

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.

Supreme Court

Case No. 82565

District Court

Case No. 2019-CV-00242

Electronically Filed
Jul 23 2021 03:36 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

APPEAL FROM THE NINTH JUDICIAL DISTRICT COURT
COUNTY OF DOUGLAS
THE HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE

**APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME 1, PART 1**

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AUG 16 2019

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CASE NO. 19-CV-0242

DEPT. NO. I

Douglas County
District Court Clerk

2019 AUG 16 PM 1:51

BOEJAN R. WILLIAMS
CLERK

M. BIAGGINI DEPUTY

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.

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

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

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

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

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

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

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

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

1 11. Moretto's objections are set forth in further detail herein below and include that:
2 (1) the Executive Board had no authority under the Bylaws to create a "Design Review
3 Committee" delegating the Executive Board's authority to develop rules and regulations
4 governing the design, architecture and construction of improvements within EPCC boundaries in
5 violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and capricious
6 enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not sufficiently
7 explicit to inform unit property owners for compliance in violation of NRS 116.31065(2); (4) the
8 Guidelines allow for imposition of fines in violation of the requirements set forth in NRS
9 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a variance
10 from the Guidelines at the discretion of the Design Review Committee with no objective
11 standard in violation of NRS 116.31065(5); (6) the Guidelines purport to create real property
12 restrictions which are restrictive covenants taken *ultra vires* on individual units; (7) the
13 Guidelines impose setback requirements on improvements that would effectively take Moretto's
14 property right to rebuild in the event of fire or natural catastrophe without Moretto's consent; and
15 (8) the Guidelines impose easements, including view easements which are restrictive covenants
16 taken *ultra vires* on individual units.

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

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

26 14. Mediation between Moretto and EPCC occurred on May 31, 2019, which did not
27 result in a resolution. The claim was closed by the Nevada Real Estate Division by letter dated
28 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.

1 23. The Guidelines, as allegedly enacted on March 31, 2018 create rules that result in
2 arbitrary and capricious enforcement in violation of NRS 116.31065(1), in that Section V allows
3 the Design Review Committee to “apply and enforce” Guidelines “as [it] sees fit”, without any
4 objective standard. A true and correct copy of the Guidelines allegedly enacted on March 31,
5 2018 is attached hereto as Exhibit 2 including the typographical error dating it to March 31,
6 2017.

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

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

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

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

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

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

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

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

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

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **VIOLATION OF PLAINTIFF'S PROPERTY RIGHTS**

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

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

28 ////

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

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

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

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

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

17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF NRS 116.31175**

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

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

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

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

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

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

8 **FIFTH CAUSE OF ACTION**

9 **DECLARATORY RELIEF**

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

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

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

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

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

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

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

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

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

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

11 WHEREFORE, Plaintiff prays for relief as follows:

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

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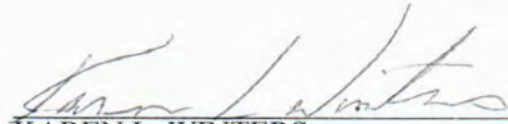
1 7. For such other and further relief as this Court may deem just and proper.

2 Dated: August 16, 2019

LAW OFFICE OF KAREN L. WINTERS

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KAREN L. WINTERS

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Nevada Bar No. 3086

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P.O. Box 1987

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Minden, NV 89423

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(775) 782-7933

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Attorney for Plaintiff

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1
2 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
3 **IN AND FOR THE COUNTY OF DOUGLAS**

4 **AFFIRMATION**
5 **Pursuant to NRS 239B.030**

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

8 ☒ Document does not contain the social security number of any person.

9 **-OR-**

10 ☐ Document contains the social security number of a person as required by:

11 ☐ A specific state or federal law, to wit:

12 _____
(State specific state or federal law)

13 **-or-**

14 ☐ For the administration of a public program

15 **-or-**

16 ☐ For an application for a federal or state grant

17 **-or-**

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

19
20 Date: August 16, 2019

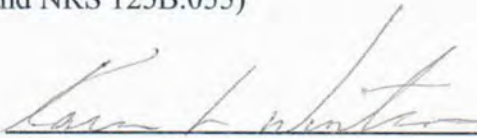
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KAREN L. WINTERS
Attorney for Plaintiff

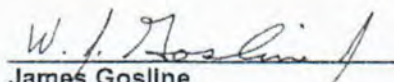
EXHIBIT 1

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.


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 ADCSG.

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 statute, 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 EPCC 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.

RECEIVED

SEP 16 2019

FILED

Case No. 19-CV-0242

Dept. I

Douglas County
District Court Clerk

2019 SEP 16 PM 3:12

BOBBIE R. WILLIAMS
CLERK*By [Signature] 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,**PROOF OF PERSONAL SERVICE**

Plaintiff,

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

Defendants.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

DECLARATION OF SERVICE

**JEROME MORETTO, Trustee of the Jerome F. Moetto
2006 Trust**

Case No :19-CV-0242

Plaintiff/Petitioner,

vs.

**ELK POINT COUNTRY CLUB HOMEOWNERS,
ASSOCIATION INC., et al.,**

Defendant/Respondent.

STATE OF NEVADA
COUNTY OF WASHOE ss.:

SUMMONS; COMPLAINT; NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEROME MORETTO IN SUPPOR OF MOTION FOR PRELIMINARY INJUNCTION Received by NOW! Services, Inc. on 09/04/2019 with instructions to serve **ROBERT FELTON** at **468 Lakeview Ave., Zephyr Cove, NV89448**.

I, **Jason Jones, R-2019-01929**, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made.

I am authorized to serve this process in the circuit/county it was served in.

On 09/06/2019 at 2:00 PM, I served the within **SUMMONS; COMPLAINT; NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JEROME MORETTO IN SUPPOR OF MOTION FOR PRELIMINARY INJUNCTION** on **ROBERT FELTON** at **468 Lakeview Ave., Zephyr Cove, NV89448** in the manner indicated below:

INDIVIDUAL: By delivering to the within named person a true copy of this process and informing the person of the contents.

A description of the Recipient is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	Gray	70'S	6'00	160
Other Features:					

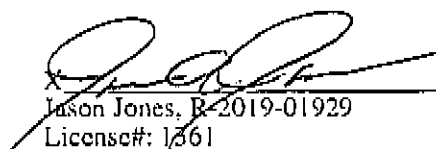
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 16 day of September 2019.

No Notary is required per NRS 53.045.



31565


Jason Jones, R-2019-01929
License#: 1361
NOW! Services, Inc.
3210 W. Charleston Blvd., Ste. 3
Las Vegas, NV89102
(702) 669-7378

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME MORETTO, TRUSTEE OF THE
JEROME F. MORETTO 2006 TRUST,

Supreme Court
Case No. 82565

Appellant,
vs.

District Court
Case No. 2019-CV-00242

ELK POINT COUNTRY CLUB
HOMEOWNERS ASSOCIATION, INC.,

Respondent.

APPEAL FROM THE NINTH JUDICIAL DISTRICT COURT
COUNTY OF DOUGLAS
THE HONORABLE NATHAN TOD YOUNG, DISTRICT JUDGE

**APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME 1, PART 2**

TODD R. ALEXANDER
Nevada Bar No. 10846
ROBERT L. EISENBERG
Nevada Bar No. 0950
LEMONS, GRUNDY & EISENBERG
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Attorneys for Appellant
JEROME MORETTO, TRUSTEE OF THE
JEROME F. MORETTO 2006 TRUST

1 **RESNICK & LOUIS, P.C.**
2 Prescott Jones, Esq., SBN: 11617
3 pjones@rlattorneys.com
4 8925 W. Russell Road, Suite 220
5 Las Vegas, NV 89148
6 Telephone: (702) 997-3800
7 Facsimile: (702) 997-3800
8 *Attorneys for Defendant*
9 *Elk Point Country Club Homeowners Assn., Inc.*

10
11 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12
13 **IN AND FOR THE COUNTY OF DOUGLAS**

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

16 Plaintiffs,

17 v.

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

22 Defendants.

CASE NO.: 19-CV-0242

DEPT: 1

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT**

23 Defendant, ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.,
24 by and through its counsel of record, PRESCOTT T. JONES, ESQ., of the law offices of
25 RESNICK & LOUIS, P.C., hereby answers Plaintiff's Complaint as follows:

26 1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant **is presently without**
27 **sufficient** information to form a belief as to the truth or falsity of the allegations contained within
28 said paragraph, and therefore, denies same.

2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant **admits each and every**
allegation contained therein.

1 3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant **is presently without**
2 **sufficient** information to form a belief as to the truth or falsity of the allegations contained within
3 said paragraph, and therefore, denies same.

4 4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant **denies** each and every
5 allegation contained therein.

6 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendant **admits** that NRS 116
7 generally applies to it, but that it was formed prior to the enactment of NRS 116.

8 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendant **admits** that the
9 documents attached by Plaintiff appear to be the 2005 Bylaws.

10 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendant **admits** each and every
11 allegation contained therein.

12 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendant **admits** each and every
13 allegation contained therein.

14 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant **admits** each and every
15 allegation contained therein.

16 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendant **admits** each and every
17 allegation contained therein.

18 11. Answering Paragraph 11 of Plaintiff's Complaint, no response is necessary as
19 Paragraph 11 does not contain an allegation. To the extent an allegation is contained therein and
20 directed at Defendant, Defendant **denies** same.

21 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant **is presently without**
22 **sufficient** information to form a belief as to the truth or falsity of the allegations contained within
23 said paragraph, and therefore, denies same.

24 13. Answering Paragraph 13 of Plaintiff's Complaint, no response is necessary as
25 Paragraph 13 does not contain an allegation. To the extent an allegation is contained therein and
26 directed at Defendant, Defendant **denies** same.
27
28

1 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant **admits** each and every
2 allegation contained therein.

3 **FIRST CAUSE OF ACTION**

4 **BREACH OF EPCC BYLAWS**

5 15. Defendant hereby incorporates their responses to Paragraphs "1" through "15" of
6 Plaintiff's Complaint as though fully contained herein.

7 16. Answering Paragraph 16 of Plaintiff's Complaint, Defendant **denies** each and every
8 allegation contained therein.

9 17. Answering Paragraph 17 of Plaintiff's Complaint, no response is necessary as
10 Paragraph 17 does not contain an allegation. To the extent an allegation is contained therein and
11 directed at Defendant, Defendant **denies** same.

12 18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant **denies** each and every
13 allegation contained therein.

14 19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant **denies** each and every
15 allegation contained therein.

16 20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant **denies** each and every
17 allegation contained therein.

18 21. Answering Paragraph 21 of Plaintiff's Complaint, Defendant **denies** each and every
19 allegation contained therein.

20 **SECOND CAUSE OF ACTION**

21 **VIOLATIONS OF NRS 116.31065**

22 22. Defendant hereby incorporates their responses to Paragraphs "1" through "22" of
23 Plaintiff's Complaint as though fully contained herein.

24 23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant **denies** each and every
25 allegation contained therein.
26
27
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1 24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant **denies** each and every
2 allegation contained therein.

3 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant **denies** each and every
4 allegation contained therein.

5 26. Answering Paragraph 26 of Plaintiff's Complaint, Defendant **denies** each and every
6 allegation contained therein.

7 27. Answering Paragraph 27 of Plaintiff's Complaint, Defendant **denies** each and every
8 allegation contained therein.

9 28. Answering Paragraph 28 of Plaintiff's Complaint, Defendant **denies** each and every
10 allegation contained therein.

11 29. Answering Paragraph 29 of Plaintiff's Complaint, Defendant **denies** each and every
12 allegation contained therein.

13 30. Answering Paragraph 30 of Plaintiff's Complaint, Defendant **denies** each and every
14 allegation contained therein.

15 31. Answering Paragraph 31 of Plaintiff's Complaint, Defendant **denies** each and every
16 allegation contained therein.

17 32. Answering Paragraph 32 of Plaintiff's Complaint, Defendant **denies** each and every
18 allegation contained therein.

19 33. Answering Paragraph 33 of Plaintiff's Complaint, Defendant **denies** each and every
20 allegation contained therein.

21 34. Answering Paragraph 34 of Plaintiff's Complaint, Defendant **denies** each and every
22 allegation contained therein.

23
24 **THIRD CAUSE OF ACTION**

25 **VIOLATION OF PLAINTIFF'S PROPERTY RIGHTS**

26 35. Defendant hereby incorporates their responses to Paragraphs "1" through "35" of
27 Plaintiff's Complaint as though fully contained herein.
28

1 36. Answering Paragraph 36 of Plaintiff's Complaint, Defendant **denies** each and every
2 allegation contained therein.

3 37. Answering Paragraph 37 of Plaintiff's Complaint, Defendant **denies** each and every
4 allegation contained therein.

5 38. Answering Paragraph 38 of Plaintiff's Complaint, Defendant **denies** each and every
6 allegation contained therein.

7 39. Answering Paragraph 39 of Plaintiff's Complaint, Defendant **denies** each and every
8 allegation contained therein.

9 40. Answering Paragraph 40 of Plaintiff's Complaint, Defendant **denies** each and every
10 allegation contained therein.

11 41. Answering Paragraph 41 of Plaintiff's Complaint, Defendant **denies** each and every
12 allegation contained therein.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF NRS 116.31175**

15 42. Defendant hereby incorporates their responses to Paragraphs "1" through "42" of
16 Plaintiff's Complaint as though fully contained herein.

17 43. Answering Paragraph 43 of Plaintiff's Complaint, Defendant **admits** receiving a
18 letter from Moretto on or about May 12, 2018, but otherwise **denies** the remaining allegations.

19 44. Answering Paragraph 44 of Plaintiff's Complaint, Defendant **denies** each and every
20 allegation contained therein.

21 45. Answering Paragraph 45 of Plaintiff's Complaint, Defendant **denies** each and every
22 allegation contained therein.

23 46. Answering Paragraph 46 of Plaintiff's Complaint, Defendant **denies** each and every
24 allegation contained therein.

25 47. Answering Paragraph 47 of Plaintiff's Complaint, Defendant **denies** each and every
26 allegation contained therein.
27
28

1 **FIFTH CAUSE OF ACTION**

2 **DECLARATORY RELIEF**

3 48. Defendant hereby incorporates their responses to Paragraphs "1" through "48" of
4 Plaintiff's Complaint as though fully contained herein.

5 49. Answering Paragraph 49 of Plaintiff's Complaint, Defendant **denies** each and every
6 allegation contained therein.

7 50. Answering Paragraph 50 of Plaintiff's Complaint, Defendant **admits** each and every
8 allegation contained therein.

9 51. Answering Paragraph 51 of Plaintiff's Complaint, Defendant **denies** each and every
10 allegation contained therein.

11 52. Answering Paragraph 52 of Plaintiff's Complaint, Defendant **denies** each and every
12 allegation contained therein.

13 53. Answering Paragraph 53 of Plaintiff's Complaint, Defendant **admits** each and every
14 allegation contained therein.

15 54. Answering Paragraph 54 of Plaintiff's Complaint, Defendant **denies** each and every
16 allegation contained therein.

17 55. Answering Paragraph 55 of Plaintiff's Complaint, Defendant **denies** each and every
18 allegation contained therein.

19 56. Answering Paragraph 56 of Plaintiff's Complaint, Defendant **denies** each and every
20 allegation contained therein.

21 **AFFIRMATIVE DEFENSES**

22 **FIRST AFFIRMATIVE DEFENSE**

23 Plaintiff failed to mitigate their damages.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Plaintiff is not entitled to relief from or against Defendant, as Plaintiff has not sustained
26 any loss, injury, or damages that resulted from any act, omission, or breach by Defendant.
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THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Defendant complied with applicable statutes and with the requirements and regulations of the state of Nevada.

FOURTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this answer, and Respondents reserves the right to amend this answer to allege additional affirmative defenses if subsequent investigation warrants.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant respectfully requests the following relief:

- A. That Plaintiff takes nothing by virtue of their Complaint;
- B. That the Complaint be dismissed with prejudice and that Defendant be awarded judgment in this action;
- C. That Defendant be awarded their costs incurred herein;
- D. That Defendant be awarded their attorneys' fees; and
- E. For such other and further relief as the Court deems just and proper.

DATED this 27th day of September, 2019.

RESNICK & LOUIS, P.C.

By: 

Prescott Jones, Esq., SBN: 11617
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Telephone: (702) 997-3800
Facsimile: (702) 997-3800
Attorneys for Defendant
Elk Point Country Club Homeowners Assn., Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT** was served this 27th day of September, 2019, by:

☒ **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 pursuant to EDCR Rule 7.26(c)(4).

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


An Employee of Resnick & Louis, P.C.

1
2
3 IN THE NINTH JUDICIAL COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF DOUGLAS
5

6
7 TRANSCRIPT OF VIDEO-RECORDED
8 HEARING IN THE MATTER OF
9 JEROME MORETTO V. ELK POINT COUNTRY CLUB HOMEOWNERS
10 ASSOCIATION, INC.
11

12 MARCH 9, 2020
13

14 CASE NO. 19-CV-0242
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21 Litigation Services Job Number: 751944
22
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1 [2020-03-09_10.09.03.828]

2

3 THE COURT: [Inaudible].

4 SPEAKER 1: [Inaudible].

5 BAILIFF: All rise. The Ninth Judicial District
6 Court is now in session. The Honorable [inaudible]
7 presiding.

8 THE COURT: Thank you. Everyone please have a
9 seat.

10 All right. We've got a couple of matters on
11 today and let me make the record clear in this
12 fashion.

13 We have both 19-CV-00272, which is the Gilbert
14 Family Trust versus Robert Felton and Charles Jenin,
15 and we also have 19-CV-00242, which is Jerome Moretto
16 versus Elk Point Country Club Homeowners Association.
17 And the way that I intend to deal with today's
18 proceedings are as follows.

19 I want start with the first case that I mentioned
20 in reference to the motion to quash some subpoenas
21 and, uh, and/or the motion for protective order. And
22 then move to the motion to intervene in the other
23 case, which is the 242 case.

24 Now, your setting notice advised you that what I
25 intend to do is to address those issues this morning

1 and then this afternoon move to the issue for the
2 preliminary injunction. Does everybody understand that
3 process and does anyone have any question about it?

4 MS. WINTERS: Yes and no, Your Honor.

5 THE COURT: Thank you, Ms. Winters. And so with
6 that, what I'm going to do is just set the record and
7 call case 19-CV-00272, which is the Gilbert Family
8 Trust and Robert, uh, versus Robert Felton.

9

10 [2020-03-09_13.31.17.500]

11

12 THE COURT: 219 242 just to keep our numbers
13 straight. Okay? And, thank you, ma'am. All right. And,
14 so ma'am --

15 MS. WINTERS: Thank you, Your Honor.

16 THE COURT: -- if you have argum- --

17 MS. WINTERS: And I apologize the last time. If I
18 interrupt it's because I'm not -- I have a hearing aid
19 so if I didn't hear you finishing your thoughts -- so
20 I feel really bad and I want to tell you that if I --
21 I'm going to do my best to pause between speaking so
22 that I catch it because I'm not doing it
23 intentionally.

24 THE COURT: I appreciate your courtesy. Thank you
25 for your courtesy, ma'am.

1 MS. WINTERS: Thank you, Your Honor.

2 THE COURT: And -- and just so that we're clear,
3 you will prepare the order on -- that I just gave.
4 You'll prepare that order and then send it to counsel
5 for approval as your form.

6 MS. WINTERS: Right. And I think the norm -- is
7 it normally I believe five days for any objection if
8 you have a different rule --

9 THE COURT: 10 days.

10 MS. WINTERS: 10 days, okay. So that's good to
11 know.

12 THE COURT: Thank you.

13 MS. WINTERS: Thank you, Your Honor. Okay.

14 THE COURT: Let's talk about intervene.

15 MS. WINTERS: Yes. Your Honor, motion --
16 plaintiff's, uh, our movant's motion to intervene is
17 based on the preliminary injunction filed by plaintiff
18 in this underlying case where the plaintiff seeks to
19 basically argue, the -- or state that the association,
20 does not have the authority to enforce or implement,
21 architectural guidelines.

22 The defendant's position is -- is that they do
23 have the authority to implement the guidelines and
24 plain -- movement in this case has basically a
25 position that if -- from reading of the pleadings I

1 think that the question becomes is if there is any
2 kind of determination as to what are the legal
3 architectural guidelines within the subdivision, then
4 we as a party or as an intervener seek to be basically
5 intervening the action.

6 As an interested party that is affected
7 financially as a property owner within the
8 subdivision, if there is not going -- I mean, the way
9 that we read the pleadings is, is that there is a
10 request to find either no art guidelines or that a
11 certain art guide- -- guidelines are the guidelines
12 that are the legally enforceable ones of the
13 subdivision.

14 And that's where the rub is, where the HOA does
15 not represent our interests because it's the mo- --
16 interveners or movants position is, is that the art
17 guidelines that have now been, essentially our word
18 has gutted, are not the regal architectural guidelines
19 of the association. So if there is a legal
20 determination by the score and we're finding that they
21 are, then we -- we want to intervene to challenge that
22 finding.

23 I think the rules provide that under NRS 12.130,
24 provide that before any trial, any person may
25 intervene in a national proceeding who has an interest

1 in the matter in the litigation and the success of
2 either of the parties or an interest against both the
3 intervention takes place when a third party is
4 permitted to become a party to the action and
5 proceeding between the other persons, either by
6 joining him -- joining the plaintiff in the claiming
7 what is sought by the complainant.

8 Or by uniting with the defendants and resisting
9 the claims of the plaintiff, or demanding anything
10 adversely to both the plaintiff and the defendant.
11 Movant clearly fits in that category in terms of the
12 issue of the architectural guidelines.

13 Movant claims the property interest impacted by
14 the action or -- or transactions that is the subject
15 of this litigation and is so situated that disposing
16 of the action may, as a practical matter, impair or
17 impede its ability to protect its property interests.

18 Its movant's position that the removal of the art
19 guidelines and/or the implementation of final ruling
20 that the art guidelines or the "art guidelines for the
21 association" will adversely affect the property rights
22 because not only will -- when you allow a number of
23 large structures within a very small association that
24 was originally built as little cabins, you overwhelm
25 the infrastructure requiring assessments to go up to

1 be able to handle it.

2 And that's what the guided art guidelines do is
3 they allow for larger structures. It impacts in terms
4 of the quiet enjoyment because a lot of the larger
5 structures are now being purchased or built by
6 investors who are VRBO-ing and allowing for party
7 homes.

8 And so it has an overwhelming sub- -- effect on
9 the subdivision as well. It's a single lane road
10 subdivision with one exit out that creates a fire
11 situation and when you have it overwhelmed with
12 enormous amounts of people that it's not -- wasn't
13 originally designed to hold -- it impacts safety, life
14 safety for property owners including movant. So --

15 THE COURT: Aren't those really policy decisions?
16 And how was that for the court? I mean -- I mean
17 you're -- you're talking about consequences of what
18 could happen depending on whether I rule one way or
19 rule another. And I don't think that's for the court's
20 determination, is it?

21 MS. WINTERS: Well, I don't know. You know,
22 that's a good question because the plaintiff in the
23 case is saying court, you know, uh, or, uh -- uh,
24 defendant, the HOA has no authority to implement our
25 guidelines, which is a question, I believe that would

1 be potentially a deck action.

2 I don't know. Declaratory relief action, I don't
3 know, based on the governing documents. And the
4 defendant says, yes.

5 We have the right to do that based on the
6 governing documents but we want to enforce these
7 gutted art guidelines.

8 And so we're here, essentially saying if the
9 court is to make a finding that no art guidelines can
10 be implemented or that only the art guidelines that
11 have been gutted are the art guidelines that will be
12 enforced, then we have a stake in the outcome, and in
13 fact is part of our litigation in the other case.

14 THE COURT: You may have a stake in that outcome
15 and it has to do with your property values and that
16 sort of thing, but your stake has to do with policy.

17 And the other issues that you raise, whether the
18 -- the old guidelines or the new guidelines are the
19 ones that are in effect, that's a question of a matter
20 of law. You referred to a declaratory judgment.

21 MS. WINTERS: Correct.

22 THE COURT: But whether they're wise, whether
23 they're a good idea, whether they'll increase or
24 decrease property values or make it difficult to get
25 out in the event of a fire, those all come down to

1 policy decisions. Do they not?

2 MS. WINTERS: Sure, but I think that that that's
3 what this litigation -- the plaintiff's litigation
4 about is to ask you to find that this, as a matter of
5 policy, that the association doesn't have the
6 authority, as a matter of law, to enforce art
7 guidelines.

8 THE COURT: Two different things.

9 MS. WINTERS: Exactly.

10 THE COURT: And you -- and you had that
11 [inaudible] there maybe for a minute. Maybe you did it
12 on purpose, but I don't -- I'm not going to rule on
13 what's a wise on policy. And that's probably why you
14 have a homeowner's association and why you elect
15 people that you hope are wise.

16 I rule on whether their actions are legal, and
17 what is legal, not what is best in the, you know, what
18 is the best policy.

19 Because that specifically is not reserved to me.
20 So I -- I'm going to ask you to go on with your
21 argument, but that part of the argument I'll let you
22 know I have some real difficulties with as to, you
23 know, whether there should be the VRBOs up there.

24 You know, I -- I understand that you find that
25 they're objectionable and for a number of reasons, I -

1 - I get it, but that's not for me to decide. Not today
2 and not in this litigation.

3 MS. WINTERS: Well, I want to take you to a
4 declaratory relief action. Hypothetically, if you were
5 to rule in that action, the question would be is
6 whether the association has the authority to implement
7 architectural guidelines. Would you agree with me that
8 that is probably the deck action that would be filed?

9 THE COURT: It might be, but it's -- it's not in
10 action right now.

11 MS. WINTERS: Okay. But I think if you look at
12 the preliminary injunction and you look at the
13 pleadings that have been filed, that's essentially
14 where they're going.

15 So that would be a decision that you make that
16 impacts movant, intervener, in terms of their or the
17 property rights of the intervener. Does it not? I
18 mean, in essence it does. It has a financial impact.
19 It has a quiet enjoyment impact.

20 And I think that if you look at rule or NRCP 19,
21 in terms of a necessary party, the criteria is not
22 that we -- we have by permitting the courts to attempt
23 to join all parties necessary with any potential
24 claim, no matter what the question is raised.

25 And so here the major objective of -- of NRCP 19

1 is to have a final and complete determination of the
2 controversy and to determine -- not to determine it in
3 piecemeal.

4 We're asking to be involved in this because if it
5 is likely a question of law, which a declaratory
6 relief action would be the mechanism to determine
7 that, the decision would impact movant.

8 And so they are a necessary party and they have -
9 - they basically buy rights under 24 A, would have the
10 right to be -- to be a party in this action because it
11 affects their property and their rights.

12 So I guess when we divide out policy versus
13 questions of law, I think that in this situation they
14 mesh together.

15 We're not asking you to decide about the VRBOs,
16 we're not asking you to decide about sizes of
17 structures; we're asking to participate because of the
18 impact of -- of the determination by the score whether
19 art guidelines are enforceable or not is a question
20 that impacts movant financially, property wise, and
21 their quiet enjoyment within the subdivision.

22 And so I -- I think under NRCP 24, um, eight,
23 one, um, it's, uh, it's a right to come in when we
24 have an interest in the matter in litigation, in the
25 success of either of the parties or an interest

1 against both.

2 So I can go into more, Your Honor, but I think
3 that we've met in -- in essence, the criteria for part
4 criteria for the right to intervene in that.

5 And I think we went through it, -- is that the --
6 the impact of negating the architectural guidelines,
7 which is plaintiff's position, has the effect of
8 overburdening the subdivision and plaintiff's, movant,
9 or excuse me, movant, intervener, increases the cost
10 of assessments which impacts directly movant,
11 intervener. And it also impacts movant's right to use
12 the common elements of the association.

13 It also is under Section 2, it would, -- being
14 prevented from intervening in the action will likely
15 impair movant's ability to protect their property
16 rights, which neither the plaintiff nor defendant in
17 this action seek to enforce.

18 In essence number three, movant is not adequately
19 represented by either the plaintiff or defendant in
20 the -- in this action. And that, the -- the motion is
21 timely brought the intervener.

22 As we discussed in our brief, the burden on the
23 intervener in showing inadequate representation is
24 minimal. Meaning while we want to be separately
25 intervened, it would be satisfied if they could

1 demonstrate the representation of their interest maybe
2 inadequate. And that's Akaki versus Caetano, which is
3 a ninth circuit case.

4 I would say that the movant has different
5 objectives that is adverse in many respects to both
6 plaintiff and defendant on the same subject matter.

7 So unless there's any other questions from the
8 court, our reserve in essence, my summary reply
9 comments to some of the other opposition arguments,
10 like whether we should have filed a real estate claim
11 which we're not a party, so, at the time.

12 So we -- we went into those arguments. So I will
13 reserve that if I can, Your Honor.

14 THE COURT: You may now.

15 MS. WINTERS: Thank you.

16 THE COURT: Thank you. Who wants to come on?

17 MS. WINTERS: It doesn't matter to me.

18 MR. JONES: I'll be brief, Your Honor. Good
19 afternoon. Prescott Jones. Again, this time on behalf
20 of the Elk Point Country Club Homeowner's association.
21 Just a few quick points, Your Honor.

22 The association filed an opposition out of
23 concerns regarding duplicative discovery, duplicative
24 depositions. I think this court is well aware of the
25 concerns that the association has regarding those

1 issues.

2 And to the extent that the movant is allowed to
3 intervene in this case, we would object on the grounds
4 of potential duplicative discovery.

5 Now, to the extent that the court is willing to
6 grant movant the ability to intervene in the case,
7 I'll note the court's March 3rd order in which it
8 found a tangential relationship between the Gilbert
9 Family Trust case heard this morning, and then the
10 present Moretto case.

11 And I would request, again, to the extent that
12 the court is willing to allow movant to intervene that
13 the court consider consolidation of the cases under
14 NRCP 42.

15 I would have, in an ideal world had a brief file
16 prior to today but I was unable to -- I didn't receive
17 service of the order until unfortunately Friday so I
18 wasn't able to prepare a brief.

19 To the extent the court would want briefing on
20 that I would understand, but to the extent also the
21 court's willing to consider an oral motion to
22 consolidate, I would submit that.

23 But, with that in mind, I did note that, Ms.
24 Gilbert mentioned that she's a necessary party. If
25 she's a necessary party as a homeowner, then that

1 would require all 99 separate property owners within
2 the Elk Point Country Club then to be necessary
3 parties.

4 I don't think that's a -- a proper argument or a
5 proper use of the term necessary parties. And with
6 that in mind, Your Honor I'll just be --

7 THE COURT: You filed a request for jury trial
8 this morning?

9 MR. JONES: Correct. This morning.

10 THE COURT: Yeah. And everyone's aware of that?
11 No.

12 MR. JONES: We served by email last week, a copy
13 of what was going to be filed. I, of course, then have
14 the file scan copy [inaudible].

15 THE COURT: Understood. Okay. I -- I don't have
16 any other questions.

17 MR. JONES: Oh, thank you, Your Honor.

18 THE COURT: Thank you. Ms. Winter.

19 MS. WINTERS: Yes. Your Honor. As to the jury
20 trial, if we stick to the complaint that I have on
21 file, there's no claims in there that allow for a jury
22 trial. They're all equitable relief.

23 So I'm not sure what the purpose of the demand
24 was, but I would, you know -- if -- if it isn't
25 withdrawn I'm certainly going to file a motion.

1 THE COURT: I think that's something that you'll
2 have to consider doing, ma'am.

3 MS. WINTERS: But as --

4 THE COURT: I -- I don't expect you to have to
5 stand here today and make some oral opposition to
6 that. Um, I received it this morning and you're going
7 to have contemplative time to respond to it.

8 MS. WINTERS: Thank you, Your Honor. As to the
9 motion to intervene, the complaint, there are two key
10 components to the complaint.

11 One is our argument that the bylaws do not give,
12 the defendant board authority to create a committee or
13 the guidelines that were created; and two, that if --
14 that even if they did have that authority, that that
15 authority does not extend to creating restrictive ease
16 -- restrictive easements, restrictive covenants
17 against a private --the private property of the unit
18 owners.

19 Only to the extent that those guidelines would
20 impact in general -- the common area, the conduct of
21 the individuals when they're in the common area. It
22 would not extend to creating view easements that
23 weren't in existence. They -- it's not -- they don't
24 extend to the extent that -- they aren't allowed to
25 create easements on the -- on the properties

1 themselves.

2 And so those are the two arguments. Now, the
3 first argument is whether or not the committee and the
4 guidelines can even be created.

5 And to the extent that that argument is being
6 litigated here, then the defense, the board, the HOA
7 itself, is representing everybody's interests in the
8 homeowner's association and litigating that.

9 So it is not a necessary party to add to -- by
10 adding any other individual, again, an artist because
11 the -- the homeowner's association itself is defending
12 against that part of our complaint.

13 Now to the extent that the movant wants to
14 intervene because they disagree with how the -- the
15 original guidelines have since been amended several
16 times, then the appropriate avenue to take would have
17 been to challenge the method of that amendment and the
18 method that the board took to amend the guidelines.

19 They're not the -- those amendments really aren't
20 part of this litigation, initially because, of course,
21 they hadn't occurred yet.

22 But to the extent that they become a part, then
23 the first avenue to rectify any procedural problems
24 that the unit orders -- owners, including the movant,
25 has any objection to that, then they could take their

1 objections to that procedure to the real estate
2 division initially.

3 That hasn't occurred. There's been no dispute
4 resolution that has gone through the entire procedure
5 for the real estate division yet between the
6 homeowner's association and Ms. Gilbert.

7 So that dispute -- that action is not ripe for
8 intervening here, because that isn't the focus of this
9 litigation.

10 If the problem with the changes to the
11 guidelines is because of the contents of the changes,
12 the substantive changes, then the dispute really is
13 between Ms. Gilbert and the board.

14 And if she disagrees and if she says the majority
15 of the unit owners disagreed, then they can file a
16 petition to remove the board members that they don't
17 like.

18 Intervening in this action is gaining nothing to
19 this complaint. It's not adding a party that is in a
20 unique position.

21 She stands in the same position as other unit
22 owners and her avenues to resolve this
23 administratively have not yet been met.

24 The issue that I raised under NRS 38.310, I
25 believe, was -- is a jurisdictional issue. It requires

1 that if there's any dispute between homeowner's
2 association and a unit owner, that they must first go
3 through the arbitration or mediation required through
4 the real estate division.

5 She's attempting to file a complaint in this
6 action to intervene, and so that is kind of squarely
7 under the requirements of 38.310 and it's
8 jurisdictional.

9 So she has not completed -- she has not completed
10 those steps to intervene in this action. She might be
11 arguing that she was trying to rush in here quickly
12 and that's why she didn't have time to go through that
13 procedure, but there's nothing in the NRCP or in NRS,
14 that says she couldn't have filed a motion to
15 intervene later on.

16 The preliminary injunction hearing is strictly
17 preliminary. It wouldn't have prevented her from
18 arguing against it if she wanted to try to file after
19 that hearing occurred.

20 So to the extent that she's in a unique position
21 to act in, in her own interests that is counter to
22 what the homeowners' association itself has been
23 litigating, the time is not right for her to do that.

24 But I would argue that her interest in the
25 existence of the guidelines is adequately represented

1 by the HOA itself. And so her intervention simply bogs
2 down the litigation.

3 THE COURT: Thank you, ma'am. So [inaudible].

4 MS. WINTERS: Thank you, Your Honor.

5 MS. WINTERS: Couple of comments on the
6 association's opposition. Consolidation, I think, with
7 the two cases would, I think, be excessive in terms of
8 litigation costs of the Morettos.

9 I think the Morettos matter is a little bit more
10 narrowed, and I think that it would be excessive on
11 the Morettos.

12 I think that the two, that our case against the
13 two individual board members are dissimilar, in terms
14 of our case is not only about the Wells and Barnett,
15 but it's also about retaliation and bullying as well
16 potential fraud issues.

17 So I think that that is not -- just because
18 there's an issue raised in ours about the Wells and
19 Barnett where they're claiming that the board of
20 members have been instrumental in getting the
21 guidelines is not, I don't think, tangential enough to
22 warrant burdening the Morettos on litigation costs to
23 be consolidated. In terms of the jury trial, or a jury
24 request, I have not seen that. And so I haven't been
25 emailed, so I don't know anything about --

1 THE COURT: Ma'am, I wouldn't expect you to have
2 to respond to that if you don't have it.

3 MS. WINTERS: Yeah. So I don't have any comments about
4 that. In terms of the opposition by the Morettos --
5 the Morettos complained to challenge basically the
6 creation of the art guidelines and they also - in
7 which, movant and intervener has an interest in and
8 has -- has a financial impact as a result of that
9 question. And then also the second issue that was
10 raised by them is whether the association had the
11 authority to impose restrictive covenants upon unit
12 owners.

13 And again, that is an issue that impacts movant
14 and intervener and they have an interest in that
15 issue. The fact that all the homeowners didn't decide
16 to intervene is just a choice that other members made
17 or didn't make, but movant believes that it's an
18 interest that impacts his property right.

19 Now, with regard to the issue of whether movant
20 should file another complaint, which we don't think is
21 necessary, the purpose of -- of intervention and
22 including necessary parties as to avoid piecemeal
23 litigations -- duplicative litigations.

24 This issue in terms of the bylaws and its final
25 outcome is -- can be resolved in this litigation as to

1 the movant's issues.

2 And so it doesn't make sense to file numerous
3 litigations over the same issue. In essence, you could
4 move to consolidate afterwards and we'd be here again.
5 So we're, in essence we're -- we're intervening.

6 And it's a matter of rights under the NRCP 24
7 and also NRS 12. 130. And in, 12 -- NRS 12.130 says
8 any person may intervene in an action or proceeding
9 who has an interest in the matter of -- in litigation.
10 That's us. And in the success of either of the parties
11 or an interest in both.

12 And then also, if you look at NRS -- excuse me,
13 NRCP24, it says on a timely motion the court must
14 permit anyone to intervene who claims an interest
15 relating to the property or transaction that is a
16 subject of the action and is so situated that
17 disposing of the action may, as a practical matter,
18 impair or impede the movant's ability to protect its
19 interest. So I think that we fit squarely within the
20 requirements to intervene, not only under NRCP 24 and
21 NRS 12 --

22 THE COURT: Did you want to just -- wait a
23 minute. Wait a minute. You -- you very conveniently
24 stopped your quote of Rule 24. You -- you stopped
25 right where the comma is. Unless existing parties

1 adequately represent that interest, you kind of left
2 that part out.

3 MS. WINTERS: Right. Oh well, I apologize. Yeah.
4 Okay. Unless existing -- I think we've already made
5 that argument that neither parties represent that
6 interest. So I don't think that the association, and I
7 think we've talked about it, nor the plaintiffs in
8 these actions represent our interests.

9 So I think that the other thing is, if you look
10 at on that same line of action or same line of thought
11 in NRS 12.13(b), it says that intervention takes place
12 when a third person is permitted to become a party to
13 an action or proceeding between other parties, either
14 by joining the plaintiff in claiming what is sought by
15 the complaint, or by uniting with the defendant in
16 resisting the claims of the plaintiff.

17 Meaning hypothetically under that argument if we
18 joined because we agreed with them, we would still be
19 allowed to permissively be intervening. But it also
20 goes on to say, or by demanding anything adversely to
21 both the plaintiff and the defendant. So that's under,
22 NRS 12. 130 (1b). So I think I've covered those
23 issues.

24 The question of NRS -- NRS 38. 310. NRS 38.310 in
25 practicing HOA loss since 2000 is a provision that

1 allows a homeowner to, basically, if they have a claim
2 against, or an issue against a homeowner's
3 association, can proceed by going through the pre-
4 mediation provisions. It has nothing to do with an
5 intervention application. And if it did, if the
6 statute's silent on intervention and it doesn't say
7 that you can't proceed if you're an intervener.

8 If you're an intervener, you're not a party until
9 the court basically issues an order to intervene. And
10 here we have an issue relating to the same facts and
11 issues that are involved in the same litigation.

12 So I -- I don't see where that even applies, in
13 terms of this proceeding. If the argument is made that
14 it applies then it wouldn't negate, basically, NRS
15 12.130, NRCP 24 and NRCP 19. Thank you, Your Honor,
16 Unless there's any other questions.

17 THE COURT: No, thank you. All right. So let's,
18 talk about this for a minute. The court is not having
19 to address right now whether in fact there'll be a
20 jury in this case.

21 I will not allow you to brief that and you can
22 address it with me. But I -- I think that the -- the
23 issue raises an interesting part or a facet of this
24 motion to intervene. The motion to intervene is
25 denied.

1 And I -- I think if there is a jury that the
2 various roles of the proposed intervener become very
3 confusing to a jury, and I think a judge can parse it
4 out better, but I think that it also puts the
5 intervener in the position of having sued two members
6 of the homeowner's association board.

7 But being in a position in this litigation, if
8 they're allowed to intervene, to simply bring issues
9 into this litigation that are not directly related to
10 this litigation and that have to do with allegations
11 of fraud and malfeasance and subterfuge, and that are
12 not -- that are not necessarily raised in the original
13 litigation.

14 And I think that it is -- makes it more difficult
15 for a jury to parse that out. I also think that in
16 looking at Rule 24, there's not an unconditional right
17 to intervene.

18 And claiming an interest in the property or
19 transaction under Subsection 82 of Rule 24, as I look
20 at that, I don't -- I don't see that the movant's
21 ability to protect its interest is impeded if they
22 don't intervene.

23 The existing parties to this litigation, already
24 Mr. Moretto, is attacking the newer architectural
25 rule. The argument of whether the old one applies or

1 not is still up in the air.

2 I think that the -- the Gilbert Family Trust is
3 adequately protected by at least their interest as far
4 as whether this rule is in place by the existing
5 litigants. And I'm not going to allow them to
6 intervene as of right.

7 And as far as the permissive intervention, it
8 seems to me that it's simply not appropriate. That the
9 claim or the defense is much different within the
10 Gilbert family's argument as to what two members of
11 this board may have done as opposed to the -- the
12 legal argument, as to what the board itself did. And
13 I'm simply not going to confuse those issues in two
14 different cases.

15 The complaint that was filed in 272 is, while
16 it's lengthy, it's fairly specific and certainly is
17 specific enough to apprise the court of exactly what
18 that family trust is alleging.

19 And it has to do more with the activities, and
20 indeed it sues to particular members of the board, and
21 about their alleged activities. And it's far different
22 than the legal authority of the board to do what it
23 did regarding this architectural rule.

24 And so I'm not going to allow the intervention. I
25 think that we'll -- we'll be on two separate tracks

1 and I think it makes the litigation cleaner, the
2 issues much cleaner and easier to parse out for
3 whomever the finder effect is, which it may very well
4 be me and it may very well be a jury.

5 We'll see. Because I'm not ruling on that yet.
6 But the Gilbert Family Trust will be heard in their
7 case, and Mr. Moretto will be heard in his case. There
8 are different theories altogether here.

9 So with that the motion to intervene having been
10 denied, Ms. Winters, she'll prepare that order.

11 MS. WINTERS: Certainly, Your Honor.

12 THE COURT: Okay. And so I think Ms. Gilbert,
13 that takes you out of any of the further arguments
14 today. Okay. So thank you for your appearance.

15 MS. GILBERT: Sure.

16 THE COURT: It's a pleasure to have you here.

17 MS. GILBERT: May I stay and watch? I think that
18 the --

19 THE COURT: Of course. I'm going to move you off
20 of the table though.

21 MS. GILBERT: That'd be great.

22 THE COURT: And I'm going to give you a minute to
23 gather yourself, so don't you -- don't feel pressured.
24 Okay?

25 MS. GILBERT: Thank you, Your Honor.

1 THE COURT: Mr. Seth, maybe you'd give her a hand
2 there. We'll move some chairs and we'll get this --

3 MR. SETH: Yeah.

4 THE COURT: Does anyone need the podium any
5 longer? Okay. We'll get it out of the way. And it
6 seems to me that the next place that it makes sense to
7 go is the motion for the preliminary injunction now.

8 MS. WINTERS: One minor thing that I'm not sure
9 if the court was aware, the only other motion that was
10 pending was a motion to strike the declaration of
11 Robert Felton in support of the motion for preliminary
12 injunction.

13 The majority of that had to do with hearsay, but
14 there was also a counter motion regarding the
15 illegibility of the articles.

16 THE COURT: There was. I saw that.

17 MS. WINTERS: And I -- I -- I don't know. I
18 assume you became aware that we finally did get a
19 readable copy of all of those things.

20 THE COURT: I didn't know that you did that.

21 MS. WINTERS: Yes. And so to the extent that that
22 would still be pending, I would say that at this point
23 it's moved because we do acknowledge receipt of those
24 readable articles that were recorded.

25 THE COURT: Okay. But the -- the motion to strike

1 that declaration of Mr. Felton is still in play.

2 MS. WINTERS: Yes, Your Honor. A large -- I think
3 there was quite a bit of it that had to do with the
4 legibility, but there were a couple of statements in
5 his declaration that were statements -- inadmissible
6 statements of opinion that are still pending.

7 THE COURT: A moment ago you said hearsay, and --
8 and your objection now is to his opinion?

9 MS. WINTERS: I would have -- well, I have to
10 take a look at which item.

11 THE COURT: Yeah. Let me give you -- I'll give
12 you a moment.

13 MS. WINTERS: There was two items.

14 THE COURT: I'll give you a moment to organize
15 yourself to me. Apparently that's construction, not
16 destruction.

17 MS. WINTERS: I believe that the arguments
18 regarding his assertions in his item numbers two or
19 three, through eight, are corrected now based on the
20 actual bylaws and articles being available.

21 THE COURT: Okay.

22 MS. WINTERS: To the extent that we any remaining
23 objections it was regarding his item number nine and
24 item number 10.

25 Those are both statements of opinion and not

1 fact as required by DCR 13 as I stated in my
2 opposition.

3 And they're not -- they're not facts
4 particularly with -- or they're not opinions that are
5 of particular relevance or assistance in this matter
6 based on the fact that Mr. Felton was not on the board
7 at the time that the original architectural guidelines
8 were created.

9 So his opinion as to what they represent or what
10 the purpose of them was at that point is not relevant.
11 His opinion has no greater input than any other unit
12 owner in the homeowner's association and it's not
13 relevant to any of the arguments. So we would move to
14 strike those too.

15 THE COURT: Thank you.

16 MR. JONES: Good afternoon again, Your Honor.
17 Prescott Jones for the defendant. First of all, I'd
18 like to apologize to the court for the use of fairly
19 poor copies of the original bylaws.

20 We were -- wanted to make sure we timely filed
21 our opposition to the motion for preliminary
22 injunction and had to go with what we had, which
23 unfortunately at that point in time was pretty poor
24 quality copies.

25 As soon as we got the originals from the -- the

1 Douglas County reporter, we, of course, have
2 supplemented our briefing. I just wanted to point that
3 out to the court.

4 Regarding the use of opinion testimony, we say a
5 little bit of case law in our opposition that sets
6 forth that opinion testimony is permissible.

7 And we think Mr. Felton's opinions as contained
8 in his affidavit really do go to show that the purpose
9 of these architectural review -- architectural
10 guidelines, is really a policy argument that -- or
11 policy issue that really should be up to the best
12 judgment of the duly elected board of the Elk Point
13 Country Club Association.

14 But, with that in mind, I don't really have much
15 to add besides that, Your Honor.

16 THE COURT: Okay. Well, it -- it is opinion as
17 you recognize, and this is -- this is fairly
18 significant, and if he's not here to really address
19 his opinion as -- as a live witness, I'm -- I'm
20 disinclined to consider it.

21 And so he -- he -- the motion to distract the
22 entire declaration is denied, but I'm not going to
23 consider his opinion. And so, I think that covers your
24 objection. Why don't we move on the preliminary
25 hearing motion?

1 MS. WINTERS: Your Honor, we have a couple of
2 witnesses, but as I have spoken to Mr. Jones about
3 this, the fact is that the -- the -- the core of the
4 arguments in the motion for preliminary injunction are
5 legal arguments. There's very little factual dispute
6 involved.

7 And so, to that extent, as I mentioned in our
8 earlier discussion the -- the plaintiff has two points
9 of dispute with the -- the creation of the committee
10 and the guidelines. One is the fact that the
11 homeowner's association has a set of articles of
12 incorporation. They have a bylaws that are on record.

13 Those bylaws have been amended numerous times
14 since 1925. They were fully amended and restated in
15 2005. And since 2005, they've been amended further
16 nine times.

17 So there is a history of them being able to
18 garner the sufficient two-third vote to amend these
19 bylaws to either conform to current, state law or to
20 -- as in many of these more recent ones to increase,
21 the initial fee that is imposed on new homeowners.

22 And so in the course of those amendments
23 nowhere, from the very beginning of the bylaws in to
24 the present, does it -- does it specifically allow,
25 the homeowner's association to delegate its authority,

1 to create any committees with the exception of an
2 audit committee and an election committee?

3 And that is it. And in, I believe it was 1991,
4 NRS Chapter 116 was imposed on all community home
5 ownership. That entire chapter, it was imposed on this
6 homeowner's association with the exception of, I
7 believe, it's referred to as Article 2.

8 It starts at one 16.210(1), I think. But that
9 section is the only section that does not apply to the
10 homeowner's association here.

11 The other sections do. And in that -- in that,
12 NRS 116 at 30.101, I believe, it requires that any
13 delegation of the board's responsibility is to be
14 specifically included in the bylaws.

15 So there being no allowance for delegation of
16 their duty to oversee any kind of improvements to any
17 property in that homeowner's association is not been
18 delegated to any committee.

19 Now, the opposing party, the homeowner's
20 association, is arguing that that committee is
21 actually just an agent and it doesn't have any -- it's
22 not been delegated the authority to enforce or to do
23 any regulation.

24 But in the guidelines itself, they specifically
25 say that the committee is to take a look at

1 applications for any improvements and to enforce those
2 applications.

3 I mean, it's -- it's very explicit, even in the
4 original guidelines, as well as in the more recent
5 ones that were created by the board amendment that
6 occurred in mid-December of this year.

7 THE COURT: Last year.

8 MS. WINTERS: Oh, of last year. I'm sorry. In the
9 original guidelines at paragraph 600 under duties,
10 they are required to review, consider and evaluate and
11 make recommendations to the board and to apply and
12 enforce those guidelines which have been approved and
13 adopted as the committee sees fit.

14 So it's not just a matter of recommending
15 approval or disapproval to the board, but it also
16 allows the committee to apply and enforce those
17 guidelines.

18 And to the extent that the committee is making
19 those decisions, it goes beyond the scope of what a
20 simple agent of the board is allowed to do under thir-
21 -- 116.30 101.

22 Now -- oh, I stand corrected. It's 116.30 106.
23 Requires that the board only be restricted to
24 delegating those things that are allowed by the
25 bylaws.

1 Now, if they have been able to have amended the
2 bylaws as many times as they already have by a two-
3 thirds vote, it's not as if there's not the unit
4 owners out there to pay attention to what's going on
5 here and choose whether or not they want to have a
6 committee that oversees any kind of guidelines. But
7 that hasn't occurred. Nobody has made any effort to
8 try to amend the by lines, bylaws.

9 I think we stated in there in our motion as well,
10 that the board has no legal authority to create
11 restrictive easements on a unit owner under real
12 property law.

13 And in NRS 116, at the very beginning of that
14 chapter, or on -- yeah. That chapter, it -- it
15 specifically states that yes, this chapter does not,
16 override any real property law.

17 That it includes in consideration of the
18 governance of a homeowner's association, all real
19 property law, corporate law, any law that has to do
20 with the formation of the homeowner association to
21 begin with.

22 And so in recognizing that the homeowner's
23 association does not have the authority to create this
24 committee or to impose guidelines and create
25 restrictive easement such as are - named -- then they

1 -- they, went about it all wrong.

2 It was all done without the authority of enough
3 unit owners to recognize it. But certainly, when it
4 comes to any kind of real property law, the law does
5 not allow for a homeowner's association to take a real
6 property interest away from a unit owner. It only
7 allows them to govern the common area, to -- to govern
8 the corporate entity.

9 It does not allow them to impose on the unit
10 owner's restrictions and changes to how they can use
11 their own property beyond what the bylaws and the
12 corporate articles allowed for initially.

13 And so on that basis, not only are they not
14 allowed to create the committee and delegate the
15 enforcement of these guidelines to the committee, but
16 they cannot, under the guidelines, create restrictions
17 on real property that they don't own.

18 Even if they were to amend the bylaws to allow
19 for this committee. the committee would still need to
20 follow the same corporate rules as -- as the board
21 did.

22 And the testimony today could show and would
23 show that they have not followed any of the rules of
24 the board. There's been no notice of any committee
25 meetings, there's been no minutes taken of any

1 committee meetings.

2 The board, to the extent that it even is allowed
3 to delegate would still would need to -- I'm sorry, to
4 the extent that the board, if it were allowed to
5 delegate anything to the committee, then the committee
6 is limited to whatever authority the board had to
7 begin with.

8 The board can't give the committee authority
9 that it didn't have to begin with. And the board does
10 not have the authority to hold board meetings without
11 notice, without minutes, and to impose restrictive
12 covenants on properties without consent of that
13 particular unit owner's approval.

14 So to say that the committee is allowed to do
15 these things goes beyond the scope of anything that
16 the board would be allowed to do.

17 So to that extent it violates not only the real
18 property law regarding unit owner's right to his own
19 property, but it also violates the bylaws by failing
20 to recognize that the bylaws don't allow for
21 delegation of this enforcement of these guidelines.

22 And it violates the body of the guidelines
23 themselves -- violate all of the requirements for any
24 such -- any kind of rules or regulations.

25 Because under NRS 116.31 065, there's a long list

1 of what's allowed and what's not allowed in
2 guidelines.

3 It appears in looking at this, that what the
4 board apparently is attempting to do is create a
5 declaration of covenant's conditions and restrictions
6 and impose it on an entire homeowners' association
7 after all of the unit -- unit owners have taken title.

8 And there's -- that goes against what the purpose
9 of -- of those, or that goes against what the law
10 allows for any kind of declaration of CC&Rs.

11 The law specifically allows for that kind of
12 restrictive governance over real property to only be
13 imposed prior to the sale of any unit property.

14 And in this case, they're doing it 85 years after
15 the fact. 85 years after all of these property owners
16 have taken title of these properties, now they want to
17 restrict them above and beyond what the bylaws have
18 allowed for, above and beyond what the statutes
19 recognize, and above and beyond what the majority of
20 the unit owners, I suspect, but it certainly in my ca-
21 -- in my client's case, above and beyond what they
22 would personally consent to.

23 Any time that there's any kind of restriction
24 under the -- any restriction that wants -- that any
25 homeowner's association wants to impose upon its unit

1 property owners that changes the fee title concept of
2 that unit property, has to be consented to by that
3 property owner.

4 And so in order to impose all of these easements
5 and restrictive covenants on any of the property
6 owners it would have to be a 100 percent consent of
7 the property owners before things like the three-foot
8 easement for the sidewalk, for the creation of
9 [inaudible] quarters that were never there in any
10 document in the past, and for telling the -- the
11 property owners whether or not they can plant annuals
12 or perennials, I mean, it goes to that extent.

13 And there's nothing that has previously allowed
14 the homeowner's association to do that. So at this
15 point, all the bylaws allow for in that kind of a
16 sweeping change is whether or not the homeowner
17 association wishes to make any changes to the common
18 area. In the bylaws themselves, it specifically
19 requires a 100 percent vote of all the unit owners to
20 incumbent or change title or alter the ownership of
21 the common areas.

22 And I would argue that that is specifically in
23 there because they know and they knew when they
24 created the bylaws, the law of the state which is that
25 you can't impose any kind of restrictions on the unit

1 property owners without their consent. So they -- they
2 minimized it or reduced it to address only the common
3 interest area. And even then it requires 100 percent
4 vote.

5 Now, in order to make that more clear I did -- I
6 do have exhibits that provide for certified copies of
7 all the bylaws that are in effect now. And I submit
8 them for admission.

9 They were not attached to the complaint because
10 what was used as attachment to the complaint was a
11 consolidation of the full amended bylaws from 2005 and
12 the changes through 2018.

13 THE COURT: Ms. Winters, if you have exhibits you
14 want to offer, I would ask that you first share them
15 with counsel and then I'll hear whether there's an
16 objection, ma'am.

17 MS. WINTERS: Okay.

18 THE COURT: So I'll give you a moment to organize
19 yourself. And sir, you may want to look at all of
20 these documents, so I'll give you a moment to look at
21 them too.

22 MR. JONES: Thank you, Your Honor.

23 MS. WINTERS: They don't -- I didn't make copies
24 of the backside of the last -- of each one but they
25 are all certified [inaudible].

1 MR. JONES: Your Honor, I have no objection.

2 THE COURT: Okay. Ms. Winters, if you would
3 please bring them up to the clerk and let's have them
4 marked as Exhibit 1 to this here.

5 MS. WINTERS: Your Honor, there's actually ten,
6 because there's nine amendments and then the 2005
7 fully amended one.

8 THE COURT: And do you have them all stapled
9 together, or they're just 10 different exhibits you
10 have?

11 MS. WINTERS: Ten different.

12 THE COURT: That's fine. Let's give -- let's give
13 the clerk the courtesy of having a moment to mark
14 them. Okay?

15 MS. WINTERS: Because they were certified
16 separately and they're [inaudible].

17 THE COURT: Not a problem there. We will just not
18 rush our clerk though.

19 MS. WINTERS: [Inaudible].

20 THE COURT: Because I do that enough already.

21 MR. JONES: We could identify each exhibit
22 separately.

23 THE COURT: Yeah. Absolutely.

24 MR. JONES: I'm only -- I'm only seeing nine
25 [inaudible].

1 MS. WINTERS: Well, I -- maybe I counted wrong,
2 but um --

3 THE COURT: Here's what we're going to do, the
4 clerk will mark what you gave her in numerical order
5 and you may both examine them to know what is number
6 one and what is number eight.

7 Okay? So we'll take -- take a minute.

8 CLERK: [Inaudible] 242.

9 MS. WINTERS: Yes.

10 THE COURT: Yeah. 242. I mess you up on that
11 again?

12 CLERK: [Inaudible].

13 MS. WINTERS: [Inaudible] Uh-oh. You're right.
14 What'd I do? No. Yeah. There's no [inaudible].

15 THE COURT: What's this?

16 MS. WINTERS: There's no [inaudible].

17 MR. JONES: Okay. Yeah. Because that's what I
18 have.

19 MS. WINTERS: Yeah.

20 MR. JONES: [Inaudible].

21 MS. WINTERS: That's a whole separate step.

22 CLERK: I marked nine.

23 MS. WINTERS: Yeah. I didn't -- I didn't realize
24 -- saw there was an amendment nine and I assumed that
25 there was a one, but actually the fully amended and

1 restated in 2005 was apparently used as one.

2 THE COURT: And did anyone want to take a moment
3 and look and see how they're marked?

4 MR. JONES: Yes, please, Your Honor.

5 THE COURT: You're welcome to come up and kind of
6 get an idea of what numbers, what -- CLERK: The
7 oldest to newest.

8 THE COURT: But there being no objection one
9 through nine, I'll admit it then.

10 MS. WINTERS: Thank you, Your Honor.

11 THE COURT: You want to make sure you have them
12 all. [Inaudible].

13 MR. JONES: Thank you, Your Honor.

14 MS. WINTERS: [Inaudible].

15 THE COURT: [Inaudible] tricky. Thank you. All
16 right. Go ahead please, ma'am.

17 MS. WINTERS: Your Honor, the point of these
18 bylaws is to recognize that when these were created,
19 the most recent iteration was actually created in
20 2005. The fully restated bylaws, they specifically
21 recognize the power of the executive board to delegate
22 under articles three, four, and five. It states the
23 powers, limitations and duties of the executive board.

24 And in these, the only powers that are recognized
25 as being allowed to be delegated are to the audit --

1 committee and to the election committee.

2 In Article 4, Section 4, it specifically
3 requires that the executive board shall not sell,
4 convey or encumber any of the real property of the
5 corporation without the unanimous consent of the total
6 unit owners first obtained.

7 So recognizes that it has to have 100 percent
8 cooperation from the unit owners to make any change to
9 the common interest area. And without -- without
10 stating in here, the obvious counterpoint to that is
11 that the board doesn't have the authority to do
12 anything encumbering or restricting the unit property
13 owners without the consent of those property owners.

14 It's because of the fact that there's a
15 recognition under real property law that you can't
16 impose those sorts of things on a unit, on a property
17 owner, without the consent of the property owner first
18 being obtained.

19 And so on that basis the efforts in the original
20 guidelines that were created in March of 2018 fail to
21 the extent that they attempt to create those kinds of
22 restrictive easement, such as the three-foot sidewalk
23 easement and the view quarters and the setback lines
24 that are -- that are required for any improvements on
25 the properties.

1 Now, as we heard this morning and as we pointed
2 out actually in our complaint, I believe there has
3 been a change to, not in the complaint but in the
4 later motions, there has been a change to the
5 guidelines.

6 There's been several changes to the guidelines.
7 It appears as if they're in response to some of our
8 concerns even in this complaint to the extent that
9 they are -- have removed apparently the requirement of
10 a three-foot sidewalk easement now.

11 But they maintain and -- and retain in those new
12 guidelines, the view quarters and the building
13 envelopes for all of the property in the homeowner's
14 association, the -- those building envelopes are
15 pretty clear and set and impose on every property
16 owner the requirement that there be 25-foot setback
17 from the street, and I believe seven-foot setback to
18 east side, 20-foot setback from the rear.

19 These are as we can bring out in this case, but
20 as was brought up previously, these are very small
21 lots. Most of these lots are not -- you know, they're
22 -- they're urban lots.

23 And so having those kinds of setbacks on
24 property that already contains cabins and homes that
25 may or may not come within those -- those building

1 envelopes creates an issue for the homeowners if
2 anything happens to their properties.

3 THE COURT: Well, let's talk about that for a
4 minute. I, and I don't mean to interrupt your argument
5 but you have been largely focusing, I -- I think most
6 of your argument on your likelihood of success on the
7 merits.

8 MS. WINTERS: Yes, Your Honor.

9 THE COURT: And -- and as you have argued
10 appropriately in order to receive the relief that you
11 seek, you -- you also have to talk to me about the
12 injury here.

13 And you allege, and the language in your motion
14 is irreparable damage. Now, how long do you think it's
15 going to be before this case gets tried?

16 MS. WINTERS: I have no idea, Your Honor. I've
17 had cases in this courtroom that have been decided in
18 six months and others that have taken two or three
19 years.

20 THE COURT: Well, those lengthy ones are the
21 exception. And I will just say that I'm not familiar
22 with one that you've had that has taken two or three
23 years in the last few years.

24 MS. WINTERS: Not in the last few years, Your
25 Honor.

1 THE COURT: No, ma'am. And so it -- you know,
2 with an intention that this case be tried as
3 expeditiously as the attorneys can be ready, talk to
4 me about what the real damage to your client is that
5 you're trying to avoid in, and what kind of damage you
6 think your client will suffer if this injunction is
7 not granted.

8 What's happening and why does -- why does this
9 have to be in place? And to the same extent I might
10 ask: what's the harm to the homeowner's association if
11 in fact it is granted. So just putting everyone on
12 equal notice and footing here.

13 MS. WINTERS: Your Honor, there is a large body
14 of -- of case law, and I believe at some point in my
15 motion I'm sure I mentioned it, that addresses the
16 fact that real estate is unique property.

17 Real estate is unique and any change to it, any
18 -- any change to the record of it, any alteration to
19 the rights and obligations and privileges of
20 homeownership, any alteration of that is a damage in
21 and of itself. It's likened to --

22 THE COURT: Real estate, ma'am, and maybe you
23 can, butt in here in a moment, but real estate
24 certainly is not fungible. And -- and it is by its
25 nature is unique and the court recognizes that.

1 But what's going to be the harm to the real
2 estate, or I -- there may be a difference here between
3 harming the real estate, the loss of the real estate.
4 I don't think anybody's going to lose their property
5 pending the outcome in this case.

6 They may lose the ability to modify it in some
7 ways. They may feel like they're required to modify it
8 in some ways, and maybe that's part of your argument
9 here. But that's really the issue. This -- these
10 association rules are not going to cost anyone their
11 actual property. It may be what they can do with their
12 property or how they have to treat their property,
13 right? So all of those things are reparable. Are they
14 not?

15 MS. WINTERS: All right. I would disagree,
16 because we're talking about from this point until the
17 trial, if -- if my client is required to -- to follow
18 the guidelines, then he is restricted to what he can
19 do with his property during that timeframe. That may
20 not have been allowed or may not have been required,
21 if there had been no guidelines. During that time --

22 THE COURT: So what's your client going to do
23 with the property?

24 MS. WINTERS: During that timeframe, if -- if
25 something happens to the property and he has to

1 rebuild it, if there's an earthquake, he has to re --
2 I mean, these are all speculative but may have
3 occurred.

4 THE COURT: That is. And it's grossly speculative
5 and I don't intend to rule based on speculation. And
6 so we need to look at what -- what is real and we
7 also, I think, need to look at whether any damages are
8 compensable. You know --

9 MS. WINTERS: During this timeframe, Your
10 Honor?

11 THE COURT: Yeah.

12 MS. WINTERS: You're talking about a normal
13 timeframe that my client paints his house. He's not
14 going to be able to do that without approval from the
15 architectural review committee.

16 This is a normal time where he plants new plants
17 for the spring. He's not going to be able to do that
18 without approval from the architectural review
19 committee. I mean, there are things that they do in
20 normal --

21 THE COURT: And that's an irreparable injury?
22 Putting in daisies is an irreparable entry? I think
23 you're pushing this envelope pretty hard there.

24 MS. WINTERS: Your Honor, I -- I understand that
25 it seems trivial, but when you're talking about a

1 person's home, where his aesthetic harmony is at
2 stake, then I would -- I would disagree that not
3 allowing him to continue with his normal maintenance
4 or to enjoy his home the way he wants to without
5 getting approval from all of his neighbors in some
6 cases does irreparable harm to him. And it does
7 irreparable harm --

8 THE COURT: What is the nature of that harm?
9 What's the harm? What's the actual harm?

10 MS. WINTERS: The harm is, is that there's going
11 to have to be approval from a committee that shouldn't
12 exist under our argument for him to do anything with
13 his own property.

14 That's the harm. It is similar to an irreparable
15 harm that is caused by somebody putting out wrongful
16 foreclosure on a piece of property.

17 Because even though they can't, they -- even
18 though if that is a wrongful foreclosure action, and
19 is stopped before it goes to sale or is stopped
20 sometime after the sale in a redemption.

21 There is the harm that you go through in the
22 anxiety of having to potentially lose your home. The
23 anxiety of having his -- his home not be the one that
24 -- that he thought he was buying when he bought it 40
25 years ago.

1 THE COURT: Well, there's an anxiety associated
2 with litigation too.

3 MS. WINTERS: I believe, Your Honor, that -- that
4 any harm to someone for imposition of what we argue
5 are illegal guidelines is enough to show -- is enough
6 to prevent those guidelines from being opposed if the
7 likelihood of success on the merits is high.

8 THE COURT: Ma'am, that's not the legal standard.
9 That -- that -- you know, any harm is not the living
10 standard.

11 And if I ruled that way I'm going to get
12 reversed pretty quickly because the legal standard has
13 to do with a reasonable probability that the conduct,
14 if allowed, will cause irreparable harm for which
15 compensatory damage is an inadequate remedy.

16 Now, that's the legal standard, according to the
17 Nevada Supreme Court. So any harm is not going to get
18 us there.

19 MS. WINTERS: I understand that, Your Honor.

20 THE COURT: Yes, ma'am. I believe you do.

21 MS. WINTERS: I also understand that the harm
22 that is done to someone who can't make changes to
23 their home as they choose is a harm that can't be
24 measured, that is beyond being repairable.

25 That if they aren't allowed to do as they choose

1 with their home, as they have done for 40 years,
2 because now the committee can choose to deny him the
3 ability to -- to do things with that home that he's
4 done for 40 years, then that's an irreparable harm to
5 my client.

6 You can't go back in time and undo the fact that
7 he's not able to do these things he's always done.

8 THE COURT: Then we got to paint his house next
9 summer instead of this one. That he had to -- had to
10 go all summer without [inaudible].

11 MS. WINTERS: And Your Honor, that is an
12 irreparable harm. It is. I understand that it seems --

13 THE COURT: For which compensatory damage is an
14 inadequate remedy.

15 MS. WINTERS: For which compensatory damages
16 would be inadequate. Yes, Your Honor.

17 THE COURT: Okay. Thank you, ma'am.

18 MS. WINTERS: I have evidence that I can present.
19 I would like to present, but I don't know if Mr. Jones
20 wishes to make an opening argument or if you wanted to
21 have me present this step now or not.

22 THE COURT: Well, ma'am, I would just have you go
23 ahead with your case. If you have evidence you'd like
24 to present I'd be glad to hear it.

25 MS. WINTERS: I'd like to call my client.

1 THE COURT: All right. You can leave those in if
2 you want, sir. Sir.

3 MR. MORETTO: I will.

4 MR. JONES: Your Honor, before we get started
5 with testimony I wanted to just confirm I have the
6 right to the extent I deem necessary to cross examine
7 any witnesses called by the plaintiff.

8 THE COURT: Have I given you any impression that
9 you would not have that right, sir?

10 MR. JONES: No. I did not -- I just didn't want
11 to interrupt, Your Honor.

12 THE COURT: Well, very well. Thank you.

13 MR. JONES: Thank you.

14 THE COURT: Come forward, please, sir. If you
15 want to, yeah. You can continue to wear that. That's
16 just fine. They work up here too, whatever you want.

17 MR. MORETTO: What's that?

18 THE COURT: Put them back in.

19 MR. MORETTO: Where do you want me to go?

20 THE COURT: Right there. Face the clerk.

21 MR. MORETTO: I can't stand too long.

22 THE COURT: Well, turn and face the clerk, raise
23 your right hand.

24 CLERK: Do you solemnly swear that the testimony
25 you're about to give will be the truth, the whole

1 truth and nothing but the truth so help you God?

2 MR. MORETTO: Yes. I do.

3 THE COURT: Now come on up and have a seat, sir.

4 There's some water there if you'd like. MS.

5 WINTERS: Would you please state your name for the
6 record?

7 MR. MORETTO: Jerome F. Moretto.

8 MS. WINTERS: And your current home address?

9 MR. MORETTO: 476, Lakeview, Zephyr Cove, Nevada.

10 MS. WINTERS: And do you own that home?

11 MR. MORETTO: Yes. I do.

12 MS. WINTERS: How long have you owned that home?

13 MR. MORETTO: 29 years.

14 MS. WINTERS: Oh, 29 years.

15 MR. MORETTO: Or 28. It's close.

16 MS. WINTERS: Okay. When you purchased the home,
17 did you -- were you aware it was a part of the
18 homeowner's association?

19 MR. MORETTO: Yes.

20 MS. WINTERS: And, in - in the course of
21 purchasing the home, did you get a copy of -- of all
22 of the records of the bylaws and the articles for the
23 homeowner's association?

24 MR. MORETTO: Yes.

25 MS. WINTERS: Okay. Were you given anything other

1 than those regarding the homeowner's association at
2 the time?

3 MR. MORETTO: No.

4 MS. WINTERS: Now. And was there some point in
5 time where you became aware of there being some other
6 rules regarding the homeowner's association?

7 MR. MORETTO: Yes.

8 MS. WINTERS: When was that?

9 MR. MORETTO: Maybe two years or three years ago.

10 MS. WINTERS: Okay. And how did you learn of
11 that?

12 MR. MORETTO: Through going to meetings and
13 mailing. Mailing in -- from the board to my address
14 from the minutes.

15 MS. WINTERS: Did you participate in any way in
16 the creation of the architectural review committee?

17 MR. MORETTO: No.

18 MS. WINTERS: Were you aware that one had been
19 created?

20 MR. MORETTO: No.

21 MS. WINTERS: When did you first become aware
22 that it was created?

23 MR. MORETTO: I think it was in '19, I mean,
24 yeah. 1918.

25 MS. WINTERS: 2019?

1 MR. MORETTO: I mean 2018. I'm sorry.

2 MS. WINTERS: Okay. At that time, did you receive
3 a copy of the architectural guidelines? MR.

4 MORETTO: Yes.

5 MS. WINTERS: [Inaudible].

6 THE COURT: It's okay.

7 MS. WINTERS: I want to show you what we marked
8 as Exhibit 10. I ask if you recognize that.

9 MR. MORETTO: Yes.

10 MS. WINTERS: Have you read these through?

11 MR. MORETTO: Yes.

12 MS. WINTERS: When you got these was this the
13 first time you had seen any of this kind of stuff?

14 MR. MORETTO: Yes.

15 MS. WINTERS: Okay. And after reviewing it, did
16 you contact anyone regarding the guidelines?

17 MR. MORETTO: Yes.

18 MS. WINTERS: Okay. Can you tell me who you
19 contacted?

20 MR. MORETTO: The board.

21 MS. WINTERS: And what was the purpose of
22 contacting them?

23 MR. MORETTO: They were interfering in my rights
24 and my property.

25 MS. WINTERS: Did you write -- did you when you

1 contacted them, did you write them a letter or did you
2 just talk to them at the board meeting?

3 MR. MORETTO: Both.

4 MS. WINTERS: Okay. In response to your argument
5 against these guidelines, did the board do anything?

6 MR. MORETTO: Not really.

7 MS. WINTERS: Okay. Was there a point in time
8 where they responded at all to your complaints about
9 these guidelines?

10 MR. MORETTO: Not sure.

11 MS. WINTERS: Okay. Did you have any kind of
12 ability to have -- to air your complaints at a board
13 meeting?

14 MR. MORETTO: Yes.

15 MS. WINTERS: And as a result of those complaints
16 that you aired, did -- did the board come back and
17 tell you they were going to make any changes to the
18 guidelines?

19 MR. MORETTO: No.

20 MS. WINTERS: Now, also as a result of that
21 complaint, you actually had some some sort of semi-
22 formal hearing, if I recall correctly, right?

23 MR. MORETTO: Yes.

24 MS. WINTERS: And after that hearing before the
25 board, did you receive any response from the board as

1 to what they decided to do about your complaints
2 either from the board or from their attorney?

3 MR. MORETTO: No.

4 MS. WINTERS: Now, that -- do you recall when
5 that -- that hearing took place?

6 MR. MORETTO: December, I think.

7 MS. WINTERS: Of 2018?

8 MR. MORETTO: Yes.

9 THE COURT: Ms. Winters, while you have that
10 mark, I'll remind you that 10 is not admitted.

11 MS. WINTERS: Well, at this point I can move to
12 admit it.

13 MR. JONES: Your Honor, I'm going to object to
14 the extent that it's represented at all that these are
15 the current architectural guidelines in effect at the
16 HOA.

17 MS. WINTERS: And that wasn't the representation
18 --

19 THE COURT: Well, I don't think he represented
20 that.

21 MR. JONES: I have no objection then, Your Honor.
22 This is more for in case any further questioning that
23 presents that to be the case, but otherwise I have no
24 objection.

25 THE COURT: But that would be an entirely

1 different objection. Do you have an objection to the
2 admission of 10?

3 MR. JONES: I do not, Your Honor.

4 THE COURT: Then 10 is admitted. May I have that
5 document, please, sir?

6 MR. MORETTO: Yes, sir. Sure.

7 THE COURT: Thank you very much. We'll see what
8 happens with the next one.

9 MS. WINTERS: I want to show you what's been
10 marked as Exhibit 11. Would you take a look at that?

11 MR. MORETTO: Yes.

12 MS. WINTERS: Can you tell me what that is?

13 MR. MORETTO: It looks like I complained to them.

14 MS. WINTERS: I'm sorry, what's that?

15 MR. MORETTO: Looks like our complaint we -- we
16 sent to them.

17 MS. WINTERS: At that front page, do you see what
18 that is?

19 MR. MORETTO: The first page?

20 MS. WINTERS: Yes.

21 MR. MORETTO: It's a complaint from our office
22 sending it to them. That's what it looks like to me.

23 MS. WINTERS: Do you see the -- the heading on
24 the top?

25 MR. MORETTO: Oh, it's their attorney.

1 MS. WINTERS: Yeah.

2 MR. MORETTO: Yeah. That's our [inaudible]
3 attorney.

4 MS. WINTERS: Yeah.

5 MR. MORETTO: Yes.

6 MS. WINTERS: And -- and do you see who it's
7 addressed to?

8 MR. MORETTO: Oh, to both of us. My wife and I.

9 MS. WINTERS: And the date on that letter?

10 THE COURT: You really having him testify from an
11 exhibit that's not in evidence. So the question is do
12 you recognize it, sir?

13 MR. MORETTO: Oh, yes.

14 THE COURT: Okay. And -- and it -- you've already
15 testified that you believe it's a response to your
16 complaint. Is that right?

17 MR. MORETTO: I think so.

18 THE COURT: You think so or you know so?

19 MR. MORETTO: It is. Yes.

20 THE COURT: Did you receive a copy of that
21 previously?

22 MR. MORETTO: Yes.

23 THE COURT: And is that a fair and accurate copy
24 of what you received?

25 MR. MORETTO: Yes.

1 MS. WINTERS: Now, in the body of that --

2 THE COURT: Are you moving for its admission?

3 MS. WINTERS: Yes, Your Honor.

4 MR. JONES: No objection.

5 THE COURT: Then it's admitted. Eleven is
6 admitted. Now you can ask about what's in the body of
7 it.

8 MS. WINTERS: Thank you, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. WINTERS: In -- at page -- on the fifth page
11 where at the bottom it says page four.

12 MR. MORETTO: Yeah.

13 THE COURT: Okay. [Inaudible].

14 MS. WINTERS: There's a heading on -- at the
15 bottom on the paragraph that's item number four says
16 the Morettos are not grandfathered out of complying
17 with the board's decision. Do you see that?

18 MR. MORETTO: Yes.

19 MS. WINTERS: Okay. In - as a result of the
20 attempt to resolve your complaint with the board, was
21 it your understanding that they were still requiring
22 you to follow the guidelines?

23 MR. MORETTO: Yes.

24 MS. WINTERS: In the guidelines, were there
25 particular items that you had objected to?

1 MR. MORETTO: Yes.

2 MS. WINTERS: Do you have any specific ones that
3 you had your biggest objections were?

4 MR. MORETTO: Regarding my property?

5 MS. WINTERS: Yes.

6 MR. MORETTO: Yes.

7 MS. WINTERS: What regarding your property?

8 MR. MORETTO: The right to do on my property what
9 I can do due to the fact that I own it, pay the taxes
10 on it and abide by association dues that we pay every
11 year.

12 MS. WINTERS: When you purchased the property,
13 were you aware of any view easements that -- that were
14 on your property?

15 MR. MORETTO: No.

16 MS. WINTERS: And when you purchased your
17 property, were you made aware of any easements of any
18 kind on your property?

19 MR. MORETTO: No.

20 THE COURT: And the timeframe you were asking
21 about is shortly after purchasing the property, you
22 mean?

23 MS. WINTERS: At the time he purchased the
24 property was he aware -- aware of any of [inaudible].

25 THE COURT: Right. He answered that. And then you

1 said, and when you purchased the property, meaning at
2 this exact same time?

3 MS. WINTERS: Yeah.

4 THE COURT: Okay. All right.

5 MS. WINTERS: And since it's -- during the course
6 of your ownership, have you ever granted any person or
7 or entity, the right to any kind of easement on your
8 property?

9 MR. MORETTO: No.

10 MS. WINTERS: After you complained about the
11 initial guidelines that were imposed in the initial
12 creation of the committee, did you become aware at any
13 point of any changes to those guidelines?

14 MR. MORETTO: No.

15 MS. WINTERS: Were you aware that they had been
16 amended?

17 MR. MORETTO: Recently, yes.

18 MS. WINTERS: I want to show you what's been
19 marked as Exhibit 12. Do you recognize this document?

20 MR. MORETTO: Yes.

21 MS. WINTERS: And are these the most recent ones
22 that you recall or that you're aware of?

23 THE COURT: Ones, ma'am? The recent --

24 MS. WINTERS: The guidelines.

25 THE COURT: Okay. Thank you.

1 MR. MORETTO: Yes.

2 MS. WINTERS: Move to admit Exhibit 12.

3 MR. JONES: Objection. I don't think the
4 foundation has been laid. We don't have the dates,
5 just the most recent guidelines. I'm not even sure
6 what I'm looking at to be honest, Your Honor.

7 THE COURT: Well, the witness has identified
8 them, indicated that he believes that they are the
9 most recent guidelines that have been issued. So he's
10 identified what they are. The -- the foundation
11 objection is overruled. So that's 12.

12 MS. WINTERS: Yes, Your Honor.

13 THE COURT: 12's admitted.

14 MS. WINTERS: Thank you, Your Honor.

15 THE COURT: You can cross examine him on that.

16 MS. WINTERS: Your Honor, if I could have Exhibit
17 10 again?

18 THE COURT: Sure.

19 MS. WINTERS: Thank you. You testified that
20 Exhibit 10 was the original guidelines that were
21 approved by the board in March of 2018, I believe.

22 MR. MORETTO: Yes.

23 MS. WINTERS: And in those, were you aware that
24 they were attempting to create any kind of, uh,
25 restrictions on your property?

1 MR. MORETTO: In the originals?

2 MS. WINTERS: Yes.

3 MR. MORETTO: Yes.

4 MS. WINTERS: And in the latest version of that,
5 are you aware that they continue to create
6 restrictions on your property?

7 MR. JONES: Objection, Your Honor. To the extent
8 counsel's representing these are the latest version,
9 they can't.

10 THE COURT: Well, his testimony was that number
11 12 is the latest version.

12 MR. JONES: He says he believes that they're the
13 latest version. Counsel's representing them to be the
14 latest version.

15 THE COURT: Sir -- sir, he's -- that objection is
16 overruled. Do you want to prove that there's a later
17 version? You can call the witness later. If you want
18 to cross examine him about the issue you can certainly
19 do that too.

20 MS. WINTERS: I forgot my question. I believe I
21 asked whether you're aware that restrictions continued
22 to be imposed on your property in the latest version
23 of the guidelines.

24 MR. MORETTO: Yes.

25 MS. WINTERS: In the course of all of these

1 creations of -- of the board and the course of the
2 reation of the committee and the imposition of the
3 guidelines, have you signed any consent to any
4 restrictions on your property?

5 MR. MORETTO: No.

6 MS. WINTERS: I guess I marked --

7 MR. JONES: I'm assuming you don't have another
8 copy.

9 MS. WINTERS: I -- I have. I kind of do. Not the
10 same size, obviously. This is my version of what I
11 have.

12 CLERK: This one you do want me to mark.

13 MS. WINTERS: Yes.

14 CLERK: Okay.

15 MR. JONES: Sorry, counsel, do you mind if I
16 write down this? Do you want this copy back?

17 MS. WINTERS: I don't want that copy back.

18 MR. JONES: Thank you.

19 MS. WINTERS: I believe that will stay. I want to
20 show you this flat plan and ask you if you recognize,
21 the property that's depicted on here.

22 MR. MORETTO: Yes.

23 MS. WINTERS: Is this your property?

24 MR. MORETTO: Yes.

25 MS. WINTERS: And was this oversized black

1 painting created at your direction?

2 MR. MORETTO: No.

3 MS. WINTERS: Who gave direction to create this?

4 MR. MORETTO: Oh. Oh, I'm sorry. I didn't get
5 that. Yes. I'm sorry.

6 MS. WINTERS: Now, in the -- in the first
7 guideline it states in there, some restrictions on
8 building setbacks. Do you recall that?

9 MR. MORETTO: Yes.

10 MS. WINTERS: And in looking at the latest
11 iteration of the guidelines, are those building
12 restrictions in there as well, the setback lines?

13 MR. MORETTO: I think so. Yes.

14 MS. WINTERS: Do you want to take a look for a
15 minute and double check?

16 MR. MORETTO: I didn't know when there was
17 changes [inaudible].

18 MS. WINTERS: Do you want to take -- yeah; I
19 think you have it there.

20 THE COURT: So you're asking him to refresh his
21 recollection --

22 MS. WINTERS: Yes.

23 THE COURT: -- as to whether it's in there? So
24 when you're done looking at it, close the document and
25 tell us whether your recollection is refreshed.

1 MR. MORETTO: Looks the same.

2 THE COURT: That's not responsive.

3 MS. WINTERS: Do you recall after taking a look
4 at both of these, whether the setback lines are stated
5 in both sets of guidelines?

6 MR. MORETTO: Yes.

7 MS. WINTERS: I don't have anything further for
8 Mr. Moretto.

9 THE COURT: Well, then you want to take your
10 exhibit down?

11 MS. WINTERS: We can, Your Honor.

12 THE COURT: It was never admitted.

13 MS. WINTERS: I understand that. I don't plan on
14 admitting it with Mr. Moretto. I'm going to be
15 admitting it with another witness.

16 THE COURT: Okay. All right. Well, you can leave
17 it there if you want. Maybe that's handy for you. Do
18 you have questions of this witness, sir?

19 MR. JONES: May I have a moment, Your Honor.

20 THE COURT: Yep. All right. While you get ready
21 for your moment I'm going to tell everybody, this --
22 my clerk works really hard; is probably the hardest
23 working person in this room. And she is entitled to a
24 break every afternoon and I'm going to give her that
25 break.

1 So, Ms. Clerk, how about if we take about 10
2 minutes or so, is that okay with you? Okay. If you
3 need a little bit more let me -- let me know. We'll be
4 in recess until 3:30.

5 MR. MORETTO: Am I allowed.

6 THE COURT: You can step down, sir. Yes, sir.

7 MR. MORETTO: Okay.

8 MS. WINTERS: This is [inaudible].

9 MR. MORETTO: Yeah. I'm going to go down and use
10 the restroom.

11 BAILIFF: All rise. Court is now in session.

12 THE COURT: You keep your seat, sir.

13 MR. MORETTO: Thank you.

14 THE COURT: Thank you though. I appreciate your
15 courtesy. Everyone have a seat please. All right,
16 we're back in session. Sir, I would remind you that
17 you're still under oath.

18 MR. MORETTO: Yes, sir.

19 THE COURT: Okay. Let us proceed.

20 MR. JONES: Your Honor, Prescott Jones for the
21 defendant. I have no questions for Mr. Moretto. Thank
22 you.

23 THE COURT: Oh, I could have done that before we
24 broke. Okay. Very well. Sir, you're welcome to step
25 down.

1 MR. MORETTO: Thank you.

2 THE COURT: Do me a favor; remember that there is
3 a step there. So if you need --

4 MR. MORETTO: I will, sir.

5 THE COURT: I know here you'll sue anybody.

6 MR. MORETTO: I'm a good guy.

7 THE COURT: Just be careful, sir.

8 MR. MORETTO: I will.

9 THE COURT: All right. Do you have another
10 witness, ma'am?

11 MS. WINTERS: Yes, Your Honor. I call Jeff
12 Turner.

13 THE COURT: Come on up, sir. You pause about
14 right there. Turn, face the clerk, raise your right
15 hand.

16 CLERK: Do you solemnly swear the testimony
17 you're about to give will be the truth, the whole
18 truth and nothing but the truth so help you God?

19 MR. TURNER: I do.

20 THE COURT: Come have a seat, please.

21 MS. WINTERS: Mr. Turner, would you state your
22 full name and occupation?

23 MR. TURNER: My full name is Jeffrey Wayne
24 Turner. I'm a professionally licensed land surveyor in
25 the state of Nevada.

1 MS. WINTERS: And is -- in your job as land
2 surveyor, have you been retained by Mr. Moretto?

3 MR. TURNER: I have.

4 MS. WINTERS: What was the purpose of your job
5 that he retained you for?

6 MR. TURNER: The purpose of my job was to relate
7 the location of his residence to the property lines of
8 his legal lot of record and the setbacks.

9 MS. WINTERS: Okay. And in creating that image,
10 what did you rely on?

11 MR. TURNER: Various things. The original
12 subdivision map, a subsequent map that was done by
13 another land surveyor that perfected title down to low
14 water that is their current boundaries, and field work
15 performed by my crew under my direction.

16 MS. WINTERS: I want to show you what we've
17 previously admitted as Exhibits 10 and 12. Would you
18 take a look at Exhibit 10?

19 Would you take a look at this Exhibit 10 that --
20 at the page number three; do you see the section
21 that's marked building envelope?

22 MR. TURNER: Yes. I do.

23 MS. WINTERS: And then would you also take a look
24 at Exhibit 12, the page is actually number 13. The
25 very first paragraph marked B.

1 MR. TURNER: Yes.

2 MS. WINTERS: Did you use either one of those in
3 creating your plan?

4 MR. TURNER: I use the most recent that was
5 adopted in, I believe, November of 2019.

6 MS. WINTERS: And in looking at that most recent,
7 version, which is Exhibit 12, I believe, do you see
8 any difference between that or those setbacks
9 requirements and the requirements that are stated in
10 Exhibit 10?

11 MR. JONES: I'm going to object again to the
12 characterization by counsel as Exhibit 12 is the --
13 the most recent version.

14 THE COURT: Well, I -- in fact it is leading the
15 witness and he has not said that he recognized that to
16 be the most recent version. Your client said that. So
17 you can ask him if that's the one that he used.

18 MS. WINTERS: Okay. I apologize, Your Honor.

19 THE COURT: All right, ma'am.

20 MS. WINTERS: Would you look at both of those and
21 see if you used either one of those to create this?

22 MR. TURNER: We used what was provided to us as,
23 I believe, the most recent and it appears to be,
24 number 12.

25 MS. WINTERS: Okay.

1 THE COURT: You may go ahead.

2 MS. WINTERS: And then looking at the setback
3 requirements in 12 as opposed to Exhibit 10, do you
4 see any difference in the setback requirements?

5 MR. TURNER: I do not.

6 MS. WINTERS: So can you describe -- let me ask
7 you this, do you recognize this oversized flat line?

8 MR. TURNER: Absolutely.

9 MS. WINTERS: And, is this --

10 THE COURT: And that will be exhibit?

11 MS. WINTERS: This is Exhibit 13, Your Honor.

12 THE COURT: Thank you, ma'am.

13 MS. WINTERS: Is this something that was created
14 in your office?

15 MR. TURNER: Yes.

16 MS. WINTERS: And you've already testified to
17 what you relied on to create this.

18 MR. TURNER: I did.

19 MS. WINTERS: I move to admit Exhibit 13.

20 MR. JONES: No objection.

21 THE COURT: Thirteen is admitted

22 MS. WINTERS: Now, in creating this, did you -- I
23 see you also have an outline there that is entitled
24 existing residents. Is that also based on the
25 information that you testified to -- to create?

1 MR. TURNER: Yes. Field measurements.

2 MS. WINTERS: Field. And the red dotted line,
3 what does that represent?

4 MR. TURNER: The red dashed line represents the
5 setback.

6 MS. WINTERS: And in that, well --, let me -- let
7 me ask you to explain what the -- the different colors
8 of this map are.

9 MR. TURNER: Yes. The black represents the legal
10 property lines. The red are the setbacks 25 feet from
11 the front right of way, seven feet from the side,
12 property lines. The blue is an outline of the
13 residence, and the green dimension show the distances
14 from building corners to the setback.

15 MS. WINTERS: So --

16 THE COURT: Help me out with what's green on that
17 map. I -- I --

18 MS. WINTERS: It's really light green actually,
19 Your Honor. You have to --

20 THE COURT: Okay. I see the line you are pointing
21 at. Thank you.

22 MS. WINTERS: It's there and there and there.

23 THE COURT: Sir, you may step around so that you
24 have a better view and position yourself where you're
25 comfortable.

1 MR. TURNER: I appreciate it, Your Honor.

2 MS. WINTERS: So if I understand you correctly,
3 these setback lines are cutting off large portions of
4 the current residents.

5 MR. JONES: Objection, Your Honor. We're starting
6 to get an expert testimony here. I feel like Mr.
7 Turner's only a fact witness.

8 He hasn't been qualified as an expert. I think
9 we're starting to go down an improper road here.

10 THE COURT: Well, your legal objection is?

11 MR. JONES: Calls for expert testimony and Mr.
12 Turner is a lead witness and has not been qualified as
13 such.

14 THE COURT: Your response?

15 MS. WINTERS: I believe he testified to his
16 qualifications as a licensed surveyor, Your Honor.

17 THE COURT: I'm going to allow the testimony.
18 Objection's overruled, on that question anyway.

19 MS. WINTERS: In doing the field work that you
20 did to measure out this, did you also include the
21 information that is hand -- that is written on this?

22 MR. TURNER: I'd like to clarify that it was my
23 staff. It was not me. And the square foot call-outs
24 are a result of computer work. Those are not what I
25 would call real time out in the field.

1 We take the field data and bring it into the
2 AutoCAD program and it does not only a drafting
3 program, certain calculations, and in this particular
4 case areas, can be derived from that field work that
5 has then been transferred into the AutoCAD program.

6 MS. WINTERS: Does that AutoCAD program also
7 create the oversized plot?

8 MR. TURNER: No. No. That was done by my staff at
9 my direction to clarify or to delineate those areas of
10 the residence that would be outside of the setbacks.

11 MS. WINTERS: And in delineating the areas
12 outside of the setbacks, did the -- does this
13 depiction show that portions of the residents would be
14 excluded from being rebuilt if they disappeared based
15 on just the restriction?

16 MR. JONES: Objection again, Your Honor. This is
17 clearly I think expert testimony and beyond his
18 personal knowledge.

19 THE COURT: Well, I can understand what the lines
20 mean and -- and I don't think the witness needs to
21 testify to that.

22 He's already said what the setbacks are and he
23 said where the property line is. And I can see the
24 different colors on those lines.

25 MS. WINTERS: I don't have any more questions.

1 Thank you.

2 THE COURT: Do you have questions, sir?

3 MR. JONES: Do you mind leaving it there,
4 counsel?

5 MS. WINTERS: I was going to. I was just moving
6 it back a little bit.

7 MR. JONES: Thank you, I appreciate that. Good
8 afternoon, Mr. Turner.

9 MR. TURNER: Good afternoon.

10 MR. JONES: My name is Prescott Jones. I
11 represent the HOA in this particular case. I have a
12 couple of questions for you.

13 Can you tell me how you came up with the red
14 line on Exhibit 13? In other words, why did you put it
15 in that particular location?

16 MR. TURNER: Utilizing the setbacks as shown in
17 item 12, twenty-five feet from the front, seven feet
18 from the side.

19 MR. JONES: So you simply took existing property
20 line which you have on Exhibit 13 shown as a black
21 line --

22 MR. TURNER: Yes.

23 PRESCOTT JONES -- and you brought it in seven
24 feet on roughly the East and West side and 20 feet on
25 the roughly North side and 25 feet on the South side.

1 Correct?

2 MR. TURNER: Yes.

3 THE COURT: Well, I don't -- I don't know if
4 that's actually oriented to North and South. I see
5 where Lake Tahoe is depicted and so I -- North is
6 actually towards the lake it looks like somewhat.

7 MR. TURNER: Yes, Your Honor. The north arrow is
8 to the left and it's pointing straight up.

9 THE COURT: Yes. Thank you.

10 MR. JONES: [Inaudible] I don't think you
11 understand what --

12 MR. TURNER: I did understand.

13 MR. JONES: Thank you. You also have an outline,
14 as you discussed, of the existing residence and that's
15 outlined in blue, correct?

16 MR. TURNER: Yes.

17 MR. JONES: I'll -- you'll note that there's
18 portions of the residence that are outside of the
19 setback line, correct?

20 MR. TURNER: That's correct.

21 MR. JONES: Is it your understanding that those
22 portions of the residents had to be demolished,
23 destructed, otherwise removed?

24 MS. WINTERS: Objection. It goes beyond the scope
25 of his direct.

1 THE COURT: That objection is sustained. No one
2 has said that anybody's chopped off a corner of this
3 gentleman's home.

4 MR. JONES: Is it fair to say that you did not
5 make this map for the purposes of showing that a
6 portion of the existing residence had to be removed,
7 correct? You're just simply trying to show where you
8 believe the setback was correct.

9 MR. TURNER: I created the exhibit using the
10 adopted ordinance, if that's what it is termed, and
11 the current conditions of the residence on the ground.

12 MR. JONES: You offer no opinions as it relates
13 to what needs to happen to the residence as a result
14 of what you have labeled as the proposed setbacks,
15 correct?

16 MR. TURNER: Can you word that a little
17 differently?

18 MR. JONES: As you sit here today, you're not
19 offering any opinions as to what needs to happen to
20 this property as a result of what you have labeled as
21 the proposed setbacks, correct?

22 MR. TURNER: I'm not aware of any actions of that
23 nature.

24 MR. JONES: That's all I have. Thank you, sir.

25 THE COURT: Do you have other questions, ma'am?

1 MS. WINTERS: Nothing further, Your Honor,

2 THE COURT: Sir, thank you for being here today.

3 MR. TURNER: Thank you, Your Honor.

4 THE COURT: Appreciate it. You are released. Is
5 there any reason why he would have to stay?

6 MS. WINTERS: No, Your Honor.

7 THE COURT: You're permanently released, sir.

8 MR. TURNER: Thank you.

9 MS. WINTERS: I just have one more witness. I'd
10 like to call Deborah Moretto.

11 THE COURT: Come one, ma'am.

12 CLERK: Do you solemnly swear that the testimony
13 you're about to give will be the truth, the whole
14 truth and nothing but the truth so help you God.

15 MS. MORETTO: I do.

16 THE COURT: Come on up, ma'am. Thank you.

17 MS. WINTERS: Ms. Moretto, could you state your
18 full name and where you currently reside?

19 MS. MORETTO: Deborah Moretto, that's, D-e-b-o-r-
20 a-h M-o-r-e-t-t-o. I reside at 476 Lakeview Avenue,
21 Zephyr Cove, Nevada, 89448.

22 MS. WINTERS: How long have you lived there?

23 MS. MORETTO: 15 years about.

24 MS. WINTERS: Now you've been here during the
25 course of the testimony by your husband. So I don't

1 need to reiterate anything he said, but I wanted to
2 ask you a couple of questions.

3 Prior to the creation of the committee and the
4 guidelines, were you aware or were you made aware by
5 anybody in the homeowner's association of any
6 restrictions on your property that you live at?

7 MR. JONES: Objection, Your Honor. I'm not sure
8 how Ms. Moretto can answer that question. She's not a
9 plaintiff to this case.

10 She certainly resided at the property but it's
11 my understanding that Mr. Moretto is the sole
12 plaintiff.

13 THE COURT: Well, the -- the thing is, this is a
14 suit by Mr. Moretto as the trustee of the Moretto 2006
15 Trust. The question -- your objection is sustained at
16 this point until you ask whether, in fact, this person
17 is a beneficiary of that trust.

18 MS. WINTERS: Your Honor, I have no --

19 THE COURT: It's not her property, otherwise
20 she's --

21 MS. WINTERS: It's not her property. I'm asking
22 her as a -- as a person that resides in the
23 homeowner's association.

24 THE COURT: Well, you said your property. So --

25 MS. WINTERS: Then I apologize. I'll regroup.

1 THE COURT: And that was the objection.

2 MS. WINTERS: Okay.

3 THE COURT: So, go ahead.

4 MS. MORETTO: Your Honor, may I clarify.

5 THE COURT: You may not. There may be a question
6 though and we'll see what happens when that happens.

7 MS. MORETTO: Okay. Thank you.

8 THE COURT: Yes, ma'am.

9 MS. WINTERS: Do you have fee title interest in
10 that property?

11 MS. MORETTO: It's held by a family trust. My
12 husband's the trustee and I am the successor trustee
13 of the trust.

14 MS. WINTERS: Okay.

15 THE COURT: There you have an answer to it. See,
16 you got that out anyway.

17 MS. MORETTO: I did get it out.

18 MS. WINTERS: And have you been participating in
19 the communications with the HOA board?

20 MS. MORETTO: Yes.

21 MS. WINTERS: And in the course of the time that
22 you've lived there have you attended any of the board
23 meetings?

24 MS. MORETTO: Yes.

25 MS. WINTERS: And the guidelines that have been

1 admitted as Exhibit 10 in this matter, are you
2 familiar with those guidelines?

3 MS. MORETTO: Yes.

4 MS. WINTERS: When those guidelines were approved
5 by the board in March of 2018, did you participate
6 with Mr. Moretto in filing the complaint on the
7 creation of those guidelines?

8 MS. MORETTO: When the guidelines were adopted in
9 March of 2018 prior to the board adopting them, I
10 recommended that they run it through their lawyer
11 before they adopted them.

12 They adopted them and then my husband and I sent
13 a letter to the board objecting to imposing property
14 restrictions on us by adopting a corporate bylaw rule.

15 MS. WINTERS: From the time that those guidelines
16 were in place to the present, have you had to -- to
17 make any requests of the architecture review
18 committee?

19 MS. MORETTO: The rules require us to go to the
20 committee to do anything on our property and to get
21 their consent and their discretion. We have been --

22 MS. WINTERS: And have you done that?

23 MS. MORETTO: We have been afraid of that so we
24 have forgone. Well, usually we would have painted our
25 house last year. We did not --

1 THE COURT: That's non-responsive and the answer
2 is stricken.

3 MS. MORETTO: Sorry. I'm sorry, what was the
4 question?

5 MS. WINTERS: Have you requested that the
6 committee approve any changes to your property since
7 that guideline has been in place?

8 MS. MORETTO: No.

9 MS. WINTERS: And have -- have those guidelines
10 changed anything about how your husband and you
11 maintain the property?

12 MS. MORETTO: Yes.

13 MS. WINTERS: Has there been any harm to you --

14 MS. MORETTO: Yes.

15 MS. WINTERS: -- and your husband in -- in
16 having these guidelines?

17 MS. MORETTO: Yes.

18 MS. WINTERS: What harm has there been?

19 MS. MORETTO: We've been living in fear. We have
20 not been able to enjoy our property with any kind of
21 quiet enjoyment, to the point where they put us before
22 the board, complaining that our bear box was not
23 properly on our property because we had not asked
24 their permission to put it there when it's been there
25 for 20 years.

1 We are afraid to paint our house because they can
2 tell us we will be fined. And they've said they will
3 actually go on people's properties, change it and
4 charge us if we don't follow their rules.

5 This happened to our neighbor. We were there at
6 a board meeting. Our neighbor put up a bear box
7 without their permission from the committee, they --
8 she hired a lawyer to say don't trespass my property.

9 They went on her property, they removed the bear
10 box, and I understand that's a litigation, Your Honor.
11 We are afraid if we don't follow their rules. Right
12 now, they've threatened to take action on our
13 property.

14 When the rules were first adopted in March, it
15 had a three-foot pedestrian easement just added to our
16 property. I sent a letter, my husband and I, saying
17 you can't just take her property without compensation
18 and without her consent.

19 THE COURT: That's not responsive. So the
20 question --

21 MS. MORETTO: Well, we -- we've been living in
22 fear.

23 THE COURT: Ma'am, ma'am.

24 MS. MORETTO: I'm sorry.

25 THE COURT: Okay. When I start talking, you need

1 to quit, okay?

2 MS. MORETTO: Yes.

3 THE COURT: Go ahead. Next question.

4 MS. WINTERS: Are there concerns about things
5 that you have planned to do to the property now?

6 MR. JONES: Objection, leading the wit- -- I'm
7 sorry. I'm sorry counsel; I thought you were done.

8 THE COURT: Okay. No objection. Go ahead.

9 MS. WINTERS: Are there concerns about, any --
10 any future projects that you may have?

11 MS. MORETTO: Yes.

12 MS. WINTERS: What concerns do you have about
13 future projects?

14 MS. MORETTO: Our house is -- was built in the
15 1930s, part of it, and then the other part was
16 remodeled in the '80s. So it's kind of a mismatch a
17 little bit. The 1930s portion we have discussed doing
18 renovations.

19 We cannot do that without getting the consent of
20 this committee. We can't paint our house. We can't --
21 I can't even plant flowers. I know you think that's no
22 big deal, but it has in there that anything we do on
23 our property, anything, we have to have the consent of
24 the community.

25 And that, yes, that is impacting us right now.

1 We can't -- I'm afraid to do my spring planting. I
2 know that seems like nothing but I can't do anything
3 without their consent. And when I raise --

4 MR. JONES: Objection, Your Honor. Non-
5 responsive. Move to strike.

6 THE COURT: Okay. So you answered. Next
7 question.

8 MS. WINTERS: I don't have anything further.
9 Thank you.

10 THE COURT: Thank you, ma'am. Keep your seat
11 please.

12 MR. JONES: Good afternoon Ms. Moretto. We have
13 not met before. My name is Prescott Jones. I represent
14 the HOA in this litigation. I just have a couple
15 questions for you.

16 You had mentioned during your testimony a few
17 minutes ago about a bear box issue. Do you recall who
18 the homeowner was who raised the bear box issue that
19 you described before?

20 MS. MORETTO: It was a lady and I don't her name.

21 MR. JONES: Do you recall what the issue was
22 involving the location of the bear box?

23 MS. MORETTO: She had gotten approval from the
24 garbage company and the fire department for the
25 location but she did not get approval from the

1 committee. That was the issue.

2 MR. JONES: Are you aware that the proposed
3 location of the bear box was in the common areas of
4 not actually on the individual property of the
5 homeowner?

6 MS. MORETTO: My understanding is it was on her
7 property.

8 MS. WINTERS: Judge has them.

9 MR. JONES: May I see Exhibit 10? Ms. Moretto, I
10 want to show you what's been previously marked and
11 admitted as Exhibit 10. I believe we discussed this
12 document before. Have you seen that document before?

13 MS. MORETTO: Oh, yes.

14 MR. JONES: I draw your attention to page five,
15 top paragraph. You tell me when you get there.

16 MS. MORETTO: I'm there.

17 MR. JONES: May I have you read the first full
18 sentence beginning with the only exception.

19 MS. MORETTO: The only exception is for like
20 kind, size, color, quantity, et cetera, replacement,
21 or repainting a residence the exact same color as
22 previously approved and painted and for like kind
23 size, quantity, et cetera, replacement only. A
24 flower's ground covers and/or shrubs. Is that the
25 sentence?

1 MR. JONES: That's it. Thank you. Thank you, Ms.
2 Moretto.

3 MS. MORETTO: Okay.

4 MR. JONES: Your concerns before were, I believe,
5 you stated that you were concerned that you couldn't
6 repaint your house, correct?

7 MS. MORETTO: That's correct.

8 MR. JONES: zeere your concerns that you cannot
9 repaint your house a different color than it's
10 currently painted?

11 MS. MORETTO: That's correct.

12 MR. JONES: Do you understand the sentence that
13 you just read to mean that there's an exception to the
14 rules if you're painting your house the same color?

15 MS. MORETTO: Yes.

16 MR. JONES: I can take Exhibit 10 back. Those are
17 the only questions I have. Thank you.

18 THE COURT: Ms. Winters?

19 MS. WINTERS: Nothing further, Your Honor.

20 THE COURT: You can step down then you have
21 another witness, ma'am. [Inaudible]. Do you have
22 another witness, ma'am?

23 MS. WINTERS: No further witnesses, Your Honor.

24 THE COURT: Mr. Jones, do you have a witness?

25 MR. JONES: I have no witnesses, Your Honor. I do

1 intend to make pretty significant legal arguments, but
2 to the extent that Ms. Winters is done with her
3 arguments, I'd like to begin.

4 THE COURT: Well, to the extent that they're
5 significant or not, I'll make the ruling on that. But,
6 I'll certainly allow you to make an argument at the
7 appropriate time. Ms. Winters.

8 MS. WINTERS: Your Honor, the primary focus of my
9 motion for preliminary injunction was, as I stated at
10 the beginning, based on the legal argument, which I've
11 gone over fairly extensively to accept to the extent
12 that Your Honor pointed out the -- the harm to my
13 clients.

14 And as the testimony has shown the harm is the
15 quiet enjoyment of their own home is at stake here
16 during the course of this litigation. The original
17 guidelines actually allow the committee to commit --
18 trespass, to harm personal property on the -- on the
19 property.

20 It allowed the committee to actually go onto the
21 property to enforce the rules in the event that the
22 homeowner chooses to ignore a fine.

23 The scope of the guidelines, either the old or
24 the new, failed to comply with NRS 116.31 065 in that
25 they are not narrowly tailored to benefit the common

1 interest of the community. There -- they go well
2 beyond that.

3 At the beginning of the guidelines, at the
4 beginning of references to the committee when it was
5 created, the focus seemed to be by the board that they
6 intended these guidelines to create, and to ensure,
7 that all of the homes in the homeowner's association,
8 keep the -- the feel of the organization, the feel of
9 the neighborhood, the same -- to keep the -- the
10 quaintness of the -- of the -- of the location the
11 same as it always has been, to prevent one homeowner,
12 doing some outrageous building that would harm the
13 rest of the homeowners in the -- in the association.

14 But in fact, the homes in this and this
15 association vary greatly as has -- as the court has
16 heard. I mean that the -- the property next to my
17 clients on one side is a 1930s log cabin.

18 The property on the other side is an oversized,
19 fairly modern home. And there's in the middle, as Mrs.
20 Moretto testified, is a combination of the two. And so
21 there is no consistency amongst the homes themselves.

22 So the guidelines purpose is -- their stated
23 purpose goes well beyond anything that could be
24 accomplished by the guidelines. They needed to change
25 the bylaws in order to allow this community to be

1 created, and they didn't do it. They needed to change
2 the bylaws and have the consent of 100 percent of the
3 homeowners if they wanted to impose easements.

4 And they needed to have the cooperation of the
5 individual homeowners, if they wanted to impose
6 easements and restrictions that weren't in existence
7 at the time that those homeowners purchased their
8 properties, including my clients. At this point, I
9 would argue that the likelihood of success on either
10 issue is good.

11 And that it's clear that these guidelines are
12 going to continue to harm my clients now and for the
13 duration of this litigation and beyond, in that they
14 are not allowed to enjoy the quiet enjoyment of their
15 homes with the threat of having to get approval from a
16 committee that is made up of all different kinds of
17 personalities that may change at any point.

18 That may decide that they -- they -- what was --
19 what was allowed last year is not allowed this year on
20 some minor plan that they have to alter their
21 property. And on that basis, they are being harmed on
22 an ongoing basis. And I submit that in this case a
23 preliminary injunction is appropriate.

24 THE COURT: Thank you, ma'am. Mr. Jones.

25 MR. JONES: Good afternoon again, Your Honor.

1 Prescott Jones for the defendant. Let's not forget
2 where we are in this case.

3 For all intents and purposes, discovery has not
4 built any [inaudible] early case conference, and I
5 believe a joint case conference report was filed, but
6 effective discovery hasn't even opened in this case.

7 And in fact, the motion for preliminary
8 injunction as it typically is, was filed
9 contemporaneously with the complaint by the plaintiff.

10 So this is, certainly a preliminary injunction
11 that carries with it a certain legal standard in the
12 state of Nevada, which Your Honor had already alluded
13 to.

14 And one of the requirements for a preliminary
15 injunction in fact, which is the burden of the
16 plaintiff to show, is that without injunctive relief
17 the plaintiff will suffer irreparable harm for which
18 compensatory damages are inadequate. I think Your
19 Honor said that essentially word for word earlier
20 today.

21 The question I have for the court is, where is
22 that harm? Is the harm that the plaintiff can't change
23 the paint color of their house if they decide to on a
24 whim and make it something completely different?

25 Well, Your Honor, if that's the harm then I

1 would submit that almost every single homeowner
2 association throughout the state of Nevada would not
3 be allowed to enforce their architectural guidelines.

4 Is the harm this drawing showing that there's a
5 potential setback, to use the words of Mr. Turner,
6 that there's a potential setback of seven to 20 feet
7 on the property? Well, where's the harm? The building
8 wasn't torn down. There's no actual damage or harm to
9 the plaintiffs.

10 And plaintiff has to meet their burden in order
11 to get the extraordinary remedy of a preliminary
12 injunction that they're requesting. This court
13 [inaudible] before as to what the potential harm is to
14 the HOA.

15 Your Honor, in fact, I took a walk around the
16 development yesterday to take a look at the
17 properties. I noticed there was a lot of construction
18 ongoing throughout the property.

19 There's about four or five vacant lots where
20 there hasn't even been a home built yet, and there
21 were probably another four to five homes that had
22 active ongoing construction or remediation and that
23 sort of thing.

24 The harm to the HOA is that there would now be,
25 for the time period that the preliminary injunction

1 would be in effect, no guidelines whatsoever. The HOA
2 can't do anything to constrain construction on its
3 property.

4 And that's something that's clearly contemplated
5 by NRS 116, clearly contemplated by the bylaws as set
6 forth in our argument, something that is a central
7 tenant of what an HOA is supposed to do in the state
8 of Nevada.

9 The harm to the the HOA is real, it's significant
10 and it could represent potentially a devaluing of the
11 properties across the entire development.

12 The harm to the plaintiff is speculative and I'm
13 still at this point trying to figure out what exactly
14 the harm is that they're claiming. Now, as we set
15 forth in our brief speculative conduct is not the
16 basis of a preliminary injunction.

17 If they're trying to base their -- their request
18 for preliminary injunction on speculative conduct,
19 what this effectively does is ask the court to
20 improperly issue an advisory opinion.

21 In other words, we're going to stop the HOA from
22 doing what it's allowed to do under the bylaws, under
23 NRS at 116, because we think something might happen in
24 the future that would potentially impact you,
25 potentially cause you harm. That's an advisory

1 opinion.

2 That's -- the case law is quite clear on that
3 topic. Now, I want to go through the eight points that
4 were set forth in plaintiff's motion for preliminary
5 injunction. Just give one second I can find the
6 citation.

7 But it was -- I'm going to read essentially word
8 for word, page three of plaintiff's motion for
9 preliminary injunction the second paragraph that
10 starts with Moretto's objections include that, and I'm
11 going to take them on a step-by-step basis.

12 Now, this more goes to the merits of the case
13 that the plaintiff is trying to make. I would submit
14 to the court if we were in an actual trial.

15 I'd probably move for a directed verdict at this
16 point before I even got up and started talking because
17 they haven't met their burden to show the irreparable
18 harm that they would be suffered -- that they would
19 suffer in the event that the architectural rules are
20 allowed to -- to stand.

21 But in the interest of a full record and
22 complete record I'm going to address these points one
23 by one, and I'll try to be as brief as possible. I
24 know we're getting pretty close to the end of the day.

25 THE COURT: Mr. Jones, you don't need to. I'm

1 going to cut you off. Have a seat, please.

2 MR. JONES: Sure. Thank you.

3 THE COURT: The motion for preliminary injunction
4 is denied. The Court finds that there is no evidence
5 of irreparable harm for which compensatory damages is
6 an inadequate remedy, and that's the finding by the
7 court based on the evidence that I've heard.

8 And that is the -- the standard here. I
9 understand -- I'll make it very clear. I think I
10 understand exactly how the Morettas feel, and I
11 understand your position, but what you have to
12 establish is something that is beyond what you have
13 established so far for a preliminary injunction.

14 And so I don't need to hear further argument
15 from you, Mr. Jones. I've heard -- I heard the
16 evidence and I'm just going to cut you off. I will
17 tell you that you may ultimately in this case prevail.
18 I don't know.

19 I've heard your consistent talk about how
20 things were changed and what the changes are, and that
21 sort of thing, and you may prevail on the merits in
22 this case as we proceed to trial.

23 But as to a preliminary injunction, there's --
24 there's an additional element that you've got to be
25 able to show me that compensatory damages would be an

1 inadequate remedy, and I don't believe that that's
2 been established.

3 So the request for preliminary injunction is
4 denied. I think that in looking at all of the other
5 motions and such thatthat they're all either rendered
6 moot or have been dealt with, and I don't think that
7 we have anything else today.

8 You'll prepare this order on the preliminary
9 injunction and it's based on exactly what I just said.
10 I do appreciate the testimony tonight.

11 I understand the angst of the homeowner and I
12 understand also the utility of an HOA where
13 appropriate. And so that's the ruling. We're in
14 recess.

15 MR. JONES: Thank you, Your Honor.

16 MS. WINTERS: Thank you, Your Honor.

17 THE COURT: Yes, ma'am. Thank you all for your
18 presentations.

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I, Chris Naaden, hereby declare under penalty of perjury that to the best of my ability the above pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.

April 30, 2021

Chris Naaden

(Moretto v. Elk Point CC HOA, 3-9-20)

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BOBBIE B. WILLIAMS
D. CLERK

BY _____ DEPUTY

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.

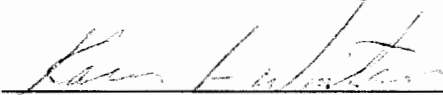
**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION OF ISSUES**

NOTICE IS HEREBY GIVEN and Plaintiff, JEROME MORETTO, Trustee of the Jerome
F. Moretto 2006 Trust, by and through his attorney, KAREN L. WINTERS, ESQ., hereby moves for
summary judgment or, in the alternative, summary adjudication of issues. This motion is made on
the grounds that the creation of the Architectural Design and Review Guidelines ("Guidelines") and
the Architectural Review Committee ("Committee") created therein were formed in violation of
Nevada law and the Bylaws governing the Defendant.

This Motion is based upon the Statement of Undisputed Facts hereunder, the Declaration of
Karen L. Winters and the Request for Judicial Notice filed herewith, and on the attached
Memorandum of Points and Authorities.

DATED: November 2, 2020

LAW OFFICE OF KAREN L. WINTERS


Karen L. Winters, Esq., SB# 3086
P.O. Box 1987
Minden, NV 89423
(775) 782-7933
Attorney for Plaintiff

[illegible]

I. STATEMENT OF THE CASE

II. SEPARATE STATEMENT OF UNDISPUTED RELEVANT FACTS

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4.	The Bylaws of EPCC only allow the Board to create an audit committee and an election committee.	Exhibit 1 to Complaint admitted in Defendant's Answer to Paragraph 6 of the Complaint, on file herein.
5.	The 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.	Exhibit to Complaint admitted in Defendant's Answer to Paragraph 6 of the Complaint, on file herein.
6.	Article III, Section 2 of the current Bylaws states that "The Executive Board shall have the 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."	<i>Id.</i>
7.	The Architectural Review Committee meetings were not properly noticed to any unit members.	Deposition of Nancy Gilbert, p.33, ll. 1-4 and 10-16; Deposition of Charles Jennings, p. 14, ll. 17-22, each are attached as Exhibits to the Declaration of Karen L. Winters, filed herewith.
8.	EPCC operates common areas and facilities for the benefit of the fee title owners of individual units within its development.	Admitted in Defendant's Answer to Paragraph 7 of the Complaint, on file herein.
9.	The development currently consists of approximately 99 parcels ("units").	Declaration of Jerome Moretto, filed herein on August 28, 2019, ¶4 in support of the Motion for Preliminary Injunction; Deposition of Charles Jennings, p. 50, ll. 17-21, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith
10.	When EPCC first chose to allow for fee title transfer of parcels within the EPCC to individual members through amendments to its Bylaws in 1929, each deed of conveyance contained a provision stating that: "It is expressly understood that the Grantee hereof and the property and premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators, successors, or assigns."	"Reply in Support of Countermotion to Cure Illegibility", at Exhibit "B" attached thereto, filed herein on or about November 15, 2019.

11.	For the last 95 years, from the inception of EPCC in 1925 to the present, the only "rules and regulations" effecting individual units addressed general construction of improvement requirements on the individual parcels.	"Reply in Support of Countermotion to Cure Illegibility", at Exhibit "B" attached thereto, filed herein on or about November 15, 2019; 2005 Bylaws, recorded 8/26/2005, at page 14, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
12.	The remainder of the "rules and regulations" addressed the community governance and use of the beach, marina and common areas, capital improvements on the commonly owned portions of EPCC, governance of the Executive Board and EPCC, and the role of EPCC in approving transfers of the members' parcels. (The 2019 set of rules also includes rules regarding renters, which is the subject of separate litigation with EPCC)	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, identifying the dates of each rule adopted at the end of each Section, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
13.	Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust ("Moretto") is the fee title owner of that certain residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which is located within, and a part of the EPCC development.	Admitted in Defendant's Answer to Paragraph 8 of the Complaint, on file herein.
14.	Moretto, either as trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990.	Id.
15.	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 initial "Architectural and Design Control Standards and Guidelines" ("Guidelines") enacted on March 31, 2018.	Id.

16.	Parts of the Moretto residence are 80 years old and not constructed to today's building codes and requirements.	Douglas County Assessor's record of original construction year of 1936, attached as an Exhibit to Declaration of Karen L. Winters, filed herewith; <i>see, also</i> , Exhibit H at p. 16-17, attached to Defendant's "Ex Parte Request for An Order Shortening Time and Motion for Limited Extension of Discovery", filed herein on or about September 26, 2020.
17.	On March 31, 2018, the Executive Board of EPCC enacted the Guidelines purportedly regulating design, architecture and construction of improvements on real property individual units within the boundaries of EPCC.	Admitted in Defendant's Answer to Paragraph 9 of the Complaint, on file herein.
18.	The initial Guidelines adopted on March 31, 2018 state that the duties of the Architectural Review Committee created in the Guidelines (the "Committee") include <u>applying and enforcing</u> the Guidelines as the Committee "sees fit".	Section VI of the Guidelines, attached to the Complaint as Exhibit 2, on file herein.
19.	The Board changed Section 6 of the initial Guidelines in the current version of the Guidelines, in that the Committee is identified as an "agent of the EPCC, as directed by the Board", its duties continue to include <u>applying and enforcing</u> the Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at pp. 11-12, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
20.	The March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto's individual unit. by imposing setback requirements on improvements that would effectively take Moretto's property right to rebuild even in the event of fire or natural catastrophe without Moretto's consent; and impose easements, including view easements which restrict buildings and landscaping on the Moretto property, beyond those originally in place at the time Moretto purchased the property and beyond the governmental restrictions placed on all land by the Tahoe Regional Planning Agency and Douglas County.	Admitted in Defendant's Answer to Paragraph 9 of the Complaint, on file herein, and Exhibit 2 attached to the Complaint, on file herein.

21.	The current version of the Guidelines, in Subparagraph 14(b) states that: "Exempt activities [from the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other calamity that <u>are rebuilt in substantial compliance with the design of the original structure</u> ".	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
22.	The Guidelines have been amended twice since they were originally forced upon Mr. Moretto, in June and September 2018, and merged into a consolidated set of "Rules, Regulations and Guidelines" for EPCC on September 14, 2019, which were later reiterated along with the rules governing the common areas, in December 2019.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 18 (EPCC ELK0325) identifying the dates of adoption and amendments, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
23.	Moretto objected to the initial Guidelines and requested to present those objections to the Executive Board through a letter dated from May 12, 2018.	Admitted in Defendant's Answer to Paragraph 10 of the Complaint, on file herein.
24.	The Executive Board finally included Moretto's objections and issues on the December 15, 2018 agenda of the Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the Executive Board and a certified court reporter on said date.	<i>Id.</i>

25.	Moretto's objections, contained in his May 12, 2018 letter, include that: (1) the Executive Board had no authority over the individual units under the Bylaws to create a "Design Review Committee" (hereinafter, the "Committee") delegating the Executive Board's authority to a committee 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 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 on individual units taken <i>ultra vires</i> ; (7) the Guidelines impose setback requirements, without Moretto's consent, on improvements that would effectively take Moretto's property right to rebuild for any reason; and (8) the Guidelines impose easements, including view easements and a pedestrian walkway easement, which are restrictive covenants taken <i>ultra vires</i> on individual units.	See, Complaint filed herein; <i>see, also</i> , the "Alternative Dispute Resolution Claim Form" filed with the Nevada Real Estate Division on March 28, 2019 referred to therein and attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
26.	Subparagraph XII(2) of the initial Guidelines states that the Committee is given 45 days to review any 'Application' for modification, new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or complexity of the proposed work to be done.	Exhibit 2 of the Complaint on file herein.
27.	The 45-day review period has no connection to the size of the project, and further fails to take into consideration the time of year at which any Application is made which would effect some projects under TRPA rules and regulations.	<i>Id.</i>
28.	At XII(3), the Guidelines state that the "Committee may recommend disapproval ...[of] any Application ... for purely aesthetic reasons."	<i>Id.</i>

29.	"Aesthetics", by definition, are the subjective conclusions of individuals as to what constitutes "beauty" and "good taste". As a result, any Committee or Board member can decide to disapprove an Application based solely on their individual sense of beauty or good taste, without even considering the aesthetic value to the unit owner. The two examples stated in Undisputed Fact Nos. 26 and 28 remain in the current version Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 14 (EPCC ELK0321), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
30.	Not only does the Major Application process increase the cost to be paid to the Committee, but it increases the cost of the project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted to the Committee for any "Major Project".	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 16 (EPCC ELK0323), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
31.	The Committee could decide that something as simple as replacing a garage door to be a "Major Project", greatly increasing the cost of each planned improvement of a residence. The current version of the Guidelines reduces this application review fee to \$200, but imposes the same extensive documentation as the initial Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at pp. 15-16 (EPCC ELK0322-323), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
32.	The latest iteration of the Guidelines also retains restrictive covenants that would impose setback requirements and view easements restricting building size and height and landscaping on the Moretto property.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 13 (EPCC ELK0320), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
33.	Nowhere in the initial Guidelines is there any stated amounts for any fines (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	Exhibit 2 attached to the Complaint on file herein.
34.	As in the initial Guidelines, nowhere in the current Guidelines is there any stated amounts for any fines (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 14 (EPCC ELK0321), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.

35.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit owner to request a variance of the "recommendation" that all construction not exceed 3500 square feet of floor area, but gives no indication why or under what circumstances a variance would be approved.	Exhibit 2 attached to the Complaint on file herein.
36.	Subparagraph XII of the initial Guidelines states that all Applications that include a variance would first be reviewed by the Committee, then forwarded to the Executive Board with the Committee's recommendation to approve or disapprove, however there is no guidance in that short paragraph to either the Committee or Executive Board in reaching their decisions. As a result, the requests for variances can be treated differently from unit owner to unit owner, with no consistency.	Exhibit 2 attached to the Complaint on file herein.
37.	The current Guidelines appear to attempt to resolve this issue, through a more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the current Guidelines allow for amendments to the Guidelines on the recommendations of the Architectural Review Committee "as it sees fit", thereby allowing an amendment, however temporary, to be made on the recommendation of the Committee to the Board and without any unit owner involvement.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, (EPCC ELK0317-325), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
38.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit owner to request a variance of the "recommendation" that all construction not exceed 3500 square feet of floor area, but gives no indication why or under what circumstances a variance would be approved.	Exhibit 2 attached to the Complaint on file herein.
39.	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.	<i>See</i> , Complaint filed herein; <i>see, also</i> , the "Alternative Dispute Resolution Claim Form" filed with the Nevada Real Estate Division on March 28, 2019 referred to therein and attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.

40.	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.	Admitted in Defendant's Answer to Paragraph 14 of the Complaint, on file herein.
41.	On August 3, 2019, the EPCC Executive Board held its monthly meeting. Included in the agenda was an item regarding "Revision and Consolidation of EPCC Rules and Regulations", and to "[d]iscuss the plan to review the ADCSG [the Guidelines] by ARC [the Committee]."	"Declaration of Jerome Moretto filed in support of Motion for Preliminary Injunction", filed herein on 9/2/2019, and Exhibit 7 thereto.
42.	On August 13, 2019, Moretto received the proposed new EPCC "Rules, Regulations and Guidelines" intended to consolidate the individuals rules, including the Guidelines.	<i>Id.</i> , and Exhibit 8 attached thereto.
43.	The proposed new guidelines contained substantially the same rules as those imposed by the March 31, 2018 Guidelines, with the exception that the three-foot sidewalk easement imposed on unit owners became a 'recommendation' rather than a requirement. The Guidelines have been amended at least twice, with the latest iteration contained within a set of "Rules and Regulations" issued in December 2019.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, (EPCC ELK0317-325) identifying the dates of adoption and amendments, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
44.	Mr. Moretto made a demand for EPCC records on May 12, 2018. Although some requested documents were provided prior to the 21 day statutory deadline, a number were not presented until December 7, 2018, and later.	Letter dated 5/12/18 (Bates Nos. JM107-108) attached as Exhibit to Declaration of Karen L. Winters, filed herewith; <i>see, also</i> , Recorded documents first provided as Exhibits attached to EPCC's "Reply in Support of Countermotion to Cure Illegibility", filed herein on or about November 15, 2019
45.	Further requested documents were not provided until after the instant litigation began and at the hearing on the preliminary injunction in this matter on March 9, 2020.	<i>Id.</i>
46.	Others were not provided at all to date and were the subject of the Order Compelling Further Responses to discovery.	<i>See</i> , "Motion to Compel Defendant to Further Respond to Discovery" filed herein on September 1, 2020 and the "Order Granting Motion" for further discovery, filed herein on October 2, 2020.

47.	In the Opposition to that Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were provided in the further documents supplied.	<i>See, "Defendant's Opposition to Plaintiff's Motion to Compel" filed herein on or about September 16, 2020; Declaration of Karen L. Winters, filed herewith.</i>
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III. STATEMENT OF RELEVANT FACTS

Defendant ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION, INC. ("EPCC") is a Nevada non-profit corporation formed on March 23, 1925 as a "social club" for Reno and Tahoe Elks Club members, with its principal place of business in Douglas County, Nevada. Undisputed Fact No. 1. EPCC's current corporate Bylaws ("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 as of the date of the Complaint on file herein. Undisputed Fact No. 2. The Articles of Incorporation and Bylaws currently govern EPCC. There is no Declaration of Covenants, Conditions, or Restrictions for EPCC. The Bylaws of EPCC only allow the Board to create an audit committee and an election committee and to delegate duties to the Election Committee for annual elections, and the Finance Committee for an annual audit. Undisputed Facts No. 4. 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. It has been given no authority under the Bylaws to impose property restrictions on individual units.

When EPCC first chose to allow for fee title transfer of parcels within the EPCC to individual members, through amendments to its Bylaws in 1929, each deed of conveyance contained a provision stating that: "It is expressly understood that the Grantee hereof and the property and premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators, successors, or assigns." Undisputed Fact No. 10. For the last 95 years, from the inception of EPCC in 1925 to the present, the only "rules and regulations" affecting individual units is set forth in the Bylaws addressed only that the Executive Board must approve any construction of improvement on

1 the individual parcels. Undisputed Fact No. 11. The remainder of the “rules and regulations”
2 addressed the community governance and use of the beach, marina and common areas, capital
3 improvements on the commonly owned portions of EPCC, governance of the Executive Board and
4 EPCC, and the role of EPCC in approving transfers of the members’ parcels. Undisputed Fact No.
5 12.

6 In the current Bylaws, Article III, Section 2 states “The Executive Board shall have the power
7 to conduct, manage and control the affairs and business of the Corporation, and to make rules and
8 regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation, and
9 the Bylaws of the Corporation.” Undisputed Fact No. 6 (Emphasis added.) The Board cannot
10 delegate to a Committee the authority to act in a manner the Board itself cannot.

11 EPCC operates common areas and facilities for the benefit of its members, who are the fee
12 title owners of individual units within its development. Undisputed Fact No. 8. The development
13 currently consists of approximately 99 parcels (“units”). Undisputed Fact No. 9. Jerome Moretto,
14 Trustee of the Jerome F. Moretto 2006 Trust (“Moretto”) is the fee title owner of that certain
15 residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which
16 is located within, and a part of the EPCC development. Undisputed Fact No. 13. Moretto, either as
17 trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990. *Id.*
18 Nevada adopted the Common Interest Development Act a year later, in 1991. Moretto’s fee title
19 interest in this property contains no view restrictions, view easements, building setback
20 requirements, minimum garage space restrictions, building size or height restrictions, landscaping
21 restrictions, easements for public sidewalks, or any other real property restriction set forth in the
22 initial “Architectural and Design Control Standards and Guidelines” (“Guidelines”) enacted on
23 March 31, 2018. *Id.* Parts of the Moretto residence are more than 80 years old and are not
24 constructed to today’s building codes and requirements. Undisputed Fact No. 16.

25 On March 31, 2018, without any authority by any recorded Declaration of Covenants,
26 Conditions or Restrictons, or authority in the Bylaws, the Executive Board of EPCC enacted the
27 Guidelines purportedly regulating design, architecture and construction of improvements on the
28 individual units within the boundaries of EPCC. Undisputed Fact No. 17. The initial Guidelines

1 created on March 31, 2018, in Paragraph VI, include, as part of the Committee's duties, that it shall
2 "apply and enforce those [Guidelines] which have been approved and adopted by the Board and as
3 the Committee sees fit". (Emphasis added.) Undisputed Fact No. 18. Although the Board has
4 attempted to soften this clear violation of the Bylaws and NRS 116.3106 in later versions of the
5 Guidelines, in that the Committee is identified as an "agent of the EPCC, as directed by the Board",
6 its duties continue to include applying and enforcing the Guidelines. Undisputed Fact No. 19. No
7 authority to do this was on record when Mr. Moretto purchased his property in 1990.

8 The Guidelines have been amended at least twice since they were originally forced upon Mr.
9 Moretto on March 31, 2018, in June and September 2018, and merged into a consolidated set of
10 "Rules, Regulations and Guidelines" for EPCC on September 14, 2019, which were later reiterated
11 along with the rules governing the common areas, in December 2019. Undisputed Fact No. 22. On
12 August 3, 2019, the EPCC Executive Board held its monthly meeting. Included in the agenda was
13 an item regarding "Revision and Consolidation of EPCC Rules and Regulations", and to "[d]iscuss
14 the plan to review the ADCSG [the Guidelines] by ARC [the Committee]. Undisputed Fact No. 41.
15 On August 13, 2019, Moretto received the proposed new EPCC "Rules, Regulations and Guidelines"
16 intended to consolidate the individuals rules, including the Guidelines. *Id.* The proposed new
17 Guidelines contained substantially the same rules as those imposed by the March 31, 2018
18 Guidelines, with the exception that the three-foot sidewalk easement imposed on unit owners became
19 a 'recommendation' rather than a requirement. The Guidelines have been amended at least twice,
20 with the latest iteration contained within a set of "Rules and Regulations" issued in December 2019.
21 Undisputed Fact No. 22. Though many changes were made, most of the illegal Guidelines to which
22 Mr. Moretto objected, remain.

23 The initial March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto's
24 individual unit by imposing setback requirements on improvements that effectively take Moretto's
25 existing property right, including the right to rebuild in the event of fire or natural catastrophe,
26 without Moretto's consent; and impose easements, including view easements which restrict
27 buildings and landscaping on the Moretto property, beyond those originally in place at the time
28 Moretto purchased the property and beyond the governmental restrictions placed on all land by the

1 Tahoe Regional Planning Agency and Douglas County. Undisputed Fact No. 20. The current version
2 of the Guidelines attempts to cure this fatal defect, by asserting, in Subparagraph 14(b) that: “Exempt
3 activities [from the Architectural Review Committee Process] are buildings damaged or destroyed
4 by fire or other calamity that are rebuilt in substantial compliance with the design of the original
5 structure”. Undisputed Fact No. 21. This would still prevent Mr. Moretto from employing his
6 existing property rights to tear down his home and rebuild it on the same footprint, with the same
7 height, in a different style and floor plan, or to modernize his home.

8 Moretto objected to the initial Guidelines and requested to present those objections to the
9 Executive Board through a letter dated from May 12, 2018. Undisputed Fact No. 23. The Executive
10 Board finally included Moretto’s objections and issues on the December 15, 2018 agenda of the
11 Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled
12 (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the
13 Executive Board and a certified court reporter on said date. Undisputed Fact No. 24.

14 Moretto’s original objections included that: (1) (1) the Executive Board had no authority
15 over the individual units under the Bylaws to create a “Design Review Committee” (hereinafter, the
16 “Committee”) delegating the Executive Board’s authority to a committee to develop rules and
17 regulations governing the design, architecture and construction of improvements within EPCC
18 boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and
19 capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not
20 sufficiently explicit to inform unit property owners for compliance in violation of NRS
21 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set
22 forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a
23 variance from the Guidelines at the discretion of the Committee with no objective standard in
24 violation of NRS 116.31065(5); (6) the Guidelines purport to create real property restrictions which
25 are restrictive covenants taken *ultra vires* on individual units; (7) the Guidelines impose setback
26 requirements, without Moretto’s consent, on improvements that would effectively take Moretto’s
27 property right to rebuild for any reason; and (8) the Guidelines impose easements, including view
28 easements and a pedestrian walkway easement which are restrictive covenants taken *ultra vires* on

1 individual units. *Undisputed Fact No. 25.*

2 An example of the issues raised by Mr. Moretto is found in Subparagraph XII(2) of the initial
3 Guidelines, in which the Committee is given 45 days to review any 'Application' for modification,
4 new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or
5 complexity of the proposed work to be done. Undisputed Fact No. 26. The 45-day review period has
6 no connection to the size of the project, and further fails to take into consideration the time of year
7 at which any Application is made which would effect some projects under TRPA rules and
8 regulations. Undisputed Fact No. 27.

9 Another example is found in the following subparagraph. At XII(3), the Guidelines state that
10 the "Committee may recommend disapproval ...[of] any Application ... for purely aesthetic reasons."
11 Undisputed Fact No. 28. "Aesthetics", by definition, are the subjective conclusions of individuals
12 as to what constitutes "beauty" and "good taste". As a result, any Committee or Board member can
13 decide to disapprove an Application based solely on their individual sense of beauty or good taste,
14 without even considering the aesthetic value to the unit owner. These last two examples remain in
15 the current version Guidelines. Undisputed Fact No. 29. Further, not only does the Major
16 Application process increase the cost to be paid to the Committee, but it increases the cost of the
17 project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted
18 to the Committee for any "Major Project". Undisputed Fact No. 30. As a result, the Committee could
19 decide that something as simple as replacing a garage door is a "Major Project", greatly increasing
20 the cost of each planned improvement of a residence. The current version of the Guidelines reduces
21 this application review fee from \$1,500 to \$200, but imposes the same extensive documentation as
22 the initial Guidelines. Undisputed Fact No. 31.

23 In addition, nowhere in the initial Guidelines is there any stated amounts for any fines
24 (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in
25 the Guidelines), which could result in fines exceeding those allowed under NRS 116.31031(1)(c).
26 Undisputed Fact No. 33. This is carried over into the current Guidelines as well. Undisputed Fact
27 No. 34.

28 The initial Guidelines allow for a variance from the Guidelines at the discretion of the

1 Committee with no objective standards. At Subparagraph XI(4), it allows a unit owner to request a
2 variance of the “recommendation” that all construction not exceed 3500 square feet of floor area,
3 but gives no indication why or under what circumstances a variance would be approved. Undisputed
4 Fact No. 35. Subparagraph XII of the initial Guidelines states that all Applications that include a
5 variance would first be reviewed by the Committee, then forwarded to the Executive Board with the
6 Committee’s recommendation to approve or disapprove, however there is no guidance in that short
7 paragraph to either the Committee or Executive Board in reaching their decisions. As a result, the
8 requests for variances can be treated differently from unit owner to unit owner, with no consistency.
9 Undisputed Fact No. 36. The current Guidelines appear to attempt to resolve this issue, through a
10 more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the current
11 Guidelines allow for amendments to the Guidelines on the recommendations of the Architectural
12 Review Committee “as it sees fit”, thereby allowing an amendment, however temporary, to be made
13 on the recommendation of the Committee to the Board and without any unit owner involvement.
14 Undisputed Fact No. 37. This effectively allows the Board to alter the Guidelines to allow a variance
15 on an individual basis, only to reverse the change after the variance has been accomplished.

16 In addition, although the Architectural Review Committee purportedly received its authority
17 from the Board, it disregarded the due process requirement that its meetings be noticed to the unit
18 owners, just as the Board meetings must be. The Architectural Review Committee meetings were
19 never properly noticed to any unit members. Undisputed Fact No. 7.

20 Moretto’s objections were not resolved at the Executive Board meeting, therefore
21 Moretto filed an “Alternative Dispute Resolution Claim Form with the Nevada Department of
22 Business and Industry Real Estate Division, Office of the Ombudsman for Common-Interest
23 Communities and Condominium Hotels” on March 28, 2019, requesting mediation. Undisputed Fact
24 No. 31. Mediation between Moretto and EPCC occurred on May 31, 2019, which did not result in
25 a resolution. The claim was closed by the Nevada Real Estate Division by letter dated June 20, 2019.
26 Undisputed Fact No. 40.

27 The failure of EPCC to comply with the law is no clearer than in its failure to comply with
28 Plaintiff’s demand for EPCC records on May 12, 2018. Although some requested documents were

provided prior to the 21 day statutory deadline, a number were not presented until December 7, 2018. Undisputed Fact No. 44. Further requested documents were not provided until after the instant litigation began and at the hearing on the preliminary injunction in this matter on March 9, 2020. Undisputed Fact No. 45. Others were not provided at all to date and were the subject of the Order Compelling Further Responses to discovery. Undisputed Fact No. 46. In the Opposition to that Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were provided in the further documents supplied. Undisputed Fact No. 47. It is apparent EPCC is secreting records from unit owners, including Mr. Moretto, in violation of their due process rights.

IV. ARGUMENT

A. This Motion is Timely and Appropriate or -

I. Standards for Summary Judgment and Summary Adjudication of Issues

NRCP 56 provides, in relevant part, that:

Motions for summary judgment and responses thereto shall include a concise statement setting forth each fact material to the disposition of the motion which the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence upon which the party relies. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. An order granting summary judgment shall set forth the undisputed material facts and legal determinations on which the court granted summary judgment.

Summary judgment is proper when the moving party is entitled to judgment as a matter of law, and no genuine issue remains for trial. A party opposing such a motion for summary judgment must set forth specific facts showing that there is a genuine issue for trial.

Van Cleave v. Kietz-Mill Mini Mart, 97 Nev. 414, 415; 633 P.2d 1220, 1221 (1981).

A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. The pleadings and proof offered below are construed in the light most favorable to the non-moving party. However, the non-moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. The non-moving party's documentation must be admissible evidence, and he or she "is not entitled to build a case on the gossamer threads of

1 whimsy, speculation and conjecture.”

2 Posadas v. City of Reno, 109 Nev. 448, 452; 851 P.2d 438, 441-42 (1993).

3 In accordance with the Scheduling Order issued in this action on July 13, 2020, this Motion
4 is timely filed prior to November 2, 2020.

5 **B. The Undisputed Facts Support Summary Judgment as to the Third Cause of**
6 **Action Where Plaintiff’s Property Rights Were Violated By Adoption of the “Architectural**
7 **Design and Review Guidelines”**

8 One of the essential sticks in the bundle of property rights is the right to exclude others.
9 *Kaiser Aetna v. United States*, 444 U.S. 164, 179–180, 100 S.Ct. 383, 392–393, 62 L.Ed.2d 332
10 (1979). The power to exclude has traditionally been considered one of the most treasured strands in
11 an owner's bundle of property rights. *See, Kaiser Aetna*, 444 U.S., at 179–180, 100 S.Ct., at
12 392–393; *see also, Restatement of Property* § 7 (1936).

13 “Authorities to prove that a fee-simple estate is the highest tenure known to the law are quite
14 unnecessary, as the principle is elementary and needs no support.” *Lycoming Fire Ins. Co. of Muncy,*
15 *Pa. v. Haven*, 95 U.S. 242, 245, 24 L.Ed. 473 (1877). An owner in fee simple is presumed to be the
16 “entire, unconditional, and sole owner[] of [any] buildings as well as the land” *Id.* (Emphasis
17 added.) That presumption, of course, can be overcome by the laws of the state and the legal contracts
18 created under those laws. “Property rights are created by the State.” *Palazzolo v. Rhode Island*, 533
19 U.S. 606, 626, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001). As such “the existence of a property interest
20 is determined by reference to ‘existing rules or understandings that stem from ... source[s] such as
21 state law.’ ” *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164, 118 S.Ct. 1925, 141 L.Ed.2d 174
22 (1998) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972));
23 *accord United States v. Causby*, 328 U.S. 256, 266, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946).

24 The focus of the Complaint is not only on EPCC’s violation of Mr. Moretto’s property rights
25 and basic due process rights, but on how the Guidelines were initially created, including how they
26 were written, all of which violate the law governing Defendant EPCC. The Guidelines fail to comply
27 with property rights law, as well as statutory law governing common-interest communities and
28 corporations, and cannot be enforced under either legal theory.

1 Article III, Section 2 of the current Bylaws states that “The Executive Board shall have the
2 power to conduct, manage and control the affairs and business of the Corporation, and to make rules
3 and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation,
4 and the Bylaws of the Corporation.” Undisputed Fact No. 6. (Emphasis added.)

5 The State laws governing EPCC are found in our Constitution as well as in our statutes. The
6 very first article of the Nevada Constitution identifies our inalienable rights: “All men are by Nature
7 free and equal and have certain inalienable rights among which are those of enjoying and defending
8 life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and
9 happiness (Emphasis added.) Title 10 of our Nevada Revised Statutes is wholly devoted to further
10 detailing those rights, and Chapter 116 of Title 10 addresses the particular rights and obligations
11 created in a common-interest community such as the Elk Point Country Club Homeowners
12 Association.

13 When EPCC first chose to allow for fee title transfer of parcels within the EPCC to
14 individual members through amendments to its Bylaws in 1929, each deed of conveyance contained
15 a provision stating that: “It is expressly understood that the Grantee hereof and the property and
16 premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said
17 grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators,
18 successors, or assigns.” Undisputed Fact No. 10. This is the only legal constraint on Moretto’s fee
19 title ownership of his residential property within EPCC’s boundaries. EPCC’s authority is set forth
20 in its Articles of Incorporation, as well as the Bylaws, neither of which retain any rights to EPCC to
21 enact or enforce restrictive covenants on individual units, contained in the Guidelines. Nevada has
22 recognized “restrictive covenants” as a property right. *See, Meredith v. Washoe County School*
23 *District*, 84 Nev. 15, 17, 435 P.2d 750, 752 (1968). As such, they cannot be created on Moretto’s
24 property without his consent. The March 31, 2018 Guidelines attempt to impose restrictive
25 covenants on Moretto’s individual unit. by imposing setback requirements on improvements that
26 would effectively take Moretto’s property right to even rebuild in the event of fire or natural
27 catastrophe without Moretto’s consent; and impose easements, including view easements which
28 restrict buildings and landscaping on the Moretto property, beyond those originally in place at the

1 time Moretto purchased the property and beyond the governmental restrictions placed on all land by
2 the Tahoe Regional Planning Agency and Douglas County. The current version of the Guidelines
3 attempts to cure this fatal defect, by asserting, in Subparagraph 14(b) that: "Exempt activities [from
4 the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other
5 calamity that are rebuilt in substantial compliance with the design of the original structure".
6 Undisputed Fact No. 21. Parts of the Moretto residence are more than 80 years old and not
7 constructed to today's building codes and requirements. Undisputed Fact No. 16. This eliminates Mr.
8 Moretto's right to remodel his home and bring it to current building codes in the event of fire or
9 natural catastrophe. Further, this would still prevent Mr. Moretto from tearing down the house and
10 building a more modern, very different, house on the same footprint. As a result, those Guidelines
11 are not within EPCC's authority and are *ultra vires*; i.e. *void ab initio*.

12 A competent grantor by appropriate covenants could, of course, convey the right
13 claimed here, and equity would enforce it. But when a right 'consists in restraining
14 the owner from doing that with, and upon, his property which, but for the grant or
15 covenant, he might lawfully have done,' it is an easement, sometimes called a
16 negative easement, or an amenity. *Trustees of Columbia College v. Lynch*, 70 N.Y.
17 440, 447, 26 Am.Rep. 615 (1877). 'An equitable restriction,' which prevents
18 development of property by building on it, has been said to be 'an easement, or
19 servitude in the nature of an easement,' a 'right in the nature of an easement,' and an
20 'interest in a contractual stipulation which is made for their common benefit.' Such
21 'equitable restrictions' are real estate, part and parcel of the land to which they are
22 attached and pass by conveyance. *River-bank Improvement Co. v. Chadwick*, 228
23 Mass. 242, 246, 117 N.E. 244, 245 (1917). A contractual restriction which limits the
24 use one may make of his own lands in favor of another and his lands is 'sometimes
25 called a negative easement, which is the right in the owner of the dominant tenement
26 to restrict the owner of the servient tenement in the exercise of general and natural
27 rights of property.' It is an interest in lands which can pass only by deed and is in
28 every legal sense an incumbrance. *Uihlein v. Matthews*, 172 N.Y. 154, 158, 64 N.E.
792, 793 (1902). (Emphasis added.)

Chapman v. Sheridan-Wyoming Coal Co., 338 U.S. 621, 626-27 (1950).

23 Under property rights laws, common-interest development boards are in charge of corporate
24 business and the common areas, but not the individual units, unless something further is contained
25 in a recorded declaration of covenants, conditions and restrictions, or the initial Articles and Bylaws
26 or agreed to by all members of an association, giving the board that additional power. This Board
27 is attempting to use its corporate rule-making powers to impose property restrictions on the
28 individual units, such as Mr. Moretto's individual unit. This is not a typical common-interest

1 community where there are recorded Covenants, Conditions, and Restrictions in place, prior to
2 purchase of the individual units, that give the Board the power to impose property restrictions on the
3 individual units. The only proper method to do this is to obtain a vote of the members to amend their
4 Bylaws to give the Board authority to act as it apparently intends; however, to impose property
5 restrictions on individual unit owners requires consent of that unit owner. As Mr. Moretto does not
6 agree to these property restrictions that did not exist when he purchased his individual unit, they
7 cannot be retroactively imposed upon him now under the corporation's rule-making authority. A
8 good example of this is the three foot easement that was given in the initial guidelines from the front
9 property line of each property. This is simply theft of and abetting trespass on Mr. Moretto's
10 property, without any reason or authority.

11 Restrictive covenants on real property can only be created through a deed restriction imposed
12 by the prior property owner at the time of transfer, or by contract between the current property owner,
13 as the owner of the servient tenement, and the entity desiring the restrictive covenants, the dominant
14 tenement holder, upon payment of valid consideration. Neither has occurred on the Moretto property.

15 The clearest explanation of why EPCC's efforts to impose restrictions through corporate
16 rules, rather than its governing documents, is a violation of Mr. Moretto's property rights is best
17 summed up in the Restatement (Third) of Property:

18 Unless a statute, or the declaration, provides a more expansive power, an
19 association's authority to impose restrictions on individually owned property, under
20 a generally worded rulemaking power, is limited to prevention of nuisance-like
21 activities (in addition to prevention of damage to common property, a power enjoyed
22 by the association even in the absence of statute, or authorizing provision in the
23 governing documents).

24 The rationale for not giving an expansive interpretation to an association's power to
25 make rules restricting use of individually owned property is based in the traditional
26 expectations of property owners that they are free to use their property for uses that
27 are not prohibited and do not unreasonably interfere with the neighbors' use and
28 enjoyment of their property. People purchasing property in a common-interest
community, which is usually subject to specific use restrictions set forth in the
declaration, are not likely to expect that the association would be able, under a
generally worded rulemaking power, to impose additional use restrictions on their
property. On the other hand, they are likely to expect that the association will be able
to protect them from neighborhood nuisances by adoption of preventative rules.
Securing private protection from nuisance-like activity is one of the frequently cited
attractions of common-interest communities. By exercising its rulemaking power, the
association can provide a more efficient means to prevent or abate nuisances than
resort to municipal authorities or to the judicial system.

1 *Restatement (Third) of Property (Servitudes)* § 6.7 (2000), comment (b). (Emphasis added.)

2 It is undisputed EPCC has no recorded declaration of property restrictions. As analyzed
3 above, EPCC has gone beyond the general corporate rule-making powers given in the Bylaws to
4 impose additional property restrictions on Mr. Moretto and the other property owners within the
5 boundaries of EPCC. As a result, the Guidelines imposing restrictive covenants must fall and
6 summary judgment on the Third Cause of Action regarding violation of Plaintiff's Property Rights
7 must be granted, imposing a permanent injunction against EPCC to prevent any effort to impose
8 restrictions on Mr. Moretto's individual unit property that is not specifically set forth in the Articles
9 of Incorporation and Bylaws.

10 In addition to an award of a permanent injunction, Mr. Moretto is entitled to attorney fees
11 pursuant to NRS 116.4117.

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

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

17 ...
(b) By a unit's owner against:
(1) The association;

18 ...
19 6. The court may award reasonable attorney's fees to the prevailing party.
20 7. The civil remedy provided by this section is in addition to, and not exclusive of,
any other available remedy or penalty.

21 NRS 116.4117.

22 The primary relief sought in this action is a permanent injunction to prevent the Board and
23 the EPCC Homeowners Association from imposing illegal property restrictions on Plaintiff's
24 property. This "appropriate relief" therefore allows for attorney fees in this matter. Should the
25 injunction not be granted, then the damages for loss in value to Plaintiff's property remains as an
26 issue for trial.

27 ////

28 ////

1 **C. The Undisputed Facts Support Summary Judgment for Breach of the Bylaws**
2 **and the Laws Governing the Bylaws, set forth in the Second Cause of Action**

3 Creation of the Architectural Review Committee (“Committee”) in the Guidelines violates
4 the Bylaws and the laws governing those Bylaws. Under corporate law, at NRS 78.125(1), the Board
5 of Directors’ powers to enact rules is limited to corporate business, without any powers to enact
6 property restrictions. “Unless it is otherwise provided in the Articles of Incorporation, the board of
7 directors may designate one or more committees which, to the extent provided in the resolution or
8 resolutions or in the bylaws of the corporation, have and may exercise the powers of the board of
9 directors in the management of the business and affairs of the corporation.” (Emphasis added.) There
10 is no provision allowing the corporation to create rules to manage property it does not own. As
11 analyzed above, the deed restriction contained on each deed within the Elk Point Country Club
12 Homeowner’s Association, binds the property owner only to the properly amended Bylaws, and the
13 rules and regulations governing the corporation and common areas. The limits of a corporation under
14 Chapter 78 are further restricted for community interest development corporations under NRS
15 116.3106(1)(d), which dictates that the board cannot delegate its duties without the bylaws
16 specifically giving the board power to do so. “The bylaws of the association must: ... (d) Specify the
17 powers the executive board or the officers of the association may delegate to other persons or to a
18 community manager”. The Bylaws of EPCC only allow the Board to create an audit committee and
19 an election committee. Undisputed Fact. No. 4. As is clear under the property laws addressed above,
20 even if the Board could create any other type of committee, its purpose is limited to corporate
21 business, not to impose property restrictions on the unit members. The Board cannot delegate to a
22 committee powers it does not have.

23 The Guidelines have been amended at least twice since they were originally forced upon Mr.
24 Moretto on March 31, 2018, including in June and September 2018, and merged into a consolidated
25 set of “Rules, Regulations and Guidelines” for EPCC on September 14, 2019, which were later
26 reiterated along with the rules governing the common areas, in December 2019. Undisputed Fact No.
27 22. The initial Guidelines adopted on March 31, 2018 state that the duties of the Architectural
28 Review Committee created in the Guidelines (the “Committee”) include applying and enforcing the

1 Guidelines (Section 6 of the Guidelines, attached to the Complaint on file herein). Although the
2 Board has attempted to soften this clear violation of the Bylaws and NRS 116.3106 in later versions
3 of the Guidelines, in that the Committee is identified as an “agent of the EPCC, as directed by the
4 Board”, its duties continue to include applying and enforcing the Guidelines. Undisputed Fact No.
5 19. Identifying the Committee as an “agent of the Board” still does not delegate to the Committee
6 any authority to apply and enforce the Guidelines, without an amendment to the Bylaws allowing
7 the Board to do so, as the Board has no legal authority to impose property restrictions on individual
8 units.

9 The foregoing violations of the Bylaws and its governing laws require a permanent injunction
10 be granted, enjoining the Board (and any committee) from imposing guidelines or “rules” that
11 attempt to govern the individual units, beyond managing the affairs of the corporation and its
12 common areas.

13 As stated herein above, in addition to an award of a permanent injunction, Mr. Moretto is
14 entitled to attorney fees pursuant to NRS 116.4117.

15 The primary relief sought in this action is a permanent injunction to prevent the Board and
16 the EPCC Homeowners Association and any committee from imposing rules and restrictions beyond
17 those stated in the Bylaws. This appropriate relief therefore allows for attorney fees in this matter.
18 Should the injunction not be granted, then the damages for loss in value to Plaintiff’s property
19 remains as an issue for trial. Without an injunction, the Guidelines are a taking of Plaintiff’s property
20 rights, for which Plaintiff is entitled to compensation.

21 **D. The Undisputed Facts Support Summary Judgment as to the Second Cause of**
22 **Action Where Guidelines Imposed Failed to Comply with Statutory Requirements and the**
23 **Bylaws.**

24 EPCC was originally incorporated in 1925 as a “social club” for the Reno and Tahoe Elks
25 Club members. Undisputed Fact No. 3. For the last 95 years, from the inception of EPCC in 1925
26 to the present, the only “rules and regulations” addressed general construction of improvement
27 requirements on the individual parcels. Undisputed Fact No. 11. The remainder of the “rules and
28 regulations” addressed the community governance and use of the beach, marina and common areas,

1 capital improvements on the commonly owned portions of EPCC, governance of the Executive
2 Board and EPCC, and the role of EPCC in approving transfers of the members' parcels. Undisputed
3 Fact No. 12.

4 EPCC is subject to and governed by NRS 116.001 through 116.795, excepting therefrom
5 NRS 116.2101 through 116.2122. NRS 116.3106(1)(d) requires that the Bylaws "[s]pecify the
6 powers the executive board or the officers of the association may delegate to other persons or to a
7 community manager." The EPCC Bylaws only allow the Executive Board to delegate its duties to
8 an Election Committee for annual elections, and a Finance Committee for an annual audit.
9 Undisputed Facts Nos. 4 and 5. The EPCC Bylaws do not allow the Executive Board to delegate
10 any of its other duties under the Bylaws, either through an explicit delegation or through an agent.
11 Nevertheless, the "Guidelines" created on March 31, 2018 delegate to the Committee the duties of
12 developing and enforcing rules, regulations, standards, protocols and procedures for the design,
13 architecture, and construction of structures and landscaping within the EPCC on the individual units
14 such as Mr. Moretto's, in violation of the Bylaws. For example, in Paragraph VI, it includes, as part
15 of the Committee's duties, that it shall "apply and enforce those [Guidelines] which have been
16 approved and adopted by the Board and as the Committee sees fit". (Emphasis added.) Undisputed
17 Fact No. 18.

18 This Paragraph VI of the March 31, 2018 Guidelines is carried over to the current version,
19 in Paragraph 8, which states that "Committee duties shall be ...(2) to apply and enforce those
20 ADCSG which have been approved and adopted by the Board". Undisputed Fact No. 19. Once
21 again, therefore the current Guidelines violate NRS 116.3106(1)(d) in that the Bylaws do not allow
22 such a delegation of the Board's duties.

23 Even if the Bylaws were amended to allow delegation of its duties to a committee, the
24 committee would still be required to follow the laws governing the Board. NRS 116.31083(2)
25 requires that: "[T]he secretary or other officer specified in the bylaws of the association shall, not
26 less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to
27 be given to the units' owners." NRS 116.31085(1) further requires that: "[A] unit's owner may
28 attend any meeting of the units' owners or of the executive board and speak at any such meeting. The

1 executive board may establish reasonable limitations on the time a unit's owner may speak at such
2 a meeting." If the Board were allowed to delegate any duties to the Committee, then that delegation
3 of powers is limited to the powers of the Board, including the statutory requirements that unit owners
4 be given basic due process rights as to committee meetings, including to be noticed of all meetings
5 of the Committee and an opportunity to be heard. The Board cannot delegate to a Committee the
6 authority to act in a manner the Board itself cannot. The Architectural Review Committee meetings
7 were not properly noticed to any unit members, and the Morettos, as well as other unit owners, were
8 not given the opportunity to attend. Undisputed Fact No. 7.

9 In addition to Chapter 116, EPCC, as a nonprofit cooperative association created in 1925,
10 is governed by Chapters 78 and 81. Pursuant to NRS 81.080(3) and the Bylaws, the Bylaws can only
11 be amended by a two-thirds affirmative vote of all its members, or 66 members. If two-thirds of the
12 members choose to amend the Bylaws of EPCC, to allow for delegation of the Board's authority over
13 enforcement of the rules and regulations in place, then and only then could an "Architectural Review
14 Committee" be delegated any duties at all. To date, no effort has been made to amend the Bylaws
15 to allow for this delegation of the Board's duties. Even then, though, the rules and regulations
16 created by anything less than a 100% affirmative vote by the members would not be valid to impose
17 property restrictions on the Moretto property that exceed the initial statement and intent of the
18 Articles of Incorporation and Bylaws, as argued herein above.

19 The Guidelines violate several other provisions of Chapter 116 of the Nevada Revised
20 Statutes, as outlined herein above. The requirements of Chapter 116 include NRS 116.31065, which
21 specifically requires the following:

22 The rules adopted by an association:

- 23 1. Must be reasonably related to the purpose for which they are adopted.
- 24 2. Must be sufficiently explicit in their prohibition, direction or limitation to inform
25 a person of any action or omission required for compliance.
- 26 3. Must not be adopted to evade any obligation of the association.
- 27 4. Must be consistent with the governing documents of the association and must not
28 arbitrarily restrict conduct or require the construction of any capital improvement by
a unit's owner that is not required by the governing documents of the association.
5. Must be uniformly enforced under the same or similar circumstances against all
units' owners. Any rule that is not so uniformly enforced may not be enforced against
any unit's owner.
6. May be enforced by the association through the imposition of a fine only if the
association complies with the requirements set forth in NRS 116.31031.

1 NRS 116.31065. (Emphasis added.)

2 First, in violation of NRS 116.31065(1), the Guidelines create rules that result in arbitrary
3 and capricious enforcement. One example of this in the initial Guidelines, is where the Guidelines
4 allow the Committee to “enforce ... [Guidelines] ... as the Committee sees fit”. Undisputed Fact No.
5 18. Another example in the initial Guidelines is found in Subparagraph XII(2), in which the
6 Committee is given 45 days to review any ‘Application’ for modification, new construction,
7 painting, replacing light fixtures, etc. on any unit, without regard to the size or complexity of the
8 proposed work to be done. Undisputed Fact No. 26. The 45-day review period has no connection
9 to the size of the project, and further fails to take into consideration the time of year at which any
10 Application is made which would effect some projects under TRPA rules and regulations.
11 Undisputed Fact No. 27. A third example is found in the following subparagraph. At XII(3), the
12 Guidelines state that the “Committee may recommend disapproval ...[of] any Application ... for
13 purely aesthetic reasons.” Undisputed Fact No. 28. “Aesthetics” by definition, are the subjective
14 conclusions of individuals as to what constitutes “beauty” and “good taste”. As a result, any
15 Committee or Board member can decide to disapprove an Application based solely on their
16 individual sense of beauty or good taste, without even considering the aesthetic value to the unit
17 owner. These last two examples remain in the current version of the Guidelines. Undisputed Fact
18 No. 29. Second, in violation of NRS 116.31065(2), the Guidelines are vague and not sufficiently
19 explicit to inform unit property owners for compliance. An example of this is found in the section
20 regarding the Committee review process of Applications. In Subparagraph XII(6) of the initial
21 Guidelines, the Guidelines impose a \$1,500 “application review fee” of any “Application of a Major
22 Project”, however nowhere in the Guidelines is “Major” defined, leaving the definition solely to the
23 Major Project Application itself, which can be changed without unit member input. Not only does
24 it increase the cost to be paid to the Committee, but it increases the cost of the project itself, since
25 Paragraph XIII requires extensive blueprints and documentation to be submitted to the Committee
26 for any “Major Project”. Undisputed Fact No. 30. As a result, the Committee could decide that
27 something as simple as replacing a garage door is a “Major Project”, greatly increasing the time and
28 cost of each planned improvement of a residence. The current version of the Guidelines reduces this

1 application review fee from \$1,500 to \$200, but imposes the same extensive documentation as the
2 initial Guidelines. Undisputed Fact No. 31. Further, neither version of the Guidelines give objective
3 standards for consideration by the Committee, resulting in a potential for arbitrary and capricious
4 enforcement of the Guidelines as to any particular project.

5 Third, the Guidelines are not consistent with the governing documents and arbitrarily restrict
6 conduct and the construction of the residence by a unit's owner that is not required by the governing
7 documents of the association.

8 The latest iteration of the Guidelines also retains restrictive covenants that would impose
9 setback requirements and view easements restricting building size and height and landscaping on the
10 Moretto property. Undisputed Fact No. 32. If not enjoined in the instant litigation, nothing would
11 prevent EPCC from reimposing the restrictive covenants previously contained in the March 31, 2018
12 version, including "creating" a three-foot or larger easement across the Moretto property for public
13 pedestrian use, and imposing restrictions on any type of rebuilding of his residence, other than an
14 exact copy of his current residence, including the portion built in 1936.

15 Third, the Guidelines allow for imposition of fines in violation of the requirements set forth
16 in NRS 116.31031 which is a violation of NRS 116.31065(6). NRS 116.31065(6) states that: "The
17 rules adopted by an association: ...(6) May be enforced by the association through the imposition of
18 a fine only if the association complies with the requirements set forth in NRS 116.31031."

19 NRS 116.31031 only allows fines that:

20 1. [I]f a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any
21 provision of the governing documents of an association, the executive board may, if
the governing documents so provide:

22 ...
(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's
owner or the tenant for each violation, except that:

23 ...
24 If the violation does not pose an imminent threat of causing a substantial adverse
effect on the health, safety or welfare of the units' owners or residents of the
25 common-interest community, the amount of the fine must be commensurate with the
severity of the violation and must be determined by the executive board in
26 accordance with the governing documents, but the amount of the fine must not
exceed \$100 for each violation or a total amount of \$1,000, whichever is less.

27 NRS 116.31031.

28 Nowhere in the initial Guidelines is there any stated amounts for any fines (although there is an

1 allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which
2 could result in fines exceeding those allowed under this statute. Undisputed Fact No. 33. This is
3 carried over into the current Guidelines as well. Undisputed Fact No. 34. Further, and of potentially
4 more consequence, neither the initial Guidelines nor the current Guidelines provide for any cure of
5 any violation prior to imposition of a fine, in violation of NRS 116.31031(1)(c).

6 [T]he executive board may, if the governing documents so provide:

7 (c) Send a written notice to cure an alleged violation, without the imposition of a
8 fine, to the unit's owner and, if different, the person responsible for curing the alleged
9 violation. Any such written notice must:

10 (1) Include an explanation of the applicable provisions of the governing documents
11 that form the basis of the alleged violation;

12 (2) Specify in detail the alleged violation and the proposed action to cure the alleged
13 violation;

14 (3) Provide a clear and detailed photograph of the alleged violation, if the alleged
15 violation relates to the physical condition of the unit or the grounds of the unit or an
16 act or a failure to act of which it is possible to obtain a photograph; and

17 (4) Provide the unit's owner or the tenant a reasonable opportunity to cure the alleged
18 violation before the executive board may take additional actions, including, without
19 limitation, other remedies available pursuant to this section.

20 NRS 116.31031(1)(c) (emphasis added).

21 Finally, in violation of NRS 116.31065(5), the initial Guidelines allow for a variance from
22 the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4),
23 it allows a unit owner to request a variance of the "recommendation" that all construction not exceed
24 3500 square feet of floor area, but gives no indication why or under what circumstance a variance
25 would be approved. Undisputed Fact No. 35. Subparagraph XII states that all Applications that
26 include a variance would first be reviewed by the Committee, then forwarded to the Executive Board
27 with the Committee's recommendation to approve or disapprove, however, there is no guidance in
28 that short paragraph to either the Committee or Executive Board in reaching their decisions. As a
result, the requests for variances can be treated differently from unit owner to unit owner, with no
consistency. Undisputed Fact No. 36. The current Guidelines appear to attempt to resolve this issue,
through a more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the
current Guidelines allow for amendments to the Guidelines on the recommendations of the
Architectural Review Committee "as it sees fit", thereby allowing an amendment, however
temporary, to be made on the recommendation of the Committee to the Board and without any unit

owner involvement. Undisputed Fact No. 37.

Under any one of the foregoing arguments, EPCC's enactment of the Guidelines are in violation of the Bylaws and relevant statutes, therefore summary judgment on the First, Second and Third Causes of Action is appropriate. Taken together, though, it is clear EPCC created a committee and guidelines outside its authority and containing numerous violations of Nevada law, requiring a complete dismantling of these new rules, summary judgment and the entry of a permanent injunction.

Further, as stated herein above, in addition to an award of a permanent injunction, Mr. Moretto is entitled to attorney fees pursuant to NRS 116.4117.

The primary relief sought in this action is a permanent injunction to prevent the EPCC, through the and any committee from imposing rules and restrictions beyond those stated in the Bylaws. This appropriate relief, therefore, allows for attorney fees in this matter. Should the injunction not be granted, then the damages for loss in value to Plaintiff's property remain at issue for trial. Without an injunction, the Guidelines are a taking of Plaintiff's property rights, for which Plaintiff is entitled to compensation.

E. Plaintiff is entitled to Summary Judgment as to the Fourth Cause of Action for Violation of NRS 116.31175

Plaintiff has asserted a claim for statutory fines under NRS 116.31175 for Defendant's failure to timely produce requested corporate records to Plaintiff, as a member of the nonprofit benefit corporation. Moretto objected to the initial Guidelines and requested to present those objections to the Executive Board through letter dated from May 12, 2018. Undisputed Fact No. 23. In that same letter, Plaintiff demanded, in writing, that the Executive Board provide him with copies of all governing documents, documents pertaining to enactment of the Guidelines, and any records of the Design Review Committee. Undisputed Fact No. 44.

1. Except as otherwise provided in subsection 4, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at the business office of the association or a designated business location not to exceed 60 miles from the physical location of the common-interest community and during the regular working hours of the association ...

2. The executive board shall provide a copy of any of the records described in

1 paragraphs (a), (b) and (c) of subsection 1 to a unit's owner or the Ombudsman
2 within 21 days after receiving a written request therefor...

3 3. If the executive board fails to provide a copy of any of the records pursuant to
4 subsection 2 within 21 days, the executive board must pay a penalty of \$25 for each
5 day the executive board fails to provide the records.

6 NRS 116.31175.

7 EPCC's duty to allow full access to its records to its members are further clarified in NRS
8 116.3118(2):

9 2. All financial and other records of the association must be:

10 (a) Maintained and made available for review at the business office of the
11 association or some other suitable location within the county where the
12 common-interest community is situated or, if it is situated in more than one county,
13 within one of those counties; and

14 (b) Made reasonably available for any unit's owner and his or her authorized
15 agents to inspect, examine, photocopy and audit.

16 This failure of EPCC is no clearer than in its failure to comply with Plaintiff's demand for
17 the records on May 12, 2018. Although some requested documents were provided prior to the 21 day
18 statutory deadline, a number were not presented until December 7, 2018. Undisputed Fact No. 44.
19 Further requested documents were not provided until after the instant litigation began and at the
20 hearing on the preliminary injunction in this matter on March 9, 2020. Undisputed Fact No. 45.
21 Others were not provided at all to date and were the subject of the Order Compelling Further
22 Responses to discovery. Undisputed Fact No. 46. In the Opposition to that Motion, EPCC identified
23 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were
24 provided in the further documents supplied. Undisputed Fact No. 47. As of the date of the instant
25 motion, therefore, it has been 1,260 days (to 11/2/20) of failure to provide copies of the requested
26 records, therefore Plaintiff is requesting a penalty of \$31,500 be levied as damages for violation of
27 NRS 116.31175.

28 **F. Plaintiff is entitled to Summary Judgment as to the Fifth Cause of Action for
Declaratory Relief**

The final Cause of Action for Declaratory Relief requests the Court recognize Plaintiff's
assertions that the Guidelines were illegally and improperly imposed on him, as well as all other
property owners within the Association, as set forth in the first three causes of action. In accordance
with the foregoing discussions regarding those claims, Plaintiff respectfully requests this Court

1 acknowledge the dispute as stated in the final claim, and find the Guidelines and the Architectural
2 Review Committee overseeing and enforcing them were illegally enacted and void.

3 Any person interested under a deed, written contract or other writings constituting a
4 contract, or whose rights, status or other legal relations are affected by a statute,
5 municipal ordinance, contract or franchise, may have determined any question of
construction or validity arising under the instrument, statute, ordinance, contract or
franchise and obtain a declaration of rights, status or other legal relations thereunder.

6 NRS 30.040(1).

7 By the Complaint filed herein, Plaintiff has set forth allegations challenging the validity of
8 any real property guidelines imposed on him as a property owner within the EPCC Homeowner's
9 Association that extend the Board's authority over his individual unit beyond its limited authority
10 set forth in the Bylaws, without his approval. As outlined in the instant motion, by creating the
11 Guidelines and the Architectural Review Committee, the Board violated the Bylaws, and Nevada
12 laws governing real property, community-interest communities, and non-profit corporation law.
13 Plaintiff is now requesting this Court recognize those violations and find Plaintiff's right to quiet
14 enjoyment of his residence has been violated through those violations. Mr. Moretto requests the
15 Court grant him declaratory relief, as set forth in the Complaint.

16 **V. CONCLUSION**

17 When "an alleged deprivation of a constitutional right is involved, most courts hold that no
18 further showing of irreparable injury is necessary" to grant an injunction. 11A *Fed. Prac. & Proc.*
19 *Civ.* § 2948.1 (Wright & Miller) (3d ed., Oct. 2020) "As a constitutional violation may be difficult
20 or impossible to remedy through money damages, such a violation may, by itself, be sufficient to
21 constitute irreparable harm." *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997),
22 cited with approval in *City of Sparks v. Municipal Court*, 129 Nev. 348, 357 (2013). Further, a
23 violation of a constitutional requirement "must be permanently enjoined." *Schwartz v. Lopez*, 132
24 Nev. 732, 755 (2016). Finally, our courts have recognized that "real property and its attributes are
25 considered unique and loss of real property rights generally results in irreparable harm". *Dixon v.*
26 *Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987).

27 The Executive Board has enacted a set of corporate rules in violation of Moretto's property
28 rights and in violation of NRS Chapter 116. It put an illegally formed committee in charge of

1 applying and enforcing those illegally enacted rules. EPCC has violated Mr. Moretto's constitutional
2 right to acquire, possess and protect his property from intrusion by others, and to have peaceable
3 enjoyment of his property without illegal restrictions on its use. Further, the Committee itself
4 violated Mr. Moretto's due process rights. In accordance with the foregoing, Mr. Moretto is entitled
5 to a permanent injunction, enjoining EPCC from imposing any restrictions on his use of his
6 individual unit beyond the narrow restrictions set forth in the Bylaws of EPCC.

7 In the event this Court lets any part of the Board's actions stand, Mr. Moretto's property will
8 have a reduced monetary value, in an amount to be established at trial. As a result, summary
9 adjudication of the issue of liability is appropriate and requested here, in the alternative.

10 Finally, NRS 116.4117(6) entitles Plaintiff to attorney fees as the prevailing party following
11 the permanent injunction requested here. Although EPCC may have attempted to alter that
12 requirement, NRS 116.1104 provides that: "Except as expressly provided in this chapter, its
13 provisions may not be varied by agreement, and rights conferred by it may not be waived." Plaintiff
14 therefore requests attorney fees be awarded concurrently with the injunction.

15 DATED: November 2, 2020

RESPECTFULLY SUBMITTED:

16 LAW OFFICE OF KAREN L. WINTERS

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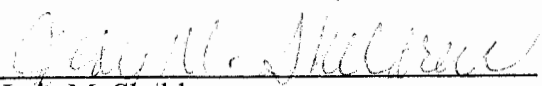
18 Karen L. Winters, Esq., SB# 3086
19 P.O. Box 1987
20 Minden, Nevada 89423
21 775-782-7933
22 Attorney for Plaintiff
23
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28

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(a), I certify that I am over the age of 18 years, an employee of the LAW
3 OFFICE OF KAREN L. WINTERS, and that on this date, I caused to be deposited for mailing at the
4 United States Post Office at Minden, Nevada, with postage thereupon fully prepaid, a true and
5 correct copy of the **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
6 **OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES** addressed as
7 follows:

8 Prescott Jones, Esq.
9 Joshua Ang, Esq.
10 Resnick & Louis, P.C.
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148

11 Dated: November 2, 2020

12 
13 Judy M. Sheldrew
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FILED

NO

CASE NO. 19-CV-0242

DEPT. NO. I

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Douglas County
District Court Clerk

20 NOV -2 A10:04

BOBBIE R. WILLIAMS

CLERK
BY D. SOLE DEPUT**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.

**DECLARATION OF KAREN L.
WINTERS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION OF ISSUES**

I, KAREN L. WINTERS, declare as follows:

1. I am the attorney of record for Plaintiff in the above-styled action, over the age of 18 and competent to testify to the matters stated herein, which I state on personal knowledge except those matters stated on information and belief, which I believe to be true.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Deposition of Nancy Gilbert, taken in this matter on July 21, 2020, p.33.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Deposition of Charles Jennings, taken in this matter on July 22, 2020, pp. 14, 50.

4. Attached hereto as Exhibit 3 is a true and correct copy of the 2005 Bylaws of Defendant, recorded 8/26/2005 in Book 0805, Page 12357, as Document No. 0653319, at page 14, originally produced to Defendant on April 10, 2020 as Bates Numbered Document JM0001-20.

5. Attached hereto as Exhibit 4 is a true and correct copy of the "EPCC Rules,

1 Regulations and Guidelines adopted 9/14/2019", produced by Defendant, identifying the dates of
2 each rule adopted at the end of each Section.

3 6. Attached hereto as Exhibit 5 is a true and correct copy of Douglas County
4 Assessor's record of original construction of Plaintiff Jerome Moretto's residence as occurring in
5 the year of 1936.

6 7. Attached hereto as Exhibit 6 is a true and correct copy of the "Alternative Dispute
7 Resolution Claim Form" filed with the Nevada Real Estate Division on March 28, 2019 on
8 behalf of Plaintiff Jerome Moretto.

9 8. Attached hereto as Exhibit 7 is a true and correct copy of the Letter from Plaintiff
10 to Defendant's Board dated 5/12/18 (Bates Nos. JM107-108).

11 9. In the Defendant's Opposition to Plaintiff's Motion to Compel Further discovery
12 responses filed herein on or about September 16, 2020, EPCC identified 5,422 e-mails
13 potentially discussing the Guidelines between Board members. Less than a dozen were provided
14 in the further documents supplied.

15 I declare under penalty of perjury that the foregoing is true and correct and executed on
16 this 2nd day of November, 2020.

17
18 
19 KAREN L. WINTERS

20 Submitted by:
21 Karen L. Winters, Esq.
22 Nevada Bar No. 3086
23 LAW OFFICE OF KAREN L. WINTERS
24 P.O. Box 1987
Minden, Nevada 89423
775-782-7933
Kwinters@nevada-law.us
Attorney for Plaintiff

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(a), I certify that I am over the age of 18 years, an employee of the
3 LAW OFFICE OF KAREN L. WINTERS, and that on this date, I caused to be deposited for
4 mailing at the United States Post Office at Minden, Nevada, with postage thereupon fully
5 prepaid, a true and correct copy of the **DECLARATION OF KAREN L. WINTERS IN**
6 **SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE,**
7 **SUMMARY ADJUDICATION OF ISSUES** addressed as follows:

8 Prescott Jones, Esq.
9 Joshua Ang, Esq.
10 Resnick & Louis, P.C.
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148

11 Dated: November 2, 2020

12 
Judy M. Sheldrew

EXHIBIT 1

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IN THE NINTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

--oOo--

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

Plaintiff,

Vs.

Case No. 19-CV-0242

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

Defendants.

_____/

DEPOSITION OF
NANCY GILBERT

Tuesday, July 21, 2020

REPORTED BY: DIANE K. LUSICH, Nevada CSR NO. 181
Calif. CSR NO. 5218
Job No. L20-118

A P P E A R A N C E S

On Behalf of the Plaintiffs:

LAW OFFICES OF KAREN L. WINTERS
1594 MONO Avenue
Minden, Nevada 89423
775.782.7933 - Phone
kwinters@nevada-law.us

BY: KAREN L. WINTERS, Attorney at Law

On Behalf of the Defendant:

RESNICK & LEWIS
8925 West Russell Road
Suite 220
Las Vegas, Nevada 89148
702.997.1029 - Phone
pjones@rlattorneys.com

BY: PRESCOTT JONES, Attorney at Law

Also Present: Charles Jennings

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I N D E X

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Examination by Mr. Jones	84

E X H I B I T S

PLAINTIFF EXHIBITS
MARKED FOR IDENTIFICATION

1	A copy of a Memorandum to Petar Kontich from Jim Cavilia dated November 21, 2017, Re: HOA Board Authority Regarding Rules (2 pages)	5
2	A copy of EPCC Architectural Committee Minutes dated February 13, 2017, conference call 7:00 - 8:30 p.m., Draft (1 page)	5
3	A copy of an email from Charles Jennings to Fred Hanker, Petar Kontich, Cathy Oyster, Ralf Nielsen and Nancy Gilbert sent Sunday, January 28, 2018, 3:34 p.m., Subject: Minutes Architectural Committee Meeting 1.26.18 (3 pages)	5
4	A copy of a cover letter dated December 1, 2017, to the members of Elk Point Country Club - HOA, Subject: Proposed Architectural Guidelines and Standards with information package and advisory ballot presenting guidelines for construction within EPCC (13 pages)	5
5	A copy of an EPCC Architectural Committee Analysis Advisory Ballot Response January 30, 2018 (1 page)	5
6	A copy of Elk Point Board of Directors Meeting Board Minutes, Saturday, March 31, 2018 at 12:00 p.m. (3 pages)	5

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E X H I B I T S

PAGE

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|----|--|---|
| 7 | A copy of Elk Point Country Club Homeowners Association General Rules and Regulations Adopted July 4, 1998, Last Revised April 24, 2017 (4 pages) | 5 |
| 8 | A copy of Elk Point Country Club Homeowners Association Board of Directors Meeting Board Minutes, Saturday, October 21, 2017 at 12:00 p.m. (3 pages) | 5 |
| 9 | A copy of Elk Point Country Club Homeowners Association Board of Directors Meeting Board Minutes, Monday, November 27, 2017 at 12:00 p.m. (4 pages) | 5 |
| 10 | A copy of an EPCC Architectural Committee Analysis Advisory Ballot Response January 30, 2018, Revised February 20, 2018 (1 page) | 5 |
| 11 | A copy of an email from Jerry and Deb Moretto dated Sat, Nov 3, 2018 at 6:02 p.m., to Bob Felton (1 page) | 5 |

--oOo--

1 Q. Well, you became chair on the
2 Architectural Review Committee in February or March of
3 2018. So after you became chair, did you send out any
4 notices of Architectural Review Committee meetings?

5 A. I think your first question was asking me,
6 during the time that the arc guidelines were being
7 formulated, and I was not the chair at the time.

8 Q. I understand that. This is a different
9 question.

10 A. What I recall is, when we had meetings,
11 when I was chair, it was by phone. And it was
12 respectfully like herding cats to get a meeting put
13 together by phone, because people were busy. So no,
14 there was no notice to the -- to the complete
15 membership about a meeting. Nor, was there, that I
16 recall, any requests to participate in any meetings.

17 It was, an application would come in the
18 -- usually what would happen is, I would review it and
19 gather information from various agencies, like Douglas
20 County, TRPA, research on various things, collect all
21 that stuff, and I gave out the initial application to
22 the members of the group to look at. But then I would
23 gather all this information, and then get it out to
24 the membership for them to take a look at, in terms of
25 the Arc Committee.

EXHIBIT 2

1 IN THE NINTH JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA
3 IN AND FOR THE COUNTY OF DOUGLAS

4 --oOo--

5
6 JEROME MORETTO, Trustee of
7 the Jerome F. Moretto 2006
Trust,

8 Plaintiffs,

9
10 vs.

Case No. 19-CV-0242

11 ELK POINT COUNTRY CLUB
12 HOMEOWNERS ASSOCIATION,
13 INC., a Nevada Non-profit
corporation, and DOES 1 -
10, inclusive,

Defendant.

14 _____/
15 DEPOSITION OF

16 CHARLES JENNINGS
17 -----

18 Wednesday, July 22, 2020
19

20
21 REPORTED BY: DIANE K. LUSICH, Nevada CSR NO. 181

22 Calif. CSR NO. 5218

23 Job No. L20-119
24
25

A P P E A R A N C E S

On Behalf of the Plaintiff:

LAW OFFICES OF KAREN L. WINTERS
1594 MONO Avenue
Minden, Nevada 89423
775.782.7933 - Phone
kwinters@nevada-law.us

BY: KAREN L. WINTERS, Attorney at Law

On Behalf of the Defendant:

RESNICK & LEWIS
8925 West Russell Road
Suite 220
Las Vegas, Nevada 89148
702.997.1029 - Phone
pjones@rlattorneys.com

BY: PRESCOTT JONES, Attorney at Law

Also Present:

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I N D E X

PAGE

EXAMINATIONS

Examination by Ms. Winters 7

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MARKED FOR IDENTIFICATION

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- 2 A copy of EPCC Architectural Committee 6
Minutes dated February 13, 2017,
conference call 7:00 - 8:30 p.m., Draft
(1 page)
- 3 A copy of an email from Charles Jennings 6
to Fred Hanker, Petar Kontich, Cathy
Oyster, Ralf Nielsen and William Zeller
sent Sunday, January 28, 2018, 3:34
p.m., Subject: Minutes Architectural
Committee Meeting 1.26.18 (3 pages)
- 4 A copy of a cover letter dated December 1, 6
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Club - HOA, Subject: Proposed
Architectural Guidelines and Standards
with information package and advisory
ballot presenting guidelines for
construction within EPCC (13 pages)
- 5 A copy of an EPCC Architectural 6
Committee Analysis Advisory Ballot
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Meeting Board Minutes, Saturday, March
31, 2018 at 12:00 p.m. (3 pages)

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3	7	6
4	A copy of Elk Point Country Club	
5	Homeowners Association General Rules	
6	and Regulations Adopted July 4, 1998,	
7	Last Revised April 24, 2017 (4 pages)	
8		
9	8	6
10	A copy of Elk Point Country Club	
11	Homeowners Association Board of	
12	Directors Meeting Board Minutes,	
13	Saturday, October 21, 2017 at 12:00	
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16	9	6
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18	Homeowners Association Board of	
19	Directors Meeting Board Minutes,	
20	Monday, November 27, 2017 at 12:00	
21	p.m. (4 pages)	
22		
23	10	6
24	A copy of an EPCC Architectural	
25	Committee Analysis Advisory Ballot	
	Response January 30, 2018, Revised	
	February 20, 2018 (1 page)	
	11	6
	A copy of an email from Jerry and Deb	
	Moretto dated Sat, Nov 3, 2018 at 6:02	
	p.m., to Bob Felton (1 page)	
	12	6
	A copy of an email from Suzanne Dante	
	to Charles Jennings dated Monday,	
	January 29, 2018, Subject: Vote from	
	Suzanne Dante, with attached advisory	
	ballots and homeowner information	
	(22 pages)	
	13	6
	A copy of an email from Charles	
	Jennings to Fred Hanker, Petar	
	Kontich, Cathy Oyster, Ralf Nielsen,	
	William Zeller, Doreen Andriacchi,	
	Nancy Gilbert, Martha Zeller, James	
	Gosline and Jim Cavilia, dated Friday,	
	January 19, 2018, Subject: EPCC	
	Advisory Ballot Response (1 page)	
	14	6
	A copy of a letter dated May 12, 2018,	
	to the Board Re: Architectural	
	Guidelines Amendment Document Request,	

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E X H I B I T S

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15	Copies of communications between the Morettos and Robert Felton, JM0171 through JM0180 (10 pages)	6
16	A copy of Elk Point Country Club, Inc. Executive Board Meeting Agenda, Saturday, July 6, 2019 (2 pages)	6
17	A copy of Elk Point Country Club Response to Moretto Letter November 1, 2018 (14 pages)	6
18	A copy of Elk Point Country Club General Ledger as of March 31, 2020 (31 pages)	6

--oOo--

1 BY MS. WINTERS:

2 Q. Yes. I'm just talking about any -- any
3 changes in the people that make up the Architectural
4 Committee.

5 A. There have been.

6 Q. And throughout the time until you came on
7 to the Board, how many changes of personnel on the
8 Architectural Committee were there?

9 A. I don't recall.

10 Q. Do you recall who was on the initial
11 Architectural Committee in late 2015 or early 2016?

12 A. Well, it was Marty Zeller and, I think,
13 Cathy Peck had volunteered. But, again, it was a
14 telephone conference amongst a group of people that
15 were scattered around in different locations, so those
16 are the only names that I remember.

17 Q. During the course of your time on the
18 Architectural Committee, were there notices to unit
19 members of any of the Architectural Committee
20 meetings?

21 MR. JONES: Object to form.

22 THE WITNESS: I don't recall any notices.

23 BY MS. WINTERS:

24 Q. During the time that you were on the
25 Architectural Committee, were Minutes kept of any of

1 foundation.

2 THE WITNESS: It says that I thank
3 everybody for at the end, so I assume that I did write
4 this.

5 BY MS. WINTERS:

6 Q. Do you recall there being 60 ballots
7 received from unit members?

8 A. I -- I don't remember.

9 Q. At the time that this advisory ballot was
10 taken, do you know how many unit members there are in
11 the -- total in the HOA?

12 A. No.

13 Q. Was it more than 60?

14 A. I believe so.

15 Q. Was it more than 70?

16 A. Could have been.

17 Q. As a vice president of the Board now, do
18 you know how many unit members there are?

19 A. According to the way that the last annual
20 meeting that we had been voted, there were 98 owners
21 that are entitled to a vote.

22 Q. And to be entitled to a vote how do you
23 qualify?

24 A. You would have to refer to our bylaws.
25 Our bylaws describe that.

EXHIBIT 3

DOC # 0653319
08/26/2005 09:09 AM Deputy: BC
OFFICIAL RECORD
Requested By:
ALLISON MACKENZIE ET AL

ASSESSOR'S PARCEL NO.

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

NAME TODD RUSSELL, ESQ.

MAILING ADDRESS P.O. BOX 646

CITY, STATE ZIP CODE CARSON CITY, NV 89702

Douglas County - NV
Werner Christen - Recorder
Page: 1 of 20 Fee: 58.00
BK-0805 PG-12357 RPTT: 0.00



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE

TITLE(S)

2005 BYLAWS OF ELK POINT COUNTRY CLUB HOMEOWNERS'
ASSOCIATION, INC.

**2005
BYLAWS
OF
ELK POINT COUNTRY CLUB
HOMEOWNERS' ASSOCIATION,
INC.**



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2005
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 1:00 p.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 by a majority using secret written ballots, the Executive Board from among the 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 116.31085 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 shall not enter into any contract, the performance of which would require over twelve (12) months, nor any contract for personal services for a period exceeding twelve (12) months.

Section 4. The 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) To appoint a committee of three Unit Owners of the Corporation, none of whom shall be incumbent Executive Board members, to make an independent annual audit of the financial condition of the Corporation and submit the same to the Executive Board. The audit committee shall complete its report during the month of April and submit their report to Executive Board at the first scheduled meeting of the Executive Board during the month of May. A copy of the audit committee's report will be sent out to the Unit Owners with the Notice of the Annual Unit Owners Meeting held the first Saturday in July each year.

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.

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 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. The Treasurer shall sign all checks and drafts against such deposited funds. If the amount of any check exceeds \$500.00, it shall also be countersigned by any member of the Executive Board.

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 initiation fee for all new Unit Owners shall be \$10,000 which said sum shall accompany all applications for membership. In the event the application is rejected, the initiation fee shall be returned to the applicant. All initiation fees shall be deposited in the reserve account of the Association. The total initiation fees collected in one fiscal year shall be deducted the following year from the contributions that would have been made 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 7. No initiation fee shall be required for any change in the Official Unit Owners' Roster as provided in Section 5, unless the change is from an existing Unit Owner to a new Unit Owner.

Section 8. 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. During the period of suspension, the suspended Unit Owner shall not be entitled to any services from the Corporation nor from its caretaker, and the water supply to the property of such member may be shut off after due notice. Voting privileges shall also be denied and assessments shall continue during the suspension.

Section 3. Any 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.

ARTICLE XXVI

EFFECTIVE DATE OF AMENDMENT

Section 1. These Amended and Restated Bylaws shall be effective upon approval in accordance with ARTICLE XXIV of these bylaws and NRS 116.3108 subsection 3 (a) at a Unit's Owners Meeting and shall be effective only when recorded in the official records of Douglas County, Nevada. These Bylaws shall supersede and shall prevail if in conflict with previous Bylaws or Amendments notwithstanding previous recordation or appearance in member meeting minutes. The Association is responsible for any damages a Unit's Owner suffers because these bylaws were not recorded within thirty (30) days from the date of approval.

The above Amended and Restated Bylaws were approved on 2nd day of July 2005

I Certify that I am the Secretary of Elk Point Country Club Homeowners' Association, Inc and Attest EPCCHA, Inc. Bylaws this 2nd day of July, 2005

Amendments effective on 7/2/05

By Gary A. Tate aug. 24, 2005
Secretary, Elk Point Country Club Homeowners' Association, Inc.

GARY A. TATE Records stamp and date.

When recorded please mail to:

Secretary, Elk Point Country Club
P. O. Box 9
Zephyr Cove, NV 89448



STATE OF NEVADA)

: ss.

CARSON CITY)

On August 24th, 2005, personally appeared before me, a notary public, GARY TATE, personally known (or proved) to me to be the person whose name is subscribed to the foregoing 2005 BYLAWS, who acknowledged to me that he executed the foregoing document.

Buzette Skok
NOTARY PUBLIC



I, Karen Ellison, certify that the foregoing instrument is a full, true and correct copy of the original on file in the office of the Recorder of Douglas County, Nevada. Per NRS 239B, the SSN shall be redacted, but in no way affects the legality of the document.

Witness my hand this 6th of March, 2020

By: Jodi Stovall

Jodi Stovall - Deputy Recorder



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BK- 0805
PG- 12376

EXHIBIT 4

**ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION
RULES, REGULATIONS AND GUIDELINES**

Adopted: 9/14/2019

SECTION	TITLE	PAGE
1	General Rules and Regulations	2
2	General Guidelines for Reasonable & Considerate use of EPCC HOA Deck for Events and Weddings	5
3	Managing Rental Activity Within EPCC	6
4	Approval of New Construction, Remodel Activity Within EPCC and Architectural and Design Control Standards and Guidelines	10
5	Managing Construction/Remodeling Within the EPCC	19
6	Marina/Boating Rules	22
7	Marina Boathouse and Slip Management Procedures	25
8	CellGate Policy <i>Note: Policy to be added</i>	28
9	Caretaker Role and Responsibilities	29
FORM		
1	Notice of Complaint Form	37
2	Application for use of HOA Beach Deck for Private Events, Parties & Weddings	38
3	Acknowledgement of Rules & Regulations for Vacation Renters	39
4	Architectural Review Application for Major Revisions, Additions and New Construction	40
5	Architectural Review Application for Minor Project	41
6	Acknowledgement of Construction Rules	42
7	Boathouse and Slip Renewal Application and Acknowledgement of Marina/Boating Rules	43
8	CellGate Form(s) <i>Note: Form(s) to be added</i>	44

Section 1: General Rules and Regulations

Adopted July 4, 1998, Last Revised April 24, 2017

The following rules and regulations shall apply to all persons coming onto Elk Point Country Club Home Owners Association, Inc., properties (EPCC) including all Unit Owners, family members of Unit Owners, as well as guests, renters, tenants, contractors, workers, and business invitees of Unit Owners. Unit Owners are responsible for the actions and behavior of all the persons listed above entering EPCC at the invitation of the Unit Owner or any of the above listed entities who invite other persons on behalf of, or at the request of, or as agent for the Unit Owner. Violations of these rules and regulations may subject the responsible Unit Owner(s) to fines and penalties as provided by Nevada statutes in accordance with procedures established by the Board of Directors.

1. **Speed Limit:** The maximum speed limit on all roads within EPCC is 15 miles per hour.
2. **One-Way Streets:** One-way street designations shall be strictly adhered to unless there is a road closure and/or ice and snow conditions that prevent one-way egress and access. The Caretaker must approve temporary closure of any road in advance.
3. **Firearms:** No firearms or guns may be discharged within EPCC.
4. **Open Fires Prohibited:** No open fires including portable BBQs are permitted on the beach or in the Marina area. Fireworks of all type are PROHIBITED in all areas of EPCC including the beach.
5. **Dogs:** All dogs on EPCC property must be on leash and under control at all times. There are no exceptions. Pet owners or persons walking the animals are responsible for cleaning up after their animals IMMEDIATELY. No dogs shall be allowed on the EPCC beach (beach does not include the boardwalk, BBQ deck and the parking area at the beach) from May 1 to Oct. 1. Dogs shall not be permitted to bark so as to constitute a noise nuisance to other Unit Owners or residents.
6. **Watercraft:** No water skiing is allowed within 50 yards of the EPCC beach. No powered or sailing vessel shall be operated within the swimming area bounded by the ropes off the EPCC beach. A watercraft speed limit of 5 miles per hour shall not be exceeded within 50 yards of the EPCC beach and marina.
7. **Use of Beach for Parking Small Non-Motorized Watercraft:** Due to limited space, only actively used watercraft may be left on the beach as immediately adjacent as practical to the marina fence-line on a space available basis. Storage space is provided in the designated watercraft trailer parking area adjacent the marina entry gate. Watercraft/trailers must fit in the designated parking stalls. No watercraft of any kind shall be left on the beach or adjacent to the Marina bulkhead after November 1 of each year.
8. **Marina and Boats** Unit Owners, visitors and renters must comply with all rules in **Section 6: Marina / Boating Rules.**
9. **Beach Litter, Removal of Equipment, & Prohibition on Smoking & Use of Illegal Drugs:** No glassware containers are allowed on the EPCC Beach. All litter must be removed when leaving the area. Beach umbrellas, sunscreens, tenting shades, etc., shall be removed from the Beach each day.

- 10. Noise:** There shall be no loud parties, music, or other noise disturbances between the hours of 10:00 p.m. and 7:00 a.m.
- 11. Minors:** Minors (persons under 18) shall not be at the EPCC beach after 10:00 p.m. unless accompanied by an adult.
- 12. Motorcycles:** No motorcycles, ATCs, ATVs, off-road motor vehicles or similar motor vehicles, nor unlicensed motor vehicles of any type shall be operated on EPCC roads or grounds for recreational purposes. Noise from motor vehicles shall not be so loud as to cause a nuisance.
- 13. Parking of Watercraft, RVs, Trailers & Recreational Vehicles Within EPCC:** Parking or storage of RVs, motorhomes, travel trailers and utility trailers are not permitted anywhere on EPCC property except for immediate loading or unloading. Only vessels and boat trailers belonging to unit owners may be parked in the designated boat and trailer parking area alongside the beach entry gate. Boat trailers must display an annual EPCC trailer parking sticker near the trailer tongue as proof of ownership.
- Except for washing or cleaning boats at a unit owner's residence, maintenance on boats and trailers shall only be done in the boat trailer parking area. Over winter storage of vessels and trailers on EPCC grounds is prohibited except for those vessels and trailers in an assigned boat house or kept within a unit member's enclosed garage. All vessels, including kayaks, canoes and paddleboards, shall be removed from EPCC grounds, marina and beach areas from November 15 to April 1.
- 14. Business Operations:** Unit Owners may engage in a business activity within their residence as long as there is no customer-employee contact within EPCC. EPCC facilities, including the beach and beach deck, shall not be used for any business activity.
- 15. Building Plans:** Unit Owners must comply with **Section 4: Approval of New Construction, Remodel Activity Within EPCCs.**
- 16. Caretaker:** Unit Owners, family members or renters needing to pick up keys or contact the Caretaker should do so between 8:30 a.m. and 8:00 p.m. unless special advance arrangements have been made with the Caretaker. The Caretaker must be advised of persons authorized to pick up keys prior to their arrival. The Caretaker's normal days off are Tuesday and Wednesday.
- 17. Emergency Information:** All Unit Owners shall notify the Caretaker of the emergency utility shut-off locations for utilities.
- 18. Main Entry and Marina Gate Electronic Opener:** A gate entry device will be provided each Unit Owner. Replacement cost of electronic gate openers shall be at the current price set by the Executive Board.
- 19. Beach Deck and BBQ Reservation:** The beach deck and BBQ may be reserved for private functions of Unit Owners only. Reservations for parties of less than 30 guests must be made through the Caretaker. Reservations for all weddings and events of more than 30 guests must be approved by the Board. There will be no beach or deck reservations allowed during any "Community Holiday," (i.e., Fourth of July, and Labor Day). Use of the deck or beach for commercial purposes is not allowed. Use of the Beach Deck and BBQ for private functions must comply with **Section 2: Rules for Reasonable & Considerate use of EPCC HOA Deck for Events, Parties & Weddings.**

20. Gate Security: For security purposes, the main and beach gates shall not be left open for any activity. Persons wishing to have deck parties, open houses, yard sales, or other similar activities must provide a gate guard to identify invited guests for admission to EPCC grounds.

21. Construction: Unit Owners, visitors and renters must comply with all rules in **Section 5: Elk Point Country Club Home Owners Association Managing Construction / Remodeling Within EPCC**

22. Garbage: All garbage must be deposited in a bear-proof collection bin or container on the Unit Owner's property.

A "bear-proof collection bin" means a secured container made of metal or its equivalent, with a locked swinging door that makes the contents of the bin inaccessible to bears. A "bear-proof container" means any container that as a result of its construction makes the contents of the container inaccessible to wildlife. "Garbage" means kitchen and table refuse, offal, swill and other accumulations of animals, vegetables and other matters that attend the preparation and consumption, decay, dealing with, or storage of meats, fish, fowl, fruits and vegetables.

Unit Owners shall be fined \$50 for each instance in which the Caretaker must clean up garbage. The Caretaker has been directed to report all spilled garbage to Douglas County Authorities for enforcement of Douglas County Code Chapter 6.32, "Bear-proof collection bins, container and structures."

23. Vacation Rental of Unit Owner Homes: Unit Owners renting their homes shall comply with the policies, rules and regulations specified in the **Section 3: Managing Rental Activity Within EPCC**. Unit Owners cooperation is essential to comply with all the Rules and Regulations, and By-Laws, of EPCC. Compliance will prevent deterioration of our property and assure that the "Point" is operating in a sound manner.

24. Long term Rental of Unit Owner Homes: Unit Owners renting their homes for a period longer than 28 days must provide their tenants with a current copy of ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION RULES AND REGULATIONS

25. No Parking in Fire Lanes Vehicles parked in fire lanes will be towed at owner's expense. Vehicle owners must contact caretaker for information to retrieve vehicle. All Unit Owners must sign FORM 9: ACKNOWLEDGEMENT OF PARKING AND FIRE LANE POLICY and return to the BOD.

26. Smoking Restrictions No smoking or vaping, of any kind, on beach or other common areas.

Document originally adopted and released July 4, 1998; revised July 4, 1999; November 26, 2002; August 30, 2003; May 6, 2006; August 4, 2006; May 17, 2008; November 5, 2011; June 2, 2012; November 17, 2012; September 21, 2013; March 15, 2014; April 18, 2015; April 24, 2017; and December 7, 2019.

PLEASE POST THESE RULES IN A VISIBLE PLACE WITHIN YOUR HOME

Section 2: Rules for Reasonable & Considerate use of EPCC HOA Beach Deck for Events, Parties, & Weddings

All Elk Point Country Club Homeowners interested in holding an event on the HOA **Beach** Deck must submit a formal request to the Board of Directors and give a detailed plan of how they will follow and implement the rules below.

1. All existing rules of EPCC apply.
2. No income or other remuneration of any kind, including an exchange for another benefit in lieu of income, shall be derived by a member resulting from arranging or conducting any event party or wedding on the Elk Point beach deck or other areas within the EPCC.
3. **FORM 2: EPCC APPLICATION FOR USE OF HOA BEACH DECK FOR PRIVATE EVENTS, PARTIES & WEDDINGS** must be submitted and approved prior to the event. Application for parties of less than 30 guests must be submitted to the Caretaker. Application for all weddings and events of more than 30 guests must be submitted to the EPCC BOD.
4. Owners must be present and responsible at the event.
5. Unit owners may reserve the beach deck for personal use.
6. Manning of the beach gate is mandatory.
7. Additional portable toilets and dumpsters must be rented to accommodate large groups. One additional portable toilet is recommended for every 50 guests.
8. The gate manning, additional portable toilets, and additional dumpsters must be coordinated with the Caretaker.
9. The event may not encroach on large areas of the beach.
10. Parking is allowed in designated areas only. EPCC BOD will determine number of vehicles allowed and designated parking areas.
11. The event must end by 10:00 p.m.
12. Property owners bordering the beach must be notified of the event in advance and given the name(s) and cell phone number(s) of the responsible person(s). A schedule of deck reservations will be posted at the beach deck.

Revised per minutes dated October 17, 2010.
By: JP & Company - JLF

Section 3: Managing Rental Activity Within EPCC

Original release 2/5/2011, amended 3/21/2016 and last amended 4/24/2017

Introduction

Pursuant to Nevada Revised Statutes (NRS) Section 116.340(3), the Elk Point Country Club Homeowners Association, Inc. (EPCC) wishes to establish requirements for the transient commercial use of Units within the Elk Point Community. The Executive Board of EPCC, pursuant to NRS 116.31065 and 116.3102(1)(a), has the right to establish rules and take actions as necessary and proper for the governance and operation of the Association.

Specifically, as permitted by Article V "Duties of the Executive Board", section (g) "Adoption of rules for the conduct and government of Unit Owners, their guests and tenants" of the EPCC Bylaws the following Rules and Regulations for managing rental activity within EPCC have been enacted by the Executive Board.

These Rules and Regulations are intended to protect the safety of Unit Owners and Renters, while preserving property values and enhancing the quality of life within the community as set forth in the preamble to the EPCC Bylaws:

"The primary purpose is hereby affirmed to be to provide Unit Owners the pleasure of fellowship and recreation, and its (EPCC's) corporate functioning shall be designed to civilly achieve in highest measure such purpose." The Bylaws go on to state that EPCC "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."

In furtherance of the interest of all Unit Owners and the purpose of EPCC Homeowners Association the following outlines the Rules, requirements and responsibilities of Unit Owners wishing to rent their properties and the Renters wishing to enjoy the EPCC. Nothing in this policy is intended to act to discriminate against any protected class, to wrongfully deprive anyone of housing or to violate any provision of the Fair Housing Act (FHA).

Policies / Rules / Regulations

1. All EPCC Unit Owners engaged in short / long-term rental of their homes shall comply with all provisions of Douglas County Title 20 Consolidated Development Code 20.622 Vacation Rentals in the Tahoe Township.
2. Any Unit Owner violating the provisions of the Douglas County Vacation Home Rental Code by renting a property within EPCC without a valid permit is guilty of a misdemeanor (Ord. 1117, 2005) and will be identified by the EPCC Executive Board to the Douglas County Code Enforcement Officer.
3. Each Unit Owner is required to provide a copy of the Douglas County "Vacation Home Rental Permit", or proof of renewal along with all amendments to said document to the EPCC Executive Board Secretary (Ord. 1117, 2005) prior to conducting any rental activity, including advertising a Unit for rent.
4. Renters, occupants and visitors shall comply with all EPCC Rules and Regulations. The unit owner is required to provide to their renters a copy of:

**a. Elk Point Country Club Homeowners Association Rules, Regulation & Guidelines Section 1:
General Rules and Regulations**

**b. Elk Point Country Club Homeowners Association Rules, Regulation & Guidelines Section 2:
EPCC-HOA Operating Policies, Rules and Regulations Managing Rental Activity Within EPCC**

with every rental agreement for a unit within EPCC, as well as conspicuously post these documents in the unit owner's property along with the information required by the provisions of the Douglas County Vacation Home Rental Code.

5. FORM 3: ACKNOWLEDGEMENT OF EPCC RULES & REGULATIONS FOR VACATION

RENTERS must be signed by the primary renter prior to arrival. Owners will be responsible for producing a signed copy of the document upon request of the Board in the event of an incident involving the renter.

6. Unit Owners renting their property are required to provide a contact number to the EPCC Executive Board Secretary and Caretaker where they or their local agent can be reached at any time should an issue arise that would require their personal intervention. It is the responsibility of the renting Unit Owner to maintain their current contact numbers, including the contact information, of the Unit Owner's local agent, if applicable, in the EPCC Unit Owners Roster at all times.
7. Vacation rental owners shall not be allowed to use the EPCC caretaker as their local contact or agent.
8. Owner or agent will provide to the Board appointed designee, a schedule of occupancy including the total number of occupants for all rental occurrences. The overnight occupancy of the vacation home rental shall not exceed the number of occupants designated in the rental permit.
9. During the hours of 11 pm and 5 am, all overnight occupant parking must be on-site and limited to parking areas designated in the rental permit as specified in Douglas County Title 20 Consolidated Development Code 20.622 Vacation Rentals in the Tahoe Township. Boat trailers and boats belonging to renters are not permitted within the premises and real property of EPCC at any time under any circumstances. Except for loading and unloading, parking buses, RVs, or motorhomes on-site or on the street is prohibited at all times. Daytime on-street parking will be in accordance with local posted parking regulations.
10. Renters, occupants and visitors of the renter shall not trespass on private property at any time.
11. During the hours of 5 am and 11 pm, renters and their visitors of rental homes must park on the grounds of the unit being rented or in the designated overflow parking areas adjacent to the caretaker facility. Owners must make arrangements with the caretaker prior to the arrival of guests or renters. Renters, occupants and visitors shall not park on the private property of other unit owners. Parking on, or encroaching on, streets is not permitted as it represents a safety as well as a fire truck/snow removal vehicle access issue. Unit owners who find unauthorized vehicles on their property shall first contact the Douglas County Sheriff's Department and report the event noting that the vehicles belong to individuals who are renters. Vehicles not parked properly, will, at the direction of EPCC, be towed away at the vehicle owner's expense.
12. Unit Owners are responsible for maintaining the exterior appearance of their property and grounds at all times.

13. Unit Owners must provide a bear proof collection bin on their property for Renter use. Renter notification on the required use of the containers is mandatory. Notification on their use shall be posted in a conspicuous location within the rental property. Violators will be reported to the Douglas County Enforcement Officer and will be required to pay the penalties defined in EPCC Rules and Regulations.
14. Renters, occupants, and visitors shall comply with EPCC Rules and Regulations concerning noise management. No loud parties, music or other noise disturbances are allowed between the hours of 10 PM and 7 AM. All residential vacation home rentals, renters and visitors shall comply with the following standard: It is unlawful for any person to maliciously and willfully disturb the peace of any neighborhood, person, or family by loud or unusual noises or by tumultuous and offensive conduct, threatening, traducing, quarreling, challenging to fight, or fighting (section 20.622.090 Standard permit conditions and additional conditions of Vacation Rentals in the Tahoe Township).
15. Minors, under the age of 18 shall not be permitted on the EPCC beach after 10 PM unless accompanied by an adult.
16. Renters and visitors are responsible for their own safety in the EPCC beach and Marina areas as lifeguards are not on duty.
17. Renters and visitors shall not leave watercraft, tents, chairs, beach equipment, and/or personal effects on the EPCC beach overnight.
18. Renters and rental occupants are not permitted to reserve the beach deck for private use. Renters, occupants and visitors are required to comply with EPCC Rules and Regulations concerning the use of the beach deck and BBQ when not being used by EPCC Unit Owners. Use of the deck or BBQ by renters for weddings or commercial purposes is prohibited.
19. Unit Owners are responsible for ensuring a “no-pet (dog/cat) clause” is included in all short term rental agreements. Long term renters shall comply with all EPCC Rules and Regulations covering control of pets.
20. Issues Resolution
Disputes between EPCC Resident(s) and EPCC Vacation Rental Owner(s) (VRO) or their Renter(s) arising from violations of Douglas County Code and/or EPCC Rental Rules and Regulations can be addressed by any or all of the following:
 - a. Direct communication between the EPCC Resident(s) and a Renter.
 - b. Contacting the VRO or their Management Agency to resolve the dispute using the contact numbers provided in the EPCC Vacation Rental Roster.
 - c. Contacting the Douglas County Sheriff’s Office and/or Douglas County Enforcement Officer to report violations of Douglas County Code, 20.622 Vacation Rentals in the Tahoe Township.
 - d. Providing a Complaint Form (Form 3) or a written statement of the dispute to the EPCC Executive Board using the process outlined in the “Procedure for Hearing and Punishing Violators of EPCC Governing Documents”, adopted May 6, 2006.

21. The VRO or Management Agency must, upon notification that occupants or guests of the rental unit are engaged in unreasonable noise or disorderly conduct or violated parking provisions of the Douglas County Vacation Home Rental Code, promptly use best efforts to prevent continuance or recurrence of such conduct by those occupants or guests.
22. In addition, the EPCC Executive Board shall have the power and authority to prohibit the violating Owner from renting the Owner's Unit for a reasonable time as established by the Executive Board.
23. The EPCC Executive Board shall have no liability to an Owner or Tenant for any enforcement actions undertaken or made in good faith.
24. In accordance with the EPCC Bylaws and Nevada Revised Statutes Section 116.3116, et seq., the Association shall have the right to place a lien against the Owners Unit for any and all costs incurred by it in connection with such eviction, including reasonable attorney's fees and any regulatory agency intervention.

Adopted February 5, 2011
Revised September 21, 2013
Revised January 12, 2014
Revised November 1, 2014
Revised April 18, 2015
Revised March 21, 2016
Revised April 24, 2017
Revised 3/23/2019

Section 4: Approval of New Construction, Remodel Activity Within EPCCs and Architectural and Design Control Standards and Guidelines

1. Introduction

Pursuant to Nevada Revised Statutes (NRS) 116 and Elk Point Country Club Homeowners Association, Inc. (EPCC) By-Laws, EPCC has established guidelines for new construction and remodel of structures within the Elk Point Community. The Executive Board of EPCC, pursuant to NRS 116.31065 and 116.3102 (1) (t), has the right to establish rules and take actions as necessary and proper for the governance and operation of the Association.

Specifically, as permitted by Article V “Duties of the Executive Board” and Article XVI “Property Rights of Unit Owner” of the EPCC By-Laws the following Rules and Regulations for approval of new construction and remodel activity within EPCC have been enacted by the Executive Board.

The goal of the EPCC Architectural and Landscape Guidelines is to maintain and protect property values, preserve view corridors, preserve historic uniqueness and to maintain joint ownership obligations. As set forth in the preamble to the By-Laws: “The primary purpose is hereby affirmed to be to provide Unit Owners the pleasure of fellowship and recreation, and its (EPCC’s) corporate functioning shall be designed to civilly achieve in highest measure such purpose.” The Bylaws go on to state that EPCC “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.”

In furtherance of the interest of all Unit Owners and the purpose of EPCC Homeowners Association the following sets forth the rules, requirements and responsibilities of Unit Owners wishing to begin new construction or remodel existing structures. Nothing in this policy is intended to act to discriminate against any individual or protected class.

2. 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 2018 and amended by the EPCC Executive Board of Directors (Board) on the 9th day of June 2018, and amended by EPCC Executive Board of Directors (Board) on the 30th day of September 2018.

The EPCC “Board” pursuant to NRS 116.31065 and NRS 116.3102 (1) (t) 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.

3. Policies / Rules / Regulations

No structure shall be demolished or erected, and no exterior alteration or landscape redesign shall be commenced upon the premises of any Unit Owner without approval by the Executive Board (reference NRS 116.2111 (1) (b)).

- a. Approval by local planning agencies and regulators alone, without Executive Board approval in writing does not constitute approval to begin construction or remodel.

- b. The Executive Board may disapprove any application for reasons of architectural design, configuration and siting and more specifically:
 - i. Because of reasonable dissatisfaction with the location of the structure or improvement having in mind the character of the neighborhood in which it is to be erected, the materials of which it is to be built, the impact on adjacent lots, Community utilities/roadways and harmony thereof with the surroundings.
 - ii. Because of grading plans, finished ground elevation, exterior finish/color, height, materials or aesthetics.
 - iii. Because the effect of the structure or improvement will interfere with the reasonable enjoyment, view and value of any other Unit Owner of his or her property or the common open space. A key consideration will be the protection of long-standing views belonging to adjacent property owners.
 - iv. Because of non-compliance with any of the specific conditions and restrictions contained in this declaration or with reasonable guidelines that the Executive Board may from time to time adopt.
- c. The Executive Board shall be entitled to determine that a proposed construction or improvement or component thereof is unacceptable when proposed for a lot, even if the same or a similar design, improvement or component has been previously approved for use at another location within the Corporation if factors such as drainage, topography or impact on adjacent properties cannot be mitigated to the satisfaction of the Executive Board.
- d. In approving a request for construction, the Executive Board may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions.

4. **Architectural Committee**

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.

5. **Committee Members**

The Committee shall consist of not less than three and not more than five members, appointed by the Board. Members shall serve until such time as they have resigned or have been removed by the Board. 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.

6. **Selection of Committee Members**

Members of the Committee shall be selected and approved by the Board.

7. **Resignation of Committee Members**

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

8. **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 (3) make recommendations to amend the ADCSG to be considered for adoption by the Board.

9. **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, in the EPCC Clubhouse all submittals and copies of written responses to owners to serve as record of all actions it has taken.

10. **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.

11. **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 sanctions, commensurate with the severity of the violation, in addition to restoration expenses, if necessary.

12. **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 ADCSG.

13. **ADCSG Design Guidelines**

Only single-family dwellings, secondary residences, accessory living and accessory structures to a single-family dwelling, will be permitted on any unit owner lot in the EPCC. The following restrictions shall apply specifically to each of the unit owner lots within the EPCC.

- a. **Building Height:** No single-family dwelling, secondary residences, accessory living and accessory structures constructed on any unit owner lot within the EPCC shall extend up to a point higher than 35 feet above the average natural grade elevation of the lot. The building height is the vertical distance between the average natural grade defined as where the exterior walls of the building are at its highest and lowest point measured from the natural ground elevation and the highest point on the building excluding appurtenances such as a chimney.

- b. Building Envelope: Any renovation, remodel, and/or new construction of a single-family dwelling, secondary residences, accessory living and accessory structures on a unit owner lot within the EPCC shall:
 - i. Be set back from the edge of the front property lot line not less than 25 feet;
 - ii. Be set back from each side property lot line not less than 7 feet;
 - iii. Be set back from the rear property lot line not less than 20 feet;
 - iv. Include at least two (2) off street covered parking spaces, inclusive of garage spaces, within the unit owner lot.
- c. Fences and Walls: The following general fence and wall guidelines shall apply.
 - i. 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.
 - ii. All property lines to the common area street shall be kept free and open.
 - iii. There shall be no fences nor walls built upon the front property line of any unit owner lot in the EPCC. There shall be no fences or walls over 5 feet in height (from the natural grade) anywhere within the EPCC without prior written Board approval.
- d. View Corridors: View corridors of single-family dwellings, secondary residences, accessory living and accessory structures to common area or the lake will be considered, and design modifications may be recommended during design review.
- e. Applicants Notifications: Upon submittal of an Architectural Review Application for a Major Project to the EPCC Secretary, unit lot owners within a 150-foot radius of the applicant's lot will be sent a copy of the application by the EPCC Secretary and the application will be posted on the EPCC website. Comments received from unit lot owners will be considered by the Committee during the design review process and in the Committee's recommendation to the Board.
- f. 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 provide a maximum of 0.05 foot-candles measured at the property line.
- g. 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 and Board, are required for all exterior walls and fences. An approved EPCC color palette refers to the TRPA color palette for structures visible in scenic areas.
- h. Preservation of Existing Trees and Rock Outcroppings: Existing trees and significant rock outcroppings are a unique feature of the land at the EPCC. All vegetation must meet TRPA and local fire regulations for defensible space.
- i. Landscape Design and Layout:
 - i. All landscaping on a unit owner lot and related detailed plans shall be submitted to the Committee and approved by the Board. Replacement of any landscaping shall comply with all of the guidelines set forth herein.
 - ii. All property lines for any single-family dwellings to the common area street shall be kept free and open of landscaping.

14. The Architectural Review Committee Process

The Committee review will initially determine that an Application is a project and is not an exempt activity. The Committee will then determine if the Application is a Major Project or a Minor Project. The Committee will then conduct a review of the Application for compliance with the ADCSG and provide recommendations to the Board.

- a. Prior Approval of New Structures and Exterior Modifications: All Improvements or visible modifications to a structure, including, but not limited to, new construction, exterior remodels, building additions, painting, installation and/or replacement doors and windows, installation and/or replacement of lighting fixtures, installation of energy saving systems, and landscaping must be submitted to the Committee and approved by the Board prior to construction or installation of such improvements or modifications.
- b. Exempt Activities: Exempt activities are structural repair, structural modifications, structural remodeling, replacement of an existing roof with a metal roof, interior remodeling, buildings damaged or destroyed by fire or other similar calamity that are rebuilt in substantial compliance with the design of the original structure, non-permanent structures, ordinary maintenance and repair, repair of fences, removal of dead trees, and demolition. This also includes 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.) landscape replacement

As a result of failure to receive prior written approval from the Board for any Project requiring approval, the Committee may recommend to the Board sanctions and fines that may be assessed against the owner in accordance with EPCC's Governing Documents and fine schedule.

- c. Decisions: The Committee shall endeavor to review and makes its recommendation to the Board on submissions within 45 calendar days of submission of complete Applications. If incomplete, Applications must be resubmitted to the Committee, in which case the Committee shall endeavor to make its recommendations to the Board within 45 calendar 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, upon any matters submitted or referred to it, shall be final. Any approval by the Board shall not relieve an applicant or unit owner from complying with any requirement of a public authority having jurisdiction and shall not constitute any representation or guaranty by the Board or EPCC of compliance of the submitted matter with any applicable statute, ordinance, or regulation.
- d. Grounds for Disapproval: The Committee may recommend disapproval and the Board may disapprove any Application:
 - i. If such Application does not comply with EPCC Governing Documents including any ADCSG adopted by the Board.
 - ii. 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.
 - iii. Because the plans are not harmonious with the design and character of the existing house, or adjacent houses and structures.

iv. Because plans are not consistent with TRPA Plan Area Statement 069, Elk Point.

- e. Reconsideration: Final action by the Board may be reconsidered at the next scheduled Board meeting by submitting a written statement for reconsideration 20 calendar days before the next scheduled Board meeting and the reconsideration placed on the meeting agenda by a Board member. Arguments and basis for reconsideration which are not included in the statement for reconsideration or in the Committee recommendations' shall neither be raised nor considered by the Board. Reconsideration will be limited to the next scheduled Board meeting and may not be continued.
- f. Variances: Any Applications that require a variance to the ADCSG shall be reviewed by the Committee. A majority of the Committee may 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. A variance may be authorized by the Board when the Board finds that there are exceptional shapes or topographical conditions of a property that would result in exceptional practical difficulties or exceptional undue hardships upon a unit owner. A variance may only be granted when it will relieve the difficulties or hardships and will not be detrimental to the public good, impair affected natural resources, or substantially impair the intent and purpose of the ADCSG.
- g. Administrative Fees for Major Projects Only: As a means of defraying its expenses for review of the Application of a Major Project, the Committee and Board shall require an application review fee of \$200. The Application review fee in the amount of \$200 is required at the time of the 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. The Committee and Board will impose an additional fee of \$200.00 each time an Application re-submittal is required, if the re-submittal(s) is necessary to achieve a final Application that complies with all ADCSG requirements.
- h. Liability: Regardless of the approval by the Board of any Application, neither the Committee, the Board of 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:
 - i. 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
 - ii. Any waiver of nor failure to enforce an ADCSG provision, nor failure to inspect or certify compliance with approved plans and specifications.

15. Submittal of Application for Major Projects

Major Projects are new construction, exterior remodels, and building additions. Major Project Application submittals to the Committee must include all of the following and must be presented in three formats:

- a. 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
- b. 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.
- c. An electronic pdf file of the submittal set, and record set shall be submitted to the Assistant to EPCC's Secretary for distribution to the Committee, Board and required neighboring lot owners.

The Application and fees shall be directed to P.O. Box 9, Zephyr Cove, Nevada 89448, to the Assistant to EPCC's Secretary, 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 Major Project Application submittal shall include:

- a. Completed Application. FORM 4: ELK POINT COUNTRY CLUB ARCHITECTURAL REVIEW APPLICATION FOR MAJOR REVISIONS, ADDITIONS AND NEW CONSTRUCTION
- b. 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, protected plants and/or special terrain features to be preserved, trees and/or special terrain features to be removed, and walls, fences, and utility connections.
- c. 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, utility locations, and easements.
- d. Floor plans showing proposed finished floor elevations relative to contour elevations on the site plan.
- e. All exterior elevations showing both existing and proposed grade lines, ridge heights, roof pitch, and all exterior materials and colors;
- f. Material samples and a color board
- g. 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.
- h. In addition to the exterior elevations 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;

- i. 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
- j. Any other drawings, materials, or samples requested by the Committee.

The Committee will review the Application and respond in writing within 15 calendar days after the review, but no later than 45 calendar 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 will be made to the Board.

The Committee will consult by conference call or in person in considering the approval of an Application. The Owner may request and attend a meeting with the Committee and the Committee will make reasonable attempts to accommodate this request. In the event of any disapproval by the Board of an Application submittal, a resubmission of the Application should follow the same procedures as an original

16. Submittal of Application for Minor Projects

Minor project are replacement of exterior paint color or materials, windows and doors, lighting fixtures, and roofs, installation of driveway pavers and energy saving systems, and landscaping. An electronic pdf file of the submittal shall be submitted to the Assistant to EPCC's Secretary for distribution to the Committee, Board and required neighboring lot owners.

Minor Project Application shall include:

- a. Completed Application. FORM 5: ELK POINT COUNTRY CLUB ARCHITECTURAL REVIEW APPLICATION FOR MINOR PROJECT
- b. Any other drawing, materials or samples requested by the Committee.

The Committee will review the Application with and respond in writing within 15 calendar days after the review, but no later than 45 calendar days after an Application with final design 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 in substantial variance the ADCSG or violate any of these guidelines a recommendation for disapproval will be made to the Board.

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 EPCC 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, may require plan revisions required to comply with the ADCSG be submitted to any governmental agency for approval.

17. Commencement of Major Project Construction

After the Board's approval of the Major Project Application 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 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 legal tolling (such as an estoppel), labor strikes, fires, national emergencies, natural calamities and/or unusual inclement weather.

18. 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 Board appointed designee for review and approval of the Board prior to making such changes or additions.

19. Final Major Project Release

Permittees shall provide evidence of final inspections from Douglas County and TRPA for EPCC records within 30 calendar days of receiving such inspections.

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.

20. Utility Maintenance Buildings

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

4821-7655-8163, v. 1

**Elk Point Country Club Home Owners Association Rules
Managing Construction / Remodeling Within the Association
Application for Major Revisions, Additions and New Construction
Application for Minor Projects**

Original release 5/18/2011

Amended 1/18/2014

Amended 7/29/2017

Revised 3/23/2019

Architectural and Design Control Standards and Guidelines ("ADCSG")

Original release 3/31/2018

Amended 6/9/2018

Amended 9/30/2018

**Section 4: Approval of New Construction, Remodel Activity Within EPCC
and Architectural and Design Control Standards and Guidelines**

Adopted: 10/26/2019

Amended: 12/7/2019

Section 5: Managing Construction / Remodeling Within EPCC

Original release 5/18/2011 and last amended 1/18/2014

Unit Owner(s) shall comply with the following Elk Point Country Club Association (EPCC) "on site" construction guidelines/rules upon receipt of Regulatory Agency/EPCC Executive Board approvals.

The Unit Owner and General Contractor shall prior to start of construction meet with the Executive Board to confirm understanding of the following rules. Both Unit Owner and General Contractor shall also confirm in writing to the Executive Board prior to start of construction that the rules which follow have been communicated to all Sub-Contractor personnel and will be posted on site and complied with.

1. Final copies of architectural and construction drawings shall be provided to the EPCC Executive Board Secretary prior to start of construction.
2. The General Contractor shall review these rules with all involved construction workers and post the rules on-site in a protected manner.
3. Prompt resolution of any problems arising from construction/remodeling activities will be the responsibility of the Unit Owner and General Contractor once notified by the Executive Board, Caretaker or affected Unit Owner.
4. Unit construction will comply with all survey, dimensional, location, material and appearance plans approved by both Regulatory Agency and EPCC Executive Board in the final drawings.
5. Contractors will comply with Douglas County and State on-site management, security, safety, and environmental and clean-up requirements. Appropriate security around the building site shall be provided to avoid injury.
6. Only certified and bonded workers may work on EPCC property.
7. Only personnel directly related to the construction activity are allowed on-site. Friends and families of construction workers are not permitted to enter EPCC grounds or use Club beaches/facilities at any time.
8. Construction workers and sub-contractors who bring pets to work shall keep their animal(s) leashed on-site.
9. The site shall be placarded with the 24-hour emergency contact number of the General Contractor.
10. Construction may only be performed from 7AM to 7PM Monday through Friday consistent with Douglas County ordinances. Only limited construction activity, not involving heavy construction vehicles (i.e. Cranes, graders, cement trucks, bobcats, etc.), and loud industrial/construction tools (i.e. jackhammers, table/radial hand power saws, nail-guns, etc.) is permitted from 8AM through 7PM Saturday and Sunday. Weekend work may be done providing all power tools are located within the structure to minimize noise. No construction of any kind is permitted over the following 3-day holiday weekends: Memorial Day, 4th of July and Labor Day and on Thanksgiving, Christmas and New Year's Eve.
11. Assigned Contractor gate codes are to be used exclusively for entry to EPCC. This gate code will be assigned by the Security Committee Administrator and will expire upon completion of the project.

12. The construction site shall be maintained in an organized manner throughout the building period. The roadway in front of the project will be swept or otherwise cleared of debris, including nails/screws at the end of each working day.
13. Construction workers shall not park on other Unit Owner properties without first receiving approval from the Unit Owner. Non-essential construction worker vehicles (those not absolutely required on-site) shall park at the Caretakers parking area.
14. The Unit Owner and/or Contractors shall be responsible for any damage to EPCC and Unit Owner property. Contractor personnel shall report any damage immediately to the EPCC Caretaker and the impacted Unit Owner.
15. The General Contractor shall coordinate construction activity so as to avoid blocking roadways and encroaching on adjacent Unit Owner property. The Caretaker shall be notified in advance in the event that roadways may need to be blocked for a short period of time to accomplish essential construction activities, which can only be performed by vehicles required to be positioned in the street. Notification shall be provided well in advance of the construction activity so as to allow impacted Unit Owners to have access to and from their property. Construction vehicles may not be allowed to block roadways for extended periods except for immediate loading and unloading. Appropriate signage notifying other Unit Owners of road blockages shall be positioned well up-stream of the construction activity.
16. Construction vehicles, materials and equipment shall not be left on roadways so as to block or restrict emergency vehicle access.
17. Vehicles, equipment, construction materials and supporting tools shall not be stored for any period of time on Elk Point Country Club common property or roadways. Such vehicles and materials may not be stored on another Unit Owner's property even if the Unit Owner has given such approval (see EPCCHOA By-Laws Article XVI, section 3). Equipment and material to be on site to facilitate new construction /remodeling shall be planned for immediate use so as to avoid unsightly appearance within the Community.
18. Contractors shall not use other Unit Owner utilities including water without first receiving approval from the affected Unit Owner.
19. No loud music may be played while on-site.
20. No fires are to be used to clean-up construction debris.
21. Portable toilets shall be serviced appropriately so as to minimize offensive odors carrying over to adjacent Unit Owner properties.
22. Damage to EPCC common property and roadways shall be repaired in a timely manner and in a fashion approved by EPCC
23. The Unit Owner must complete all exterior construction per the approved plans within four (4) months of final Douglas County/TRPA approvals and issuance of a certification of occupancy.
- 24. FORM 6: ACKNOWLEDGEMENT OF CONSTRUCTIONS RULES** must be signed by the Unit Owner and the general contractor prior to the start of construction and returned to the EPCC BOD.

EPCC Executive Board

Original Release 5/18/2011

Amended 7/6/2013

Amended 9/21/2013

Amended 1/18/14

Section 6: Marina/Boating Rules

In order to provide for the safety, health and comfort of all persons, the following marina rules shall be observed by all users:

1. Only Unit Owners of EPCC in good standing may use the Marina and operate watercraft within it. Guests and renters may not launch or operate any watercraft within the Marina.
2. All watercraft, including jet skis, kayaks, canoes and sailing vessels not owned exclusively by EPCC members will not be allowed in the Marina.
3. Boathouse and slip assignment will be accomplished as outlined in EPCC document "Managing Boathouse / Slip Assignment Procedures". Marina slips are restricted to individuals that have been granted seasonal or weekly use of a slip by the EPCC MOC. Slip assignment, along with the period of use, will be designated on the vessel's EPCC MOC vessel permit.
4. Unit Owners who have paid and been assigned a slip or boathouse may not allow other Unit Owners to use or share their assignments.
5. Unit Owners who have had their membership rights suspended shall immediately remove their vessel(s) and trailers from the Marina and EPCC property once notified.
6. The EPCC Marina does not operate on the basis of "temporary use or vacant slips". Any Unit Owner using a vacant slip is subject to payment of a use fee for that slip at the current weekly rate as set by the EPCC Executive Board.
7. For the safety and convenience of all EPCC members who have not paid for and been assigned a slip, The Unit Owner's vessel may enter the Marina to embark or disembark passengers, load supplies or to effect recovery of the vessel onto a trailer. In doing so, the Unit Owner may temporarily use any vacant slip provided the Unit Owner remains with the vessel throughout the process. The Unit Owner shall be required to immediately move from the slip if the assigned user arrives in the Marina. Any vessel in the Marina on a temporary basis and left unattended in a vacant slip will be subject to paying the weekly slip rate. The Unit Owner shall coordinate gate access to the Marina through the Caretaker or Marina Operating Committee member.
8. All EPCC Unit Owners using the marina boat launch or slips are required to have a current EPCC HOA vessel permit sticker displayed on the windscreen of the watercraft for the current boating season. The sticker is provided by the EPCC MOC or EPCC Caretaker upon receipt of all required documentation and user fees as specified in "Section 7: Marina Boathouse and Slip Management Procedures".
9. All watercraft in the Marina shall be operated according to the Navigational Laws of the United States, and the State of Nevada and California. Watercraft not placarded or identified as required by law, or without current EPCC permits, will not be permitted in the Marina.
10. All marina users agree to provide copies of current watercraft insurance, registration, signed Marina Rules and applicable use fees as specified in "Section 7: Marina Boathouse and Slip Management Procedures" prior to launching their vessel.
11. All watercraft must be inspected for invasive species as legally required before launch. The Caretaker is authorized by the regulatory agencies and EPCC to permit entry to the launch ramp, perform the

inspection and provide the required EPCC user placarding with reasonable advanced notice. Unit Owners requiring the use of the launching/recovery ramp and Marina gate shall have their vessel and trailer in position and ready for inspection prior to the arrival of the Caretaker.

12. Watercraft must be moored in their assigned slip. Vessels granted a slip assignment will have a different colored vessel permit, for easy identification, from vessels not having a slip.
13. Watercraft shall not dimensionally exceed a hull length of twenty-three (23) feet in length and a beam width of eight feet six inches (8' 6") so as to avoid damage to vessels moored in adjacent slips. All watercraft shall be secured in their slips in a manner acceptable to the EPCC MOC and shall not encroach on the space of the adjacent slip or dock walkways. Non-compliance will result in the Unit Owner being required to remove the vessel from the Marina. If after notice, no action is taken then the MOC will properly secure the vessel and a service fee of \$100 will be charged to the Unit Owner.
14. EPCC MOC may inspect all watercraft in the marina at any time to determine their adherence to seaworthy conditions, local safety requirements and federal safety requirement.
15. All watercraft using the Marina shall be in a seaworthy condition, and not constitute a fire hazard, if after notice of non-compliance and no action is taken then the vessel will be removed from the Marina at the user's expense. Any vessel, which appears to be sinking, or be in such damaged condition as to prevent the use of the marina by any other permitted user, shall be removed by the vessel Unit Owner or by the user having custody of said vessel. If neither is available, the EPCC MOC will remove the vessel at the permitted user's expense.
16. Watercraft shall not be operated in excess of 5 miles per hour, while inside the Marina and within 50 yards of the EPCC beach and Marina channel entrance area.
17. No watercraft of any kind shall be operated within the water swimming area bounded by the ropes off the EPCC beach.
18. No fishing, swimming or diving will be permitted within the Marina.
19. No one shall store supplies, materials, accessories or other debris upon any dock walkway, nor construct thereupon any structures.
20. No refuse or debris shall be thrown overboard. Garbage and other debris shall be deposited in cans supplied for this purpose.
21. Noise shall be kept at a minimum at all times.
22. Disorderly conduct that might injure a person, cause damage to property or harm the reputation of EPCC MOC shall be cause for immediate removal of the watercraft and the persons in question from the Marina. EPCC reserves the right to revoke the use of a Unit Owner's slip assignment at any time for such conduct and no fees will be refunded.
23. Boaters entering or exiting the marina shall sound a warning horn well in advance of entering the channel to the Marina so as to avoid collision between vessels, or damage to the Marina. No kayaks, stand up paddleboards, canoes or other non-motorized vessels may enter or operate in the marina.

**26. FORM 7: BOATHOUSE AND SLIP RENEWAL APPLICATION AND ACKNOWLEDGEMENT
OF MARINA/BOATING RULES** must be signed by the Unit Owner prior to the Marina opening.

Elk Point Country Club HOA
Adopted 12-07-08
Amended 9-21-13
Amended 3-15-14
Adopted 9-14-19 & 10-26-19
Amended 12-7-2019

Section 7: Marina Boathouse and Slip Management Procedures

Assignment of Boat Slips and Boathouses

1. Assignment of facilities shall be made annually as follows by the Elk Point Marina Operating Committee (EPCC MOC) and Executive Board.
2. Definitions
 - a. Boating Season - The period running from May 1st of each year to April 30th of the following year.
 - b. Master List - The document identifying EPCC Owner applicants in post-marked date order used by the Marina Operating Committee to facilitate initial and subsequent draws of watercraft slip/boathouses assignees.

Conditions of Assignment

3. Assignees must be Unit Owners of EPCC in good standing and own a watercraft at the time of application. Applications for watercraft not owned exclusively by EPCC members will not be allowed.
4. FORM 7: BOATHOUSE AND SLIP RENEWAL APPLICATION AND ACKNOWLEDGEMENT OF MARINA/BOATING RULES must be signed and returned to the EPCC BOD.
5. All Marina users agree to maintain watercraft liability insurance in the amount of \$300,000 or more combined single limit. Elk Point Country Club shall be named as an additional insured on the Unit Owner's policy.
 - a. Only boats and watercraft related equipment may be stored in boathouses.
 - b. Assignees must comply with all EPCC policies/rules for use of boathouses/Marina.
 - c. Assignment will be limited to one boathouse/slip per Unit Owner, unless there are open slips or boathouses after the annual draw is complete and all Unit Owners on the "Master" list have been satisfied.
 - d. Assignees may not sub-let assigned facilities to third parties or allow non-Elk Point Country Club members use of the facilities. Assignees are responsible for any damage to the facilities they are assigned. A joint inspection by Assignee and the Marina Committee shall be conducted with both parties signing off on "the as inspected" condition of the facilities prior to use and transfer.
 - e. Assignees, as applicable agree to complete transfer of boathouses/slips consistent with Marina Operating requirements by no later than April 30th.
 - f. Assignment of boathouses requires acceptance of a boat slip as well.
 - g. Unit Owners whose membership rights have been suspended shall remove their watercraft and trailer(s) from the Marina and EPCC property immediately once notified. They shall forfeit the balance of their paid slip and boathouse fees until their membership rights have been restored. Upon restoration of membership rights, the Unit Owner may resubmit application for a slip and or boathouse assignment.

6. Assignment Process

- a. The Marina Operating Committee (EPCC MOC) shall manage the Boathouse/Slip application and assignment process.

- b. The EPCC MOC shall provide a letter and application covering participation in the assignment process to all Unit Owners by no later than February 1st of each year along with the user fee for boathouses and slips.
 - c. All interested Unit Owners shall submit their applications for annual boathouse / slip assignment by mail as directed by the EPCC MOC. A current copy of watercraft registration, insurance and signed EPCC Marina Operating Rules shall be provided with the mailed application. Application, supporting documentation and required user fees must be received by the EPCC MOC prior to March 1st in order to participate in the coming year's assignment process. Applications postmarked after that date will not be included in the draw. Applications will only be accepted through the mail.
7. The Committee shall create a Master List of applicants. The list may only be updated after the Annual Draw by receipt of mailed applications. The list will be maintained in order of postmarked date following the March 1st deadline, until a new list is created at the next Annual Draw.
- a. The EPCC MOC, upon completion of the assignment process will notify the Unit Owner of their boathouse and/or slip number.
 - b. Unit Owners requesting weekly slip use after the annual boathouse / slip assignment must also provide copies of current watercraft registration, insurance, signed Marina Rules along with applicable user fees to the EPCC MOC prior to launching their watercraft.
 - c. All applicable documentation, and payment of user fees is required in order to receive EPCC MOC authorization to receive required EPCC watercraft /trailer stickers and launch any watercraft.
 - d. In the event that an Applicant chooses not to participate in a draw for which they are entitled, their name shall drop to the bottom of the list for that year. New applicants will then be placed on the list following that of the declining Applicant.
 - e. Selection of assignees and terms shall be made on or before March 30th of each year.
 - f. The Committee shall draw from the applicant Master List to determine the 21 boathouse/slip Assignees. The draw shall be continued for the remaining boat slips until all available slips and/or applicants are exhausted. If there are applicants remaining after all boathouses and/or slips are assigned, the draw will be continued in order to establish a numerical order for the Unit Owners remaining on the Master List. These applicants may be assigned fractional assignments for the year in which a draw is made if they become available.
 - g. Each draw shall include all applicants whether new or previous assignment holders.
 - h. Assignees whose assignment period is ending must re-apply as outlined above if they want to continue participation in the next annual draw.
 - i. Late applicants may only be assigned a slip for one year if there is availability after first satisfying all Master List applicants for the year in question.

8. Term of Assignment

- a. Initial draw and assignment of boathouses/slips will be made for periods of 2, 3, 4 and 5 years.
- b. Assignment shall be made in 1 group of 6 (2-year assignment), 1 group of 5 (3 year), 1 group of 5 (4 year), and 1 group of 5 (5 year).
- c. At the end of year 2 all 2-year assignments will be re-drawn on the basis of 4-year assignments. At the end of year three all 3-year assignments will be re-drawn on the basis of 4 years and so on with year 4 and 5 assignments so as to establish a rotation.
- d. Each draw shall include all applicants whether new or previous assignment holders.
- e. The draw shall be made from an equal number of coupons to applicants with an appropriate number marked as assignment coupons for the number up for draw in the assignment group.

9. Reassignment of Terms Not Completed Boathouse/slip assignments will be returned to the pool for Assignees who sell their homes or elect to drop out of participation in the Marina.

- a. Re-assignments will only be made for the time remaining on the original assignment. The Committee may at its discretion not re-assign the boathouse/slip if not cost/effective (from the Assignees perspective) against the time remaining.
- b. The "Master" list shall be used to determine re-assignments.

Adopted December 7, 2008

Amended September 21, 2013

Amended March 15, 2014

Section 8: CellGate Policy

Section 9: Caretaker Role and Responsibilities

Adopted by the Executive Board March 12, 2016

1. INTRODUCTION

The Caretaker acts as an agent of The Executive Board and performs routine assignments as specified by the Board. These tasks represent a specific set of activities which are at a minimum to be accomplished at frequencies specified by the Board.

This document shall supersede all other documents that may define required Caretaker work activities. The Caretaker's job description shall reference this document as the principal document defining his assigned tasks.

The Caretaker shall formally maintain a log of completion of these tasks to facilitate performance reviews by the Board. This log shall be submitted to the Association Secretary monthly.

Tasks and frequencies shall be reviewed bi-annually by the Executive Board with input from the Caretaker. Task and frequency changes shall be incorporated into this document.

Assigned Caretaker work activities are outlined in the following sections:

ADMINISTRATIVE

GROUND, STRUCTURES AND RELATED SYSTEMS AND EQUIPMENT LANDSCAPE AND RELATED EQUIPMENT

2. ADMINISTRATIVE

Elk Point Country Club Homeowners Association

General Requirements

Administrative Activities / Responsibilities

Adopted January 9, 2016

a. General Management

- i. The following activities are assigned to the Association Caretaker unless specified differently.
- ii. Frequency for accomplishing activity is defined for each task and may be adjusted for regulatory agency or EPCC requirement.
- iii. All changes to activity, frequency or responsibility shall be approved by the Executive Board and reflected in this document.

b. Maintenance of Unit Owner Property Access Log

Working with the Club Secretary, the Caretaker shall maintain a log of all Unit Owner forms authorizing entry into their homes in their absence. The log shall be updated annually.

c. Douglas County Sewer District Reporting

Monthly - Report monthly water usage totals to Douglas County Water/Sewer District.