 proximate result of the defects set forth herein, Association has suffered damages in an  
 15 amount precisely unknown, but believed to be within the jurisdiction of this Court in that it  
 16 has been and will hereafter be required to perform works of repair, restoration, and  
 17 construction to portions of the Common Areas to prevent further damages and to restore the  
 18 structures to their proper condition. Association will establish the precise amount of such  
 19 damages at trial, according to proof, for the following damages:

- 20 a. The cost of any repairs already made;
- 21 b. The cost of any repairs yet to be made that are necessary to cure any
- 22 construction defect;
- 23 c. The expenses of temporary housing reasonably necessary during the repairs;
- 24 d. The loss of the use of all or any part of the residences;
- 25 e. The value of any other property damaged by the construction defects;
- 26 f. The reduction in market value of the residences;
- 27 g. Any additional costs incurred by the Plaintiff, including, but not limited to, any
- 28 costs and fees incurred for the retention of experts;

h. Any reasonable attorney's fees;



i. Any interest provided by statute;

WHEREFORE, Association prays for judgment as hereinafter set forth.

**SECOND CAUSE OF ACTION  
(Breach of Express Warranties)  
(Against TERRAVITA, DOES 1 through 100 and DOES 176 through 225)**

47. Association realleges and incorporates by reference paragraphs 1 through 41.

48. Association is informed and believes and thereon alleges that Defendants TERRAVITA and DOES 1 through 100, expressly warranted through sales brochures of the subject premises, related advertising circulars and materials, and through the contracts of sale and related sales warranty information regarding the subject premises, that the Project, including the Common Areas, was designed and constructed in a commercially reasonable and habitable manner.

49. When Defendants TERRAVITA and DOES 1 through 100 offered the Project, including the Common Areas, for sale to the general public for use as residences, Association relied on the express representations of Defendants TERRAVITA and DOES 1 through 100 that the Common Areas were marketed for sale to the general public, and thus were of merchantable quality, suitable for their intended purpose, without major, significant defective construction or conditions, un-remedied or unrepaired by said Defendants.

50. Defendants TERRAVITA and DOES 1 through 100 breached these express warranties by selling the Project, including the Common Areas, with the above-described deficiencies in the design, specification, planning supervision, construction, observation of construction, development and/or improvement and repair of the Common Areas.

51. As a direct and proximate result of the breach of the express warranties by Defendants TERRAVITA and DOES 1 through 100, as alleged above, Association and its members have suffered damages stemming from the failure of the Common Areas, as set forth above.

52. Association is informed and believes and thereon alleges that as a direct and proximate result of the breaches set forth herein, Association has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform investigations and works of repair,



1 restoration, and construction to portions of the Common Areas and individual homes to  
 2 prevent further damage and to restore the structures to their proper condition, and/or will  
 3 suffer damages in an amount the full nature and extent of which shall be ascertained  
 4 according to proof at trial.

5 WHEREFORE, Association prays for judgment as hereinafter set forth.

6 **THIRD CAUSE OF ACTION**  
 7 **(Negligence)**  
 8 **(Against TERRAVITA and DOES 1 through 300)**

9 53. Association realleges and incorporates by reference Paragraphs 1 through 41.

10 54. Association is informed and believes and thereon alleges that Defendants  
 11 TERRAVITA and DOES 1 through 300, were and are builders, contractors, general  
 12 contractors, subcontractors, suppliers, material men, architects and/or engineers, or other  
 13 persons, entities or professionals who participated in the process of design, engineering,  
 14 manufacture, and/or construction of the Project, including the Common Areas, and who  
 15 performed works of labor, supplied materials, equipment and/or services necessary for the  
 16 building and construction, including supervision of construction of the Project with the  
 17 knowledge that the Common Areas would be sold to and used by members of the public. In so  
 18 doing, said Defendants in the capacity as builder, contractor, subcontractors, supplier,  
 19 materialmen, architect, engineer, seller and/or general contractor or otherwise, caused the  
 20 Project to be designed, engineered and/or constructed through their own works of labor, their  
 21 supplying of materials, equipment and services, and through causing other contractors and  
 22 subcontractors, including other Defendants to perform works of labor, to supply materials,  
 23 equipment and services in order to properly complete the Project so that it could be sold to  
 24 and used by members of the public.

25 55. Association is informed and believes and thereon alleges that Defendants  
 26 TERRAVITA and DOES 1 through 300, whether builder, contractor, subcontractor, supplier,  
 27 material men, architect, engineer or otherwise, negligently, carelessly, tortuously, and  
 28 wrongfully failed to use reasonable care in the analysis, preparation, design, manufacture,  
 construction, and/or installation of the Project.

1           56. Association is informed and believes and thereon alleges that Defendants  
 2 TERRAVITA and DOES 1 through 300, whether builder, contractor, subcontractor, supplier,  
 3 material men, architect, engineer or otherwise, performed work, labor and/or services for the  
 4 construction of the Project, and each knew or should have known that if the Project was not  
 5 properly or adequately designed, engineered, supervised and/or constructed, that the owners  
 6 and users would be substantially damaged thereby, and that the Project would be defective  
 7 and not of merchantable quality.

8           57. The Defendants TERRAVITA and DOES 1 through 300 were under a duty to  
 9 exercise ordinary care as builder, contractor, subcontractor, supplier, material men, architect,  
 10 engineer or otherwise to avoid reasonably foreseeable injury to users and purchasers of the  
 11 Project, including the Common Areas, and knew or should have foreseen that purchasers  
 12 and/or users would suffer the damages set forth herein if said Defendants, and each of them,  
 13 failed to perform their duty to cause the Project to be designed, engineered and constructed in  
 14 a proper workmanlike manner and fashion.

15           58. In performing the works of a builder and/or contractor, subcontractor, supplier,  
 16 material man, architect, engineer or otherwise, Defendants TERRAVITA and DOES 1  
 17 through 300 breached their duty owed to Association and neglected to perform the work,  
 18 labor and services properly or adequately in that each said Defendant so negligently,  
 19 carelessly and in an unworkmanlike manner performed the aforesaid work, labor and/or  
 20 services such that the Project, including the Common Areas, was designed, engineered and/or  
 21 constructed improperly, negligently, carelessly and/or in an unworkmanlike manner.

22           59. Association is informed and believes and thereon alleges that as a direct and  
 23 proximate result of the conduct described herein, Association has suffered damages in an  
 24 amount precisely unknown, but believed to be within the jurisdiction of this Court, in that it  
 25 has been and will in the future be required to perform investigations and works of repair,  
 26 restoration, and construction to portions of the Common Areas and homes to prevent further  
 27 damage and to restore the Common Areas to their proper condition, and/or will suffer  
 28 damages in an amount the full nature and extent of which shall be ascertained according to

proof at trial.

WHEREFORE, Association prays for judgment as hereinafter set forth.

#### FOURTH CAUSE OF ACTION

(Breach of Implied Warranties of Quality-NRS 116.4114)

(Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

60. Association realleges and incorporates by reference Paragraphs 1 through 41.

61. NRS 116.4114 provides that the defendants did warrant the suitability

(habitability) and quality of the community, including the Common Elements, regardless of when they were developed and/or built. As set forth above, Defendants TERRAVITA and DOES 1 through 10 are the declarant or affiliates of the declarant for the Anthem Country Club development. NRS 116.4114 states that a declarant and any dealer impliedly warrants that the Common Elements in the common-interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the common-interest community, will be:

(a) Free from defective materials; and

(b) Constructed in accordance with applicable law, according to sound standards of engineering and construction, and in a workmanlike manner.

62. Any conveyance of a unit transfers to the purchaser all of the Declarant's implied warranties of quality.

63. Defendants TERRAVITA and DOES 1 through 10 did violate NRS 116.4114 by transferring ownership of Common Areas that were, in many respects, not suitable for use or habitation, not free of defective materials and in violation of time-pertinent building codes and standards.

64. The Association and by incorporation, its unit members, have been harmed by these violations of warranty in many ways. Community property has been damaged by ongoing failures of component systems. The cost to repair or replace conditions that have been damaged, or are in violation of warranties, is expected to exceed \$50,000.00.

65. As a result of Defendants' violations of NRS Chapter 116, as expressed above, Plaintiff has suffered actual damages and is entitled to be compensated for such damages, including reasonable attorney's fees, investigative costs and punitive damages, if the

conduct of the Defendants is a result of their willful and material failure to comply with NRS

1 Chapter 116. NRS 116.4117.

2 WHEREFORE, Association prays for judgment as hereinafter set forth.

3 **FIFTH CAUSE OF ACTION**

4 (Violations of NRS 116.4102 and NRS 116.4103)

5 (Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)

6 66. The Association incorporates by reference paragraphs 1 - 41.

7 67. NRS 116.4102 and NRS 116.4103 provides that TERRAVITA and DOES 1  
8 through 10 make full and accurate disclosures of the true condition of the Common Elements  
9 of the community as part of the Public Offering Statements given to each original owner.

10 68. Plaintiff is informed and believes and thereon alleges that a Public Offering  
11 Statement was provided to the Anthem Country Club homeowners by TERRAVITA and  
12 DOES 1 through 10 and each of them, on or about the time that each homeowner purchased  
13 their homes at the Anthem Country Club development. However, Plaintiff is informed and  
14 believes and thereon alleges that the Public Offering Statement failed to disclose the true  
15 condition of the Project and the Common Areas. TERRAVITA and DOES 1 through 10 and  
16 each of them therefore wholly and completely failed to comply with the mandates of NRS  
17 116.4102 and 116.4103.  
18

19 69. The Association has been harmed by the failure of TERRAVITA and DOES 1  
20 through 10 to disclose the true condition of the Common Areas. Community property has  
21 been damaged by ongoing failures of component systems with problems that were not  
22 disclosed, and that would have been discovered and disclosed by reasonable inspection. The  
23 cost to repair or replace conditions that have been damaged, or are in violation of warranties,  
24 that were not properly disclosed is expected to exceed \$50,000.00. Similarly, the Association  
25 was not adequately funded to address these items, as set forth in Count Six. TERRAVITA  
26  
27  
28

1 and DOES 1 through 10 are liable for false and/or misleading statements or the omission of  
2 material facts, and are subject to a statutory action pursuant to NRS 116.4117, below:

3 70. As a result of TERRAVITA and DOES 1 through 10's violations of NRS  
4 Chapter 116, as expressed above, Plaintiff has suffered actual damages and is entitled to be  
5 compensated for such damages, including reasonable attorney's fees, investigation costs and  
6 punitive damages, if the conduct of TERRAVITA and DOES 1 through 10 is a result of their  
7 willful and material failure to comply with NRS Chapter 116. NRS 116.4117.  
8

9 WHEREFORE, Association prays for judgment as hereinafter set forth.

10 **SIXTH CAUSE OF ACTION**  
11 **(Violation of NRS 116.4102/NRS 116.4103/NRS 116.31038)**  
12 **(Inadequate Reserves/Under- Funding)**  
13 **(Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)**

14 71. The Association incorporates by reference paragraphs 1 - 41.

15 72. NRS 116.4103 requires TERRAVITA and DOES 1 through 10 to provide the  
16 Association with an adequately funded operating budget and reserves for long-term repairs  
17 and/or maintenance. TERRAVITA and DOES 1 through 10 and each of them, prior to sale  
18 of the homes at the Anthem Country Club Development, commissioned a Reserve Study of  
19 the development. Plaintiff is informed and believes and thereon alleges that this Reserve  
20 Study was provided by TERRAVITA and DOES 1 through 10 and each of them to Plaintiff  
21 when it was commissioned, and to each homeowner upon the purchase of their homes.

22 73. In the Reserve Study, TERRAVITA and DOES 1 through 10 did not provide  
23 an adequate operating budget or reserves. TERRAVITA and DOES 1 through 10  
24 commissioned a reserve study that assumed that the Common Areas were suitable for use or  
25 habitation (untrue), free of defective materials (untrue), and without code violations (also  
26 untrue). In fact, TERRAVITA and DOES 1 through 10 knew or should have known of the  
27 contrary. They did not incorporate the true condition of the Common Areas in their budget  
28 determinations, by intent, resulting in both inadequate budgets and long-term reserve  
financing, as well as artificially low assessments, meant to attract and deceive prospective  
customers in a proverbial 'bait-and-switch' scheme.

1           74. Further, Plaintiff is informed and believes and thereon alleges that TERRA  
2 VITA and DOES 1 through 10 and each of them failed to fund the reserves as required by  
3 NRS 116.31038. Pursuant to NRS 116.31038, within 30 days of turning over control of the  
4 Association to the Plaintiff, TERRAVITA and DOES 1 through 10 were required to fund the  
5 reserve account of the Association with TERRAVITA and DOES 1 through 10's share of the  
6 reserve funds due.

7           75. TERRAVITA and DOES 1 through 10 wholly and completely failed to fund  
8 the reserve accounts as required under NRS 116.31038.

9           76. The Association has been harmed by the failure of TERRAVITA and DOES 1  
10 through 10 to set adequate budgets and reserves, and their failure to adequately fund the  
11 reserve account of the Association. As a result of these actions and omissions by TERRA  
12 VITA and DOES 1 through 10, Association is not in a sound financial position to permanently  
13 repair Common Areas and community property that has been damaged by ongoing failures of  
14 component systems. The Association is not in a sound financial position to repair or replace  
15 conditions that are otherwise in need of repair or will be in need of repair before their existing  
16 budgeted estimates.

17           77. The Association also seeks relief pursuant to NRS 116.4102 because the Public  
18 Offering Statement, including (but not limited to) reserve studies and budgets, contain false  
19 and/or misleading statements, or omit material facts (i.e., the true condition of the Common  
20 Areas) that provide for an accurate financial statement for this community. TERRAVITA and  
21 DOES 1 through 10 are liable for false and/or misleading statements or the omission of  
22 material facts and are subject to a statutory action pursuant to NRS 116.4117, below.

23           78. As a result of TERRAVITA and DOES 1 through 10's violations of NRS  
24 Chapter 116, as expressed above, Plaintiff has suffered actual damages and is entitled to be  
25 compensated for such damages, including reasonable attorney's fees and punitive damages, if  
26 the conduct of TERRAVITA and DOES 1 through 10 is a result of their willful and material  
27 failure to comply with NRS Chapter 116. NRS 116.4117.

28           WHEREFORE, Association prays for judgment as hereinafter set forth.

1 **SEVENTH CAUSE OF ACTION**  
2 **(Violation of NRS 116.1113)**  
3 **(Duty of Good Faith and Fair Dealing)**  
4 **(Against TERRAVITA, DOES 1 through 100 and DOES 176 through 225)**

5 79. Plaintiff incorporates by reference paragraphs 1 - 41.

6 80. The pattern and practice of conduct of TERRAVITA and DOES 1 through  
7 100, including but not limited to the overall scheme creating and governing the Project and  
8 the Common Areas, incorporating ploys such as inadequate expert investigations, inadequate  
9 corrective measures, false and/or deceptive public offerings and under-funding, separate  
10 and/or together are violations of the duty of good faith and fair dealing owed to the  
11 Association and its members. NRS 116.1113.

12 81. The Association has been harmed in the various ways and manners described  
13 in other counts of this complaint and incorporated by reference.

14 WHEREFORE, Association prays for judgment as hereinafter set forth.

15 **EIGHTH CAUSE OF ACTION**  
16 **(Negligent Misrepresentation)**  
17 **(Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)**

18 82. The Association incorporates by reference paragraphs 1 - 41.

19 83. TERRAVITA and DOES 1 through 10 did negligently fail to provide full,  
20 complete or accurate statements or reports about the condition of the Common Areas in the  
21 following sales and financial documents: the Reserve Study; the Purchase and Sales  
22 Agreements and the related sales warranty information; the Public Offering Statement,  
23 including the financial statement and Budget; the marketing materials, including the sales  
24 brochures of the subject premises; and related advertising circulars and materials.

25 84. The representations about the condition and useful life of the community  
26 and/or its components, including the Common Areas, that were made were- in part-  
27 false and/or misleading.

28 85. The representations made about the financial condition of the community,  
including budgets, reserves, studies and/or other projections, were in large part false and  
misleading.

86. These representations were made orally and in writing to Association to induce



1 Association to accept conveyance and control of the Project and Common Areas, and

2 Association did accept conveyance and control of the Project and Common Areas.

3 87. These representations were made orally and in writing to individual members  
4 of Association as part of TERRAVITA and DOES 1 through 10's sales program, to induce  
5 members of Association to accept a conveyance of the homes within the Project, and  
6 members did accept such conveyances.

7 88. Defendants made the representations as set forth herein in a careless and  
8 reckless manner and with no reasonable basis for believing them to be true.

9 89. Defendants made the representations to Association and members of  
10 Association, and/or reasonably expected that such representations would be made by others  
11 including, without limitation, accountants, real estate agents, brokers and predecessors-in-  
12 interest to the members, and said representations were made based upon the  
13 misrepresentations by TERRAVITA and DOES 1 through 10.

14 90. Actually and justifiably relying upon such negligent misrepresentations as  
15 herein alleged, Association accepted conveyance and control of the Project and Common  
16 Areas, and Association members entered into contracts for the purchase of and did  
17 purchase homes within the Project. The facts which have been misrepresented to Association  
18 and to Association members were material to the Association's decision to accept  
19 conveyance and control of the Project and Common Areas, and to Association's members'  
20 decisions to purchase the homes. Had they been aware of the true facts, Association would  
21 not have accepted conveyance and control of the Project and Common Areas and Association  
22 members would not have purchased the homes.

23 91. The negligent misrepresentations of TERRAVITA and DOES 1 through 10  
24 were material, and the Association and its members did rely upon them to their prejudice,  
25 injury and/or harm.

26 92. TERRAVITA and DOES 1 through 10's false and/or misleading  
27 representations were the proximate and legal cause of harm, including ongoing and continued  
28 damage to Association property, including but not limited to damage and/or harm in the  
future, prospective repair and maintenance costs, and various economic losses.

1 WHEREFORE, Association prays for judgment as hereinafter set forth.

2 **NINTH CAUSE OF ACTION**  
 3 **(Intentional Misrepresentation)**

4 **(Against TERRAVITA, DOES 1 through 10 and DOES 176 through 225)**

5 93. The Association incorporates by reference paragraphs 1 - 41.

6 94. TERRAVITA and DOES 1 through 10 did intentionally fail to provide full,  
 7 complete or accurate statements or reports about the condition of the Common Areas in the  
 8 following sales and financial documents: the Reserve Study; the Purchase and Sales  
 9 Agreements and the related sales warranty information; the Public Offering Statement,  
 10 including the financial statement and Budget; the marketing materials such as the sales  
 11 brochures of the subject premises; and related advertising circulars and materials.

12 95. The representations about the condition and useful life of the community  
 13 and/or its components, including the Common Areas, that were made were, in part,  
 14 false and/or misleading.

15 96. The representations made about the financial condition of the community,  
 16 including budgets, reserves, studies and/or other projections, were in large part false and  
 17 misleading.

18 97. These representations were made orally and in writing to Association to induce  
 19 Association to accept conveyance and control of the Project and Common Areas, and  
 20 Association did accept conveyance and control of the Project and Common Areas.

21 98. These representations were made orally and in writing to individual members  
 22 of Association as part of TERRAVITA and DOES 1 through 10's sales program, to induce  
 23 members of Association to accept a conveyance of the homes within the Project, and  
 24 members did accept such conveyances.

25 99. These representations were false and were made with the intent to deceive and  
 26 induce members of Association to accept a conveyance of the homes within the Project, and  
 27 members did accept such conveyances.

28 100. Defendants made the representations to Association and members of

1 Association with the intent that said representations would be made by others including,  
 2 without limitation, accountants, real estate agents, brokers and predecessors-in-interest to the  
 3 members, and the representations were made based upon the misrepresentations by  
 4 Defendants.

5 101. Actually and justifiably relying upon such intentional misrepresentations as  
 6 herein alleged, Association accepted conveyance and control of the Project and Common  
 7 Areas and Association members entered into contracts for the purchase of and did  
 8 purchase homes within the Project. The facts which have been misrepresented to Association  
 9 and to Association's members were material to the Association decision to accept conveyance  
 10 and control of the Project and Common Areas, and to Association members' decisions to  
 11 purchase the homes. Had they been aware of the true facts, Association would not have  
 12 accepted conveyance and control of the Project and Common Areas and Association  
 13 members would not have purchased the homes.

14 102. The intentional misrepresentations of TERRAVITA and DOES 1 through 10  
 15 were material, and the Association and its members did rely upon them to their prejudice,  
 16 injury and/or harm.

17 103. TERRAVITA and DOES 1 through 10's false and/or misleading  
 18 representations were the proximate and legal cause of harm, including ongoing and continued  
 19 damage to Association property, including but not limited to damage and/or harm in the  
 20 future, prospective repair and maintenance costs, and various economic losses.

21 WHEREFORE, Association prays for judgment as hereinafter set forth,

22 **TENTH CAUSE OF ACTION**  
 23 **(Professional Negligence)**  
 24 **(Against DOES 101 through 125)**

25 104. Plaintiff incorporates by reference Paragraphs 1 through 41.

26 105. DOE Design Professionals 101 through 125 fell below the  
 27 professional standard of care for an architect or engineer by accepting work that was, in part,  
 28 incompetent, unqualified and/or unlicensed to provide, by failing to conduct a reasonable or

adequate inspection of the Common Areas, and by representing that the Common Areas and its major components were in a good and sound condition, when many are clearly not, and have a useful life (suitability for use) that is far longer than actual or reasonable.

106. These Defendants' professional negligence was a legal and proximate cause of injury, harm and damage to the Association and the community, including ongoing and continued damage to the Common Areas, including but not limited to damage and/or harm in the future, prospective repair and maintenance costs, and various economic losses.

WHEREFORE, Association prays for judgment as hereinafter set forth.

**PRAYER**

WHEREFORE, Association prays for judgment against Defendants TERRAVITA and DOES 1 through 300, and each of them, as follows:

1. For general and special damages in excess of \$50,000.00;
2. For prejudgment interest;
3. For cost of suit and attorneys' fees incurred by Plaintiff herein; and
4. For such other and further relief as the Court may deem just and proper.

DATED: February 3, 20100

ANGIUS & TERRY LLP

/s/ Melissa Bybee

Paul P. Terry, Jr., SBN 7192  
John J. Stander, SBN 9198  
Melissa Bybee, SBN 8390  
Asmara Tarar, SBN 10999  
ANGIUS & TERRY LLP  
1120 Town Center Drive, Suite 260  
Las Vegas, Nevada 89144  
Attorneys for Plaintiff

ANGIUS & TERRY LLP  
1120 N. Town Center Dr.  
Suite 260  
Las Vegas, NV 89144  
(702) 990-2017

# Exhibit 57

# Exhibit 57

Electronically Filed  
03/21/2013 12:39:26 PM

  
CLERK OF THE COURT

1 TPC  
2 JASON W. WILLIAMS, ESQ.  
3 Nevada Bar No. 8310  
4 MARK F. ROACH, ESQ.  
5 Nevada Bar No. 8237  
6 KOELLER, NEBEKER, CARLSON  
7 & HALUCK, LLP  
8 300 South Fourth Street, Suite 500  
9 Las Vegas, NV 89101  
10 Phone: (702) 853-5500  
11 Fax: (702) 853-5599  
12 Attorneys for Defendant/Third-Party Plaintiff  
13 TERRAVITA HOME CONSTRUCTION CO.

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 ANTHEM COUNTRY CLUB  
18 COMMUNITY ASSOCIATION, INC. a  
19 Nevada non-profit mutual benefit  
20 corporation

21 Plaintiff,

22 vs.

23 TERRAVITA HOME CONSTRUCTION  
24 COMPANY, INC., an Arizona  
25 corporation; and DOES 1 through 300,

26 Defendants,

27 TERRAVITA HOME CONSTRUCTION  
28 COMPANY, INC., an Arizona  
corporation

Third-Party Plaintiff,

vs.

AMERICAN ASPHALT & GRADING  
COMPANY, a Nevada corporation,

) CASE NO.: A634626  
) DEPT. NO.: XXII

) TERRAVITA HOME CONSTRUCTION  
) COMPANY, INC.'S AMENDED THIRD-  
) PARTY COMPLAINT

) [ELECTRONIC FILING CASE]

165731\_1

1 BOBS CONSTRUCTION, INC., a )  
 2 Nevada corporation, CEDCO, INC., a )  
 3 Nevada corporation, CHIEF )  
 4 CONCRETE, INC., a Nevada )  
 5 corporation; PRADELLA IRON )  
 6 WORKS, INC., a Nevada corporation, )  
 7 GOTHIC LANDSCAPING, INC., a )  
 8 Foreign Corporation, MASONRY )  
 9 BUILDERS OF NEVADA, a Nevada )  
 10 corporation; MS CONCRETE CO., INC., )  
 11 a Nevada Corporation; PETE KING )  
 12 NEVADA CORPORATION, a Nevada )  
 13 corporation; SOUTHERN NEVADA )  
 14 PAVING, INC., a Nevada corporation; )  
 15 STEWART & SUNDELL, CONCRETE )  
 16 INC., a Nevada limited liability )  
 17 corporation; TRAFFIC MASTERS, an )  
 18 unknown entity, WESTERN PIPELINE )  
 19 CONSTRUCTION CORPORATION, a )  
 20 Nevada corporation, CEDCO IRON, A )  
 21 Nevada Corporation, and ROES 2-250, )  
 22  
 23 Third-Party Defendants. )  
 24  
 25  
 26  
 27  
 28

29 CEDCO, INC., a Nevada corporation, )  
 30  
 31 Third-Party Plaintiff, )  
 32  
 33 vs. )  
 34  
 35 ALL VALLEY CONCRETE PUMPING, )  
 36 INC., a Nevada corporation; PEARSON )  
 37 BROTHERS CONSTRUCTION, LLC, a )  
 38 Nevada limited liability corporation; )  
 39 TOWN AND COUNTRY )  
 40 CONSTRUCTION, INC., a Nevada )  
 41 corporation; DOES 1 through 50; and )  
 42 ROE CORPORATIONS 51 through 100, )  
 43  
 44 Third-Party Defendants. )  
 45  
 46  
 47  
 48



COMES NOW Third-Party Plaintiff TERRAVITA HOME CONSTRUCTION CO. (hereinafter "Third-Party Plaintiff") by and through its attorneys Koeller, Nebeker, Carlson & Haluck, LLP, and hereby state this Third-Party Complaint against American Asphalt & Grading Company, a Nevada corporation, Bobs Construction, Inc., a Nevada corporation, Cedco, Inc., a Nevada corporation, Chief Concrete, Inc., a Nevada corporation, Fradella Iron Works, Inc., a Nevada corporation, Gothic Landscaping, Inc., a Foreign Corporation, Masonry Builders of Nevada, a Nevada corporation, MS Concrete Co., Inc., a Nevada Corporation, Pete King Nevada Corporation, a Nevada corporation, Southern Nevada Paving, Inc., a Nevada corporation, Stewart & Sundell Concrete, Inc., A Nevada corporation, Traffic Masters, an unknown entity, Western Pipeline Construction Corporation, a Nevada corporation, Cedco Iron, a Nevada corporation, and ROES 2-250 (hereinafter collectively "Third-Party Defendants"), as follows:

#### GENERAL ALLEGATIONS

1. Third-Party Plaintiff Terravita Home Construction Co. is an Arizona corporation and is, and at all times relevant herein, was authorized to do business in the State of Nevada.

2. At all times relevant herein, each of the Third-Party Defendants were entities doing business in the State of Nevada and performed architectural, engineering, or construction related work and/or supplied materials for the construction of the common area elements of the residential development known as Anthem Country Club located in the City of Henderson, County of Clark, State of Nevada.

3. Each of the Third-Party Defendants were architects, engineers, suppliers, manufacturers or subcontractors who performed engineering, architectural or construction activities for the common area elements located within and throughout the Anthem Country Club development or who supplied or provided to one of the other architects, engineers or subcontractors materials and/or other items which were installed into and/or became a part of the Anthem Country Club development.

4. Third-Party Defendant, AMERICAN ASPHALT & GRADING COMPANY a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada

1 who designed, engineered and/or performed the work for, construction of, and/or installation of  
2 or supplied materials for the construction of the common area elements of the Anthem Country  
3 Club development.

4 5. Third-Party Defendant, BOB'S CONSTRUCTION, INC. a Nevada corporation,  
5 was at all times material hereto, a legal entity doing business in Nevada who designed,  
6 engineered and/or performed the work for, construction of, and/or installation of or supplied  
7 materials for the construction of the common area elements of the Anthem Country Club  
8 development.

9 6. Third-Party Defendant, CEDCO, INC., a Nevada corporation, was at all times  
10 material hereto, a legal entity doing business in Nevada who designed, engineered and/or  
11 performed the work for, construction of, and/or installation of or supplied materials for the  
12 construction of the common area elements of the Anthem Country Club development.

13 7. Third-Party Defendant, CHIEF CONCRETE, INC, a Nevada corporation, was at  
14 all times material hereto, a legal entity doing business in Nevada who designed, engineered  
15 and/or performed the work for, construction of, and/or installation of or supplied materials for  
16 the construction of the common area elements of the Anthem Country Club development.

17 8. Third-Party Defendant, FRADELLA IRON WORKS, INC., a Nevada  
18 corporation, was at all times material hereto, a legal entity doing business in Nevada who  
19 designed, engineered and/or performed the work for, construction of, and/or installation of or  
20 supplied materials for the construction of the common area elements of the Anthem Country  
21 Club development.

22 9. Third-Party Defendant, GOTHIC LANDSCAPING, INC., a foreign corporation,  
23 was at all times material hereto, a legal entity doing business in Nevada who designed,  
24 engineered and/or performed the work for, construction of, and/or installation of or supplied  
25 materials for the construction of the common area elements of the Anthem Country Club  
26 development.

10. Third-Party Defendant, MASONRY BUILDERS OF NEVADA, a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

11. Third-Party Defendant, MS CONCRETE, INC, a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

12. Third-Party Defendant, PETE KING NEVADA CORPORATION a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

13. Third-Party Defendant, SOUTHERN NEVADA PAVING, INC., a Nevada corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

14. Third-Party Defendant, STEWARD & SUNDELL CONCRETE, INC. a Nevada limited liability corporation, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the work for, construction of, and/or installation of or supplied materials for the construction of the common area elements of the Anthem Country Club development.

15. Third-Party Defendant, TRAFFIC MASTERS, an unknown entity, was at all times material hereto, a legal entity doing business in Nevada who designed, engineered and/or

1 performed the work for, construction of, and/or installation of or supplied materials for the  
2 construction of the common area elements of the Anthem Country Club development.

3 16. Third-Party Defendant, WESTERN PIPELINE CONSTRUCTION  
4 CORPORATION, a Nevada corporation, was at all times material hereto, a legal entity doing  
5 business in Nevada who designed, engineered and/or performed the work for, construction of,  
6 and/or installation of or supplied materials for the construction of the common area elements of  
7 the Anthem Country Club development.

8 17. Third-Party Defendant, CEDCO IRON., a Nevada corporation, was at all times  
9 material hereto, a legal entity doing business in Nevada who designed, engineered and/or  
10 performed the work for, construction of, and/or installation of or supplied materials for the  
11 construction of the common area elements of the Anthem Country Club development.

12 18. The true names and capacities, whether individual, corporate, associate or  
13 otherwise, of the Third-Party Defendants designated herein as ROES 2-250, are unknown to  
14 Third-Party Plaintiff, who therefore sues said Third-Party Defendants by such fictitious names,  
15 and who will seek leave of Court to amend this Third-Party Complaint to set forth their true  
16 names and capacities, together with the appropriate charging allegations, when same have been  
17 ascertained. Third-Party Defendants ROES 2-250, and/or, each of them, are responsible to  
18 Third-Party Plaintiff as subcontractors, design professionals, maintenance contractors, suppliers,  
19 manufacturers, insurers or in other capacities based on the facts and theories alleged herein.

#### 20 **FIRST CLAIM FOR RELIEF**

##### 21 **Breach of Contract**

22 19. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 18  
23 of this Third-Party Complaint as though fully set forth herein.

24 20. Third-Party Plaintiff is informed and believes, and thereon alleges, that pursuant  
25 to the terms of said written agreements, and wherever else referenced, Third-Party Defendants  
26 and ROES 2-250, and each of them, undertook obligations, including but not limited to,  
27 maintaining commercial general liability policies, naming Third-Party Plaintiff as Additional  
28

1 Insureds under their respective policies of liability insurance, indemnifying Third-Party  
 2 Plaintiff, defending Third-Party Plaintiff, and performing their work in a good and workmanlike  
 3 manner in accordance with the contract, plans, and specifications for the construction of the  
 4 residences, at the Anthem Country Club development as follows:

5 INSURANCE: Contractor shall maintain at all times during performance of said  
 6 Work:

- 7 i) statutory worker's compensation insurance and employer's liability  
 8 insurance in the amount of the State of Nevada's statutory limits to cover  
 all employees engaged in the Work;
- 9 ii) commercial general liability insurance with minimum limits of \$1,000,000  
 10 combined single limit per occurrence, \$2,000,000 general aggregate;
- 11 iii) \$2,000,000 products/completed operations aggregate; and
- 12 iv) automobile liability insurance for all owned, non-owned, and hired vehicles  
 13 with a minimum limit of \$500,000 combined single limit per accident.

14 The commercial general liability insurance shall specifically include coverage for  
 15 Contractor's obligations under any indemnification/hold harmless provisions in  
 16 this Contract. Contractor may satisfy a portion of the employer's  
 17 liability/occupational disease, commercial general liability, or automobile liability  
 18 limits with following form excess or umbrella excess liability insurance. The  
 19 commercial general liability policy shall be endorsed to include Del Webb  
 20 Corporation, Del Webb's subsidiaries, and affiliates, and their respective directors,  
 21 officers, employees, and agents, (hereinafter sometimes collectively referred to as  
 "Webb" in this Section only) as additional insureds, with respect to any claims,  
 22 losses, expenses, or other costs arising out of this Contract, and shall also be  
 23 endorsed as primary coverage with respect to any other insurance which may be  
 24 carried by Webb. It is expressly agreed that any other insurance covering Webb is  
 25 over and non-contributing with Contractor's commercial general liability  
 26 insurance.

27 Certificates of insurance evidencing the worker's compensation, commercial  
 28 general liability, and automobile liability coverages required herein shall be filed  
 with Webb within five (5) days following the execution of this Contract prior to  
 the commencement of any Work thereunder and shall be maintained in a current  
 status throughout the term of this Contract. Such certificates of insurance shall  
 require the insurer (s) to provide not less than thirty (30) days advance written  
 notice to Webb in the event of any cancellation, non-renewal or material change  
 in the policy limits, terms or conditions. All of the coverages required herein shall  
 be maintained with insurers rated "B+" or better in the most current edition of  
Best's Insurance Reports.

1 The worker's compensation/employer's liability/occupational disease insurance  
 2 required herein may be maintained with the state worker's compensation fund  
 3 operating in the state in which the job-site is located. Contractor shall  
 4 immediately notify Webb in writing, of any incident, occurrence, injury, or  
 5 situation arising in connection with this Contract which may give rise to any  
 6 claim, or loss under any of the aforementioned insurance coverages.

7 Contractor hereby waives Contractor's right of recovery against Webb for any  
 8 claims, losses, expenses, or the costs Contractor may sustain arising out of this  
 9 Contract and shall cause the worker's compensation policy to be specifically  
 10 endorsed to waive all rights of subrogation against Webb. Contractor shall  
 11 maintain Contractor's commercial general liability insurance described above for  
 12 not less than five (5) years following the completion of this Contract. Contractor  
 13 also shall maintain adequate property insurance on and security for all equipment  
 14 and building materials whether on-site, or off-site until such time they are  
 15 incorporated in the Work and finally acceptance by Webb, as described below.  
 16 Contractor hereby waives Contractor's right of recovery against Webb for any loss  
 17 of, or damage to such equipment and building materials, including any loss of use  
 18 claim, and shall cause each such property insurance policy to include a waiver of  
 19 subrogation in favor of Webb.

20 21. Third-Party Plaintiff has fully performed all conditions, covenants and promises  
 21 required of them in accordance with the terms and conditions of said written agreements.

22 22. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
 23 party Defendants and ROES 2-250, and each of them, have breached said written agreements by  
 24 refusing and failing to comply with their contractual obligations to maintain liability insurance,  
 25 to name Third-Party Plaintiff as additional insureds under said policies of liability insurance, to  
 26 indemnify Third-Party Plaintiff, to defend Third-Party Plaintiff, and to perform their work in a  
 27 good and workmanlike manner, without defects, and in accordance with said written  
 28 agreements.

23 23. Third-Party Plaintiff has necessarily engaged Koeller, Nebeker, Carlson &  
 24 Haluck, LLP to represent them in the defense of Plaintiff's Complaint for Damages, and in this  
 25 Third-Party Complaint, and have incurred legal fees, court costs, and investigations costs, and  
 26 will in the future incur further fees and costs by reason of Plaintiff's Complaint for Damages  
 27 referenced herein.



**SECOND CLAIM FOR RELIEF**

**Express Indemnity**

24. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 23 of this Third-Party Complaint as though fully set forth herein.

25. Third-Party Plaintiff is informed and believes, and based thereon alleges, that it entered into written agreements with Third-Party Defendants, and ROES 2 -250 wherein said Third-Party Defendants agreed to satisfy, among other things, the following specific terms:

INDEMNIFICATION: Contractor shall indemnify, protect, defend, and hold harmless Del Webb from and against any and all "Claims" (defined below) directly or indirectly caused by Contractor's negligent or intentional act or omission, regardless of whether such act or omission is active or passive, in Contractor's performance of (or failure to perform) the Work covered by this Contract, including without limitation, the failure to discover dangerous conditions or events regardless of any active or passive negligence of or by Del Webb, but excluding any gross negligence or willful misconduct by Del Webb. For purposes of this indemnification "Del Webb" shall include parent and subsidiary corporations, and the officers, directors, agents, and employees of Del Webb and such parents and subsidiaries. "Claims" shall mean all claims, demands, causes of action, injuries, losses, damages, liabilities, costs, charges, judgments, or expenses, including without limitation, attorneys' fees, for:

- i) personal injury to any person (including employees of Del Webb and Contractor);
- ii) property damage; and
- iii) any and all penalties, fines or assessments imposed on account of any violation of any law or statute required to be complied with by Contractor.

Contractor shall at Contractor's own cost and expense and risk, defend all suits, actions, or other proceedings that may be instituted by a third party against Del Webb covered by this indemnification. Contractor shall reimburse Del Webb for any expenses Del Webb incurs in enforcing this indemnification.

26. Third-Party Plaintiff is informed and believes, and thereon alleges, the defects and damages alleged by Plaintiff in its Complaint for Damages involve alleged defects and alleged damages to portions of the Anthem Country Club development. Third-Party Plaintiff is informed and believes, and thereon alleges, that any damages alleged by Plaintiff were caused by Third-Party Defendants and ROES 2-250, and each of them, arising out of and connected



1 with the performance of their obligations pursuant to those written agreements herein referred to  
2 and entered into by the above-specified Third-Party Defendants.

3 27. Third-Party Plaintiff has made a demand or by this Third-Party Complaint  
4 demand that Third-Party Defendants and ROES 2-250, defend, indemnify, release, and hold  
5 harmless Third-Party Plaintiff for any liability, and the resulting sums to be paid, which are  
6 assigned to Third-Party Plaintiff due to judgment on, or settlement of, the allegations in  
7 Plaintiff's Complaint for Damages.

8 28. Third-Party Plaintiff is informed and believes, and thereon alleges that Third-  
9 Party Defendants, have failed and refused to, and continue to fail and refuse to defend,  
10 indemnify, release and hold harmless Third-Party Plaintiff.

11 29. Third-Party Plaintiff has necessarily retained Koeller, Nebeker, Carlson &  
12 Haluck, LLP to defend against the Complaint for Damages filed by Plaintiffs, thereby incurring  
13 costs and attorneys' fees in the defense of this action and in the prosecution of this Third-Party  
14 Complaint. Third-Party Plaintiff will seek leave of Court to amend this Third-Party Complaint  
15 to show the amount of said cost of attorneys' fees when the same becomes known to Third-  
16 Party Plaintiff.

17 30. Third-Party Plaintiff is entitled to express indemnity from the above-specified  
18 Third-Party Defendants, and each of them, pursuant to the terms of the written agreements  
19 entered into between Third-Party Plaintiff and each of the specified Third-Party Defendants,  
20 including costs and attorneys' fees according to proof at trial.

### 21 THIRD CLAIM FOR RELIEF

#### 22 Equitable Indemnity

23 31. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 30  
24 of this Third-Party Complaint as though fully set forth herein.

25 32. Third-Party Plaintiff, by way of its Answer to Plaintiff's Complaint for  
26 Damages, has denied and continues to deny Plaintiffs' allegations and has asserted by way of  
27 Answer the appropriate affirmative defenses.

33. In the event that the trier of fact concludes that the allegations of Plaintiff are true, and if Third-Party Plaintiff is held liable to Plaintiffs in said action, then Third-Party Plaintiff alleges that any responsibility found on the part of Third-Party Plaintiff will be due to the negligence and/or fault of Third-Party Defendants, ROES 2-250, and each of them.

34. By reason of the foregoing, if Plaintiff should recover judgment against Third-Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with Plaintiff, then Third-Party Plaintiff will be entitled to judgment in the like amount, or in proportion to fault, for comparative indemnity over and against Third-Party Defendants, ROES 2-250, and each of them, and in addition, Third-Party Plaintiff will be entitled to recover from Third-Party Defendants, ROES 2-250, and each of them, all costs, expenses, and attorneys' fees that Third-Party Plaintiff incurs in the preparation of its defense of the principal action, and in the preparation, presentation and prosecution of this Third-Party Complaint, respectively.

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

##### **Breach of Express Warranty**

35. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 34 of this Third-Party Complaint as though fully set forth herein.

36. The written agreements between Third-Party Plaintiff and Third-Party Defendants provide the description of the work to be performed by Third-Party Defendants, and their guarantee and warranty of said work as follows:

**WARRANTY:** If at any time during one (~1 year after the date of completion and acceptance of the Work by Anthem Country Club (or such longer period as may be specified in Exhibit "B" attached hereto), any part of the materials or workmanship furnished by Contractor shall prove to be defective or not in conformity with plans and specifications, Contractor shall be responsible for the replacement or repair of the non-conforming or defective Work to Anthem Country Club's satisfaction, including all costs incidental thereto, without cost to Anthem Country Club. In the event Contractor's Work on this project terminates prior to the expiration date of all warranty periods, Contractor will remain obligated to fulfill Contractor's responsibilities for all such Work covered by this Contract. Anthem Country Club reserves the right to withhold from current and future payables due under this Contract, for a period of ninety (90) days following the termination of this Contract, an amount equal to ten percent (10%) of the total

1 amount to be paid for Work completed under the terms hereof to off-set any  
 2 expenses incurred by Anthem Country Club to complete unfinished Work or any  
 3 Work not meeting the requirements of this Contract, including warranty Work. At  
 4 the end of such ninety (90) day period, all amounts withheld that have not been  
 5 applied or are not required to be applied to the cost of such non-conforming  
 6 Work, warranty Work, or completion items, shall be paid to Contractor. This  
 warranty shall not limit or void any extended or longer warranty provided under  
 applicable law for a latent construction defect, or under any case law extending  
 the warranty provided by the developer to the buyer of any residential unit.

7 37. As set forth in the written agreements between Third-Party Plaintiff and Third-  
 8 Party Defendants; and as further alleged above and elsewhere in this Third-Party Complaint,  
 9 Third-Party Defendants, ROES 1 – 250, and each of them, agreed and guaranteed to perform  
 10 their work in a good and workmanlike manner.

11 38. Third-Party Plaintiff relied upon such warranties and believed in good faith that  
 12 the construction of the Anthem Country Club development would comply with approved plans  
 13 and specifications for the Anthem Country Club development and would be free from defective  
 14 construction or workmanship.

15 39. Third-Party Plaintiff has fully performed all conditions and promises required on  
 16 its part to be performed in accordance with the terms and conditions of the underlying written  
 17 agreements.

18 40. Third-Party Plaintiff has provided notice, or by this Third-Party Complaint  
 19 provides notice, to the Third-Party Defendants, ROES 1 - 250, and each of them, of claims  
 20 asserted by Plaintiff, which if true, would trigger the warranty provisions identified above and  
 21 elsewhere in the Third-Party Complaint.

22 41. Third-Party Plaintiff has undertaken defense of the matter in question and if  
 23 Plaintiff recovers judgment against Third-Party Plaintiff for failure to comply with the approved  
 24 plans and specifications, or alleged defective construction or workmanship, or if Third-Party  
 25 Plaintiff incurs any expense in the defense of said lawsuit, then Third-Party Plaintiff alleges that  
 26 it are entitled to judgment over and against Third-Party Defendants, ROES 1 – 250, and each of  
 27 them, for all sums that Third-Party Plaintiff incurs by reason of said judgment, settlement, and  
 28

1 expense of litigation, including reasonable attorneys' fees and costs, as provided by the contract  
2 agreement.

### 3 FIFTH CLAIM FOR RELIEF

#### 4 Breach of Implied Warranty

5 42. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 41  
6 of this Third-Party Complaint as though fully set forth herein.

7 43. Third-Party Plaintiff is informed and believes, and thereon alleges that Third-  
8 Party Defendants and ROES 2-250, impliedly warranted that the work performed by Third-  
9 Party Defendants at the Anthem Country Club development was performed in a reasonably  
10 workmanlike manner.

11 44. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
12 Party Defendants and ROES 2-250, impliedly warranted that their work that the common area  
13 elements of the Anthem Country Club development were of merchantable quality and safe and  
14 fit for their foreseeable or intended use.

15 45. Plaintiff has alleged in its Complaint for Damages that the Third-Party Plaintiff  
16 is somehow liable for the damage, if any, it has alleged. Third-Party Plaintiff, by way of their  
17 Answer to Plaintiff's Complaint for Damages, has denied and continues to deny Plaintiff's  
18 allegations and have asserted, by way of Answer, the appropriate affirmative defenses. If at the  
19 trial of this action, it should be determined that Third-Party Plaintiff is in some manner  
20 responsible to Plaintiff, then Third-Party Plaintiff is informed and believes, and thereon alleges,  
21 that the proximate cause of Plaintiff's damage, if any, was a result of Third-Party Defendants'  
22 failure to construct the common area elements of the Anthem Country Club development in a  
23 reasonably workmanlike manner as warranted by Third-Party Defendants, ROES 2-250, and  
24 each of them, and therefore Third-Party Defendants and ROES 2-250 have breached their  
25 implied warranty.

26 46. Third-Party Plaintiff intends this Third-Party Complaint to constitute notice to  
27 said Third-Party Defendants and ROES 2-250 of the breach of said implied warranty.  
28

1 47. Third-Party Plaintiff alleges that, by virtue of their breach of implied warranty,  
 2 Third-Party Defendant and ROES 2-250 are liable to Third-Party Plaintiff for resulting  
 3 damages, including, but not limited to the expenses in defending Plaintiff's Complaint for  
 4 Damages, any judgment or settlement ultimately favoring Plaintiff, and the expense of  
 5 maintaining this Third-Party Complaint.

6 **SIXTH CLAIM FOR RELIEF**

7 **Declaratory Relief Regarding Duty to Defend**  
 8 **Against All Third-Party Defendants, ROES 2-250**

9 48. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through  
 10 47 of this Third-Party Complaint as though fully set forth herein.

11 49. An actual controversy exists between Third-Party Plaintiff and Third-Party  
 12 Defendants, and all ROES 2-250, as to their rights and liabilities with respect to any ultimate  
 13 responsibility to Plaintiff and with respect to the rights of the Third-Party Plaintiff to receive, or  
 14 duty of the Third-Party Defendants to provide, a defense to Third-Party Plaintiff.

15 50. Third-Party Plaintiff contends that, if Plaintiff's claims arise out of or in any  
 16 manner are connected to the work, materials or services provided by Third-Party Defendants, or  
 17 the contracts between Third-Party Plaintiff and the Third-Party Defendants expressly provide  
 18 for the defense of Third-Party Plaintiff against the claims of Plaintiff, then Third-Party  
 19 Defendants have an obligation to defend Third-Party Plaintiff without, and before, a  
 20 determination of the fault of the Third-Party Defendants for the damages alleged by Plaintiff.

21 51. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
 22 Party Defendants and ROES 2-250 contend to the contrary. Therefore, an actual controversy  
 23 exists relative to the legal rights and duties of the respective parties pursuant to their written  
 24 agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of  
 25 Declaratory Judgment.

26 ///

27 ///

**SEVENTH CLAIM FOR RELIEF**  
**Declaratory Relief Regarding Duty to Indemnify**  
**Against All Third-Party Defendants, ROES 2-250**

52. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 51 of this Third-Party Complaint as though fully set forth herein.

53. An actual controversy exists between Third-Party Plaintiff and Third-Party Defendants, and ROES 2-250 as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect to the rights to receive, or duty to give, indemnification in proportion to their comparative fault, if any.

54. Third-Party Plaintiff contends that if it suffers judgment in the action brought by Plaintiff or if it pays monies by way of reasonable compromise of said claim, then Third-Party Plaintiff is entitled to be indemnified by all Third-Party Defendants and ROES 2-250, and entitled to judgment over and against Third-Party Defendants and ROES 2-250, to the extent that Third-Party Plaintiff's financial responsibility to Plaintiff exceeds the percentage of Third-Party Plaintiff's negligence, fault, or liability, if any.

55. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendants and ROES 2-250, contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of Declaratory Judgment.

**EIGHTH CLAIM FOR RELIEF**  
**Declaratory Relief Regarding Duty to Name Third-Party Plaintiff as Additional Insured**  
**Against ROES 2-250**

56. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 55 of this Third-Party Complaint as though fully set forth herein.

57. An actual controversy has arisen and now exists between Third-Party Plaintiff and Third-Party Defendant Insurers, concerning their respective rights and duties in that Third-Party Plaintiff contends it is an additional insured under the policies of insurance provided by



1 Third-Party Defendant Insurers to various Third-Party Defendants under the terms of the Third-  
 2 Party Defendants' liability policies of insurance provided by Third-Party Defendant Insurers.

3 58. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
 4 Party Defendant Insurers contend to the contrary. Therefore, an actual controversy exists  
 5 relative to the legal rights and duties of the respective parties pursuant to their written  
 6 agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of  
 7 Declaratory Judgment.

8 **NINTH CLAIM FOR RELIEF**

9 **Contribution**

10 **Against All Third-Party Defendants, ROES 2-250**

11 59. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through  
 12 58 of this Third-Party Complaint as though fully set forth herein.

13 60. Third-Party Plaintiff contends that it is not responsible legally or otherwise for  
 14 the damage created from the Constructional Defects alleged by Plaintiff in this litigation.  
 15 Despite this, Third-Party Plaintiff has incurred expenses investigating and repairing, among  
 16 other expenses, common area elements of the Anthem Country Club that have been damaged by  
 17 Third-Party Defendants.

18 61. In the event that the trier of fact concludes that the allegations of Plaintiff are  
 19 true, and if Third-Party Plaintiff is held liable to Plaintiff in said action, then Third-Party  
 20 Plaintiff alleges that any responsibility found on the part of Third-Party Plaintiff will be due to  
 21 the negligence and/or fault of Third-Party Defendants and ROES 2-250 and each of them

22 62. By reason of the foregoing, if Plaintiff should recover judgment against Third-  
 23 Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with  
 24 Plaintiff, then Third-Party Plaintiff will be entitled to contribution over and against Third-Party  
 25 Defendants, ROES 2-250, and each of them, for all costs, expenses, and attorneys' fees that  
 26 Third-Party Plaintiff incur in the preparation and presentation of its defense of the principal  
 27 action, and in the preparation, presentation and prosecution of this Third-Party Complaint,  
 28 respectively.



63. Third-Party Plaintiff has necessarily engaged the law firm Koeller, Nebeker, Carlson & Haluck, LLP to represent them in the defense of the Plaintiff's Complaint for Damages, and in this Third-Party Complaint, and have incurred legal fees, courts costs, and investigation costs, and will in the future incur further fees and costs by reason of Plaintiff's Complaint for Damages referenced herein.

WHEREFORE, Third-Party Plaintiff respectfully request that this Court enter judgment against Third-Party Defendants and ROES 2-250, and each of them as follows:

1. A determination that each Third-Party Defendant and ROES 2-250, and each of them, contributed in some percentage to the loss, damage and detriment alleged by Plaintiff and for a declaration of percentages by which the conduct of Third-Party Defendants and ROES 2-250 and each of them, contributed to the loss, damage and detriment, if any, of the Plaintiff;
2. A determination that Third-Party Plaintiff is an additional insured under the policies of insurance provided by Third-Party Defendant Insurers to various Third-Party Defendants under the terms of the Third-Party Defendants' liability policies of insurance provided by Third-Party Defendant Insurers
3. That if Plaintiff should recover sum or judgment against Third-Party Plaintiff, that Third-Party Plaintiff should have judgment against Third-Party Defendants and ROES 2-250;
4. That Third-Party Plaintiff is entitled to a defense from Third-Party Defendants and ROES 2-250;
5. For general and special damages in an amount to be proven at trial;
6. For indemnity of all damages and/or economic losses that Plaintiff recovers against Third-Party Plaintiff by way of judgment, order, settlement, compromise, or trial;
7. For reasonable attorneys' fees, expert fees and costs;
8. For prejudgment and post-judgment interest;

1 9. For contribution pursuant to NRS 17.225; and

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

4 Dated this 11<sup>th</sup> day of March 2013.

5 KOELLER, NEBEKER, CARLSON  
6 & HALUCK, LLP

7 BY: 

8 JASON W. WILLIAMS, ESQ.

9 Nevada Bar No. 8310

10 MARK P. ROACH, ESQ.

11 Nevada Bar No. 8237

12 300 South Fourth Street, Suite 500

13 Las Vegas, NV 89101

14 Phone: (702) 853-5500

15 Fax: (702) 853-5599

16 Attorneys for Defendant/Third Party Plaintiff

17 Terravita Home Construction Co.

# Exhibit 58

# Exhibit 58

520  
 1 **COMP**  
 2 **MARK J. BOURASSA, ESQ.**  
 3 Nevada Bar No. 7999  
 4 **MOLLY C. KRAMER, ESQ.**  
 5 Nevada Bar No. 9085  
 6 **The Bourassa Law Group, LLC**  
 7 3025 West Sahara Ave., Suite 105  
 8 Las Vegas, Nevada 89102  
 9 Tel: (702) 851-2180  
 10 Fax: (702) 851-2189

11 *Attorneys for PLAINTIFF*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

12 **STALLION MOUNTAIN COMMUNITY**  
 13 **ASSOCIATION, a Nevada non-profit**  
 14 **corporation,**

15 **Plaintiff,**

16 **vs.**

17 **WILLIAM LYON HOMES, INC., a**  
 18 **California corporation; and DOES 1 through**  
 19 **50 and ROE corporations and organizations**  
 20 **1 through 50,**

21 **Defendants,**

CASE NO.: A-09-599651-C

DEPT. NO.: VIII

**COMPLAINT**

A-09-599651-C  
 405557



22 COMES NOW, Plaintiff STALLION MOUNTAIN COMMUNITY ASSOCIATION  
 23 ("PLAINTIFF"), by and through its attorney Mark J. Bourassa, Esq. and The Bourassa Law  
 24 Group, LLC, and hereby complains, alleges and states as follows:

**GENERAL ALLEGATIONS**

- 25 1. PLAINTIFF is and was at all times mentioned herein a Nevada non-profit corporation  
 26 doing business in Clark County, Nevada.
- 27 2. PLAINTIFF is informed and believes and thereupon alleges that DEFENDANT  
 28 WILLIAM LYON HOMES, INC. (hereinafter, "DEFENDANT") is a California  
 corporation doing business in Clark County Nevada.
3. PLAINTIFF is informed and believes and thereupon alleges, that at all times relevant

1 hereto, that DEFENDANT was engaged in the business of, planning, developing,  
2 designing, supervising, constructing and selling residential homes and common areas  
3 in the County of Clark, State of Nevada.

4 4. At all times relevant herein, DOES 1 through 50, and ROE corporations and  
5 organizations 1 through 50, in their true capacities, whether individual, corporate,  
6 associate or otherwise of the DEFENDANTS named herein are unknown to  
7 PLAINTIFF who, therefore, sues said DEFENDANTS by said fictitious names.  
8 DEFENDANT, DOES 1 through 50, and ROE corporations and organizations 1  
9 through 50, will be collectively referred to as "DEFENDANTS."

10 5. PLAINTIFF is informed and believe and thereon alleges that the DEFENDANTS are  
11 responsible in some manner for the events and happenings referred to herein, and  
12 caused damages proximately to PLAINTIFF as herein alleged, and PLAINTIFF will  
13 ask leave of this court to amend this Complaint to insert the true names and capacities  
14 of DOES 1 through 50 and ROE corporations and organizations 1 through 50, when  
15 the same have been ascertained and to join such DEFENDANTS in this action.

16 6. PLAINTIFF is informed and believes and thereupon alleges, that at all times relevant  
17 hereto, that DEFENDANT acted as a developer and/or contractor of construction of  
18 the residential common areas located at 5500 E. Flamingo Ave. Las Vegas, Nevada,  
19 within the development known as The Enclave at Stallion Mountain. DEFENDANT  
20 was directly responsible for the planning, development, supervision and/or  
21 construction of the common areas. Therefore, DEFENDANT is responsible in some  
22 manner for the defects and deficiencies in the planning, development, supervision  
23 and/or construction of the common areas, as alleged herein, and PLAINTIFF'S  
24 damages related to such defects and deficiencies.

25 7. The real property and improvements addressed in this Complaint are located at 550 E.  
26 Flamingo Avenue, Las Vegas, Nevada within the development known as The Enclave  
27 at Stallion Mountain in Clark County, Nevada (hereinafter referred to as the  
28 "SUBJECT PROPERTY").

- 1 8. PLAINTIFF is informed and believes and thereupon alleges, that DEFENDANT  
2 undertook certain works of improvement upon the SUBJECT PROPERTY, including  
3 works of development, design, and construction of the common areas.
- 4 9. After the work at the SUBJECT PROPERTY was purportedly completed,  
5 PLAINTIFF became aware that the work at the SUBJECT PROPERTY was not of  
6 merchantable quality, but is, in fact, defective and fails to meet applicable building  
7 codes and industry standards and has caused damage to the SUBJECT PROPERTY.  
8 This damage is progressive and continues to worsen.
- 9 10. PLAINTIFF is informed and believes and thereupon alleges, that DEFENDANT failed  
10 to properly and adequately investigate, inspect, plan, engineer, supervise, produce,  
11 develop, or construction the common areas of the SUBJECT PROPERTY, in that said  
12 SUBJECT PROPERTY has experienced, and continues to experience, defects and  
13 deficiencies, and damages resulting there from, as more specifically described below.
- 14 11. PLAINTIFF is informed and believes and thereupon alleges, that the SUBJECT  
15 PROPERTY may be defective or deficient in other ways and to other extents not  
16 presently known to PLAINTIFF, and not specified above. PLAINTIFF reserves the  
17 right to amend this Complaint upon discovery of any additional defects or deficiencies  
18 not referenced herein and/or to present evidence of the same at the trial of this action.
- 19 12. PLAINTIFF is informed and believes and thereupon alleges, these defective  
20 conditions were either known or through reasonable diligence and experience with the  
21 construction industry, should have been known to DEFENDANT at the time of  
22 substantial completion of construction such that NRS § 11.202 and NRS § 11.203 are  
23 applicable to the facts and circumstances as alleged herein.
- 24 13. PLAINTIFF has standing to commence this action against DEFENDANT.  
25 Specifically, PLAINTIFF seeks all available damages as an owner of the SUBJECT  
26 PROPERTY against DEFENDANT and all other damages and remedies available at  
27 law.
- 28 14. As a result of the acts and omissions of DEFENDANT, PLAINTIFF has been forced

1 to hire counsel to prosecute this action and to incur attorney fees and costs.

2 **FIRST CLAIM FOR RELIEF**

3 **(Breach of Contract)**

4 15. PLAINTIFF incorporates herein by reference Paragraphs 1 through 14 inclusive, as  
5 though fully set forth herein.

6 16. PLAINTIFF is informed and believes and thereupon alleges, that on various dates,  
7 DEFENDANT entered into written contracts whereby DEFENDANT would, for good  
8 and valuable consideration, perform services and provide materials and improvements  
9 for the benefit of PLAINTIFF and deliver the common areas and appurtenances  
10 thereto in a habitable condition reasonably free of defect or deficiency.

11 17. PLAINTIFF is informed and believes and thereupon alleges, that PLAINTIFF has  
12 performed all terms conditions of said contracts, except for those which were  
13 impossible to perform through no fault of its own. DEFENDANT failed and refused  
14 to tender performance upon the terms and conditions of said contracts in spite of  
15 repeated demands to do so, and has materially breached said contract by conveying  
16 and delivering to PLAINTIFF common areas with improvements and appurtenances  
17 thereto which were designed and constructed, and continue to exist, in a defective and  
18 deficient manner.

19 18. As a direct and proximate cause of DEFENDANT'S breach of contract, PLAINTIFF  
20 has suffered and continues to suffer damages which include, without limitation, the  
21 cost to repair the defects and deficiencies in the design and construction of the  
22 residences and improvements and appurtenances thereto on the SUBJECT  
23 PROPERTY, which now pose and which will continue to pose a threat to the health,  
24 safety and welfare of PLAINTIFF, guests and the general public until such repairs are  
25 effected, as well as damages incident to, and consequent of, DEFENDANT'S breach.  
26 All of the above-described damages have occurred, but the amount thereof is precisely  
27 unknown, and when the precise amount is known, it will be established by way of  
28 amendment to these pleadings or according to proof at the time of trial.



1 19. PLAINTIFF is informed and believes and thereupon alleges, that as a further direct  
2 and proximate result of the defective conditions of the SUBJECT PROPERTY,  
3 PLAINTIFF was compelled to retain legal counsel to obtain recovery for the defective  
4 conditions. Therefore, DEFENDANT is liable for attorney's fees and costs reasonably  
5 necessary, and incurred by EISENBERG in order to obtain compensation in a sum to  
6 be determined at trial.

7 **SECOND CLAIM FOR RELIEF**

8 **(Breach of Implied Warranties)**

9 20. PLAINTIFF incorporates herein by reference Paragraphs 1 through 19, inclusive, as  
10 though fully set forth herein.

11 21. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT  
12 impliedly warranted, among other express and/or implied warranties, that the common  
13 areas owned by PLAINTIFF was fit and safe for the purposes intended.

14 22. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT  
15 breached their implied warranty of habitability and covenants of repair because the  
16 common areas were in disrepair, unfit and unsafe in violation of the Nevada Revised  
17 Statutes and other codes and regulations.

18 23. As a direct result of the foregoing, PLAINTIFF has suffered costs and out-of-pocket  
19 expenses, in an amount to be determined at the time of trial.

20 **THIRD CLAIM FOR RELIEF**

21 **(Breach of Express Warranties)**

22 24. PLAINTIFF incorporates herein by reference Paragraphs 1 through 23, inclusive, as  
23 though fully set forth herein.

24 25. PLAINTIFF is informed and believes and thereupon alleges, that on various dates,  
25 DEFENDANT entered into written contracts whereby DEFENDANT would, for good  
26 and valuable consideration, provide and construct the common areas of the SUBJECT  
27 PROPERTY for the benefit of PLAINTIFF and deliver the same in a workmanlike  
28 condition reasonably free of defect or deficiency.

1 26. PLAINTIFF is informed and believes and thereupon alleges, that pursuant to said  
 2 written contracts, DEFENDANT expressly warranted that it would construct the  
 3 common areas of the SUBJECT PROPERTY in a good and workmanlike manner.

4 27. PLAINTIFF is informed and believes and thereupon alleges, that pursuant to the  
 5 written contracts, DEFENDANT expressly warranted that it would perform the  
 6 construction of the SUBJECT PROPERTY in conformance with the rules and codes  
 7 of all applicable governing agencies.

8 28. PLAINTIFF is informed and believes and thereupon alleges, that pursuant to the  
 9 written contracts DEFENDANT expressly warranted that all materials and work at the  
 10 SUBJECT PROPERTY would be of good quality, free from faults and defects.

11 29. PLAINTIFF is informed and believes and thereupon alleges, that DEFENDANT was a  
 12 merchant with respect to the works of improvement to the common areas and  
 13 appurtenances thereof and DEFENDANT expressly warranted that common areas  
 14 were of merchantable quality, were constructed in a reasonably workmanlike manner  
 15 and fit for the purpose of use intended. Because of the defective condition of the  
 16 common areas of the SUBJECT PROPERTY, DEFENDANT has breached the  
 17 expressed warranties between the parties.

18 30. PLAINTIFF is informed and believes, and thereon alleges, that as a further direct and  
 19 proximate result of the defective conditions of the common areas at the SUBJECT  
 20 PROPERTY, PLAINTIFF was compelled to retain legal counsel to obtain recovery for  
 21 the defective conditions. Therefore, pursuant to NRS § 40.600 et seq., DEFENDANT  
 22 is liable for those attorney's fees recently necessary incurred by PLAINTIFF in order  
 23 to obtain compensation in a sum to be determined at trial.

#### 24 FOURTH CLAIM FOR RELIEF

25 (Negligence/Negligence Per Se)

26 31. PLAINTIFF repeats, re-alleges and incorporates by reference Paragraphs 1 through  
 27 30, inclusive, as though fully set forth herein.

28 32. PLAINTIFF is informed and believe, and thereon alleges that DEFENDANT was a

1 builder, contractor, subcontractor, supplier, material man, architect and/or engineer, or  
2 other person, entity or professional who participated in the process of developing,  
3 designing, engineering and/or construction of the SUBJECT PROPERTY and who  
4 performed works of labor, supplied materials, equipment and/or services necessary for  
5 the building and construction, including supervision of construction of the SUBJECT  
6 PROPERTY. In so doing, DEFENDANT in its capacity as developer, builder,  
7 contractor, subcontractor, supplier, material men, architect, engineer and/or general  
8 contractor or otherwise, caused the SUBJECT PROPERTY to be designed, engineered  
9 and/or constructed through their own works of labor, and supplying of materials,  
10 equipment and services, and through causing other contractors and subcontractors,  
11 including DEFENDANT to perform works of labor, and to supply materials, and/or  
12 equipment and services in order to properly complete the SUBJECT PROPERTY.

13 33. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT,  
14 whether developer, builder, contractor, subcontractor, supplier, material men,  
15 architect, engineer or otherwise, performed work, labor and/or services upon the  
16 SUBJECT PROPERTY and each knew or should have known that if the SUBJECT  
17 PROPERTY was not properly or adequately designed, engineered, supervised and/or  
18 constructed, the owners and users would be substantially damaged thereby and the  
19 SUBJECT PROPERTY would be defective and not of merchantable quality.  
20 Likewise, DEFENDANT knew or reasonably should have known that if the  
21 SUBJECT PROPERTY was not adequately designed, engineered, constructed, or  
22 installed, that the owners and users would be substantially damaged thereby and that  
23 the SUBJECT PROPERTY would be defective and not of merchantable quality.

24 34. DEFENDANT was under a duty to exercise ordinary care as developer, builder,  
25 contractor, subcontractor, supplier, material men, architect, engineer or otherwise, to  
26 avoid reasonably foreseeable injury to users of the SUBJECT PROPERTY, and knew  
27 and should have foreseen with reasonable certainty that PLAINTIFF would suffer the  
28 monetary damages set forth herein.

1 35. DEFENDANT failed to perform its duty to cause the SUBJECT PROPERTY to be  
2 designed, engineered and completed in a proper and workmanlike manner and fashion.

3 36. Despite its duty to act reasonably, DEFENDANT breached its duties of care by  
4 negligently, recklessly and/or intentionally failing to design, engineer or construct the  
5 SUBJECT PROPERTY in a good and workmanlike manner.

6 37. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT, in  
7 addition to that heretofore alleged, violated the Building Codes and regulations of the  
8 County of Clark, the Uniform Building Codes and/or the Nevada Revised Statutes  
9 relating to development, common interest subdivisions, trade professionals, design  
10 professionals, construction and sales of real estate.

11 38. PLAINTIFF is informed and believes, and thereon alleges, in addition to that  
12 heretofore alleged, that the damages sustained by PLAINTIFF were proximately  
13 caused by violations of the Codes alleged above.

14 39. PLAINTIFF is informed and believes, and thereon alleges, that it is a member of the  
15 class of persons for whose protection the aforementioned Codes were adopted.

16 40. As a direct and proximate result of the foregoing violations of codes, negligence,  
17 carelessness and unworkmanlike conduct, actions and/or omissions by DEFENDANT,  
18 PLAINTIFF has suffered damages in an amount presently unknown, but believed to  
19 be within this Court's jurisdiction, in order to correct the defective conditions of the  
20 SUBJECT PROPERTY and to restore it to its proper condition including reasonable  
21 expenses necessary during the repair. Further, PLAINTIFF has incurred and will incur  
22 expert fees and costs to investigate the defective conditions to determine the nature,  
23 extent, cause of the defects and the reasonable and appropriate repairs. Finally,  
24 PLAINTIFF has suffered loss of other property damaged by the defective conditions;  
25 PLAINTIFF is presently unaware of the precise amount of the damages, but will  
26 establish the same at trial, according to proof.

27 41. PLAINTIFF is informed and believes, and thereon alleges, that as a further direct and  
28 proximate result of the defective conditions of the SUBJECT PROPERTY,

1 PLAINTIFF'S interests in the SUBJECT PROPERTY and the value thereof have been  
 2 reduced and diminished. All of the above-described damages have occurred, but the  
 3 amount thereof is precisely unknown, and when the precise amount is known, it will  
 4 be established by way of amendment to these pleadings or according to proof at the  
 5 time of trial.

6 42. PLAINTIFF is informed and believes, and thereon alleges that as a further direct and  
 7 proximate result of the defective conditions of the SUBJECT PROPERTY,  
 8 PLAINTIFF has lost and will continue to lose the use and enjoyment of the SUBJECT  
 9 PROPERTY, including the use of the SUBJECT PROPERTY as a result of the  
 10 restoration required to repair and restore the defects.

11 43. PLAINTIFF is informed and believes, and thereon alleges that as a further direct and  
 12 proximate result of the defective conditions of the SUBJECT PROPERTY,  
 13 PLAINTIFF was compelled to retain legal counsel to obtain recovery for the defective  
 14 conditions. Therefore, pursuant to NRS § 40.600 et seq., DEFENDANT is liable for  
 15 those attorney's fees recently necessary incurred by PLAINTIFF in order to obtain  
 16 compensation in a sum to be determined at trial.

#### 17 PRAYER FOR RELIEF

18 WHEREFORE, PLAINTIFF realleges and incorporates by reference all Paragraphs of the  
 19 Complaint as though fully set forth herein, and pray for judgment as follows:

- 20 1. General and specific damages in excess of this Court's minimum jurisdiction of  
 21 \$10,000 including but not limited to any costs to identify, mitigate, cure or repair  
 22 any defect or deficiency in the design or construction of the residence and  
 23 improvements and appurtenances thereto, and any and all damages proximately  
 24 caused thereby, in a sum to be determined according to proof;
- 25 2. Incidental and consequential damages proximately caused by any defect or  
 26 deficiency in the design or construction of the SUBJECT PROPERTY and  
 27 improvements and appurtenances thereto, including but not limited to the loss of  
 28

1 use, relocation and alternative housing, incidental expenses, diminished value,  
2 stigma, lost rents and lost business opportunity, all in sums to be determined  
3 according to proof;

4 3. Attorney's fees;

5 4. Costs of suit;

6 5. All interest as provided by law, including prejudgment interest; and

7 6. Such other equitable relief as the court deems just and proper.

8  
9 DATED this 10<sup>th</sup> day of September 2009.

10 THE BOURASSA LAW GROUP, LLC

11  
12 By: 

13 MARK J. BOURASSA, ESQ.

14 Nevada Bar No. 7999

15 MOLLY C. KRAMER, ESQ.

16 Nevada Bar No. 9085

17 3025 West Sahara Ave., Suite 105

18 Las Vegas, Nevada 89102

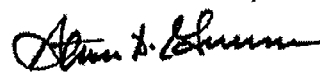
19 Attorneys for Plaintiff

# Exhibit 59

# Exhibit 59



Electronically Filed  
06/03/2011 12:14:46 PM

  
CLERK OF THE COURT

1 ATPC  
2 R. CHRISTOPHER READE, ESQ.  
3 Nevada Bar No. 006791  
4 ROBERT N. EATON, ESQ.  
5 Nevada Bar No. 009547  
6 READE & ASSOCIATES  
7 4560 South Decatur Boulevard, Suite 201  
8 Las Vegas, Nevada 89103  
9 Tel:(702) 794-4411  
10 Fax: (702) 794-4421  
11 creade@readelawfirm.com  
12 reaton@readelawfirm.com  
13 Attorneys for Defendant/ Third Party Plaintiff  
14 WILLIAM LYON HOMES, INC.

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 STALLION MOUNTAIN COMMUNITY )  
12 ASSOCIATION, a Nevada non-profit )  
13 corporation, )  
14 Plaintiff, )  
15 v. )

Case No. : A599651  
Dept. No.: VIII

14 WILLIAM LYON HOMES, INC., a California )  
15 corporation; and DOES 1 through 50 and ROE )  
16 corporations and organizations 1 through 50, )  
17 Defendants. )

**WILLIAM LYON HOMES, INC'S**  
**ANSWER AND AMENDED THIRD-**  
**PARTY COMPLAINT**

17 WILLIAM LYON HOMES, INC., )  
18 Third Party Plaintiff, )  
19 vs. )

20 AMERICAN ASPHALT & GRADING )  
21 COMPANY; HIRSCHI MASONRY, LLC; )  
22 IMPERIAL IRON, INC.; KACCEL )  
23 COMMUNICATION SERVICES, INC.; )  
24 MARV BLACK MASONRY, INC.; )  
25 P N II, INC.; R.P. WEDDELL & SONS, CO. )  
26 STEWART & SUNDELL CONCRETE, INC.: )  
27 SUN CITY LANDSCAPES & LAWN )  
28 MAINTENANCE, INC.; SUNRISE PAVING, )  
INC., DOES 1 through 100; and ROE )  
CORPORATIONS II through C )

Third Party Defendants.

**WILLIAM LYON HOMES, INC'S ANSWER AND AMENDED  
THIRD-PARTY COMPLAINT**

COMES NOW, Defendant/ Third-Party Plaintiff WILLIAM LYON HOMES, INC. by and through its attorneys, the law firm of READE & ASSOCIATES, and hereby files this Answer in response to the Complaint on file herein as follows:

This Answering Defendant denies each and every paragraph contained within the Complaint on file herein, save and except those matters that are expressly addressed hereinafter.

**GENERAL ALLEGATIONS**

1. Answering Paragraphs 1 of the Complaint, this Answering Defendant is without sufficient knowledge to admit or deny the allegations contained therein and thus denies the allegations contained therein.

2. Answering Paragraph 2 of the Complaint, Defendant admits it is a California corporation licensed to do business in Clark County, Nevada.

3. Answering Paragraphs 3, 4, 5, 7, 8, 9, 10, 11 and 13 of the Complaint, this Answering Defendant is without sufficient knowledge to admit or deny the allegations contained therein and thus denies the allegations contained therein.

4. Answering Paragraphs 6, 12 and 14 of the Complaint, Defendant denies each and every allegation contained therein.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

5. Answering Paragraph 15 of the Complaint, Defendant repeats, realleges and incorporates by this reference each and every response in Paragraphs 1 through 14 of this Answer as though fully set forth herein.

6. Answering Paragraphs 16, 17, 18, and 19 of the Complaint, Defendant denies each and every allegation contained therein.

///

///

///

**SECOND CLAIM FOR RELIEF**

**(Breach of Implied Warranties)**

7. Answering Paragraph 20 of the Complaint, Defendant repeats, realleges and incorporates by this reference each and every response in Paragraphs 1 through 19 of this Answer as though fully set forth herein.

8. Answering Paragraph 21 of the Complaint, this Answering Defendant admits the allegations contained therein.

9. Answering Paragraphs 22, and 23 of the Complaint, Defendant denies each and every allegation contained therein.

**THIRD CLAIM FOR RELIEF**

**(Breach of Express Warranties)**

10. Answering Paragraph 24 of the Complaint, Defendant repeats, realleges and incorporates by this reference each and every response in Paragraphs 1 through 23 of this Answer as though fully set forth herein.

11. Answering Paragraphs 25, 26, 27, 28, 29, and 30 of the Complaint, this Answering Defendant denies each and every allegation contained therein.

**FOURTH CLAIM FOR RELIEF**

**(Negligence/ Negligence Per Se)**

12. Answering Paragraph 31 of the Complaint, Defendant repeats, realleges and incorporates by this reference each and every response in Paragraphs 1 through 30 of this Answer as though fully set forth herein.

13. Answering Paragraph 32 of the Complaint, this Answering Defendant denies the allegation as contained in lines 8 and 9 that it "caused the subject property to be designed, engineered and/or constructed through their own works of labor." As to the balance of Paragraph 32, this Answering Defendant admits the allegations contained therein.

14. Answering Paragraphs 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 of the Complaint, Defendant denies each and every allegation contained therein.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a claim against this Answering Defendant upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The events referred to in and damages, if any, arising therefrom, were caused by the acts of a third person or persons over whom these Answering Defendant had no control, including but not limited to the acts or omissions of third parties.

**THIRD AFFIRMATIVE DEFENSE**

Answering Defendant has been caused to employ counsel defend this action, and are entitled to a reasonable attorney's fee therefore.

**FOURTH AFFIRMATIVE DEFENSE**

The incidents alleged in the Complaint, and the resulting damage, if any, to Plaintiffs, were proximately caused or contributed to by the Plaintiffs' own negligence and bad acts, and such negligence and bad acts were greater than the negligence and bad acts, if any, of this Answering Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs herein failed to mitigate their damages.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred by the doctrine of laches from pursuing their claims as set forth in its Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred by the doctrine of impossibility of performance from pursuing claims against this Answering Defendant under any contractual or quasi-contractual theory.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs expressly and/or implied released and waived all claims pled herein against this Answering Defendant.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped from pursuing any claims against this Answering Defendant.

**TENTH AFFIRMATIVE DEFENSE**

Answering Defendant alleges that damages, if any, suffered by Plaintiffs were caused in whole or in part or were contributed to by reason of the negligence of the Plaintiffs, and that said negligence was greater than the negligence if any of this Answering Defendant.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs have unilaterally breached the terms of his purported Agreement(s) complained of with this Answering Defendant.

**TWELFTH AFFIRMATIVE DEFENSE**

The Agreement(s) as alleged by Plaintiff was breached by Plaintiffs themselves, and therefore any and all damages complained of by Plaintiffs were caused by Plaintiffs' own actions and inactions.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are non-perfected, invalid and unenforceable.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have ratified and confirmed and accepted in all respects the acts and positions of Answering Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The acts alleged to have been wrongfully done by this Answering Defendant was accomplished with authority and license given to Answering Defendant by Plaintiffs.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs cannot pursue a claim for breach of contract as against this Answering Defendant.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to elect their remedies.

///

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to properly pursue the remedies under NRS 40.600 *et seq.*

**NINETEENTH AFFIRMATIVE DEFENSE**

Answering Defendant alleges that any award of punitive damages is an unconstitutional violation of these Answering Defendant's rights under the United States Constitution including the Fifth and Fourteenth Amendments right to due process.

**TWENTIETH AFFIRMATIVE DEFENSE**

Answering Defendant allege that Plaintiffs' claim for punitive damages are limited by N.R.S. 42.005.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs have failed to name necessary and indispensable parties for full relief in this action.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs have failed to fulfill conditions precedent to performance by Answering Defendants, said breaches excusing performance by Answering Defendants.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

Pursuant to NRCP Rule 11, these Answering Defendant reserves the right to amend this Answer to add additional affirmative defenses as discovery progresses and new facts come to light.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiff failed to timely serve Defendant pursuant to NRCP 4(I).

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to plead with sufficient specificity and violation of codes, ordinances, regulations, statutes or other laws.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Defendant has a right to offset against Plaintiffs' claims.

///

1 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

2 The doctrine of unclean hands prevents any recovery by Plaintiff herein.

3 WHEREFORE, Answering Defendant prays that Plaintiff takes nothing by virtue of their  
4 Complaint on file herein; for costs and disbursements incurred in this action; and for such other  
5 and further relief as the Court deems just, equitable and proper.

6 **AMENDED THIRD-PARTY COMPLAINT**

7 COME NOW Defendant/Third-Party Plaintiff WILLIAM LYON HOMES, INC. fka  
8 PRESLEY HOMES [hereinafter referred to as "Third-Party Plaintiff"], by and through its  
9 attorney of record R. CHRISTOPHER READE, ESQ. and ROBERT N. EATON, ESQ., of the  
10 law firm of READE & ASSOCIATES, and herby files this Amended Third-Party Complaint  
11 against Third-Party Defendants AMERICAN ASPHALT & GRADING COMPANY; HIRSCHI  
12 MASONRY, LLC; IMPERIAL IRON, INC.; KACCEL COMMUNICATION SERVICES,  
13 INC.; MARV BLACK MASONRY, INC.; P N II, INC.; R.P. WEDDELL & SONS, CO.;  
14 STEWART & SUNDELL CONCRETE, INC.; SUNRISE PAVING, INC.; SUN CITY  
15 LANDSCAPES & LAWN MAINTENANCE, INC.; DOES 1 through 100; and ROE  
16 CORPORATIONS II through C, alleging as follows:

17 **GENERAL ALLEGATIONS**

18 1. WILLIAM LYON HOMES, INC. (hereinafter WILLIAM LYON HOMES, INC.  
19 or "WLHI"), refers to and incorporates herein each and every allegation by Plaintiff, which is  
20 contained in Plaintiffs' Complaint, on file herein, for the purpose of establishing the fact that  
21 Plaintiff has commenced suit against WLHI, but without admitting, in whole or in party, any of  
22 the allegations contained in Plaintiffs' Complaint.

23 2. WILLIAM LYON HOMES, INC. is a corporation organized under the laws of the  
24 State of California and is, and at all times relevant herein was doing business in Clark County,  
25 Nevada.

26 3. WLHI is informed and believes, and thereon alleges that at all times relevant  
27 herein, Third-Party Defendant AMERICAN ASPHALT & GRADING COMPANY, a Nevada  
28



1 corporation, was an entity doing business in the State of Nevada and performed work on the  
2 properties known as THE ENCLAVE AT STALLION MOUNTAIN – UNIT 1, Clark County  
3 Assessor Parcel Map 161-15-2 [hereinafter "Subject Properties"].

4 4. WLHI is informed and believes, and thereon alleges that at all times relevant  
5 herein, Third-Party Defendant HIRSCHI MASONRY, LLC, a Nevada corporation, was an entity  
6 doing business in the State of Nevada and performed work on the Subject Properties.

7 5. WLH is informed and believes, and thereon alleges that at all times relevant  
8 herein, Third-Party Defendant IMPERIAL IRON, INC., a Nevada corporation, was an entity  
9 doing business in the State of Nevada and performed work on the Subject Properties.

10 6. WLH is informed and believes, and thereon alleges that at all times relevant  
11 herein, Third-Party Defendant KACCEL COMMUNICATION SERVICES, INC., a Nevada  
12 corporation, was an entity doing business in the State of Nevada and performed work on the  
13 Subject Properties.

14 7. WLH is informed and believes, and thereon alleges that at all times relevant  
15 herein, Third-Party Defendant MARV BLACK MASONRY, INC., a Nevada corporation, was  
16 an entity doing business in the State of Nevada and performed work on the Subject Properties.

17 8. WLH is informed and believes, and thereon alleges that at all times relevant  
18 herein, Third-Party Defendant P N II, INC., a Nevada corporation, was an entity doing business  
19 in the State of Nevada and performed work on the Subject Properties.

20 9. WLH is informed and believes, and thereon alleges that at all times relevant  
21 herein, Third-Party Defendant R.P. WEDDELL & SONS, CO., a Nevada corporation, was an  
22 entity doing business in the State of Nevada and performed work on the Subject Properties.

23 10. WLH is informed and believes, and thereon alleges that at all times relevant  
24 herein, Third-Party Defendant STEWART & SUNDELL CONCRETE, INC., a Nevada  
25 corporation, was an entity doing business in the State of Nevada and performed work on the  
26 Subject Properties.

1           11.       WLH is informed and believes, and thereon alleges that at all times relevant  
2 herein, Third-Party Defendant SUN CITY LANDSCAPES & LAWN MAINTENANCE, INC., a  
3 Nevada corporation, was an entity doing business in the State of Nevada and performed work on  
4 the Subject Properties.

5           12.       WLHI is informed and believes, and thereon alleges that at all times relevant  
6 herein, Third-Party Defendant SUNRISE PAVING, INC., a Nevada corporation, was an entity  
7 doing business in the State of Nevada and performed work on the Subject Properties.

8           13.       Pursuant to the Nevada Rules of Civil Procedure, Rule 10(a), and *Nuremburger*  
9 *Hercules-Werke GmbH v. Virostek*, 107 Nev. 873, 822 P.2d 1100 (1991), Third-Party Plaintiff is  
10 informed and believes, and therefore alleges, that the true names and capacities, whether  
11 individual, corporate, associate or otherwise, of DOES 1 through 100 and ROE  
12 CORPORATIONS I - C are unknown to Third-Party Plaintiff who therefore sues said Third-  
13 Party Defendants by said fictitious names. Third-Party Plaintiff is informed and believes that  
14 each of the Third-Party Defendants designated as a DOE 1 through 100 is responsible in some  
15 manner for the events and happenings described in the Third-Party Complaint which proximately  
16 caused the damages to Third-Party Plaintiff as alleged herein. Third-Party Plaintiff is informed  
17 and believes that each of the Third-Party Defendants designated as a ROE CORPORATION are  
18 responsible in some manner for the events and happenings described in the Third-Party  
19 Complaint which proximately caused the damages to Third-Party Plaintiff as alleged herein.  
20 Third-Party Plaintiff is informed and believes that each of the Third-Party Defendants designated  
21 as DOES and ROE CORPORATIONS in some manner performed work, installed, designed,  
22 constructed or supplied materials on the Subject Properties. Third-Party Plaintiff will ask leave  
23 of Court to amend the Third-Party Complaint to insert the true names and capacities of the DOE  
24 and ROE CORPORATIONS and state appropriate charging allegations, when that information  
25 has been ascertained.

26           14.       The work being done or materials supplied was pursuant to a contract entered into  
27 between Third-Party Plaintiff and Third-Party Defendants AMERICAN ASPHALT &  
28

1 GRADING COMPANY; HIRSCHI MASONRY, LLC; IMPERIAL IRON, INC.; KACCEL  
 2 COMMUNICATION SERVICES, INC.; MARV BLACK MASONRY, INC.; P N II, INC.;  
 3 R.P. WEDDELL & SONS, CO ; STEWART & SUNDELL CONCRETE, INC.; SUNRISE  
 4 PAVING, INC.; SUN CITY LANDSCAPES & LAWN MAINTENANCE, INC.; DOES 1  
 5 through 100; and ROE CORPORATIONS II through C (hereinafter collectively referred to as  
 6 "Third-Party Defendants").

7 15. That while working at the site, Third-Party Defendants acted in a negligent,  
 8 careless and/or reckless manner and thereupon created a condition which has allegedly injured  
 9 Plaintiff and is the subject of Plaintiff's Complaint on file herein.

#### 10 **FIRST CLAIM FOR RELIEF**

##### 11 **(Equitable Indemnity)**

12 16. Third-Party Plaintiff repeats and realleges the allegations of Paragraphs 1 through  
 13 15 of the General Allegations as though fully set forth herein.

14 17. As a result of the negligent, careless, and/or reckless actions and/or omissions of  
 15 Third-Party Defendants, claims in excess of TEN THOUSAND AND NO/100 DOLLARS  
 16 (\$10,000.00) have been made against Third-Party Plaintiff by Plaintiff in this Court for damages  
 17 they have allegedly incurred as a result of a condition in their home in Las Vegas, Nevada.

18 18. The damages which have been alleged and the claims made against Third-Party  
 19 Plaintiff is not the result of any acts and/or omissions of the Third-Party Plaintiff.

20 19. The damages which have been alleged in the claims made against the Third-Party  
 21 Plaintiff is the proximate result in whole or in part of the acts of Third-Party Defendants.  
 22 Moreover, Third-Party Plaintiff and Third-Party Defendants are not joint tortfeasors in pari  
 23 delicto.

24 20. As a result of the claims against Third-Party Plaintiff, Third-Party Plaintiff may  
 25 be held liable to Plaintiff for all or part of said damage which may be sustained, in which event,  
 26 Third-Party Plaintiff is entitled to be indemnified by Third-Party Defendant for all such loss or  
 27  
 28

1 damage it sustained as a result of any settlement, compromise, judgment, or award which may  
2 occur in this matter.

3 21. It has become necessary for Third-Party Plaintiff to bring this Third-Party  
4 Complaint and, therefore, Third-Party Plaintiff is entitled to recover reasonable attorney's fees  
5 and costs.

6 **SECOND CLAIM FOR RELIEF**

7 **(Express Indemnity)**

8 22. Third-Party Plaintiff repeats and realleges the allegations contained in paragraphs  
9 1 through 21 of the Complaint as if fully set forth herein.

10 23. In the contract between Third-Party Plaintiff and Third-Party Defendant, Third-  
11 Party Defendant agreed with respect all work covered by the contract and to the fullest extent  
12 permitted by law to defend, indemnify and hold Third-Party Plaintiff harmless.

13 24. Pursuant to the language of the contract, Third-Party Plaintiffs are entitled to be  
14 indemnified for any and all losses incurred as a result of this litigation including but not limited  
15 to its attorneys fees, costs of litigation, investigative costs and any amounts paid to the Plaintiff  
16 as a result of a settlement, judgment or compromise.

17 25. The damages which have been alleged and the claims made against the Third-  
18 Party Plaintiff is the proximate result in whole or in part of the acts of Third-Party Defendants

19 26. As a result of the claims against Third-Party Plaintiff, Third-Party Plaintiff may  
20 be held liable to Plaintiffs for all or part of said damage which may be sustained, in which event,  
21 Third-Party Plaintiffs are entitled to be indemnified by Third-Party Defendants, for all such loss  
22 or damage it may sustain as a result of any settlement, compromise, judgment, or award which  
23 may occur in this matter.

24 27. It has become necessary for Third-Party Plaintiff to bring this Third-Party  
25 Complaint and, therefore, Third-Party Plaintiff is entitled to recover reasonable attorney's fees  
26 and costs.

27 ///

**THIRD CLAIM FOR RELIEF**

**(Contribution)**

28. Third-Party Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 27 of the Complaint as if fully set forth herein.

29. As a result of the negligent, careless, and/or reckless actions and/or omissions of Third-Party Defendants, claims in excess of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) have been made against Third-Party Plaintiff and other Defendants by Plaintiff in this Court for damages they have allegedly incurred at their homes in Las Vegas, Nevada.

30. The damages which have been alleged and the claims made against Third-Party Plaintiff is the result in whole or in part of the acts and/or omissions of Third-Party Defendants.

31. Third-Party Plaintiff is entitled to contribution from the Third-Party Defendants for their proportionate share of all such loss or damage as a result of any settlement, compromise, judgment, or award which may occur in this matter.

32. It has become necessary for Third-Party Plaintiff to bring this Third-Party Complaint and, therefore, Third-Party Plaintiff is entitled to recover reasonable attorney's fees and costs.

**FOURTH CLAIM FOR RELIEF**

**(Breach of Contract)**

33. Third-Party Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 31 of the Complaint as if fully set forth herein.

34. Third-Party Plaintiff is informed and believes and thereon alleges that it entered into written, oral and/or implied agreements with Third-Party Defendants.

35. Third-Party Plaintiff has fully performed all conditions, covenants and promises required of it to be performed pursuant to the terms and conditions of said agreements.

36. Third-Party Defendants contracted and agreed to supply labor and materials in accordance with each and every provision of said agreements.

37. The contracts between Third-Party Plaintiff and Third-Party Defendants contained the following language or similar language in which Third-Party Defendants agreed:

10.1 Subcontractor shall procure and maintain, at its sole cost and expense, the following insurance coverage:

\* \* \*

(c) Comprehensive General Liability or Commercial General Liability:

The limits of liability shall not be less than:

(1) Comprehensive General Liability:

\$1,000,000 Combined Single Limit

Bodily Injury/Property Damage per Occurrence

**OR**

(2) Commercial General Liability

The limits of liability shall not be less than:

Each Occurrence Limit \$1,000,000

\* \* \*

(3) Both policy forms must include:

\* \* \*

(e) An endorsement naming Contractor and any other parties in interest as additional insured(s) under the coverage specified under Insurance requirement 3. Such endorsement shall contain the following provision:

It is understood and agreed that coverage afforded by this Policy shall also apply to William Lyon Homes, Inc., its officers, directors, agents, servants, employees, divisions, subsidiaries, partners, shareholders and affiliated companies as additional insured but only with respect to legal liability or claims caused by, arising out of, or resulting from the acts or omissions, work or work product of the named insured or of others performed on behalf of the named insured.



1 The above endorsement shall be acceptable as well as ISO forms CG2010B 11/85 or  
2 CG2026 11/85. ISO forms CG 2010A or CG 2010B 10/93 or their equivalent are not  
3 acceptable. Any form that limits coverage to "ONGOING OPERATIONS" or otherwise  
4 dose not grant additional insured status under the products/completed operations  
5 coverage is not acceptable.

6 ((f)) An endorsement stating "Such coverage as is afforded for by this Policy for the  
7 benefit of the additional insured(s) is primary and any other coverage maintained by such  
8 additional insured(s) shall be non0-contributing with the coverage provided under this  
9 policy."

10 38. Third-Party Defendants have breached these provisions of the Contract.

11 39. It has become necessary for Third-Party Plaintiff to bring this Third-Party  
12 Complaint and, therefore, Third-Party Plaintiff is entitled to recover reasonable attorney's fees  
13 and costs.

#### 14 FIFTH CLAIM FOR RELIEF

##### 15 (Apportionment)

16 40. Third-Party Plaintiff repeats and realleges the preceding paragraphs 1 through 39  
17 as though fully set forth at length herein.

18 41. In the event that the trier of fact concludes that Plaintiffs' allegations, or any of  
19 them, are meritorious, then to the extent of WLHI's liability to Plaintiff, WLHI alleges that any  
20 responsibility and/or liability on the party of WLHI is due to the negligence and/or fault of  
21 Third-Party Defendants in the performance of the materials supplied for installation at the  
22 Subject Property.

23 42. Based upon the acts and/or omissions of the Third-Party Defendants, if Plaintiff  
24 recovers against WLHI, then WLHI is entitled to apportionment of liability among and from the  
25 Third-Party Defendants, and each of them, according to their respective fault, for any and all  
26 damage, liability, loss, judgment, settlement amounts and expenses including, but not limited to  
27  
28



1 attorney fees, awards, compromises, costs, expert fees and fines incurred by, or on behalf of,  
2 WLHI by reasons of the acts or omissions of Third-Party Defendants.

3 43. It has been necessary for WLHI to retain the services of Reade & Associates to  
4 defend and bring this action and, therefore, WLHI is entitled to recover attorney's fees and costs  
5 herein, pursuant to NRS 18.010 and Nevada Law.

6 **SIXTH CLAIM FOR RELIEF**

7 **(Breach of Express or Implied Warranties)**

8 44. Third-Party Plaintiff repeats and realleges the allegations contained in paragraphs  
9 1 through 42 of the Complaint as if fully set forth at length herein.

10 45. Each of the above named Third-Party Defendants applied for payment for  
11 services and/or materials and provided for express and implied warranties to WLHI including,  
12 but not limited to, representation that work and/pr materials performed and installed at the  
13 Subject Property was performed(i) in full accordance with the plans, specifications and contract  
14 requirements; (ii) in a good, workmanlike and substantial manner per accepted industry  
15 standards; and (iii) in accordance with applicable codes, statutes and/or ordinances within the  
16 jurisdiction in which the Subject Property was built.

17 46. Third-Party Plaintiff relied upon said warranty and belief that said work and  
18 materials conformed to said standards and would be installed in a workmanlike and substantial  
19 manner for its intended use and purpose.

20 47. As a result of the allegations contained in Plaintiffs' Complaint, Third-Party  
21 Plaintiff is informed and believes and thereon alleges that Third-Party Defendants, and each of  
22 them, breached said warranties as alleged by Plaintiff and numerous alleged deficiencies may  
23 exist at the Subject Property as set forth in the Complaint on file herein, which alleged  
24 deficiencies are incorporated herein by reference.

25 48. Third-Party Plaintiff is informed and believes and thereon alleges that Third-Party  
26 Defendants, and each of them, declined to acknowledge their responsibilities to repair the alleged  
27 deficiencies.  
28

1           49.       As a proximate result of the breach of express and implied warranties by Third-  
2 Party Defendants, and each of them, WLHI alleges that it will suffer damages in an amount equal  
3 to any sums paid by way of liability, loss, judgment, settlement amounts and expenses including,  
4 but not limited to, attorney fees, awards, compromises, costs, expert fees and fines incurred by,  
5 or on behalf of, WLHI in the underlying action.

6           50.       It has been necessary for WLHI to retain the services of READE &  
7 ASSOCIATES to defend and bring this action and, therefore, WLHI is entitled to recover  
8 attorney fees and costs herein, pursuant to NRS 18.010 and Nevada Law.

9                               **SEVENTH CLAIM FOR RELIEF**

10                              **(Negligence)**

11           51.       Third-Party Plaintiff repeats and realleges the preceding paragraphs 1 through 50  
12 as though they were fully set forth at length herein.

13           52.       Third-Party Defendants, and each of them, owed a contractual and/or legal duty to  
14 WLHI to exercise due and reasonable care in supplying labor and materials to the Subject  
15 Property.

16           53.       Third-Party Defendants also had a legal duty to abide by local construction  
17 practices, industry standards, governmental codes and restrictions, manufacturers requirements,  
18 Clark County Building Codes, product specifications and/or the laws of the State of Nevada.

19           54.       If the Subject Property is defectively designed, developed and/or constructed,  
20 Third-Party Defendants, and each of them, are responsible for such defects, in that they failed to  
21 act reasonably in the supplying of materials to the Subject Property, thereby breach their duty  
22 owed to Third-Party Plaintiff, WLHI.

23           55.       If the Subject Property is ultimately found by the trier of fact to have been  
24 defectively designed, developed and/or constructed as alleged by Plaintiffs' Complaint, the acts  
25 or omissions of Third-Party Defendants, and each of them, were the direct and proximate cause  
26 of any and all damages incurred by Third-Party Plaintiff.

1           56.       Third-Party Plaintiff is informed, and believes, and thereon alleges that Plaintiffs'  
2 damages, if any, were proximately caused by Third-Party Defendants, and each of them, and that  
3 said Third-Party Defendants are liable for the damages sought by Plaintiffs in their Complaint.

4           57.       The breaches of the aforementioned duties by each Third-Party Defendant, as  
5 described above, were and are the actual and proximate cause of damages to WLHI, in excess of  
6 \$10,000.00.

7           58.       It has been necessary for WLHI to retain the services of READE &  
8 ASSOCIATES to defend and bring this action and, therefore, WLHI is entitled to recover  
9 attorney fees and costs herein, pursuant to NRS 18.010 and Nevada Law.

10                               **EIGHTH CLAIM FOR RELIEF**

11                               **(Declaratory Relief)**

12           59.       Third-Party Plaintiff repeats and realleges the preceding paragraphs 1 through 58  
13 as though they were fully set forth at length herein.

14           60.       A dispute has arisen and actual controversy now exists between Third-Party  
15 Plaintiff and Third-Party Defendants, and each of them, as to their rights and liabilities with  
16 respect to any ultimate responsibility in the underlying action, and with respect to the right to  
17 receive, or duty to give, indemnification in proportion to their comparative fault, if any.  
18 WILLIAM LYON HOMES, INC. contends that if it suffers judgment in the underlying action,  
19 or if it pays monies by way of reasonable compromise of said claim, WLHI is entitled to be  
20 indemnified by Third-Party Defendants and to judgment over and against them, to the extent of  
21 Third-Party Defendants' negligence, fault, and/or liability in the underlying action WLHI is  
22 informed and beliefs that Third-Party Defendants contend to the contrary. Therefore, an actual  
23 controversy exists relative to the legal duties and rights of the respective parties pursuant to their  
24 written, oral, and/or implied agreements, which controversy WLHI requests the Court to resolve.

25           61.       All of the rights and obligations of the parties hereto arose out of what is actually  
26 one transaction or one series of transactions, happenings, or events, all of which can be settled  
27 and determined in a judgment in this one action. Third-Party Plaintiff WLHI alleges that an  
28

1 actual controversy exists between the parties to the Third-Party Complaint under the  
 2 circumstances alleged. A declaration of rights, responsibilities, and obligations of Third-Party  
 3 Plaintiff and Third-Party Defendants, and each of them, is essential to determine their respective  
 4 obligations in connection with the principal action and the Third-Party Complaint. Third-Party  
 5 Plaintiff has no true and speedy remedy at law of any kind.

6 62. It has been necessary for WLHI to retain the services of READE &  
 7 ASSOCIATES to defend and bring this action and, therefore, WLHI is entitled to recover  
 8 attorney fees and costs herein, pursuant to NRS 18.010 and Nevada Law.

9 WHEREFORE, Third-Party Plaintiff WILLIAM LYON HOMES, INC. prays for relief  
 10 as follows:

- 11 1. For general and special damages in excess of \$10,000.00
- 12 2. That this Court declare that Third-Party Plaintiff has a right of equitable  
 13 indemnity for all amounts that it is required to pay by way of settlement, compromise, judgment  
 14 or award;
- 15 3. That this Court declare that Third-Party Plaintiff has a right of express indemnity  
 16 for all amounts that it is required to pay by way of settlement, compromise, judgment or award;
- 17 4. That this Court declare that Third-Party Plaintiff has a right of contribution from  
 18 Third-Party Defendants for all amounts that it is required to pay by way of settlement,  
 19 compromise, judgment or award;
- 20 5. For pre-judgment interest; reasonable attorney's and expert's fees;
- 21 6. For consequential damages in excess of \$10,000.00;
- 22 7. For incidental damages in excess of \$10,000.00;
- 23 8. For an apportionment of liability among the Third-Party Defendants, and each of  
 24 them; award of reasonable attorney's fees
- 25 9. For a declaration of rights and obligations as between Third-Party Plaintiff and  
 26 Third-Party Defendants, and each of them;
- 27 10. For contribution pursuant to NRS 17.255; and
- 28

11. For such other relief as this Court may deem just, equitable, and proper.

DATED this \_\_\_\_\_ day of May, 2011.

READE & ASSOCIATES

By: 

R. CHRISTOPHER READE, ESQ.

Nevada Bar No. 006791

ROBERT N. EATON, ESQ.

Nevada Bar No. 009547

4560 South Decatur Blvd., Suite 201

Las Vegas, Nevada 89103

Tel: (702) 794-4411

Fax: (702) 794-4421

Attorneys for Defendants/Third-Party Plaintiffs

WILLIAM LYON HOMES, INC.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I hereby certify that I am an employee of READE & ASSOCIATES, and that on the 3<sup>rd</sup> day of <sup>June</sup> ~~May~~, 2011, I served a true and correct copy of the WILLIAM LYON HOMES, INC'S ANSWER AND AMENDED THIRD-PARTY COMPLAINT pursuant to the Electronic Filing Order on file herein.

  
An Employee of Reade & Associates

# Exhibit 60

# Exhibit 60

ORIGINAL

1 COMP

2 ROGER J. GRANT, ESQ., NVB: 004103

3 CHARLES M. LITT, ESQ., NVB: 006040

4 BRUCE MAYFIELD, ESQ., NVB: 007440

5 FEINBERG GRANT MAYFIELD KANEDA &amp; LITT, LLP

6 1955 Village Center Circle

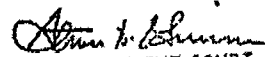
7 Las Vegas, Nevada 89134

8 (702) 947-4900 / (702) 947-4901 FAX

9 Attorneys for Plaintiff

FILED

JAN 22 3 55 PM '10

  
 CLERK OF THE COURT

## DISTRICT COURT

## CLARK COUNTY, NEVADA

 11 SUN CITY ANTHEM COMMUNITY  
 12 ASSOCIATION, INC., a Nevada non-profit  
 13 corporation

14 Plaintiff,

15 v.

 16 DEL WEBB COMMUNITIES, INC., an  
 17 Arizona corporation; DOES 1 through 100;

18 Defendants.

CASE NO.: A-10-608708-D

DEPT. NO.: XVI

## COMPLAINT

A-10-608708-D  
647423
 18 COMES NOW Plaintiff SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC.  
 19 by and through its attorneys FEINBERG GRANT MAYFIELD KANEDA & LITT, LLP, and  
 20 for its causes of action against Defendants, and each of them, alleges as follows:

 21 1. Plaintiff SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC.  
 22 (hereinafter "Plaintiff" or "Association") at all times herein mentioned, is and was incorporated  
 23 as a non-profit Nevada corporation with its principal place of business within Clark County,  
 24 Nevada. The Association is composed of owners of residences, improvements, appurtenances,  
 25 and structures built and existing upon certain parcels of real property all as more particularly  
 26 described in the Declaration of Covenants, Conditions & Restrictions, and any amendments  
 27 thereto, recorded with the Clark County Recorder hereinafter referred to as "Association  
 28 Development".

 PRECEIVED  
 JAN 22 2010  
 CLERK OF THE COURT

 FEINBERG GRANT MAYFIELD  
 KANEDA & LITT, LLP  
 1955 Village Center Circle  
 Las Vegas, Nevada 89134  
 (702) 947-4900

ISIC 5886

AA001673



2. By the express terms of the governing documents and pursuant to Nevada Revised Statutes, Chapter 116 of the Common Interest Ownership Act, Plaintiff is granted the general authority and responsibility to bring the herein stated action on behalf of all homeowners within the Association Development.

3. Plaintiff, in accordance with its governing documents, has the sole and exclusive right and duty to manage, operate, control, repair, replace and restore the Association Development, including the right to enter into contracts to accomplish its duties and obligations, and have all of the powers necessary to carry out its rights and obligations, including the right, duty, and power to contract for legal services to prosecute any action affecting the Association when such action is deemed by it necessary to enforce its powers, rights and obligations, including the bringing of this action. Pursuant to Nevada Revised Statutes, Chapter 116 of the Common Interest Ownership Act, Plaintiff seeks recovery for damages to the property which consists of but is not limited to damages to the common areas, and/or damages to the separate interests within the Association's common interest, power and standing pursuant to Nevada law.

4. Plaintiff is informed and believes, and thereon alleges that, at all times herein mentioned, Defendant DEL WEBB COMMUNITIES, INC., an Arizona corporation, was engaged in and doing business in Clark County, Nevada, including but not limited to development, construction, improvement, and/or sale of the Association Development.

5. Defendant DOES 1 through 100, inclusive, whether individual, corporate, associate or otherwise are sued by these fictitious names and whose true names and capacities, at this time, are unknown to Plaintiff. Plaintiff is informed and believes and thereupon alleges that at all times herein mentioned each of the Defendants sued herein as DOES 1 through 100 was the agent, servant, and employee of his, her or its co-Defendants, and in doing the things hereinafter mentioned was acting in the scope of his, her or its authority as such agent, servant, and employee, and with the permission, consent and/or ratification of his, her or its co-Defendants; and that each of said fictitiously named Defendants, whether an individual, corporation, association, or otherwise, is in some way liable or responsible to the Plaintiff on the facts hereinafter alleged, and caused injuries and damages proximately thereby as hereinafter

1 alleged. At such time as Defendants' true names become known to Plaintiff, Plaintiff will  
2 amend this Complaint to insert said true names and capacities.

3 6. Plaintiff is informed and believes and thereupon alleges that Defendant DEL  
4 WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, were and at all times  
5 herein mentioned are, engaged in the mass production of homes and appurtenances for sale and  
6 use by members of the general public, and that Defendants and each of them, participated in the  
7 development, construction and/or sale of the homes, appurtenances, and improvements for the  
8 Association Development.

9 7. Plaintiff is informed and believes and thereupon alleges that Defendant DEL  
10 WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, as developers, sellers and/or  
11 builders developed the Association Development and subject residential structures, which  
12 structures were intended to be used as residential dwellings; that at all times herein mentioned,  
13 said Defendants acted as developers of the Association Development for the purpose set forth  
14 herein.

15 8. Plaintiff is informed and believes and based thereon alleges that Defendant DEL  
16 WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, as developers, sellers and/or  
17 builders of the Association Development, knew that the homes, appurtenances, and structures  
18 would be sold to and be used by members of the general public for the purpose of residences  
19 and said Defendants knew or reasonably should have known that the persons who would  
20 purchase said units would do so without inspection for the defects set forth herein.

21 9. Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100,  
22 inclusive, at all times herein mentioned, were and are merchants with respect to the subject  
23 Association Development and said Defendants, and each of them, impliedly warranted that the  
24 real property and structures thereon were of merchantable quality and were constructed in a  
25 reasonable and workmanlike manner.

26 10. Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100,  
27 inclusive, as developers, mass-developers, mass-constructors and mass-producers of the  
28

1 Association Development are liable and responsible to Plaintiff for all damages suffered as a  
2 result of the deficiencies set forth herein.

3 11. Within three years past, Plaintiff discovered the Association Development has  
4 been and is experiencing defective conditions of the real property and structures thereon, and  
5 that said components are not of merchantable quality nor were they designed, erected,  
6 constructed or installed in a workmanlike manner but instead, are defective and, as now known,  
7 the subject components demonstrate improper, nonexistent, and/or inadequate design,  
8 construction, manufacture, and/or installation. Plaintiff is informed and believes and thereupon  
9 alleges that the structures may be additionally defective in ways and to an extent not precisely  
10 known, but which will be established at the time of trial, according to proof.

11 12. Plaintiff has complied with all prefiling requirements of Nevada Revised Statutes  
12 §40.600 through §40.695, Nevada Revised Statutes Chapter 116, and the Association's  
13 governing documents.

14 13. Plaintiff is informed and believes and based thereon alleges that the items  
15 generally referred to and particularly described herein were "known deficiencies" within the  
16 meaning of Nevada Revised Statutes §11.203. Plaintiff, at all times herein mentioned, relied  
17 on the skill of Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100,  
18 inclusive, in producing homes and appurtenances thereto that are reasonably fit for their  
19 intended purpose.

20 14. Plaintiff is still not fully aware of all of the causes, the full extent and possible  
21 legal significance of the results or causes of the property conditions herein above-described due  
22 to the loss being continual and latent in nature. Plaintiff is an organization of lay individuals  
23 who have required expert consultations to provide a review of the property conditions. Plaintiff  
24 is still not informed of any causes or entire results of the full extent of these latent deficiencies,  
25 nor is Plaintiff fully informed of the potential causes of the resultant distress due to the loss  
26 being continual and latent in nature.

27 15. Plaintiff is informed and believes and thereon alleges that Defendant DEL WEBB  
28 COMMUNITIES, INC., and DOES 1 through 100, inclusive, did inspect and market said homes

1 and appurtenances with full knowledge of the causes and effects of defects in the construction  
 2 of the Association Development, the deficiencies in design, installation and supervision thereof  
 3 and, in willful and reckless disregard of the defective conditions, causes and results. In  
 4 particular, Plaintiff is informed and believes and thereon alleges that said Defendants in the  
 5 inspection, design, installation and supervision of Association Development, engaged in a  
 6 calculated course of conduct to reduce the costs of development by the use of substandard,  
 7 deficient and inadequate design, and construction techniques and materials and concealed said  
 8 defects from Plaintiff and its members.

9 16. Plaintiff is informed and believes and thereon alleges Defendant DEL WEBB  
 10 COMMUNITIES, INC., and DOES 1 through 100, inclusive, ignored curing the causes of the  
 11 defects and pursued a course of development and construction of the Association Development  
 12 so as to increase their profit from the project at the expense of the ultimate purchaser in that said  
 13 defects were known to Defendants, were latent defects, and were not apparent to Plaintiff from  
 14 a casual inspection.

15 17. Plaintiff is informed and believes and based thereon alleges that any and all repair  
 16 attempts by Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100,  
 17 inclusive, failed to adequately correct said property damages and deficiencies thereby resulting  
 18 in further property damages caused thereby.

19 18. Plaintiff is informed and believes and thereupon alleges that instead of causing the  
 20 necessary and required reconstruction and repair of the Association Development, Defendant  
 21 DEL WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, have caused cosmetic,  
 22 temporary or ineffective repairs to be made to various portions of the Association Development  
 23 for the purpose of leading Plaintiff and its members to believe that said Defendants were  
 24 resolving and correcting all deficiencies. By virtue of such conduct, said Defendants are  
 25 estopped to assert that the Plaintiff has not commenced this action in a timely fashion and are  
 26 further estopped to assert that the Plaintiff may not seek the damages herein sought.

27 19. Plaintiff is informed and believes and thereupon alleges that the above-described  
 28 defects arose out of, were attributable to, and are directly and proximately caused by the above-

1 described deficiency in the design, specification, planning, supervision, observation of  
 2 construction, development and/or improvement and any repairs of the Association Development,  
 3 and that prior to the time when it was discovered by Plaintiff as set forth herein, could not have  
 4 been discovered by the exercise of reasonable diligence.

#### 5 FIRST CAUSE OF ACTION

#### 6 **(Breach of Implied Warranties Against Del Webb Communities, Inc., 7 and Does 1 Through 100, Inclusive)**

8 20. Plaintiff realleges and incorporates by reference Paragraphs 1 through 19,  
 9 inclusive, as though fully set forth herein.

10 21. Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100,  
 11 inclusive, impliedly warranted that the Association Development was designed and constructed  
 12 in accordance with applicable law, according to sound standards of engineering and construction,  
 13 in a commercially reasonable, habitable and workmanlike manner and free from defective  
 14 materials when said Defendants offered units of the project for sale to the general public as new  
 15 construction.

16 22. DEL WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive,  
 17 impliedly warranted that the Association Development was of merchantable quality and fit for  
 18 its intended purposes as residences and appurtenances without significant defective causes,  
 19 effects, or conditions un-remedied or unrepaired by said Defendants.

20 23. Plaintiff is informed and believes and thereon alleges that the subject structures  
 21 and subject premises were not constructed in accordance with applicable law or according to  
 22 sound standards of engineering and construction, were not constructed in a workmanlike manner,  
 23 were not free from defective materials, and were not of proper durability, reliability, habitability,  
 24 merchantability, and/or general quality and not fit for their intended use all as herein described.

25 24. Plaintiff is informed and believes and thereupon alleges that as a direct and  
 26 proximate result of the defects set forth herein, Plaintiff has suffered damages in an amount  
 27 precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and  
 28 will hereafter be required to perform works of repair, restoration, and construction to portions



1 of the structures to prevent further damages and to restore the structures to their proper condition.  
 2 Plaintiff will establish the precise amount of such damages at trial, according to proof, for the  
 3 following damages:

- 4 a. The cost of any repairs already made;
- 5 b. The cost of any repairs yet to be made that are necessary to cure any  
 6 construction defect;
- 7 c. The expenses of temporary housing reasonably necessary during the repair;
- 8 d. The loss of the use of all or any part of the residence;
- 9 e. The value of any other property damaged by the construction defect;
- 10 f. The reduction in market value of the residences;
- 11 g. Any additional costs incurred by the Plaintiff, including, but not  
 12 limited to, any costs and fees incurred for the retention of experts;
- 13 h. Any reasonable attorney's fees;
- 14 i. Any interest provided by statute.

#### 15 SECOND CAUSE OF ACTION

#### 16 (Breach of Express Warranties Against Del Webb Communities, Inc., 17 and Does 1 Through 100, Inclusive)

18 25. Plaintiff realleges and incorporates by reference paragraphs 1 through 24,  
 19 inclusive, as though fully set forth herein.

20 26. Plaintiff is informed and believes and based thereon alleges Defendant DEL  
 21 WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, expressly warranted  
 22 through sales brochures of the subject premises, related advertising circulars and materials; and  
 23 through the contracts of sale and related sales warranty information regarding the subject  
 24 premises, that the Association Development was designed and constructed in a commercially  
 25 reasonable and habitable manner when Defendant DEL WEBB COMMUNITIES, INC., and  
 26 DOES 1 through 100, inclusive, offered the homes and appurtenances of the Association  
 27 Development for sale to the general public for use as residences.

28 ...

27. Plaintiff's members relied on Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, express representations that these homes and appurtenances were marketed for sale to the general public, and thus of merchantable quality suitable for their intended purpose, without major, significant defective causes, effects or conditions, un-remedied or unrepaired by said Defendants.

28. Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, breached these express warranties by selling the homes and appurtenances of the Association Development with the above-described deficiencies in the design, specification, planning supervision, observation of construction, development and/or improvement and repair of the Association Development.

29. As a direct and proximate result of the breach of the express warranties by Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100, inclusive, as herein above alleged, Plaintiff and its members suffered damages stemming from the construction defects at the real property and structures thereon.

30. Plaintiff is informed and believes and thereupon alleges that as a direct and proximate result of the breaches set forth herein, Plaintiff has suffered damages in an amount precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and will hereafter be required to perform investigations and works of repair, restoration, and construction to portions of the structures to prevent further damage and to restore the structures to their proper condition and/or will suffer damages in an amount the full nature and extent of which shall be ascertained according to proof at trial.

### THIRD CAUSE OF ACTION

(Negligence Against Del Webb Communities, Inc.,  
and Does 1 Through 100, Inclusive)

31. Plaintiff realleges and incorporates by reference Paragraphs 1 through 30, inclusive, as though fully set forth herein.

32. Plaintiff is informed and believes and thereupon alleges that Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100, were and are builders, contractors,



1 general contractors, subcontractors, suppliers, material men, architects and/or engineers, or other  
2 persons, entities or professionals who participated in the process of design, engineering,  
3 manufacture, and/or construction of homes, appurtenances, buildings, improvements and  
4 structures of the Association Development and who performed works of labor, supplied  
5 materials, equipment and/or services necessary for the building and construction, including  
6 supervision of construction of the Association Development with the knowledge that the homes  
7 and appurtenances thereto would be sold to and used by members of the public. In so doing, said  
8 Defendants in the capacity as builder, contractor, subcontractor, supplier, material men, architect,  
9 engineer, seller and/or general contractor or otherwise, caused the subject premises and subject  
10 structures to be designed, engineered and/or constructed through their own works of labor, their  
11 supplying of materials, equipment and services, and through causing other contractors and  
12 subcontractors, including other Defendants to perform works of labor, to supply materials,  
13 equipment and services in order to properly complete the Association Development and subject  
14 structures so that it could be sold to and used by members of the public.

15 33. Plaintiff is informed and believes and thereupon alleges the Defendant DEL  
16 WEBB COMMUNITIES, INC., and DOES 1 through 100, whether builder, contractor,  
17 subcontractor, supplier, material men, architect, engineer or otherwise, negligently, carelessly,  
18 tortiously and wrongfully failed to use reasonable care in the analysis, preparation, design,  
19 manufacture, construction, and/or installation of the real property and structures thereon.

20 34. Plaintiff is informed and believes and thereupon alleges the Defendant DEL  
21 WEBB COMMUNITIES, INC., and DOES 1 through 100, whether builder, contractor,  
22 subcontractor, supplier, material men, architect, engineer or otherwise, performed work, labor  
23 and/or services for the construction of the Association Development, and each knew or should  
24 have known that if the Association Development was not properly or adequately designed,  
25 engineered, supervised and/or constructed, that the owners and users would be substantially  
26 damaged thereby, and that the homes, appurtenances, buildings, improvements and structures  
27 would be defective and not of merchantable quality.

28

1           35. That Defendant DEL WEBB COMMUNITIES, INC., and DOES 1 through 100,  
 2 were under a duty to exercise ordinary care as builder, contractor, subcontractor, supplier,  
 3 material men, architect, engineer or otherwise to avoid reasonably foreseeable injury to users and  
 4 purchasers of the homes, appurtenances, buildings, improvements and structures, and knew or  
 5 should have foreseen with reasonable certainty that purchasers and/or users would suffer the  
 6 damages set forth herein if said Defendants, and each of them, failed to perform their duty to  
 7 cause the subject premises and subject structures to be designed, engineered and constructed in  
 8 a proper workmanlike manner and fashion.

9           36. In performing the works of a builder and/or contractor, subcontractor, supplier,  
 10 material man, architect, engineer or otherwise, Defendant DEL WEBB COMMUNITIES, INC.,  
 11 and DOES 1 through 100, inclusive, breached their duty owed to Plaintiff and neglected to  
 12 perform the work, labor and services properly or adequately in that each said Defendant so  
 13 negligently, carelessly and in an unworkmanlike manner performed the aforesaid work, labor  
 14 and/or services such that the subject premises and subject structures as described herein were  
 15 designed, engineered and/or constructed improperly, negligently, carelessly and/or in an  
 16 unworkmanlike manner.

17           37. Plaintiff is informed and believes and thereupon alleges that as a direct and  
 18 proximate result of the conduct described herein, Plaintiff has suffered damages in an amount  
 19 precisely unknown, but believed to be within the jurisdiction of this Court in that it has been and  
 20 will hereinafter be required to perform investigations and works of repair, restoration, and  
 21 construction to portions of the structures to prevent further damage and to restore the structures  
 22 to their proper condition and/or will suffer damages in an amount the full nature and extent of  
 23 which shall be ascertained according to proof at trial.


24           WHEREFORE, judgment is prayed for herein against Defendant DEL WEBB  
 25 COMMUNITIES, INC., and DOES 1 through 100, inclusive, and each of them, as follows:

- 26           1. For general and special damages in excess of \$10,000.00;
- 27           2. For prejudgment interest;
- 28           3. For cost of suit and attorneys' fees incurred by Plaintiff herein; and

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

2 DATED this 22<sup>nd</sup> day of January, 2010.

3 FEINBERG GRANT MAYFIELD  
4 KANEDA & LITT, LLP

5  
6 By:   
7 ROGER J. GRANT, ESQ.; NVB: 004103  
8 CHARLES M. LITT, ESQ.; NVB: 006040  
9 BRUCE MAYFIELD, ESQ.; NVB: 007440  
10 1955 Village Center Circle  
11 Las Vegas, Nevada 89134

12 Attorneys for Plaintiff  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit 61

# Exhibit 61

Electronically Filed  
03/18/2010 01:12:49 PM

  
CLERK OF THE COURT

TPC

1 JASON W. WILLIAMS, ESQ.

2 Nevada Bar No. 8310

3 [jason.williams@knchlaw.com](mailto:jason.williams@knchlaw.com)

4 KOELLER, NEBEKER, CARLSON

5 & HALUCK, LLP

6 300 South Fourth Street, Suite 500

7 Las Vegas, NV 89101

8 Phone: (702) 853-5500

9 Fax: (702) 853-5599

10 Attorneys for Defendant/Third-Party Plaintiff

11 DEL WEBB COMMUNITIES, INC.

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 SUN CITY ANTHEM COMMUNITY )  
15 ASSOCIATION, INC., a Nevada non- )  
16 profit corporation, )

17 Plaintiff, )

18 vs. )

19 DEL WEBB COMMUNITIES, INC., an )  
20 Arizona corporation; DOES 1 through )  
21 100, )

22 Defendants. )

CASE NO.: A-10-608708-D

DEPT NO.: XVI

DEL WEBB COMMUNITIES, INC.'S  
THIRD-PARTY COMPLAINT

23 DEL WEBB COMMUNITIES, INC., an )  
24 Arizona corporation, )

25 Third-Party Plaintiff, )

26 vs. )

27 A&A ASPHALT PAVING, LLC, a )  
28 Nevada limited liability company; )

ADAMS BROS. INTERIORS OF )

NEVADA, INC., a Nevada corporation; )

AFFORDABLE TRACTOR SERVICE, )

LLC, a Nevada limited liability company; )

AMERICAN ASPHALT & GRADING )

COMPANY, a Nevada corporation; )

1 ATRIUM DOOR AND WINDOW )  
 2 COMPANY OF ARIZONA, fka )  
 3 MASTERVIEW WINDOW )  
 4 COMPANY, LLC, a Delaware )  
 5 corporation; BOB'S CONSTRUCTION, )  
 6 INC., a Nevada corporation; )  
 7 CAMPBELL CONCRETE, INC., a )  
 8 Nevada corporation; CAMPBELL )  
 9 CONCRETE OF NEVADA, INC., a )  
 10 Nevada corporation; CEDCO, INC., a )  
 11 Nevada corporation; CEDCO )  
 12 LANDSCAPE, INC., a Nevada )  
 13 corporation; CEDCO IRON, INC., a )  
 14 Nevada corporation; CHIEF )  
 15 CONCRETE, INC., a Nevada )  
 16 corporation; COLOR COUNTRY )  
 17 COUNTERTOPS, INC., a Utah )  
 18 corporation; D-JONS COUNTERTOP )  
 19 SPECIALISTS, INC., a Nevada )  
 20 corporation; DAN BRADLEY GLASS )  
 21 SHOP, INC., a Nevada corporation; E/G )  
 22 MANAGEMENT, INC., an Arizona )  
 23 corporation; SOUND AND SECURE, )  
 24 INC., dba EAGLE SENTRY, INC., a )  
 25 Nevada corporation; EFFICIENT )  
 26 ENTERPRISES, LLC, dba EFFICIENT )  
 27 ELECTRIC, a Nevada limited liability )  
 28 company; EXECUTIVE PLASTERING, )  
 INC., a Nevada corporation; BUILDER )  
 SERVICES GROUP, INC., fka GALE )  
 INDUSTRIES, INC., a Florida )  
 corporation; GOTHIC LANDSCAPING, )  
 INC., a California corporation; )  
 HARRISON DOOR COMPANY, a )  
 Nevada corporation; J.R. MERANTO )  
 CONSTRUCTION, INC., a Nevada )  
 corporation; JAYNES CORPORATION, )  
 a New Mexico corporation; KORTE )  
 CONSTRUCTION COMPANY, fka )  
 KORTE-BELLEW & ASSOCIATES )  
 CONSTRUCTION COMPANY, a )  
 Missouri corporation; LANDSCAPE )  
 SERVICES, INC., a Nevada corporation; )  
 LEWIS ENTERPRISES, INC. dba )  
 LEWIS LANDSCAPE DESIGN, a )  
 Nevada corporation; M S CONCRETE )

CO., INC., a Nevada corporation; )  
 1 NATIVE RESOURCES NEVADA, )  
 2 LLC, a Nevada limited liability company; )  
 3 NEVADA COUNTERTOP )  
 CORPORATION, a Nevada corporation; )  
 4 PETE KING NEVADA )  
 CORPORATION, an Arizona )  
 5 corporation; PETE KING )  
 CORPORATION, an Arizona )  
 6 corporation; PRATTE DEVELOPMENT )  
 CO., INC., a Nevada corporation; R&O )  
 7 CONSTRUCTION COMPANY, a Utah )  
 corporation; R.A.M.M. CORP., a )  
 8 Nevada corporation; SELECTBUILD )  
 NEVADA, INC., fka CAMPBELL )  
 9 CONCRETE, INC., SOUTHERN )  
 NEVADA PAVING, INC., a Nevada )  
 10 corporation; STEWART & SUNDELL )  
 11 CONCRETE, INC., a Nevada )  
 corporation; SUNLAND, INC. – )  
 12 ASPHALT & SEALCOATING, dba )  
 SUNLAND ASPHALT, an Arizona )  
 13 corporation; TEJAS UNDERGROUND, )  
 14 LLC, a Nevada limited liability company; )  
 WESLEY CORPORATION, a Nevada )  
 15 corporation; WESTERN STATES )  
 CONTRACTING, a Nevada corporation; )  
 16 WESTERN STATES GLASS AND )  
 BUILDING PRODUCTS, INC., a )  
 17 Nevada corporation; WILLIS ROOF )  
 CONSULTING, INC., a Nevada )  
 18 corporation; WOLSELEY NA )  
 19 CONSTRUCTION SERVICES, LLC, )  
 fka EFFICIENT ENTERPRISES, INC., a )  
 20 Virginia limited liability company; a )  
 Delaware corporation; and ROES 1-250, )  
 21

22 Third-Party Defendants.

23 COMES NOW Third-Party Plaintiff Del Webb Communities, Inc. (hereinafter "Third-  
 24 Party Plaintiff"), by and through its attorneys Koeller, Nebeker, Carlson & Haluck, LLP, and  
 25 hereby states its Third-Party Complaint against A&A Asphalt Paving, LLC, Adams Bros  
 26 Interiors of Nevada, Inc., Affordable Tractor Service LLC, American Asphalt & Grading  
 27  
 28



1 Company, Atrium Door and Window Company of Arizona, fka Masterview Window Company  
 2 LLC, Bob's Construction, Inc., Builder Services Group, Inc., f/k/a Gale Industries, Inc.,  
 3 Campbell Concrete of Nevada, Inc., Campbell Concrete, Inc., Cedco Iron, Inc., Cedco  
 4 Landscape, Inc., Cedco, Inc., Chief Concrete, Inc., Color Country Countertops, Inc., Dan  
 5 Bradley Glass Shop, Inc., D-Jons Countertop Specialists, Inc., E/G Management, Inc., Efficient  
 6 Enterprises, LLC dba Efficient Electric, Executive Plastering, Inc., Gothic Landscaping, Inc.,  
 7 Harrison Door Company, J.R. Meranto Construction, Inc., Jaynes Corporation, Korte  
 8 Construction Company f/k/a Korte-Bellew & Associates Construction, Landscape Services,  
 9 Inc., Lewis Enterprises, Inc. dba Lewis Landscape Design, a Nevada corporation, M S  
 10 Concrete Co., Inc., Native Resources Nevada, LLC, Nevada Countertop Corporation, Pete  
 11 King Corporation, Pete King Nevada Corporation, Pratte Development Co., Inc., R&O  
 12 Construction Company, R.A.M.M. Corp., SelectBuild Nevada, Inc., f/k/a Campbell Concrete,  
 13 Inc., Sound and Secure, Inc., dba Eagle Sentry, Inc., Southern Nevada Paving, Inc., Stewart &  
 14 Sundell Concrete, Inc., Tejas Underground LLC, Wesley Corporation, Western States  
 15 Contracting, Western States Glass and Building Products, Inc., Willis Roof Consulting, Inc.,  
 16 Wolseley NA Construction Services, LLC, fka Efficient Enterprises, Inc., and ROES 1-250  
 17 (hereinafter collectively "Third-Party Defendants"), states and alleges as follows:

#### 18 GENERAL ALLEGATIONS

19 1. Third-Party Plaintiff is a corporation organized under the laws of the State of  
 20 Arizona and is, and at all times relevant herein, was authorized to do business in the State of  
 21 Nevada.

22 2. At all times relevant herein, each of the Third-Party Defendants were entities  
 23 doing business in the State of Nevada and performed architectural, engineering, or construction  
 24 related work and/or supplied materials for the construction on or around the duplex homes,  
 25 recreation centers, and/or common areas located within the residential development known as  
 26 Sun City Anthem, located in the City of Henderson, County of Clark, State of Nevada.

1           3. Each of the Third-Party Defendants were architects, engineers, suppliers,  
2 manufacturers or subcontractors who performed engineering, architectural or construction  
3 activities for the duplex homes, recreation centers, and/or common areas located within and  
4 throughout the Sun City Anthem Development, or who supplied or provided to one of the  
5 other architects, engineers or subcontractors materials and/or other items which were installed  
6 into and/or became a part of one, some, or all of the duplex homes, recreation centers, and/or  
7 common areas within and throughout the Sun City Anthem development.

8           4. Third-Party Defendant, A&A Asphalt Paving, LLC, a dissolved Nevada  
9 Limited-Liability Company, was at all times material hereto, a legal entity doing business in  
10 Nevada who designed, engineered and/or performed the work for, construction of, and/or  
11 installation of or supplied materials to the duplex homes, recreation centers, and/or common  
12 areas located within the Sun City Anthem Development.

13           5. Third-Party Defendant, Adams Brothers Interiors of Nevada, Inc., an active  
14 Nevada Corporation, is and was at all times material hereto, a legal entity doing business in  
15 Nevada who designed, engineered and/or performed the work for, construction of, and/or  
16 installation of or supplied materials to the duplex homes, recreation centers, and/or common  
17 areas located within the Sun City Anthem Development.

18           6. Third-Party Defendant, Affordable Tractor Service LLC, an active Nevada  
19 Limited-Liability Company, is and was at all times material hereto, a legal entity doing  
20 business in Nevada who designed, engineered and/or performed the work for, construction of,  
21 and/or installation of or supplied materials to the duplex homes, recreation centers, and/or  
22 common areas located within the Sun City Anthem Development.

23           7. Third-Party Defendant, American Asphalt & Grading Company, an active  
24 Nevada Corporation, is and was at all times material hereto, a legal entity doing business in  
25 Nevada who designed, engineered and/or performed the work for, construction of, and/or  
26 installation of or supplied materials to the duplex homes, recreation centers, and/or common  
27 areas located within the Sun City Anthem Development.

28

1           8.     Third-Party Defendant, Atrium Door & Window Company of Arizona, an  
2 active Delaware Corporation, formerly known as Masterview Window Company LLC, is and  
3 was at all times material hereto, a legal entity doing business in Nevada who designed,  
4 engineered and/or performed the work for, construction of, and/or installation of or supplied  
5 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
6 City Anthem Development.

7           9.     Third-Party Defendant, Bob's Construction, Inc., a dissolved Nevada  
8 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
9 designed, engineered and/or performed the work for, construction of, and/or installation of or  
10 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
11 the Sun City Anthem Development.

12          10.    Third-Party Defendant, Builder Services Group, Inc., an active Florida  
13 Corporation, formerly known as Gale Industries, Inc., is and was at all times material hereto, a  
14 legal entity doing business in Nevada who designed, engineered and/or performed the work  
15 for, construction of, and/or installation of or supplied materials to the duplex homes, recreation  
16 centers, and/or common areas located within the Sun City Anthem Development.

17          11.    Third-Party Defendant, Campbell Concrete, Inc., a dissolved California  
18 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
19 designed, engineered and/or performed the work for, construction of, and/or installation of or  
20 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
21 the Sun City Anthem Development.

22          12.    Third-Party Defendant, Campbell Concrete of Nevada, Inc., a dissolved Nevada  
23 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
24 designed, engineered and/or performed the work for, construction of, and/or installation of or  
25 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
26 the Sun City Anthem Development.

1           13. Third-Party Defendant, Cedco Iron, Inc., a dissolved Nevada Corporation, was  
2 at all times material hereto, a legal entity doing business in Nevada who designed, engineered  
3 and/or performed the work for, construction of, and/or installation of or supplied materials to  
4 the duplex homes, recreation centers, and/or common areas located within the Sun City  
5 Anthem Development.

6           14. Third-Party Defendant, Cedco Landscape, Inc., a dissolved Nevada  
7 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
8 designed, engineered and/or performed the work for, construction of, and/or installation of or  
9 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
10 the Sun City Anthem Development.

11           15. Third-Party Defendant, Cedco, Inc., is and was at all times material hereto, a  
12 legal entity doing business in Nevada who designed, engineered and/or performed the work  
13 for, construction of, and/or installation of or supplied materials to the duplex homes, recreation  
14 centers, and/or common areas located within the Sun City Anthem Development.

15           16. Third-Party Defendant, Chief Concrete, Inc., an active Nevada Corporation, is  
16 and was at all times material hereto, a legal entity doing business in Nevada who designed,  
17 engineered and/or performed the work for, construction of, and/or installation of or supplied  
18 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
19 City Anthem Development.

20           17. Third-Party Defendant, Color Country Countertops, Inc., an inactive Utah  
21 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
22 designed, engineered and/or performed the work for, construction of, and/or installation of or  
23 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
24 the Sun City Anthem Development.

25           18. Third-Party Defendant, Dan Bradley Glass Shop, Inc., an active Nevada  
26 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
27 who designed, engineered and/or performed the work for, construction of, and/or installation of  
28

1 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
2 within the Sun City Anthem Development.

3 19. Third-Party Defendant, D-Jons Countertop Specialist, Inc., an inactive Nevada  
4 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
5 designed, engineered and/or performed the work for, construction of, and/or installation of or  
6 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
7 the Sun City Anthem Development.

8 20. Third-Party Defendant, Sound & Secure, Inc., an active Nevada Corporation,  
9 doing business as Eagle Sentry, is and was at all times material hereto, a legal entity doing  
10 business in Nevada who designed, engineered and/or performed the work for, construction of,  
11 and/or installation of or supplied materials to the duplex homes, recreation centers, and/or  
12 common areas located within the Sun City Anthem Development.

13 21. Third-Party Defendant, E/G Management, Inc., an inactive Arizona  
14 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
15 designed, engineered and/or performed the work for, construction of, and/or installation of or  
16 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
17 the Sun City Anthem Development.

18 22. Third-Party Defendant, Efficient Enterprises, LLC, an active Nevada Limited  
19 Liability Company, doing business as Efficient Electric, is and was at all times material hereto,  
20 a legal entity doing business in Nevada who designed, engineered and/or performed the work  
21 for, construction of, and/or installation of or supplied materials to the duplex homes, recreation  
22 centers, and/or common areas located within the Sun City Anthem Development.

23 23. Third-Party Defendant, Executive Plastering, Inc., an active Nevada  
24 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
25 who designed, engineered and/or performed the work for, construction of, and/or installation of  
26 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
27 within the Sun City Anthem Development.

28

1           24. Third-Party Defendant, Gothic Landscaping, Inc., an active California  
2 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
3 who designed, engineered and/or performed the work for, construction of, and/or installation of  
4 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
5 within the Sun City Anthem Development.

6           25. Third-Party Defendant, Harrison Door Company, a dissolved Nevada  
7 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
8 designed, engineered and/or performed the work for, construction of, and/or installation of or  
9 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
10 the Sun City Anthem Development.

11           26. Third-Party Defendant, J.R. Meranto Construction, Inc., an inactive Nevada  
12 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
13 designed, engineered and/or performed the work for, construction of, and/or installation of or  
14 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
15 the Sun City Anthem Development.

16           27. Third-Party Defendant, Jaynes Corporation, an active New Mexico Corporation,  
17 is and was at all times material hereto, a legal entity doing business in Nevada who designed,  
18 engineered and/or performed the work for, construction of, and/or installation of or supplied  
19 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
20 City Anthem Development.

21           28. Third-Party Defendant, Korte Construction Company, an active Missouri  
22 Corporation, formerly known as Korte-Bellew & Associates Construction Company, is and  
23 was at all times material hereto, a legal entity doing business in Nevada who designed,  
24 engineered and/or performed the work for, construction of, and/or installation of or supplied  
25 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
26 City Anthem Development.



1           29.     Third-Party Defendant, Landscape Services, Inc., an active Nevada Corporation,  
2 is and was at all times material hereto, a legal entity doing business in Nevada who designed,  
3 engineered and/or performed the work for, construction of, and/or installation of or supplied  
4 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
5 City Anthem Development.

6           30.     Third-Party Defendant, Lewis Enterprises, Inc. dba Lewis Landscape Design, a  
7 dissolved Nevada Corporation, was at all times material hereto, a legal entity doing business in  
8 Nevada who designed, engineered and/or performed the work for, construction of, and/or  
9 installation of or supplied materials to the duplex homes, recreation centers, and/or common  
10 areas located within the Sun City Anthem Development.

11           31.     Third-Party Defendant, MS Concrete Co., Inc., an active Nevada Corporation, is  
12 and was at all times material hereto, a legal entity doing business in Nevada who designed,  
13 engineered and/or performed the work for, construction of, and/or installation of or supplied  
14 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
15 City Anthem Development.

16           32.     Third-Party Defendant, Native Resources Nevada, LLC, an active Nevada  
17 Limited-Liability Company, is and was at all times material hereto, a legal entity doing  
18 business in Nevada who designed, engineered and/or performed the work for, construction of,  
19 and/or installation of or supplied materials to the duplex homes, recreation centers, and/or  
20 common areas located within the Sun City Anthem Development.

21           33.     Third-Party Defendant, Nevada Countertop Corporation, a dissolved Nevada  
22 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
23 designed, engineered and/or performed the work for, construction of, and/or installation of or  
24 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
25 the Sun City Anthem Development.

26           34.     Third-Party Defendant, Pete King Corporation, an active Arizona Corporation,  
27 is and was at all times material hereto, a legal entity doing business in Nevada who designed,  
28



1 engineered and/or performed the work for, construction of, and/or installation of or supplied  
2 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
3 City Anthem Development.

4 35. Third-Party Defendant, Pete King Nevada Corporation, an active Nevada  
5 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
6 who designed, engineered and/or performed the work for, construction of, and/or installation of  
7 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
8 within the Sun City Anthem Development.

9 36. Third-Party Defendant, Pratte Development Co., Inc., an inactive Nevada  
10 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
11 designed, engineered and/or performed the work for, construction of, and/or installation of or  
12 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
13 the Sun City Anthem Development.

14 37. Third-Party Defendant, R&O Construction Company, an active Utah  
15 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
16 who designed, engineered and/or performed the work for, construction of, and/or installation of  
17 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
18 within the Sun City Anthem Development.

19 38. Third-Party Defendant, RAMM Corp., an active Nevada Corporation, is and  
20 was at all times material hereto, a legal entity doing business in Nevada who designed,  
21 engineered and/or performed the work for, construction of, and/or installation of or supplied  
22 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
23 City Anthem Development.

24 39. Third-Party Defendant, SelectBuild Nevada, Inc., an active Delaware  
25 Corporation, formerly known as Campbell Concrete, Inc., is and was at all times material  
26 hereto, a legal entity doing business in Nevada who designed, engineered and/or performed the  
27  
28

1 work for, construction of, and/or installation of or supplied materials to the duplex homes,  
2 recreation centers, and/or common areas located within the Sun City Anthem Development.

3 40. Third-Party Defendant, Southern Nevada Paving, Inc., an active Nevada  
4 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
5 who designed, engineered and/or performed the work for, construction of, and/or installation of  
6 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
7 within the Sun City Anthem Development.

8 41. Third-Party Defendant, Stewart & Sundell Concrete, Inc., an active Nevada  
9 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
10 who designed, engineered and/or performed the work for, construction of, and/or installation of  
11 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
12 within the Sun City Anthem Development.

13 42. Third-Party Defendant, Sunland, Inc. – Asphalt & Sealcoating, dba Sunland  
14 Asphalt, an active Arizona Corporation, is and was at all times material hereto, a legal entity  
15 doing business in Nevada who designed, engineered and/or performed the work for,  
16 construction of, and/or installation of or supplied materials to the duplex homes, recreation  
17 centers, and/or common areas located within the Sun City Development.

18 43. Third-Party Defendant, Tejas Underground LLC, an active Nevada Limited-  
19 Liability Company, is and was at all times material hereto, a legal entity doing business in  
20 Nevada who designed, engineered and/or performed the work for, construction of, and/or  
21 installation of or supplied materials to the duplex homes, recreation centers, and/or common  
22 areas located within the Sun City Anthem Development.

23 44. Third-Party Defendant, Wesley Corporation, a dissolved Nevada Corporation,  
24 was at all times material hereto, a legal entity doing business in Nevada who designed,  
25 engineered and/or performed the work for, construction of, and/or installation of or supplied  
26 materials to the duplex homes, recreation centers, and/or common areas located within the Sun  
27 City Anthem Development.

28

1           45. Third-Party Defendant, Western States Contracting, an inactive Nevada  
2 Corporation, was at all times material hereto, a legal entity doing business in Nevada who  
3 designed, engineered and/or performed the work for, construction of, and/or installation of or  
4 supplied materials to the duplex homes, recreation centers, and/or common areas located within  
5 the Sun City Anthem Development.

6           46. Third-Party Defendant, Western States Glass and Building Products, Inc., an  
7 inactive Nevada Corporation, was at all times material hereto, a legal entity doing business in  
8 Nevada who designed, engineered and/or performed the work for, construction of, and/or  
9 installation of or supplied materials to the homes located within the Sun City Anthem  
10 Development.

11           47. Third-Party Defendant, Willis Roof Consulting, Inc., an active Nevada  
12 Corporation, is and was at all times material hereto, a legal entity doing business in Nevada  
13 who designed, engineered and/or performed the work for, construction of, and/or installation of  
14 or supplied materials to the duplex homes, recreation centers, and/or common areas located  
15 within the Sun City Anthem Development.

16           48. Third-Party Defendant, Wolseley NA Construction Services, LLC, an active  
17 Virginia Limited Liability Company, formerly known as Efficient Enterprises, Inc., is and was  
18 at all times material hereto, a legal entity doing business in Nevada who designed, engineered  
19 and/or performed the work for, construction of, and/or installation of or supplied materials to  
20 the duplex homes, recreation centers, and/or common areas located within the Sun City  
21 Anthem Development.

22           49. The true names and capacities, whether individual, corporate, associate or  
23 otherwise, of the Third-Party Defendants designated herein as ROES 1-250, are unknown to  
24 Third-Party Plaintiff, who therefore sues said Third-Party Defendants by such fictitious names,  
25 and who will seek leave of Court to amend this Third-Party Complaint to set forth their true  
26 names and capacities, together with the appropriate charging allegations, when same have been  
27 ascertained. Defendants ROES 1-250, and/or, each of them, are responsible to Third-Party  
28

1 Plaintiff as subcontractors, design professionals, maintenance contractors, suppliers,  
2 manufacturers or in other capacities based on the facts and theories alleged herein.

3 **FIRST CLAIM FOR RELIEF**

4 **Breach of Contract**

5 50. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through  
6 49 of this Third-Party Complaint as though fully set forth herein.

7 51. Third-Party Plaintiff is informed and believes, and thereon alleges, that pursuant  
8 to the terms of said written agreements, and wherever else referenced, Third-Party Defendants  
9 and ROES 1-250, and each of them, undertook obligations, including but not limited to,  
10 maintaining liability policies, naming Third-Party Plaintiff as an Additional Insured under their  
11 respective policies of liability insurance, indemnifying Third-Party Plaintiff, defending Third-  
12 Party Plaintiff, and performing their work in a good and workmanlike manner in accordance  
13 with the plans and specifications for the construction of the residences, recreation centers,  
14 and/or common areas at the Sun City Anthem Community.

15 52. Third-Party Plaintiff has fully performed all conditions, covenants and promises  
16 required of it in accordance with the terms and conditions of said written agreements.

17 53. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
18 party Defendants and ROES 1-250, and each of them, have breached said written agreements  
19 by refusing and failing to comply with their contractual obligations to maintain liability  
20 insurance, to name Third-Party Plaintiff as an additional insured under said policies of liability  
21 insurance, to indemnify Third-Party Plaintiff, to defend Third-Party Plaintiff, and to perform  
22 their work in a good and workmanlike manner, without defects, and in accordance with said  
23 written agreements.

24 54. Third-Party Plaintiff has necessarily engaged Koeller, Nebeker, Carlson &  
25 Haluck, LLP to represent it in the defense of Plaintiff's Complaint, and in its Third-Party  
26 Complaint, and has incurred legal fees, court costs, and investigations costs, and will in the  
27 future incur further fees and costs by reason of Plaintiff's Complaint referenced herein.

**SECOND CLAIM FOR RELIEF**

**Express Indemnity**

55. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 54 of this Third-Party Complaint as though fully set forth herein.

56. Third-Party Plaintiff is informed and believes, and based thereon alleges, that it entered into written agreements with Third-Party Defendants, and ROES 1-250 wherein said Third-Party Defendants agreed to satisfy, among other things, the following specific terms:

**INDEMNIFICATION:** Contractor shall indemnify, protect, defend, and hold harmless Del Webb from and against any and all Claims (defined below), directly or indirectly caused by Contractor's negligent or intentional act or omission, regardless of whether such act or omission is active or passive, in Contractor's performance of (or failure to perform) the Work covered by this Contract, including without regardless of any active or passive negligence of, or by Del Webb, but excluding any gross negligence or willful misconduct by Del Webb. For purposes of this indemnification "Webb" shall include parent and subsidiary corporations, and the officers, directors, agents, and employees of Webb and such parents and subsidiaries. "Claims" shall mean all claims, demands, causes of action, injuries, losses, damages, liabilities, costs, charges, judgments, or expenses, including without limitation, attorneys' fees for:

- (i) personal injury to any person (including employees of Webb and Contractor);
- (ii) property damage; and
- (iii) any and all penalties, fines, or assessments imposed on account of any violation of any law, or statute required to be complied with by Contractor.

Contractor shall at Contractor's own cost, expense, and risk defend all suits, actions, or other proceedings that may be instituted by a third party against Webb covered by this indemnification. Contractor shall reimburse Webb for any expenses Webb incurs in enforcing this indemnification.

or in the alternative:

**INDEMNITY:** To the maximum extent permitted by law, Contractor hereby agrees to save, indemnify, defend and keep harmless Pulte/Del Webb its subsidiaries and affiliates, and their respective officers, directors, partners, shareholders, members, employees, successors and assigns against all liability, claims, judgments, suits, or demands for damages to persons or property arising out of, resulting from, or relating to Contractor's performance of the Work performed under this Agreement and/or Contractor Project Agreement and all Contract Addenda ("Claims") unless such Claims have been specifically determined by the trier of the fact to be the sole negligence of Pulte/Del Webb. Contractor's duty to indemnify and defend Pulte/Del Webb shall arise



1 at the time written notice of a Claim is first provided to Pulte/Del Webb regardless of  
 2 whether claimant has filed suit on the Claim. Contractor's duty to indemnify and  
 3 defend shall arise even if Pulte/Del Webb is the only party sued by claimant and/or  
 4 claimant alleges that Pulte/Del Webb's negligence was the sole cause of claimant's  
 5 damages. Contractor's indemnification and defense obligation shall include, but not be  
 6 limited to, any Claim made against Pulte/Del Webb by: (1) a Contractor's employee or  
 7 subcontractor who has been injured on property owned by Pulte/Del Webb; (2) a  
 8 homeowner or association; and (3) a third party claiming patent, trademark or copyright  
 9 infringement.

10 Contractor will defend any and all Claims which may be brought or threatened against  
 11 Pulte/Del Webb and will pay on behalf of Pulte/Del Webb any expenses incurred by  
 12 reason of such Claims including, but not limited to, court costs, expert costs and  
 13 reasonable attorney fees incurred in defending or investigating such Claims. Such  
 14 payments on behalf of Pulte/Del Webb shall be in addition to any and all other legal  
 15 remedies available to Pulte/Del Webb and shall not be considered Pulte/Del Webb's  
 16 exclusive remedy.

17 In the event Pulte is required to mediate or arbitrate a claim with a homeowner arising  
 18 out of or relating to the Work performed under this Agreement and/or Contractor  
 19 Project Agreement, Pulte/Del Webb may, in its sole discretion, require Contractor to  
 20 participate in the mediation and/or arbitration in accordance with the Federal  
 21 Arbitration Act. Contractor agrees to participate upon Pulte/Del Webb's request. The  
 22 Construction Industry Arbitration Rules of the American Arbitration Association  
 23 ("AAA") and the Supplementary Consumer/Residential Construction Industry  
 24 Arbitration Rules of the AAA Rules shall apply. Any judgment rendered by the  
 25 arbitrator(s) may be confirmed, entered and enforced in any court having jurisdiction  
 26 and the Contractor shall be bound by that decision.

27 The provisions of this paragraph shall survive expiration or termination of this  
 28 Agreement and/or Contractor Project Agreement and/or completion of the Work of  
 Contractor and shall continue until such time it is determined by final judgment that the  
 Claims against Pulte/Del Webb is fully and finally barred by the statute of limitations.  
 Contractor's indemnification and defense obligations shall not be limited by the  
 amounts or types of insurance that Contractor is required to carry under this Agreement  
 and/or Contractor Project Agreement or that Contractor does in fact carry.

or in the alternative:

Contractor hereby agrees to save, indemnify, and keep harmless PULTE/DEL WEBB  
 and its agents and employees against all liability, claims, judgments, suits, or demands  
 for damages to persons or property arising out of, resulting from, or relating to  
 Contractor's performance of the work under this Agreement ("Claims") unless such  
 Claims have been specifically determined by the trier of fact to be the sole negligence  
 of PULTE/DEL WEBB. Contractor's duty to indemnify PULTE/DEL WEBB shall  
 arise at the time written notice of a Claim is first provided to Pulte/DEL WEBB

1 regardless of whether claimant has filed suit on the Claim. Contractor's duty to  
 2 indemnify PULTE/DEL WEBB shall arise even if PULTE/DEL WEBB is the only  
 3 party sued by claimant and/or claimant alleges that PULTE/DEL WEBB's negligence  
 4 was the sole cause of claimant's damages. Contractor's indemnification obligation  
 shall include, but not be limited to, any Claim made against PULTE/DEL WEBB by  
 Contractor's employee or Contractor who has been injured on property owned by  
 PULTE/DEL WEBB.

5 Contractor will defend any and all Claims which may be brought or threatened against  
 6 PULTE/DEL WEBB and will pay on behalf of PULTE/DEL WEBB any expenses  
 7 incurred by reason of such Claims including, but not limited to, court costs and  
 8 reasonable attorney fees incurred in defending or investigating such Claims. Such  
 9 payments on behalf of PULTE/DEL WEBB shall be in addition to any and all other  
 legal remedies available to PULTE/DEL WEBB and shall not be considered  
 PULTE/DEL WEBB's exclusive remedy.

10 and:

11 INSURANCE:  
 12 Work:

Contractor shall maintain at all times during performance of said

- 13 (i) statutory worker's compensation insurance and employer's liability  
 insurance in the amount of the State of Nevada's statutory limits to  
 cover all employees engaged in the Work;
- 14 (ii) commercial general liability insurance with minimum limits of  
 \$1,000,000 combined single limit per occurrence, \$2,000,000  
 15 general aggregate;
- 16 (iii) \$2,000,000 products/completed operations aggregate; and
- 17 (iv) automobile liability insurance for all owned, non-owned, and hired  
 vehicles with a minimum limit of \$500,000 combined single limit  
 per accident.

18 The commercial general liability insurance shall specifically include coverage for  
 19 Contractor's obligations under any indemnification/hold harmless provisions in this  
 20 Contract. Contractor may satisfy a portion of the employer's liability/occupational  
 21 disease, commercial general liability, of automobile liability limits with following form  
 22 excess of umbrella excess liability insurance. The commercial general liability  
 23 subsidiaries, and affiliates, and their respective directors, officers, employees, and  
 24 agents, (hereinafter sometimes collectively referred to as "Webb" in this Section only)  
 as additional insureds, with respect to any claims, losses, expenses, or other costs  
 arising out of this Contract, and shall also be endorsed as primary coverage with respect  
 to any other insurance which may be carried by Webb. It is expressly agreed that any  
 other insurance covering Webb is excess over and non-contributing with Contractor's  
 commercial general liability insurance.

25 Certificates of insurance evidencing the worker's compensation, commercial general  
 26 liability, and automobile liability coverages required herein shall be filed with Webb  
 27 within five (5) days following the execution of this Contract prior to the  
 28



1 commencement of any Work thereunder and shall be maintained in a current status  
 2 throughout the term of this Contract. Such certificates of insurance shall require the  
 3 insurer(s) to provide not less than thirty (30) days advance written notice to Webb in  
 4 the event of any cancellation, non-renewal of material change in the policy limits, terms  
 5 or conditions. All of the coverages required herein shall be maintained with insurers  
 6 rated "B+" or better in the most current edition of Best's Insurance Reports.

7 The worker's compensation/employer's liability/occupational disease insurance  
 8 required herein may be maintained with the state worker's compensation fund operating  
 9 in the state in which the job-site is located. Contractor shall immediately notify Webb  
 10 in writing, of any incident, occurrence, injury, or situation arising in connection with  
 11 this Contract which may give rise to any claim, or loss under any of the aforementioned  
 12 insurance coverages.

13 Contractor hereby waives Contractor's right of recovery against Webb for any claim,  
 14 losses, expenses, or the costs Contractor may sustain arising out of this Contract and  
 15 shall cause the worker's compensation policy to be specifically endorsed to waive all  
 16 rights of subrogation against Webb. Contractor shall maintain Contractor's commercial  
 17 general liability insurance described above for not less than five (5) years following the  
 18 completion of this Contract. Contractor also shall maintain adequate property  
 19 insurance on and security for all equipment and building materials whether on-site, or  
 20 off-site until such time they are incorporated in the Work and finally acceptance by  
 21 Webb, as described below. Contractor hereby waives Contractor's right of recovery  
 22 against Webb for any loss of, or damage to such equipment and building materials,  
 23 including any loss of use claim, and shall cause each such property insurance policy to  
 24 include a waiver of subrogation in favor of Webb.

25 or in the alternative:

26 INSURANCE: Contractor represents that it does carry and will continue to  
 27 carry, with insurance companies rated A- or better by A.M. Best Rating Company, the  
 28 following insurance coverage continuously during the life of this Agreement and/or  
 Contractor Project Agreement:

29 Commercial General Liability Insurance. Commercial General Liability Insurance on  
 30 an occurrence form containing limits of at least \$1,000,000 per occurrence/ \$1,000,000  
 31 general aggregate / \$1,000,000 product-completed operations, protecting against bodily  
 32 injury, property damage and personal injury claims arising from the exposures of:

- 33 (1) Premises or on-going operations;
- 34 (2) Products-completed operations including materials designed, furnished and/or  
 35 modified in any way by Contractor with a separate aggregate limit at least equal to the  
 36 per occurrence limit. This coverage must be maintained through the statute of  
 37 limitations in the state where work is being performed. Policies and/or endorsements  
 38 cannot include any provisions that terminate products-completed operations coverage at

the end of a policy period or limit this coverage in any other way with respect to the additional insured;

(3) Independent Contractors;

(4) Contractual liability coverage; and

(5) Where applicable, property damage resulting from explosion, collapsed, or underground (x, c, u) exposures;

and containing the following provisions:

(a) This coverage must be primary; any of Pulte/Del Webb's insurance shall be considered excess for the purpose of responding to claims

(b) The policy may not contain exclusions for residential construction; attached product or, in California, SB800 liability.

(c) Owners and Contractors Protective Liability Policies (OCP) are unacceptable.

(d) Contractor shall add Pulte/Del Webb as an Additional Insured on the above general liability policy by having the insurance carrier issue an Additional Insured Endorsement(s) at least as broad as the ISO CG 2010 11/85 Additional Insured – Owners, Lessees or Contractors Form B endorsement.

- Such endorsement must provide coverage for both premises/ongoing operations and products-completed operations to the benefit of the Additional Insured.
- This extension shall apply to the full extent of the actual limits of Contractor's coverages even if such actual limits exceed the minimum limits required by this Agreement and/or Contractor Project Agreement.
- Pulte/Del Webb's additional insured status under the policy must not be limited by amendatory language to the policy.
- Contractor must provide a copy of the endorsements

To the extent umbrella or excess insurance is available above the minimum required limits stated in this Agreement and/or Contractor Project Agreement, the protection afforded Pulte/Del Webb in the umbrella or excess liability insurance shall be as broad or broader than the coverages present in the underlying insurance and in accordance with this Agreement and/or Contractor Project Agreement. Each umbrella or excess liability policy shall specifically state that the insurance provided by the Contractor shall be considered primary.

Contractor must disclose all applicable policy deductibles and/or self-insured retentions (SIR) and agrees to be liability for all costs within the deductibles and/or SIR.

or in the alternative:

Contractor represents that it does carry and will continue to carry, with insurance companies acceptable to PULTE/DEL WEBB, the following insurance coverage continuously during the life of this Agreement (and in the case of products and completed operations coverage, for two years after the expiration of this Agreement):

1 Commercial General Liability Coverage – Commercial General Liability Insurance on  
 2 an Occurrence Form containing a per occurrence limit of at least \$1,000,000 protecting  
 3 against bodily injury, property damage and personal injury claims arising from the  
 4 exposures of (1) premises-operations (with an aggregate limit at least equal to the per  
 5 occurrence limit); (2) products and completed operations including materials designed,  
 6 furnished and/or modified in any way by Contractor (with a separate aggregate limit at  
 7 least equal to the per occurrence limit); (3) independent Contractors; (4) contractual  
 8 liability risk covering the indemnity obligations set forth in this Agreement; and, (5)  
 9 where applicable, property damage resulting from explosion, collapse, or underground  
 10 (x, c, u) exposures.

11 \*\*\*\*

12 Contractor shall add PULTE/DEL WEBB as an Additional Insured on the above  
 13 general liability policy by having the insurance carrier issue an ISO-2010 Endorsement,  
 14 Owners, Lessees or Contractors – Form B, Edition date 11/85, or its equivalent. Such  
 15 endorsement must include completed operations coverage for the benefit of the  
 16 Additional Insured. This extension shall apply to the full extent of the actual limits of  
 17 Contractor's coverage's [sic] even if such actual limits exceed the minimum limits  
 18 required by this Agreement. PULTE/DEL WEBB's additional insured status under the  
 19 policy(ies) must not be limited by amendatory language to the policy. To the extent  
 20 umbrella or excess insurance is available above the minimum required limits stated in  
 21 this Agreement, the protection afforded PULTE/DEL WEBB in the umbrella or excess  
 22 liability insurance shall be as broad or broader than the coverage present in the  
 23 underlying insurance and in accordance with this Agreement. Each general liability,  
 24 umbrella or excess policy shall specifically state that the insurance provided by the  
 25 Contractor shall be considered primary, and insurance of PULTE/DEL WEBB shall be  
 26 considered excess for purposes of responding to Claims.

27 Contractor shall evidence that such insurance is in force by furnishing PULTE/DEL  
 28 WEBB with a Certificate of Insurance, or if requested by PULTE/DEL WEBB,  
 29 certified copies of the policies. The Certificate shall accompany and become a part of  
 30 this Agreement. Each Certificate of Insurance shall (1) contain an unqualified  
 31 statement that the policy shall not be subject to cancellation, non-renewal, adverse  
 32 change, or reduction of amounts of coverage without thirty (30) days prior written  
 33 notice to PULTE/DEL WEBB, but in the event of non-payment of premium ten (10)  
 34 days notification will be provided; (2) show PULTE/DEL WEBB as Additional Insured  
 35 by either referencing or attaching the required endorsement; (3) shall indicate that the  
 36 Contractor's Coverage is primary and PULTE/DEL WEBB's insurance is in excess for  
 37 any Claims; and (4) indicate that coverage applies in the state where operations are  
 38 being performed.

39 57. Third-Party Plaintiff is informed and believes, and based thereon alleges, the  
 40 defects and damages alleged by Plaintiff in its Complaint involve alleged defects and alleged  
 41 damage to duplex homes, recreation centers, and common areas located at the Sun City

1 Anthem Community. Third-Party Plaintiff is informed and believes, and thereon alleges, that  
2 any damages alleged by Plaintiff were caused by Third-Party Defendants and ROES 1-250, and  
3 each of them, arising out of and connected with the performance of their obligations pursuant  
4 to those written agreements herein referred to and entered into by the above-specified Third-  
5 Party Defendants.

6 58. Third-Party Plaintiff has made a demand or by this Third-Party Complaint  
7 demands that Third-party Defendants and ROES 1-250, defend, indemnify, release, and hold  
8 harmless Third-Party Plaintiff for any liability, and the resulting sums to be paid, which is  
9 assigned to the Third-Party Plaintiff due to judgment on, or settlement of, the allegations in  
10 Plaintiff's Complaint.

11 59. Third-Party Plaintiff is informed and believes, and based thereon alleges that  
12 Third-Party Defendants, have failed and refused to, and continue to fail and refuse to defend,  
13 indemnify, release and hold harmless Third-Party Plaintiff.

14 60. Third-Party Plaintiff has necessarily retained Koeller, Nebeker, Carlson &  
15 Haluck, LLP to defend against the Complaint filed by Plaintiff, thereby incurring costs and  
16 attorneys' fees in the defense of this action and in the prosecution of its Third-Party Complaint.  
17 Third-Party Plaintiff will seek leave of Court to amend its Third-Party Complaint to show the  
18 amount of said cost of attorneys' fees when the same becomes known to the Third-Party  
19 Plaintiff.

20 61. Third-Party Plaintiff is entitled to express indemnity from the above-specified  
21 Third-Party Defendants, and each of them, pursuant to the terms of the written agreement  
22 entered into between Third-Party Plaintiff and each of the specified Third-Party Defendants,  
23 including costs and attorneys' fees according to proof at trial.

### 24 **THIRD CLAIM FOR RELIEF**

#### 25 **Equitable Indemnity**

26 62. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through  
27 61 of this Third-Party Complaint as though fully set forth herein.

63. Third-Party Plaintiff, by way of its Answer to Plaintiff's Complaint, has denied and continues to deny Plaintiff's allegations and has asserted by way of Answer the appropriate affirmative defenses.

64. In the event that the trier of fact concludes that the allegations of Plaintiff are true, and if Third-Party Plaintiff is held liable to Plaintiff in said action, then Third-Party Plaintiff alleges that any responsibility found on the part of Third-Party Plaintiff will be due to the negligence and/or fault of Third-Party Defendants, ROES 1-250, and each of them.

65. By reason of the foregoing, if Plaintiff should recover judgment against Third-Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with Plaintiff, then Third-Party Plaintiff will be entitled to judgment in the like amount, or in proportion to fault, for comparative indemnity over and against Third-Party Defendants, ROES 1-250, and each of them, and in addition, Third-Party Plaintiff will be entitled to recover from Third-Party Defendants, ROES 1-250, and each of them, all costs, expenses, and attorneys' fees that Third-Party Plaintiffs incur in the preparation of its defense of the principal action, and in the preparation, presentation and prosecution of this Third-Party Complaint, respectively.

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

##### **Breach of Express Warranty**

66. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through 65 of this Third-Party Complaint as though fully set forth herein.

67. The written agreements between Third-Party Plaintiff and Third-Party Defendants provide the description of the work to be performed by Third-Party Defendants, and their guarantee and warranty of said work as follows:

**WARRANTY:** If at any time during one (1) year after the date of completion and acceptance of the Work by Del Webb, (or such longer period as may be specified in Exhibit "B" attached hereto) any part of the materials or workmanship furnished by Contractor shall be responsible for the replacement, or repair of the non-conforming, or defective Work to Del Webb's satisfaction, including all costs incidental thereto,



without cost to Del Webb. In the event Contractor's Work on this project terminates prior to the expiration date of all warranty periods, Contractor will remain obligated to fulfill Contractor's responsibilities for all such Work covered by this Contract. Del Webb reserves the right to withhold from current and future payables due under this Contract, for a period of ninety (90) days following the termination of this Contract, an amount equal to ten percent (10%) of the total amount to be paid for Work completed under the terms hereof to off-set any expenses incurred by Del Webb to complete unfinished Work or any Work not meeting the requirements of this Contract, including warranty Work. At the end of such ninety (90) day period, all amounts withheld that have not been applied, or are not required to be applied to the cost of such non-conforming Work, warranty Work, or completion items, shall be paid to Contractor. This warranty shall not limit, or void any extended, or longer warranty provided under applicable law for a latent construction defect, or under any case law extending the warranty provided by the developer to the buyer of any residential unit.

Or in the alternative:

**WARRANTY:** If at any time during one (1) year after the date of completion and acceptance of the Work by Del Webb, (or such longer period as may be specified in Exhibit "B" attached hereto) any part of the materials or workmanship furnished by Contractor shall be responsible for the replacement, or repair of the non-conforming, or defective Work to Del Webb's satisfaction, including all costs incidental thereto, without cost to Del Webb. In the event Contractor's Work on this project terminates prior to the expiration date of all warranty periods, Contractor will remain obligated to fulfill Contractor's responsibilities for all such Work covered by this Contract. Del Webb reserves the right to withhold from current and future payables due under this Contract, for a period of ninety (90) days following the termination of this Contract, an amount equal to ten percent (10%) of the total amount to be paid for Work completed under the terms hereof to off-set any expenses incurred by Del Webb to complete unfinished Work or any Work not meeting the requirements of this Contract, including warranty Work. At the end of such ninety (90) day period, all amounts withheld that have not been applied, or are not required to be applied to the cost of such non-conforming Work, warranty Work, or completion items, shall be paid to Contractor. This warranty shall not limit, or void any extended, or longer warranty provided under applicable law for a latent construction defect, or under any case law extending the warranty provided by the developer to the buyer of any residential unit.

All trades will be required to have an individual dedicated for the completion for warranty service Work. Any service item occurring from a key inspection (customer walk through) will require a forty-eight (48) hour turn around. All other warranty service repairs are to be complete within five (5) working days from date of issuance of written request.

Unless specified, Contractor will be required to furnish Del Webb with the name, address, and telephone number of an employee that can be phoned at any time in case of emergency.

1 or in the alternative:

2 Contractor warrants and guarantees that all work, materials and labor furnished by  
3 Contractor or its Subcontractors under this Agreement and/or Contractor Project  
4 Agreement shall be in conformity with the terms of this Agreement and/or Contractor  
5 Project Agreement and free from faults or defects. If the Work involves or relates to  
6 the construction of a home, the warranty and guaranty of the work, materials and labor  
furnished by Contractor or its Subcontractor shall be for a period measured by the later  
of:

7 (i) (2) years from the date that Pulte/Del Webb conveys or transfers to any  
8 party, including a home purchaser or homeowner's association, title to the real property  
(including improvements) upon which the Work was performed; or

9 (ii) Any longer time that Pulte/Del Webb may be held responsible for such  
10 Work, labor and materials pursuant to any express, implied or other warranty afforded  
by law to purchasers of residential real property in the State of Nevada; or

11 (iii) The time period during which the State Contractors Board of Nevada has  
jurisdiction over Pulte/Del Webb for the work, labor and materials furnished.

12 If the Work does not involve or relate to the construction of a home, the warranty and  
13 guaranty of the work, materials and labor furnished by Contractor or its Subcontractor  
14 shall be for a period of one (1) year after the governing agency accepts the subdivision  
where the Work is being performed by Contractor and occupancy permits can be  
issued.

15 The warranty applies to both patent and latent defects in workmanship and materials.

16 If the Work involves the construction of a home, Contractor acknowledges and agrees  
17 that it is obligated to warrant and guarantee its work at a minimum for the duration of  
18 the Pulte/Del Webb Home Protection Plan which is attached hereto as Exhibit "A" and  
is incorporated herein by reference.

19 Contractor warrants that it shall promptly correct all such defective and non-  
20 conforming Work at its expense within forty-eight hours after notice to do so, or within  
21 eight hours after notice in the event of any Emergency. Pulte/Del Webb shall  
22 determine whether an Emergency exists, which generally includes, but is not  
23 necessarily limited to, those conditions involving the risk of harm to persons or  
24 property or which make the real property not habitable comfortably. Repairs shall be  
25 made in a diligent first-class manner with as little inconvenience as possible to  
26 Pulte/Del Webb and any owner of the real property and shall be consistent with the  
27 Warranty Performance Standards incorporated in Exhibit "A" hereto. Contractor shall  
28 clean up thoroughly after repairs are completed. Repairs shall not be deemed to be  
complete until the defect or nonconformity has been permanently corrected. Contractor  
shall reimburse Pulte/Del Webb (or at Pulte/Del Webb's direction, the owner of the real  
property) for any damages to the real property, for any damages to the personal



1 property located on the real property for any reasonable expenses incurred as a result of  
2 the inconvenience or loss of use and enjoyment of the real property which is caused by  
3 the defect, non-conformity or the repairs. Contractor shall indemnify, hold harmless  
4 and defend Pulte/Del Webb for, from and against all claims for damages or personal  
injury resulting from any such defect, non-conformity or repair. The obligations of  
Contractor under this subparagraph shall survive expiration or termination of this  
Agreement.

5 Contractor hereby assigns to Pulte/Del Webb any and all warranties, guaranties and  
6 other materials, whether written, oral, express, implied or statutory, which Contractor  
7 now has or hereafter receives from any Subcontractor or manufacturer supplying  
8 materials, labor, services, goods, appliances or equipment to Contractor in connection  
9 with Contractor's Work and the right to recovery from any and all such persons and  
10 entities for any breach by them of their respective warranties, guaranties, contracts or  
other obligations. All such written warranties, guaranties and materials shall be  
delivered to Pulte/Del Webb when the Work is completed or this Agreement and/or  
Contractor Project Agreement, whichever first occurs.

11 68. As set forth in the written agreement between Third-Party Plaintiff and as  
12 further alleged above and elsewhere in this Third-Party Complaint, Third-Party Defendants,  
13 ROES 1-250, and each of them, agreed and guaranteed to perform their work in a good and  
14 workmanlike manner.

15 69. Third-Party Plaintiff relied upon such warranties and believed in good faith that  
16 the project and its structures would comply with the approved plans and specifications for the  
17 Sun City Anthem development and would be free from defective construction or workmanship.

18 70. Third-Party Plaintiff has fully performed all conditions and promises required  
19 on its part to be performed in accordance with the terms and conditions of the underlying  
20 written agreements.

21 71. Third-Party Plaintiff has provided notice, or by this Third-Party Complaint  
22 provides notice, to the Third-Party Defendants, ROES 1-250, and each of them, of claims  
23 asserted by Plaintiff, which if true, would trigger the warranty provisions identified above and  
24 elsewhere in the Third-Party Complaint.

25 72. Third-Party Plaintiff has undertaken defense of the matter in question and, if  
26 Plaintiff recovers judgment against Third-Party Plaintiff for failure to comply with the  
27 approved plans and specifications, or alleged defective construction or workmanship, or if  
28

1 Third-Party Plaintiff incurs any expense in the defense of said lawsuit, then Third-Party  
2 Plaintiff alleges that it is entitled to judgment over and against Third-Party Defendants, ROES  
3 1-250, and each of them, for all sums that Third-Party Plaintiff incurs by reason of said  
4 judgment, settlement and expense of litigation, including reasonable attorneys' fees and costs,  
5 as provided by the contract agreement.

6 **FIFTH CLAIM FOR RELIEF**

7 **Breach of Implied Warranty**

8 73. Third-Party Plaintiff repeats, re-alleges and incorporates paragraphs 1 through  
9 72 of this Third-Party Complaint as though fully set forth herein.

10 74. Third-Party Plaintiff is informed and believes, and based thereon alleges that  
11 Third-Party Defendants and ROES 1-250, impliedly warranted that the duplex homes,  
12 recreation centers, and common areas at the Sun City Anthem Community were designed and  
13 constructed in a reasonably workmanlike manner.

14 75. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
15 Party Defendants and ROES 1-250, impliedly warranted that the duplex homes, recreation  
16 centers, and common areas at the Sun City Anthem community were of merchantable quality  
17 and safe and fit for their foreseeable or intended use.

18 76. Plaintiff has alleged in its Complaint that the Third-Party Plaintiff is somehow  
19 liable for the damage, if any, that they have alleged. Third-Party Plaintiff, by way of Answer  
20 to Plaintiff's Complaint, has denied and continues to deny Plaintiff's allegations and has  
21 asserted, by way of Answer, the appropriate affirmative defenses. If at the trial of this action it  
22 should be determined that Third-Party Plaintiff is in some manner responsible to Plaintiff, then  
23 Third-Party Plaintiff is informed and believes, and thereon alleges, that the proximate cause of  
24 Plaintiff's damage, if any, was a result of Third-Party Defendants' failure to construct the  
25 duplex homes, recreation centers, and common areas in a reasonably workmanlike manner as  
26 warranted by Third-Party Defendants, ROES 1-250, and each of them, and therefore Third-  
27 Party Defendants and ROES 1-250 have breached their implied warranty.



**SEVENTH CLAIM FOR RELIEF**

**Declaratory Relief Regarding Duty to Indemnify  
Against All Third-Party Defendants, ROES 1-250**

83. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 82 of this Third-Party Complaint as though fully set forth herein.

84. An actual controversy exists between Third-Party Plaintiff and Third-Party Defendants, and ROES 1-250 as to their rights and liabilities with respect to any ultimate responsibility to Plaintiff and with respect to the rights to receive, or duty to give, indemnification in proportion to their comparative fault, if any.

85. Third-Party Plaintiff contends that if it suffers judgment in the action brought by Plaintiff or if it pay monies by way of reasonable compromise of said claim, then Third-Party Plaintiff is entitled to be indemnified by all Third-Party Defendants and ROES 1-250, and entitled to judgment over and against Third-Party Defendants and ROES 1-250, to the extent that Third-Party Plaintiff's financial responsibility to Plaintiff exceeds the percentage of Third-Party Plaintiff's negligence, fault, or liability, if any.

86. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-Party Defendants and ROES 1-250, contend to the contrary. Therefore, an actual controversy exists relative to the legal rights and duties of the respective parties pursuant to their written agreements, which controversy Third-Party Plaintiff requests the court to resolve in the form of Declaratory Judgment.

**EIGHTH CLAIM FOR RELIEF**

**Declaratory Relief Regarding Duty to Name Del Webb as Additional Insured  
Against ROES 51-150**

87. Third-Party Plaintiff repeats, re-alleges, and incorporates paragraphs 1 through 86 of this Third-Party Complaint as though fully set forth herein.

88. An actual controversy has arisen and now exists between Third-Party Plaintiff and Third-Party Defendant Insurers, concerning their respective rights and duties in that Third-Party Plaintiff contend it is an additional insured under the policies of insurance provided by

1 Third-Party Defendant Insurers to various Third-Party Defendants under the terms of the  
 2 Third-Party Defendants liability policies of insurance provided by Third-Party Defendant  
 3 Insurers.

4 89. Third-Party Plaintiff is informed and believes, and thereon alleges, that Third-  
 5 Party Defendant Insurers contend to the contrary. Therefore, an actual controversy exists  
 6 relative to the legal rights and duties of the respective parties pursuant to their written  
 7 agreements, which controversy Third-Party Plaintiff request the court to resolve in the form of  
 8 Declaratory Judgment.

#### 9 **NINTH CLAIM FOR RELIEF**

##### 10 **Contribution** 11 **Against All Third-Party Defendants, ROES 1-250**

12 90. Third-Party Plaintiff repeats, re-alleges, and incorporate paragraphs 1 through  
 13 89 of this Third-Party Complaint as though fully set forth herein.

14 91. Third-Party Plaintiff contends that it is not responsible legally or otherwise for  
 15 the damage created from the Constructional Defects alleged by Plaintiff in this litigation.  
 16 Despite this, Third-Party Plaintiff has incurred expenses investigating and repairing, among  
 17 other expenses, homes that have been damaged by Third-Party Defendants.

18 92. In the event that the trier of fact concludes that the allegations of the Plaintiff  
 19 are true, and if Third-Party Plaintiff is held liable to Plaintiff in said action, then Third-Party  
 20 Plaintiff alleges that any responsibility found on the part of Third-Party Plaintiff will be due to  
 21 the negligence and/or fault of Third-Party Defendants and ROES 1-250 and each of them

22 93. By reason of the foregoing, if Plaintiff should recover judgment against Third-  
 23 Party Plaintiff and/or if Third-Party Plaintiff should enter into a settlement or compromise with  
 24 Plaintiff, then Third-Party Plaintiff will be entitled to contribution over and against Third-Party  
 25 Defendants, ROES 1-250, and each of them, for all costs, expenses, and attorneys' fees that  
 26 Third-Party Plaintiff incurs in the preparation and presentation of its defense of the principal  
 27 action, and in the preparation, presentation and prosecution of this Third-Party Complaint,  
 28

1 respectively.

2       94. Third-Party Plaintiff has necessarily engaged the law firm Koeller, Nebeker,  
3 Carlson & Haluck, LLP to represent it in the defense of the Plaintiff's Complaint, and in its  
4 Third-Party Complaint, and has incurred legal fees, courts costs, and investigation costs, and  
5 will in the future incur further fees and costs by reason of Plaintiff's Complaint referenced  
6 herein.

7       **WHEREFORE**, Third-Party Plaintiff respectfully requests that this Court enter  
8 judgment against Third-Party Defendants and ROES 1-250, and each of them as follows:

- 9       1. A determination that each Third-Party Defendant and ROES 1-250, and each of  
10       them, contributed in some percentage to the loss, damage and detriment alleged  
11       by Plaintiff and for a declaration of percentages by which the conduct of Third-  
12       Party Defendants and ROES 1-250 and each of them, contributed to the loss,  
13       damage and detriment, if any, of the Plaintiff;
- 14       2. That if Plaintiff should recover sum or judgment against Third-Party Plaintiff,  
15       that the Third-Party Plaintiff should have judgment against Third-Party  
16       Defendants and ROES 1-250;
- 17       3. That Third-Party Plaintiff is entitled to a defense from Third-Party Defendants  
18       and ROES 1-250;
- 19       4. For general and special damages in an amount to be proven at trial;
- 20       5. For indemnity of all damages and/or economic losses that Plaintiff recovers  
21       against Third-Party Plaintiff by way of judgment, order, settlement,  
22       compromise, or trial;
- 23       6. For reasonable attorneys' fees, expert fees and costs;
- 24       7. For prejudgment and post-judgment interest;
- 25       8. For contribution pursuant to NRS 17.225; and

26 ///

27 ///

28



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

3 DATED this 18<sup>th</sup> day of March, 2010.

4 KOELLER, NEBEKER, CARLSON  
5 & HALUCK, LLP

6  
7 By: 

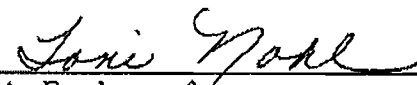
8 JASON W. WILLIAMS, ESQ.  
9 Nevada Bar No. 8310  
10 300 South Fourth Street, Suite 500  
11 Las Vegas, NV 89101  
12 Phone: (702) 853-5500  
13 Fax: (702) 853-5599  
14 Attorneys for Defendant/Third-Party  
15 Plaintiff,  
16 DEL WEBB COMMUNITIES, INC.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of March, 2010, I served a true and correct copy of the foregoing **DEL WEBB COMMUNITIES, INC.'S THIRD-PARTY COMPLAINT** by depositing a copy in the United States Mail at Las Vegas, Nevada postage fully prepaid, addressed to the following individual(s):

Roger J. Grant, Esq.  
Charles M. Litt, Esq.  
Bruce Mayfield, Esq.  
FEINBERG GRANT MAYFIELD KANEDA & LITT, LLP  
1955 Village Center Circle  
Las Vegas, Nevada 89134  
*Attorneys for Plaintiff*

  
An Employee of  
KOELLER, NEBEKER, CARLSON & HALUCK, LL

# Exhibit 62

# Exhibit 62

CV-13-01125  
CECIL & MAYBETH CLARK TRUST  
District Court  
Washoe County  
May 20 2013 4:23 PM  
\$1425

\$1425  
Robert C. Maddox, NV Bar No. 4002  
Ardea G. Canepa, NV Bar No. 12345  
Eva G. Segerblom, NV Bar No. 10749  
Robert C. Maddox & Associates  
10587 Double R Boulevard, Suite 100  
Reno, Nevada 89521  
Telephone: (775) 322-3666  
Facsimile: (775) 322-6338  
Attorneys for Plaintiffs

FILED  
2013 MAY 20 PM 4:23  
JOEY ADOLPH HASTINGS  
CLERK OF THE COURT  
BY *[Signature]*  
DEPUTY

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

CECIL AND MAYBETH CLARK, as  
Trustees of the CLARK FAMILY 2006  
TRUST

Plaintiffs,

v.

D.W. ARNOLD, INC., a Nevada  
Corporation, and DOES 1-50  
INCLUSIVE

Defendants.

CASE NO.: CV13 01125  
DEPT. NO.: 4

COMPLAINT FOR DAMAGES  
EXEMPT FROM ARBITRATION  
DAMAGES IN EXCESS OF \$50,000

Plaintiffs, CECIL and MAYBETH CLARK, (hereinafter referred to as "Plaintiffs")  
individually, by and through their attorneys, ROBERT C. MADDOX & ASSOCIATES,  
claim and allege causes of action against Defendant D. W. ARNOLD, INC, a Nevada  
corporation and DOES 1 through 50, inclusive, and each of them (hereinafter collective  
referred to as "Defendants"), as follows:

GENERAL ALLEGATIONS

- 0.1 Plaintiffs brings these causes of actions individually.
- 0.2 Plaintiffs are the owners of real property and a residence located  
thereupon (as defined in NRS 40.630) commonly known as 10005 Windy Creek Court,  
Reno, Nevada situated in the Sky Vista subdivision, City of Reno County of Washoe,  
Nevada (hereinafter referred to as "Subject Property"). As owners of the Subject  
Property thus situated, Plaintiffs suffered damages as hereinafter alleged.

1           0.3 The damages suffered by Plaintiffs were proximately caused by the acts  
2 and/or omissions of Defendants in the development and construction of the residential  
3 real property as described above.

4           0.4 Venue is proper in the Second Judicial District, and this Court has  
5 jurisdiction over the parties and causes of action.

6           0.5 At all times material hereto Plaintiffs Cecil and Maybeth Clark were the  
7 purchasers and owners of the residence located at 10005 Windy Creek Court, Reno,  
8 Nevada.

9           0.6 Plaintiffs are informed and believe, and thereupon allege that Defendant  
10 D. W. Arnold, Inc. at all relevant times was a Nevada corporation, registered in Nevada,  
11 organized and existing pursuant to the laws of the State of Nevada and was doing  
12 business in Washoe County, State of Nevada regarding the Subject Property.

13           0.7 Plaintiffs do not know the true names and capacities of Defendants sued  
14 herein as DOE DEFENDANTS 1 through 50, inclusive, and therefore sues these  
15 Defendants by fictitious names. Plaintiffs are informed and believe, and thereupon  
16 allege, that each of these fictitiously named Defendants is responsible in some actionable  
17 manner for the defective and negligent design, engineering, architecture, development,  
18 construction, supplying or improper materials and performance of inspections at the  
19 Subject Property, or in some other actionable manner was an integral part of the  
20 concatenation of development, construction and marketing of the Subject Property, and  
21 therefore Plaintiffs' damages hereafter alleged were proximately caused by their  
22 conduct. Plaintiffs will identify and name Doe Defendants in this Complaint when the  
23 true names and capacities of such Defendants are ascertained.

24           0.8 Plaintiffs are informed and believe, and thereupon allege that Defendants  
25 have been and at all times mentioned herein were contractors licensed by the State of  
26 Nevada and/or acting as a contractor as defined in NRS § 40.620 and/or licensed  
27 pursuant to Chapter 624 of NRS, and engaged in the business of, including but not  
28 limited to, developing, constructing, altering, repairing, improving or landscaping a

1 residence, appurtenance or any part thereof; developing a site for a residence,  
2 appurtenance or any part thereof; or selling a residence or appurtenance, any part of  
3 which the persons, by themselves or through their agents, employees or subcontractors,  
4 has developed, constructed, altered, repaired, improved or landscaped, and was engaged  
5 in such business regarding the subject properties in Washoe County, State of Nevada.

6 0.9 Pursuant to NRS § 40.600 through §40.695 inclusive, Plaintiffs seek  
7 recovery for damages suffered as delineated therein, and are entitled to all damages set  
8 forth in NRS § 40.655.

9 0.10 The Subject Property was built and sold by Defendants within a Common  
10 Interest Community pursuant to NRS Chapter 116.

11 0.11 Plaintiffs are informed and believe, and thereupon allege that when  
12 marketed, purchased and sold, the Subject Property was defective and unsafe and/or  
13 unsuitable for the intended use and purpose in numerous particulars.

14 0.12 Pursuant to NRS § 40.645, Plaintiffs directed notices to Defendants  
15 advising the same of constructional defects present in the Subject Property. Despite  
16 being presented with notice of defects, Defendants elected to not repair or correctly  
17 repair all of the constructional defects.

18 0.13 As a further proximate result of said defects, many parts of the Subject  
19 Property have been damaged and/or are defective and are reasonably believed to cause  
20 damage in the future and must be repaired and/or replaced, including but not limited to  
21 those defects as outlined in Plaintiffs' Notices in Compliance Nevada Revised Statute §  
22 40.645 which is attached hereto as Exhibit 1, Exhibit 2 and Exhibit 3.

23 0.14 These defects are causing or likely will cause injury to person and/or  
24 property. Plaintiffs have also suffered and will continue to suffer loss of use and  
25 enjoyment of the Subject Property for extended time periods all to their detriment.

26 0.15 Due to the defects alleged herein, Plaintiffs are entitled to the cost of  
27 repairs that are necessary to cure any constructional defect that Defendants failed to  
28 cure, the reasonable expenses of temporary housing necessary during the repair, the loss

1 of use of all or part of the residence, loss of value due to structural defects, the  
2 reasonable value of other property damaged by the constructional defects, reasonable  
3 attorneys fees and additional costs, fees, and prejudgment interest, in excess of \$50,000  
4 entitling this action to be exempt from arbitration pursuant to Nevada Rules of  
5 Arbitration Rule 3.

6 0.16 Plaintiffs are informed and believe, and thereupon allege that the foregoing  
7 defects were negligently or otherwise hidden, concealed, and disguised from Plaintiffs so  
8 that Plaintiffs or their predecessors in interest did not discover and could not have  
9 discovered with reasonable diligence the existence of any of said defects until Plaintiffs  
10 undertook, at their expense, investigations performed by professionals retained by  
11 Plaintiffs. While physical manifestation of some damage occurred prior to investigation  
12 and discovery by experts retained by Plaintiffs, Plaintiffs did not and could not discover  
13 the defects or the actionable causes thereof until a time within the periods of limitation  
14 applicable to the causes of action hereafter alleged.

15 0.17 Plaintiffs are informed and believe, and thereupon allege that Defendants  
16 intended that the dwelling and component parts would be purchased and used without  
17 inspection for defects of the type described herein.

18 0.18 The parties did not reach an agreement concerning the matter in  
19 mediation pursuant to NRS 40.680.

20 0.19 Plaintiffs allowed inspection and reasonable opportunity to repair defects  
21 pursuant to NRS § 40.647.

22 0.20 Plaintiffs are informed and believe, and thereupon allege that Defendants  
23 had a duty to Plaintiffs and/or their predecessors in interest and any other reasonably  
24 foreseeable purchaser of the Subject Property to use reasonable care in the performance  
25 of the tasks related to the planning, development, creation, improvement, design,  
26 construction, inspection, promotion and sale of the Subject Property.

27 0.21 Plaintiffs are informed and believe, and thereupon allege that Defendants  
28 made negligent and/or intentional misrepresentations to the Plaintiffs and/or their



1 predecessors in interest and their representatives and agents; assisted other Defendants  
 2 in making said misrepresentations to the Plaintiffs and/or predecessors in interest and  
 3 their representative and agents; were responsible for supervising certain Defendants and  
 4 negligently failed to do so; negligently and/or intentionally concealed material facts  
 5 from the Plaintiffs and their representatives and agents; or assisted other Defendants in  
 6 concealing said facts from the Plaintiffs, their representatives and agents.

7       0.22 Plaintiffs had faith and confidence in Defendants as builders, contractors  
 8 or professionals, and Plaintiffs relied on such status and upon the representations as  
 9 referred to herein.

10       0.23 Plaintiffs are informed and believe, and thereupon allege, that at all times  
 11 herein mentioned, each of the Defendants was the agent and employee of the other  
 12 Defendants and was acting within the course, scope and authority of said agency; each  
 13 Defendant approved, ratified and authorized the acts of each of the other Defendants as  
 14 herein alleged; each Defendant was subject to a right of control by the other Defendants;  
 15 each Defendant was authorized to act for each and all of the other Defendants; and each  
 16 Defendant is a successor in interest to each of the other Defendants.

17  
 18                   **FIRST CAUSE OF ACTION**  
                   **Breach of Express Warranties**

19       1.1 Plaintiffs herein reallege each and every allegation as contained above and  
 20 hereby incorporate them by this reference as if fully set forth herein.

21       1.2 In 2006, Plaintiffs and/or their predecessors in interest, entered into  
 22 contracts in writing with the Defendants for the purchase of the Subject Property from  
 23 Defendants.

24       1.3 Plaintiffs are informed and believe, and thereupon allege, that at the time  
 25 of negotiation of said contracts between Plaintiffs and/or their predecessors in interest,  
 26 and Defendants, but before said contracts were executed, Defendants, as an inducement  
 27 to Plaintiffs and/or their predecessors in interest, to purchase the Subject Property, and  
 28 as part of the basis of the bargain of the parties that culminated in the making of the



1 contracts, expressly warranted to Plaintiffs and/or their predecessors in interest, that  
2 the Subject Property was satisfactorily constructed in conformance with the approved  
3 plans and specifications and applicable building codes, ordinances, and standards, and  
4 that the Subject Property was structurally sound and safe, and would remain so, among  
5 other warranties.

6       1.4 Plaintiffs are informed and believe, and thereupon allege, that among  
7 other promises, Defendants as contractors and/or sellers agreed to perform work or sell  
8 and convey the Subject Property free from defects, in a condition of good and  
9 merchantable quality, and fit for the purpose of ordinary residential habitation by  
10 Plaintiffs.

11       1.5 The statutory warranties of NRS § 116.4113 apply to the Subject Property.  
12 Defendants expressly warranted pursuant to NRS § 116.4113, that the Subject Property  
13 was designed, developed and constructed free from defective materials, in accordance  
14 with applicable law, according to sound standards of engineering and construction, and  
15 in a workmanlike manner.

16       1.6 Plaintiffs and/or their predecessors in interest purchased said dwellings in  
17 reliance on the above express warranties made by Defendants. Plaintiffs have duly  
18 performed all conditions, covenants and promises on their part to be performed without  
19 limitation.

20       1.7 Due to the deficiencies alleged herein, Defendants have materially  
21 breached said express warranties, and Plaintiffs have sustained damages as a direct and  
22 proximate result of said breaches. Plaintiffs have notified Defendants of said breach of  
23 warranties, and Defendants have refused, and continue to refuse, to remedy these  
24 defects. Plaintiffs intend by service of the Summons and Complaint and written notice  
25 to the contractor pursuant to NRS Chapter 40 to further notify Defendants of their  
26 breach of express warranties.

27       1.8 Plaintiffs are informed and believe, and thereupon allege, that pursuant to  
28 the contracts for the purchase of the dwellings that they are entitled to recover attorney's

1 fees and costs in connection with enforcing their rights pursuant to said contracts. The  
 2 amount of said attorney's fees and costs are unknown to Plaintiffs at the present time,  
 3 and Plaintiffs will seek leave to amend this Complaint at such time as said amounts are  
 4 ascertained:

5 1.9 Due to the alleged deficiencies, Defendants have materially breached said  
 6 express warranties, and Plaintiffs have sustained damages as a direct and proximate  
 7 result of said breaches. Plaintiffs notified Defendants of said breach of warranties by  
 8 written notice to the contractor pursuant to NRS Chapter 40, and Defendants have  
 9 refused, and continue to refuse, to completely remedy these defects. Plaintiffs intend by  
 10 service of the Summons and this Complaint to further notify Defendants of their breach  
 11 of said express warranties.

12 1.10 Plaintiffs have suffered damages in an amount not fully known but  
 13 believed to be within the jurisdiction of this Court in that Plaintiffs have been and will  
 14 hereafter be required to investigate, estimate the cost of and design proper repairs; and  
 15 perform works of repair, restoration, and construction to portions of the structures to  
 16 prevent further damage and to restore the Subject Property to the proper condition.  
 17 Plaintiffs will establish the precise amount of such damages at trial, according to proof.

18 1.11 As a result of Defendants' breaches of express warranties, Plaintiffs have  
 19 been compelled to retain the services of counsel in order to comply with statutory  
 20 requirements prior to litigation and to institute and prosecute these proceedings, and to  
 21 retain expert consultants and witnesses as reasonably necessary to prove their case, thus  
 22 entitling Plaintiffs to an award of attorneys' fees and costs in amounts to be established  
 23 at the time of trial.

24  
 25 **SECOND CAUSE OF ACTION**  
**Breach of Implied Warranties**

26 2.1 Plaintiffs herein reallege each and every allegation as contained above and  
 27 hereby incorporate them by this reference as if fully set forth herein.

28 2.2 Plaintiffs are informed and believe, and thereupon allege, that Defendants,

1 by developing, constructing and marketing said Subject Property, impliedly warranted  
2 that said dwellings would be free from defective materials, would be constructed in  
3 accordance with applicable law, according to sound standards of engineering and  
4 construction, and in a workmanlike manner, would be habitable, would be of good and  
5 merchantable quality, and would be of at least a quality as would be fit for the ordinary  
6 purposes for which such dwellings were to be used.

7       2.3 The statutory warranties of NRS § 116.4114 apply to the Subject Property.  
8 Defendants impliedly warranted, pursuant to NRS § 116.4114, that the Subject Property  
9 was designed, developed and constructed free from defective materials, in accordance  
10 with applicable law, according to sound standards of engineering and construction, and  
11 in a workmanlike manner.

12       2.4 Plaintiffs and/or their predecessors in interest, purchased said dwellings in  
13 reliance on the above implied warranties made by Defendants. Plaintiffs have  
14 performed all conditions, covenants and promises on their part to be performed without  
15 limitation to include payment of the purchase price and taking possession of the Subject  
16 Property.

17       2.5 Plaintiffs are informed and believe, and thereupon allege, that due to the  
18 deficiencies alleged herein, Defendants have materially breached said implied  
19 warranties, and Plaintiffs have sustained damages as a direct and proximate result of  
20 said breach of implied warranties as set forth herein. Plaintiffs notified Defendants of  
21 said breach of warranties by written notice to the contractor pursuant to NRS Chapter  
22 40, and Defendants have refused, and continue to refuse, to remedy these defects.  
23 Plaintiffs intend by service of the Summons and this Complaint to further notify  
24 Defendants of their breach of said implied warranties.

25       2.6 Plaintiffs have suffered damages in an amount not fully known but  
26 believed to be within the jurisdiction of this Court in that Plaintiffs have been and will  
27 hereafter be required to investigate, estimate the cost of and design proper repairs; and  
28 perform works of repair, restoration, and construction to portions of the structures to

1 prevent further damage and to restore the Subject Property to the proper condition.  
2 Plaintiffs will establish the precise amount of such damages at trial, according to proof.  
3 2.7 As a result of Defendants' breaches of implied warranties, Plaintiffs have  
4 been compelled to retain the services of counsel in order to comply with statutory  
5 requirements prior to litigation and to institute and prosecute these proceedings, and to  
6 retain expert consultants and witnesses as reasonably necessary to prove their case, thus  
7 entitling Plaintiffs to an award of attorneys' fees and costs in amounts to be established  
8 at the time of trial.

9 **THIRD CAUSE OF ACTION**  
10 **Negligence and Negligence Per Se**

11 3.1 Plaintiffs herein reallege each and every allegation as contained above and  
12 hereby incorporate them by this reference as if fully set forth herein.

13 3.2 At all times mentioned herein Defendants had a duty to exercise ordinary  
14 care in the conduct of their business and affairs so as to avoid any unreasonable  
15 likelihood and/or gravity of potential harm to those who might be injured as a  
16 foreseeable result of Defendants' acts, failure to act, or failure to warn.

17 3.3 Plaintiffs are informed and believe, and thereupon allege, that Defendants  
18 breached the above standard of care when they negligently, carelessly and recklessly,  
19 designed, developed, constructed and marketed the Subject Property, resulting in  
20 numerous defects.

21 3.4 Plaintiffs are informed and believe, and thereupon allege, that at all times  
22 relevant hereto, Defendants knew, or through the exercise of reasonable care and  
23 diligence, should have known of such defective, dangerous and hazardous conditions  
24 and that Defendants thereafter failed to warn Plaintiffs of such conditions or to protect  
25 members of Plaintiffs' class therefrom.

26 3.5 Plaintiffs are informed and believe, and thereupon allege, that at all times  
27 relevant hereto, there existed local, state, national building codes, and national building  
28 requirements, such as, but not limited to, the Uniform Building, Mechanical, and

1 Plumbing Codes and/or International Building/Residential Codes in effect as legislative  
 2 enactments, and certain Federal guidelines or requirements, that controlled the  
 3 construction of homes such as the Subject Property.

4 3.6 Plaintiffs are informed and believe, and thereupon allege, that at all times  
 5 relevant hereto, particular provisions of these above mentioned building standards were  
 6 intentionally adopted to protect a class of persons to which the Plaintiffs belong.

7 3.7 Plaintiffs are informed and believe, and thereupon allege, that at all times  
 8 relevant hereto, the injuries suffered by Plaintiffs as alleged herein are the type of  
 9 injuries that the above mentioned provisions were intended to prevent.

10 3.8 As a direct and proximate result of the negligent, careless, and/or wanton  
 11 conduct of Defendants, Defendants breached their duty to Plaintiffs and/or their  
 12 predecessors in interest, and Plaintiffs have been damaged in the manner herein alleged.

#### 13 **FOURTH CAUSE OF ACTION**

##### 14 **Negligent Misrepresentation and Negligent Failure to Disclose**

15 4.1 Plaintiffs herein reallege each and every allegation as contained above and  
 16 hereby incorporate them by this reference as if fully set forth herein.

17 4.2 Plaintiffs allege that at all relevant times Defendants owed to Plaintiffs and  
 18 members of the general public a duty to disclose all conditions potentially having  
 19 adverse impact upon the Subject Property, its value, stability, as well as their safety.  
 20 Plaintiffs allege that Defendants also owed Plaintiffs and/or their predecessors in  
 21 interest and members of the general public a duty to represent with reasonable accuracy  
 22 the actual conditions, quality and significant factors concerning value, safety and  
 23 stability of the Subject Property. As the builders, developers and sellers of said Subject  
 24 Property, Defendants held a special relationship of trust and confidence with potential  
 25 buyers such that duties of disclosure and accurate representations were incumbent upon  
 26 Defendants.

27 4.3 Plaintiffs allege that Defendants, at all relevant times, in breach of the  
 28 duties set forth above, negligently misrepresented and/or failed to disclose to Plaintiffs



1 and/or their predecessors in interest and members of the general public, facts and  
2 information regarding the defective conditions known to Defendants and affecting the  
3 Subject Property, as described herein.

4       4.4 Plaintiffs are informed and believe, and thereupon allege that Defendants  
5 knew or should have known that members of the public, including the Plaintiffs and/or  
6 their predecessors in interest, would purchase the single family homes and that  
7 Defendants, who have superior knowledge and expertise as builders, developers and  
8 sellers of the Subject Property, were required to correct any such defects in the Subject  
9 Property and were further required not to sell such defective property, and were also  
10 required to make such defects in the Subject Property known to Plaintiffs and/or their  
11 predecessors in interest, as prospective purchasers.

12       4.5 Had Plaintiffs known the undisclosed facts, Plaintiffs would have  
13 investigated the condition and integrity of the Subject Property or would have declined  
14 to purchase the Subject Property, and Plaintiffs and/or their predecessors in interest  
15 would not have relied, as they did, upon Defendants' and each of their representations  
16 that the Subject Property were generally in good condition and fit for the intended use  
17 and that all repair work and/or renovations had been successfully completed.

18       4.6 Plaintiffs allege that as a direct and proximate result of the defects set forth  
19 herein, Plaintiffs have sustained damages in an amount not fully known, but believed to  
20 be within the jurisdiction of this Court in that they have been and will hereafter be  
21 required to investigate, estimate the cost of and design proper repairs; and perform  
22 works of repair, restoration, and construction to portions of the structures to prevent  
23 further damage and to restore the Subject Property to the proper condition. Plaintiffs  
24 will establish the precise amount of such damages at trial, according to proof.

25 ///

26 ///

27 ///

28



**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs pray for judgment against Defendants and each of them, as follows:

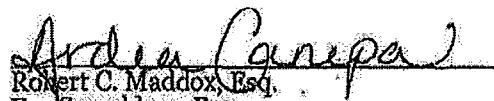
1. For general and special damages according to proof, in excess of \$50,000.00 (Fifty Thousand Dollars);
2. For attorney's fees and costs according to proof;
3. For prejudgment and post-judgment interest on all sums awarded, according to proof at the maximum legal rate;
4. For costs of suit incurred herein;
5. For all damages per NRS 40.655;
6. For such other and further relief as the court may deem just and equitable.

**AFFIRMATION**

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

Dated this 13th day of May, 2013.

**ROBERT C. MADDOX & ASSOCIATES**

  
Robert C. Maddox, Esq.  
Eva Segerblom, Esq.  
Ardea G. Canepa, Esq.  
10587 Double R Boulevard, Suite 100  
Reno, Nevada 89521  
Tel: (775) 322-3666 Fax: (775) 322-6338  
Attorneys for Plaintiffs

**LIST OF EXHIBITS**

Exhibit 1 - Notice in Compliance with Nevada Revised Statute §40.645 dated September 28, 2009

Exhibit 2 - Notice in Compliance with Nevada Revised Statute §40.645 dated November 20, 2009

Exhibit 3 - Notice in Compliance with Nevada Revised Statute §40.645 dated April 6, 2010

CV-13-01125 DC-000041502-892  
CECIL & ROBERTA CLARK TRUST  
District Court  
Mashpee County  
MA  
05/20/2015 04:23 PM  
10/14/2015

**EXHIBIT 1**

**EXHIBIT 1**

ISIC 5942

AA001731

1 Robert C. Maddox & Associates  
Robert C. Maddox, NV Bar No. 4002  
2 Bruce E. Cyra, NV Bar No. 8042  
10587 Double R Blvd., Suite 100  
3 Reno, Nevada 89521  
Telephone: (775) 322-3666  
4 Facsimile: (775) 322-6338  
Attorneys for Claimants

6 CECIL J. CLARK and MAYBETH C.  
CLARK as individuals and as  
7 TRUSTEES OF THE CLARK FAMILY  
8 2006 TRUST,

9 Claimants,

10 vs.

11 D. W. ARNOLD, INC., a Nevada  
Corporation,

12 Respondent.

NOTICE IN COMPLIANCE  
WITH NEVADA REVISED  
STATUTE §40.645

14 TO: D. W. ARNOLD, INC.

15 PLEASE TAKE NOTICE that this firm has been retained by CECIL J. and  
16 MAYBETH C. CLARK ("Claimants") to notify you of constructional defect claims  
17 pursuant to NRS §40.600 *et seq.*

18 I.

19 NOTICE

20 This Notice is being given to satisfy the requirements of NRS §40.645. This  
21 Notice is made pursuant to NRS §40.645(1)(a) by certified mail, return receipt  
22 requested, to:

23 D. W. ARNOLD, INC.  
24 P.O. Box 18197  
Reno, Nevada 89511

25 The last known addresses for the contractor on file with the Nevada State  
26 Contractors Board; and to:

27 ///

28

1       **MICHAEL CHAPMAN**  
2       as Registered Agent of D. W. Arnold, Inc.  
3       9585 Prototype Court, Ste. C  
4       Reno, Nevada 89511

5       The last known address on file with the Nevada Secretary of State

6                               **II.**

7                               **THE PROJECT**

8       The location of the Claimants' residence is 10005 Windy Creek Court, Reno,  
9       Nevada, Lot 44 in the subdivision commonly known as Sky Vista Village 1A, parcel  
10      number 550-392-15, transferred on or about March 20, 2002.

11                              **III.**

12                              **COMMUNICATIONS**

13      At the request of the Claimants, all communications, either verbal, written or  
14      otherwise regarding this matter must be made to, and through, the law office of  
15      **ROBERT C. MADDOX & ASSOCIATES**. Any communication made to the Claimants by  
16      telecommunication or direct contact, unless otherwise specifically authorized through  
17      this law firm, should be directed to **ROBERT C. MADDOX & ASSOCIATES**, 10587  
18      Double R Blvd., Suite 100, Reno, Nevada 89521.

19                              **IV.**

20                              **TOLLING OF ALL RELEVANT STATUTES OF LIMITATION/REPOSE**

21      This notice shall also commence the tolling provisions contained in NRS §40.695;  
22      thus any statutory and contractual limitations as they apply to Claimants will be tolled  
23      during the entire NRS §40.600 process.

24                              **V.**

25                              **THE DEFECTS**

26      Pursuant to and in compliance with NRS §40.645.2(a),(b) and (c), this Notice  
27      contains the preliminary construction defect list thus far identified by the Claimants  
28      hereto:

1 ELECTRICAL

- 2 1. Defective light/fan fixture and/or electrical wiring in family room;
- 3 2. Defective and/or defectively installed electrical switches causing electrical
- 4 shocks;

5 PLUMBING & HEATING

- 6 3. Plumbing leak under master bath tub;
- 7 4. Inconsistent water temperature at showers;
- 8 5. Insufficient hot water at showers;
- 9 6. Leaking hose bib(s);
- 10 7. Sewer odor in laundry room;

11 INTERIOR

- 12 8. Excessive drywall cracking;
- 13 9. Excessive nail pops;
- 14 10. Defective and/or defectively applied drywall patches, primarily in the
- 15 kitchen and family room areas;
- 16 11. Defective and/or defectively applied rounded sheetrock corners;
- 17 12. Defective and/or defectively installed interior trim, primarily in the area of
- 18 the sliding glass patio door;
- 19 13. Defective and/or defectively applied drywall texture/seaming primarily in
- 20 the area of the ceiling in the family room;
- 21 14. Excessive floor squeaks;
- 22 15. Defective toilet in guest bath;
- 23 16. Architectural beam in living room out of level;
- 24 17. Possible leak at ceiling in family room;
- 25 18. Defective and/or defectively applied drywall taping primarily in the
- 26 garage;

27 EXTERIOR

- 28 19. Defective and/or defectively installed man-door from garage to exterior



- 1 causing episodic difficulty in opening, closing and/or locking of door;
- 2 20. Inconsistent quality and/or inferior quality of fencing material;
- 3 21. Defective and/or defectively built fence gate;
- 4 22. Excessive and/or premature deterioration of fencing;
- 5 23. Adverse soils conditions and/or inadequate design and installation of
- 6 drainage system;
- 7 24. Overall original poor site drainage, ponding of water and/or excessive soil
- 8 erosion;
- 9 25. Original grading deficiencies, including cross drainage;
- 10 26. Excessive deterioration and/or separation of wood trim and siding;
- 11 27. Defective or defectively installed nailing of exterior siding;
- 12 28. Defective or defectively installed fascia boards;
- 13 29. Defective and/or defectively installed nailing of front porch railing;
- 14 30. Roof leak at front porch;
- 15 31. Discolored spots in concrete flatwork at front porch/stoop;
- 16 32. Concrete cracking at front porch/stoop;
- 17 33. Excessive warping and/or separation of trim from exterior siding.

18 This list is in no way a complete investigation and should not be construed as a  
 19 complete statement of all constructional defects and Claimants reserve the right to  
 20 amend and/or append the list after further investigation or discovery, but is in the most  
 21 detail that is reasonably available to Claimants as of this date as required by NRS  
 22 §40.645 (2) (b) and (c).

## VI.

### REQUESTED DOCUMENTS

25 Pursuant to NRS §40.681, this is a demand that you immediately provide a copy  
 26 of all relevant reports, photos, correspondence, plans, specifications, shop drawings,  
 27 warranties, contracts, including contracts for insurance that cover the respondent,  
 28 subcontracts, work orders for repair, videotapes, audiotapes and soil and other

1 engineering reports that are not privileged and that apply to the Project.

2 **VII.**

3 **PROTECTED CORRESPONDENCE**

4 All documents and writings, including this notice, are protected by the  
5 document/mediation privilege set forth in NRS §40.109 and by the explicit terms of  
6 NRS §40.680. The legislative purpose of NRS §40.600 *et seq.* is to settle construction  
7 defect claims without litigation. As such, all documents including this Notice, are  
8 privileged and protected from disclosure.

9 **VIII.**

10 **MEDIATION DEMAND**

11 Pursuant to NRS §40.680, demand is hereby made for the mandated pre-  
12 litigation mediation proceedings. We propose the Hon. Michael E. Fondi (Ret.) as the  
13 mediator. Pursuant to NRS §40.680(2), you have 20 days to notify us of your approval  
14 of Judge Fondi as the mediator or to provide us with alternative names.

15 **IX.**

16 **PROCEDURE FOR CONTRACTOR'S RESPONSE.**

17 You are advised to consult an attorney in order to properly comply with the duties  
18 of the contractor as set forth in NRS §40.600, *et seq.*

- 19 A. **Notice to Subcontractors:** Pursuant to NRS §40.646 you must  
20 forward a copy of this Notice within 30 days certified mail, return receipt  
21 requested, to the last known address of each subcontractor, supplier or  
22 design professional whom the contractor reasonably believes is  
23 responsible for a defect specified in the Notice. Failure to send this Notice  
24 may restrict your ability to commence an action against such a  
25 subcontractor, supplier or design professional.
- 26 B. **Inspection:** Pursuant to NRS §40.6462 and NRS §40.647 you may, after  
27 receipt of this Notice and upon your reasonable written request to this  
28 office, inspect the property.

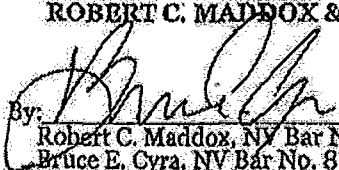
1 C. **Response:** NRS 540.6472 further mandates that within 90 days from  
2 your receipt of this Notice you must provide a written response to each of  
3 the construction defect items. Your response must include details as to the  
4 nature and extent of the construction defect, and unless the response is  
5 limited to a proposal for monetary compensation, the response must also  
6 include the method, adequacy and the estimated costs of any proposed  
7 repair.

8 D. **Mediation:** If disputes remain, the parties are required to submit to  
9 mediation before litigation is commenced by the Claimants unless waived  
10 by agreement or by operation of law.

11 E. **Correspondence address:** In satisfying the time requirements of NRS  
12 §40.600-695, any verbal and written communications must be timely  
13 provided to ROBERT C. MADDOX & ASSOCIATES, 10587 Double R Blvd.,  
14 Suite 100, Reno, Nevada 89521, (775) 322-3666. We appreciate your  
15 anticipated cooperation in this matter.

16  
17 DATED: This 28<sup>th</sup> day of September, 2009

18  
19 ROBERT C. MADDOX & ASSOCIATES

20  
21 By:   
22 Robert C. Maddox, NV Bar No. 4002  
23 Bruce E. Cyra, NV Bar No. 8042  
24 Attorneys for Claimants  
25  
26  
27  
28

1  
2  
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCF 5(b), I hereby certify that I am an employee of the law offices of  
5 **ROBERT C. MADDOX & ASSOCIATES** and on this date served a true copy of the within  
6 document by **CERTIFIED RETURN RECEIPT REQUESTED US First Class Mail** addressed as  
7 follows:

8 **D. W. ARNOLD, INC.**  
9 **2600 College Parkway, Ste. H-20**  
10 **Carson City, NV 89706**  
11 **Certified No.: 7007-0220-0000-5211-2694**

12 **Michael Chapman**  
13 **as Registered Agent for D.W. Arnold, Inc.**  
14 **9585 Prototype Court, Ste. C**  
15 **Reno, Nevada 89511**  
16 **Certified No.: 7007-0220-0000-5211-2700**

17 Dated this 27<sup>th</sup> September, 2009

18   
19 Employee of Robert C. Maddox & Associates  
20  
21  
22  
23  
24  
25  
26  
27  
28

CV13-01125  
CECIL A. WILKINSON CLARK TRUSTE 7 PAGES  
District Court 05/20/2013 04:23 PM  
Harris County \$1,029  
FRT

**EXHIBIT 2**

**EXHIBIT 2**

1 Robert C. Maddox & Associates  
Robert C. Maddox, NV Bar No. 4002  
2 Bruce E. Cyra, NV Bar No. 8042  
10587 Double R Blvd., Suite 100  
3 Reno, Nevada 89521  
Telephone: (775) 322-3666  
4 Facsimile: (775) 322-6338  
*Attorneys for Claimants*

6 CECIL J. CLARK and MAYBETH C.  
7 CLARK as individuals and as  
8 TRUSTEES OF THE CLARK FAMILY  
2006 TRUST,

9 Claimants,

10 vs.

11 D. W. ARNOLD, INC., a Nevada  
Corporation,

12 Respondent.  
13

NOTICE IN COMPLIANCE  
WITH NEVADA REVISED  
STATUTE §40.645

14 TO: D. W. ARNOLD, INC.

15 PLEASE TAKE NOTICE that this firm has been retained by CECIL J. and  
16 MAYBETH C. CLARK ("Claimants") to notify you of constructional defect claims  
17 pursuant to NRS §40.600 et seq.

18 I.

19 NOTICE

20 This Notice is being given to satisfy the requirements of NRS §40.645. This  
21 Notice is made pursuant to NRS §40.645(1)(a) by certified mail, return receipt  
22 requested, to:

23 D. W. ARNOLD, INC.  
24 P.O. Box 18197  
Reno, Nevada 89511

25 The last known addresses for the contractor on file with the Nevada State  
26 Contractors Board; and to:

27 ///



1       **MICHAEL CHAPMAN**  
2       as Registered Agent of D. W. Arnold, Inc.  
3       9585 Prototype Court, Ste. C  
4       Reno, Nevada 89511

5       The last known address on file with the Nevada Secretary of State

6                               **II.**

7                               **THE PROJECT**

8       The location of the Claimants' residence is 10005 Windy Creek Court, Reno,  
9       Nevada, Lot 44 in the subdivision commonly known as Sky Vista Village 1A;, parcel  
10      number 550-392-15, transferred on or about March 20, 2002.

11                              **III.**

12                              **COMMUNICATIONS**

13      At the request of the Claimants, all communications, either verbal, written or  
14      otherwise regarding this matter must be made to, and through, the law office of  
15      ROBERT C. MADDOX & ASSOCIATES. Any communication made to the Claimants by  
16      telecommunication or direct contact, unless otherwise specifically authorized through  
17      this law firm, should be directed to ROBERT C. MADDOX & ASSOCIATES, 10587  
18      Double R Blvd., Suite 100, Reno, Nevada 89521.

19                              **IV.**

20                              **TOLLING OF ALL RELEVANT STATUTES OF LIMITATION/REPOSE**

21      This notice shall also commence the tolling provisions contained in NRS §40.695;  
22      thus any statutory and contractual limitations as they apply to Claimants will be tolled  
23      during the entire NRS §40.600 process.

24                              **V.**

25                              **THE DEFECTS**

26      Pursuant to and in compliance with NRS §40.645.2(a),(b) and (c), this Notice  
27      contains the preliminary construction defect list thus far identified by the Claimants  
28      hereto:

ELECTRICAL

1. Defective light/fan fixture and/or electrical wiring in family room;
2. Defective and/or defectively installed electrical switches causing electrical shocks;

PLUMBING & HEATING

3. Plumbing leak under master bath tub;
4. Inconsistent water temperature at showers;
5. Insufficient hot water at showers;
6. Leaking hose bib(s);
7. Sewer odor in laundry room;

INTERIOR

8. Excessive drywall cracking;
9. Excessive nail pops;
10. Defective and/or defectively applied drywall patches, primarily in the kitchen and family room areas;
11. Defective and/or defectively applied rounded sheet rock corners;
12. Defective and/or defectively installed interior trim, primarily in the area of the sliding glass patio door;
13. Defective and/or defectively applied drywall texture/seaming primarily in the area of the ceiling in the family room;
14. Excessive floor squeaks;
15. Defective toilet in guest bath;
16. Architectural beam in living room out of level;
17. Possible leak at ceiling in family room;
18. Defective and/or defectively applied drywall taping primarily in the garage;

EXTERIOR

19. Defective and/or defectively installed man-door from garage to exterior

- 1 causing episodic difficulty in opening, closing and/or locking of door;
- 2 20. Inconsistent quality and/or inferior quality of fencing material;
- 3 21. Defective and/or defectively built fence gate;
- 4 22. Excessive and/or premature deterioration of fencing;
- 5 23. Adverse soils conditions and/or inadequate design and installation of
- 6 drainage system;
- 7 24. Overall original poor site drainage, ponding of water and/or excessive soil
- 8 erosion;
- 9 25. Original grading deficiencies, including cross drainage;
- 10 26. Excessive deterioration and/or separation of wood trim and siding;
- 11 27. Defective or defectively installed nailing of exterior siding;
- 12 28. Defective or defectively installed fascia boards;
- 13 29. Defective and/or defectively installed nailing of front porch railing;
- 14 30. Roof leak at front porch;
- 15 31. Discolored spots in concrete flatwork at front porch/stoop;
- 16 32. Concrete cracking at front porch/stoop;
- 17 33. Excessive warping and/or separation of trim from exterior siding.

18 This list is in no way a complete investigation and should not be construed as a  
 19 complete statement of all constructional defects and Claimants reserve the right to  
 20 amend and/or append the list after further investigation or discovery, but is in the most  
 21 detail that is reasonably available to Claimants as of this date as required by NRS  
 22 §40.645(2)(b) and (c).

## 23 VI.

### 24 REQUESTED DOCUMENTS

25 Pursuant to NRS §40.681, this is a demand that you immediately provide a copy  
 26 of all relevant reports, photos, correspondence, plans, specifications, shop drawings,  
 27 warranties, contracts, including contracts for insurance that cover the respondent,  
 28 subcontracts, work orders for repair, videotapes, audiotapes and soil and other

1 engineering reports that are not privileged and that apply to the Project.

2 **VII.**

3 **PROTECTED CORRESPONDENCE**

4 All documents and writings, including this notice, are protected by the  
5 document/mediation privilege set forth in NRS §40.109 and by the explicit terms of  
6 NRS §40.680. The legislative purpose of NRS §40.600 *et seq.* is to settle construction  
7 defect claims without litigation. As such, all documents including this Notice, are  
8 privileged and protected from disclosure.

9 **VIII.**

10 **MEDIATION DEMAND:**

11 Pursuant to NRS §40.680, demand is hereby made for the mandated pre-  
12 litigation mediation proceedings. We propose the Robert F. Enzenberger, Esq. as the  
13 mediator. Pursuant to NRS §40.680(2), you have 20 days to notify us of your approval  
14 of Judge Fondi as the mediator or to provide us with alternative names.

15 **IX.**

16 **PROCEDURE FOR CONTRACTOR'S RESPONSE**

17 You are advised to consult an attorney in order to properly comply with the duties  
18 of the contractor as set forth in NRS §40.600, *et seq.*

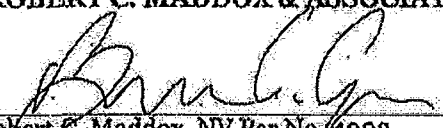
19 A. **Notice to Subcontractors:** Pursuant to NRS §40.646 you must  
20 forward a copy of this Notice within 30 days certified mail, return receipt  
21 requested, to the last known address of each subcontractor, supplier or  
22 design professional whom the contractor reasonably believes is  
23 responsible for a defect specified in the Notice. Failure to send this Notice  
24 may restrict your ability to commence an action against such a  
25 subcontractor, supplier or design professional.

26 B. **Inspection:** Pursuant to NRS §40.6462 and NRS §40.647 you may, after  
27 receipt of this Notice and upon your reasonable written request to this  
28 office, inspect the property.

- 1       **C. Response:** NRS §40.6472 further mandates that within 90 days from  
2       your receipt of this Notice you must provide a written response to each of  
3       the construction defect items. Your response must include details as to the  
4       nature and extent of the construction defect, and unless the response is  
5       limited to a proposal for monetary compensation, the response must also  
6       include the method, adequacy and the estimated costs of any proposed  
7       repair.
- 8       **D. Mediation:** If disputes remain, the parties are required to submit to  
9       mediation before litigation is commenced by the Claimants unless waived  
10      by agreement or by operation of law.
- 11      **E. Correspondence address:** In satisfying the time requirements of NRS  
12      §40.600-695, any verbal and written communications must be timely  
13      provided to ROBERT C. MADDOX & ASSOCIATES, 10587 Double R Blvd.,  
14      Suite 100, Reno, Nevada 89521, (775) 322-3666. We appreciate your  
15      anticipated cooperation in this matter.

16  
17      DATED: This 20<sup>th</sup> day of November, 2009

18  
19                                      ROBERT C. MADDOX & ASSOCIATES

20  
21                                      By:   
22                                      Robert C. Maddox, NV Bar No. 4002  
23                                      Bruce E. Cyr, NV Bar No. 8042  
24                                      Attorneys for Claimants  
25  
26  
27  
28

CV-13-61125  
CC-59266AS26-064  
CECIL A. MAYBETH CLARK TRUSTE E Pages  
District Court 05/28/2013 04:23 PM \$1425  
Hastings County EXA  
HAROLD

**EXHIBIT 3**

**EXHIBIT 3**

1 Robert C. Maddox & Associates  
Robert C. Maddox, NV Bar No. 4002  
2 Bruce E. Cyra, NV Bar No. 8042  
10587 Double R Blvd., Suite 100  
3 Reno, Nevada 89521  
Telephone: (775) 322-3666  
4 Facsimile: (775) 322-6338  
Attorneys for Claimants  
5

6 CECIL J. CLARK and MAYBETH C.  
CLARK as individuals and as  
7 TRUSTEES OF THE CLARK FAMILY  
2006 TRUST,  
8

9 Claimants,

10 vs.

11 D. W. ARNOLD, INC., a Nevada  
Corporation,

12 Respondent.  
13

NOTICE IN COMPLIANCE  
WITH NEVADA REVISED  
STATUTE §40.645

14 TO: D. W. ARNOLD, INC.

15 PLEASE TAKE NOTICE that this firm has been retained by CECIL J. and  
16 MAYBETH C. CLARK ("Claimants") to notify you of constructional defect claims  
17 pursuant to NRS §40.600 et seq.  
18

19 I.

20 NOTICE

21 This Notice is being given to satisfy the requirements of NRS §40.645, is in  
22 supplement to prior Notices and does in no way negate or replace any prior Notice, is  
23 provided to the contractor specifically for the plumbing and electrical defects, and does  
24 not alter any other response deadline for the contractor but is solely for the purpose of  
25 the contractor's Notice requirement to the plumbing and electrical subcontractors under  
26 NRS §40.646. This Notice is made by service on Stephen G. Castronova of the  
27 Castronova Law Offices, P.C., Attorneys for Respondent, by e-mail and by agreement in  
28 lieu of service on the contractors and agents pursuant to NRS §40.645(1)(a) to:



1 D. W. ARNOLD, INC.  
2 P.O. Box 18197  
3 Reno, Nevada 89511

4 The last known addresses for the contractor on file with the Nevada State  
5 Contractors Board.

6 II.

7 THE PROJECT

8 The location of the Claimants' residence is 10005 Windy Creek Court, Reno,  
9 Nevada, Lot 44 in the subdivision commonly known as Sky Vista Village 1A; parcel  
10 number 550-392-15, transferred on or about March 20, 2002.

11 III.

12 COMMUNICATIONS

13 At the request of the Claimants, all communications, either verbal, written or  
14 otherwise regarding this matter must be made to, and through, the law office of  
15 ROBERT C. MADDOX & ASSOCIATES. Any communication made to the Claimants by  
16 telecommunication or direct contact, unless otherwise specifically authorized through  
17 this law firm, should be directed to ROBERT C. MADDOX & ASSOCIATES, 10587  
18 Double R Blvd., Suite 100, Reno, Nevada 89521.

19 IV.

20 TOLLING OF ALL RELEVANT STATUTES OF LIMITATION/REPOSE

21 This notice shall also commence the tolling provisions contained in NRS §40.695;  
22 thus any statutory and contractual limitations as they apply to Claimants will be tolled  
23 during the entire NRS §40.600 process.

24 V.

25 THE DEFECTS

26 Pursuant to and in compliance with NRS §40.645.2(a),(b) and (c), this Notice  
27 contains the preliminary construction defect list thus far identified by the Claimants  
28 hereto:

1 **ELECTRICAL**

- 2 1. Defective light/fan fixture and/or electrical wiring in family room;  
3 2. Defective and/or defectively installed electrical switches causing electrical  
4 shocks;

5 **PLUMBING & HEATING**

- 6 3. Plumbing leak under master bath tub;  
7 4. Inconsistent water temperature at showers;  
8 5. Insufficient hot water at showers;  
9 6. Leaking hose bib(s);  
10 7. Sewer odor in laundry room;

11 **INTERIOR**

- 12 8. Excessive drywall cracking;  
13 9. Excessive nail pops;  
14 10. Defective and/or defectively applied drywall patches, primarily in the  
15 kitchen and family room areas;  
16 11. Defective and/or defectively applied rounded sheet rock corners;  
17 12. Defective and/or defectively installed interior trim, primarily in the area of  
18 the sliding glass patio door;  
19 13. Defective and/or defectively applied drywall texture/seaming primarily in  
20 the area of the ceiling in the family room;  
21 14. Excessive floor squeaks;  
22 15. Defective toilet in guest bath;  
23 16. Architectural beam in living room out of level;  
24 17. Possible leak at ceiling in family room;  
25 18. Defective and/or defectively applied drywall taping primarily in the  
26 garage;

27 **EXTERIOR**

- 28 19. Defective and/or defectively installed man-door from garage to exterior

- 1 causing episodic difficulty in opening, closing and/or locking of door;
- 2 20. Inconsistent quality and/or inferior quality of fencing material;
- 3 21. Defective and/or defectively built fence gate;
- 4 22. Excessive and/or premature deterioration of fencing;
- 5 23. Adverse soils conditions and/or inadequate design and installation of
- 6 drainage system;
- 7 24. Overall original poor site drainage, ponding of water and/or excessive soil
- 8 erosion;
- 9 25. Original grading deficiencies, including cross drainage;
- 10 26. Excessive deterioration and/or separation of wood trim and siding;
- 11 27. Defective or defectively installed nailing of exterior siding;
- 12 28. Defective or defectively installed fascia boards;
- 13 29. Defective and/or defectively installed nailing of front porch railing;
- 14 30. Roof leak at front porch;
- 15 31. Discolored spots in concrete flatwork at front porch/stoop;
- 16 32. Concrete cracking at front porch/stoop;
- 17 33. Excessive warping and/or separation of trim from exterior siding.
- 18 This list is in no way a complete investigation and should not be construed as a
- 19 complete statement of all constructional defects and Claimants reserve the right to
- 20 amend and/or append the list after further investigation or discovery, but is in the most
- 21 detail that is reasonably available to Claimants as of this date as required by NRS
- 22 §40.645 (2) (b) and (c).

## VI.

### REQUESTED DOCUMENTS

25 Pursuant to NRS §40.681, this is a demand that you immediately provide a copy  
 26 of all relevant reports, photos, correspondence, plans, specifications, shop drawings,  
 27 warranties, contracts, including contracts for insurance that cover the respondent,  
 28 subcontracts, work orders for repair, videotapes, audiotapes and soil and other