IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME MORETTO, TRUSTEE OF THE JEROME F. MORETTO 2006 TRUST, Appellant, vs. ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC., Respondent.	No. 82565 **CORRECTED DOCKETING STATEMENT CIVIL APPEALS**

Electronically Filed
Mar 26 2021 09:29 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

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

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

1. Judicial District: Ninth Department: One

County: Douglas Judge: Hon. Nathen Tod Young

District Ct. Case No.: 19-CV-0242

2. Attorney filing this docketing statement:

Attorney: Robert L. Eisenberg, Esq. Telephone: (775) 786-6868

Firm: Lemons, Grundy & Eisenberg

Address: 6005 Plumas Street, Third Floor

Reno, Nevada 89519

Client(s): Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

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

Attorney: Prescott T. Jones, Esq. Telephone: (702) 997-3800

Firm: Resnick & Louis, P.C.

Address: 8925 W. Russell Road, Suite 220

Las Vegas, Nevada 89148

Client(s): Elk Point Country Club Homeowners Association, Inc.

Attorney: Joshua Y. Ang Telephone: (702) 997-3800

Firm: Resnick & Louis, P.C.

Address: 8925 W. Russell Road, Suite 220

Las Vegas, Nevada 89148

Client(s): Elk Point Country Club Homeowners Association, Inc.

(List additional counsel on separate sheet if necessary)

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

☐ Judgment after bench trial

☐ Judgment after jury verdict

√ Summary judgment

☐ Default judgment

☐ Grant/Denial of NRCP 60(b) relief

√ Grant/Denial of injunction

√Grant/Denial of declaratory relief

☐ Review of agency determination

☐Dismissal:

☐Lack of jurisdiction

☐Failure to state a claim

☐Failure to prosecute

☐Other (specify): _____

☐Divorce Decree:

☐ Original ☐ Modification

☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following? No.

☐ Child

☐ Custody

Venue

☐ Termination of parental rights

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

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

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

When a corporation purporting to act as an HOA, which does not have a recorded set of CC&Rs, unilaterally and improperly enacted new restrictions on the use of individually owned property, Appellant sued to enjoin the application of the new restrictions to his property. The district court denied Appellant the relief sought, granting summary judgment in favor of the corporation, and holding that the corporation's new restrictions apply even to homeowners who owned their property before the restrictions were enacted.

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

An issue of first impression in Nevada: should Nevada law adhere to the principles embodied in the *Restatement (Third) of Property (Servitudes)* that absent a specific grant of power, either by statute or by a recorded declaration of CC&Rs, a common interest development does not have the power to impose restrictions on the use of individually owned property? Although this authority was presented to this district court, it was entirely ignored.

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

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

√ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This is a matter presumptively retained by the Supreme Court under NRAP 17(a)(11) and (12) as it raises a question of first impression involving common law and a question of statewide public importance: the restriction of property rights of an owner who purchased his property unencumbered by such restrictions.

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

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from: December 8, 2020

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

17. Date written notice of entry of judgment or order was served: January 21, 2021

Was service by:

☐ Delivery

√ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served_____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed: February 18, 2021

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

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

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

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

(a)

√ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
√ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

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

NRAP 3A(b)(1) provides a basis for appeal because the Order appealed from is a final judgment entered in an action commenced in the court in which the judgment was rendered.

NRAP 3A(b)(3) provides a basis for appeal because Appellant's claims in the case below sought injunctive relief. The Order appealed from granted only partial injunctive relief and denied injunctive relief on all other grounds.

22. List all parties involved in the action or consolidated actions in the district court:
(a) Parties:

1. Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust
2. Elk Point Country Club Homeowners Association, Inc.

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

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

1. Breach of corporation's bylaws
2. Violation of NRS 116.31065
3. Violation of plaintiff's property rights
4. Violation of NRS 116.31175
5. Declaratory relief

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

√ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Jerome F. Moretto, Trustee of the
Jerome F. Moretto 2006 Trust
Name of Appellant

Todd R. Alexander, Esq.
Name of counsel of record

3/23/2021
Date

Signature of counsel of record

Nevada/Washoe County
State and county where signed

RECEIVED
AUG 16 2019
Douglas County
District Court Clerk

FILED
2019 AUG 16 PM 1:51
SUSAN K. WILLIAMS
CLERK
M. BIAGGINI
DEPUTY

CASE NO. 19-CV-0242

DEPT. NO. I

IN THE NINTH JUDICIAL DISTRICT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

****

JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust,

Plaintiff,

v.

ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC., a Nevada non-profit corporation , and DOES 1- 10, inclusive,

Defendants.

_____/

COMPLAINT

EXEMPT FROM ARBITRATION

Plaintiff JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust, by and through his attorney, Karen L. Winters of the Law Office of Karen L. Winters, alleges:

1. Plaintiff JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust, (hereinafter "Moretto") is, and at all times mentioned in this complaint was, a resident of Douglas County, Nevada.

2. Defendant ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC. ("EPCC") is a Nevada non-profit corporation formed on March 23, 1925, with its principal place of business in Douglas County, Nevada.

3. Plaintiff does not know the true names of defendants DOES 1 through 10, and therefore sue them by those fictitious names. Plaintiff is informed and believes, and on the basis of that information and belief alleges, that each of those defendants was in some manner legally responsible for the events and happenings alleged in this complaint and for plaintiff's damages.

The names, capacities and relationships of DOES 1 through 10 will be alleged by amendment to this complaint when they are known.

4. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned in this complaint, defendants were the agents and employees of their co-defendants, and in doing the things alleged in this complaint were acting within the course and scope of that agency and employment, except as alleged otherwise herein.

5. EPCC is subject to and governed by NRS 116.001 through 116.795, excepting therefrom NRS 116.2101 through 116.2122.

6. EPCC's current corporate Bylaws are the Amended and Restated Bylaws recorded as Document No. 0653319 on August 26, 2005 in the Official Records of Douglas County, Nevada, with further recorded amendments through August 7, 2018. Attached hereto as Exhibit 1 is a true and correct copy of the complete Bylaws with the compiled amendments (hereinafter the "Bylaws"), currently governing EPCC.

7. EPCC is the common interest association created to operate common areas and facilities for the benefit of the fee title owners of units within its development.

8. Moretto is the fee title owner of that certain residential property commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which is located within, and a part of the EPCC development. Moretto, either as trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990.

9. On March 31, 2018, the Executive Board of EPCC enacted "Architectural and Design Control Standards and Guidelines" ("Guidelines") purportedly regulating design, architecture and construction of improvements on real property parcels within the boundaries of EPCC.

10. Moretto objected to the Guidelines and requested to present those objections to the Executive Board through letters dated from May 12, 2018 until the Executive Board finally included Moretto's objections and issues on the December 15, 2018 agenda of the Executive Board quarterly meeting. The hearing occurred before the Executive Board and a certified court reporter on said date.

11. Moretto's objections are set forth in further detail herein below and include that: (1) the Executive Board had no authority under the Bylaws to create a "Design Review Committee" delegating the Executive Board's authority to develop rules and regulations governing the design, architecture and construction of improvements within EPCC boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not sufficiently explicit to inform unit property owners for compliance in violation of NRS 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a variance from the Guidelines at the discretion of the Design Review Committee with no objective standard in violation of NRS 116.31065(5); (6) the Guidelines purport to create real property restrictions which are restrictive covenants taken *ultra vires* on individual units; (7) the Guidelines impose setback requirements on improvements that would effectively take Moretto's property right to rebuild in the event of fire or natural catastrophe without Moretto's consent; and (8) the Guidelines impose easements, including view easements which are restrictive covenants taken *ultra vires* on individual units.

12. Moretto also demanded, in his December 15, 2018 hearing before the Executive Board, that the Executive Board produce the records relating to the creation of the "Guidelines" pursuant to Moretto's written request dated May 12, 2018 and pay the penalty of $25 for each day after which such records are not produced, as required pursuant to NRS 116.31175, which was denied at that hearing and continues to be denied.

13. Moretto's objections were not resolved at the Executive Board meeting, therefore Moretto filed an "Alternative Dispute Resolution Claim Form with the Nevada Department of Business and Industry Real Estate Division, Office of the Ombudsman for Common-Interest Communities and Condominium Hotels" on March 28, 2019, requesting mediation.

14. Mediation between Moretto and EPCC occurred on May 31, 2019, which did not result in a resolution. The claim was closed by the Nevada Real Estate Division by letter dated June 20, 2019.

FIRST CAUSE OF ACTION

BREACH OF EPCC BYLAWS

15. Plaintiff incorporates Paragraphs 1 through 14 herein above, as though fully set forth in this Cause of Action.

16. EPCC Bylaws only allow the Executive Board to delegate its duties to an Election Committee for annual elections, and a Finance Committee for an annual audit. The EPCC Bylaws do not allow the Executive Board to delegate any of its other duties under the Bylaws, either through an explicit delegation or through an agent.

17. NRS 116.3106(1)(d) requires that the Bylaws "[s]pecify the powers the executive board or the officers of the association may delegate to other persons or to a community manager."

18. The "Guidelines" created on March 31, 2018 delegate to a 'Design Review Committee' the duties of developing and enforcing rules, regulations, standards, protocols and procedures for the design, architecture, and construction of structures and landscaping within the EPCC, in violation of the Bylaws.

19. The Executive Board's enactment of the Guidelines and creating the Design Review Committee are void *ab initio*.

20. Moretto has been harmed by the Executive Board's action in that it has reduced the value of Plaintiff's residence, and encroached on Moretto's fee title interest in the residential property.

21. Moretto has been further damaged by the Executive Board's action in that Moretto has been compelled to retain the services of an attorney to enforce his rights. But for the actions of Defendant, Moretto would not have incurred attorney fees, therefor Moretto is entitled to an award of this Court of attorney fees and costs.

SECOND CAUSE OF ACTION

VIOLATIONS OF NRS 116.31065

22. Plaintiff incorporates Paragraphs 1 through 21 herein above, as though fully set forth in this Cause of Action.

23. The Guidelines, as allegedly enacted on March 31, 2018 create rules that result in arbitrary and capricious enforcement in violation of NRS 116.31065(1), in that Section V allows the Design Review Committee to "apply and enforce" Guidelines "as [it] sees fit", without any objective standard. A true and correct copy of the Guidelines allegedly enacted on March 31, 2018 is attached hereto as Exhibit 2 including the typographical error dating it to March 31, 2017.

24. In Sections IX, XII(1) and XXI, it imposes fines for noncompliance to the Guidelines without any procedure to challenge such a fine, without notice, without identifying the exact amount of any fines prior to impositions, and without a hearing before the Executive Board.

25. In Section XI(3), the Guidelines set out restrictions on the type and size of any building on any unit, but allows for a variance from those restrictions without any objective standard.

26. In Section XI(5), the Guidelines set out restrictions on the height of any construction and create view corridor easements, all based on subjective standards and providing veto power to neighbors, without any objective limitations.

27. In Section XI(8), the Guidelines allow the Design Review Committee to approve or disapprove the colors of any exterior walls and trims without specifying what colors or how those colors are chosen, which is arbitrary and capricious.

28. In Section XII(3), the Guidelines allow the Design Review Committee to 'recommend' disapproval of any application from any unit owner for projects of improvement or repair based on its dissatisfaction "or for purely aesthetic reasons."

29. Section XII(4) allows variances of any of the Guidelines without any objective standards and at the complete discretion of the Design Review Committee and the Executive Board, which is arbitrary and capricious, allowing for unequal application.

30. Section XII(6) imposes a $1500 "application review fee" for any application made by any unit owner for construction of any "Major Project", without defining a "Major Project", which may result in arbitrary imposition of the fee as to any particular unit owner. Section XII(6)

and Section XVII both refer to "Major Projects" requiring an application, with Section XVII requiring a $5,000 deposit, and without differentiating between the two Sections as to the definition of "Major Project".

31. In Section XXII, the Guidelines allow the Executive Board to waive or vary any procedures in the Guidelines without any objective standard.

32. The Guidelines sections set forth herein above are vague and not sufficiently explicit to inform unit property owners for compliance in violation of NRS 116.31065(2); allow for imposition of fines in violation of the requirements set forth in NRS 116.31031 which is a violation of NRS 116.31065(6); and allow for a variance from the Guidelines at the discretion of the Design Review Committee with no objective standard in violation of NRS 116.31065(5)

33. The foregoing violations of NRS 116.31065 have reduced the value of Moretto's residence, and encroached on Moretto's fee title interest in his residential property.

34. Moretto has been further damaged by the Executive Board's action in that Moretto has been compelled to retain the services of an attorney to enforce his real property rights. But for the actions of Defendant, Moretto would not have incurred attorney fees, therefore Moretto is entitled to an award of this Court of attorney fees and costs.

THIRD CAUSE OF ACTION

VIOLATION OF PLAINTIFF'S PROPERTY RIGHTS

35. Plaintiff incorporates Paragraphs 1 through 34 herein above, as though fully set forth in this Cause of Action.

36. Moretto initially obtained fee title to his residential unit at 476 Lakeview Avenue, Zephyr Cove, Nevada, which is located within, and a part of the EPCC development, in 1990. Moretto's fee title interest in this property contains no view restrictions, view easements, building setback requirements, minimum garage space restrictions, building size restrictions, landscaping restrictions, easements for public sidewalks, or any other real property restriction set forth in the Guidelines. As a result, Moretto's property rights are grandfathered into any attempted changes made without his consent.

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37. EPCC's authority is set forth in its Articles of Incorporation and Bylaws, which do not retain any rights to EPCC to enact or enforce the restrictive covenants contained in the Guidelines.

38. Section XI of the Guidelines purport to impose view restrictions, view easements, building setback requirements, minimum garage space restrictions, building size restrictions, landscaping restrictions, and easements for public sidewalks, in violation of Moretto's property rights.

39. EPCC's enactment of the Guidelines violate Moretto's property rights and are *ultra vires* of EPCC's authority under Nevada Constitional law, EPCC's Articles of Incorporation and Bylaws.

40. The foregoing violations of Moretto's property rights have reduced the value of Moretto's residence, and encroached on Moretto's fee title interest in his residential property.

41. Moretto has been further damaged by the Executive Board's action in that Moretto has been compelled to retain the services of an attorney to enforce his rights. But for the actions of Defendant, Moretto would not have incurred attorney fees, therefor Moretto is entitled to an award of this Court of attorney fees and costs.

FOURTH CAUSE OF ACTION

VIOLATION OF NRS 116.31175

42. Plaintiff incorporates Paragraphs 1 through 41 herein above, as though fully set forth in this Cause of Action.

43. On May 12, 2018, Moretto demanded, in writing, that the Executive Board provide Moretto with copies of all governing documents, documents pertaining to enactment of the Guidelines, and any records of the Design Review Committee.

44. To date, all or some of those requested documents have not been provided to Moretto.

45. NRS 116.31175(3) imposes a $25 statutory fine per day on the Executive Board for each day after the initial demand plus 21 days, in which all requested documents are not provided, totaling 439 days to date.

46. Moretto has been damaged because of the failure of the Executive Board to comply with NRS 116.31175(3) in the amount of $10,975 to date, and has suffered further damages as a result of not obtaining the full records requested.

47. Moretto has been further damaged by the Executive Board's action in that Moretto has been compelled to retain the services of an attorney to enforce his rights. But for the actions of Defendant, Moretto would not have incurred attorney fees, therefor Moretto is entitled to an award of this Court of attorney fees and costs.

FIFTH CAUSE OF ACTION

DECLARATORY RELIEF

48. Plaintiff incorporates Paragraphs 1 through 47 herein above, as though fully set forth in this Cause of Action.

49. Moretto asserts and alleges that the Executive Board has no authority to impose the Guidelines on him or any other unit owner, as set forth in the above causes of action. In addition the Guidelines are arbitrary and capricious, vague and unenforceable.

50. EPCC asserts the Guidelines were properly enacted and contain no arbitrary, capricious, and vague rules under the authority of the Executive Board, and are enforceable as written.

51. The Executive Board now seeks to re-enact the Guidelines and consolidate them with the other rules and regulations of the EPCC, through the same or similar procedure used to enact the original Guidelines, containing the same or similar sets of guidelines.

52. Moretto asserts and alleges that the Executive Board has no authority to impose the new set of Guidelines on him or any other unit owner. In addition, the new Guidelines are also arbitrary and capricious, vague and unenforceable.

53. EPCC asserts the new set of guidelines are to be enacted properly and contain no arbitrary, capricious, and vague rules under the authority of the Executive Board, and are enforceable as written.

54. An actual controversy has arisen and now exists between Moretto and EPCC regarding their respective rights and duties. Moretto contends that EPCC has no authority to

impose the new set of Guidelines on him or any other unit owner, in violation of the foregoing identified statutes and his property rights. In addition, the new Guidelines are also arbitrary and capricious, vague and unenforceable. EPCC contends that it may enact the guidelines as written and as proposed to be adopted.

55. Plaintiff desires a judicial determination of his rights and duties and a declaration as to whether Plaintiff is subject to the Guidelines as written or as proposed, as claimed by EPCC.

56. A judicial declaration is necessary and appropriate at this time under all the circumstances so that Plaintiff may determine his rights and duties with respect to the Guidelines and proposed guidelines so as to proceed under the correct rules and regulations.

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages in excess of $15,000;
2. For a declaration from this Court that the Guidelines are void *ab initio*;
3. For an order requiring defendant EPCC to show cause, if any, why this defendant should not be enjoined as set forth below during the pendency of this litigation and permanently;
4. For temporary and permanent orders enjoining defendant from:
   a. Imposing and enforcing the Guidelines as written;
   b. Enacting or enforcing the new guidelines, as proposed; and
   c. Delegating any authority to a committee, including the Design Review Committee, not allowed by the Articles of Incorporation or Bylaws of EPCC;
5. For reasonable attorney's fees;
6. For costs incurred in this action; and

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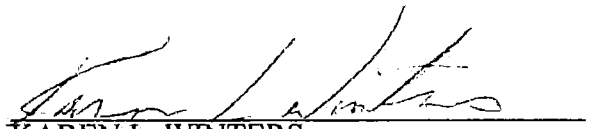
7. For such other and further relief as this Court may deem just and proper.

Dated: August 16, 2019

LAW OFFICE OF KAREN L. WINTERS



KAREN L. WINTERS
Nevada Bar No. 3086
P.O. Box 1987
Minden, NV 89423
(775) 782-7933
Attorney for Plaintiff

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document entitled Complaint filed in case number:

[X] Document does not contain the social security number of any person.

-OR-

[ ] Document contains the social security number of a person as required by:

[ ] A specific state or federal law, to wit:

_____
(State specific state or federal law)

-or-

[ ] For the administration of a public program

-or-

[ ] For an application for a federal or state grant

-or-

[ ] Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: August 16, 2019

KAREN L. WINTERS
Attorney for Plaintiff

EXHIBIT 1

Amended BYLAWS

OF

ELK POINT COUNTRY CLUB HOA, INC.

July 7, 2018

This copy of the EPCCHOA Bylaws, recorded as Document 0653319 on August 26, 2005, includes the following amendments incorporated into the Bylaws:

1. Bylaw Amendments that were adopted at the Unit Owners Annual Meeting of July 5, 2008 and recorded as Document 0727411 on July 24, 2008 amending ARTICLE I, Section 3c; ARTICLE IV, Section 3 and ARTICLE XV, Section 4.
2. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 4, 2009 and recorded as Document 0758100 on November 7, 2009 amending Article I, Section 3a.
3. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 2, 2011 and recorded as Document 0791527 on October 26, 2011 amending Article XV, Section 4.
4. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 2, 2011 and recorded as Document 0792378 on November 10, 2011 amending Article XV, Section 4.
5. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 6, 2013 and recorded as Document 0828991 on August 16, 2013 amending Article V, Section 1F.
6. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 2, 2016 and recorded as Document 887335 on September 9, 2016 amending Article XX, Section 2.
7. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 2, 2016 and recorded as Document 887439 on September 12, 2016 amending Article V, Section h.
8. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 1, 2017 and recorded as Document 909415 on January 19, 2018 amending Article XIV, Section 1.
9. Bylaw Amendment that was adopted at the Unit Owners Annual Meeting of July 7, 2018 and recorded as Document 2018-917776 on August 7, 2018 amending Article XV, Section 4.

I certify this copy of EPCCHOA Bylaws is correct and current based upon the above referenced recorded amendments.

W. J. Gosline

James Gosline
EPCCHOA Secretary

August 7, 2018
Date

2008

BYLAWS OF ELK POINT COUNTRY CLUB HOMEOWNERS' ASSOCIATION INCORPORATED

Preamble

The Elk Point Country Club Homeowners' Association, Inc., is a common-interest development operating as a Nevada non-profit corporation, hereinafter called Elk Point Country Club, Inc, EPCC Association or Corporation , and in operating compliance with Nevada law. Its primary purpose is hereby affirmed to be to provide its Unit Owners the pleasure of fellowship and recreation, and its corporate functioning shall be designed to civilly achieve in highest measure such purpose. It shall not operate its properties or facilities with the view of providing profit to its Unit Owners but rather such properties and facilities shall be held, operated, and made available for the use and enjoyment of its Unit Owners 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 UNIT OWNERS

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

Section 2. A majority of the Unit Owners in good standing as shown on the Official Unit Owners' Roster in person or by proxy shall constitute a quorum for the transaction of business at all Unit Owners' meetings.

Section 3.

a) The annual meeting of the Unit Owners shall be held at Elk Point Country Club, Inc. on the first Saturday of July of each year at the hour of 10:00 a.m. thereof.

b) At such annual meeting each Unit's Owner, as defined in NRS 116.095, in good standing shall be entitled to one vote per unit in person or by proxy.

c) At such meetings, the Unit Owners shall elect the candidates who receive the most votes to the open seats on the Executive Board by using secret written ballots. Eligible candidates are qualified and not suspended Unit Owners as defined by the Articles of Incorporation and the Bylaws. The written ballots will be counted in public by three Unit Owners appointed by the Executive Board.

d) A copy of minutes of all meetings shall be mailed at no charge to each Unit's Owner.

e) Each candidate must comply with the requirements of NRS 116.31034 (5) by submitting the candidate's disclosure to the association secretary for inclusion with the ballot. If the candidate is unable to meet the secretary's schedule the candidate must deliver the disclosure to each Unit's Owner by first class US mail, Federal Express, United Parcel, or by hand at least 15 days prior to the annual meeting at the candidate's own expense. The candidate may submit a statement of 150 words or less regarding the candidacy to the secretary for inclusion with the ballot. Failure to comply with the mandatory requirements of this Section makes the candidate ineligible for serving on the Executive Board.

For additional requirements of the election process see:

NRS 116.31034 Election of members of executive board and officers of association; term of office of member of executive board; staggered terms; eligibility to serve on executive board; required disclosures; procedure for conducting elections; certification by member of executive board of understanding of governing documents and provisions of chapter.

NRS 116.3109 Quorum;

For requirements of unit's owners meeting See:

NRS 116.3108 Meetings of units' owners of association; frequency of meetings, requirements concerning notice and agendas; dissemination of schedule of fines; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings.

Section 4.

a) At any meeting of the Unit Owners, a quorum is 51% of the Unit Owners in good standing as described in Article XX, present in person or by proxy.

b) A majority of the Unit Owners present in person or by proxy at any meeting representing a quorum can conduct Association business.

Section 5. 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) Right of Unit Owners to speak;
(e) Reports of Directors and Officers;
(f) Election of Directors;
(g) Miscellaneous Business.

Section 6. At each meeting of the Association, the President or Board member conducting the meeting shall follow all procedural rules contained in NRS 116, procedural rules contained in the Association Bylaws and generally follow Robert's Rules of Order, to the extent practicable.

For the rights of Unit's Owners to speak at a meeting see:

NRS 116.31085 Right of units' owners to speak at certain meetings; limitations on right; limitations on power of executive board to meet in executive session; procedure governing hearings on alleged violations; requirements concerning minutes of certain meetings.

See:

NRS 116.311 Voting by units' owners; use of proxies; voting by lessees of leased units; association prohibited from voting as owner of unit.

ARTICLE II

EXECUTIVE BOARD

Section 1. The Executive Board 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 Executive Board Members: An Executive Board Member must be a Unit Owner of the Corporation in good standing for two years prior to election to office. If any

Executive Board member shall cease to be a Unit Owner or fail to continue to be a Unit Owner in good standing, the office of that Executive Board member shall be deemed to be vacant.

Section 3. To avoid conflicts of interest, The Executive Board shall consist of five persons who are unrelated by blood or marriage and do not share a common ownership interest in a unit. They shall fill the terms of office as follows: Beginning with the elections scheduled in July 1991 and thereafter, three (3) Executive Board members shall be elected on even numbered years for two (2) year terms each, and two (2) Executive Board members shall be elected on odd numbered years for two (2) year terms each.

See:

NRS 116.31034 Election of members of executive board and officers of association; term of office of member of executive board; staggered terms; eligibility to serve on executive board; required disclosures; procedure for conducting elections; certification by member of executive board of understanding of governing documents and provisions of chapter.

Section 4. The Executive Board shall meet at such time at the office of the Corporation, or at such other convenient place upon the Corporation property. A meeting of the Board shall be held immediately succeeding every annual meeting of the Unit Owners of the Corporation.

Section 5. Meetings of the Executive Board shall be held when called by the President, or when requested by a majority of the Executive Board.

See:

NRS 116.31083 Meetings of executive board; frequency of meetings; requirements concerning notice and agendas; periodic review of certain financial and legal matters at meetings; requirements concerning minutes of meetings; right of units' owners to make audio recordings of certain meetings.

Section 6.

a) The Executive Board may have an office on the premises of the Corporation.

b) Access to the records shall be allowed upon ten (10) days written notice, during normal business hours.

See:

NRS 116.31175 Maintenance and availability of books, records and other papers of association: General requirements; exceptions; general records concerning certain violations; enforcement by Ombudsman; limitations on amount that may be charged to conduct review.

NRS 116.31177 Maintenance and availability of certain financial records of association; provision of copies to units' owners and Ombudsman.

NRS 117.3118 Maintenance and availability of certain financial records necessary to provide information required for resale of units; right of units' owners to inspect, examine, photocopy and audit records of association.

Section 7. A quorum shall be deemed present throughout any Executive Board meeting if persons entitled to cast 50% of the votes on that Board are present throughout the meeting. See NRS 116.3109. {p59}

Section 8. 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.

Section 9. The Executive Board of the Association shall designate an Executive Board member nominating committee for the following year's Executive Board election at their second meeting. The Committee shall be made up of three Unit Owners in good standing. The Committee will be charged with the responsibility of identifying, confirming interest, and placing in nomination a list of recommended Executive Board nominees. The Committee will present the nominees to the Executive Board. for information. No Committee member may be an Executive Board member.

See:

NRS 116.31034 regarding nominations.

ARTICLE III

POWERS OF EXECUTIVE BOARD

Section 1. The Executive Board 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 Executive Board 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 Executive Board shall have power to incur indebtedness, except as limited by Article IV of these Bylaws, the terms and amounts of which shall be entered upon the Minutes of the Executive Board meeting, and the note or writing given for the same shall be signed officially by the Officer or Officers authorized by the Executive Board.

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

For rules requirements see:

NRS 116.31065 Rules.

NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; procedural requirements; continuing violations; collection of past due fines.

NRS 116.310305 Power of executive board to impose construction penalties for failure of unit's owner to adhere to certain schedules relating to design, construction, occupancy or use of unit or improvement.

ARTICLE IV

LIMITATIONS OF POWERS

Section 1. The enumeration of the powers and duties of the Executive Board 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 Board 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 Executive Board shall not borrow money or incur any indebtedness in excess of the annual budget amounts approved by a majority vote of the Unit Owners first had at a regularly called annual or special meeting of the Unit Owners.

Section 3. The Executive Board can enter into any contract, the performance of which would require up to thirty-six (36) months that does not encumber real property. Unit Owners, by majority vote at a duly call Unit Owners' meeting, voting in person or by proxy, may direct the Board to approve and authorize contracts for longer terms that does not encumber real property.

Section 4. The Executive Board shall not sell, convey, or encumber any of the real property of the Corporation without the unanimous consent of the total Unit Owners first obtained. Nothing herein, however, shall preclude the Board of Directors from leasing Club beach property to The Elk Point Yacht Club, Incorporated, A non-profit Corporation, composed of and restricted to Elk Point Country Club members for the construction of a boating facility only. (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 Executive Board, shall be fixed and determined by the Executive Board as herein provided.
See:
NRS 116.3112 Conveyance or encumbrance of common elements.
NRS 116.31036 Removal of member of executive board; indemnification and defense of member of executive board.

ARTICLE V

DUTIES OF EXECUTIVE BOARD

Section 1. It shall be the duty of the Executive Board:

a) To cause to be kept a complete record of all the accounts and the proceedings of the Unit Owners and to present a full statement thereof at the annual meeting of the Unit Owners, showing in detail the receipts 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 meeting of the Unit Owners when thereby requested by one-third of the unit owners identified on the Official Unit Owners' Roster.

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

c) To cause to be kept the Official Unit Owners' Roster and to add new Unit Owners to the Roster upon admission to the Association.

d) To approve the employment of a caretaker.

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

f) The Executive Board may, at its discretion, or at the request of a Unit Owner appoint a Financial Review Committee. This Committee will be charged with conducting an independent review of the financial condition of the Corporation. The report will be submitted to the Executive Board.

The report shall be completed during the month of April and be submitted to the Executive Board at the first scheduled meeting of the Executive Board during the month of May. If the review requested by a Unit Owner is initiated and reported on, then a copy of the report shall be transmitted with the Annual Meeting Package for discussion at the Annual Unit Owner's Meeting.

g) To adopt as necessary, rules for the conduct and government of the Unit Owners, their guests and tenants, in connection with the exercise of their privileges as Unit Owners, tenants and guests and their use of the Corporation property, and cause the same to be published and mailed to each Unit Owner at the address of the Unit Owner as the same appears upon the records of the Corporation. The rules shall be consistent with NRS 116.31065, or any amendments thereto. It shall be each Unit Owner's responsibility to require guests and tenants to obey said rules.

h) The Executive Board shall formally review the status of the Asset Reserve account at its regular scheduled Board meetings and prior to finalizing the annual budget/related assessments. The Treasurer shall be responsible for the coordination of this activity and the associated contractor assessment report. All capital assets whose useful lives will expire within the next five years will be discussed to ensure adequate funding and plans are in place for their maintenance or replacement. The Board shall document appropriate financial/operational plans to ensure compliance with the 5-year asset management reserve plan as documented by the contracted assessment agency. These plans shall be appropriately communicated to the association.

See:

NRS 116.3103 Duty of executive board to act on behalf of association; adoption and ratification of budget.

NRS 116.31183 Retaliatory action prohibited.

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 Executive Board shall, at their first regular meeting, elect from its members a President, Vice President, a Secretary and a Treasurer.

Section 2. No Executive Board 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 Executive Board. 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 Executive Board, 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 Executive Board 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 Unit Owners and Executive Board.

b) To sign, as President, all contracts and other instruments in writing which have been approved first by the Executive Board.

c) To call the Executive Board together whenever the President shall deem it necessary; and to have, subject to the advice of the Executive Board, 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 Executive Board may prescribe.

ARTICLE IX

SECRETARY

Section 1. The Secretary shall give all required notice of all meetings of the Unit Owners and meetings of the Executive Board, keep minutes of all the meetings of Unit Owners and the Executive Board, keep and update the Official Unit Owners' Roster, 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.

See:

NRS 116.3108 regarding meeting minutes.

Section 2. Written remarks prepared and submitted for inclusion in the minutes of the Executive Board or minutes of the Unit Owners by a Unit Owner must:

a. Be legible, preferably type written;
b. NOT contain any information critical, disparaging, or discourteous toward any other EPCC Unit Owner, group of Unit Owners or Board member(s).
c. Be short and to the point.

Section 3. It shall be the primary responsibility of the Secretary to review all material, remarks, or other information to be included or attached to the minutes keeping in mind Section 2 (b) of this Article. The Secretary may bring any questionable materials, remarks, or other information to be included in the minutes to the attention of the Board for direction.

ARTICLE X

TREASURER

Section 1. The Treasurer shall receive all monies 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 Executive Board.

Section 2. The Treasurer shall perform all other duties respecting monies, 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 Executive Board 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 Executive Board 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 Executive Board 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 Executive Board an annual statement showing in detail all receipts and disbursements at the first scheduled meeting of the Executive Board during the month of May.

ARTICLE XI

VACANCIES

Section 1. If the office of any Executive Board member or of any appointed official of the Corporation shall become vacant for any cause, the remaining Executive Board members, 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 Executive Board members shall call a special meeting of the Unit Owners to fill the vacancies.

ARTICLE XII

VALIDATION OF INFORMAL ACTS

Section 1. Any act of a majority of the Executive Board, 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 Unit Owners entitled to vote at any meeting, whether of Executive Board or of Unit Owners, 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 Unit Owners 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 Executive Board may determine.

ARTICLE XIV

DEPOSIT AND DISPOSITION OF FUNDS

Section 1. The Executive Board is authorized to select such depositories as it shall deem proper for the needs of the Corporation. Funds from the Corporation's accounts may be withdrawn only with the signature of at least two members of the Executive Board or one member of the Executive Board and a Community Manager as defined under NRS, Chapter 116 and designated by the Executive Board.

Money may be withdrawn from the operating account without the signatures provided for above in accordance with the terms of NRS 116.31153 (3) & (4).

See: NRS 116.31153 Signatures required for withdrawals of certain association funds; exceptions.

See:

NRS 116.31153 Signatures required for withdrawals from reserve account of association.

ARTICLE XV

UNIT OWNERS

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

Section 2. Any Owner of property at Elk Point may apply for membership in the Association by application to the Executive Board on a form to be made available by the Executive Board. If a Unit Owner desires to transfer the membership to any such applicant, such Unit Owner shall join in the application and request that the membership be so transferred to such applicant. If such Unit Owner desires to transfer membership to such applicant only one or more of several lots owned by the Unit Owner, but would still retain one or more lots, then such Unit Owner shall join in the application and request permission to transfer membership in such lot or lots proposed to be sold. A copy of the proposed deed or deeds shall be annexed to each application.

Section 3. Upon the sale or transfer of a unit, upon the date the deed is recorded effecting the transfer or sale, all property rights of the grantor or transferor for that unit shall terminate and shall vest in the new Unit Owner.

Section 4. The transfer fee for new Unit Owners shall be $20,000, which said sum should accompany all applications for membership. In the event the application is rejected, the transfer fee shall be returned to the applicant. The Executive Board shall have the right, if the Asset Reserve account is

fully funded, to allocate initiation fees to either the General Fund or Asset Reserve Account of the Association as may financially be appropriate. The total transfer fee collected in one fiscal year shall be deducted the following year from the contributions that would have been made to the Reserve Account should all of the transfer fees be applied to the Reserve Account.

Section 5. Any Unit Owner who wishes the Secretary to change the Official Unit Owners' Roster to show the recorded Unit Ownership interest in any unit may do so upon presenting a record stamped copy of the deed to the Secretary.

Section 6. No initiation fee shall be required for any change in the Official Unit Owners' Roster as provided in Section 6, unless the change is from an existing Unit Owner to a new Unit Owner.

Section 7. There shall be one class of membership, limited to natural persons.

See:

NRS 116.4109 Resale of units.

NRS 116.41095 Required form of information statement.

ARTICLE XVI

PROPERTY RIGHT OF UNIT OWNERS

Section 1. No Unit shall transfer membership without the prior approval of an application for membership in the Association by a majority of the Executive Board by appropriate action at any regular or special meeting thereof.

Section 2. The property of Unit Owners 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 Unit Owner, unless the plans and specifications shall have first been submitted to and approved by the Executive Board. 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 Unit Owner, either individually, or in the name of a family trust, spouse, corporation, limited liability company, partnership, limited partnership or retirement plan, 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. Assessments shall be made against each Unit Owner. A Unit Owner is defined as the Owner of a lot as shown on the Elks Subdivision Map plat recorded in the Douglas County Assessor's Map Book originally on May 5, 1927, at Book 1 of Maps, as amended.

Section 2. Maintenance, repair, restoration or replacement of limited common use elements that are used by less than all the Unit Owners, will be assessed against only those Unit Owners benefitting from their usage.

Section 3. 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. The Board may establish an interest rate charge on delinquent accounts by Board action at a properly noticed meeting.

Section 4. Special Assessments covering unforeseen emergencies which affect the health, safety and welfare of the Association, and occur between annual budgets, can be authorized by the Executive Board. One or more Special Assessments cannot exceed $100 per Unit Owner, per year (not to exceed $10,000 aggregate to the Association). All special assessments to the Unit Owners shall be on a per Unit Ownership (per lot) basis.

See:

NRS 116.3115 Assessments for common expenses; notice of meeting required if assessment for capital improvement or commencement of certain civil actions are to be considered; requirements for commencement of certain civil actions by association; request for dismissal of civil action.

NRS 116.31151 Annual distribution to units' owners of operating and reserve budgets or summaries of such budgets.

***NRS 116.31152 Study of reserves*; duties of executive board regarding study; qualifications of person who conducts study; contents of study; submission of study to Commission; regulations regarding study; use of money credited against residential construction tax for upkeep of park facilities and related improvements identified in study.**

ARTICLE XVIII

LIENS UPON UNIT OWNERS

See:

NRS 116.3116 Liens against units for assessments.

NRS 116.31162 Foreclosure of liens: Mailing of notice of delinquent assessment; recording of notice of default and election to sell; period during which unit's owner may pay lien to avoid foreclosure; limitations on type of lien that may be foreclosed.

NRS 116.31163 Foreclosure of liens: Mailing of notice of default and election to sell to certain interested persons.

NRS 116.311635 Foreclosure of liens: Providing notice of time and place of sale.

NRS 116.31164 Foreclosure of liens: Procedure for conducting sale; purchase of unit by association; execution and delivery of deed; use of proceeds of sale.

NRS 116.31166 Foreclosure of liens: Effect of recitals in deed; purchaser not responsible for proper application of purchase money; title vested in purchaser without equity or right of redemption.

NRS 116.31168 Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

ARTICLE XIX

TERMINATION OF MEMBERSHIP

Section 1. Membership in the Association shall be terminated by transfer of the last lot owned by a Unit Owner. The transfer of membership shall be effective except upon the approval of an application for membership by the Executive Board as set forth in these Bylaws. Membership obligations shall continue against the new recorded owner and shall continue to be a lien upon said lot or lots. A former Unit Owner, whose membership has been terminated as provided in these Bylaws, immediately forfeits all rights of membership in the Association.

ARTICLE XX

PENALTIES

Section 1. By action of the Executive Board, the Unit Owner's rights shall be suspended for any of the following causes:

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

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

Section 2. The Executive Board is granted the authority to take any and all suspension actions authorized by the statutory provisions of NRS 116.31031 and shall comply with the procedural requirements for their implementation. Common elements of the association shall include marina facilities and reserved beach deck use. Voting privileges on all association matters shall be denied during the period of the suspension and assessments/interest due on delinquent payments shall continue during the suspension.

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

Section 4. The prevailing party to any arbitration, administrative proceeding or litigation between Elk Point Country Club, Inc., its agents, directors, or employees and any unit owner or owners, is

entitled to reimbursement of attorney's fees and costs from the other party or parties. Administrative proceeding is defined to include, but is not limited to, any proceeding before any governmental entity, including the Tahoe Regional Planning Agency, Douglas County or any state or local agency.

If any unit owner is liable for attorney's fees or costs pursuant to this section, the debt may be enforced as an assessment against their unit.

See:

NRS 116.31031 Power of executive board to impose fines and other sanctions for violations of governing documents; procedural requirements; continuing violations; collection of past due fines.

ARTICLE XXI

PROPERTY RIGHTS ON UNIT OWNER DEATH

Section 1. Upon the death of a Unit Owner, all provisions of these Bylaws shall apply to the heirs, devisees and personal representatives of the deceased Unit Owner. Should title to any lot or lots of the deceased Unit Owner vest in any heir or heirs, devisee or devisees, of said Unit Owner either by operation of law or decree of distribution, then such heir or heirs, devisee or devisees shall be admitted to this Corporation upon application to and approval by the Executive Board and no initiation fee shall be charged the heir, devisee or 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 Unit Owner shall not be valid until the purchaser or contemplated purchaser shall be approved by the Executive Board of this Corporation as provided in these Bylaws.

ARTICLE XXII

DISSOLUTION

See:

NRS 116.2118 Termination of common-interest community.

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 Executive Board.

ARTICLE XXIV

AMENDMENTS

Section 1. These Bylaws may be amended except as otherwise provided, by a two-thirds majority vote of all the Unit Owners present in person or by proxy at any regularly called meeting of Unit Owners, provided, however, that written notice of the proposed changes shall have been given to each Unit Owner 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 Unit Owners.

See:

NRS 116.3108 Meetings of units' owners of association; frequency of meetings, requirements concerning notice and agendas; dissemination of schedule of fines; requirements concerning minutes of meetings; right of units' owners to make audio recordings of meetings. Section 3. para a.

NRS 116.12065 Notice of changes to governing documents.

ARTICLE XXV

CARETAKER

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

Section 2. The Caretaker shall reside on the premises throughout the year.

EXHIBIT 2

ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION
Architectural and Design Control Standards and Guidelines

I. Authority

The Elk Point Country Club Homeowners Association ("EPCC") Architectural and Design Control Standards and Guidelines ("ADCSG") were approved and formally adopted by the EPCC Executive Board of Directors ("Board") on the 31st day of March 2017.

The EPCC "Board" has the authority to establish and maintain a Design Review Committee ("Committee") on behalf of EPCC to consider and recommend written guidelines, controls, standards, rules and regulations concerning the design, architecture and/or construction of structures within EPCC consistent with EPCC's historical character. The Committee shall develop and recommend rules, regulations, standards, protocols and procedures for the design, architecture, and construction of structures within the EPCC, for consideration and possible adoption by the Board.

The Committee submits the following provisions concerning the nature and structure of the Committee as well as the proposed written guidelines, controls, standards, rules and regulations concerning the design, architecture and/or construction of structures within the EPCC to the Board for its consideration and final adoption.

II. Relationship with the EPCC

The Committee shall serve as an agent of the EPCC, as directed by the Board, concerning the review, enforcement, and other matters described in the ADCSG, as well as the making recommendations to the Board regarding the written guidelines, controls, standards, rules and regulations of design, architecture and/or construction of structures within the EPCC.

III. Committee Members

The Committee shall initially consist of not less than three and not more than five members. Members shall hold their office until such time as they have resigned or have been removed or the Board has appointed their successor. At least one member of the Committee shall be a licensed architect. If no Committee member is a licensed architect, then the Board has the authority to hire and/or appoint a licensed architect to assist the Committee in evaluating submitted design, architectural and/or construction Applications concerning any structure(s) proposed to be built and/or improved ("Project") within the EPCC.

IV. Selection of Committee Members

Members of the Committee shall be selected at the reasonable discretion of the Board.

V. Resignation of Committee Members

Any member of the Committee may, at any time, resign upon written notice delivered to the Board.

VI. Duties

Committee duties shall be: (1) to review, consider, evaluate, and make recommendations to the Board regarding submissions, proposals and/or plans related to any Application for the design, architecture and/or construction, remodel, and/or renovation of any structure within the EPCC (Application) that have been submitted pursuant to the ADCSG; (2) to apply and enforce those ADCSG which have been approved and adopted by the Board and as the Committee sees fit; and (3) in a manner deemed appropriate by the Committee, make recommendations to amend the ADCSG to be considered for adoption by the Board.

VII. Meetings
The Committee shall meet from time to time as necessary to properly perform its duties. A majority vote of the members shall constitute an act of the Committee. The Committee shall keep on file all submittals and copies of written responses to owners to serve as record of all actions it has taken.

VIII. Compensation
No member of the Committee shall receive any compensation for services rendered, unless specifically authorized and approved by the Board. All members are entitled to reimbursement for reasonable expenses incurred. Professional consultants and representatives of the Committee retained for assistance in the review process shall be paid such compensation as the Board determines.

IX. Amendment of the ADCSG
The Committee may, from time to time recommend amendments, revisions and/or changes to any portion of the ADCSG that shall be presented to the Board for its consideration, approval and/or adoption as it sees fit. All such approved amendments or revisions will be appended and made a part of the ADCSG.

Owners are responsible for obtaining from the Committee a copy of the most recently revised ADCSG prior to their consideration of any proposed design, architecture and/or construction of any structure within the EPCC.

A recommendation for approval by the Committee of any improvement within EPCC only refers to the ADCSG and in no way implies conformance with local, state or federal government regulations. Complying with all applicable government ordinances and/or regulations, including but not limited to zoning ordinances and/or local building codes, is the sole responsibility of the owner.

In the event of any violation of the ADCSG, the Committee may recommend to the Board the imposition of a fine, commensurate with the severity of the violation, in addition to restoration expenses, if necessary. Such fine shall be paid to the EPCC, and secured by the EPCC in the same manner that any other EPCC expenses and assessments are paid to and/or secured by the EPCC.

X. Severability
If any component of the ADCSG or the application of the ADCSG in any circumstance is held invalid, the validity of the remainder of the ADCSG will be construed as if such invalid component were never included the ADSCG.

XI. ADCSG Design Guidelines
Only single-family dwellings, guesthouses, and/or such other outbuildings as are usually an accessory to a single-family dwelling, will be permitted on any lot in the EPCC. The following restrictions shall apply specifically to each of the lots within the EPCC.

1. Maximum Area. Any single-family dwellings, guesthouses, and/or such other outbuildings to be constructed within the EPCC shall have a maximum lot coverage of which the floor area(s) collectively is not more than 35% of the total square footage of the lot (inclusive of exterior decks, roofed porches, garages, carports, guesthouses or other outbuildings).

2. Height Limitations. No single-family dwelling, guesthouse and/or outbuilding, or portion thereof (except chimneys) constructed on any lot within the EPCC shall extend up to a point higher than 35 feet above the average natural grade elevation of the lot.

3. Building Envelope. Any renovation, remodel, and/or new construction of a single-family dwelling, guesthouse, and/or outbuilding on a lot within the EPCC shall:

a) Be set back from the edge of the common area street and/or the front property lot line not less than 25 feet;
b) Include a 3-foot walkway area for pedestrian foot travel which parallels and adjoins the edge of the common area street within the 25 feet set back from the edge of the street and/or from the front property lot line;
c) Be set back from each side property lot line not less than 7 feet;
d) Be set back from the rear property lot line not less than 20 feet;
e) Not exceed 35 feet above the average natural grade elevation;
f) Not exceed a two-story structure;
g) Include at least one (1) off street parking space, inclusive of garage spaces, within the lot for each sleeping area identified within any building structure;
h) Not interfere nor block the existing lake view corridors of all neighboring structures, including neighbors across the street. Written input of any proposed Application must first be obtained from all neighboring lots prior to any submission for approval of an Application to the Committee. Such written input from the neighboring lots shall be provided to the Committee and may be considered by the Committee in evaluating proposed Application.

It is recommended that all single-family dwellings, guesthouses, and/or such other outbuildings constructed on a lot collectively not exceed 3,500 square feet of floor area. Any Application that exceeds this recommendation may apply for a variance.

4. Fences and Walls. The following general fence and wall guidelines shall apply.

a) All fences and walls shall be reviewed by, and related detailed plans shall be submitted to, the Committee as in the case of other structures. Replacement of any existing fences and/or walls shall comply with all of the guidelines set forth herein. Receipt of city and/or county approval shall not override Board approval or the ADCSG.
b) All property lines for any single-family dwellings to the common area street shall be kept free and open.
c) There shall be no fences nor walls built upon the front property line of any lot in the EPCC. There shall be no fences nor walls built within 3 feet of the front property line nor any other property line which adjoins and/or abuts the common area streets. No fences, walls, hedges nor tree lines shall be installed which interfere or block the existing lake view corridors of all neighboring structures, including neighbors across the street. There shall be no fences, hedges, nor walls over 5 feet in height (from the natural grade) anywhere within the EPCC without prior written Board approval.
d) Fences and walls shall be kept in good condition at all times. Damaged, split, broken, missing, or hinging boards, posts, etc., shall be promptly repaired. Fences subject to sun and water damage should be treated each spring as soon as outdoor temperatures allow for painting and/or staining. Perimeter lot fences shall be treated in a consistent manner throughout. Fences may be repaired, painted or stained in order to restore them to their original condition. Any changes, including but not limited to, paint and stain color, shall be pre-approved in writing by the Board. Owners, who have a fence and/or wall in disrepair after having been sent written notice to repair or replace fences and/or walls, shall be subject to fines and penalties.

5. View Corridors. The Committee may recommend, and the Board may impose additional building height limitations in order to preserve the view corridors of neighboring dwellings to common areas and/or toward the lake. Additional building height limitations may also be imposed to minimize the impact of structures upon sensitive natural areas of the EPCC. The initial height limitation is set forth in Section XI.3(e) above, and

additional height limitations may be recommend where appropriate, during the Committee's application review process.

Incorporated within XI(3)(h) above, and 15 days prior to submission of an Application to the Committee, applicants must send a letter with a copy of their full and complete Application to all neighboring owners within a 300 foot radius of the applicant's lot. Proof of service is required of the applicant's letter and the accompanying full and complete Application on each of the neighboring lots. A copy of same shall be submitted to the Committee with the applicant's Application. The neighboring lot owners shall have 14 business days from receipt of said letter and Application to express their concerns and provide input, comments and/or requests in writing to the applicant and to the Committee. The applicant's letter to neighboring owners shall advise each of them of the time deadline to provide their respective input, comments and/or requests to the applicant and the Committee. Should the applicant ignore the neighboring owner(s)' written input, comments and/or requests, then the Committee may incorporate the neighboring owner(s)' written input, comments, and/or requests into its Application review process. Upon completion of the Application review process, the Committee shall distribute its analysis with the applicant and those neighboring lot owners who had timely provided written input, comments and/or requests to the Committee concerning said Application. Should the applicant and/or the neighboring owner(s) be dissatisfied with the Committee's preliminary design review analysis, either may take their respective concerns to the Board for further review.

7. Exterior Lighting. All plans for new and/or any replacement of exterior lighting must be submitted to and approved by the Board prior to installation and/or replacement. Exterior lighting shall not shine or reflect past the boundaries of the lot from which it originates, nor interfere with the visual enjoyment of neighboring property owners.

8. Exterior Walls and Trims. Natural wood species (or facsimiles), natural stones, or other materials deemed in the character of the EPCC community for a specific site by the Committee, are required for all exterior fences and/or walls. An approved EPCC color palette and material sampler will be available to the applicant by request from the Committee.

9. Preservation of Existing Trees and Rock Outcroppings. Existing trees and significant rock outcroppings are a unique feature of the land at the EPCC. They should be carefully preserved and featured in all planning for structures and landscaping. During construction, special care must be taken to avoid damage to these rock elements and the lichens growing on their surfaces, and existing trees. Such damage can be caused by heavy machinery, chemicals or other irritants.

10. Landscape Design and Layout. The following general landscape design and layout apply.

e) All landscaping around the perimeter of the structure and upon the lot shall be approved by, and related detailed plans shall be submitted to, the Committee. Replacement of any landscaping shall comply with all of the guidelines set forth herein.
f) All property lines for any single-family dwellings to the common area street shall be kept free and open of landscaping.
g) There shall be no landscaping installed which interferes and/or blocks the existing lake view corridors of all neighboring structures, including neighbors across the street. There shall be no hedges or other vegetation over 5 feet in height (from the natural grade) anywhere within the EPCC without prior written Board approval.

XII. The Architectural Review Committee Process

Prior Approval of Exterior Modifications. All Improvements or visible modifications to a lot structure, including, but not limited to, new construction, exterior remodels, building additions, painting, replacement of

garage doors, installation and/or replacement of lighting fixtures, installation of energy saving systems, landscaping additions or removals, etc., must be submitted to the Committee prior to construction or installation of such improvements or modifications. The only exception is for like-kind (size, color, quantity, etc.) replacement, or re-painting a residence the exact same color as previously approved and painted; and for like-kind (size, quantity, etc.) replacement only of flowers, groundcovers and/or shrubs. The Committee requires an Application for review and final approval for any new construction, exterior remodel(s) and/or renovation(s) Projects.

The Committee shall review and make its recommendation on an Application as provided for herein

As a result of failure to receive prior written approval from the Board for any Project requiring approval, the Committee has the authority to recommend to the Board the requirement for the removal of the improvement(s) and/or the restoration to the original state or condition. Additionally, fines and construction penalties may be assessed against the owner in accordance with the Fine Schedule set by the Board and the EPCC's Governing Documents.

2. Decisions. The Committee shall endeavor to review and makes its recommendation to the Board on submissions within 45 days of submission of complete Applications. If requested by the Committee, Applications must be resubmitted to the Committee, in which case the Committee shall endeavor to comment on such resubmission within 45 days. An Application shall not be approved unless and until the Board receives the Committee's recommendation and grants final written approval. Committee comments and recommendations with respect to any Application shall be considered by the Board before final action on Application is taken by the Board. The decision of a majority of a quorum of the Board, its sole discretion, upon any matters submitted or referred to it, shall be final. Any decision or approval by the Board shall not relieve an applicant nor lot owner from complying with any requirement of a public authority having jurisdiction, and shall not constitute any representation nor guaranty by the Board or EPCC of compliance of the submitted matter with any applicable statue, ordinance, or regulation.

3. Grounds for Disapproval. The Committee may recommend disapproval and the Board may disapprove any Application:

a) If such Application does not comply with EPCC Governing Documents including any ADCSG adopted by the Board.
b) Because of the reasonable dissatisfaction with grading plans; location of the proposed improvement on a lot; finished ground elevation; color scheme; exterior finish; design, proportions, architecture, shape, height or style of the proposed improvement; materials used; the kind, pitch or type of roof proposed; or for purely aesthetic reasons.
c) Because the plans are not consistent with the overall character and scheme of the EPCC.

4. Variances. Any Applications that would involve a variance to the ADCSG shall be forwarded to the Committee who shall review all variance requests. A majority of the Committee shall have the authority to recommend to the Board to grant or deny variances from the ADCSG. Variances shall not be construed as precedent-setting in any way or manner.

5. Certification of Compliance. At any time prior to completion of any Project, the Committee may require a certification in such form as it shall furnish from the contractor, owner or licensed surveyor that such Project does not violate any set-back rules, ordinances or statutes, nor encroach upon any easement nor right-of-way of record; and/or that all construction is in strict compliance with the Application approved by the Board.

6. Administrative Fees for Major Projects Only. As a means of defraying its expenses for review of the Application of a Major Project, the Committee shall require an application review fee of $1,500.00 and/or an

amount determined by the Board, which may vary depending on the scope and extent of the Application. (*See also Section XVII*, below.) The Application review fee in the amount of $1,500.00 is required at the time of preliminary design Application submittal. (*See also Section XVII*, below). This fee will cover the preliminary design Application submittal, preliminary design Application review and final Application submittal. Should the Committee incur additional expenses and costs in reviewing an Application, such additional expenses and costs will be recouped from the applicant. At its discretion, the Committee will impose an additional fee of not less than $500.00 each time an Application re-submittal is required, if the re-submittal(s) become necessary to achieve a final Application that complies with all ADCSG requirements.

7. Inspection Required. An inspection of structure by the Committee shall be scheduled with the owner's qualified and licensed architect and engineer(s) when the foundation is complete, and again when the framing is complete. Any member of the Committee or the Board has the right, after providing a minimum 48-hour written notice to the owner, to inspect all improvements and/or modifications for the purpose determining if, during the construction process, all improvements and/or modifications are in compliance with the Application approved by the Board.

8. Liability. Regardless of the approval by the Board of any Application, neither the Committee, the Board, the EPCC, nor any person acting on their behalf shall be responsible in any way for any defects in any Application plans or specifications nor other material submitted to the Committee, nor for any defects in any pursuant Project work. Each person submitting an Application or specifications shall be solely responsible for their sufficiency and the adequacy of pursuant Project work. No member of the Committee, the Board, the EPCC nor any person acting on their behalf shall be liable to any person, whether an owner of a lot or his/her agents, employees, or assignees, on account of any action or decision of the Committee and/or Board, nor the failure of the Committee and/or Board to take any action nor make any decision. Neither the Committee, EPCC, the Board nor any person acting on behalf of any of them shall be responsible in any manner for any claim, cause of action nor alleged damages resulting from:

a) Any design concepts, aesthetics, latent nor patent errors or defects in design or construction relating to improvements constructed on lots, whether shown or omitted on any plans and specifications that may be approved by the Board, nor any buildings or structures erected there from; nor
b) Any waiver of nor failure to enforce an ADCSG provision, nor failure to inspect or certify compliance with approved plans and specifications.

9. Enforcement. If any improvement and/or construction commences without Board approval as required, or any improvement and/or construction are not in conformance with plans approved by the Board, or not in conformance with the EPCC's Governing Documents, the same shall constitute a violation of the EPCC's Governing Documents. In addition to the remedies for any violation of any portion(s) of the EPCC's Governing Documents, the EPCC shall have the power and authority to institute legal or other appropriate proceedings to enjoin or otherwise prevent any such violations. All fees and costs incurred by the Committee, the Board and/or EPCC pertaining in any way to the violation, including, without limitation, attorneys' fees and costs, shall be assessed, charged and/or paid by the lot owner as an assessment, should the EPCC prevail in an action concerning same. In the event the EPCC is not successful, each party shall pay its own costs and attorneys' fees.

XIII. Submittal of Application with Preliminary Design for Major Projects

When the preliminary design is complete, Application submittals to the Committee must include all of the following and must be presented in three formats:

1. Two regular sets of blueprint size plans in 24" x 36" format or larger and at a scale appropriate to such size presentation. This set shall be referred to as the "submittal set" and will be marked-up with review input and comments. The second copy of the marked-up submittal set will be returned to the applicant.

Once it has received full and final design Application approval a regular set of blueprint size plans to be referred to as the "record set" in 24" X 36" format shall be submitted

2. Duplicate copies of the submittal set and record set of the plans, reduced to 11" x 17" paper, shall be made by the Applicant for distribution to neighbors.
3. An electronic pdf file of the submittal set and record set shall be submitted to the Committee, and upon request to neighboring owners.

The Application and fees shall be directed to P.O. Box 9, Zephyr Cove, Nevada 89448, to the Assistant to EPCC's Secretary (currently, Jennifer Frates), who will log in same, and then direct the Application to the Chairperson of the Committee for review and action. The Board shall be copied on this transmittal. The Assistant to EPCC's Secretary shall ensure appropriate follow-up is in place for timely compliance with the Committee's input and response. Once the Committee completes input and review, it will deliver its response to the Assistant to EPCC's Secretary for transmittal to the Board. The Assistant to EPCC's Secretary will also prepare a simple transmittal cover letter with the Committee's recommendation and comments, to the Applicant.

The preliminary design Application submittal shall include:

1. Site plan, showing the entire property and the location of the building envelope; the residence and all buildings, driveways, and parking areas; existing and proposed topography; proposed finished floor elevations; all trees of 6 inch diameter or greater and protected plants and/or special terrain features to be preserved; and trees and/or special terrain features to be removed;
2. Survey of the site, prepared by a registered land surveyor or licensed civil engineer showing lot boundaries and dimensions, topography (2 foot contours or less), major terrain features, all trees of 6 inch diameter or greater, edge and elevation of pavement or curb, and utility locations;
3. Floor plans showing proposed finished floor elevations;
4. All exterior elevations showing both existing and proposed grade lines, plate heights, ridge heights, roof pitch, and a preliminary proposal of all exterior materials and colors;
5. Site sections that include the exterior elevations of all adjoining lot structures as well as the exterior elevation of the proposed structure on said lot;
6. In addition to the exterior elevations in Item 4 above, a "conceptual drawing" showing the most prominent and descriptive view of the building in perspective and in relation to the adjoining properties' building structures, and the actual site. This drawing must show all major existing site features and topography in scale. It must also clearly show all design elements, with major building elements labeled for identification;
7. A study model (same scale as site plan) and/or story poles may be required that accurately depict all the proposed improvements and their relationship to the site and adjoining properties' structures if the Committee deems it appropriate due to slope considerations or complexity of design, and
8. Any other drawings, materials, or samples requested by the Committee.

The Committee will review the preliminary plans and respond in writing within 15 days after the review, but no later than 45 days after an Application submittal is complete. If, in the opinion of the Committee, the Application is in substantial compliance with the ADCSG, a recommendation for approval will be made to the Board. Should the design be a substantial variance with the ADCSG or violate any of these guidelines, a recommendation for disapproval may result, and a revised submittal will be required.

The Committee will consult by conference call or in person in considering the approval of preliminary plans. The Owner may request and attend a meeting with the Committee and the Committee will make reasonable attempts to accommodate this request. No applicant, architect or builder may approach a Board or Committee

member to discuss Application details. Any response an owner may wish to make regarding the results of an Application design review must be addressed to the Committee in writing. In the event of any disapproval by the Committee of an Application submittal, a resubmission of the Application should follow the same procedures as an original

XIV. Submittal of Application with Final Design for Major Projects

After the Board approves an Application, the following documents are to be submitted for final review in all 3 size formats outlined for the Application review process. The log in and response process will be as outlined for the Application review process. No review will commence until the submittal is complete and inclusive of the preliminary design Application submittal items as well as the following:

1. Site plan with final proposed finished floor elevations; all utility sources and connections; and all site walls, fences, or similar structures;
2. Floor plans showing all final proposed floor elevations;
3. Roof plan showing all final proposed roof pitches;
4. Building section, showing existing and final proposed grade lines;
5. All exterior elevations showing both existing and final grade lines, plate heights, roof pitch and the final approved exterior materials and colors;
6. Samples, color boards showing actual materials and colors depicting or describing all approved exterior materials, finishes, and colors;
7. Complete landscape plan showing location, size, and type of all existing and proposed plants; irrigation system facilities; decorative materials; paving and/or other impervious surfaces; walls; steps; fences and/or borders; and,
8. On-site staking of all building corners and other improvements.

The Committee will review the Application with final design plans and respond in writing within 15 days after the review, but no later than 45 days after an Application with final design is complete. If, in the opinion of the Committee, the Application with final design is in substantial compliance with the approved preliminary drawings and is otherwise in compliance with the ADCSG, a recommendation for approval will be made to the Board. Should the design be a substantial variance with the approved Application with preliminary design or violate any of the ADCSG, a recommendation for disapproval may result, and a revised Application with final design will be required.

No submittal to any governmental agency, including but not limited to the TRPA and Douglas County, shall precede or otherwise commence until final design approval is first obtained from the EPPC Board. Failure to obtain final design review approval from the EPCC Board, in advance of submission of the applicant's plans to any governmental agency, including but not limited to TRPA and Douglas County, automatically renders the applicant's plans rejected and disapproved by the EPCC Board until such time as the ADCSG is complied with.

XV. Site Inspection

As soon as the review of the Application with final design is complete, a representative of the Committee may inspect the site to determine that the conditions as depicted in the Application with final design are accurate and complete.

XVI. Pre-Construction Conference

Prior to commencing construction, the builder must meet with a representative of the Committee to review construction policies and procedures set forth in the document commonly referred to as "Managing

Construction Within the Elk Point Country Club Association" ("Construction Rules"), available upon request, and to coordinate his/her activities with the Committee, the Elk Point Caretaker, and the Board.

XVII. Compliance Deposit for Major Projects

To assure the owner's and builder's compliance with the ADCSG and their agreement to build all structures, landscaping, and other improvements in complete conformance with approved Application with final design, the owner shall deliver to the EPCC a Compliance Deposit in the amount of $ 5,000.00 at the time of the Pre-Construction Conference. This deposit must be made payable to the EPCC prior to any commencement of any Project activities; and same will be held by the EPCC until the final release described below has been issued by the Committee. $2,500.00 of the Compliance Deposit is non-refundable. Out of this non-refundable portion, $1,500.00 is to aid in defraying costs to the Board and Committee for additional consultant and other fees incurred during the Applicant's construction process of the Project; and $1,000.00 of which may be deposited in the EPCC's general and/or reserve accounts for any street repair(s) and/or replacement(s) due to construction traffic, particularly heavy trucks. $2,500.00 of the compliance deposit will be refundable, unless the owner, the builder, and/or their respective agents and/or employees fail to comply in any way with the EPCC's Governing Documents, the ADCSG, the Committee's approved plans, and/or the EPCC's Construction Rules. Should same be violated in any way, then the deposited funds held as part of the Compliance Deposit may be used by the EPCC to pay the costs of damages, the cost of compliance and/or the cost of the correction of such failure(s), including any attorney fees or costs incurred by the EPCC in gaining said compliance. Any funds remaining in such Compliance Deposit after the final release has been issued will be promptly returned to the owner. No interest shall be due to the owner from the Compliance Deposit. If expenses exceed the amount of the Compliance Deposit, then the owner shall be liable for the excess, and said excess may be charged against the owner's lot as a special assessment.

Any and all funds held or disbursed as, and/or from, receipt of design review fees, Compliance Deposits, payments of fines, and payments and/or reimbursements from expenses of enforcing compliance with the ADCSG will be held by and/or paid through the EPCC designated account(s) and will in all instances be the property of the EPCC.

XVIII. Commencement of Construction

After the Board's approval of the Application with final design, the payment of the Compliance Deposit, and satisfactory completion of all Douglas County and Tahoe Regional Planning Agency's (TRPA) review processes, the owner shall then have satisfied all conditions and commence the construction and/or any work pursuant to the Application with final design within one year from the date of such approval. If the owner fails to begin construction within this time period, any given EPCC approval shall be revoked.

The owner shall, in any event, complete the construction of any and all improvements on the owner's lot within two years after commencing construction, except and upon a showing that such completion is rendered impossible due to labor strikes, fires, national emergencies, natural calamities and/or unusual inclement weather.

If the owner fails to comply with this schedule, the Board shall have the right to either have the exterior of the improvement completed in accordance with the approved plans and/or have the right to remove the improvement, with all expenses incurred to be reimbursed to EPCC by the owner.

XIX. Inspections of Work in Progress

The Committee may inspect all Project work in progress and give notice of noncompliance. Absence of such inspection or notification during the construction period does not constitute an approval by the Committee nor EPCC of Project work in progress and/or compliance with the ADCSG.

XX. Subsequent Changes
Additional construction and/or other improvements to a residence or lot, and/or changes during construction and/or after completion of an approved structure, including landscaping and color modification, must first be submitted to the Committee for review and approval of the Board prior to making such changes or additions.

XXI. Final Release
Upon completion of any residence and/or other improvement, the owner shall give written notice of completion to the Committee. Within 10 days of such notification, a representative of the Committee may inspect the residence and/or other improvements for compliance. If all improvements comply with the ADCSG, the Committee may recommend that the Board issue a written approval to the owner, constituting a final release of the entire Project by EPCC. If the Committee fails to recommend approval or disapproval of the Project within 45 days of receipt of owner's notice, EPCC's right to approve shall be waived.

If it is found that the Project was not done in strict compliance with the approved Application with final design or any portion of the ADCSG, the Committee may issue a written notice of noncompliance to the owner, specifying the particulars of noncompliance; said notice to be issued within 45 days of the final inspection. The owner shall have 45 days from the date of notice of noncompliance to remedy the noncomplying portions of his/her improvement. If, by the end of this time period, the owner has failed to remedy the noncompliance, the Committee may recommend to the Board action to remove, repair and/or reconstruct the noncomplying improvements as provided for in the ADCSG, and in addition, may without limitation seek injunctive relief against occupancy of the site until compliance is achieved and/or full payment of the imposed sanction and/or fine against the owner.

The approval by the Board of any plans, drawings, or specifications for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing or specification subsequently or additionally submitted for approval. Failure to enforce any of the ADCSG shall not constitute a waiver of same.

XXII. Right of Waiver
The Board reserves the right to waive and/or vary any of these declared procedures at its sole discretion.

XXIII. Exemptions
Utility and maintenance buildings and other structures located on nonresidential portions of EPCC are exempt from the "ADCSG" portion of this document; however, EPCC will endeavor to attain as high a level or conformance with the ADCSG as is practical for these types of facilities.

XXIV. Review of Minor or Major Alterations to Existing Structures
EPCC, through the Committee and Board, reserves the right to review Application(s) for alterations to existing structures and to require certain upgrades to meet current codes compliance when the Committee deems it appropriate, on a case-by-case basis.

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K. WILFERT

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust, Plaintiffs, v. ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC., a Nevada non-profit corporation, and DOES 1-10 inclusive, Defendants.	CASE NO.: 19-CV-0242 DEPT: 1 **ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR SUMMARY JUDGMENT**

On November 30, 2020, at 10:00 a.m., the above-captioned case came before the Honorable Judge Nathan Tod Young, regarding Plaintiff JEROME MORETTO's *Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues*, and Defendant ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.'s *Motion for Summary Judgment*, with Karen Winters, Esq. appearing on behalf of Plaintiff JEROME MORETTO, and Prescott T. Jones, Esq. of RESNICK & LOUIS P.C. appearing on behalf of Defendant ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC. The

Court, having reviewed the Motions, the papers and pleadings on file herein, and the arguments of counsel, finds and orders as follows:

FINDINGS OF FACT

1. The Court finds that the Jerome F. Moretto 2006 Trust is the owner of the property located at 476 Lakeview Avenue, Zephyr Cove, Nevada, which is a part of the Elk Point Country Club development.
2. The Court finds that Plaintiff Jerome Moretto first took title to the property located at 476 Lakeview Avenue in 1990, and he took title "subject at all times to the by-laws, and rules and regulations" of the Elk Point Country Club.
3. The Court finds that the Bylaws of the Elk Point Country Club state, in Article 3, section 2, that the Executive Board shall have the authority 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."
4. The Court finds that the Bylaws of the Elk Point Country Club, in Article 16, Section 2, restrict properties to single family residential use only.
5. The Court finds that the Bylaws of the Elk Point Country Club state, in Article 16, Section 3, that "[n]o structure of any kind shall be erected or permitted upon the premises of any Unit Owner, unless the plans and specifications shall have first been submitted to and approved by the Executive Board.
6. The Elk Point Country Club does not have a Covenant of Conditions and Restrictions, and instead has developed Rules and Regulations.
7. The Elk Point Country Club has developed Architectural Design Guidelines which have been incorporated into the Rules and Regulations.
8. The Elk Point Country Club has created an Architectural Review Committee which issues recommendations to the Executive Board on issues related to Architectural issues in the community.

CONCLUSIONS OF LAW

THE COURT CONCLUDES that while Plaintiff has an expectation of free use of his property, that expectation is limited because he took title to the property subject to the bylaws and rules and regulations of the Elk Point Country Club.

THE COURT FURTHER CONCLUDES that the Elk Point Country Club has the authority under the Bylaws to create Rules and Regulations, including those that regulate architecture at the community.

THE COURT FURTHER CONCLUDES that Article 16, section 3 of the Bylaws, which gives the Board authority to create rules and regulations, does not simply modify Article 16, section 2 of the Bylaws, it is a completely separate section.

THE COURT FURTHER CONCLUDES that the Executive Board has not delegated any authority to the Architectural Review Committee because the Committee only issues recommendations to be taken up by the Executive Board.

THE COURT FURTHER CONCLUDES that the architectural guidelines promulgated by the Elk Point Country Club are not arbitrary and capricious under NRS 116.31065, with the sole exception of the provision that allows the Executive Board to deny applications for "purely aesthetic reasons."

THE COURT FURTHER CONCLUDES that Plaintiff's claim for "violation of property rights" is not a cognizable claim in Nevada; but even if it was, Plaintiff's property rights were not violated in this matter.

THE COURT FURTHER CONCLUDES that documents requested by the Plaintiff in his fourth cause of action do not fall within NRS 116.31175, and the statutory penalty of $25 per day set forth in NRS 116.31175(3) is inapplicable because the documents requested are not those set forth in NRS 116.31175(1)(a) through (c).

THE COURT FURTHER CONCLUDES that there are no genuine issues of material fact at issue in this matter.

ORDER

IT IS ORDERED THAT, based on the findings above, Plaintiff's *Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues*, is granted in part and denied in part as follows:

1. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is denied as to the first cause of action for Breach of Elk Point Country Club Bylaws.
2. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is granted in part as to the second cause of action for Violations of NRS 116.31065 only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is otherwise denied as to the remaining architectural guidelines.
3. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is denied as to the third cause of action for Violation of Plaintiff's Property Rights.
4. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is denied as to the fourth cause of action for Violation of NRS 116.31175.
5. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is granted in part as to the fifth cause of action for Declaratory Relief only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is otherwise denied as to the remaining architectural guidelines.

IT IS FURTHER ORDERED THAT, based on the findings above, Defendant's *Motion for Summary Judgment* is granted in part and denied in part as follows:

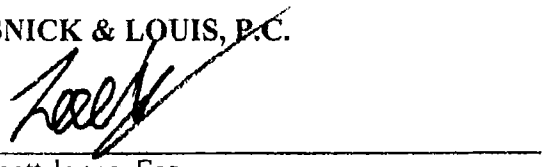
1. Defendant's Motion for Summary Judgment is granted as to the first cause of action for Breach of Elk Point Country Club Bylaws.
2. Defendant's Motion for Summary Judgment is denied in part as to the second cause of action for Violations of NRS 116.31065 only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Defendant's Motion for Summary Judgment is otherwise granted as to the remaining architectural guidelines.
3. Defendant's Motion for Summary Judgment is granted as to the third cause of action for Violation of Plaintiff's Property Rights.
4. Defendant's Motion for Summary Judgment is granted as to the fourth cause of action for Violation of NRS 116.31175.
5. Defendant's Motion for Summary Judgment is denied in part as to the fifth cause of action for Declaratory Relief only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Defendant's Motion for Summary Judgment is otherwise granted as to the remaining architectural guidelines.

DATED this 7 day of December, 2020.

DISTRICT COURT JUDGE

DATED this 14th day of December, 2020

RESNICK & LOUIS, P.C.



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Elk Point Country Club Homeowners Assn., Inc.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust, Plaintiffs, v. ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC., a Nevada non-profit corporation, and DOES 1-10 inclusive, Defendants.	CASE NO.: 19-CV-0242 DEPT: 1

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that DEFENDANT'S ORDER GRANTING IN PART AND DENYING IN PART THE MOTIONS FOR SUMMARY JUDGMENT was entered on the 8th

day of December, 2020, a copy of which is attached hereto.

DATED this 21st day of January, 2021.

RESNICK & LOUIS, P.C.

By: _____

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Attorneys for Defendant
Elk Point Country Club Homeowners Assn., Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **NOTICE OF ENTRY OF ORDER** was served this 21st day of January, 2021, by:

[X] **BY U.S. MAIL**: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada, addressed as set forth below.

[ ] **BY FACSIMILE**: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document.

[ ] **BY PERSONAL SERVICE**: by causing personal delivery by an employee of Resnick & Louis, P.C. of the document(s) listed above to the person(s) at the address(es) set forth below.

[ ] **BY ELECTRONIC SERVICE**: by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date.

Karen L. Winters, Esq.
LAW OFFICE OF KAREN L. WINTERS
P.O. Box 1987
Minden, NV 89423
Counsel for Plaintiff

Maneek Morrow
An Employee of Resnick & Louis, P.C.

Preston T. Jones, Esq.
Admitted in NV
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RESNICK & LOUIS, P.C.

ATTORNEYS AT LAW

REPLY TO: NEVADA OFFICE
8925 West Russell Road, Suite 220
Las Vegas, Nevada 89148
(702) 997-3800

December 14, 2020

RECEIVED
DEC 17 2020
Douglas County
District Court Clerk

VIA U.S. MAIL

Clerk of the Court
Ninth Judicial District Court
Douglas County
P.O. Box 218
Minden, NV 89423

Re: Moretto v. Elk Point Country Club Homeowners Assn., Inc.
Case No.: 19-CV-0242 Dept. I

Dear Sir/Madam:

Enclosed please find an original and one copy of Defendant's Order Granting in Part and Denying in Part the Motions for Summary Judgment to be submitted to the Judge for signature.

Kindly return the file-stamped copy in the self-addressed, stamped envelope provided for your convenience. Please contact me at (702) 997-8506 should you have any questions or concerns.

Thank you for your professional courtesies.

Very truly yours,

RESNICK & LOUIS, P.C.

S. Susan Carbone

Susan Carbone
Legal Assistant
For the Firm

sc
Enc.

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Attorneys for Defendant
Elk Point Country Club Homeowners Assn., Inc.

2021 JAN -8 PM 4:22
K. WILFERT
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust, Plaintiffs, v. ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC., a Nevada non-profit corporation, and DOES 1-10 inclusive, Defendants.	CASE NO.: 19-CV-0242 DEPT: 1 **ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR SUMMARY JUDGMENT**

On November 30, 2020, at 10:00 a.m., the above-captioned case came before the Honorable Judge Nathan Tod Young, regarding Plaintiff JEROME MORETTO's *Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues*, and Defendant ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.'s *Motion for Summary Judgment*, with Karen Winters, Esq. appearing on behalf of Plaintiff JEROME MORETTO, and Prescott T. Jones, Esq. of RESNICK & LOUIS P.C. appearing on behalf of Defendant ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC. The

Court, having reviewed the Motions, the papers and pleadings on file herein, and the arguments of counsel, finds and orders as follows:

FINDINGS OF FACT

1. The Court finds that the Jerome F. Moretto 2006 Trust is the owner of the property located at 476 Lakeview Avenue, Zephyr Cove, Nevada, which is a part of the Elk Point Country Club development.
2. The Court finds that Plaintiff Jerome Moretto first took title to the property located at 476 Lakeview Avenue in 1990, and he took title "subject at all times to the by-laws, and rules and regulations" of the Elk Point Country Club.
3. The Court finds that the Bylaws of the Elk Point Country Club state, in Article 3, section 2, that the Executive Board shall have the authority 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."
4. The Court finds that the Bylaws of the Elk Point Country Club, in Article 16, Section 2, restrict properties to single family residential use only.
5. The Court finds that the Bylaws of the Elk Point Country Club state, in Article 16, Section 3, that "[n]o structure of any kind shall be erected or permitted upon the premises of any Unit Owner, unless the plans and specifications shall have first been submitted to and approved by the Executive Board.
6. The Elk Point Country Club does not have a Covenant of Conditions and Restrictions, and instead has developed Rules and Regulations.
7. The Elk Point Country Club has developed Architectural Design Guidelines which have been incorporated into the Rules and Regulations.
8. The Elk Point Country Club has created an Architectural Review Committee which issues recommendations to the Executive Board on issues related to Architectural issues in the community.

CONCLUSIONS OF LAW

THE COURT CONCLUDES that while Plaintiff has an expectation of free use of his property, that expectation is limited because he took title to the property subject to the bylaws and rules and regulations of the Elk Point Country Club.

THE COURT FURTHER CONCLUDES that the Elk Point Country Club has the authority under the Bylaws to create Rules and Regulations, including those that regulate architecture at the community.

THE COURT FURTHER CONCLUDES that Article 16, section 3 of the Bylaws, which gives the Board authority to create rules and regulations, does not simply modify Article 16, section 2 of the Bylaws, it is a completely separate section.

THE COURT FURTHER CONCLUDES that the Executive Board has not delegated any authority to the Architectural Review Committee because the Committee only issues recommendations to be taken up by the Executive Board.

THE COURT FURTHER CONCLUDES that the architectural guidelines promulgated by the Elk Point Country Club are not arbitrary and capricious under NRS 116.31065, with the sole exception of the provision that allows the Executive Board to deny applications for "purely aesthetic reasons."

THE COURT FURTHER CONCLUDES that Plaintiff's claim for "violation of property rights" is not a cognizable claim in Nevada; but even if it was, Plaintiff's property rights were not violated in this matter.

THE COURT FURTHER CONCLUDES that documents requested by the Plaintiff in his fourth cause of action do not fall within NRS 116.31175, and the statutory penalty of $25 per day set forth in NRS 116.31175(3) is inapplicable because the documents requested are not those set forth in NRS 116.31175(1)(a) through (c).

THE COURT FURTHER CONCLUDES that there are no genuine issues of material fact at issue in this matter.

ORDER

IT IS ORDERED THAT, based on the findings above, Plaintiff's *Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues*, is granted in part and denied in part as follows:

1. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is denied as to the first cause of action for Breach of Elk Point Country Club Bylaws.
2. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is granted in part as to the second cause of action for Violations of NRS 116.31065 only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is otherwise denied as to the remaining architectural guidelines.
3. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is denied as to the third cause of action for Violation of Plaintiff's Property Rights.
4. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is denied as to the fourth cause of action for Violation of NRS 116.31175.
5. Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is granted in part as to the fifth cause of action for Declaratory Relief only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues is otherwise denied as to the remaining architectural guidelines.

IT IS FURTHER ORDERED THAT, based on the findings above, Defendant's *Motion for Summary Judgment* is granted in part and denied in part as follows:

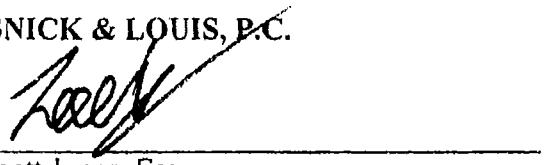
1. Defendant's Motion for Summary Judgment is granted as to the first cause of action for Breach of Elk Point Country Club Bylaws.
2. Defendant's Motion for Summary Judgment is denied in part as to the second cause of action for Violations of NRS 116.31065 only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Defendant's Motion for Summary Judgment is otherwise granted as to the remaining architectural guidelines.
3. Defendant's Motion for Summary Judgment is granted as to the third cause of action for Violation of Plaintiff's Property Rights.
4. Defendant's Motion for Summary Judgment is granted as to the fourth cause of action for Violation of NRS 116.31175.
5. Defendant's Motion for Summary Judgment is denied in part as to the fifth cause of action for Declaratory Relief only such that the Elk Point Country Club is enjoined from denying any architectural application for "purely aesthetic reasons." Defendant's Motion for Summary Judgment is otherwise granted as to the remaining architectural guidelines.

DATED this 7 day of December, 2020.

DISTRICT COURT JUDGE

DATED this 14th day of December, 2020

RESNICK & LOUIS, P.C.



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