IN THE SUPREME COURT OF THE STATE OF NEVADA

ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC., also known as ELK POINT COUNTRY CLUB, INC., a Nevada non- profit, non-stock Corporation,

Appellant,

v.

K.J. BROWN, L.L.C., a Nevada limited liability company; TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013,

Respondent.

Electronically Filed
Oct 18 2021 06:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 82484

District Court Case Number:
2020-CV-0124

APPELLANT'S APPENDIX

VOLUME 1

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Docket 82484 Document 2021-29976

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR COUNTY OF DOUGLAS

K. J. BROWN, L.L.C., a Nevada limited liability company; and TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013,

Plaintiffs,

v.

ELK POINT COUNTRY CLUB, INC., a Nevada non-profit, non-stock corporation; and DOES 1-50, inclusive,

Defendant.

_______________________________________/

CASE NO.: 2020 CV 00124

DEPT. NO.: II

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, K. J. BROWN, L.L.C., ("KJB") and TIMOTHY D. GILBERT and NANCY AVANZINO GILBERT, as trustees of the TIMOTHY D. GILBERT AND NANCY AVANZINO GILBERT REVOCABLE FAMILY TRUST DATED DECEMBER 27, 2013 (the "Trust" and collectively referred to as "Plaintiffs"), move the Court for the issuance of a preliminary injunction, enjoining the defendant, ELK POINT COUNTRY CLUB, INC., (the "Association" or "EPCC HOA"), from allowing, actively engaging in, and providing permission to Association Unit Owners/Members to engage in the transient commercial use of Units within the Elk Point subdivision during the pendency of this action, and afterwards, permanently.

Reference is also made to the Complaint for Preliminary Injunction ("Complaint") filed concurrently with this motion.

I.

INTRODUCTION

Plaintiffs own homes within the EPCC HOA subdivision in Zephyr Cove, Nevada. The subdivision is part of the EPCC HOA, which is Nevada non-profit corporation and a "social club" made open only to private Members (also known as "Unit Owner" or "Club Member"). The Association's Bylaws clearly set forth the intended primary purpose for the Association, which prohibits Unit Owners/Members from operating the Association's properties or facilities, including individual Units, with the purpose or effect of providing a profit to Unit Owners/Members. The Bylaws state in pertinent part (***emphasis added***):

> Its primary purpose is hereby affirmed to be to provide its members the pleasure of fellowship and recreation, and its corporate functioning shall be designed to achieve in highest measure such purpose. ***It shall not operate its properties or facilities with the view of providing profit to its members but rather such properties and facilities shall be held, operated, and made available for the use and enjoyment of its members …***

Further, the Association has been granted tax-exempt status under Internal Revenue Code ("IRC") Section 501(c) (7), specifically because it is a club organized solely for the pleasure, recreation, and other nonprofitable purposes of its Unit Owners/Members.

Despite the foregoing use restrictions imposed by the Associations' Governing Documents, and federal tax code, Plaintiffs have recently discovered the growing practice of Unit Owners/Members, including individual Board members, renting their Units to non-members as transient commercial short-term vacation rentals for profit. That unpermitted use violates the governing documents, has caused damage to the Association's property, caused health and safety concerns to Unit Owners/Members, constitutes an unreasonable interference with the quiet enjoyment of Unit Owners/Members' properties and their quiet enjoyment of common areas, over taxes the common area amenities, and jeopardizes the Association's tax-exempt status. Defendant has refused to acknowledge Plaintiffs' concerns regarding the foregoing and has even suppressed their complaints. Plaintiffs have no other option but to seek Court intervention.

II.

FACTS

The Association, through its executive board, manages, controls, and maintains the Elk Point subdivision. The subdivision is a private gated community that provides its Unit Owners/Members with, among other exclusive benefits, private beach access to Lake Tahoe, a private beach deck and barbeque area, a private marina, private water system, private roadways, a private caretaker's residential compound, boat storage facility and privately held water rights.

The Association was established 1925 and has, since its inception, been a member only "social club." Membership is not open to the general public. The association is gate protected. When prospective buyers purchase real property within the subdivision, they must apply, be approved, pay an initial membership fee, and then must pay annual membership assessments thereafter. As part of their exclusive membership, unit owners are granted access and use of all

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the Association's common areas, water usage, and facilities, which are maintained by a full-time association caretaker.

By reason of it being a private "social club," the Association has been granted exemption from federal income taxes under IRC Section 528, granted tax-exempt status under IRC Section 501(c)(7), and is also exempt from State property taxes, all of which have provided a great financial benefit to each of the Unit Owners/Members. Specifically, IRC Section 501(c)(7) provides an exemption from federal income tax of social clubs, such as the Association, which are organized for pleasure, recreation, and other nonprofitable purposes, and *only* when substantially all of the activities of which are for non-profit purposes and *only* when no part of the net earnings inures to the benefit of any single private unit owner/shareholder. On information and belief, if any part of an organization's net earnings "inures" to the benefit of any single private unit owner/shareholder having a personal and private interest in the organization's benefits or activities, no tax exemption protections are provided. Further, an IRC Section 501(c) (7) social club is not tax exempt if it provides profits to its members from the public and non-members' pleasure, recreation and use upon its Association property on a commercial basis. This includes allowing or offering use of the Association's club common facilities to be made available for use by the public for a fee.

The Association, which includes all Unit Owners/Members within the subdivision, is subject to the Association's governing documents, which, in line with the Association's IRC Section 501(c)(7) tax-exempt status, prohibit the use of any portion of property within the Association to be used for profit, inclusive of any commercial use. Specifically, as stated above, the Association's Bylaws Preamble clearly states the intended purpose of the Association and sets forth the permitted use of its properties (***emphasis added***):

> *[The Elk Point Country Club] shall not operate its properties or facilities with the view of providing profit to its members but rather such properties and facilities shall be held, operated, and made available to the use and enjoyment of its members* upon payment of such assessments and charges as will fairly meet its costs of operation and provide a reasonable accumulation of funds for repairs, replacements and additions.

Reference is made to the Bylaws of Elk Point Country Club, Inc., recorded in the office of the Douglas County Recorder as Document No. 370678 ("Bylaws"), a true and correct copy of which is attached as Exhibit 1.

Further, the Bylaws confirm the Association imposes use restrictions on Unit Owners. It provides at Article XVI, Section 2, as follows (*emphasis added*): "*The property of members shall be used for single family residential purposes only*." *See* Exhibit 1.

Plaintiffs have discovered that Unit Owners/Members are engaged in renting their Units to non-members as short-term vacation rentals, which constitutes unauthorized "transient commercial use"[1] in direct violation of the Association's Bylaws, the Association's primary purpose, and its IRC Section 501(c)(7) social club status.

The advertisements for the short-term vacation rentals within the Association that are directed to the general public, prominently identify the Association's exclusive and private common area amenities and facilities, including its gated entrance, its private 13.04 acre beach, private beach deck, and marina, as added benefits to the individual short-term rental properties. On information and belief, the Unit Owners/Members that are engaged in short-term renting of their Units offer the Association's common areas and facilities to their commercial customers,

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[1] NRS 116.340(4) defines "transient commercial use" as the rental of a unit for less than 30 consecutive days. NRS 116.340 only allows transient commercial use of a unit if: 1) the Governing Documents do not prohibit such use; 2) the Board approves the use; and 3) the unit is properly zoned. Because transient commercial use is not permitted according to the Association's Bylaws, the requirements set forth in NRS 116.340 for allowing transient commercial use are not satisfied. Therefore, under Nevada law, transient commercial use is prohibited within the Association.

being the general public, for the purpose of generating income from their short-term vacation renters. Plaintiffs are informed and believe that by doing so, Unit Owners/Members are offering the Association's private amenities and facilities to the public for income generating purposes, which is not permissible under IRC Section 501(c) (7). Further, Unit Owners/Members renting their Units are likely receiving increased rental revenue as a result of their offering the Association's private amenities and facilities for use, which runs afoul of the IRC Section 501(c) (7) requirements. In other words, by accommodating and allowing such commercial use within the association, Defendant is encouraging, facilitating and assisting Unit Owners/Members in renting their Units and promoting the Association's private, membership-only pleasure and recreation on a commercial basis. As a result, there is a high likelihood that the Internal Revenue Service could intervene and revoke the Association's tax-exempt status, which would be in direct violation of the spirit and intent set forth in the Association's governing documents. Should this occur, the Association would be required to file federal income tax returns, pay all applicable income taxes, property taxes, pay back taxes, back interest and penalties to the IRS and the State, including the potential to also pay excise tax. The net result would be significant damage and detriment to each of the Unit Owners/Members. The governing documents require that the Association operate as a tax-exempt social club. Loss of this status would directly violate the requirements set forth in the governing documents.

The unauthorized transient commercial use of Units by Unit Owners/Members is being accommodated by Defendant, which has caused significant dissention, division, and disruption upon the remaining Unit Owners/Members. Defendant has failed and refused to enforce the governing documents concerning transient commercial use within the association. The unauthorized transient commercial use of Units by some of the Unit Owners/Members has and continues to over stress the association's underlying infrastructure capacity. For example, the

Association's now single lane roadway system is encroached upon by excessive vehicles and unauthorized parking by short-term renters, narrowing access. The unauthorized transient commercial use of Units continues to cause significant overuse and damages upon common area properties, including, but not limited to the following: excessive noise and parties by renters after curfew; inappropriate trash storage and trash disposal; overuse of the common area beach system; illegal parking in designated fire lanes; additional wear and tear upon the single lane roadway system; increased wear and tear upon the front gate system; parking violations blocking narrowed common area roadways which directly interferes with fire, medical, or other emergency services ability to gain clear access into and through the association; and renters interfering in the safety, welfare and quiet enjoyment of Unit Owners/Members. Despite the Association's lack of certain insurance protections, transient commercial use operators within the Association provide their renters with access to watercraft within the Association, thereby exposing all of the membership to increased liability. Reference is made to the Declaration of Kurt R. Brown for further particulars, attached as Exhibit 2. Reference is also made to the Declaration of Nancy A. Gilbert, attached as Exhibit 3, regarding the serious safety issues resulting from the short-term renters.

Defendant has ignored and suppressed Plaintiffs' and other members' complaints regarding the foregoing because the Board members themselves are either profiting from their own misconduct and/or they have aligned themselves with Unit Owners/Members that are engaged in transient commercial use of their Units, and therefore support the Board Members' control of the Association because they accommodate such rentals. The foregoing puts the entire Association at risk for serious tax consequences and increased liability risks, as described above. Their flagrant disregard of the governing documents and the refusal to acknowledge Plaintiffs' serious concerns is evidence that the Association is collectively blinded by their Board Members own desire to generate income from their Units and/or to retain control over the association to accommodate transient commercial use within the Association. It is clear this misconduct cannot be stopped absent court intervention.

III.

LAW

This motion is supported by NRCP 65, which sets forth the requirements for the issuance of a preliminary injunction.

In addition, NRS 33.101 sets forth the numerous instances in which an injunction may be granted to enjoin wrongful conduct:

> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.
>
> 3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

In the case of *S.O.C., Inc. v. Mirage Casino-Hotel,* 117 Nev. 403, 408, 23 P.3d 243 (2001), the Nevada Supreme Court held: "A party seeking the issuance of a preliminary injunction bears the burden of establishing (1) a likelihood of success on the merits; and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damages is an inadequate remedy." *See also Dangberg Holdings v. Douglas County,* 115 Nev. 129, 142-143, 978 P.2d 311, 319 (1999). The decision to grant or deny injunctive relief is directly appealable and is reviewed for an abuse of discretion. NRAP 3A (3), *Attorney General v. NOS Communications,* 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004).

IV.

ANALYSIS

1. Plaintiffs' requested relief.

Plaintiffs requested relief is simple and reasonable. They seek an order of this Court prohibiting Defendant from allowing, actively engaging in, and/or giving permission to the Association's Unit Owners/Members to engage in the transient commercial use of Units within the Elk Point subdivision during the pendency of this action and afterwards, permanently. The prohibition necessarily includes any use, or advertisement for use of the Association's Units, common areas, and facilities by short-term renters for commercial gain. Plaintiffs ask the Court to order that if Defendant fails to comply during the pendency of this action, which includes permitting, advertising, and engaging in short-term vacation rentals of Units within the Association, that Defendant be held in contempt of Court.

2. Plaintiffs have a likelihood of success on the merits.

Here, the first prong of the *S.O.C.* inquiry (likelihood of success on the merits) is easily satisfied. The Association's governing documents are clear. The Bylaws specifically set forth that the intention of the Association is not to operate to provide income to its Unit Owners/Members. The Association's longstanding IRC 501(c)(7) status prohibits Unit Owners/Members from engaging in activities for the generation of income. The Unit Owners/Members are engaged in transient commercial use and engaged in activities for income and profit. They are charging a premium for their Units because of the access to the Association's gated community, marina, beach deck, and private beach access, all of which are exclusive private amenities to be only offered by the Association for the sole benefit if its Unit Owners/Members.

That unauthorized use of the Associations common areas and facilities is accommodated by Defendant and violates the Association's governing documents. The transient commercial use is resulting in Unit Owners/Members privately benefitting from the Association's properties and common areas, which puts the Association's tax-exempt status under IRC Section 501(c)(7) at risk. Defendant is failing and refusing to acknowledge Plaintiffs' complaints and failing to comply with the governing documents because the Board Members' wrongful commercial income and profits obtained through transient commercial use of their Units will be negatively impacted.

Defendant must be from allowing and encouraging this misconduct. Plaintiffs have no plain, speedy, simple or adequate remedy at law, and injunctive relief is warranted.

3 There is a reasonable probability that Defendant's conduct, if allowed to continue, will cause irreparable harm for which compensatory damages will be an inadequate remedy.

The second *S.O.C.* factor ("a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damages is an inadequate remedy") also favors the entry of a preliminary injunction. Irreparable harm is that harm for which compensatory damages would be inadequate. *Dixon v. Thatcher,* 103 Nev. 414, 415, 742 P.2d 1029, 1029-30 (1987). It is clear Defendant will continue to refuse to take any action to enforce the Association's Bylaws prohibiting transient commercial use, or to ensure that the Association's tax-exempt status under IRC Section 501(c) (7) status is protected, preserved and not compromised. If the Internal Revenue Service completed an audit of the Association's records and revoked the Association's tax-exempt status, as a result of Unit Owners/Members transient commercial use of their Units for profit, the tax exposure would be serious. All of the individual Unit Owners/Members and the Association would potentially need to pay the IRS back taxes, income taxes, and State property taxes, as well as penalties and interest. The consequences of the foregoing would be overwhelming, will most certainly alter the character of the community and will have a longstanding detrimental effect upon the Association.

The negative impact caused by the short-term renters on the Unit Owners/Members is real and serious. Not only is their quiet and peaceful enjoyment of their properties being negatively impacted, and the character of the community being negatively altered, but their individual safety has been significantly compromised because the short-term renters are blocking emergency access to Unit Owners/Members' homes. Additional consequences include, but are not limited to: the overuse of the association roadway system; high volume parking shortages; high volume parking road blockages; pedestrian-vehicle proximity on narrow roads; lack of speed controls upon the narrow roadway system with the influx of renters into the association; impingement upon fire, medical and safety vehicle access through the subdivision; and overcrowding of the beach system. Further, the common area facilities are being unreasonably worn down by the influx of transient commercial use, and as a result require more maintenance and services due to increased use by non-members, all without any benefit to all of the Unit Owners/Members. And lastly, the Court is asked to note that the Association has existed and operated since 1925 as a private-members only social club. The tenets that have upheld the character and charm of the Association are being threatened because of individual Unit Owner/Member's own personal economic and commercial self-interest. Unless restrained, the complete character and charm of the Association will forever be altered, the Association's infrastructure and systems will be overtaxed, and the quiet use and enjoyment by the Unit Owners/Members will be destroyed. That damage cannot be undone. An award of compensatory damages would be a futile act by this Court for this type of damage.

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Plaintiffs ask the Court to order the Association to show cause, if any, why it, through its Board of Directors should be permitted to allow and encourage income to be produced and earned from the transient commercial use by Units Owners/Members within the Association. Defendant must demonstrate that the commercial use of Units is allowed under the Association's governing documents, including its Bylaws. As the Court will see, that cannot be done under any fair reading. Defendant must also establish that the Association's social club status is legally authorized to operate while its Unit Owners/Members receive income from the social club's amenities, all without running afoul of the strict prohibitions imposed by the Internal Revenue Service and the related IRC provisions.

In terms of security, Plaintiffs suggest that $500 will be adequate to protect Defendant. Indeed, by way of Plaintiffs' requested relief, they are merely requesting that Defendant comply with and enforce the governing documents, Nevada law and federal income tax requirements. The matter will come on for a hearing quickly and, if additional security is required, the Court can so order.

V.

CONCLUSION

Plaintiffs are entitled to injunctive relief. Plaintiffs have shown a likelihood of success on the merits of their claims and that, unless Defendant's conduct is restrained, Plaintiffs will be irreparably harmed, for which compensatory damages will be an inadequate remedy.

WHEREFORE, Plaintiffs pray for the issuance of injunctive relief prohibiting transient commercial use of Units within the Association during the pendency of this case, and afterwards,

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permanently; for an award of damages, fees and costs; and for such other, further and additional relief as seems just to the Court in the premises.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that Plaintiffs' preceding *Motion for Preliminary Injunction* filed in the above-entitled case does not contain the social security number of any person.

DATED this 29 day of June, 2020.

LEACH KERN GRUCHOW ANDERSON SONG

By: ______________________

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EXHIBIT “1”

EXHIBIT “1”

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Elk Point Country Club
P.O. Box 9
Zephyr Cove,
Nevada 89448
Attn: Steve Achard

BYLAWS

OF

ELK POINT COUNTRY CLUB, INC.

July 2, 1994
250-77-16b

INDEX

PROPOSED AMENDMENT - 1981

BYLAWS OF ELK POINT COUNTRY CLUB INCORPORATED

Preamble

The Elk Point Country Club, hereafter called Corporation, is a membership corporation organized under the General Non-Profit Corporation Laws of the State of Nevada. Its primary purpose is hereby affirmed to be to provide its members the pleasure of fellowship and recreation, and its corporate functioning shall be designed to achieve in highest measure such purpose. It shall not operate its properties or facilities with the view of providing profit to its members but rather such properties and facilities shall be held, operated, and made available for the use and enjoyment of its members upon payment of such assessments and charges as will fairly meet its cost of operation and provide a reasonable accumulation of funds for repairs, replacements and additions.

ARTICLE I

MEETINGS OF MEMBERS

Section 1. All meetings of the members shall be held on the property of Elk Point Country Club, Inc., Lake Tahoe, Nevada.

Section 2. A majority of the membership certificates issued and outstanding represented by the holders thereof either in person or by proxy shall constitute a quorum for the transaction of business at all meetings of members.

Section 3.

a) The annual meeting of the members shall be held at Elk Point Country Club, Inc. on the first Saturday of July of each year at the hour of 1:00 P.M. thereof.

b) At such annual meeting each holder of a certificate of membership in the Corporation, which said certificates of membership were registered in the name of the member on the 90th day preceding the meeting, exclusive of the day of such meeting, shall be entitled to one vote in person or by proxy.

c) At such meetings the members shall elect by a plurality by ballot the Board of Directors from among the qualified members as defined by the Articles of Incorporation and the Bylaws.

Section 4. Notice of annual meeting of the members shall be given by depositing the notice in the U.S. mail addressed to each member at the address of the member as the members name appears upon the records of the Corporation, at least fifteen calendar days prior to the meeting, exclusive of the day of the mailing.

Section 5.

a) At such annual meeting, if a quorum of the membership certificates shall not be present or represented, the members present shall have the power to adjourn to a day certain, and notice of the meeting to the adjourned day shall be given to the members by depositing the notice in the U.S. mail addressed to each member at the address of the member, as the same appears upon the records of the Corporation, at least five calendar days prior to such adjourned meeting, exclusive of the day of the mailing.

b) If a majority of the membership is present at such annual meeting in person or by proxy, such majority shall have power from time to time to adjourn the annual meeting to any subsequent day or days, and notice of the adjourned meeting need not be given.

Section 6. Special meetings of the members may be held when called by the President, by a majority of the Directors, or by one third of the members of the Corporation. Notice of special meetings shall be given by depositing the notice in the U.S. mail addressed to each member of the address of the member as the same appears upon the records of the Corporation, at least seven calendar days prior to the meeting, exclusive of the day of the mailing.

Section 7. Personal notice shall be equivalent to the notice by U.S. mail in all cases wherein notice by mail is authorized by these Bylaws.

Section 8. At all meetings of the members, the order of business shall be as follows:

(a) Calling of roll;

(b) Proof of notice of meeting;

(c) Approving of Minutes of previous meeting;

(d) Reports of Directors and Officers;

(e) Election of Directors;

(f) Miscellaneous Business.

ARTICLE II

DIRECTORS

Section 1. The Board of Directors shall constitute the ruling and governing body of the Corporation. It shall apply all rules regulating the affairs and conduct of the Corporation, subject in each case to the provisions of these Bylaws the Articles of Incorporation and subject to the laws of the State of Nevada.

Section 2. Qualification for Directors: A director must be a member of the Corporation in good standing for two years prior to election to office. If any director shall cease to be a member or fail to continue to be a member in good standing, the office of that director shall be deemed to be vacant.

Section 3. Directors of the corporation shall be five in number and shall fill the terms of office as follows: Beginning with the elections scheduled in July of 1991 and thereafter, three (3) directors shall be elected on even numbered years for two (2) year terms each, and two (2) directors shall be elected on odd numbered years for (2) year terms each.

Section 4. The Directors shall meet at such time at the office of the Corporation, or at such other convenient places upon the Corporation property. A meeting of the Board shall be held the last Sunday in June, and again immediately succeeding every annual meeting of the members of the Corporation.

Section 5. Special meetings of the Board of Directors shall be held when called by the President, or when requested by a majority of the Directors. Notice of special meetings of the Board of Directors shall be given to each Director by depositing the notice in the U.S. mail addressed to the Director at the address of the Director as the same appears upon the records of the Corporation, or shall be given personal notification, at least seven calendar days prior to the meeting exclusive of the day of the mailing or giving personal notification. The fact of notice and the time and method thereof shall be entered upon the minutes of the meeting. Upon request, any member shall receive notice of special meetings after payment of a reasonable fee for such service. The fee shall be paid to the Treasurer. The amount of the fee shall be established annually by the Board of Directors.

Section 6. The Board of Directors may have an office on the premises of the Corporation and shall keep the books of the Corporation as the laws of the State of Nevada require to be kept within the State of Nevada, at such office. Other books of the Corporation shall be kept at such place or places as the Board of Directors may from time to time determine.

Section 7. A majority of the Board of Directors shall constitute a quorum for the transaction of business.

Section 8. Any act of a majority of the Directors, although not taken or done at a regular or special meeting of the Board of Directors, if such action and the record thereof is assented to in writing by all members of the Board of Directors, shall be as valid and effective as if taken or done by the Board of Directors at a regularly called meeting.

Section 9. Any notice required to be given by this Article may be waived by the party to whom such notice is required to be given, provided such waiver is in writing, duly signed either before, at, or after the meeting. The waiver shall be filed with the Secretary of the Corporation.

ARTICLE III

POWERS OF DIRECTORS

Section 1. The Directors shall have power to appoint and remove at pleasure, all officers, agents and employees of the Corporation, prescribe their duties, fix their compensation and require from them security for faithful services.

Section 2. The Directors shall have power to conduct, manage and control the affairs and business of the Corporation and to make rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation and the Bylaws of the Corporation.

Section 3. The Directors shall have power to incur indebtedness, except as limited by Article V of these Bylaws, the terms and amounts of which shall be entered upon the Minutes of the Board of Directors meeting, and the note or writing given for the same shall be signed officially by the Officer or Officers authorized by the Board of Directors.

Section 4. The Board of Directors may not increase or decrease the number of members of the Board of Directors.

ARTICLE IV

LIMITATIONS OF POWERS

Section 1. The enumeration of the powers and duties of the Directors in these Bylaws shall not be construed to exclude all or any of the powers and duties, except insofar as the same are expressly prohibited or restricted by the provisions of these Bylaws or Articles of Incorporation, and the Directors shall have and exercise all other powers and perform all such duties as may be granted by the laws of the State of Nevada and do not conflict with the provisions of these Bylaws and the Articles of Incorporation.

Section 2. The Board of Directors shall not borrow money or incur any indebtedness in excess of the annual budget amounts approved by a majority vote of the members first had at a regularly called annual or special meeting of the members.

Section 3. The Board of Directors shall not enter into any contract, the performance of which would require over twelve (12) months, nor any contract for personal services for a period exceeding twelve (12) months.

Section 4. The Board of Directors shall not sell, convey, or encumber any of the real property of the Corporation without the unanimous consent of the total Membership first obtained.

(Note: Amendment of this section is restricted. See Article XXIV, Section 1.)

Section 5. The compensation of all employees and of all Officers of the Corporation, other than the Directors, shall be fixed and determined by the Board of Directors as herein provided.

ARTICLE V

DUTIES OF DIRECTORS

Section 1. It shall be the duty of the Directors:

(a) To cause to be kept a complete record of all the accounts and the proceedings of the members and to present a full statement thereof at the annual meeting of the members, showing in detail the receipt and disbursements and the assets and liabilities of the Corporation, and generally the condition of its affairs, a similar statement shall be presented at any other meeting of the members when thereby required by persons holding at least one-third of the issued and outstanding membership certificates.

(b) To supervise all officers, agents, the caretaker and employees and see that their duties are properly performed.

(c) To cause to be issued the certificates of membership upon admission to membership of new members.

(d) To approve the employment of a caretaker, to reside on the premises throughout the year.

(e) To issue to the caretaker each month, or following each meeting of the Board of Directors, orders setting forth a monthly schedule of work to be performed by the caretaker in the ensuing month.

(f) To appoint a committee of three members of the Corporation, none of whom shall be incumbent directors, to make an independent annual audit of the financial condition of the Corporation and submit the same to the Directors at the meeting of Directors held the last Sunday of June.

(g) To adopt annually, rules for the conduct and government of the members, their guests and tenants, in connection with the exercise of their privileges as members, tenants and guests and their use of the Corporation property, and cause the same to be published and mailed to each member at the address of the member as the same appears upon the records of the Corporation. It shall be each member's responsibility to require guests and tenants to obey said rules.

ARTICLE VI

OFFICERS

Section 1. The Officers of the Corporation shall be a President, Vice President, Secretary and Treasurer. No Offices shall be consolidated. The Board of Directors shall, at their first regular meeting, elect from its members a President, Vice President, a Secretary and a Treasurer.

Section 2. No member may act in the capacity of more than one officer position for any transaction or series or related transactions.

Section 3. The Treasurer and any other Officers with authority to disburse funds of the Corporation shall be bonded for an amount determined by the Board of Directors. Each such bond shall be not less than $2,000.00.

ARTICLE VII

PRESIDENT

Section 1. The President shall be the chief officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. If at any time the President shall be unable to act, the Vice President shall take the place of the President and perform such duties, and, in case of the inability of the Vice President to act, the Board of Directors shall appoint a member of the Board to do so, and such member shall be vested for the interim period with all powers and shall discharge and perform all duties and functions of the office.

Section 2. The duties of the President shall be:

(a) To preside over all meetings of the members and Directors.

(b) To sign, as President, all certificates of membership and all contracts and other instruments in writing which have been approved first by the Board of Directors.

(c) To call the Directors together whenever he shall deem it necessary; and to have, subject to the advice of the Directors, charge of all affairs of the Corporation, and generally to discharge such other duties as may be required of the President by the Bylaws of the Corporation.

ARTICLE VIII

VICE PRESIDENT

Section 1. The Vice President shall be vested with the powers and shall perform all of the duties of the President in the absence of the President and at other times shall have authority and shall perform such duties as the Board of Directors may prescribe.

ARTICLE IX

SECRETARY

Section 1. The Secretary shall give all required notice of all meetings of the members and meetings of the Board of Directors, keep minutes of all the meetings of members and Board of Directors, register and countersign all certificates of membership, countersign contracts, and other instruments in writing requiring the signature of the President, be custodian of the seal and attach the same to all documents and instruments requiring the seal, and in general, perform all acts incident to the office of Secretary.

Section 2. The Secretary shall mail to each member a copy of the Minutes of Directors' meetings, and all meetings of the members, within five calendar days after any such meeting, whether the said Minutes have been approved or not.

ARTICLE X

TREASURER

Section 1. The Treasurer shall receive all moneys and funds of the Corporation and shall deposit the same in such depository or depositories as from time to time may be selected by the Board of Directors.

Section 2. The Treasurer shall perform all other duties respecting moneys, funds, securities and property of the Corporation which the Treasurer may receive, or which may be confided to the care of the Treasurer as the Board of Directors may from time to time prescribe or direct.

Section 3. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors or by an authorized Officer of the Corporation, only upon proper vouchers for such disbursements and as required by Article XIV of these Bylaws.

Section 4. The Treasurer shall render to the President and Board of Directors at regular meetings of the Board, or whenever they may require it, an account of all actions as Treasurer, and of the financial condition of the Corporation.

Section 5. The Treasurer shall submit to the Board of Directors an annual statement showing in detail all receipts and disbursements at the meeting of the Board of Directors which shall be held on the last Sunday of June of each year.

ARTICLE XI

VACANCIES

Section 1. If the office of any Director or of any appointed official of the Corporation shall become vacant for any cause, the remaining Directors, if more than a quorum, may elect a successor or successors who shall hold office for the unexpired term, and in the event there is less than a quorum, the remaining Directors shall call a special meeting of the membership to fill the vacancies.

ARTICLE XII

VALIDATION OF INFORMAL ACTS

Section 1. Any act of a majority of the Board of Directors, although not had at a regularly called meeting, and the records thereof, if attested to in writing by all the other members of the Board, shall be as valid and effective in all respects as if passed by the Board in regular meeting.

Section 2. Whenever all members entitled to vote at any meeting, whether of Directors or of members, consent either by writing signed on the records of the meeting, or filed with the Secretary, or by presence at such meeting, and oral consent entered on the Minutes, or by taking part in the deliberations at such meeting without objections, all acts of such meeting shall be as valid as if had at a meeting regularly called and noticed and at such meeting any business may be transacted which is not excepted from the written consent, or to the consideration of which no objection for want of notice is made at the time, and if any meeting is irregular for want of notice, or of such consent, and a quorum is present at such meeting, the proceedings of such meeting may be ratified and approved and rendered valid, and the irregularity or defect waived by a written consent by all members having a right to vote at such meeting, or by a majority vote at any subsequent legally convened meeting, and such consent or approval of members may be by proxy or by power of attorney, in writing.

ARTICLE XIII

CORPORATE SEAL

Section 1. The Corporation shall have a seal upon which shall appear the Corporate name and date when incorporated, which date shall be the date of the issuance of the original certificate of the Secretary of State, and such other designs as the Board of Directors may determine.

ARTICLE XIV

DEPOSIT AND DISPOSITION OF FUNDS

Section 1. The Board of Directors is authorized to select such depositories as it shall deem proper for the needs of the Corporation. All checks and drafts against such deposited funds shall be signed by the Treasurer and countersigned by one of the following Officers: President, Vice President or Secretary.

ARTICLE XV

MEMBERS

Section 1. No person shall be eligible to membership in this Corporation whose application for membership has not been submitted to the Board of Directors and favorably passed upon by a majority vote of the Board of Directors at any regular or special meeting thereof.

Section 2. No person shall be entitled to any property rights or interest therein or derived by a member of the Corporation from whom any such person may obtain consenting to such assignment of transfer and to the acceptance of the assignee or transferee as a member of the Corporation.

Section 3. Any person may apply for membership in the Corporation by application to the Board of Directors on a form to be made available by the Board of Directors. If a member desires to transfer the membership and all property of the member to any such applicant, such member shall join in the application and request that the membership be so transferred to such applicant. If such member desires to sell to such applicant only one or more of several lots owned by the member but would still retain one or more lots, then such member shall join in the application and request permission to transfer such lot or lots proposed to be sold. A copy of the proposed deed or deeds shall be annexed to each application.

Section 4. If an applicant is elected to membership by the Board of Directors, upon transfer of membership, all property rights of the prospective grantor and assignor of the certificate of membership of the Corporation shall terminate upon the execution and valid delivery of the deed or deeds to the grantee and execution of the assignment of the certificate of membership.

Section 5. The initiation fee for all new members shall be $10,000 which said sum shall accompany all applications for membership. In the event the application is rejected, the initiation fee shall be returned to the applicant.

Section 6. Any owner of a certificate of membership, who on the 22nd day of August, 1948, owned a lot or lots in his or her name, having a spouse, adult or adults, child, or children, or parent or parents, or brother or sisters, may, upon surrender of such certificate, apply to the Board of Directors to issue a certificate of membership in joint tenancy to such owner and to the spouse, or adult or adults, child or children, or parent child, or children, or parent or parents, or brother or sisters, may, upon surrender of such certificate, apply to the Board of Directors to issue a certificate of membership in joint tenancy to such owner and to the spouse, or adult or adults, child or children, or parent or parents, or bother or sister of the member, and the Board of Directors shall forthwith issue to such member and spouse, adult or adults, or child or children, or parent or parents, or brother or sister, a new certificate of membership in joint tenancy to such persons.

<u>Section 7</u>. No initiation fees shall be required upon the issuance of a new certificate as provided in Section 6.

<u>Section 8</u>. When any certificate or membership is held jointly by several persons, any one of them may vote at any meeting in person or by proxy in respect of such membership, however, if more than one of them are present at such meeting in person or by proxy, no vote shall be received in respect of such shared membership unless the persons present join in or assent to such vote. In case of the death, bankruptcy, or mental incapacity of any fractional owner of a membership certificate, the person entitled to such fractional membership shall be entitled to vote in respect of such fractional membership as set forth above.

<u>Section 9</u>. There shall be one class of membership, limited to natural persons.

ARTICLE XVI

PROPERTY RIGHT OF MEMBERS

<u>Section 1</u>. No member or owner of a lot or lots, or any member having only an equity in a lot or lots, shall sell or convey or otherwise dispose of any part or

portion thereof without the prior consent of a majority of the Board of Directors by appropriate resolution at any general or special meeting thereof.

Section 2. The property of members shall be used for single family residential purposes only.

Section 3. No structure of any kind shall be erected or permitted upon the premises of any member unless the plans and specifications shall have first been submitted to and approved by the Board of Directors. No tent, house trailer, motor home, camper, or similar housing, permanent or temporary, shall be permitted within the premises and real property of the Corporation at any time under any circumstances, except for loading and unloading.

Section 4. No member shall own more than three (3) lots at the same time.

Section 5. The grantee or grantees of any property and premises, and the property and the premises within the tract of the Corporation, shall be subject at all times to the Articles of Incorporation, Bylaws, rules and regulations of the Corporation which shall in turn bind every subsequent grantee, the executors, administrators, successors and or assigns of such grantee.

ARTICLE XVII

ANNUAL ASSESSMENTS

Section 1. The annual operating assessment shall be on a membership basis, and shall be fixed by the Board of Directors at the Adjourned Annual Meeting in accordance with the budget submitted and approved by the Members at the Annual

July Meeting.

Section 2. The annual assessment shall cover a period of time extending from July 1st to June 30th of the following year and shall be due and payable on August 10th of each year and shall become delinquent on November 10th of that particular year.

Section 3. All special assessments, such as roads, water, trees, etc., shall be on a per lot basis.

ARTICLE XVIII

LIENS UPON MEMBERSHIPS

Section 1. Any unpaid membership fees and assessments shall be a lien upon the debtors membership, certificate of membership, and all lots, including the improvements thereon, at Elk Point Country Club, Nevada, owned by the member or in which the member has an interest. In any suit to foreclose such lien the court may award reasonable attorney's fees, which together with cost of suit, for foreclosure and sale, and any taxes paid by the Corporation, shall also be a lien upon said properties of the debtor.

ARTICLE XIX

TERMINATION OF MEMBERSHIP

Section 1. Membership shall be terminated by transfer of the same, or be transfer of the last lot owned by a member. No such transfer shall be effective except upon the consent of the Board of Directors as set forth in these Bylaws. Membership obligations shall continue against the personal representatives, heirs, assigns and devisees of the former member and shall continue to be a lien upon said lot or lots. A former member whose membership has been terminated as provided in these Bylaws, immediately forfeits all rights of membership and all interest in the property and assets of the Corporation.

ARTICLE XX

PENALTIES

Section 1. By action of the Board of Directors, the membership of a member shall be suspended for any of the following causes:

(a) Violation of or failure by any member or the tenant or guests, of the member to comply with any Corporation Bylaw, Article of Incorporation, or any of the rules and regulations promulgated by the Board of Directors, after due notice and hearing by the Board of Directors.

(b) Failure, for three months, to pay assessments owing the Corporation.

Section 2. During the period of suspension, the suspended member shall not be entitled to any services from the Corporation nor from its caretaker, and the water supply

to the property of such member may be shut off after due notice. Voting privileges shall also be denied and assessments shall continue during the suspension.

Section 3. Any member so suspended may be reinstated, by a majority vote of the Board of Directors, after completion of remedy imposed by the Board of Directors.

ARTICLE XXI

PROPERTY RIGHTS ON DEATH OF MEMBERS

Section 1. Upon the death of a member, all provisions of these Bylaws shall apply to the heirs, devisees and personal representatives of the deceased member. Should title to any lot or lots of the deceased member vest in any heir or heirs, devisee or devisees, of said member either by operation of law or decree of distribution, then such heir or heirs, devisee or devisees shall be admitted to membership in this Corporation upon application to and approval by the Board of Directors and no initiation fee shall be charged the heir, devisee and personal representatives of any deceased member, and the title of such heir or heirs, devisee or devisees, to the lot or lots of said deceased member shall be recognized by this Corporation; upon the condition, however, that said heir or heirs, devisee or devisees, shall in all respects be bound by and shall adhere to the Bylaws, rules and regulations of this Corporation, including those pertaining to any sale of said lot or lots. Any sale of said lot or lots by any personal representative of a deceased member shall not be valid until the purchaser or contemplated purchaser shall be approved by the Board of Directors of this Corporation as provided in these Bylaws.

ARTICLE XXII

DISSOLUTION

Section 1. Upon the termination of the life of the Corporation, or upon its sooner dissolution for any cause, all restrictions, regulations and limitations as to the sale and conveyance, possession, occupancy and enjoyment of any lot or lots owned by the members shall terminate. All assets of whatever kind, character or nature shall be converted into cash and the net thereof divided among the members proportionately to the number of lots owned by each. Nothing herein contained shall be construed to prevent a renewal of the charter of the Corporation in the manner provided by law thereby extending the life of the Corporation.

ARTICLE XXIII

FISCAL YEAR

Section 1. The fiscal year of the Corporation shall begin with the first day of July and extend to the 30th day of June, both days, inclusive, unless otherwise provided by the resolution of the Board of Directors.

ARTICLE XXIV

AMENDMENTS

Section 1. These Bylaws may be amended except as otherwise provided, by a two-thirds majority vote of all the members present at any regularly called meeting of members, provided, however, that written notice of the proposed changes shall have been given to each member in the same manner and for the same time as notice for the meeting is required by these Bylaws. Neither Article XXIV nor Article IV Section 4 shall be amended without the unanimous consent of all members.

ARTICLE XXV

CARETAKER

Section 1. A caretaker shall be employed by the Board of Directors upon terms and conditions to be fixed and approved by the Board of Directors. Said Caretaker shall be directly responsible to the Board of Directors. No caretaker shall be retained by a contract for services in excess of one year.

Section 2. Each member shall notify the Caretaker of the name of any renter, tenant or guest and the dates of tenancy.

ARTICLE XXVI

EFFECTIVE DATE OF BYLAWS

Section 1. These Bylaws shall be effective upon approval by a two-thirds vote of all members present, at its Annual Membership Meeting to be held on the First Saturday in July, and shall supersede all other Bylaws of Elk Point Country Club, Inc., and said Bylaws shall be filed by the Secretary of this Corporation, with the County Clerk of Douglas County, Nevada, within thirty (30) days from the effective date of the approval of these Bylaws by a two-thirds vote of all members as provided in these Bylaws.

The above Bylaws were adopted on July 3, 1982.

Attested this 22nd day of July, 1982.

Amendments effective as amended July 2, 1994.

~~Secretary~~ TREASURER
Elk Point Country Club, Inc.
STEVE ACHARD

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ELKPOINT COUNTRY CLUB, INC.

RULES AND REGULATIONS - ADOPTED JUNE 26, 1988

Members are responsible for the actions and behavior of their renters and guests. Renters must comply with all rules and regulations of the Elkpoint Country Club. Any violations of the rules by renters, the Caretaker will notify renter and the Secretary will notify the member. If the violations are not corrected in a reasonable time, the Board of Directors are to take appropriate action.

1. The speed limit on all roads within the Club is 15 miles per hour. One-way street designations shall be strictly enforced.

2. No firearms may be discharged on the grounds or roads of the Club.

3. No burning, open fires or fireworks will be allowed on the grounds with the exception of specific days allowed by the Fire Dept. for open burning with a Fire Permit.

4. Members will not allow renters to have cats or dogs. No dogs shall be allowed on the Club beach. Dogs must be on leash in other areas of the Club grounds.

5. No water skiing off the Club beach and no glass containers on the beach.

6. Persons having late hour activities or loitering on Club property should show respect to the entire membership in regard to unnecessary disturbances (loud music, etc.). Minors (under 18) must be accompanied by an adult after 10:00 p.m. at the beach.

7. No Motorcycles, ATC's, ATV's, Off-road vehicles and unlicensed vehicles shall be operated on the Club roads or grounds for recreational purposes.

8. Boat trailers only may be parked in the designated parking area near the beach gate.

9. No structures of any kind shall be erected or permitted upon the member's premises unless plans and specifications have been first submitted to the Board 30 days in advance of submitting to local agencies - building department, TRPA, etc., for preliminary approval by the Board. This provision includes any exterior remodeling or construction.

10. No person shall operate any business on the Club premises, nor on their individual property, within the Club.

11. Members or tenants desiring to pick up keys from the Caretaker should do so prior to 8:00 p.m. unless special advance arrangements have been made. Caretaker must be advised of persons authorized to pick up keys prior to their arrival. All members shall notify Caretaker of the emergency shut-off locations, Replacement keys - $2 each.

12. Members renting their property must notify the Caretaker (for the Board of Directors), of the names of the tenants and the terms of their rental agreement.

13. Any member selling their property at Elkpoint must notify the buyer that they must submit three letters of recommendation for approval by the Board of Directors, along with a check for membership fees at the current rate before the sale is finalized.

14. All members shall give the Caretaker the phone number of their permanent residence or where they can be reached in case of emergency.

15. The attention of the Members is directed to Article XX of the By-laws. This section states that the Board may suspend a member for "violation of or failure of any member, or tenant or guests of the member, to comply with any Corporation By-law,...or any of the rules and regulations, after due notice and hearing...". It also states that a member may be suspended if they fail, for three months, to pay assessments owing the Club. An interest charge of 1-1/2% per month will be made on delinquent assessments as of December 10th of each year.

Members cooperation is essential to comply with all the Rules and Regulations and the By-laws of Elkpoint Country Club, Inc. Compliance will prevent deterioration of our property and assure that the "Point" is operating in a sound manner.

PLEASE POST THESE RULES IN A VISIBLE PLACE.

REQUESTED BY
Elk Point Country Club
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

'95 SEP 18 P2:17

LINDA SLATER
RECORDER
$32.00 PAID K2 DEPUTY

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EXHIBIT "2"

EXHIBIT "2"