

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

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

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

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d. Marina Operations

- i. Annually - Maintain invasive species inspection certification status.
- ii. On Request – Conduct invasive species inspections for Unit Owners prior to boat launch.
- iii. As Directed by the Marina Operating Committee and EPCC Board coordinate slip and boathouse access issues.

e. TRPA Reporting

As required – Oversee logging/disposal/burning activities within common grounds and report actions to TRPA regulatory agency as mandated.

f. Securing Contractor Bids and Material Costs

- i. As directed by the EPCC Board – Secure formal contractor bids for Association work. Whenever possible secure minimum of three bids.
- ii. As directed by the EPCC Board – Prepare plans and secure cost estimates for work to be performed within the Association.

g. Security Management

- i. As directed by the EPCC Board – Arrange for security coverage for EPCC events at main and marina gates. Provide necessary information and guidance to security personnel to ensure effective coverage and communication.
- ii. As directed by the EPCC Board determine sticker color for Annual/4th of July meeting and advise Club secretary so Douglas County Police Operations can be advised. Caretaker to distribute stickers to Unit Owners in advance of the 4th of July Annual meeting.
- iii. Caretaker to coordinate Club access with Douglas County police officials prior to the 4th of July/Annual meeting as directed by the EPCC Board.

h. Association Gate Keys/Electronic Cards

Monthly - Maintain log of all Unit Owner keys providing main and marina gate access.

i. Dumpster Access Keys

Monthly - Maintain log of all assigned dumpster access keys and coordinate with Club Secretary to ensure proper billing of Unit Owners.

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3. GROUNDS, STRUCTURES AND RELATED SYSTEMS AND EQUIPMENT

Elk Point Country Club Homeowners Association

General Requirements

Landscape and Related Equipment Maintenance Activities / Responsibilities

Adopted January 9, 2016

a. General Management

- i. The following activities are assigned to the Association Caretaker unless specified differently. The Caretaker may be assisted by contract help to accomplish a task normally accomplished by the Caretaker when approved by the Executive Board.
- ii. Landscape contractor responsibilities are noted accordingly.
- iii. Frequency for accomplishing activity is defined for each task and may be adjusted for season.
- iv. The Caretaker shall provide general oversight to all contractor activities concerning grounds maintenance. The Caretaker shall report performance issues and address needed corrective actions with the Board.
- v. All changes to activity, frequency or responsibility shall be approved by the Executive Board and reflected in this document.

b. Main Entry Gate & Elks Avenue Grounds

- i. Twice Monthly – Clear dead planting, brush, foliage and weeds on either side of entry gate including the Elks Avenue fence line / Hill Street drainage ditch terminating at the bottom of Hill Street.
- ii. Monthly - Prune/Fertilize/Replace planting as required or directed

c. Association/Marina Roadways

- i. Daily - Inspect for condition and report problems
- ii. Weekly - Clear excessive dirt/sand/gravel pine needles and debris as required
- iii. Twice monthly – Landscape contractor to maintain shoulder areas/planting on common areas adjacent roadways as required
- iv. Daily - Inspect for /clear construction materials including nails as required
- v. Daily - Clear snow as required prior to 7AM
- vi. Annually - As directed by Board – Paving contractor to pave, repair, seal roadways

d. Water Tank Grounds

- i. Twice monthly – Clear dead planting, brush, foliage and weeds
- ii. Quarterly – Prune/Fertilize/Replace planting as required or directed

e. Beach/Marina Grounds

- i. Twice weekly - Clear beach areas of all debris
- ii. Weekly - Drag Beach from Memorial through Labor Day
- iii. Weekly - Clean deck and remove trash from deck refuse containers weekly
- iv. Monthly - Clear dead plants, brush and weeds in and around boathouse, marina structures docks and interior harbor area
- v. Monthly – Clear dead plants and brush along beach walkway and behind deck as required
- vi. Monthly - Clear all roofs (pump house, boat storage, etc.) of pine needles
- vii. Quarterly – Prune/fertilize/replace planting on marina grounds as required or directed by Board

f. Association Common Areas

- i. Annually – Caretaker/Executive Board member to conduct inspection with Fire Marshall to recommend actions
- ii. As directed - Clear dead trees, brush, foliage
- iii. As directed – Caretaker to coordinate tree removal with Unit Owners and oversee work by contractors

g. Caretakers Home/Clubhouse Grounds

- i. As required - Fertilize, mow and water lawn
- ii. Weekly - Clear dead planting, foliage, pine needles and weeds
- iii. Monthly – Prune/Fertilize/Replace planting as required

h. Beach Access Trails

Twice weekly - Clear dirt/sand/gravel/pine needles and debris from all trails when not covered by snow

i. Perimeter Security Fences

- i. Daily - Inspect/repair fencing
- ii. As directed - Coordinate fence repairs/installation by Fencing contractor
- iii. As directed - Coordinate shared fence repairs with Forest Service

j. Best Management Catch Basins

- i. Bi-annually and prior to wet seasons - Inspect /clean catch basins for which the Association is responsible. Check for condition and report problems at following locations:

- Perforated strip traps in front of 408, 410, 412, 416, 420, 428, 432, 450 Elks Avenue and 464, 470 Lakeview (470 Lakeview has two traps on either side of the fire hydrant)
- 409 Elks Avenue basin tank grate
- 410 Lakeview basin tank grate at end of paved "Beach Trail" walkway
- Catch basin at bottom of Hill St. (Keep Hill Street gutter clear)
- 407 Lakeview catch tank approx. 12" cover at top of driveway.
- Perforated strip that crosses Nevada Street.
- Basin tank grate alongside fence at 402 Lakeview (12" cover)

- ii. As directed - Coordinate clean out of sediment with contractors

k. Irrigation Systems

- i. Weekly – Inspect for general condition and report problems to Executive Board
- ii. As required - Repair systems and equipment
- iii. As directed - Install new systems and equipment
- iv. As directed - Coordinate new system installation / maintenance with Contractors when directed by Executive Board

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4. LANDSCAPE AND RELATED EQUIPMENT

Elk Point Country Club Homeowners Association General Requirements

Grounds, Structures and Related Systems / Equipment Maintenance Tasks Adopted January 9, 2016

a. General Management

- i. The following activities are assigned to the Association Caretaker unless specified differently. The Caretaker may be assisted by contract help to accomplish a task normally accomplished by the Caretaker when approved by the Executive Board.
- ii. Contractor responsibilities are noted accordingly.
- iii. Frequency for accomplishing a given activity is defined for each task and may be adjusted for season.
- iv. The Caretaker shall provide general oversight to all contractor activities concerning grounds maintenance. The Caretaker shall report performance issues and address needed corrective actions with the Board.
- v. All changes to task, frequency or responsibility shall be approved by the Executive Board and reflected in this document.

b. Main Entry / Marina Gates and Keypad structure

- i. Twice Monthly - Check gate mechanisms and card reader for proper operation and service as required.
- ii. Monthly – Inspect keypad structure for condition. Verify proper function of keypad. Maintain and service as required.
- iii. Annually - With Executive Board determine whether gate codes need to be changed.
- iv. As required assign/replace gate activation devices. Maintain up to date log of all assigned Unit Owner electronic gate activation devices. Coordinate assignment with Board secretary for billing.
- v. Monthly - Check condition of entryway signage and maintain as required.

c. Association / Marina Roadways

- i. Daily - Inspect for condition and report problems
- ii. Weekly - Clear excessive dirt/sand/gravel pine needles and debris as required
- iii. Annually - Inspect directional/speed signage for condition and repair/replace as required.
- iv. Annually - Inspect speed bumps for condition and repair as required to ensure compliance with Douglas County design standards. Repaint speed bump to ensure proper visibility.
- v. Daily - Inspect for and clear construction materials including nails as required
- vi. Daily - Clear snow as required prior to 7AM
- vii. As directed by Board oversee paving contractor to pave, repair, seal roadways. Communicate Contractor activities with Unit Owners to minimize disruption within Association.

d. Water Tank

- i. Twice monthly – Inspect external tank structure and related systems to verify integrity.
- ii. As directed by the Executive Board over-see contractors to perform internal inspections of the tank structure and report findings.

e. Upper Water / Fire Pump House, Wells and Related Systems / Equipment

- i. Daily - Check systems and equipment for proper operation and service as required.
- ii. Daily - Inspect fluid levels on equipment and service as required.
- iii. Daily - Maintain logs and record water use, pumps on line, pressures and generator hours.
- iv. Monthly – Check exterior / interior condition and electrical and lighting systems of Upper Pump house structure and repair /maintain as required.
- v. As directed by the Executive Board over-see contractors to perform system inspections, repair/replace equipment and report findings.
- vi. As required - Attend required education courses to maintain water management licenses
- vii. As required – Conduct State mandated water system testing, sample submission and lab reporting. Communicate findings and compliance to the Executive Board and Unit Owners as required by the State and Association.

f. Water Well Heads

- i. Weekly – Check wells #1 and 2 and pumps for condition and proper operation. Service and repair pumps as required.
- ii. Monthly – Inspect associated wellhead structures for condition and repair / maintain as required.

g. Beach Pump Vault and Pumps

- i. Bi-Annually conduct operational test of beach fire suppression pumps and lake hose with fire department. Address issues which arise from test. Service pumps and electrical system units as required.
- ii. Monthly – Check exterior / interior condition and electrical and lighting systems of Vault pump structure and repair /maintain as required.

h. Uranium Filtration House and Related Systems / Equipment

- i. Daily - Check systems and equipment for proper operation and service as required.
- ii. Daily - Inspect fluid levels on equipment and service as required.
- iii. Monthly – Check exterior / interior condition and electrical / lighting systems of house structure and repair /maintain as required.
- iv. Daily - Maintain operational and maintenance logs on systems and equipment as legally required.
- v. As required - Attend required education courses to maintain water management licenses
- vi. As required – Conduct State mandated water system testing, sample submission and lab reporting. Communicate findings and compliance to the Executive Board and Unit Owners as required by the State and Association.
- vii. As directed by the Executive Board over-see contractors to perform system / equipment inspections. Repair/replace equipment and report findings.

i. General Association Grounds Lighting Systems and Equipment

- i. Daily - Check roadway, general signage, walkways, beach access trails, beach deck, marina lighting systems and equipment for proper operation and service as required.
- ii. Report roadway street lighting issues to the appropriate agencies and power companies for corrective action as required.

j. Portable Stand-By Generator and Shed Supporting Main Water Tank

- i. Monthly - Inspect structure and maintain integrity as required.
- ii. Weekly – Perform operational test of generator and service fluids as required. Make repairs as inspection and operational test results dictate.

k. Marina Boathouses. Harbor Structures and Swim Float

- i. Weekly - Inspect overall boathouse structure for condition and repair / maintain as required. Address Unit Owner issues with roll-up doors and lock mechanisms on boathouses.
- ii. Weekly - Inspect docks, walkways for condition and maintain as required. Address Unit Owner issues with cleats, bumpers, and walk surfaces.
- iii. Prior to Swimming season inspect swim float and repair as required. Position float in swim area. At completion of season retrieve and store float.
- iv. Inspect swim area marker lines for integrity and security. Repair or replace as required.
- v. Annually - Re-seal dock walkway surfaces prior to boating season.
- vi. Monthly - Report issues to Executive Board for guidance and action.
- vii. Conduct annual exterior inspection of boathouse structure with Executive Board to establish painting schedule.
- viii. As directed by Board over-see contractor work in Marina. Communicate Contractor activity and schedule with Unit Owners to minimize disruption within Association.

l. Beach Deck, Walkways and Related Equipment

- i. Daily - Clear deck and walkways of all debris
- ii. Weekly - Empty extinguished coals from BBQ.
- iii. Daily – Lower deck umbrellas nightly and on high wind days.
- iv. Bi-Weekly - Remove trash from deck refuse containers.
- v. Weekly - Conduct inspection of deck / walkway, benches and rail structures with special attention to walking surfaces, steps benches and rails for security.
- vi. Weekly - Inspect deck tables with special attention to surface condition and security.
- vii. Daily - Inspect BBQ mechanisms and equipment for proper function and repair / maintain as required.
- viii. Daily - Inspect umbrella shade mechanisms and stands for proper function / appearance and repair / maintain / replace as required.
- ix. Bi-Annually - Store umbrellas and stands for winter season and set up for spring, summer and fall use.

m. Dumpster Management and Security

- i. Daily - During daily rounds check for trash issues and report issues to Executive Board monthly. Clean up trash problems as required on Unit Owners property and keep log and photos for Executive Board review.
- ii. Daily – During daily rounds confirm proper security of dumpsters.
- iii. Spring – Coordinate placement and pickup of Large Containers for spring clean-up and vegetation removal.
- iv. Summer - Beach Dumpster

n. Caretakers Home / Clubhouse

- i. Monthly - Conduct walk-around inspection of external structures and repair/maintain as required.
- ii. As required - Maintain equipment, fixtures, and appliances in serviceable condition.
- iii. Weekly - Service Clubhouse lavatory amenities.
- iv. Weekly - Clean Clubhouse lavatory fixtures and toilet.
- v. Monthly - Check Clubhouse lighting and replace lamps as required.

o. Beach Access Trails

Bi-Annually - Inspect trails for condition and safety. Repair any unsatisfactory deficiencies.

p. Association Vehicles and Related Snow Removal Equipment

- i. Annually - Ensure proper licensing of Association vehicles.
- ii. Annually - Service vehicles as required. Conduct safety and smog inspections as required. Maintain vehicle to protect asset investment.
- iii. Annually - Prior to winter season inspect and service plows and related snow removal equipment.

Pk
1/15/16

FORM 1

EPCC RULES AND REGULATIONS
NOTICE OF COMPLAINT FORM

Complaint Information

Date(s) of violation:

Rule number(s) violated if known:

Describe nature and circumstance of the violation (write additional comments on separate page):

Name of the offender:

Address where violation occurred:

Name of owner of record:

Relationship of offender to owner:

Was Sheriff called?: yes no

Sheriff's Incident Report Number:

Complainant Information

Name of complainant:

EPCC address of complainant:

Phone number of complainants:

Email of complainant:

Name and phone number of any additional witnesses:

Name of witness 1:

Phone # of witness 1:

Name of witness 2:

Phone # of witness 2:

Signature of complainant:

Date:

For Executive Board Use

Date received:

Action taken by board:

Please submit signed form to EPCC Executive Board, P.O. Box 9, Zephyr Cove, NV 89448

Adopted 11/01/2014

FORM 2
**EPCC APPLICATION FOR USE OF HOA BEACH DECK FOR
PRIVATE EVENTS, PARTIES & WEDDINGS**

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.

<u>Homeowner Name(s):</u>
<u>Property Address:</u>
<u>Mailing Address:</u>
<u>Phone:</u>
<u>Email:</u>

Please provide a brief description of the event

Date of event:

Start time of the event:

Set-up plan:

Purpose of event:

Number of guests:

Additional information:

Please read the following EPCC Rules:

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. Only unit owners may reserve the beach deck for personal use.
6. Manning of the beach gate is mandatory.
7. Additional portable toilets & 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.
Parking is allowed in designated areas only. EPCC BOD will determine number of vehicles allowed and designated parking areas for weddings and large events.
10. The event must end by 10:00 p.m.
11. 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.

I acknowledge I have read and understand the EPCC Rules in this document.

Signature of EPCC Member

Date

Please return this completed form to the Caretaker or EPCC Executive Board
P.O. Box 9, Zephyr Cove, NV 89448

ACKNOWLEDGEMENT OF EPCC RULES & REGULATIONS FOR VACATION RENTERS
(To be filled out and signed by the renter)

Please read and initial the following EPCC Rules

_____ **Garbage:** Renters must know and comply with the garbage disposal arrangement of the Unit Owner. All household garbage must be deposited in either:
a bear-proof collection bin, container or structure on the Unit Owner's property,

_____ **Watercraft/Marina:** Only Unit Owners may use the marina and boat trailer parking area adjacent to the beach.

_____ **Beach:** Minors, under the age of 18, shall not be permitted on the EPCC beach after 10:00 unless accompanied by an adult. Renters and visitors shall not leave watercraft, tents, chairs, beach equipment, and personal effects on the EPCC beach overnight. Glassware containers and bottles on the EPCC beach are prohibited. No open fires, including portable BBQs, are permitted on the beach or in the Marina area. Fireworks of all types are PROHIBITED in all areas of EPCC including the beach.

_____ **Parking:** Renters and their visitors shall not park on the private property of other Unit Owners. Street parking, including encroaching on streets, is not permitted. Parking must be fully on-site and is limited to only to those parking areas designated in the rental permit. Vehicles not parked properly, will, at the direction of EPCC be towed away at the vehicle owner's expense.

_____ **RV and oversize vehicle parking:** 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 within EPCC is prohibited at all times

_____ **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.

_____ **Trespassing:** Renters and their visitors shall not trespass on private property at any

time. _____ **Pets:** Pets (dog/cat) are prohibited in all short term rental agreements.

I acknowledge I have read and understand the EPCC rules in this document and I have received a copy of **Elk Point Country Club Homeowners Association General Rules and Regulations** and **EPCC-HOA Operating Policies, Rules and Regulations Managing Rental Activity Within EPCC**. I agree to comply with all EPCC Rules and Regulations.

Signature of primary renter

Date

FORM 4

ELK POINT COUNTRY CLUB
ARCHITECTURAL REVIEW APPLICATION FOR MAJOR REVISIONS,
ADDITIONS AND NEW CONSTRUCTION

Homeowner Name(s)	
Property Address	Assessor Parcel #
Mailing Address	
Phone	Email
Architect or Designer	Phone
Contractor	Phone

An **Architectural Review Application for Major Project** and design review documents shall be submitted to the EPCC Executive Board Secretary c/o Jennifer Frates, JP & Company to initiate the review process. The design review documents shall include the following:

- Site development plan including relationship to surrounding structures, property lines, setback lines, topography and relationship to Community utilities and roadways
- Grading and drainage plan
- Floor and Roof Plans
- 3-dimensional rendering
- Front, rear and side elevations
- Exterior materials and finishes
- Landscape plans (when applicable)
- Boundary survey prepared by a licensed professional

Executive Board approval of plans must be obtained before submitting plans to any other regulatory agency.

Signature of EPCC Member

Date

Please return this completed form and documents to the EPCC Executive Board Secretary c/o Jennifer Frates Jennifer.jpandco@sbcglobal.net P.O. Box 9, Zephyr Cove, NV 89448

FORM 5

ELK POINT COUNTRY CLUB
ARCHITECTURAL REVIEW APPLICATION FOR MINOR PROJECT

Homeowner Name(s)	
Property Address	Assessor Parcel #
Mailing Address	
Phone	Email
Architect or Designer	Phone
Contractor	Phone
Please provide a brief description of the project. Include diagram, photo and/or map for clarity:	

Minor projects include replacement of an existing feature, such as changing windows and doors, exterior lighting, exterior paint color and/or materials, landscape replacement, installation of driveway pavers and roof replacement.

- An **Architectural Review Application for Minor Project** shall be submitted to the EPCC Executive Board Secretary c/o Jennifer Frates, JP & Company to initiate the review process
- Application must be approved by the EPCC Executive Board before the project commences.

The EPCC Executive Board may determine that the proposed project requires submittal of an **Architectural Review Application for Major Project**.

Signature of EPCC Member

date

Please return this completed form to the EPCC Executive Board Secretary c/o Jennifer Frates Jennifer.jpandco@sbcglobal.net P.O. Box 9, Zephyr Cove, NV 89448

FORM 6

ACKNOWLEDGEMENT OF CONSTRUCTION RULES

I have read and agree to comply with "Elk Point Country Club Home Owners Association Rules, Regulations and Guidelines Section 5: Managing Construction/Remodeling Within EPCC"

Name of Homeowner Printed

EPCC Unit Address

Mailing Address

Phone

Alternate Phone

Signature

Date

Name of General Contractor Printed

Contractor License #

Mailing Address

Phone

Alternate Phone

Signature

Date

FORM 6: ACKNOWLEDGEMENT OF CONSTRUCTIONS RULES must be signed by the Unit Owner
and the general contractor prior to the start of construction.

Send form to EPCC Executive Board, P.O. Box 9, Zephyr Cove, NV 89448

**ELK POINT COUNTRY CLUB
BOATHOUSE AND SLIP RENEWAL APPLICATION AND
ACKNOWLEDGEMENT OF MARINA/BOATING RULES**

May 1, 20__ to April 30, 20__

Printed Name	
EPCC Unit Address	
Mailing Address	
Phone	Alternate Phone

Application for annual slip and boathouse use:

____ Slip (\$600) Contact me for additional slip(s), if available. Yes ____
 ____ Boathouse (\$900) Contact me for additional boathouse(s), if available. Yes ____

Application for weekly slip rental (submit requests at least 30 days in advance of use)

Number of Slips Requested _____

Dates Requested (Friday at 12 noon to Friday at 12 noon) _____

\$300.00 per week, per slip(s) Subject to availability.

Your application will **not** be accepted or processed without the following documents enclosed:

- Proof of watercraft liability insurance showing EPCC as an additional insured in the amount of \$300,000.
- Copy of vessel registration
- Copy of boat trailer registration

I have read and agree to comply with "Elk Point Country Club Home Owners Association Rules, Regulations and Guidelines Section 6: Marina/Boating Rules"

Signature _____

Date _____

Make checks payable to **EPCC HOA Marina. Amount Enclosed \$** _____

Mail form, full payment of annual fees and required documents to:

JP & Company
Marina Operating Committee
3351 Lake Tahoe Blvd, Ste 8
So. Lake Tahoe, CA 96150

ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION
The Ad Hoc Committee Standards, Guidelines and Charter
January 25th, 2020

I. Authority

The Elk Point Country Club (EPCC) Executive Board of Directors (Board) has the authority pursuant to NRS 116.31065 and NRS 116.3102 (1) (t), to establish and maintain an Ad Hoc Committee (Committee) on behalf of EPCC, to serve as an advisory committee to the EPCC Board related to the EPCC Water System and other items as assigned by the Board, consistent with EPCC's Bylaws.

II. Relationship with the EPCC

The Committee shall serve as an agent of the EPCC, as directed by the Board, concerning Charter items listed below.

III. Charter

The Committee shall develop its Charter as provided by the guidance of the Board:

- a. Oversee water system--to include potable water system, fire suppression, water storage tanks, uranium removal, wells, pumps, and water testing procedures/manuals
- b. Oversee survey/questionnaire process
- c. Itemize maintenance/operation of EPCC assets
- d. Other items as assigned by the Board

IV. Committee Members

The Committee shall initially consist of not less than three and not more than five members. Members shall serve until such time as they have resigned or have been removed or the Board has appointed their successor.

V. Selection of Committee Members

The Chairperson of the Committee shall be selected by the Board. The other members of the Committee shall be selected by the Board in conjunction with the Chairperson. All selections shall be based upon the interest and qualifications of the candidates. All appointments shall be approved by the Board at a regularly scheduled Executive Board Meeting.

VI. Resignation of Committee Members

Any member of the Committee may, at any time, resign upon written notice delivered to 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 provide recommendations to the Board to serve as a 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 Charter

The Committee may, from time to time, recommend amendments to its Charter.

X. The Ad Hoc Committee Process

The Committee will provide continuous oversight of all aspects of the WPCC water system, will overview a continued survey process, will help ensure that the EPCC assets are properly maintained and provide recommendations to the Board on these and other items assigned by the Board.

ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION
The Architectural Committee Standards, Guidelines and Charter
January 25th, 2020

I. Authority

The Elk Point Country Club (EPCC) Executive Board of Directors (Board) has the authority pursuant to NRS 116.31065 and NRS 116.3102 (1) (t), to establish and maintain an Architectural Committee (Committee) on behalf of EPCC to develop and recommend rules, regulations, standards, protocols and procedures for design, architecture, and construction of structures within EPCC, for consideration and possible adoption by the Board consistent with EPCC's Bylaws.

II. Relationship with the EPCC

The Committee shall serve as an agent of the EPCC, as directed by the Board, concerning architectural standards and guidelines.

III Charter

Provide fair and balanced design review consistent with the EPCC Architectural Design Control and Standards Guidelines (ADCSG). The design review objectives are to promote harmonious architectural and landscape design consistent with the character of Elk Point, to consider neighboring properties view corridors, to provide for the enjoyment of all EPCC members, and to maintain property values.

IV. Committee Members

The Committee shall initially consist of not less than three and not more than five members. Members shall serve until such time as they have resigned or have been removed or the Board has appointed their successor.

V. Selection of Committee Members

The Chairperson of the Committee shall be selected by the Board. The other members of the Committee shall be selected by the Board in conjunction with the Chairperson. All selections shall be based upon the interest and qualifications of the candidates. All appointments shall be approved by the Board at a regularly scheduled Executive Board Meeting.

VI. Resignation of Committee Members

Any member of the Committee may, at any time, resign upon written notice delivered to 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 provide recommendations to the Board to serve as a record of all actions it has taken.

IX. 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.

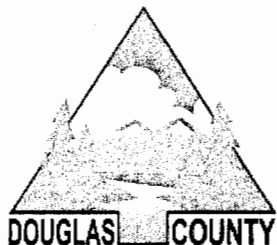
X. Amendment of the Charter

The Committee may, from time to time, recommend amendments to its charter.

XII. The Architectural Committee Process

The Committee design 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.

EXHIBIT 5



DOUGLAS COUNTY, NEVADA

ASSESSOR'S OFFICE

Trent A. Tholen, Assessor

[Assessor Home](#)[Personal Property](#)[Sales Data](#)[Annual Taxes](#)[Recorder Website](#)**Parcel Detail for Parcel # 1318-16-710-026****Prior Parcel #** 1318-16-710-014**Location**

Property Location 476 LAKEVIEW AV

Town ELK POINT SANI DIST

District 210.0 - ELK POINT DIST

Subdivision ELKS SUB Lot 102 Block

Property Name

[Add'l Addresses](#)[Parcel Map](#)**Ownership**Assessed Owner Name MORETTO,
JEROME F TYEEMailing Address 880 E FRONT ST
FALLON, NV 89408[Ownership History](#)[Document History](#)Legal Owner Name MORETTO 2000
TRUST

812463

Vesting Doc #, Date 11/08/2012 Year / Book / Page 12 / 11
/ 1948

Map Document #s 768323

Description

Total Acres .104

Square Feet 5,837

Ag Acres .000

W/R Acres .000

Improvements

Single-family Detached 1 Non-dwelling Units 0

Single-family Attached 0 Mobile Home Hookups 0

Stories 2.0

Multiple-family Units 0 Wells 0

Garage Square Ft... 325

Mobile Homes 0 Septic Tanks 0

Attached / Detached A

Total Dwelling Units 1 Buildings Sq Ft 0

[Improvement List](#) Residence Sq Ft 2,260[Improvement Sketches](#) Basement Sq Ft 0[Improvement Photos](#) Finished Basement SF 0**Appraisal Classifications**Current Land Use Code 200 [Code Table](#)

Zoning Code(s)

Re-appraisal Group 5 Re-appraisal Year 2020

Original Construction Year 1938 Weighted Year 1980

Owner-Occupied or Rental for
2020-21 0**Assessed Valuation**

Assessed Values	2020-21	2019-20	2018-19
Land	530,950	530,950	465,500
Improvements	85,987	85,900	84,330
Personal Property	0	0	0
Ag Land	0	0	0
Exemptions	0	0	0
Net Assessed Value	616,937	616,850	550,330

Increased (New) Values

Land	0	0	0
Improvements	0	0	0
Personal Property	0	0	0

Taxable Valuation

Taxable Values	2020-21	2019-20	2018-19
Land	1,517,000	1,517,000	1,350,000
Improvements	245,677	245,429	242,371
Personal Property	0	0	0
Ag Land	0	0	0
Exemptions	0	0	0
Net Taxable Value	1,762,677	1,762,429	1,572,371

Increased (New) Values

Land	0	0	0
Improvements	0	0	0
Personal Property	0	0	0

[Back to Search List](#)



EXHIBIT 6

RECEIVED
MAR 28 2019
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY - REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS
3300 West Sahara Avenue, Suite 325, Las Vegas, Nevada 89102
(702) 486-4480 / Toll free: (877) 829-9907 / Fax: (702) 486-4520
E-mail: CICOmbudsman@red.nv.gov / <http://www.red.nv.gov>

ALTERNATIVE DISPUTE RESOLUTION (ADR) CLAIM FORM

Date: 3/26/19

Jerome Moretto
Signature of Claimant

***Only one Claimant per claim form is allowed for tracking purposes.**

Claimant: Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust

*If individual, provide full name as it appears with the assessor's office in order to verify that you are a Unit Owner. If an Association, provide COMPLETE Association name as it appears on Secretary of State's website. (<http://nysos.gov/sosentitysearch/>)

If Claimant is represented by an attorney: Law Office of Karen L. Winters, Karen L. Winters, Esq.

Please provide the name of the Law Firm and the name of the attorney. An attorney is not required.

Mailing Address: PO Box 1987 Minden NV 89423
Street City State Zip Code

Phone Number: 775-782-7933 **Fax:** 775-782-6932 **E-Mail:** kwinters@nevada-law.us

Respondent: Elk Point Country Club Homeowners' Association, Inc.

*If individual, provide full name. If an Association, provide COMPLETE Association name as it appears on Secretary of State's website. (<http://nysos.gov/sosentitysearch/>)

*** Please list only one party; attach Additional Respondent Form (#520B) if there is more than one Respondent**

Mailing Address: P.O. Box 9 Zephyr Cove NV 89448
Street City State Zip Code

Phone Number: _____ **Fax:** _____ **E-Mail:** _____

PLEASE SELECT YOUR METHOD OF RESOLUTION:



MEDIATION



REFEREE PROGRAM*

* Claims involving multiple parties may be excluded from the Referee Program.

** If all parties agree to the Referrer Program, the cost will be fully subsidized by the Division, as long as funds are available.

J. Moretto
(Initial)

I have read and agree to the policies stated in the ADR Overview (Form #523).

☐ Yes ☒ No

Has the above listed Claimant filed an Intervention Affidavit (Form #530) regarding the same or similar issues.

If yes, please provide the file number(s): _____

(Initial if applicable)

I acknowledge that if an Intervention Affidavit (Form #530) has been filed with the Division based upon the same issues, by filing an ADR claim; the Division will not move forward with investigating the Intervention Affidavit pursuant to NAC 116.630.

(Initial if applicable)

If the **Referee Program** is selected, and the Respondent chooses Mediation, the claim will default to mediation.

Receipt number: 512564 Claim number: 19-217 Date received: March 28, 2019

ENTERED
4-2-19

Address of unit related to this claim: _____

- Your explanation must start below. You may attach additional pages, if more space is needed. Please, do not write "SEE ATTACHMENT" in the space below IT IS NOT ACCEPTABLE.
- If this claim is being filed based on a referral from the Intervention process, please ensure that you explain the issue below. Do not refer to your original complaint.

This is a dispute between property owner Jerome Moretto, Trustee, owner of 476 Lakeview, Zephyr Cove, NV, and the Elk Point Country Club Homeowners Assn., Inc. regarding its authority to create an Architectural Committee delegating the Board's duties, its procedural failure to notice members of the association of that creation and the subsequent rules and standards, and its imposition of rules and standards in violation of members' property rights. The Executive Board created an "Architectural Committee" in violation of NRS 116.3106(1)(d), 116.11085 and 78.125 and its own Bylaws at Art. V, Sec. 1 in that the Bylaws do not state the Board has any authority to delegate its duties to a Committee, therefore the Architectural Committee and all its acts are illegal and void. Further, assuming the "Architectural Committee" is a viable committee, the Board violated the Notice requirements of NRS 116.31083 for failure to provide timely and proper notice to all unit members of all meetings of the "Architectural Committee" (which necessarily effects all members) during which it promulgated the "Standards and Guidelines" the Board approved in its March 31, 2018 meeting. Continued on Attachment 1 hereto.

IDENTIFY THE SECTION OF GOVERNING DOCUMENTS PERTAINING TO THE DISPUTE:

In addition to the Nevada Revised Statutes cited, the following portions of the Bylaws pertain to the dispute: Bylaws at: Article II, Sections 5 and 6, Article III, Section 2, Article IV, Section 4; Article V, Section 1, Article XVI, Section 3. The entirety of the alleged Architectural Committee Standards and Guidelines adopted by the Board on March 31, 2018 also pertains to the dispute. A copy of the Bylaws and the purported Standards and Guidelines are attached to this ADR Claim Form.

In order for the claim to be considered filed, the following must be submitted, if applicable.

Please indicate that you acknowledge and will follow through with completing each of the items below. Initialing that the following steps have been completed:

Forms:

- One (1) Original Claim Form, # 520
- Two (2) copies of the Claim Form and supporting documents
 - Supporting documents may be provided directly to the Mediator or Referee once assigned, and need not be provided with this Claim Form. Should you choose to submit your documents; you must supply one (1) original set and two (2) copies of the supporting documents.

Filing Fee of \$50.00 payable to "NRED" in the form of (This fee is nonrefundable):

- Cash (exact change; please do not mail cash)
- Check
- Money Order

I acknowledge that the Subsidy Application will ONLY be accepted, and reviewed prior to the claim being assigned to a Mediator or Referee.

ADR Subsidy Application for Mediation (Form #668):

Subsidy is awarded based on:

- **For a Unit Owner:**
 - Once during each fiscal year of the State for each unit owned.
- **For an Association:**
 - Once during each fiscal year of the State for each unit located within the each individual association.
 - In "Good Standing" with Secretary of State & Office of the Ombudsman.

Should subsidy be awarded, the Division will notify each party when the claim is assigned to a Mediator.

I acknowledge that the Claimant will NOT be applying for Subsidy for this claim.

SERVING THE CLAIM

Please be advised, the Claimant will be responsible to have the Respondent(s) served within **45 days** from the date the Division processes the Claimant's 520 claim form. The packet will contain instructions on how to serve the claim.

The packet that the Claimant will receive in the mail will contain:

- A claim opening letter (keep this letter for your records).
- A receipt for the **non-refundable** \$50.00 filing fee (keep for your records).
- Affidavit of Services Form
 - This form must be filled out by the person that serves the claim.
 - The form **MUST** be notarized, and returned to the Division within 10 days of the claim being served.
 - The packet cannot be served by anyone associated with the claim.

The following items from the packet are required to be served:

- ADR Overview, form #523
- Copy of the claim that was processed, form #520
- A blank Response, Form #521
- A blank Subsidy Application, form #668
- *If the Claimant listed more than one Respondent on the Claim Form (#520). The Claimant will be responsible to make copies of the packet, so that each Respondent can be served.*
- *One (1) Affidavit of Service will have to be notarized, and submitted for each Respondent listed on the Claim Form (#520/520B).*
- *Pursuant to NAC 38.350(2)(a) – The Affidavit of Service (AOS) be submitted to the Division within 10 days of being served.*

Jm I acknowledge that all forms listed above will be served pursuant to NRS 38.320.
(Initial)

Jm I acknowledge that if the claim is not served within the timeframe set forth by Nevada
(Initial) Administrative Code (NAC) 38.350 (1), the claim will be closed.

Jm I acknowledge if the Affidavit of Service (AOS) is not submitted to the Division within the
(Initial) timeframe set forth by Nevada Administrative Code (NAC) 38.350 (2)(a), the Division has the authority to close the claim.

How service must be made:

- **Service on a Nevada Corporation:** Service shall be made upon the president or other corporate head, secretary, cashier, managing agent or resident agent. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **Service on a Non-Nevada Corporation:** Service shall be made upon the agent designated for service of process, in Nevada, or its managing agent, business agent, cashier, or secretary within this State. However, if this is not possible, then upon the Secretary of State in the manner described in Rule 4 of the Nevada Rules of Civil Procedure.
- **In all other cases (except service upon a person of unsound mind, or upon a city, town or county):** Service shall be made upon the respondent personally, or by leaving copies at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.
- **If all of the above are not possible because of the absence from the state or inability to locate the respondent:** An *Affidavit of Due Diligence* can be provided to the Division. If the Division determines adequate efforts were made to serve the respondent(s), the Division will provide a letter to the claimants acknowledging their unsuccessful efforts to participate in the ADR program.

* "Service by Publication" is not a valid form of service for the ADR Program.

The following is a listing of the Mediators and Referees for the Alternative Dispute Resolution program. Before making your selection you may view the resumes of the Mediators and Referees, and their location availability can also be viewed on the Division's website at <http://red.nv.gov/Content/CIC/ADR/Panel/>

- If the parties do not agree on the selection of Mediator or Referee, the Division will assign a Mediator/Referee at random.
- *This is a requirement, please indicate the Mediator/Referee by initialing next to the party selected.*

SOUTHERN NEVADA

MEDIATOR LISTING

REFeree LISTING

_____ Angela Dows, Esq.
_____ Barbara Fenster
_____ Christopher McCullough, Esq.
_____ Dee Newell, JD
_____ Donald E. Lowrey, J.D. LL.M.
_____ Eric Dobberstein, Esq.
_____ Henry Melton
_____ Ira David, Esq.
_____ Janet Trost, Esq.
_____ Malcom Doctors
_____ Phillip A. Silvestri, Esq.

_____ Angela Dows, Esq.
_____ Donald Lowrey, J.D.
_____ Ira David, Esq.

NORTHERN NEVADA

MEDIATOR LISTING

REFeree LISTING

LM
_____ Paul H. Lamboley, Esq.
_____ Michael Matuska, Esq.

_____ Paul Lamboley, Esq.
_____ Michael Matuska, Esq.

Once a claim has been received and processed by the Division an opening packet will be mailed out to the mailing address provided on page 1 of this form. This packet will include instructions on the next step in this process (serving the claim).

Submit the required forms and documents to:

**Nevada Real Estate Division
ADR Facilitator
3300 West Sahara Avenue, Ste. 325
Las Vegas, Nevada 89102**

ATTACHMENT 1

Further, the "Standards and Guidelines" adopted by the Board on March 31, 2018 violate the Complainant's and all members' property rights. The Board has argued, during the hearing on this matter before the Board, held on December 15, 2018, that all the real property within the boundaries of the Elk Point Country Club Homeowners Association, Inc. (EPCC) was originally owned by the EPCC and each deed thereafter to the members contained a covenant and restriction subjecting the member to by-laws, rules and regulations of the EPCC. Under the original Bylaws and all amendments thereafter, any member choosing to build any structure on the property was required to first obtain the approval of the Board. The Complainant's home was built decades ago and no one disputes it was built with the approval of the Board at that time. Now, however, the Board has attempted to impose "Standards and Guidelines" that not only burdens each property, including Complainant's property, with a walkway easement and a "view corridor" without due process and without compensation, but establishes a "building envelope" that would effectively require Complainant to tear down his home if even a minor renovation is needed or desired. In addition, it would impose on Complainant the duty to remove structures on Complainant's property that have been located on the property for decades and require construction of a garage three times the size of the current garage.

In addition to the disputes listed above regarding the formation of the Architectural Committee and promulgation of the "Standards and Guidelines", the rules contained in the "Standards and Guidelines" violate its own Bylaws at Article IV, Section 4, which requires that: "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." If the Board argues that it maintained any ownership interest in the Units as a result of the deed restriction, then this section of the Bylaws first requires a unanimous vote of the members prior to imposing these new rules.

In the course of this dispute, Complainant has attempted to address his issues through a hearing before the Board. Prior to that December 15, 2018 hearing, the Complainant submitted a written brief and the attorney for the Association submitted a written response in support of their respective positions. Attached hereto as Attachment 2 is the Complainant's written "Hearing Reply Memorandum" more thoroughly addressing the issues now presented for mediation.

ATTACHMENT 2

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HEARING REPLY MEMORANDUM

March 25, 2019

**Re: Morettos' Objection to Architectural Guidelines Amendment, approved 3/31/2018; and
Morettos' Document Request and Request for Sanctions**

The Morettos live full time at 476 Lakeview Avenue, Zephyr Cove, NV 89448, APN 1318-16-710-014. The following is our REPLY HEARING MEMORANDUM ("REPLY"), for a hearing we requested, pursuant to NRS 116.31087.

I. PROCEDURAL HISTORY:

- (1) Pursuant to NRS 116.31087, the Morettos requested a hearing of EPCC, by written letters: May 12, 2018, hand-delivered letter, June 9, 2018, hand-delivered letter, November 1, 2018, certified letter. Ex. 11, Board Hearing Exhibits. The Board finally placed the Morettos' issues on the Dec. 15, 2018 Agenda. Ex. 1, Agenda, Board Hearing Exhibits.
- (2) On December 15, 2018, a hearing was held before the EPCC Board, whereby the Morettos submitted a written brief, a list of exhibits, and called the Board Members as sworn witnesses before a Nevada Licensed Court Reporter, Diane Lusich. Jerome and Deborah Moretto testified under oath that their statements and record are true and correct of their own personal knowledge. A transcript of the proceedings, prepared and certified by the Court Reporter, are attached hereto. Ex. 2, Reply Exhibits.
- (3) At the hearing, no testimony or evidence of any kind was presented by the EPCC Board, except their responses under oath to the Morettos' questions.
- (4) To date, the Board has made no decision or taken any action.
- (5) On February 5, 2019, EPCC's Counsel James R. Cavilia, Esq., of Allison, MacKenzie, et al., by email and certified letter, sent a Memorandum, from him to the Board, an attorney-client document, that the cover letter says was sent to the Morettos at the "Board's direction...." A true and correct copy is attached as Ex. 3 "EPCC Counsel's Post-Hearing Memo," Reply Exhibits.

II. ISSUES TO BE DECIDED AT HEARING

**ISSUE 1: IS THE EPCC BOARD AUTHORIZED TO IMPOSE PROPERTY RESTRICTIONS
ON THE INDIVIDUAL UNITS WITHIN THE ELK POINT SUBDIVISION, INCLUDING THE
MORETTOS INDIVIDUAL UNIT, WITHOUT A PROPER VOTE OF THE MEMBERS?**

**ISSUE 2: DID THE BOARD IMPROPERLY RESPOND TO THE MORETTOS' DOCUMENT
REQUEST AND IS IT LIABLE FOR SANCTIONS FOR ITS FAILURE?**

III. MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

The Morettos have procedural and substantive complaints against EPCC and its Governing

Board, the 2018 and 2019 Board of Directors. The fundamental substantive dispute is whether the EPCC Board has authority under either the Governing Documents or Nevada Law to impose the Property Restrictions set forth in the Architectural Control Committee (“ACC”) Guidelines on the the Morettos’ individual unit. It is the Morettos position that a 2/3 majority vote of the membership is required to amend the Bylaws to impose such restrictions, and their consent is required as well. On March 31, 2018, the Board adopted the ACC Guidelines, after an “advisory vote” of the members (not even a majority vote, per the ballots), without the Morettos’ consent, finding EPCC can impose property restrictions on the individual units within the Elk Point subdivision, including the Morettos. The Morettos are seeking rescission of that decision.

The procedural violations of both Nevada Law and the EPCC Governing Documents on this issue have risen to harassment of the Morettos. First, the Board refused to hear the Morettos dispute, in violation of law. Second, the Board refused to produce documents in response to the Morettos’ request, in violation of law. Third, after a hearing was finally received before the Board, 7 months after it was requested, the EPCC Board has refused to issue a decision, knowing full well that the statute of limitations to bring this matter to court or before the Department of Real Estate, State Ombudsman, is quickly approaching, on March 31, 2019. The Morettos are left with no recourse than to seek DRE and possible Judicial Review of these issues, as shown in the following points and authorities.

A. ONLY THE MEMBERS CAN IMPOSE PROPERTY RESTRICTIONS ON INDIVIDUAL UNITS, NOT THE BOARD OF DIRECTORS

(1) THE BOARD IS NOT AUTHORIZED BY LAW TO IMPOSE PROPERTY RESTRICTIONS ON INDIVIDUAL UNITS

The Nevada Constitution, in its very first Section, states that its citizens have an inalienable right to their property, including “acquiring, possessing and protecting property...” It is hornbook law that the bundle of sticks of property ownership includes: the right of possession, the right of control, the right of exclusion, the right of enjoyment and the right of disposition. Further, it is considered a crime of trespass to go upon the land of another. See NRS 207.200. Nevertheless, this Board is attempting by its adoption of the ACC Guidelines to invade the Morettos’ individual unit and violate their property rights, to tell them what they can and cannot do with their property, delegating the review to an Architectural Control Committee (“ACC”), which is outside the Board’s jurisdiction, as discussed below.

It is basic servitude common law that a common-interest community has no power to adopt rules that restrict the use or occupancy of individually owned lots. Section 6.7, “Power to Adopt Rules Governing Property,” Rest. Of Property, Third, “Servitudes.” As stated therein:

“Absent specific authorization in the declaration, the common-interest community does not have the power to adopt rules, other than those designed to protect the common property, that restrict the use or occupancy of, or behavior within, individually owned lots or units.” This law is explained further in Comment b. Rationale:

“Rules are not valid unless also reasonable...Even in the absence of express grant of authority, an association enjoys an implied power to make rules in furtherance of its power of the common property. The association has no inherent power to regulate use of the individually owned properties, however, except as implied by its responsibility for management of the common property.” (Emphasis Added).

As noted in the Restatement, Servitudes are also deemed invalid because they violate public policy in the following cases:

- (1) "A servitude that is arbitrary, spiteful, or capricious;
- (2) A servitude unreasonably burdens a fundamental constitutional right;
- (3) ...An unreasonable restraint on alienation;
- (4) *****
- (5) A servitude that is unconscionable under sec. 3.7."

Id., Section 3.1m "Validity of Servitudes, General Rule."

What is 'reasonable' is further explored in the Rest. of Property. Section 3.4 notes that a "direct restraint" is determined by weighing the utility of the restraint against the injurious consequences of enforcing the restraint. Section 3.7 notes that a servitude is invalid if it is unconscionable. And the comments on these laws, at p. 485 notes that "unconscionable transactions contain an element of overreaching, unfairness, surprise or harshness..." (Emphasis Added).

These common law property rights are violated by EPCC by its adoption of the ACC Guidelines. For example, as noted in the ACC Guidelines, the Board adopted rules that require that anything the individual property owner does to their individual unit must be first approved by the ACC Committee and the unit owner is required to pay fees for this review. Ex. 5, Board Hearing Exhibits. Such review includes, as noted on the ACC Guidelines, pp 2-4:

- (1) The Maximum coverage area is limited to 35% of the lot (however, as noted by the EPCC summary submitted to the Board on 3/31/2018, 7% of the existing homes exceed 35% coverage);
- (2) Height Limitation of 35 feet (as noted on the EPCC summary, 18% of the homes exceed this height);
- (3) Building Envelope is limited significantly, including a 25' setback from the street, with a "3-foot walkway 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 the front property lot line;" a 7 feet side setback and a 20 foot rear setback.¹
- (4) Include at least one off street parking space, inclusive of garage spaces, within each lot for each sleeping area within the building.
- (5) Written approval from all neighboring lots prior to approval of the Committee.
- (6) Fences and Walls must be approved, including any in kind replacement. No fences or walls are allowed within 3 feet of the front property line. Any paint or stain must be approved by the committee. If a fence is deemed by the committee to be in disrepair, the owner is subject to fines and penalties and the Board can come onto the property, fix it and assess the owner.
- (7) Landscape design and layout is required to be approved by the Committee. The size and height of landscaping is limited to 5 feet and under.
- (8) All exterior modifications to any building including painting, landscaping additions or removals must be submitted to the Committee. This review includes "the Committee has the authority to recommend to the Board the requirement for the removal of improvement(s) and/or the restoration of the original state or condition."
- (9) Fines and construction penalties may be assessed against the owner in accordance with the Fine Schedule set by the Board and the EPCC Governing Documents.

The Committee has almost sole discretionary power over each individual unit. The Guidelines also

¹ The three foot easement was revised at the following Board Meeting to a "recommendation" after Mrs. Moretto advised that they were giving an easement that is a violation of trespass law and after the advice of their own lawyer, that Mrs. Moretto was correct.

state that an architect must be on the committee. *Id.*, at III, p. 1. As testified to by Charles Jennings, a former ACC Committee Member, current Board Member and current ACC Committee Liaison, he is a licensed architect and he knows of no others who are in the Elk Point Subdivision. Thus, the question arises, is the Board and its created ACC Committee authorized to impose these unreasonable property restrictions on individual units? The Restatement states otherwise:

“Except to the extent provided by statute or authorized by the declaration, a common-interest community may not impose restrictions on the structures or landscaping that may be placed on individually owned property; or on the design, materials, colors, or plants that may be used.” Sec. 6.9, “Design-Control Powers,” Rest. of Prop. (Third), emphasis added. As noted in Comment (a) “Rationale”:

“Although design controls are a common feature of common-interest communities, they are not necessary to the effective functioning of the community... Design controls may contribute to the maintenance of property values, but they may also interfere with freedom of expression and contribute to the creation of communities lacking in variety and architectural interest.”

These laws supplement NRS Chapter 116, by statute. Chapter 116 specifically provides that it is supplemented by all other laws applicable to real property. See NRS 116.1108:

“The principles of law and equity, including the laws of corporations and any other form of organization, authorized by the law of this State... the law of real property ...supplement the provisions of this chapter, except to the extent inconsistent with this chapter...”

The legislature adopted NRS Chapter 116 and included this common law in various statutes, some cited by the Morettos in their hearing brief.

(2) The EPCC ATTORNEY’S POST-HEARING MEMORANDUM DOES NOT ADDRESS THE MORETTOS’ REAL PROPERTY POSITION

In response to the Morettos’ legal arguments, Mr. Cavilia’s February 5, 2019, Post-Hearing Brief (“Post-Hearing Brief”) states NRS Chapter 116 does not “require a common-interest community created before January 1, 1992, to comply with the provisions of NRS 116.2101 to 116.2122.” Actually, NRS 116.1201 provides that “this chapter applies to all common-interest communities within this State.” It does not create a blanket exception for communities created before 1992. The subsection that applies is subsection (d) which exempts from coverage:

“A common-interest community that was created before January 1, 1992, is located in a county whose population is less than 55,000, and has less than 50 percent of the units within the community put to residential use, unless a majority of the units’ owners otherwise elect in writing.”

In this case, it is true EPCC was formed prior to January 1, 1992, and it is in Douglas County, which is just under the 55,000 population limit. However, 100 percent of its units are “put to residential use” as shown by the Bylaws. (Ex. 4, Hearing Exhibits). Thus, it is not exempted from coverage, by statute.

In subsection 3, the Board is given the option to comply with NRS 116.2101 to 116.2122, pertinent provisions cited by the Morettos in their hearing brief. However, if EPCC chooses not to comply with the statutory law, it must still comply with the law of property, cited above. See NRS 116.1108. The statutes cited by the Morettos are Nevada’s interpretation of long-standing common law, as cited in the Restatement of Property.

Thus, this law does apply to this situation. It is noteworthy that Mr. Cavilia cited this law to the Board in his Pre-Hearing Memorandum. (Ex. 11, Hearing Exhibits). Further, this argument does not refute the Morettos’ argument that the Board has no legal authority to impose property

restrictions on individual units. No legal authority is cited at all to support the EPCC Board's position that it can adopt real property restrictions on individual units. Therefore, by the authorities cited by the Morettos, the Board is without any authority as a matter of law to impose restrictions on the Morettos' individual unit.

(3) THE ACC GUIDELINES ARE NOT AUTHORIZED BY EPCC'S GOVERNING DOCUMENTS

In 1927, EPCC was formed by Elks Club Members to build summer cabins at Lake Tahoe. Per Mr. Jennings' testimony, there are 91 units within the subdivision. As 1927 precedes the adoption of NRS Chapter 116, Nevada Common-Interest Development Law, EPCC was formed as a Co-Operative Corporation, as noted in the Articles of Incorporation on file with the Secretary of State. Nevada Secretary of States Records, Ex. 4, Reply Exhibits. As noted in the Morettos' Hearing Brief, all references in the Articles and Bylaws refer to the Board having Corporate Powers and Responsibilities, not responsibility over the individual units. Thus, references in Mr. Cavilia's Post-Hearing Brief that the Morettos' predecessors in interest agreed to amendments to the corporate documents and corporate rights are irrelevant to any authority of the Board over the Morettos' individual unit and their real property rights. It is noteworthy that the Bylaws confirm that the Board's powers are even limited over the common interest property, which it cannot encumber or convey without a 100% vote of the Membership.

Whether unit owners have delegated any of their real property rights to the Board is set forth in the Bylaws, Article XVI, Property Right of Members, Section 2, p. 17. It provides the units shall be used for single family residential purposes only, thus limiting any construction that is not for single family residential purposes. It is undisputed that all units within the Elk Point Subdivision are single family residences.

Also, Section 3 provides "[n]o structure of any kind shall be erected or permitted upon the premises of any member unless the plans and specifications shall have been first been submitted to and approved by the Board of Directors." There are no objective standards set forth to support this section and none have been applied by the Board since 1927. As noted in Mr. Cavilia's Pre-Hearing Brief, to adopt any such restrictions requires a 2/3 vote of the members and a vote by the affected property owner. That has not happened here. Disputing his own position in his Pre-Hearing brief, in the Post-Hearing brief, Mr. Cavilia argues that they are not adopting any property restrictions at all, they "clarify" an existing property restriction. However, the ACC Guidelines speak for themselves. Ex. 5, Hearing Exhibits. They impose setback restrictions, grant easements, impose height and coverage restrictions, give authority over individual units to the neighbors, to an improperly formed committee, etc., etc.

The Rules had no specific property restrictions stated for any individual unit, until the Board adopted these amended ACC Guidelines on March 31, 2018. This proposal to adopt specific real property restrictions on the individual units is outside of the jurisdiction of the Board. As noted in the Morettos' hearing memorandum, governing documents give the Board corporate powers, not power over the individual unit owner's real property rights. Thus, the citations in the Post-Hearing Brief that the 1927 Bylaws allow amendments and the Morettos' predecessors in interest agreed to such amendments are irrelevant to the issues. This refers to corporate powers, not real property rights. If the Board wishes to have the governing documents amended to impose real property restrictions, then by law and the Bylaws, they need a two-thirds vote of the members to do so, including the vote of the affected property owner, including the Morettos. This position is supported by real property law, binding on

this Board, by NRS Chapter 116. Section 6.7, "Power to Adopt Rules Governing Property," Rest. Of Property, Third, "Servitudes" provides:

"Absent specific authorization in the declaration, the common-interest community does not have the power to adopt rules, other than those designed to protect the common property, that restrict the use or occupancy of, or behavior within, individually owned lots or units." (Emphasis added).

The Bylaws do not give the Board specific authorization on how it approves plans and specifications within individual units. As noted by Mr. Cavilia in his Pre-Hearing Brief, if the Board adopts a property restriction, it is required to get a two-thirds vote of the Members. Ex. 11, Hearing Exhibits. As noted in his Post-Hearing Brief, as this sentence is without any objective standards, the Board could act arbitrary and capricious, if it so chooses. Ex. 3, Reply Exhibits, last page. This statement, without any kind of objective standards, is analogous to statutes that are void for vagueness.

As noted in Flamingo Paradise Gaming, LLC v. Chanos, 124 Nev. 502, 510, 217 P.3d 546, 551-552 (2009), a statute is deemed void for vagueness when (1) it fails to provide sufficient notice to a person of ordinary intelligence of what is prohibited, and (2) it lacks specificity, which encourages or fails to prevent arbitrary or discriminatory enforcement. This specificity requirement was adopted by the legislature in NRS Chapter 116. Specifically, it mandates that any rules adopted by the association:

"Must be sufficiently explicit in their prohibition, direction or limitation to inform a person of any action or omission required for compliance." NRS 116.31065(2).

In this case, Mr. Moretto when he purchased his property 25 years ago, had no notice of these property restrictions on his individual unit, adopted on March 31, 2018. Moreover, the ACC Guidelines are set up so that the committee can force him to pay fees for approval, file forms, obtain the consent of his neighbors, and be subject to the arbitrary and capricious review of a committee that must contain his neighbor, Charles Jennings, a licensed architect, to review his property, even to paint it the same color it's been painted for 25 years or do his spring landscaping. It grants his neighbors license to use his property as a pedestrian easement, without compensation, in violation of Nevada trespass laws. If his house is destroyed by fire, it removes his grandfathered rights to rebuild on the footprint of his existing house, on his narrow lot, by excessive new setback requirements, with height restrictions, and the other property restrictions in these ACC Guidelines.

As noted in NRS Chapter 116, any rule "[m]ust be reasonably related to the purpose for which they are adopted." *Id.*, (1). They must be consistent with the governing documents of the association and must not arbitrarily restrict conduct or require construction of any capital improvement by a unit's owner that is not required by the governing documents of the association." *Id.*, (4). These ACC Guidelines are not authorized at all by the governing documents. They are deemed unconscionable as a matter of law, as noted by the Rest. of Property, cited *infra*, because "unconscionable transactions contain an element of overreaching, unfairness, surprise or harshness..." (Emphasis Added).

Finally, Mr. Cavilia's own Pre-Hearing Brief confirms that if the Board wishes to impose Property Restrictions on the individual units, it must obtain a two-thirds vote of the Members, held in an open meeting. No such vote was obtained. It is noteworthy that the Cavilia Post-Hearing Brief says nothing about the faulty "advisory vote." As noted in Nevada Civil Law, failure to address an issue with points and authorities in an opposition is an admission against interest that the motion has merit. Therefore, its decision to approve the ACC Guidelines should be vacated, as requested by the Morettos.

B. PROCEDURAL VIOLATIONS BY THE 2018-2019 BOARD OF DIRECTORS

(1) THE BOARD FAILED TO TIMELY ACKNOWLEDGE THE MORETTOS COMPLAINT OR PUT IT ON THEIR AGENDA

The Department of Real Estate, State Ombudsman, requires the Morettos to first go to the Board with any alleged violation by it of the governing documents and/or Nevada law, prior to filing for redress with the Nevada Department of Real Estate, State Ombudsman. The intent is to give the Board a chance to rectify its errors. Therefore, the Morettos hand-delivered letters to the Board on May 12, 2018, reiterated on June 9, 2018, and by certified mail on November 1, 2018, to request the matter be placed on the Board agenda, pursuant to NRS 116.31087. The Board did not allow a hearing on this request until December 15, 2018. See Agenda, Ex. 1, Hearing Exhibits.

The failure to even consider the matter or acknowledge the Morettos' Request for Hearing is a violation of Nevada Law, a procedural violation. Id. NRS 116.31087(1) provides that upon the receipt of a written request, the Board "shall...place the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board." Further, "[n]ot later than 10 business days after the date that the association receives such a complaint, the executive board or an authorized representative of the association shall acknowledge the receipt of the complaint and notify the unit's owner ...[and upon their written request], the subject of the complaint will be placed on the agenda of the next regularly scheduled meeting of the executive board." Id., section (2). It took seven months and six Board meetings between the date the Morettos requested a hearing in May 2018 and the date they finally got one on December 15, 2018. This is just the first EPCC procedural violation.

(2) THE BOARD FAILED TO PRODUCE DOCUMENTS AND IS SUBJECT TO STATUTORY SANCTIONS TO THE MORETTOS

The Board's most egregious procedural failure is to fail to timely produce documents to the Morettos, upon their written request. As noted in the May 12, 2018, Moretto letter, the Board and the Morettos have a substantive dispute on whether or not the Board or a vote of the members is required to impose property restrictions on the individual units. On May 12, 2018, the Morettos requested documents in support of their side of the dispute, including such basics as the governing documents, the architectural committee records and other documents relevant to the issue. See Ex. 10, Correspondence, Hearing Exhibits. The documents came in piecemeal up to including December 4, 2018. Itemization of EPCC Document Responses, Ex. 12, Hearing Exhibits. This was 139 days after the Morettos' Request in May 2018.

NRS 116.2117(2) provides that the Board has 21 days from a written request, to produce documents. Further, upon the failure to do so, the Executive Board members, individually, are liable for \$25 per day until the documents are produced. As noted in the Morettos' Hearing Memorandum, \$25 per day for 139 days of failure to produce is a statutory penalty of each Board member, jointly and severally, of \$3,475.00 owed to the Morettos.

As if this procedural error could not get any worse, on February 5, 2019, the Morettos received an email and later a certified mailing, mailed on February 5, 2019, from EPCC's Counsel, Jim Cavilia, Esq., of Allison, MacKenzie, et al., the Post-Hearing Brief, cited herein. Ex. 3, Reply. This mailing is of an attorney-client communication between Jim Cavilia, Esq. and the EPCC Board, which the cover letter indicates the Board authorized be released to the Morettos, thus, waiving attorney-client privilege. Mr. Cavilia attended the December 15, 2018, hearing at the request of the Board.

This Post-Hearing Brief does not address with any points and authorities the issue of EPCC's failure to produce documents, which right there is an admission against interest. Further, it relies upon exhibits (illegible copies sent to the Morettos, as shown on Exhibit 2), including the 1927 EPCC

Bylaws, the 1929 Bylaws Amendment, the 1949 Bylaws and the 1927 Deed of the Morettos' predecessor- in- interest. **These documents were not provided to the Morettos in response to their May 12, 2018, request for documents.** See Ex. 12, Hearing Exhibit. Moreover, EPCC presented no evidence at all at hearing, failing to provide these exhibits, apparently in their attorney's possession. See attached Reply Ex. 1, Certified Transcript of Hearing. Thus, Counsel is admitting, by his Post-Hearing Brief, sent to the Morettos at EPCC's direction, on February 5, 2019, that his client omitted to provide relevant documents to the Morettos.

Moreover, the 1927 Bylaws copy is illegible, even with a magnifying glass and really should not be included as a "production" on February 5, 2019. Based on this admission by EPCC's Counsel, sent to the Morettos with EPCC's consent, to date the Morettos have still not been provided with relevant documents. Thus, the penalties have accrued to March 10, 2019, from December 4, 2018, at \$25 per day, by 96 days, or \$2400.00, in addition to the \$3475.00 previously requested by the Morettos, for a total in statutory penalties of \$5875.00, continuing to accrue until the documents in a legible form are produced to the Morettos, at the statutory rate of \$25 per day.

As if the EPCC lawyer's admission of his client's failing to produce documents is not enough, the Board Members testimony at hearing shows this Board needs to be sanctioned and advised by the Department to comply with the law, because without any meaningful sanction, they will continue with their violations of statutory law on document production. Former Architectural Control Committee Member and current Board Member Charles Jennings was asked:

Q: "Have you provided to me all of the Architectural Control Committee Records in response to our request?

A: Only the ones that I am aware of. I really can't say in the entirety. **There probably are others.**" (Transcript, at p. 35:5-9, emphasis added).

Mr. Jennings denied preparing the Thumb Drive of the Architectural Records provided to the Morettos, however, when current Board President Robert Felton testified, he said he got it from Mr. Jennings.

Q. "Were you [Robert Felton] the one that produced the documents that we received in a packet on September 30th, 2018?

A. Yes...

Q. So you prepared the thumb drive?

A. I am not sure. **I received it from Mr. Jennings.**" (Transcript, at p. 37:8-21, emphasis added).

Also, Mr. Felton admitted that the Board violated the statutory 21 day rule.

Q. "Do you agree that since your election [July 7, 2018], documents were not provided within 21 days of your election?

A. Yes." (Transcript, p. 40: 18-21).

Board Member James Gosline (elected to the Board on July 7, 2018, currently Secretary, and previously a member of the ACC Committee) testified he was aware of the Morettos' request for documents when he was elected to the Board, on July 7, 2018, and had no reason why the documents were not provided to the Morettos.

Q. "Did you provide the Architectural Control Committee records at the time?

A. No.

Q. Is there a reason why?

A. Um, I was a brand new Board member. I had, you know, I had a lot to learn, and I moved on. And I would not have had any information about where that information was." (Transcript, p. 43-44: 18-25, 1-25). ***

Q. "I mean all the Architectural Control Committee records. Were they kept somewhere where you could have access to them?

A. I would have to answer that question, I would say many of the records were available through electronic files.

Q. Were they kept here at Elk Point in any way, shape or form, or were they on private computers?

A. Both

Q. And you had access to them?

A. As of July 7, 2018?

Q. Yes.

A. Yes.

Q. So why didn't you give them to us?

A. Um, I --I was not clear on my responsibilities, first joining the Board, and our president, Bob, said that he was doing his best to respond to your requests.

Q. Do you admit that we were entitled to the documents and did not get them?

A. Yes." Id.

Board Member William Zeller was asked the same questions. He was on the Board and Secretary during the period May 12, 2018 (the date of the Morettos' document demand) to the date of hearing, although no longer Secretary as of July 7, 2018.

Q. "Did you prepare any of the documents that were provided to Jerome Moretto and Deborah Moretto?

A. I did not.

Q. Who prepared them?

A. I don't know." Transcript, p. 47:7-11.

He said that the other continuing Board member was Cathy Oyster. Transcript, p. 47: 14-16. Ms. Oyster refused to testify. Transcript, p. 45:3-18.

Not one Board member testified or provided any evidence why they did not comply with Nevada law on the production of documents. The testimony confirms that these Executive Board Members had access to the documents, but refused to produce them to the Morettos, as mandated by law. The proof of their intentional violation of law is EPCC's Counsel' Post-Hearing Brief which relies upon documents NOT PROVIDED to the Morettos.

The Morettos request the State Ombudsman obtain all documents in response to the Morettos Request, set forth in their May 12, 2018 letter and fine EPCC and its individual Board Members \$5,875.00 up to March 10, 2019, and accruing at \$25.00 per day, until all documents requested are provided to the Morettos, including legible copies of the documents used by Mr. Cavilia in his Post-Hearing Brief. These fines should be against the individual Executive Board Members, by statute, for their intentional failure to produce corporate records, from May 2018 to July 7, 2018, including Fred Hanker, William Zeller, Cathy Oyster, and Ralph Neilsen. The fifth Board Member, Peter Kontich, is deceased and his unexpired term was filled by Charles Jennings, approved in March 2018. The Board Members from July 7, 2018, after the Unit Owners' Annual Election, to the present, are Robert Felton, Charles Jennings, Cathy Oyster, James Gosline, and William Zeller. William Zeller resigned, effective March 23, 2019.

(3) THE BOARD IMPROPERLY APPOINTED THE ACC COMMITTEE

Another issue arose at hearing, whether the Board has authority to form the Architectural Control Committee at all, or any other Committee for that matter. NRS 116.3106(1)(d) provides:

“(1) The bylaws of the association must:

(d) Specify the powers the executive board or the officers of the association may delegate to other persons or to a community manager....”

The EPCC Bylaws do not provide any authority for the Board to create committees. Further, no document was produced to the Morettos that showed the Membership approved of such a Committee or even that the Board adopted a Resolution to appoint such a Committee. Thus, pursuant to NRS Chapter 116, the Board had no specific powers to appoint an ACC Committee by its governing documents.

Moreover, general Corporate Law allows for the creation of committees by non-profit corporations, which may exercise the rights of the Board, to exercise “the powers of the board of directors in the management of the business and affairs **of the corporation**....” See NRS 82.206 (1), emphasis added. Of course, the business of the EPCC corporation, as set forth in the Bylaws, does not include the right to impose property restrictions on individual units, which is governed by property law. It is noteworthy that the power to appoint committees in corporate law conflicts with the NRS 116.3106(1)(d) mandate that any such power must be specified in the Bylaws. Where there is a conflict of law between corporate law and NRS Chapter 116, NRS Chapter 116 controls. See 116.11085, “**Provisions of chapter prevail over conflicting provisions governing certain business entities generally.** If a matter governed by this chapter is also governed by chapter 78, 81, 82, 86, 87, 87A, 88 or 88A of NRS and there is a conflict between the provisions of this chapter and the provisions of those chapters, the provisions of this chapter prevail.” Thus, this Board was without any power pursuant to the governing documents to appoint any committee. Its actions in appointing this ACC and adopting these ACC Governing Documents are completely outside its jurisdiction, as a matter of law. This is fatal to its acts taken on March 31, 2018.

Moreover, even if the Committee were properly formed, which the Morettos dispute, how it has acted violates Nevada law. NRS Chapter 116 mandates that any meeting of the Board requires notice to the members. See NRS 116.31083(2). This is also stated in the EPCC Bylaws. As a delegated body, any Committee is acting as the Board, and is mandated to comply with a Board’s notice requirements. The substance of the notice is mandated to include the place of the meeting, an agenda, the right of the unit owners to be heard, and the right to obtain an audio recording of the meeting. *Id.* This never happened with this ACC Committee. Instead, the body met secretly, at locations not at the Elk Point property, generally, by teleconferencing and without keeping any records of their meetings at the Elk Point Corporate Offices. (Testimony of Charles Jennings and James Gosline).

The testimony of Charles Jennings indicated that the Architectural Control Committee met by conference call, without any notice to the Membership of what they were doing. No agendas were generated and no minutes. The Board apparently formed the ACC Committee in 2017, per this testimony, although no Board Resolution approving this Committee was provided to the Morettos. The Committee prepared the ACC Guidelines, which the Board adopted on March 31, 2018, however, Mr. Jennings testified no notice was ever given to the unit owners of this committee’s meetings. To show the abuse of power by this Committee, when the Morettos obtained the ballots from Mr. Jennings, it was discovered that his statement to the Board that a majority of the unit owners voted in favor of the ACC Guidelines was false, and the Board repeated this falsehood in justification of its vote on March 31, 2018. Ballots, Ex. 6, Hearing Exhibits. The ballots were not counted in public, but secretly by Mr. Jennings by himself, per his testimony, not even at a meeting

of the ACC Committee. He only provided a "summary" of the vote to the Board. Summary, Ex. 13, Hearing Exhibits. The Board did not bother to check the ballots or count them in public. This is an example of this Board's violation of the business judgment rule and acting outside the scope of its powers, by Nevada law and the governing documents.

This was not an unknowing or negligent violation by this Board. On December 5, 2018, **PRIOR TO THE MORETTOS' HEARING BEFORE THE BOARD**, EPCC ACC Committee Member, Board Member, and Treasurer Cathy Oyster contacted the Department of Real Estate representative Antonio R. Brown, and asked if the EPCC Committees were required to notice their meetings to the unit owners. On the same date, Mr. Brown responded with the applicable law. He said "Provisions regarding committees **should be contained primarily in the bylaws of the association**. I recommend reviewing all of your association's governing documents to determine whether the executive board is authorized to form them and if so, what authority and duties are imposed." Correspondence, Ex. 5, Reply Exhibits, emphasis added. It is undisputed that the EPCC Articles and Bylaws do not give the Board authority to create Committees. Further, as noted by Mr. Brown, Corporate law allows the creation of committees, however, committee powers are limited:

"No such committee may:

(a) Amend, alter or repeal the bylaws..." Citing NRS 82.206.

Ms. Oyster knew this, however, she refused to testify at the December 15, 2018, hearing, probably to hide this knowledge that the Board was acting outside its jurisdiction.

Thus, the Board had no power by either Nevada law or the Governing Documents to create this ACC Committee or adopt its ACC Guidelines, which were prepared secretly and adopted under false pretenses that the majority of the Unit Owners approved them. Further, this ACC Committee is without power to impose fines or conduct hearings of alleged violations without acting as Board delegates "subject to all duties and requirements of the executive board and its members." See NRS 116.31031. This means they must notice all hearings to the membership, hold them on Elk Point Property, and allow Members to see Agendas, Minutes and audio of these meetings. *Id.* That would only apply if the governing documents allowed the creation of such a committee, which they do not.

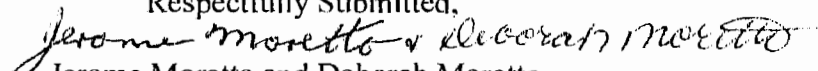
This final procedural violation is fatal.

CONCLUSION

The Morettos respectfully request the Department of Real Estate, State Ombudsman, order the following:

- (1) The Architectural Control Committee Guidelines are void and the act of the Board in adopting them on March 31, 2018 is rescinded.
- (2) The Board had no legal power to form the Architectural Control Committee and this Committee is abolished.
- (3) The Board violated the Morettos' right to obtain documents, therefore, the Board is ordered to produce all documents requested by the Morettos to them within 21 days from the date of the Board's Order, and the named Board Members, jointly and severally, are ordered to pay the Morettos statutory sanctions of \$5875.00, up to and including March 10, 2019, accruing at \$25.00 per day, until the documents are produced in full.

Respectfully Submitted,


Jerome Moretto and Deborah Moretto

Enclosures

REPLY BRIEF EXHIBIT LIST

- 1 HEARING EXHIBITS (REQUESTED BY EPCC COUNSEL JIM CAVILIA FROM COURT REPORTER, WHO HAND-DELIVERED THEM TO HIM 12/2018)**
- 2 EPCC BOARD HEARING 12/15/2018 TRANSCRIPT**
- 3 EPCC COUNSEL POST-HEARING MEMORANDUM, DATED 2/1/2019, SERVED ON THE MORETTOS, BY EMAIL AND CERTIFIED MAIL, ON 2/5/2019**
- 4 NEVADA SECRETARY OF STATE RECORDS FOR THE ELK POINT SUBDIVISION**
- 5 EMAIL FROM CATHY OYSTER TO DRE TRAINING OFFICER ANTONIO BROWN AND HIS RESPONSE, DATED 12/5/2018**

Program Training Officer
Dept. of Business & Industry | Nevada Real Estate Division
Office of the Ombudsman for CICCH
3300 W. Sahara Ave. Ste. 325
Las Vegas, Nevada 89102
P: (702) 486-4012 | F: (702) 486-4520
arbrown@red.nv.gov



Nevada Real Estate Division

Nevada Department of Business and Industry
"Growing business in Nevada"

From: Oyster Holdings LLC <oysterproperties@oysterinc.com>
Sent: Wednesday, December 5, 2018 10:17 AM
To: Antonio R. Brown <ARBrown@red.nv.gov>
Subject: Another questions about non-Board meetings

Another questions about non-Board meetings - Board appointed committees:

We have some committees that review architectural and landscape submissions, the rental community impact and rules, policy committee that is going through our rules and bylaws and making sure they align with NRS and each other, etc...a homeowner asked at the Executive Board meeting if these meetings are open and will be noticed...is notice required? Would a standing meeting work, something like: "Every first Tuesday at 10 am, please contact Jennifer for the conference call access (or our website when we get that up and running)"?

Cathy Oyster

Oyster Holdings, LLC

Manager

(650)363-7201

(650)619-0673 Cell

RE: Another questions about non-Board meetings

Antonio R. Brown <ARBrown@red.nv.gov>

Wed 12/5/2018 11:13 AM

to: Oyster Holdings LLC <oysterproperties@oysterinc.com>;

Good morning Cathy,

Unfortunately, the statutes do not provide much direction when it comes to committees. Provisions regarding committees should be contained primarily in the bylaws of the association. I recommend reviewing all of your association's governing documents to determine whether the executive board is authorized to form them and if so, what authority and duties are imposed.

Your association is organized as a nonprofit corporation, therefore the association must also comply with NRS 82 governing nonprofit corporations.

Please see the provision of law pertaining to committees below:

NRS 82.206 Committees of board of directors: Designation; powers; names; membership.

1. Unless otherwise provided in the articles or bylaws, the board of directors may designate one or more committees which, to the extent provided in the bylaws or in the resolution or resolutions designating such committee or committees, have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation, and may have power to authorize the seal of the corporation to be affixed to all papers on which the corporation desires to place a seal.

2. The committee or committees may have such name or names as may be stated in the bylaws or as may be determined from time to time by resolution adopted by the board of directors.

3. Each committee must have at least one director. Unless it is otherwise provided in the articles or bylaws, the board of directors may appoint natural persons who are not directors to serve on the committees.

4. No such committee may:

(a) Amend, alter or repeal the bylaws;

(b) Elect, appoint or remove any member of any such committee or any director of the corporation;

(c) Amend or repeal the articles, adopt a plan of merger or a plan of consolidation with another corporation;

(d) Authorize the sale, lease or exchange of all of the property and assets of the corporation;

(e) Authorize the voluntary dissolution of the corporation or revoke proceedings therefor;

(f) Adopt a plan for the distribution of the assets of the corporation; or

(g) Amend, alter or repeal any resolution of the board of directors unless it provides by its terms that it may be amended, altered or repealed by a committee.

(Added to NRS by 1991, 1267; A 2009, 1687)

NRS 82.271 Meetings of board of directors or delegates: Quorum; consent to action taken without meeting; alternative means for participating at meeting.

1. Unless the articles or the bylaws provide for a different proportion, a majority of the board of directors or delegates of the corporation, at a meeting duly assembled, is necessary to constitute a quorum for the transaction of business at their respective meetings, and the act of a majority of the directors or delegates present at a meeting at which a quorum is present is the act of the board of directors or delegates.

2. Unless otherwise restricted by the articles or bylaws, any action required or permitted to be taken at any meeting of the board of directors or the delegates or of any committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by a majority of the board of directors or the delegates or of such committee. If the vote of a different proportion of the directors or delegates is required for an action, then the different proportion of written consents is required.

3. Unless otherwise restricted by the articles or bylaws, members of the board of directors, the delegates or any committee designated by the board or the delegates may participate in a meeting through electronic communications, videoconferencing, teleconferencing or other available technology which allows the participants to communicate simultaneously or sequentially. Participating in a meeting pursuant to this subsection constitutes presence in person at the meeting.

(Added to NRS by 1991, 1272; A 1993, 1000; 1997, 711; 2011, 778)

Please see the provision of law pertaining to committees organized to conduct hearings for alleged violations and fines:

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

8. If the governing documents so provide, the executive board may appoint a committee, with not less than three members, to conduct hearings on alleged violations and to impose fines pursuant to this section. While acting on behalf of the executive board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the executive board and its members.

Thank you,

Antonio Brown

EXHIBIT 7

May 12, 2018

Elk Point Country Club, Inc.
Attn: Board of Directors
P.O. Box 9
Zephyr Cove, NV 89448
(Via Hand-Delivery, on May 12, 2018)

Re: Architectural Guidelines Amendment
Document Request

Dear Board:

My husband, Jerry Moretto, and I live full time at 476 Lakeview Avenue. Apparently, the day before Easter, the Board approved, without change, the draft Architectural Guidelines, after an advisory vote of the membership. When I asked at the last meeting for a copy of them, none was available, and I was told I would be provided with a copy, although that has not occurred to date. Also, the Minutes were not approved to date from that meeting, although NRS Chapter 116 mandates approval of minutes within 30 days of a meeting.

As noted in the next previous meeting, I suggested you run those draft proposed Guidelines before your attorney, because, in my opinion, they include provisions that violate Nevada Common Interest Development Law. From the draft minutes, you apparently got your attorney's okay for these. We respectfully disagree with that opinion and wish to present the issue to the Nevada State Ombudsman for review asap, as these proposed guidelines impact our individual unit property rights. It is our opinion that the Board has no authority or jurisdiction to grant easements over our individual unit, nor to take our property rights. Therefore, pursuant to NRS Chapter 116 and your governing documents, we request all the necessary documents to file the matter for review with the State Ombudsman.

Attached is the list of documents we wish to review. We will pay for copies or come to the Clubhouse and scan what you have, at your earliest convenience, as allowed by law.

Sincerely,

Jerry and Deb Moretto

Attachment

EPCC Meeting Ex 10

12-15-2018

Request for Documents

1. All Elk Point Country Club, Inc. ("EPCC") governing documents, including its Articles of Incorporation, Bylaws, Rules, Committee Rules and any other governing document, including any Plats and Plans.
2. All Board Minutes related to the Architectural Guidelines, as originally adopted and as amended.
3. All Architectural Committee Minutes related to the Architectural Guidelines, as originally adopted and as amended.
4. All Ballots and supporting documentation sent to the members on the adoption of the original Architectural Guidelines.
5. All Ballots and supporting documentation sent to the members on the adoption of the amendment to the Architectural Guidelines.
6. All returned Ballots from the Members, including any correspondence, regarding the adoption of the amendment to the Architectural Guidelines.
7. The official count of the membership on the adoption of the original Architectural Guidelines.
8. The official count of the membership on the adoption of the amended Architectural Guidelines.
9. All Board communications regarding amending the Architectural Guidelines, including any electronic correspondence, written correspondence, notes from Facetime communications, any other telephonic communications, minutes, meeting notes or any other communication of any kind, between Board members, regarding the amendment of the Architectural Guidelines.
10. All member communications of any kind to the Board or any individual Board member, regarding the amendment of the Architectural Guidelines.
11. All communications to the Board from anyone of any kind, including Architecture Committee Members, regarding the amendment of the Architectural Guidelines.
12. All advisory opinions by anyone, not privileged, regarding the amendment to the Architectural Guidelines, including all documentation of any kind in support of said opinions.
13. We reserve the right to supplement this request, with additional requests, upon reviewing the above documents.

MSJ

RESNICK & LOUIS, P.C.

Prescott Jones, Esq., SBN: 11617

pjones@rlattorneys.com

Joshua Ang, Esq., SBN: 14026

jang@rlattorneys.com

8925 W. Russell Road, Suite 220

Las Vegas, NV 89148

Telephone: (702) 997-3800

Facsimile: (702) 997-3800

Attorneys for Defendants

Elk Point Country Club

Homeowners Association, Inc.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: 19-CV-0242

DEPT: I (1)

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant, Elk Point Country Club Homeowners Association, Inc., by
and through her attorneys of record, Prescott T. Jones, Esq. and Joshua Y. Ang, Esq. of the law
firm Resnick & Louis, P.C., and hereby moves this Honorable Court for summary judgment
pursuant to NRCP 56 ("Motion").

This Motion is based upon the attached Memorandum of Points and Authorities; NRCP
56, all other pleadings and papers on file herein; and any oral argument which the Court

///

///

1 may entertain during the hearing scheduled for this matter.

2 DATED this 2nd day of November, 2020.

3 RESNICK & LOUIS, P.C.

4 

5
6 PRESCOTT JONES
Nevada Bar No. 11617
7 JOSHUA ANG
Nevada Bar No. 14026
8 8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
9 *Attorneys for Defendants*
10 *Elk Point Country Club*
Homeowners Association, Inc.

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **INTRODUCTION/FACTUAL BACKGROUND**

15 This action is regarding various issues allegedly arising from the enactment of the March
16 31, 2018 Architectural and Design Control Standards and Guidelines (“ADCDG”) by Defendant
17 Elk Point Country Club Homeowners Association, Inc. (“EPCC”), the common-interest
18 homeowner’s entity in charge of the Elk Point community located in Douglas County, Nevada
19 within which the home owned by Plaintiff is located. Specifically, Plaintiff claims, among other
20 things, that the allegedly illegal enactment and arbitrary enforcement of this March 2018 version
21 of the ACDSG caused damages to Plaintiff in the form of the diminution of the value of
22 Plaintiff’s property (a home located in the Elk Point community) due to various new
23 restrictions/encumbrances upon the manner in which said property could be used, that these
24 restrictions of use themselves constitute encroachments upon Plaintiff’s constitutional rights/fee
25 title interest in being able to control his own property; and that on top of payment of monetary
26
27
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1 damages for said diminution of value, declaratory relief should be entered enacting a version of
2 the ACDSG desired by Plaintiff and/or preventing EPCC from enacting new versions of said
3 ACDSG and form delegating any authority to committees to enforce the ACDSG. *See Exhibit*
4 *A*, [Plaintiff's Complaint].

5 Defendant EPCC now moves for summary judgment as every claim asserted by Plaintiff
6 fails as a matter of law; no genuine issue of material facts remains as to any of them.

7 II.

8 STATEMENT OF RELEVANT/UNDISPUTED FACTS

9
10 A. Plaintiff's Complaint does not dispute that EPCC's Bylaws do not prohibit and do permit
11 the enactment of guidelines such as the ACDSG at issue, but rather only alleges that
12 certain contents of the ACDSG violate the bylaws. *See Exhibit A*, [Plaintiff's
13 Complaint].

14 B. NRS Chapter 116 does not prohibit Architectural Guidelines such as the subject ACDSG.
15 *See generally* NRS Chapter 116.

16
17 C. Plaintiff admits that the subject ACDSG never delegated any authority of the EPCC's
18 Executive Board to the Architectural Design Review Committee ("ARC"), but instead
19 merely permits the ARC to issue non-binding recommendations that must be accepted or
20 rejected by EPCC's Executive Board. *See Exhibit B*, [Excerpt From Plaintiff Jerome's
21 Deposition; pg 13, ln 15-22; pg 22-24]; *See Exhibit C*, [March 2018 ACDSG]; *See*
22 *Exhibit D*, [December 2019 ACDSG version + Declaration of Authenticity].

23
24 D. Plaintiff admits that he knows of no specific instances of arbitrary and capricious
25 enforcement of the ACDSG rules by the ARC, nor where the said ACDSG rules lent
26 themselves to such arbitrary and capricious enforcement. *See Exhibit B*, [Excerpt From
27 Plaintiff Jerome's Deposition; pg 13-15].
28

1 E. The currently effective 2019 version of the ACDSG permits rebuilding to restore
2 buildings damaged or destroyed by fire or other similar calamities to a form in substantial
3 compliance with the design of the original structure, exempting such rebuilding from the
4 ARC's design review process. *See Exhibit D*, [December 2019 ACDSG version +
5 Declaration of Authenticity (pg 14)].
6

7 F. Plaintiff cannot demonstrate that he has suffered any monetary damages; his experts
8 reviewed a version of the ACDSG dated to March 2018, which is different from the
9 current effective December 2019 version that Defendant's appraiser expert has opined
10 would permit Plaintiff's property to be developed to the same size as before the March
11 2018 guidelines were adopted. *See Exhibit D*, [December 2019 ACDSG version +
12 Declaration of Authenticity (pg 14)]; *See Exhibit E*, [Report of Defendant's Appraiser
13 Expert, Matthew Lubawy].
14

15 G. Plaintiff's experts improperly rely on the hypothetical condition of the effectiveness of
16 the March 2018 version of the ACDSG (which is not effective, the December 2019
17 version supercedes), and upon the flawed methodology of Plaintiff's surveyor expert
18 witness in determining an alleged loss of buildable square footage under said outdated
19 March 2018 ACDSG rules; Plaintiff's damages are thus wholly speculative in nature. *See*
20 *Exhibit D*, [December 2019 ACDSG version + Declaration of Authenticity (pg 14)]; *See*
21 *Exhibit E*, [Report of Defendant's Appraiser Expert, Matthew Lubawy, Esq.]; *See*
22 *Exhibit F*, [Report of Defendant's Surveyor Expert, Rick Byrem].
23

24 ///

25 ///

26 ///

27 ///

28 ///

1 IV.

2 LEGAL ARGUMENT

3 A. Legal Standard for Summary Judgment

4 The primary purpose of a summary judgment procedure is to secure a “just, speedy, and
5 inexpensive determination of any action.” *Albatross Shipping Corp. v. Stewart*, 326 F.2d 208,
6 211 (5th Cir. 1964); accord *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121
7 Nev. 812, 815, 123 P.3d 748, 750 (2005). Although summary judgment may not be used to
8 deprive litigants of trials on the merits where material factual doubts exist, summary proceedings
9 promote judicial economy and reduce litigation expenses associated with actions clearly lacking
10 in merit. *Id.* Summary judgment enables the trial court to “avoid a needless trial when an
11 appropriate showing is made in advance that there is no genuine issue of fact to be tried.” *Id.*
12 (quoting *Coray v. Hom*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964)).
13

14 A party moving for summary judgment may make a showing that no genuine issue of
15 material fact exists such that it is entitled to judgment as a matter of law by “(1) submit[ting]
16 evidence that negates an essential element of the nonmoving party’s claim, or (2) ‘point[ing] out
17 ... that there is an absence of evidence to support the nonmoving party’s case.’” *Francis v. Wynn*
18 *Las Vegas, LLC*, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011). Once this showing is met,
19 summary judgment must be granted unless “the nonmoving party [can] transcend the pleadings
20 and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue
21 of material fact.” *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d
22 131, 134 (2007).
23

24 Parties resisting summary judgment cannot stand on their pleadings once the movant has
25 submitted affidavits or other similar materials. N.R.C.P. 56(e). Affidavits that do not
26 affirmatively demonstrate personal knowledge are insufficient. *Id.*; accord *Coblentz v. Hotel*
27
28

1 *Employees & Rest. Employees Union Welfare Fund*, 112 Nev. 1161, 1172, 925 P.2d 496, 502
2 (1996); see also, *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th. Cir. 1978) (applying
3 analogous federal rule). Likewise, “legal memoranda and oral argument are not evidence and do
4 not create issues of fact capable of defeating an otherwise valid motion for summary judgment.”
5 *British Airways Bd.*; accord N.R.C.P. 56(e).

7 Though inferences are to be drawn in favor of the non-moving party, an opponent to
8 summary judgment must show that he can produce evidence at trial to support his claim. *Van*
9 *Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981). The Nevada
10 Supreme Court has rejected the “slightest doubt” standard, under which any dispute as to the
11 relevant facts defeats summary judgment. *Wood v. Safeway*, 121 Nev. at 731, 121 P.3d at 1031.
12 A party resisting summary judgment “is not entitled to build a case on the gossamer threads of
13 whimsy, speculation, and conjecture.” *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 302,
14 622 P.2d 610, 621 (1983) (quoting *Hahn v. Sargent*, 523 F.2d 461, 467 (1st Cir. 1975)). Rather,
15 the non-moving party must demonstrate specific facts as opposed to general allegations and
16 conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*,
17 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Indeed, an opposing party “is not entitled to have
18 [a] motion for summary judgment denied on the mere hope that at trial he will be able to
19 discredit movant’s evidence; he must at the hearing be able to point out to the court something
20 indicating the existence of a triable issue of fact.” *Hickman v. Meadow Wood Reno*, 96 Nev.
21 782, 784, 617 P.2d 871, 872 (1980) (quoting *Thomas v. Bokelman*, 86 Nev. 10, 14, 462 P.2d
22 1020, 1022-23 (1970)); see also, *Aldabe v. Adams*, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965)
23 (“The word ‘genuine’ has moral overtones; it does not mean a fabricated issue.”); *Elizabeth E.*
24 *v. ADT Sec. Sys. W.*, 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992).

1 **B. Plaintiff's First Cause Of Action For Violation Of EPCC's Bylaws Fails Because**
2 **The Executive Board Did Not Delegate Any Powers To The ARC Per The Plainti**
3 **Language Of The Effective ACDSG**

4 No powers of the EPCC Executive Board were delegated to the ARC. Wheresoever the
5 duties of the ARC are described in relation to the Executive Board in the ACDSG (applicable to
6 both the currently controlling December 2019 version and the March 2018 version utilized by
7 Plaintiff's experts), it is clearly explained that the ARC may only make recommendations that
8 must then be subsequently considered and adopted by the Executive Board itself to become
9 effective. *See Exhibit C*, [March 2018 ACDSG]; *See Exhibit D*, [December 2019 ACDSG
10 version + Declaration of Authenticity]. Example excerpts include:

11 "The EPCC "Board" pursuant to NRS 116.31065 and NRS 116.3102 (1) (t) has the
12 authority to establish and maintain a Design Review Committee ("Committee") on behalf
13 of EPCC to consider and recommend written guidelines, controls, standards, rules and
14 regulations concerning the design, architecture and/or construction of structures within
15 EPCC consistent with EPCC's historical character. The Committee shall develop and
16 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." *See Exhibit D*, [December 2019 ACDSG version +
Declaration of Authenticity (first page)].

17 "The Committee may, from time to time recommend amendments, revisions and/or
18 changes to any portion of the ADCSG that shall be presented to the Board for its
19 consideration, approval and/or adoption as it sees fit." *See Exhibit D*, [December 2019
ACDSG version + Declaration of Authenticity (third page)].

20 "If, in the opinion of the Committee, the Application is in substantial compliance with the
21 ADCSG, a recommendation for approval will be made to the Board. Should the design be
22 a substantial variance with the ADCSG or violate any of these guidelines, a
23 recommendation for disapproval will be made to the Board." *See Exhibit D*, [December
2019 ACDSG version + Declaration of Authenticity (eighth page)].

24 In short, no question of material fact remains as to whether the effective ACDSG were
25 enacted in violation of EPCC's bylaws in the manner alleged by Plaintiff- as its plain language
26 explicitly prohibits such a delegation of the powers of the Executive Board to the ARC, which
27
28

1 can only promulgate recommendations to the Executive Board for consideration and approval
2 thereby. Indeed, Plaintiff himself conceded this point during his deposition.

3 "Q: ... So I'm going to go ahead and ask the question one more time, sir. What authority
4 do you allege is being delegated by the executive board?

5 A: None.

6 ...

7 Q: Okay. Do you see where it says "consider and recommend written guidelines"?

8 A: I see that.

9 Q: Okay. Sir, are you -- do you believe that is a delegation of duty, as you've alleged in
10 your complaint?

11 ...

12 BY MR. JONES:

13 Q: Sure. Sir, do you see where it says "consider and recommend written guidelines"?
14 And, sir, I'm looking at the second paragraph, the second line where it says, "consider and
15 recommend written guidelines." Do you see where I'm talking about?

16 A: Yes. I found it now.

17 Q: Do you believe the authority to consider and recommend written guidelines is a
18 delegation of duty? And, sir, I'm not asking -- I'm asking for your opinion.

19 A: No.

20 Q: Thank you. The next sentence reads, "The Committee shall develop and recommend
21 rules, regulations, standards, protocols and procedures for the design, architecture, and
22 construction of structures within the EPCC, for consideration and possible adoption by
23 the Board. Do you see where I'm reading, sir?

24 A: Yes.

25 Q: Do you see where it says "developed and recommend rules"?

26 A: Yes.

27 Q: Do you believe that, in your opinion, to be a delegation of authority by the executive
28 board?

A. No."

See **Exhibit B**, [Excerpt From Plaintiff Jerome's Deposition; pg 13, ln 15-22; pg 22-24].

Thus, this cause of action fails and summary judgment must be entered against it.

21 **C. Plaintiff's Second Cause Of Action For Violations Of NRS 116.31065 Due To**
22 **Arbitrary And Capricious Enforcement Of The ACDSG Arising From Alleged**
23 **Vagueness Thereof Fails Because The Claim Consists Of Pure Speculation**

24 Plaintiff has not demonstrated any instances wherein actual arbitrary and capricious
25 enforcement of the ACDSG has actually occurred. No examples of such conduct by ARC or the
26 Executive Board were uncovered during discovery by Plaintiff. Indeed, Plaintiff himself admits

1 during his deposition that he did not know of any specific instances of arbitrary and capricious
2 enforcement.

3 "Q: Okay. Let's go to -- one second here. Go to number two on paragraph 11, and I'm
4 just going to read that again very quickly into the record. "The Guidelines create rules
5 that result in arbitrary and capricious enforcement in violation of NRS 116.31065(1)." Are you aware of what rules you're alleging result in arbitrary and capricious
6 enforcement, sir?

7 ...

8 BY MR. JONES:

9 Q: Go ahead and answer, sir.

10 A: I object.

11 MS. WINTERS: Do you know?

12 THE WITNESS: No.

13 BY MR. JONES:

14 Q: Let me ask you this, sir: Have you read this complaint before?

15 A: Yes.

16 Q: Okay. And let me move on to the next one then very quickly, number 3. "The
17 Guidelines are vague and not sufficiently explicit to inform unit property owners for
18 compliance in violation of NRS 116.31065(2)." What guidelines do you believe are
19 vague and not sufficiently explicit to inform unit property owners for compliance?

20 ...

21 BY MR. JONES:

22 Q: Sure. Which guidelines do you believe are vague and not sufficiently explicit as stated
23 in this objection?

24 A: I don't know.

25 Q: I want to turn to number 5 of paragraph 11, and I'm going read again that very quickly
26 into the record. "The Guidelines allow for a variance from the Guidelines at the
27 discretion of the Design Review Committee with no objective standard in violation of
28 NRS 116.31065(5)." Are you aware of any examples where a variance from the
guidelines was issued at the discretion of the Design Review Committee?

A: Not really."

See **Exhibit B**, [Excerpt From Plaintiff Jerome's Deposition; pg 13-15].

Plaintiff's Complaint alleged that numerous sections of the ACDSG are overly vague in
violation of NRS 116.31065, and consequently were actually enforced in an arbitrary and
capricious manner. However, in the absence of any concrete examples of actual arbitrary and
capricious, it is also necessarily plainly evident by extension that the ACDSG was sufficiently
specific as to avoid any such illegal arbitrary and capricious enforcement.

///

1 Thus, no question of material fact remains as to this cause of action and summary
2 judgment is warranted.

3 **D. Plaintiff's Third Cause Of Action For Violations Of Plaintiff's Property Rights Fails**
4 **Because There Is No Such Cognizable Cause Of Action Under Nevada Law, Because**
5 **It Is Impermissibly Vague As Pled, And Because The Executive Board's Powers As**
6 **Set Forth In The Bylaws Were Not Exceeded**

7 First and foremost, this cause of action for a "Violation of Plaintiff's Property Rights," as
8 pled in Plaintiff's Complaint, does not appear to be a cognizable claim under Nevada law. Thus,
9 for this reason alone, summary judgment should be entered, as it fails as a matter of law
10 regardless of the facts.

11 It was also pled by Plaintiff in a manner that was excessively vague; Plaintiff claims that
12 the Executive Board of EPCC exceeded its authority under the Nevada Constitution and EPCC's
13 Bylaws in enacting the various architectural restrictions contained in the ACDSG, but fails to
14 explain how this occurred. Again, no such cognizable cause of action arises under Nevada law
15 (let alone the Nevada Constitution), and on top of that Plaintiff cannot demonstrate that the
16 various Architectural restrictions under the ACDSG were enacted in violation of EPCC's Bylaws.
17 Said Bylaws explicitly provide that:

18
19 "The enumeration of the powers and duties of the Executive Board in these Bylaws shall
20 not be construed to exclude all or any of the powers and duties, except insofar as the
21 same are expressly prohibited or restricted by the provisions of these Bylaws or Articles
22 of Incorporation, and the Board shall have and exercise all other powers and perform all
23 such duties as may be granted by the laws of the State of Nevada and do not conflict with
24 the provisions of these Bylaws and the Articles of Incorporation." See **Exhibit G**, [EPCC
25 Bylaws (pg 7-8)].

26 Thus, though there is no specific grant of authority to the Executive Board to enact the
27 manner of ACDSG architectural restrictions complained about by Plaintiff, it is plainly evident
28 that such an omission is equivalent to a grant of authority.

Consequently, there remains no question of material fact as to this cause of action, against which summary judgment must be entered, as on top of failing as a matter of law for not constituting a cognizable cause of action under Nevada law, also fails as a matter of its own vague underlying logic, wherein the EPCC Executive Board did have the authority to enact the ACDSG provisions complained of by Plaintiff.

E. Plaintiff's Fourth Cause Of Action For Violations Of NRS 116.31175 Fails As Plaintiff Has Not Demonstrated Discovery That Any Such Violations Have Occurred

Plaintiff's fourth cause of action alleges that Defendant did not timely provide copies of all documents that must be provided to unit owners upon request under NRS 116.31175, pursuant to a request made by Plaintiff on May 12, 2018. Plaintiff simply has not been able to clearly establish that all required documentation was not provided during discovery. Thus, Plaintiff has not met his burden of proof as to this claim, and it appearing that all documents that must be provided to unit owners pursuant to a NRS 116.31175 were provided to Plaintiff timely by extension, there remains no issue of material fact as to this cause of action against which summary judgment must also be entered.

F. Plaintiff's Fifth Cause Of Action For Declaratory Relief Fails As No Actual Controversy Exists

As articulated above, Plaintiff's experts reviewed and relied upon a version of the ACDSG dated to March 2018, which is different from the current effective December 2019 version that Defendant's appraiser expert has opined would permit Plaintiff's property to be developed to the same size as before the March 2018 guidelines were adopted. *See Exhibit D*, [December 2019 ACDSG version + Declaration of Authenticity (pg 14)]; *See Exhibit E*, [Report of Defendant's Appraiser Expert, Matthew Lubawy]. Consequently, no actual controversy continues to exist, wherein the encumbrances on Plaintiff's property that are the subject of this

1 litigation were wholly absolved by the December 2019 ACDSG version and where Plaintiff's
2 experts, who have not seen this version of the ACDSG, have not provide any opinions to the
3 contrary. Thus, there also remains no question of material fact as to this cause of action, against
4 which summary judgment must also be granted.

5 **G. Summary Judgment Should Be Entered Against All Of Plaintiff's Claims For**
6 **Monetary Damages For Failure To Comply With The Computation Of Damages**
7 **Requirement Of NRCP 16.1(a)(1)(A)(iv)**

8 A party's obligations under NRCP 16.1(a)(1)(A)(iv) to disclose a computation of
9 damages in their NRCP 16.1 Disclosures is affirmative, and in failing to make such a disclosure
10 of a computation of damages, said party should be prohibited from introducing evidence in
11 support thereof during trial. *See Pizarro-Ortega v. Cervantes-Lopez*, 396 P.3d 783, 791 (2017).
12 This remains true even if the party's experts have opined as to the types of monetary damages at
13 issue. *See Pizarro-Ortega*, 396 P.3d at 785-6, 791.

14 In this matter, Plaintiff is alleging two types of monetary damages- diminution in the
15 value of his property and accumulation of the \$25 daily statutory fine arising under NRS
16 116.31175. However, Plaintiff's only NRCP 16.1 disclosures pleading does not include a
17 computation of damages at all, neglecting to even mention/estimate the amount of these
18 damages. *See Exhibit H*, [Plaintiff's Initial NRCP 16.1 Disclosures]. Thus, as a matter of
19 Nevada law, given that discovery is closed and no further supplementation of such materials may
20 be allowed, Plaintiff must be prevented from offering evidence as to all such monetary damages
21 at trial, effectively foreclosing all forms of monetary damages sought by Plaintiff, and removing
22 any and all questions of material fact as to whether Plaintiff should be entitled thereto.

23
24 Summary judgment is therefore warranted, foreclosing all monetary damages alleged by
25 Plaintiff in this matter.
26

27 ///
28

V.

CONCLUSION

Based on the foregoing, Defendant respectfully requests that the Court summarily dismiss the Complaint against Defendant in its entirety. The undisputable material facts show that every cause of action asserted by Plaintiff fails.

DATED this 2nd day of November, 2020.

RESNICK & LOUIS, P.C.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was served this 2nd day of November, 2020, 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.

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.

Exhibit A

Exhibit A

RECEIVED

AUG 16 2019

FILED

CASE NO. 19-CV-0242

Douglas County
District Court Clerk

2019 AUG 16 PM 1:51

DEPT. NO. I

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,**

COMPLAINT

EXEMPT FROM ARBITRATION

Plaintiff,

v.

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

Defendants.

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.

11. Moretto's objections are set forth in further detail herein below and include that:

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

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

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

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

1 **FIRST CAUSE OF ACTION**
2 **BREACH OF EPCC BYLAWS**

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

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

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

12 18. The “Guidelines” created on March 31, 2018 delegate to a ‘Design Review
13 Committee’ the duties of developing and enforcing rules, regulations, standards, protocols and
14 procedures for the design, architecture, and construction of structures and landscaping within the
15 EPCC, in violation of the Bylaws.

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

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

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

25 **SECOND CAUSE OF ACTION**
26 **VIOLATIONS OF NRS 116.31065**

27 22. Plaintiff incorporates Paragraphs 1 through 21 herein above, as though fully set
28 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

25 ///

26 ///

27 ///

28 ///

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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(775) 782-7933

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Attorney for Plaintiff

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

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

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

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

8 **-OR-**

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

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

11 _____
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
19 (NRS 125.130, NRS 125.230 and NRS 125B.055)

20 Date: August 16, 2019

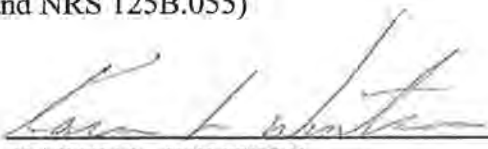
21 
22 KAREN L. WINTERS
23 Attorney for Plaintiff
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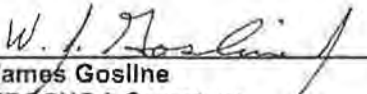
EXHIBIT 1

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.

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 2, PART 2**

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

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 of 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.

Exhibit B

Exhibit B

1	IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA	
2	IN AND FOR THE COUNTY OF DOUGLAS	
3		
4	JEROME MORETTO, Trustee of the Jerome)	
5	F. Moretto 2006 Trust,)
6)
7	Plaintiffs,)
8)
9	vs.)Case No.
10)19-CV-0242
11	ELK POINT COUNTRY CLUB)
12	HOMEOWNERS ASSOCIATION, INC., a)
13	Nevada non-profit corporation, and)
14	DOES 1-10 inclusive,)
15)
16	Defendants.)
17)

14 ZOOM VIDEOCONFERENCE DEPOSITION OF JEROME MORETTO

16 Taken at the Law Offices of Karen L. Winters
17 Minden, Nevada

19 On Monday, September 28, 2020

20 At 9:20 a.m.

24Job Number. 665346

25 Reported by: Deborah Ann Hines, CCR #473, RPR

1 BY MR. JONES:

2 Q. Go ahead, sir.

3 MS. WINTERS: If you understand that you can
4 answer it.

5 THE WITNESS: Yes.

6 BY MR. JONES:

7 Q. Okay.

8 A. What my attorney said.

9 Q. Okay. I understand that, sir. Your
10 attorney will -- I should have mentioned this
11 earlier. Your attorney from time to time will state
12 objections for the record. Unless she instructs you
13 to not answer, you're still to answer the question.
14 She's just making an objection for the record.

15 So I'm going to go ahead and ask the
16 question one more time, sir. What authority do you
17 allege is being delegated by the executive board?

18 A. None.

19 Q. Are you alleging that the authority of the
20 executive board is being delegated to some other
21 party in your complaint?

22 A. I'm not sure.

23 Q. Okay. Let's go to -- one second here. Go
24 to number two on paragraph 11, and I'm just going to
25 read that again very quickly into the record. "The

1 Guidelines create rules that result in arbitrary and
2 capricious enforcement in violation of NRS
3 116.31065(1)." Are you aware of what rules you're
4 alleging result in arbitrary and capricious
5 enforcement, sir?

6 MS. WINTERS: Objection. That calls for a
7 legal conclusion.

8 BY MR. JONES:

9 Q. Go ahead and answer, sir.

10 A. I object.

11 MS. WINTERS: Do you know?

12 THE WITNESS: No.

13 BY MR. JONES:

14 Q. Let me ask you this, sir: Have you read
15 this complaint before?

16 A. Yes.

17 Q. Okay. And let me move on to the next one
18 then very quickly, number 3. "The Guidelines are
19 vague and not sufficiently explicit to inform unit
20 property owners for compliance in violation of NRS
21 116.31065(2)." What guidelines do you believe are
22 vague and not sufficiently explicit to inform unit
23 property owners for compliance?

24 MS. WINTERS: Objection. It's overbroad.
25 You're talking about several pages of guidelines. Do

1 you want him to go through all of them right now?

2 MR. JONES: I'm curious to hear what his
3 answer is, Counsel.

4 THE WITNESS: I didn't hear you, sir.

5 BY MR. JONES:

6 Q. Sure. Which guidelines do you believe are
7 vague and not sufficiently explicit as stated in this
8 objection?

9 A. I don't know.

10 Q. I want to turn to number 5 of paragraph 11,
11 and I'm going read again that very quickly into the
12 record. "The Guidelines allow for a variance from
13 the Guidelines at the discretion of the Design Review
14 Committee with no objective standard in violation of
15 NRS 116.31065(5)." Are you aware of any examples
16 where a variance from the guidelines was issued at
17 the discretion of the Design Review Committee?

18 A. Not really.

19 Q. Okay. All right. Number 7 of the same
20 paragraph 11 reads, "The Guidelines impose setback
21 requirements on improvements that would effectively
22 take Moretto's property right to rebuild in the event
23 of fire or natural catastrophe without Moretto's
24 consent."

25 Are you aware of any situation where any

1 expertise. I'm going to direct him not to answer
2 legal conclusions.

3 MR. JONES: Well, I mean, Counselor, I don't
4 believe you can direct him to not answer, you can --
5 he can answer the question to the best of his
6 knowledge, and if it's objectionable, then the court
7 can rule that down the road, but he does have to
8 answer, unless it's privileged.

9 MS. WINTERS: I don't think that's how it
10 works, Mr. Jones.

11 BY MR. JONES:

12 Q. I'll tell you what, Mr. Moretto, let's try
13 this a different way then. Let me -- in that
14 Exhibit 2 to your complaint, which I hope you're
15 looking at right now, page one, paragraph two, do you
16 have that in front of you, sir?

17 A. I think so.

18 Q. Okay. I'm going to read that into the
19 record, the first full sentence. "The EPCC 'Board'
20 has the authority to establish and maintain a Design
21 Review Committee on behalf of EPCC to consider and
22 recommend written guidelines, controls, standards,
23 rules and regulations concerning the design,
24 architecture and/or construction of structures within
25 EPCC consistent with EPCC's historical character."

1 Do you see where I'm reading, sir?

2 A. Yes, sir.

3 Q. Okay. Do you see where it says "consider
4 and recommend written guidelines"?

5 A. I see that.

6 Q. Okay. Sir, are you -- do you believe that
7 is a delegation of duty, as you've alleged in your
8 complaint?

9 MS. WINTERS: Objection. It calls for a
10 legal conclusion.

11 MR. JONES: Counselor, I'm entitled to get
12 the basis of his claims being made against my client.
13 I'm entitled to answer that -- or to ask that
14 question and to receive an answer.

15 MS. WINTERS: Well, then try to ask him
16 factual stuff. You're not entitled to ask any legal
17 argument in a deposition.

18 BY MR. JONES:

19 Q. Sure. Sir, do you see where it says
20 "consider and recommend written guidelines"? And,
21 sir, I'm looking at the second paragraph, the second
22 line where it says, "consider and recommend written
23 guidelines." Do you see where I'm talking about?

24 A. Yes. I found it now.

25 Q. Do you believe the authority to consider and

1 recommend written guidelines is a delegation of duty?

2 And, sir, I'm not asking -- I'm asking for your opinion.

3 A. No.

4 Q. Thank you. The next sentence reads, "The
5 Committee shall develop and recommend rules,
6 regulations, standards, protocols and procedures for
7 the design, architecture, and construction of
8 structures within the EPCC, for consideration and
9 possible adoption by the Board." Do you see where
10 I'm reading, sir?

11 A. Yes.

12 Q. Do you see where it says "developed and
13 recommend rules"?

14 A. Yes.

15 Q. Do you believe that, in your opinion, to be
16 a delegation of authority by the executive board?

17 A. No.

18 Q. Thank you, sir. I want to turn your
19 attention to page two of the guidelines. Sir, are
20 you on page two?

21 A. Yes.

22 Q. You'll see a subsection IX, Amendment of the
23 ADCSG. Do you see where I'm talking about, sir?

24 A. Yes, sir.

25 Q. And that section has four paragraphs. I

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3 SS:

4 COUNTY OF CLARK)

5

6 I, Deborah Ann Hines, RPR, Nevada CCR No. 473,
7 California CSR No. 11691, Certified Court Reporter,
8 certify:

9

10 That I reported the taking of the deposition
11 of the witness, Jerome Moretto, commencing on Monday,
12 September 28, 2020, at 9:20 a.m.;

13

14 That prior to being examined, the witness
15 was by me duly sworn to testify to the truth, the
16 whole truth, and nothing but the truth;

17

18 That I thereafter transcribed my shorthand
19 notes into typewriting and that the typewritten
20 transcript of said deposition is a complete, true and
21 accurate record of testimony provided by the witness
22 at said time to the best of my ability;

23

24 I further certify (1) that I am not a
25 relative, employee or independent contractor of
counsel of any of the parties; nor a relative,
employee or independent contractor of the parties
involved in said action; nor a person financially
interested in the action; nor do I have any other
relationship with any of the parties or with counsel
of any of the parties involved in the action that
may reasonably cause my impartiality to be
questioned; and (2) that transcript review pursuant
to NRCP 30(e) was not requested.

26

27 IN WITNESS WHEREOF, I have hereunto set my
28 hand in my office in the County of Clark, State of
29 Nevada, this 13th day of October, 2020.

30

31 

32

33 Deborah Ann Hines, CCR #473, RPR

34

35

Exhibit C

Exhibit C

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 of 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.

Exhibit D

Exhibit D

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

DECLARATION OF CHARLES JENNINGS

I, Charles Jennings, pursuant to NRS 53.045, declares:

1. I am over the age of 21 and am the current Vice President of the Defendant in this matter (Moretto v. Elk Point HOA; 19-CV-0242), Elk Point Country Club Homeowners Association, Inc. (hereinafter "EPCC" or "the HOA").
2. That I have personal knowledge about facts stated below, except where stated upon information or belief.
3. That the documents bates-numbered ("DEFT-ELK 000317-DEFT-ELK 000328") are true and correct copies of the current, operative version of EPCC's Architectural and Design Control Standards and Guidelines, officially amended on 12/7/19, as stated on page DEFT-ELK 000325. (Attached as "**Exhibit A**").
4. That I have personal knowledge of the authenticity thereof because I was involved in the process of drafting, adopting and finally archiving this latest effective set of EPCC's Architectural and Design Control Standards and Guidelines.
5. That the EPCC board does not have any intention of amending EPCC's Architectural and Design Control Standards and Guidelines again anytime soon, and that this version should remain in effect for the foreseeable future.
6. I declare under the penalty of perjury that the foregoing is true and correct, to the best of my understanding, memory and knowledge.

Dated this 15 day of October, 2020.



CHARLES JENNINGS

Exhibit E

Exhibit E



Valbridge
PROPERTY ADVISORS

An Appraisal Review and Rebuttal of
IMPROVED LAKEFRONT SINGLE-FAMILY
RESIDENTIAL PROPERTY

476 Lakeview Avenue
Zephyr Cove, Douglas County, NV 89448

Report Date: August 3, 2020

FOR
Joshua Ang
Resnick & Louis, P.C.
5940 S. Rainbow Blvd
Las Vegas, NV 89118

Valbridge Property Advisors |
Las Vegas | Reno.

3034 S. Durango Drive, Suite 100
Las Vegas, Nevada 89117
702-242-9369
702-242-6391 fax

valbridge.com

Valbridge Job No.:
NV01-NV01-20-0190

EPCC EXP 000005

A.App._382

August 3, 2020

Mr. Joshua Ang
Resnick & Louis, P.C.
5940 S. Rainbow Blvd
Las Vegas, NV 89118

RE: Appraisal Review and Rebuttal Report of
476 Lakeview Avenue
Zephyr Cove, Douglas County, NV 89448

Dear Mr. Ang:

As requested, we have prepared an appraisal review/rebuttal of the appraisal report prepared by Mr. Benjamin Q. Johnson, MAI of Johnson Valuation Group, Ltd. The report under review has an effective date of value of June 11, 2020 with a report date of June 15, 2020. The appraisal report is referred to as Johnson Valuation Group, Ltd. File Number 20-020.

The property that is the subject of the appraisal report is an existing 2,260-square-foot single-family residence located at 476 Lakeview Avenue, Zephyr Cove, Douglas County, Nevada, 89448. It is further identified as Assessor's Parcel Number (APNs) 1318-16-710-026 and is situated in the Elk Point Country Club Community (EPCC). The residence is situated on a 5,837-square-foot lot and has 24 feet of lake frontage. The main two-bedroom structure was constructed in 1936; an addition was made in 1979-1980 including a bathroom and one-car garage.

EPCC is a desirable community of 95 homesites in Zephyr Cove with 21 lakefront homesites. The HOA was reportedly formed in 1926 and architectural guidelines were revised and with the final version adopted in December 2019. In the letter of transmittal for the report under review, Mr. Johnson states he was instructed by his client to use architectural guidelines previously *proposed* by EPCC although a more moderate version of the guidelines was adopted in December 2019. That said, the premise of Mr. Johnson's report is to estimate diminution in value due to the hypothetical restrictions placed on the property by the previously *proposed* HOA architectural guidelines. In short, Mr. Johnson states the property will lose 659 square feet of potential living area under the previously *proposed* guidelines and estimated loss in value based on such. However, it is imperative to note that in a discussion with the president and vice president of the EPCC HOA, they both stated that the subject's potential building area would probably not change under the adopted architectural guidelines from what would be allowed before the new architectural guidelines were adopted.

The appraisal report was reviewed for major compliance issues with the 2019/2020 version of USPAP as the report was written in 2020, compliance with Nevada Revised Statutes, and to determine the adequacy and relevance of the data, the propriety of any adjustments to the data, the appropriateness of appraisal methods and techniques used, and whether the analyses, opinions, and conclusions in the report are appropriate and reasonable

This report contains a review of the appraisal prepared by Benjamin Q. Johnson, MAI. The values, opinions, and conclusions can only be used in conjunction with the aforementioned report which is on file in our

office. The intended users of this report are Joshua Ang of Resnick & Louis, P.C., Elk Point Country Club HOA and no others. The intended use is for HOA litigation. The opinions reported herein are subject to the definitions, assumptions and limiting conditions, and certification contained in this report. The reviewer is not responsible for any unauthorized use of this report.

The purpose of this review is to evaluate major compliance issues with USPAP Standards, Nevada Revised Statutes, and to determine the adequacy and relevance of the data, the propriety of any adjustments to the data, the appropriateness of appraisal methods and techniques used, and whether the analyses, opinions, and conclusions in the report are appropriate and reasonable. We developed our analyses, opinions, and conclusions and prepared this report in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation; the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute; and the requirements of our client as we understand them.

This letter by itself is not construed to be a complete review. It should be used in conjunction with the rest of the report that follows.

The acceptance of this appraisal review assignment and the completion of the appraisal review report submitted herewith are contingent on the following extraordinary assumptions and/or hypothetical conditions:

Extraordinary Assumptions:

We have assumed the difference in allowed buildable area from the "before" and "after" scenarios of 659 sf is accurate and reliable (under the proposed architectural guidelines presented in the appraisal report).

The subject parcel has 790 square feet of land that juts out into the water. This area is different than the surrounding parcels that do not have this characteristic. The gross land area is identified as being 5,837 square feet and subtracting the 790 square feet of extra lot area would equate to a net land area of 5,047 square feet. We were not able to ascertain the reason for this extra lot area and have appraised the property under the extraordinary assumption that there is no significant contributory value associated with the extra 790 square feet of land.

Hypothetical Conditions:

In order to review Mr. Johnson's report and understand his premise for his assignment, we have employed the same hypothetical condition he used, the previous proposed architectural guidelines are in place and that the collective square footage of improvements not exceed 3,500 square feet of floor area. This hypothetical condition has a direct effect on the value conclusions contained herein because the actual architectural guidelines adopted by EPCC in December 2019 would probably not change the buildable area in the "after" condition. That said, the subject would not be negatively affected and the diminution in value is not applicable.

The use of the extraordinary assumptions and/or hypothetical condition may affect assignment results.

This letter of transmittal is not considered valid if separated from this report and must be accompanied by all sections of this report as outlined in the Table of Contents, in order for the value opinions set forth above to be valid.

As will be shown later in the review, we do not concur with the appraisers' opinions and conclusions as the land sales were not comparable to the subject property. Furthermore, we do not agree with the appraiser using a draft of the architectural guidelines when the final version was substantially different. The appraiser should not have accepted the appraisal assignment using a draft copy of the architectural guidelines since

there was a more recent version. The use of the draft copy of the architectural guidelines provides for a misleading appraisal report and misleading conclusions. These issues as well as other issues will be discussed in more detail later in this report.

Respectfully submitted,
Valbridge Property Advisors | Las Vegas | Reno



Matthew Lubawy, MAI, CVA
Senior Managing Director
Nevada License #A.0000044-CG
License Expires 04-30-2021



Tammy Howard
Senior Appraiser
Nevada License #A.0000253-CG
License Expires 06-30-2021

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Summary of Salient Facts

Property Name:	Single-Family Residential Property
Address:	476 Lakeview Avenue, Zephyr Cove, Douglas County, NV
Assessor's Parcel Number:	1318-16-710-026
Purpose of the Review:	The purpose of the review is evaluate major compliance issues with USPAP Standards, Nevada Revised Statutes, and to determine the adequacy and relevance of the data, the propriety of any adjustments to the data, the appropriateness of appraisal methods and techniques used, and whether the analyses, opinions, and conclusions in the report are appropriate and reasonable.
Client:	Mr. Joshua Ang
Intended User(s):	Joshua Ang, Resnick & Louis, P.C., Elk Point Country Club HOA
Intended Use:	To assist in HOA litigation.
Property Rights Appraised:	Fee Simple
Zoning:	Residential, 069 Elk Point
Site Size:	5,837 square feet 5,037 net square feet
Existing Improvements Property Type: Gross Building Area:	Single-Family Residential 2,260 square feet
Extraordinary Assumptions:	There are no extraordinary assumptions of this review.
Hypothetical Conditions:	There are no hypothetical conditions of this review.
Date of Review Preparation:	August 3, 2020

Scope of Review Process

In reviewing the content and conclusions of the Appraisal Report, the reviewer completed the following specific procedures:

The appraisal was read and reviewed for its compliance with the 2019/20 version of USPAP as the report was written in 2020. We have not made a personal inspection of the property. The sales data was checked against Douglas County Recorder's data; however, it was not confirmed with a party to the transaction, unless otherwise noted. We have also formed an opinion as to:

- 1) the adequacy and relevance of the data and the appropriateness of adjustments applied to the data;
- 2) the appropriateness of the appraisal methods and techniques used and develop the reasons for any disagreement;
- 3) the completeness of the report under review within the context of the reporting requirements for the type of report submitted for review (i.e.) Appraisal Report, or Restricted Appraisal Report; and
- 4) whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable and develop the reasons for any disagreement.

As mentioned above, the purpose and scope of work is to review the report to determine its compliance with USPAP and to determine the adequacy and relevance of the data, the propriety of any adjustments to the data, the appropriateness of appraisal methods and techniques used, and whether the analyses, opinions, and conclusions in the report are appropriate and reasonable. Normally, a checklist would be provided to check compliance with USPAP; however, we have only reviewed the report for major infractions as they pertain to USPAP. The focus of the report is compliance with Nevada Revised Statutes, the propriety of any adjustments to the data, the appropriateness of appraisal methods and techniques used, and whether the analyses, opinions, and conclusions in the report are appropriate and reasonable.

We have not provided any service for this property.

Extent to Which the Property Is Inspected

We have not inspected the subject property as of the effective date of value of June 11, 2020.

Type and Extent of the Data Researched

We researched and analyzed: 1) market area data, 2) property-specific, market-analysis data, 3) zoning and land-use data, and 4) current data on comparable listings, sales, and rentals in the competitive market area. We spoke with Theresa Avance with TRPA, Bob Felton, the president of the Elk Point County Club HOA, and Chuck Jennings, the vice president of the Elk Point Country Club HOA. Mr. Jennings is also an architect.

Type of Appraisal and Report Option

This is an appraisal review and rebuttal report of an appraisal prepared by Benjamin Q. Johnson, MAI and was performed under Standard 3 of USPAP. The appraisal report that is the subject of this review provided an opinion of market value as well as a recommendation of just compensation. The report was prepared under Standards 1 and 2 of USPAP.

Information Requested but not Provided

All information requested for this assignment has been provided.

Introduction

Client and Other Intended Users of the Appraisal Report Under Review

The client in this assignment is Joshua Ang with Resnick & Louis, P.C. The intended users of this report are Joshua Ang, Resnick & Louis, P.C. and Elk Point Country Club HOA and no others.

Intended Use of the Appraisal

The intended use of this report is for HOA litigation.

Real Estate Identification

The subject property is located at 476 Lakeview Avenue, Zephyr Cove, Nevada 89448. The Douglas County Assessor identifies the subject property as Assessor Parcel Number 1318-16-710-026.

Real Property Interest Appraised

The fee simple interest of the property was appraised.

Definition of Market Value

The appraiser utilized the same definition of market value that we used in preparation of our appraisal report (Nevada Revised Statutes 37.009).

USPAP Competency Provision

This appraisal report is being prepared with the intention of complying with the most recent version of the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Foundation. The appraiser as well as the reviewer is competent to appraise/review the property that is the subject of this report.

Effective Dates of Value

The effective date of the appraisal report under review is June 11, 2020.

Date of Report

The date of this review is August 3, 2020, which is the date of the letter of transmittal. The date of the appraisal report under review is June 11, 2020.

Extraordinary Assumptions

There are no extraordinary assumptions of this review.

Hypothetical Conditions

There are no hypothetical conditions of this review.

Summary of Review

The appraisal report that is the subject of this review was prepared by Benjamin Q. Johnson, MAI of Johnson Valuation Group, Ltd. The date of the report is June 15, 2020 and the effective date of value is June 11, 2020.

We have read through the appraisal and have provided our opinion of the quality of the work as previously identified in the "scope of review process" section.

We will refer to the section headings and page numbers of the report in the following review.

"Title Page" Through "Introduction to Valuation Analysis"

On the letter of transmittal (and other pages in the report), there is a summary table which shows 1) "Before Value – Hypothetical – predicated upon the assumption that the "Architectural Guidelines", as attached to this appraisal, are not contemplated for approval and have not been adopted, nor considered by the Elk Point County Club HOA",

2) "After Value – Hypothetical – predicated upon the assumption the attached "Architectural Guidelines" have been fully adopted, as presented, by the Elk Point Country Club HOA as of the relevant date of valuation, It is further assumed the "Architectural Guidelines" encumber and are binding upon the subject property as of the relevant date of valuation."

And 3) "Total Diminution in Value to the Subject Property resulting from the attached "Architectural Guidelines" being approved, fully adopted and binding upon the subject as of the relevant date of valuation"

This table has been copied from the report and is shown below for reference. As we will show later in the sales comparison review of this report, we do not concur with the methods of valuation and conclusions summarized in the following chart for several reasons but the main one is that the architectural guidelines used for Mr. Johnsons assignment were not adopted but a more moderate guideline was adopted by the HOA in December 2019. This will be discussed later in each appropriate section.

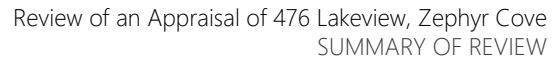
SUMMARY OF VALUE CONCLUSIONS

Date of Valuation of June 11, 2020

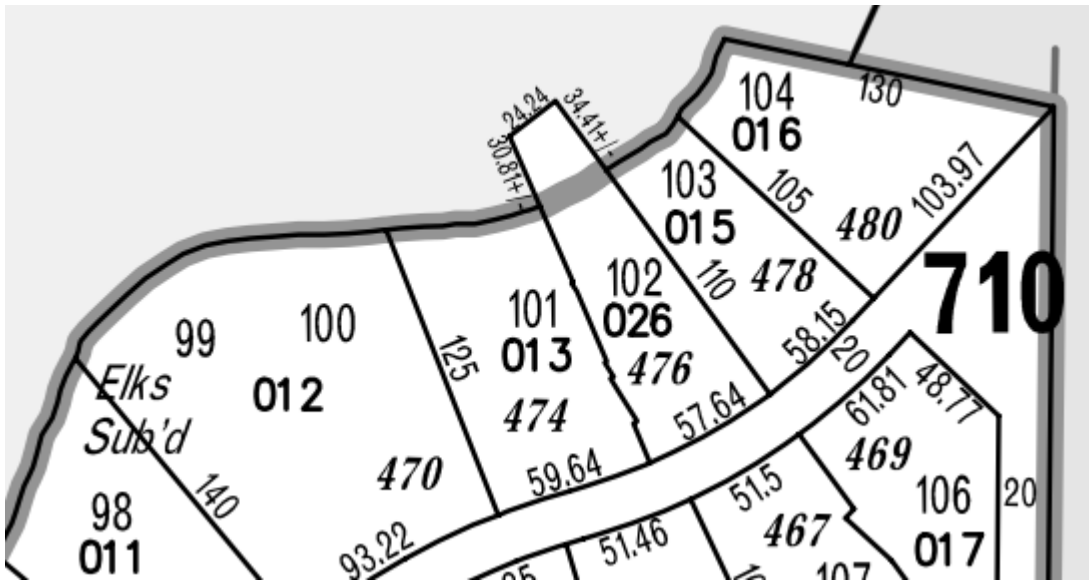
Before Value – Hypothetical -predicated upon the assumption that the "Architectural Guidelines", as attached to this appraisal, are not contemplated for approval and have not been adopted, nor considered by the Elk Point Country Club HOA	\$3,750,000
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------

After Value – Hypothetical - predicated upon the assumption the attached "Architectural Guidelines" have been fully adopted, as presented, by the Elk Point Country Club HOA as of the relevant date of valuation, It is further assumed the "Architectural Guidelines" encumber and are binding upon the subject property as of the relevant date of valuation.	\$2,750,000
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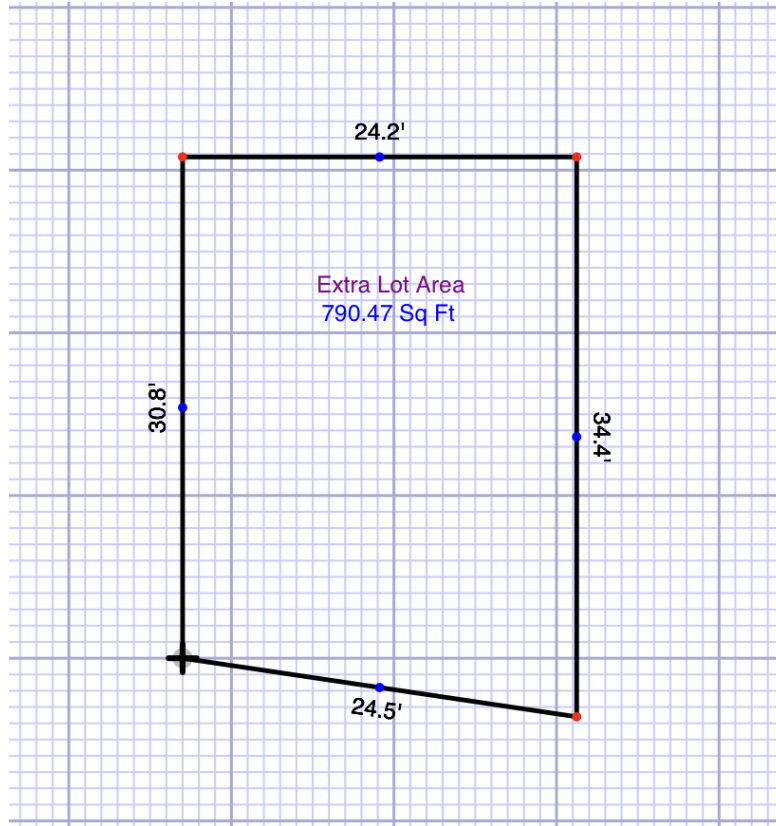
Total Diminution in Value to the Subject Property resulting from the attached "Architectural Guidelines" being approved, fully adopted and binding upon the subject property as of the relevant date of valuation	\$1,000,000
(As of June 11, 2020)	



Mr. Johnson's factual data and description of the subject are reasonable and appear to be reliable; however, he does not discuss the effective age of the improvements or the remaining economic life of the improvements. He cites his source for lot size and zoning and discusses potential uses based on the 069 Elk Point Planning Area. However, he fails to analyze or summarize the overall utility of the site given its less than desirable, narrow shape. Mr. Johnsons reports the Elk Point community contains 95 homesites with 21 being lakefront parcels. The parcels range from 1,742 sf to 21,344 sf with an average of 7,203 sf. The subject lot, with 5,837 sf, falls below the average. It should also be pointed out that the subject parcel is different than other parcels along the lake as a portion of the property juts out into the lake. Other parcels do not jut out into the lake, so the lot size of the subject is actually smaller than the 5,837 square feet. The area that juts out into the lake is further depicted in the Assessor Parcel map shown below:



The dimensions of the extra lot area measures 24.24 to the north, 34.41 feet to the east, 24.5 feet to the south and 30.81 feet to the west and this equates to 790.47 feet of additional lot that is different than other surrounding parcels. This would reduce the actual lot size from 5,837 square feet to approximately 5,047 net square feet. It is important to note that TRPA allows structures to be built 10 feet from the backwater line; therefore, the additional land area would not increase the allowable lot coverage. We were not able to ascertain the reason for this extra lot area and have appraised the property under the extraordinary assumption that there is no significant contributory value associated with the extra 790 square feet of land. If this extraordinary assumption is found to be false, then it could impact the assignment results and conclusions. The following page shows the calculations of the extra lot area.



The subject lot is the third smallest of the 21 lakefront parcels with 24 feet of lake frontage. The 1,742-sf parcel at 466 Lakeview Avenue (4 lots to the SW from the subject) is the smallest lot and has the least lake frontage at only 12 feet. It has been improved with a 1,136-sf house which has been placed very near the Lakeview Avenue frontage as the 12-foot rear width limits development. It has 35 feet of frontage along Lakeview Avenue.

The second smallest lot is located immediately east of the subject at 478 Lakeview Avenue; this 5,227-square foot-lot is improved with a 3-story, 4,627-square foot single-family residence plus 440-square foot garage plus decks and outdoor areas. There is a ground level (at street frontage) with a second floor above. The third level is a daylight basement that is open to the rear of the site. This site appears to have approximately 36 feet of lake frontage and 58.15 feet of frontage along Lakeview Avenue

The subject lot has 57.64 feet of frontage along Lakeview Avenue but narrows to 24.24 feet at the lake. With 7-foot side yard setbacks, this further limits the structure at this portion of the site. A portion of the site plan provided in the report, prepared by Turner & Associates, Inc. Land Surveying dated June 2020 is shown below.

an addition was made in 1979-1980, the improvements are outdated and do not meet the markets expectation for lakefront property. We concur with this conclusion based on data reviewed.

There are also some functional inadequacies within the property including 1) access to the second-floor guest bedroom is only possible through the master bedroom and 2) the second floor guest bathroom lacks a tub or shower (page 51 and top of Page 53) which means any guests would have to use the master bathroom or go downstairs to use the shower. Again, these do not meet the markets expectations.

Mr. Johnson's highest and best use conclusion as improved on Page 53, is "for continued utilization as a lakefront residence until such time as the property could obtain approvals and permits for redevelopment of the site with a new (or substantially renovated) lakefront residence that is to design and finish standards generally expected of lakefront buyers in the market area at the present time." This indicates the improvements are at the end of their useful and economic life and the property should be considered as land only. Mr. Johnson uses, however, sales of properties that were purchased with demolition of existing improvements planned *and* properties with newer improvements that still contribute value to the site with inadequate accounting for the newer improvements. Comparable Residential Sale 1 on Page 59 shows an approximate 2-year timeline from date of purchase to demolition on that site.

Ms. Theresa Avance with Tahoe Regional Planning Agency stated the subject improvements are grandfathered in and, should they be destroyed, could be rebuilt at the same size. Because they were constructed prior to implementation of the IPES, it will not fall under the rules for this scoring system. Properties developed prior to July 1, 1987 are evaluated under the Bailey System for Land Capability. Each Bailey score corresponds to a percent of base allowable coverage. Each site is assessed on an individual basis to determine allowable lot coverage. This information is not readily available for all parcels, however, as noted, the subject is reported to be developable to the same size as noted before.

Mr. Felton, President of the ECPP HOA confirmed the original foundation would have to remain in place in order to qualify for being rebuilt with the same building area.

Sales Comparison Approach "Before"

Six improved sales were presented for Mr. Johnsons' analysis in the "before" scenario. Five involved improvements that had construction years from 1926 to 1969 and were similar to the subject in their highest and best use. Sale number 2, however, had improvements that were constructed in 2004 and, when compared to the other five, still contributed substantial value to the site. This property is not truly comparable to the subject and is not appropriate for this analysis. The sales used by Mr. Johnson in the before condition are summarized below. As can be seen, all are larger than the subject and have 2 to 6.5 times more frontage than the subject. The sites in sales 5 and 6 actually overlook the beach and then the lake, they do not have true lake frontage (see aerials on following page).

Residential Sales Chart

No.	Address	Sale Date	Year Built	Lot SF	Lake Front	Sale Price	\$/SF Land	\$/Front Foot
					Feet			
1	468 Lakeview Avenue	1/5/2016	N/A	8,276	96	\$3,900,000	\$471.24	\$40,625
2	442 Lakeview Avenue	4/13/2017	2004	6,098	50	\$4,650,000	\$762.55	\$93,000
3	76 Skyland Court	9/12/2017	1963	8,712	158	\$3,375,000	\$387.40	\$21,361
4	1050 Skyland Court	6/18/2018	1969	12,197	70	\$3,550,000	\$291.06	\$50,714
5	716 Lincoln Highway	9/16/2019	1938	17,424	75	\$4,250,000	\$243.92	\$56,667
6	746 Lincoln Highway	2/10/2020	1926	8,712	50	\$2,890,000	\$331.73	\$57,800
Subj.	476 Lakeview Avenue	N/A	1936	5,837	24			

No analysis is provided on a per unit basis; Mr. Johnson arrives at an estimate of an overall value based simply on a qualitative adjustment discussion. Given the substantial difference in lake frontage, some analysis should be provided. In addition to showing the existing structures on the sites at the time of sale,

he could have included aerial views of the sites themselves as he states the highest and best use is to redevelop the site. For this review, we have included aeriels obtained from douglasnvgiv.maps.arcgis.com.

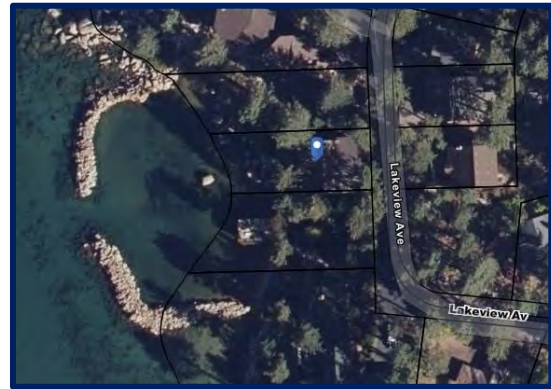
Location Map of Comparable Sales



Aerial View of Comparable Sales



468 Lakeview Avenue



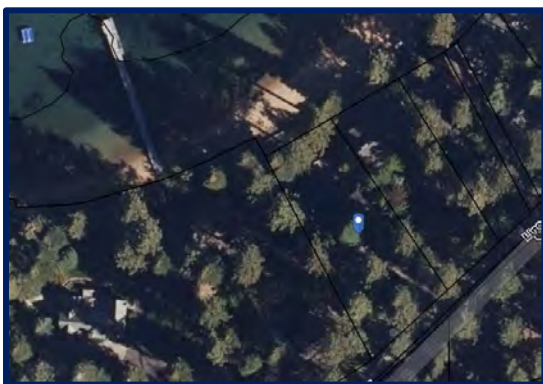
442 Lakeview Avenue



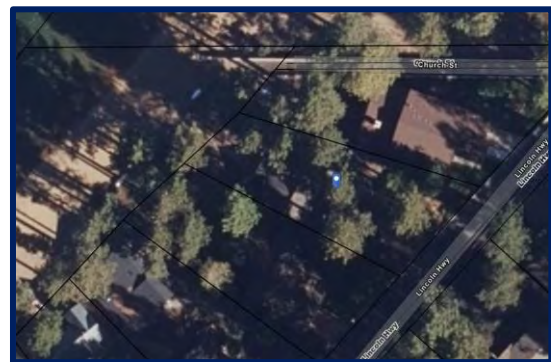
76 Skyland Court



1050 Skyland Court



716 Lincoln Highway



746 Lincoln Highway

Mr. Johnson briefly discussed the sales and how each one compares to the subject on a qualitative level and suggested a higher or lower value based on the differences noted. However, when we present the sales data in a chart for better visual understanding of the differences and account for those differences as indicated by the market, the resulting value "before" is substantially lower than Mr. Johnson estimates.

We disagree with the "before" value as Mr. Johnson failed to account for some major differences between the subject property and the comparable sales used in his analysis including lake frontage and lot size. The two main factors that need to be addressed, in our opinion, are date of sale or market conditions and lake frontage.

Some of the sales occurred 3-4 years ago and need to be adjusted for market conditions as market conditions continued to see favorable upward trend as seen by the sale and resale of the properties involved in sales 6 and 2.

746 Lincoln Highway sold in November 2018 for \$2,600,000 and resold in February 2020 for \$2,890,000. These transactions represent an increase of 11.15% overall or 0.74% per month up to February 2020.

442 Lakeview Avenue sold in November 2011 for \$4,000,000 and resold in April 2017 for \$4,650,000 or 16.25% over 66 months; this equates to 0.25% per month on average. However, this transaction involves a newer, existing residence which may appreciate at a different rate than a site with more "upside potential". That said, we have used a market conditions adjustment closer to that established by the property at 746 Lincoln Highway at 0.70% per month.

Because we do not know the full effect of the COVID pandemic on the lake front properties, we will adjust our sales up to February 2020 (as illustrated by the sale and resale of Lincoln Highway) and assume the next four months up to June 2020 have remained flat.

The following chart shows the adjusted price overall, per square foot and per front foot.

Residential Sales Chart, Adjusted for Market Conditions

No.	Address	Sale Date	Year Built	Lot SF	Lake Front Feet	Adjusted Sale			
						Sale Price	Price	\$/SF Land	\$/Front Foot
1	468 Lakeview Avenue	1/5/2016	N/A	8,276	96	\$3,900,000	\$5,237,700	\$632.88	\$54,559
2	442 Lakeview Avenue	4/13/2017	2004	6,098	50	\$4,650,000	\$5,724,150	\$938.69	\$114,483
3	76 Skyland Court	9/12/2017	1963	8,712	158	\$3,375,000	\$4,060,125	\$466.04	\$25,697
4	1050 Skyland Court	6/18/2018	1969	12,197	70	\$3,550,000	\$4,047,000	\$331.80	\$57,814
5	716 Lincoln Highway	9/16/2019	1938	17,424	75	\$4,250,000	\$4,398,750	\$252.45	\$58,650
6	746 Lincoln Highway	2/10/2020	1926	8,712	50	\$2,890,000	\$2,890,000	\$331.73	\$57,800

We then need to consider that sales 3 thru 6 are located in inferior developments with no private beach while still having 2 to 6.5 times the lake frontage when compared to the subject. These four sales, when compared to each other, show the front foot price to be similar (\$57,814, \$58,650 and \$57,800) while varying by 20 to 25 feet but a substantial decrease per front foot is noted when you compare sale 3 with 158 feet of lake frontage (\$25,697) to that of 4, 5, and 6 with 70, 75 and 50 feet of lake frontage. If we compare sale 4 with 70 feet of frontage to sale 3 with 158 feet of frontage, a difference of 40.46% is indicated for 88 feet more of frontage.

We can compare sales 6 and 3 to get an idea of the price difference for lake front. The lots are the same size, are in similar locations with #3 having three times more lake frontage than #6. Sale 3 sold for 40.49% more for this additional frontage. However, as can be seen from the aerials previously shown, part of the difference is that sale #6 fronts the beach then the water, not its own private lakefront.

If we consider sale 1 is most similar to the subject in location and use, we can adjust it down 45% for 4 times more lake frontage and up 10% for slightly larger size for a net downward adjustment of 35% for an adjusted price of \$411.37 per square foot (rounded to \$410). This is reasonably higher than sales 4 thru 6 given the subject's superior location but slightly lower than comp. 3 which has substantially more lake frontage.

In conclusion, the value of the subject property in the "before" condition, is estimated to be \$410/square foot of land area. Since the subject parcel has an extra 790 square feet of land that juts into the water and is different than surround properties, we have subtracted this area from the 5,837 square feet of land for a net land area of 5,047 square feet. We have made an extraordinary assumption that the net land area is correct and there is no significant contributory value associated with the extra 790 square feet of land.

Based on this analysis, we have formed an opinion of the land value at \$2,069,270, rounded to \$2,070,000.

Sales Comparison Approach "After"

On Page 77 of Mr. Johnsons report, he presents 4 improved sales to estimate a value of the subject property in the "after" condition but uses 3 of the same sales used in the before condition.

As with the "before" value estimate, Mr. Johnson discusses the basic differences in the sales and the subject and comes up with a qualitative value conclusion for the subject as a whole. He does not estimate a per unit value or provide a per unit analysis.

We disagree with this method for a couple of reasons 1) Mr. Johnson made a reasonable conclusion that the highest and best use is to develop the lot with a new single family residence or renovate the existing structure to a level that meets market expectations for this property type and 2) this method fails to recognize which properties were purchased for new construction, complete remodel or which ones were purchased with continued use of existing improvements.

Diminution in Value

Mr. Johnson estimated diminution in value simply by deducting the "after" value from the "before" value which is \$1,000,000. However, as noted, the value estimate in both situations is vague, general and is very subjective.

A more appropriate and reliable method is to look at how much buildable area is allowed in the "after" condition compared to the "before" condition.

Mr. Johnson discusses a reduction in living area of 659 square feet as estimated by the drawing prepared by Turner & Associates, Inc. (using the hypothetical condition a set of architectural guidelines that were not adopted). The loss in value, assuming this 659 square foot figure is reliable and accurate, can be estimated by looking at the price per buildable area in the "before" condition and applying that price/building area to the area being "lost" in the "after" condition. For instance, referring back to Page 72 of Mr. Johnsons report, the architectural guidelines used for his analysis states "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."

So, we can take the value estimated herein (\$2,070,000) divided by recommended square foot of floor area of 4,159 square feet (3,500 sf max per the Architectural Guidelines + 659 sf = 4,159 sf), to arrive at a price/sf of buildable area of \$497.72. This figure can then be applied to the amount of square footage reportedly being "lost" by the previously *proposed* architectural guidelines to arrive at a diminution in value of \$327,997 ($\$497.72 \times 659 \text{ sf} = \$327,997$).

Conclusion

The subject of this report and review is an existing 2,260-square foot house on a 5,837-square-foot lot. The improvements are outdated and are now at the end of their economic life. The EPCC HOA has adopted a set of architectural guidelines in December 2019. However, the appraiser was instructed by his client to assume a previously *proposed* set of guidelines was in place to estimate diminution in value for the subject property. A diagram provided by Turner & Associates shows a loss in buildable area of 659 square feet because of the previously *proposed* guidelines. For the purpose of this review, we have assumed this estimate of square footage to be accurate and reliable, but it is imperative to note that this is based on a hypothetical condition that is based on a set of architectural guidelines that were not adopted by EPCC HOA.

Mr. Johnson estimated the value of the property in a "before" and "after" situation by estimating a lump sum figure based on sales that involved a mix of tear downs and existing residences for continued use. Rather than analyzing the sales on a price per square foot of land area, he estimated a value of the property as a whole and simply deducted one from the other for an indication of diminution in value.

Given the stringent building requirements and restrictions set forth by Douglas County and TRPA, there are a wide range of development guidelines and requirements on all properties in the Tahoe area. Lot coverage for each site is not readily available as they are all based on individual site assessments and can vary depending what scoring system they fall under. However, we have confirmed with a representative of the TRPA and the president of the HOA that the subject property could be redeveloped at the same buildable area as noted in the "before" condition as long as the foundation remains in place. Mr. Johnson himself states on the bottom of Page 34 the subject appears to have significant on-site coverage well in excess of the base allowable coverage. This along with the fact the buildable area is "grand fathered in" and keeping in mind the actual adopted architectural guidelines are reported by the HOA president to not have an effect on the buildable area suggests there is no diminution in value.

The diminution in value only comes into play by using the hypothetical condition used by Mr. Johnson at the direction of his client.

As we stated earlier, it is our opinion that there are no damages to the subject property as the Architectural Guidelines that the appraiser used in his appraisal report were never adopted. Under the Architectural Guidelines that were adopted in December 2019, the property could be developed to the same size as before the new guidelines were adopted, so there would be no diminution in value. If the Architectural Guidelines from the appraisal report were adopted, then it is our opinion that the damages due to the diminution of the allowable building area is \$327,997. This also assumes that the loss of the 659 square feet of building area is accurate. It is unclear how the calculations were made, and we recommend that a land survey be conducted to determine the potential loss of building area (again assuming the Architectural Guidelines were adopted).

General Assumptions & Limiting Conditions

This appraisal is subject to the following limiting conditions:

1. The legal description – if furnished us – is assumed to be correct.
2. No responsibility is assumed for legal matters, questions of survey or title, soil or subsoil conditions, engineering, availability or capacity of utilities, or other similar technical matters. The appraisal does not constitute a survey of the property appraised. All existing liens and encumbrances have been disregarded and the property is appraised as though free and clear, under responsible ownership and competent management unless otherwise noted.
3. Unless otherwise noted, the appraisal will value the property as though free of contamination. Valbridge Property Advisors | Las Vegas | Reno will conduct no hazardous materials or contamination inspection of any kind. It is recommended that the client hire an expert if the presence of hazardous materials or contamination poses any concern.
4. The stamps and/or consideration placed on deeds used to indicate sales are in correct relationship to the actual dollar amount of the transaction.
5. Unless otherwise noted, it is assumed there are no encroachments, zoning violations or restrictions existing in the subject property.
6. The appraiser is not required to give testimony or attendance in court by reason of this appraisal, unless previous arrangements have been made.
7. Unless expressly specified in the engagement letter, the fee for this appraisal does not include the attendance or giving of testimony by Appraiser at any court, regulatory, or other proceedings, or any conferences or other work in preparation for such proceeding. If any partner or employee of Valbridge Property Advisors | Las Vegas | Reno is asked or required to appear and/or testify at any deposition, trial, or other proceeding about the preparation, conclusions or any other aspect of this assignment, client shall compensate Appraiser for the time spent by the partner or employee in appearing and/or testifying and in preparing to testify according to the Appraiser's then current hourly rate plus reimbursement of expenses.
8. The values for land and/or improvements, as contained in this report, are constituent parts of the total value reported and neither is (or are) to be used in making a summation appraisal of a combination of values created by another appraiser. Either is invalidated if so used.
9. The dates of value to which the opinions expressed in this report apply are set forth in this report. I assume no responsibility for economic or physical factors occurring at some point at a later date, which may affect the opinions stated herein. The forecasts, projections, or operating estimates contained herein are based on current market conditions and anticipated short-term supply and demand factors and are subject to change with future conditions.

10. The sketches, maps, plats and exhibits in this report are included to assist the reader in visualizing the property. The appraiser has made no survey of the property and assumed no responsibility in connection with such matters.
11. The information, estimates and opinions which were obtained from sources outside of this office, are considered reliable. However, no liability for them can be assumed by the appraiser.
12. Possession of this report, or a copy thereof, does not carry with it the right of publication. Neither all, nor any part of the content of the report, or copy thereof (including conclusions as to property value, the identity of the appraisers, professional designations, reference to any professional appraisal organization or the firm with which the appraisers are connected), shall be disseminated to the public through advertising, public relations, news, sales, or other media without prior written consent and approval.
13. No claim is intended to be expressed for matters of expertise which would require specialized investigation or knowledge beyond that ordinarily employed by real estate appraisers. I claim no expertise in areas such as, but not limited to, legal, survey, structural, environmental, pest control, mechanical, etc.
14. This appraisal was prepared for the sole and exclusive use of the client for the function outlined herein. Any party who is not the client or intended user identified in the appraisal or engagement letter is not entitled to rely upon the contents of the appraisal without express written consent of Valbridge Property Advisors | Las Vegas | Reno and Client. Client shall not include partners, affiliates, or relatives of the party addressed herein. The appraiser assumes no obligation, liability or accountability to any third party.
15. Distribution of this report is at the sole discretion of the client, but no third-parties not listed as an intended user on the face of the appraisal or the engagement letter may rely upon the contents of the appraisal. In no event shall client give a third-party a partial copy of the appraisal report. I will make no distribution of the report without the specific direction of the client.
16. This appraisal shall be used only for the function outlined herein, unless expressly authorized by Valbridge Property Advisors | Las Vegas | Reno
17. This appraisal shall be considered in its entirety. No part thereof shall be used separately or out of context.
18. Unless otherwise noted in the body of this report, this appraisal assumes that the subject property does not fall within the areas where mandatory flood insurance is effective. Unless otherwise noted, I have not completed nor have I contracted to have completed an investigation to identify and/or quantify the presence of non-tidal wetland conditions on the subject property. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

19. If the appraisal is for mortgage loan purposes 1) I assume satisfactory completion of improvements if construction is not complete, 2) no consideration has been given for rent loss during rent-up unless noted in the body of this report, and 3) occupancy at levels consistent with my "Income & Expense Projection" are anticipated.
20. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover them.
21. My inspection included an observation of the land and improvements thereon only. It was not possible to observe conditions beneath the soil or hidden structural components within the improvements. I inspected the buildings involved, and reported damage (if any) by termites, dry rot, wet rot, or other infestations as a matter of information, and no guarantee of the amount or degree of damage (if any) is implied. Condition of heating, cooling, ventilation, electrical and plumbing equipment is considered to be commensurate with the condition of the balance of the improvements unless otherwise stated.
22. This appraisal does not guarantee compliance with building code and life safety code requirements of the local jurisdiction. It is assumed that all required licenses, consents, certificates of occupancy or other legislative or administrative authority from any local, state or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value conclusion contained in this report is based unless specifically stated to the contrary.
23. When possible, I have relied upon building measurements provided by the client, owner, or associated agents of these parties. In the absence of a detailed rent roll, reliable public records, or "as-built" plans provided to us, I have relied upon my own measurements of the subject improvements. I follow typical appraisal industry methods; however, I recognize that some factors may limit my ability to obtain accurate measurements including, but not limited to, property access on the day of inspection, basements, fenced/gated areas, grade elevations, greenery/shrubbery, uneven surfaces, multiple story structures, obtuse or acute wall angles, immobile obstructions, etc. Professional building area measurements of the quality, level of detail, or accuracy of professional measurement services are beyond the scope of this appraisal assignment.
24. I have attempted to reconcile sources of data discovered or provided during the appraisal process, including assessment department data. Ultimately, the measurements that are deemed by me to be the most accurate and/or reliable are used within this report. While the measurements and any accompanying sketches are considered to be reasonably accurate and reliable, I cannot guarantee their accuracy. Should the client desire a greater level of measuring detail, they are urged to retain the measurement services of a qualified professional (space planner, architect or building engineer). I reserve the right to use an alternative source of building size and amend the analysis, narrative and concluded values (at additional cost) should this alternative measurement source reflect or reveal substantial differences with the measurements used within the report.
25. In the absence of being provided with a detailed land survey, I have used assessment department data to ascertain the physical dimensions and acreage of the property. Should a survey prove this information to be inaccurate, I reserve the right to amend this appraisal (at additional cost) if substantial differences are discovered.
26. If only preliminary plans and specifications were available for use in the preparation of this appraisal, then this appraisal is subject to a review of the final plans and specifications when available (at

additional cost) and I reserve the right to amend this appraisal if substantial differences are discovered.

27. Unless otherwise stated in this report, the value conclusion is predicated on the assumption that the property is free of contamination, environmental impairment or hazardous materials. Unless otherwise stated, the existence of hazardous material was not observed by the appraiser and the appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required for discovery. The client is urged to retain an expert in this field, if desired.
28. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. I have not made a specific compliance survey of the property to determine if it is in conformity with the various requirements of the ADA. It is possible that a compliance survey of the property, together with an analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this could have a negative effect on the value of the property. Since I have no direct evidence relating to this issue, I did not consider possible noncompliance with the requirements of ADA in developing an opinion of value.
29. This appraisal applies to the land and building improvements only. The value of trade fixtures, furnishings, and other equipment, or subsurface rights (minerals, gas, and oil) were not considered in this appraisal unless specifically stated to the contrary.
30. If any claim is filed against any of Valbridge Property Advisors, Inc. a Florida Corporation, its affiliates, officers or employees, or the firm providing this report, in connection with, or in any way arising out of, or relating to, this report, or the engagement of the firm providing this report, then (1) under no circumstances shall such claimant be entitled to consequential, special or other damages, except only for direct compensatory damages and (2) the maximum amount of such compensatory damages recoverable by such claimant shall be the amount actually received by the firm engaged to provide this report.
31. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated, unless specifically stated to the contrary.

32. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute prediction of future operating results. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance.
33. Any estimate of insurable value, if included within the scope of work and presented herein, is based upon figures developed consistent with industry practices. However, actual local and regional construction costs may vary significantly from my estimate and individual insurance policies and underwriters have varied specifications, exclusions, and noninsurable items. As such, I strongly recommend that the Client obtain estimates from professionals experienced in establishing insurance coverage. This analysis should not be relied upon to determine insurance coverage and I make no warranties regarding the accuracy of this estimate.
34. The data gathered in the course of this assignment (except data furnished by the Client) shall remain the property of the Appraiser. The appraiser will not violate the confidential nature of the appraiser-client relationship by improperly disclosing any confidential information furnished to the appraiser. Notwithstanding the foregoing, the Appraiser is authorized by the client to disclose all or any portion of the appraisal and related appraisal data to appropriate representatives of the Appraisal Institute if such disclosure is required to enable the appraiser to comply with the Bylaws and Regulations of such Institute now or hereafter in effect.
35. You and Valbridge Property Advisors | Las Vegas | Reno both agree that any dispute over matters in excess of \$5,000 will be submitted for resolution by arbitration. This includes fee disputes and any claim of malpractice. The arbitrator shall be mutually selected. If Valbridge Property Advisors | Las Vegas | Reno and the client cannot agree on the arbitrator, the presiding head of the Local County Mediation & Arbitration panel shall select the arbitrator. Such arbitration shall be binding and final. In agreeing to arbitration, we both acknowledge that, by agreeing to binding arbitration, each of us is giving up the right to have the dispute decided in a court of law before a judge or jury. In the event that the client, or any other party, makes a claim against Lubawy and Associates, Inc or any of its employees in connections with or in any way relating to this assignment, the maximum damages recoverable by Valbridge Property Advisors | Las Vegas | Reno for this assignment, and under no circumstances shall any claim for consequential damages be made.
36. Valbridge Property Advisors | Las Vegas | Reno shall have no obligation, liability, or accountability to any third party. Any party who is not the "client" or intended user identified on the face of the appraisal or in the engagement letter is not entitled to rely upon the contents of the appraisal without the express written consent of Valbridge Property Advisors | Las Vegas | Reno "Client" shall not include partners, affiliates, or relatives of the party named in the engagement letter. Client shall hold Valbridge Property Advisors | Las Vegas | Reno and its employees harmless in the event of any lawsuit brought by any third party, lender, partner, or part-owner in any form of ownership or any other party as a result of this assignment. The client also agrees that in case of lawsuit arising from or in any way involving these appraisal services, client will hold Valbridge Property Advisors | Las Vegas | Reno harmless from and against any liability, loss, cost, or expense incurred or suffered by Valbridge Property Advisors | Las Vegas | Reno in such action, regardless of its outcome.

37. The value opinion(s) provided herein is subject to any and all predications set forth in this report.
38. The Valbridge Property Advisors office responsible for the preparation of this report is independently owned and operated by Lubawy and Associates, Inc. Neither Valbridge Property Advisors, Inc., nor any of its affiliates, has been engaged to provide this report. Valbridge Property Advisors, Inc. does not provide valuation services, and has taken no part in the preparation of this report.
39. This report and any associated work files may be subject to evaluation by Valbridge Property Advisors, Inc., or its affiliates, for quality control purposes.
40. Acceptance and/or use of this appraisal report constitutes acceptance of the foregoing general assumptions and limiting conditions.
41. Any use of or reliance on the appraisal by any party regardless of whether the use or reliance is authorized or known by Appraiser, constitutes acceptance of, and is subject to, all appraisal statements, limiting conditions and assumptions stated in the appraisal report.
42. Unless the time frame is shorter under applicable law, any legal action or claim relating to the appraisal or Appraiser's services shall be filed in court (or in the applicable arbitration tribunal, if the parties to the dispute have executed an arbitration agreement) within (2) years from the date of the alleged acts or conduct. The time frame stated in this section shall not be extended by any delay in the discovery or accrual of the underlying claims, causes of actions or damages. The time frame stated in this section shall apply to all non-criminal claims or causes of action of any type.
43. Legal claims or causes of action relating to the appraisal are not transferable or assignable to a third party, except: (i) as the result of a merger, consolidation, sale or purchase of a legal entity, (ii) with regard to the collection of a bona fide existing debt for services but then only to the extent of the total compensation for the appraisal plus reasonable interest, or (iii) in the case of an appraisal performed in connection with an origination of a mortgage loan, as part of the transfer or sale of the mortgage before an event of default on the mortgage or note or its legal equivalent.

Certification

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this review are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. Matthew Lubawy, MAI, CVA has not provided previous services, as an appraiser, regarding the property that is the subject within the three-year period immediately preceding acceptance of this assignment.
5. I have no bias with respect to the property that is the subject of this review or to the parties involved with this assignment.
6. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. The reported analyses, opinions and conclusions were developed, and this review has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
9. Matthew Lubawy has not personally inspected the subject property.
10. No one provided significant real property appraisal assistance to the appraiser signing this certification.
11. The reported analyses, opinions and conclusions were developed, and this review has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice (USPAP).
12. The use of this review is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

13. As of the date of this review, Matthew Lubawy has completed the continuing education program of the Appraisal Institute.



Matthew Lubawy, MAI, CVA
Senior Managing Director
Nevada License #A.0000044-CG
License Expires 04-30-2021

Certification

I certify that, to the best of my knowledge and belief:

14. The statements of fact contained in this review are true and correct.
15. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
16. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
17. Tammy Howard has not provided previous services, as an appraiser, regarding the property that is the subject within the three-year period immediately preceding acceptance of this assignment.
18. I have no bias with respect to the property that is the subject of this review or to the parties involved with this assignment.
19. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
20. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
21. The reported analyses, opinions and conclusions were developed, and this review has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
22. Tammy Howard has not personally inspected the property.
23. No one provided significant real property appraisal assistance to the appraiser signing this certification.
24. The reported analyses, opinions and conclusions were developed, and this review has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, which include the Uniform Standards of Professional Appraisal Practice (USPAP).
25. The use of this review is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.



A handwritten signature in blue ink that reads "Tammy L. Howard".

Tammy Howard
Senior Appraiser
Nevada License #A.0000253-CG
License Expires 06-30-2021

Addenda

Architectural Guidelines (December 2019)

Glossary

Qualifications of the Review Appraiser

Architectural Guidelines (December 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 or 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

Glossary

Definitions are taken from the Dictionary of Real Estate Appraisal, 5th Edition (Dictionary), the Uniform Standards of Professional Appraisal Practice (USPAP) and Building Owners and Managers Association International (BOMA).

Absolute Net Lease

A lease in which the tenant pays all expenses including structural maintenance, building reserves, and management; often a long-term lease to a credit tenant. (Dictionary)

Additional Rent

Any amounts due under a lease that is in addition to base rent. Most common form is operating expense increases. (Dictionary)

Amortization

The process of retiring a debt or recovering a capital investment, typically through scheduled, systematic repayment of the principal; a program of periodic contributions to a sinking fund or debt retirement fund. (Dictionary)

As Is Market Value

The estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal's effective date. (2010 Interagency)

Base (Shell) Building

The existing shell condition of a building prior to the installation of tenant improvements. This condition varies from building to building, landlord to landlord, and generally involves the level of finish above the ceiling grid. (Dictionary)

Base Rent

The minimum rent stipulated in a lease. (Dictionary)

Base Year

The year on which escalation clauses in a lease are based. (Dictionary)

Building Common Area

The areas of the building that provide services to building tenants but which are not included in the rentable area of any specific tenant. These areas may include, but shall not be limited to, main and auxiliary lobbies, atrium spaces at the level of the finished floor, concierge areas or security desks, conference rooms, lounges or vending areas food service facilities, health or fitness centers, daycare facilities, locker or shower facilities, mail rooms, fire control rooms, fully enclosed courtyards outside the exterior walls, and building core and service areas such as fully enclosed mechanical or equipment rooms. Specifically excluded from building

common areas are; floor common areas, parking spaces, portions of loading docks outside the building line, and major vertical penetrations. (BOMA)

Building Rentable Area

The sum of all floor rentable areas. Floor rentable area is the result of subtracting from the gross measured area of a floor the major vertical penetrations on that same floor. It is generally fixed for the life of the building and is rarely affected by changes in corridor size or configuration. (BOMA)

Certificate of Occupancy (COO)

A statement issued by a local government verifying that a newly constructed building is in compliance with all codes and may be occupied.

Common Area (Public) Factor

In a lease, the common area (public) factor is the multiplier to a tenant's useable space that accounts for the tenant's proportionate share of the common area (restrooms, elevator lobby, mechanical rooms, etc.). The public factor is usually expressed as a percentage and ranges from a low of 5% for a full tenant to as high as 15% or more for a multi-tenant floor. Subtracting one (1) from the quotient of the rentable area divided by the useable area yields the load (public) factor. At times confused with the "loss factor" which is the total rentable area of the full floor less the useable area divided by the rentable area. (BOMA)

Common Area Maintenance (CAM)

The expense of operating and maintaining common areas; may or may not include management charges and usually does not include capital expenditures on tenant improvements or other improvements to the property.

CAM can be a line-item expense for a group of items that can include maintenance of the parking lot and landscaped areas and sometimes the exterior walls of the buildings. CAM can refer to all operating expenses.

CAM can refer to the reimbursement by the tenant to the landlord for all expenses reimbursable under the lease. Sometimes reimbursements have what is called an administrative load. An example would be a 15% addition to total operating expenses, which are then prorated among tenants. The administrative load, also called an administrative and marketing fee, can be a substitute for or an addition to a management fee. (Dictionary)

Condominium

A form of ownership in which each owner possesses the exclusive right to use and occupy an allotted unit plus an undivided interest in common areas.

A multiunit structure, or a unit within such a structure, with a condominium form of ownership. (Dictionary)

Conservation Easement

An interest in real property restricting future land use to preservation, conservation, wildlife habitat, or some combination of those use. A conservation easement may permit farming, timber harvesting, or other uses of a rural nature to continue, subject to the easement. In some locations, a conservation easement may be referred to as a conservation restriction. (Dictionary)

Contributory Value

The change in the value of a property as a whole, whether positive or negative, resulting from the addition or deletion of a property component. Also called deprival value in some countries. (Dictionary)

Debt Coverage Ratio (DCR)

The ratio of net operating income to annual debt service ($DCR = NOI/Im$), which measures the relative ability to a property to meet its debt service out of net operating income. Also called Debt Service Coverage Ratio (DSCR). A larger DCR indicates a greater ability for a property to withstand a downturn in revenue, providing an improved safety margin for a lender. (Dictionary)

Deed Restriction

A provision written into a deed that limits the use of land. Deed restrictions usually remain in effect when title passes to subsequent owners. (Dictionary)

Depreciation

1) In appraising, the loss in a property value from any cause; the difference between the cost of an improvement on the effective date of the appraisal and the market value of the improvement on the same date. 2) In accounting, an allowance made against the loss in value of an asset for a defined purpose and computed using a specified method. (Dictionary)

Disposition Value

The most probable price that a specified interest in real property is likely to bring under the following conditions:

- Consummation of a sale within a exposure time specified by the client;
- The property is subjected to market conditions prevailing as of the date of valuation;
- Both the buyer and seller are acting prudently and knowledgeably;

- The seller is under compulsion to sell;
- The buyer is typically motivated;
- Both parties are acting in what they consider to be their best interests;
- An adequate marketing effort will be made during the exposure time specified by the client;
- Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Easement

The right to use another's land for a stated purpose. (Dictionary)

EIFS

Exterior Insulation Finishing System. This is a type of exterior wall cladding system. Sometimes referred to as dry-vit.

Effective Date

1) The date at which the analyses, opinions, and advice in an appraisal, review, or consulting service apply. 2) In a lease document, the date upon which the lease goes into effect. (Dictionary)

Effective Rent

The rental rate net of financial concessions such as periods of no rent during the lease term and above- or below-market tenant improvements (TI's). (Dictionary)

EPDM

Ethylene Diene Monomer Rubber. A type of synthetic rubber typically used for roof coverings. (Dictionary)

Escalation Clause

A clause in an agreement that provides for the adjustment of a price or rent based on some event or index. e.g., a provision to increase rent if operating expenses increase; also called an expense recovery clause or stop clause. (Dictionary)

Estoppel Certificate

A statement of material factors or conditions of which another person can rely because it cannot be denied at a later date. In real estate, a buyer of rental property typically requests estoppel certificates from existing tenants. Sometimes referred to as an estoppel letter. (Dictionary)

Excess Land

Land that is not needed to serve or support the existing improvement. The highest and best use of the excess land

may or may not be the same as the highest and best use of the improved parcel. Excess land may have the potential to be sold separately and is valued separately. (Dictionary)

Expense Stop

A clause in a lease that limits the landlord's expense obligation, which results in the lessee paying any operating expenses above a stated level or amount. (Dictionary)

Exposure Time

1) The time a property remains on the market. 2) The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market. (Dictionary)

Extraordinary Assumption

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary)

Fair Market Value

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property the sale price in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. (IRS)

Fee Simple Estate

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. (Dictionary)

Floor Common Area

Areas on a floor such as washrooms, janitorial closets, electrical rooms, telephone rooms, mechanical rooms, elevator lobbies, and public corridors which are available primarily for the use of tenants on that floor. (BOMA)

Full Service (Gross) Lease

A lease in which the landlord receives stipulated rent and is obligated to pay all of the property's operating and fixed expenses; also called a full service lease. (Dictionary)

Going Concern Value

- The market value of all the tangible and intangible assets of an established and operating business with an indefinite life, as if sold in aggregate; more accurately termed the market value of the going concern.
- The value of an operating business enterprise. Goodwill may be separately measured but is an integral component of going-concern value when it exists and is recognizable. (Dictionary)

Gross Building Area

The total constructed area of a building. It is generally not used for leasing purposes (BOMA)

Gross Measured Area

The total area of a building enclosed by the dominant portion (the portion of the inside finished surface of the permanent outer building wall which is 50% or more of the vertical floor-to-ceiling dimension, at the given point being measured as one moves horizontally along the wall), excluding parking areas and loading docks (or portions of the same) outside the building line. It is generally not used for leasing purposes and is calculated on a floor by floor basis. (BOMA)

Gross Up Method

A method of calculating variable operating expense in income-producing properties when less than 100% occupancy is assumed. The gross up method approximates the actual expense of providing services to the rentable area of a building given a specified rate of occupancy. (Dictionary)

Ground Lease

A lease that grants the right to use and occupy land. Improvements made by the ground lessee typically revert to the ground lessor at the end of the lease term. (Dictionary)

Ground Rent

The rent paid for the right to use and occupy land according to the terms of a ground lease; the portion of the total rent allocated to the underlying land. (Dictionary)

HVAC

Heating, ventilation, air conditioning. A general term encompassing any system designed to heat and cool a building in its entirety.

Highest & Best Use

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are 1) legal permissibility, 2) physical possibility, 3) financial feasibility, and 4) maximally profitability. Alternatively, the probable use of land or improved property-specific with respect to the user and timing of the use—that is adequately supported and results in the highest present value. (Dictionary)

Hypothetical Condition

That which is contrary to what exists but is supposed for the purpose of analysis. Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (Dictionary)

Industrial Gross Lease

A lease of industrial property in which the landlord and tenant share expenses. The landlord receives stipulated rent and is obligated to pay certain operating expenses, often structural maintenance, insurance and real estate taxes as specified in the lease. There are significant regional and local differences in the use of this term. (Dictionary)

Insurable Value

A type of value for insurance purposes. (Dictionary)

(Typically this includes replacement cost less basement excavation, foundation, underground piping and architect's fees).

Investment Value

The value of a property interest to a particular investor or class of investors based on the investor's specific requirements. Investment value may be different from market value because it depends on a set of investment criteria that are not necessarily typical of the market. (Dictionary)

Just Compensation

In condemnation, the amount of loss for which a property owner is compensated when his or her property is taken. Just compensation should put the owner in as good a position as he or she would be if the property had not been taken. (Dictionary)

Leased Fee Interest

A freehold (ownership interest) where the possessory interest has been granted to another party by creation of

a contractual landlord-tenant relationship (i.e., a lease). (Dictionary)

Leasehold Interest

The tenant's possessory interest created by a lease. (Dictionary)

Lessee (Tenant)

One who has the right to occupancy and use of the property of another for a period of time according to a lease agreement. (Dictionary)

Lessor (Landlord)

One who conveys the rights of occupancy and use to others under a lease agreement. (Dictionary)

Liquidation Value

The most probable price that a specified interest in real property should bring under the following conditions:

- Consummation of a sale within a short period.
- The property is subjected to market conditions prevailing as of the date of valuation.
- Both the buyer and seller are acting prudently and knowledgeably.
- The seller is under extreme compulsion to sell.
- The buyer is typically motivated.
- Both parties are acting in what they consider to be their best interests.
- A normal marketing effort is not possible due to the brief exposure time.
- Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
- The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (Dictionary)

Loan to Value Ratio (LTV)

The amount of money borrowed in relation to the total market value of a property. Expressed as a percentage of the loan amount divided by the property value. (Dictionary)

Major Vertical Penetrations

Stairs, elevator shafts, flues, pipe shafts, vertical ducts, and the like, and their enclosing walls. Atria, lightwells and similar penetrations above the finished floor are included in this definition. Not included, however, are vertical penetrations built for the private use of a tenant occupying office areas on more than one floor. Structural columns, openings for vertical electric cable or telephone distribution, and openings for plumbing lines are not considered to be major vertical penetrations. (BOMA)

Market Rent

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement including permitted uses, use restrictions, expense obligations; term, concessions, renewal and purchase options and tenant improvements (TI's). (Dictionary)

Market Value

The following definition of market value is used by agencies that regulate federally insured financial institutions in the United States: The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;
- Both parties are well informed or well advised, and acting in what they consider their own best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. (FIRREA)

Market Value As If Complete

Market value as if complete means the market value of the property with all proposed construction, conversion or rehabilitation hypothetically completed or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants.

Market Value As If Stabilized

Market value as if stabilized means the market value of the property at a current point and time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

Marketing Time

An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after

the effective date of the appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Standards Board of the Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time). (Dictionary)

Master Lease

A lease in which the fee owners leases a part or the entire property to a single entity (the master lease) in return for a stipulated rent. The master lessee then leases the property to multiple tenants. (Dictionary)

Modified Gross Lease

A lease in which the landlord receives stipulated rent and is obligated to pay some, but not all, of the property's operating and fixed expenses. Since assignment of expenses varies among modified gross leases, expense responsibility must always be specified. In some markets, a modified gross lease may be called a double net lease, net net lease, partial net lease, or semi-gross lease. (Dictionary)

Option

A legal contract, typically purchased for a stated consideration, that permits but does not require the holder of the option (known as the optionee) to buy, sell, or lease real property for a stipulated period of time in accordance with specified terms; a unilateral right to exercise a privilege. (Dictionary)

Partial Interest

Divided or undivided rights in real estate that represent less than the whole (a fractional interest). (Dictionary)

Pass Through

A tenant's portion of operating expenses that may be composed of common area maintenance (CAM), real estate taxes, property insurance, and any other expenses determined in the lease agreement to be paid by the tenant. (Dictionary)

Prospective Future Value Upon Completion

Market value "upon completion" is a prospective future value estimate of a property at a point in time when all of its improvements are fully completed. It assumes all proposed construction, conversion, or rehabilitation is hypothetically complete as of a future date when such effort is projected to occur. The projected completion date and the value estimate must reflect the market value of the property in its projected condition, i.e., completely vacant or partially occupied. The cash flow must reflect lease-up costs, required tenant improvements and

leasing commissions on all areas not leased and occupied.

Prospective Future Value Upon Stabilization

Market value "upon stabilization" is a prospective future value estimate of a property at a point in time when stabilized occupancy has been achieved. The projected stabilization date and the value estimate must reflect the absorption period required to achieve stabilization. In addition, the cash flows must reflect lease-up costs, required tenant improvements and leasing commissions on all unleased areas.

Prospective Market Value "As Completed" and "As Stabilized"

For properties that are to be constructed or rehabilitated, the Prospective Market Value "As Completed" and/or the Prospective Market Value "As Stabilized" may be required. The 2010 Interagency Appraisal and Evaluation Guidelines defines these terms as follows:

"A prospective market value may be appropriate for the valuation of a property interest related to a credit decision for a proposed development or renovation project. According to USPAP, an appraisal with a prospective market value reflects an effective date that is subsequent to the date of the appraisal report. Prospective value opinions are intended to reflect the current expectations and perceptions of market participants, based on available data. Two prospective value opinions may be required to reflect the time frame during which development, construction, and occupancy will occur. The prospective market value "as completed" reflects the property's market value as of the time that development is expected to be completed. The prospective market value "as stabilized" reflects the property's market value as of the time the property is projected to achieve stabilized occupancy. For an income-producing property, stabilized occupancy is the occupancy level that a property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties. (See USPAP Statement 4 and Advisory Opinion 17.)".

Replacement Cost

The estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised, using modern materials and current standards, design, and layout. (Dictionary)

Reproduction Cost

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the

deficiencies, superadequacies, and obsolescence of the subject building. (Dictionary)

Retrospective Value Opinion

A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., "retrospective market value opinion." (Dictionary)

Sandwich Leasehold Estate

The interest held by the original lessee when the property is subleased to another party; a type of leasehold estate. (Dictionary)

Sublease

An agreement in which the lessee (i.e., the tenant) leases part or all of the property to another party and thereby becomes a lessor. (Dictionary)

Subordination

A contractual arrangement in which a party with a claim to certain assets agrees to make his or her claim junior, or subordinate, to the claims of another party. (Dictionary)

Substantial Completion

Generally used in reference to the construction of tenant improvements (TI's). The tenant's premises are typically deemed to be substantially completed when all of the TI's for the premises have been completed in accordance with the plans and specifications previously approved by the tenant. Sometimes used to define the commencement date of a lease.

Surplus Land

Land that is not currently needed to support the existing improvement but cannot be separated from the property and sold off. Surplus land does not have an independent highest and best use and may or may not contribute value to the improved parcel. (Dictionary)

Triple Net (Net Net Net) Lease

A lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management. Also called NNN, triple net leases, or fully net lease. (Dictionary)

(The market definition of a triple net leases varies; in some cases tenants pay for items such as roof repairs, parking lot repairs, and other similar items.)

Usable Area

The measured area of an office area, store area or building common area on a floor. The total of all the usable areas on a floor shall equal floor usable area of that same floor. The amount of floor usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled. (BOMA)

Value-in-Use

The value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually. (Dictionary)

Qualifications of Matthew Lubawy, MAI, CVA
Senior Managing Director
Valbridge Property Advisors | Lubawy & Associates, Inc.



Independent Valuations for a Variable World

State Certifications

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Arizona License
#32072

California License
#3029734

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Membership/Affiliations:

Member: Appraisal Institute - MAI Designation #10653
Director - (2008 – 2011)
President of Las Vegas Chapter (1998 - 1999)
1st V.P. of Las Vegas Chapter (1997 – 1998)
2nd V.P. of Las Vegas Chapter (1996 – 1997)

Member: NACVA – CVA Designation (Certified Valuation Analyst for business valuation)

Member: NEBB Institute – CMEA Designation for Machinery and Equipment

Board Member: Valbridge Property Advisors -
Vice-Chairman of the Board of Directors
(2011 – Present)

Member: International Right of Way Association

Member: National Association of Realtors

Member: GLVAR

Board Member: Nevada State Development Corporation
Chairman of the Board (2008-Present)

Experience:

Senior Managing Director

Valbridge Property Advisors | Lubawy & Associates (2013 - Present)

Principal

Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant

Timothy R. Morse and Associates (1992 – 1994)

Staff Appraiser/Assistant Vice President

First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant

The Clark Companies (1987 - 1988)

Appraisal/valuation and consulting assignments include: vacant land; apartment buildings; retail buildings; shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools, churches hotel/casinos air hangars, automobile dealerships, residential subdivisions, and master-planned communities. Other assignments include tax credit valuations, Fannie Mae and Freddie Mac reports, and HUD MAP valuations and market studies, as well as valuation of fractional interests in FLP's, LP's LLC's and/or other business entities.

Appraisal Institute & Related Courses:

Eminent Domain 2016, CLE International	September 2016
Supervisor Trainee Course for Nevada	January 2016
USPAP 2016/2017	January 2016
Small Hotel/Motel Valuation	February 2015
NEBB Institute Machinery & Equipment Certification Training	January 2014
2014-2015 National USPAP Update Course, Appraisal Institute	January 2014
NACVA Business Valuation Certification and Training Center	December 2013
Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets, Appraisal Institute	March 2012
7-Hour National USPAP Update Course, Appraisal Institute	January 2012
2010-2011 National USPAP Update, Appraisal Institute	January 2010
Appraising Distressed Commercial Real Estate, Appraisal Institute	July 2009
Understanding the Home Valuation Code of Conduct, Appraisal Institute	June 2009
Introduction to Valuation for Financial Reporting, Appraisal Institute	June 2009
Argus Based Discounted Cash Flow Analysis, Appraisal Institute	June 2009
National Uniform Standards of Professional Practice Course 400, Appraisal Institute	April 2009
Online Scope of Work: Expanding Your Range of Services, Appraisal Institute	April 2009
Online Rates and Ratios: Making sense of GIMs, OARs and DCF, Appraisal Institute	April 2009
Forecasting Revenue, Appraisal Institute	October 2008
Law of Easements: Legal Issues & Practical Considerations, Lorman Education Services	August 2008
Analyzing Operating Expenses, Appraisal Institute	May, 2007
Valuation of Detrimental Conditions in Real Estate, Appraisal Institute	April, 2007
2007 National USPAP Update, Appraisal Institute	March, 2007
Analyzing Commercial Lease Clauses, Appraisal Institute	February, 2007
Analyzing Distressed Real Estate, Appraisal Institute	February, 2007
Uniform Appraisal Standards for Federal Land Acquisitions, Appraisal Institute	October 2005
Online Analyzing Distressed Real Estate, Appraisal Institute	September 2005
Business Practices and Ethics, Course 420, Appraisal Institute	September 2005
USPAP Update – Course 400, Appraisal Institute	February 2005
Litigation Appraising: Specialized Topics and Applications	October 2004
Separating Real & Personal Property from Intangible Business Assets	September 2003
So. NV Public Land Mgt. Act BLM Appraisal Compliance Workshop	May 2003
Income Capitalization	March 2003
Appraising Non-Conforming and Difficult Properties	March 2003
Appraiser Liability	March 2003
2003 National USPAP	February 2003
Valuation of Partial Acquisitions, Course 401 through IRWA	October 2000
Partial Interest Valuation – Divided, Course A7414	April 2000
Highest & Best Use and Market Analysis	March 2000

Subdivision Analysis	January 2000
Writing the Narrative Appraisal Report	November 1999
USPAP 1999 Revisions A7415ES	March 1999
Reporting Sales Comparison Grid Adj. for Residential Properties	March 1999
USPAP 1999 Revisions – A7415ES	March 1998
Litigation Appraisal and Expert Testimony	June 1997
USPAP (Parts A & B)	1996
Ethics - USPAP Statements	March 1995
Comprehensive Appraisal Workshop	July 1994
Current Issues and Misconceptions in Appraisal	December 1993
Standards of Professional Appraisal Practice, Part B	1992
Land Faire Nevada	July 1992
Appraising From Blueprints and Specifications	September 1992
Accrued Depreciation	September 1992
Standards of Professional Appraisal Practice, Part A	1991
Report Writing and Valuation Analysis; Exam 2-2	June 1991
Case Studies; Exam 2-1	June 1991
Capitalization Theory and Techniques, Part B; Exam 1-BB	June 1990
Capitalization Theory and Techniques, Part A; Exam 1-BA	June 1990
Basic Valuation; Exam 1A2	May 1989
Principles of Real Estate Appraisal; Exam 1A1	May 1989

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE REAL ESTATE DIVISION NOT TRANSFERABLE

This is to Certify That : **MATTHEW J LUBAWY** Certificate Number: **A.0000044-CG**

Is duly authorized to act as a **CERTIFIED GENERAL APPRAISER** from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: **March 7, 2017** Expire Date: **April 30, 2019**

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: **VALBRIDGE PROPERTY ADVISORS**
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REAL ESTATE DIVISION

SHARATH CHANDRA
Administrator





Valbridge
PROPERTY ADVISORS



FAST FACTS

COMPANY INFORMATION

- Valbridge is the largest independent national commercial real estate valuation and advisory services firm in North America.
 - Total number of MAI-designated appraisers: 200+ on staff
 - Total number of office locations: 70+ across U.S.
 - Total number of staff: 675+ strong
- Valbridge covers the entire U.S. from coast to coast.
- Valbridge services all property types, including special-purpose properties.
- Valbridge provides independent valuation services. We are not owned by a brokerage firm or investment company.
- Every Valbridge office is led by a senior managing director who holds the MAI designation of the Appraisal Institute.
- Valbridge is owned by our local office leaders.
- Valbridge welcomes single-property assignments as well as portfolio, multi-market and other bulk-property engagements.

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Education

Bachelor of Science
Business Administration
University of Nevada,
Las Vegas

Contact Details

702-242-9369 (p)
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Valbridge Property Advisors |
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3034 S. Durango Dr. #100
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Membership/Affiliations:

Member: Appraisal Institute - MAI Designation #10653
Director - (2008 – 2011)
President of Las Vegas Chapter (1998 - 1999)
1st V.P. of Las Vegas Chapter (1997 – 1998)
2nd V.P. of Las Vegas Chapter (1996 – 1997)
Member: NACVA – CVA Designation (Certified Valuation
Analyst for business valuation)
Board Member: Valbridge Property Advisors -
Vice-Chairman of the Board of Directors
(2011 – 2020)
Member: International Right of Way Association
Member: National Association of Realtors
Member: GLVAR
Board Member: Nevada State Development Corporation
Chairman of the Board (2008-2020)

Experience:

Senior Managing Director

ValbridgePropertyAdvisors (2013 to Present)

Principal

Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant

Timothy R. Morse and Associates (1992 – 1994)

Staff Appraiser/Assistant Vice President

First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant

The Clark Companies (1987 - 1988)

Appraisal/valuation and consulting assignments include: vacant land; apartment buildings; retail buildings; shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools, churches hotel/casinos air hangars, automobile dealerships, residential subdivisions, and master-planned communities. Other assignments include tax credit valuations, Fannie Mae and Freddie Mac reports, and HUD MAP valuations and market studies, as well as valuation of fractional interests in FLP's, LP's LLC's and/or other business entities.

Appraisal Institute & Related Courses:

Comparative Analysis, Appraisal Institute	April 2019
Appraising Convenience Stores, Appraisal Institute	April 2019
Appraising Automobile Dealerships, Appraisal Institute	April 2019
7-Hour National USPAP Update Course-2018/2019	March 2019
Eminent Domain 2016, CLE International	September, 2016
Supervisor Trainee Course for Nevada	January, 2016
USPAP 2016/2017	January, 2016
Small Hotel/Motel Valuation	February 2015
NEBB Institute Machinery & Equipment Certification Training	January 2014
2014-2015 National USPAP Update Course, Appraisal Institute	January 2014
NACVA Business Valuation Certification and Training Center	December 2013
Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets, Appraisal Institute	March 2012
7-Hour National USPAP Update Course, Appraisal Institute	January 2012
2010-2011 National USPAP Update, Appraisal Institute	January 2010
Appraising Distressed Commercial Real Estate, Appraisal Institute	July 2009
Understanding the Home Valuation Code of Conduct, Appraisal Institute	June 2009
Introduction to Valuation for Financial Reporting, Appraisal Institute	June 2009
Argus Based Discounted Cash Flow Analysis, Appraisal Institute	June 2009
National Uniform Standards of Professional Practice Course 400, Appraisal Institute	April 2009
Online Scope of Work: Expanding Your Range of Services, Appraisal Institute	April 2009
Online Rates and Ratios: Making sense of GIMs, OARs and DCF, Appraisal Institute	April 2009
Forecasting Revenue, Appraisal Institute	October 2008
Law of Easements: Legal Issues & Practical Considerations, Lorman Education	August 2008
Analyzing Operating Expenses, Appraisal Institute	May, 2007
Valuation of Detrimental Conditions in Real Estate, Appraisal Institute	April, 2007
2007 National USPAP Update, Appraisal Institute	March, 2007
Analyzing Commercial Lease Clauses, Appraisal Institute	February, 2007
Analyzing Distressed Real Estate, Appraisal Institute	February, 2007
Uniform Appraisal Standards for Federal Land Acquisitions, Appraisal Institute	October 2005
Online Analyzing Distressed Real Estate, Appraisal Institute	September 2005
Business Practices and Ethics, Course 420, Appraisal Institute	September 2005
USPAP Update – Course 400, Appraisal Institute	February 2005
Litigation Appraising: Specialized Topics and Applications	October 2004
Separating Real & Personal Property from Intangible Business Assets	September 2003
So. NV Public Land Mgt. Act BLM Appraisal Compliance Workshop	May 2003
Income Capitalization	March 2003
Appraising Non-Conforming and Difficult Properties	March 2003
Appraiser Liability	March 2003
2003 National USPAP	February 2003
Valuation of Partial Acquisitions, Course 401 through IRWA	October 2000
Partial Interest Valuation – Divided, Course A7414	April 2000
Highest & Best Use and Market Analysis	March 2000

Subdivision Analysis	January 2000
Writing the Narrative Appraisal Report	November 1999
USPAP 1999 Revisions A7415ES	March 1999
Reporting Sales Comparison Grid Adj. for Residential Properties	March 1999
USPAP 1999 Revisions – A7415ES	March 1998
Litigation Appraisal and Expert Testimony	June 1997
USPAP (Parts A & B)	1996
Ethics - USPAP Statements	March 1995
Comprehensive Appraisal Workshop	July 1994
Current Issues and Misconceptions in Appraisal	December 1993
Standards of Professional Appraisal Practice, Part B	1992
Land Faire Nevada	July 1992
Appraising From Blueprints and Specifications	September 1992
Accrued Depreciation	September 1992
Standards of Professional Appraisal Practice, Part A	1991
Report Writing and Valuation Analysis; Exam 2-2	June 1991
Case Studies; Exam 2-1	June 1991
Capitalization Theory and Techniques, Part B; Exam 1-BB	June 1990
Capitalization Theory and Techniques, Part A; Exam 1-BA	June 1990
Basic Valuation; Exam 1A2	May 1989
Principles of Real Estate Appraisal ; Exam 1A1	May 1989

National Association of Certified Valuers and Analysts (NACVA) Business Valuation Courses:

Working Your Way Through the DLOM Minefield	2017
Valuing Fast-Food Restaurants	2017
Valuation of Family Limited Partnerships	2017
Intangible Asset Valuation: Cost Approach Valuation Methods and Procedures	2017
ESOP Basics	2017
Common Sense and The S Corp Value Question	2017
Buy Sell Agreements	2017
Trust and Estates: S-Corporation Valuation Issues	2017
Trust and Estates: Gift & Estate Case Law Update	2017
The Expert's Draft Report and Pre-Trial Communications with Counsel	2017
Intangible Asset Valuation and Fair Value Accounting	2017
How and When to Implement a Discount for Lack of Control in Your Valuation	2017
Federal and State Case Law Update	2017
Business Valuation, DLOM and Daubert: The Issue of Redundancy	2017
Intangible Asset Valuation Considerations for Entertainment and Sports Businesses	2017
Excel- Building Better Budget Spreadsheets	2017
Excel- Automating Financial Statements	2017
Valuation and How to Address These Issues	2017
Automating Financial Statements	2017
Engagement Risk and Acceptance	2016
Cost of Capital	2016
Income Approach	2016
Guideline Transaction Method	2016
Guideline Company Method	2016
Synthesis of Conclusion	2016
Valuation Software and Databases	2016
Asset Approach	2016
Financial Statement Analysis, Economic, and Industry Overview	2016

Engagement Letters	2016
Information Requests and Site Visits	2016
Report Writing	2016
Discounts and Premiums	2016

APPRAISER CERTIFICATE		
STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY		
NOT TRANSFERABLE	REAL ESTATE DIVISION	NOT TRANSFERABLE
This is to Certify That : MATTHEW J LUBAWY		Certificate Number: A.0000044-CG
<p>Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.</p>		
Issue Date: April 18, 2019	Expire Date: April 30, 2021	
<p>In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.</p>		
FOR: VALBRIDGE PROPERTY ADVISORS 3034 S DURANGO DR #100 LAS VEGAS, NV 89117	REAL ESTATE DIVISION SHARATH CHANDRA <i>Administrator</i>	

Exhibit F

Exhibit F



Carson City • Fallon • Lake Tahoe • Reno

www.LumosInc.com

Lake Tahoe

225 Kingsbury Grade, Suite A | P.O. Box 3570
Stateline, Nevada 89449
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LA20.590

July 31, 2020

Mr. Josh Ang, Esq.
Resnick & Louis, P.C.
8925 West Russell Road, Suite 220
Las Vegas, NV 89148

***RE: Expert Rebuttal Report of Plaintiff's Designation of Expert Witnesses
Adjusted Lot 102, 2nd Amended Map of Elks Subdivision, Douglas County, NV***

Dear Mr. Ang:

I have reviewed the documentation that you sent to me regarding Case No. 19-CV-0242, Plaintiff's Designation of Expert Witnesses, with particular consideration given to the information provided by Turner & Associates, Inc., Jeffery Turner, PLS, President. My preliminary findings are as follows:

1. Both of Mr. Turner's exhibits state, "The property line information shown hereon is from record data and does not represent a boundary survey." If an actual boundary survey has not been performed, I question how a determination as to the location of existing or future set back lines, which are exclusively tied to the location of the property boundaries, can be made without accurately locating said boundaries? I recommend that an independent site inspection and subsequent Record of Survey be performed to verify the findings of the Plaintiff's surveyor.
2. The westerly set back line shown on the exhibits is not parallel with the westerly property line, and is therefore incorrect, as shown.
3. The Amended Exhibit states that "Total Loss of Square Footage-----2,585 square feet" There is no indication of what this statement is based upon.
4. The rear property line shown on the exhibits is consistent with the low water line of Lake Tahoe. It is impractical that this line would be the reference for a building setback line. No indication is given on the exhibits for the high water line of Lake Tahoe, or for the back shore line, both of which are requisite for the placement of any structures on the shoreline of Lake Tahoe per Douglas County and TRPA regulations. Due to the above stated conditions, the existing setback line is likely greater than 20 feet from the property line.

The above comments are based solely upon a preliminary review of that data provided. These opinions are not based upon any field surveys or calculations. The information provided on the exhibits from Turner & Associates is not sufficient to allow for an actual verification of the stated square footage values.

Sincerely,

Rick Byrem, P.L.S., WRS
Survey Project Manager

Exhibit G

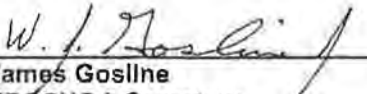
Exhibit G

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 H

Exhibit H

1 CASE NO. 19-CV-0242

2 DEPT. NO. I

3
4
5
6 IN THE NINTH JUDICIAL DISTRICT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

8 *****

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

11 Plaintiff,

12 v.

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

14 Defendants.
15 _____/

**PLAINTIFF'S INITIAL LIST OF
WITNESSES AND DOCUMENTS
PURSUANT TO NRCP 16.1**

16 Plaintiff, JEROME MORETTO, Trustee of the Jerome F. Moretto 2006 Trust, by and
17 through his attorney, KAREN L. WINTERS, ESQ., hereby provides his initial list of witnesses
18 and documents following the Early Case Conference, pursuant to NRCP 16.1.

19 **A. WITNESSES**

20 1. Plaintiff Jerome Moretto, c/o Law Office of Karen L. Winters, P.O. Box
21 1987, Minden, NV 89423. Mr. Moretto is anticipated to testify to facts regarding all aspects of
22 the litigation.

23 2. Deborah Moretto, c/o Law Office of Karen L. Winters, P.O. Box 1987,
24 Minden, NV 89423. Ms. Moretto is anticipated to testify to facts regarding all aspects of the
25 litigation.

26 3. James R. Cavilia, Esq, Allison, MacKenzie, Attorneys & Counselors, 402
27 N. Division St., Carson City, NV 89703. Mr. Cavilia is anticipated to testify to the actions taken
28 by Defendant in creating and implementing the Architectural Guidelines and its Committee, as

1 well as the hiring and use of A. Lyn Barnett of Wells Barnett & Associates LLC.

2 4. A. Lyn Barnett, Wells Barnett & Associates LLC, 276 Kingsbury Grade,
3 Stateline, NV 89449. Mr. Barnett is anticipated to testify regarding being retained by the
4 Defendant to review the Architectural Guidelines, and his knowledge of the Defendant's Board's
5 action regarding their creation and use.

6 5. Charles Jennings, c/o Resnick & Louis P.C., 8925 West Russell Road,
7 Suite 220, Las Vegas, NV 89148. Mr. Jennings is anticipated to testify to his actions individually
8 and the Defendant's Board's actions taken in creating and implementing the Architectural
9 Review Committee and the Architectural Guidelines.

10 6. Nancy A. Gilbert, 3899 Vistacrest Dr., Reno, NV 89509. Ms. Gilbert is
11 anticipated to testify to her actions individually and the Defendant's Board's actions taken in
12 creating and implementing the Architectural Review Committee and the Architectural
13 Guidelines.

14 7. Martha Zeller, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
15 220, Las Vegas, NV 89148. Ms. Zeller is anticipated to testify to her actions individually and the
16 Defendant's Architectural Review Committee's and the Board's actions taken in creating and
17 implementing the Architectural Review Committee and the Architectural Guidelines.

18 8. Cathy Peck, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
19 220, Las Vegas, NV 89148. Ms. Peck is anticipated to testify to her actions individually and the
20 Defendant's Architectural Review Committee's and the Board's actions taken in creating and
21 implementing the Architectural Review Committee and the Architectural Guidelines.

22 9. Jim Gosline, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
23 220, Las Vegas, NV 89148. Mr. Gosline is anticipated to testify to his actions individually and
24 the Defendant's Architectural Review Committee's and the Board's actions taken in creating and
25 implementing the Architectural Review Committee and the Architectural Guidelines.

26 10. Cathy Oyster, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
27 220, Las Vegas, NV 89148. Ms. Oyster is anticipated to testify to her actions individually and the
28 Defendant's Architectural Review Committee's and the Board's actions taken in creating and

1 implementing the Architectural Review Committee and the Architectural Guidelines.

2 11. Fred Hanker, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
3 220, Las Vegas, NV 89148. Mr. Hanker is anticipated to testify to his actions individually and
4 the Defendant's Architectural Review Committee's and the Board's actions taken in creating and
5 implementing the Architectural Review Committee and the Architectural Guidelines.

6 12. Ralf Nielsen, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
7 220, Las Vegas, NV 89148. Mr. Nielsen is anticipated to testify to his actions individually and
8 the Defendant's Architectural Review Committee's and the Board's actions taken in creating and
9 implementing the Architectural Review Committee and the Architectural Guidelines.

10 13. Robert Felton, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
11 220, Las Vegas, NV 89148. Mr. Felton is anticipated to testify to his actions individually and the
12 Defendant's Architectural Review Committee's and the Board's actions taken in creating and
13 implementing the Architectural Review Committee and the Architectural Guidelines.

14 14. Lindsay Wallis, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
15 220, Las Vegas, NV 89148. Ms. Wallis is anticipated to testify to her actions individually and the
16 Defendant's Architectural Review Committee's and the Board's actions taken in creating and
17 implementing the Architectural Review Committee and the Architectural Guidelines.

18 15. Jeanne Hendrix, 1395 Hawkins Peak Ct., Gardnerville, NV 89410. Ms.
19 Hendrix is anticipated to testify regarding her knowledge of the Architectural Guidelines creation
20 and implementation.

21 16. Bill Olin, 427 Lakeview Zephyr Cove, NV 89448. Mr. Olin is anticipated
22 to testify regarding his knowledge of the Architectural Guidelines creation and implementation.

23 17. Bill Vickers, 235 Country Club Dr., Reno, NV 89509. Mr. Vickers is
24 anticipated to testify regarding his knowledge of the Architectural Guidelines creation and
25 implementation.

26 18. Doreen Andriacchi, 12167 Altamont Ct., Los Altos Hills, CA 94022. Ms.
27 Andriacchi is anticipated to testify to her actions individually and the Defendant's Architectural
28 Review Committee's and the Board's actions taken in creating and implementing the

1 Architectural Review Committee and the Architectural Guidelines.

2 19. William Zeller, 412 Lakeview Ave., Zephyr Cove, NV 89448. Mr. Zeller
3 is anticipated to testify to his actions individually and in his role as a Board member and Officer
4 of the Defendant in the Board's actions taken in creating and implementing the Architectural
5 Review Committee and the Architectural Guidelines.

6 20. Jacqueline Proulx, 3351 Lake Tahoe Blvd., Suite 8, South Lake Tahoe,
7 CA 96150. Ms. Proulx is Defendant's Accountant and is anticipated to testify regarding the
8 Advisory Vote presented to unit owners, and the relevant documents requested by Plaintiff from
9 the Board, as well as all notices and meeting minutes.

10 21. Jennifer Frates, 3351 Lake Tahoe Blvd., Suite 8, South Lake Tahoe, CA
11 96150. Ms. Frates was Defendant's Acting Secretary and is anticipated to testify regarding the
12 Advisory Vote presented to unit owners, and the relevant documents requested by Plaintiff from
13 the Board, as well as all notices and meeting minutes.

14 22. Mark Morosky, c/o Resnick & Louis P.C., 8925 West Russell Road, Suite
15 220, Las Vegas, NV 89148. Mr. Morosky is anticipated to testify to his participation as a Board
16 member in the actions taken by the Board in overseeing the Architectural Review Committee.

17 23. Richard Lagomarsino, c/o Resnick & Louis P.C., 8925 West Russell Road,
18 Suite 220, Las Vegas, NV 89148. Mr. Lagomarsino is anticipated to testify to his participation as
19 a Board member in the actions taken by the Board in overseeing the Architectural Review
20 Committee.

21 24. Kelly Morford, current address unknow. Ms. Morford is anticipated to
22 testify to her participation as a Board member in the actions taken by the Board in overseeing the
23 Architectural Review Committee.

24 25. Mary Kay Richter, 188 Concho Dr., Reno, NV 89521. Ms. Richter is
25 anticipated to testify to her participation as an Architectural Review Committee member in the
26 actions taken by the Committee in administering the Architectural Review Guidelines.

27 26. Larry Fry, 412 Elks Ave., Zephyr Cove, NV 89448. Mr. Fry is anticipated
28 to testify to his participation as an Architectural Review Committee member in the actions taken

1 by the Committee in administering the Architectural Review Guidelines.

2 27. Jim Moore, 2865 Saklan Indian Dr., Walnut Creek, CA 94595. Mr. Moore
3 is anticipated to testify to his participation as an Architectural Review Committee member in the
4 actions taken by the Committee in administering the Architectural Review Guidelines.

5 28. Ryan Russell, Esq., Allison, MacKenzie, Attorneys & Counselors, 402 N.
6 Division St., Carson City, NV 89703. Mr. Russell is anticipated to testify to the actions taken by
7 Defendant in creating and implementing the Architectural Guidelines and its Committee, as well
8 as his participation in the Board meetings and hearing.

9 29. Any witness listed by Defendant.

10 **B. DOCUMENTS**

11 Following the Early Case Conference, Plaintiff provides the following list of
12 documents:

13 1. All documents previously admitted at the hearing on the Motion for
14 Preliminary Injunction, held on March 9, 2020.

15 2. The attached documents identified by Bates-Numbering JM0001 -
16 JM0514, inclusive, as well as by descriptive file name, and produced in the form of a DVD
17 produced herewith.

18 3. Any documents provided or to be provided by Defendant and any witness.

19 DATED: April 14, 2020.

LAW OFFICE OF KAREN L. WINTERS

20 

21 KAREN L. WINTERS

22 NV Bar No. 3086

23 P.O. Box 1987

Minden, Nevada 89423

775-782-7933

Kwinters@nevada-law.us


24 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 **PLAINTIFF'S INITIAL LIST OF WITNESSES AND**
6 **DOCUMENTS PURSUANT TO NRCP 16.1** addressed as follows:

7 Prescott Jones, Esq.
8 Resnick & Louis, P.C.
9 8925 W. Russell Road, Suite 220
10 Las Vegas, NV 89148

11 Dated: April 14, 2020


12 Renee J. Morris
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Moretto v. EPC HOA
Plaintiff's Early Case Conference
Production



Exhibit I

Exhibit I

**DECLARATION OF JOSHUA Y. ANG IN SUPPORT OF THE
FOREGOING MOTION**

Joshua Y. Ang, pursuant to NRS 53.045, declares:

1. I am over the age of 21, am an attorney for *Elk Point Country Club Homeowners Association, Inc.* ("Defendant"), and have personal knowledge about the facts related to the filing of this motion.
2. **Exhibit A**, attached to this Motion, is a true, correct, authentic and genuine copy of Plaintiff's Complaint.
3. **Exhibit B**, attached to this Motion, is a true, correct, authentic and genuine copy of the transcript of the relevant excerpts from Plaintiff Jerome Moretto's deposition.
4. **Exhibit C**, attached to this Motion, is a true, correct, authentic and genuine copy of the March 2018 ACDSG, referenced by Plaintiff's complaint and utilized by his experts.
5. **Exhibit D**, attached to this Motion, is a true, correct, authentic and genuine copy of the currently effective December 2019 ACDSG, also separately verified by declaration of EPCC's Vice President Mr. Jennings.
6. **Exhibit E**, attached to this Motion, is a true, correct, authentic and genuine copy of the initial rebuttal expert report of Defendant's appraiser expert, Mr. Matthew Lubawy.
7. **Exhibit F**, attached to this Motion, is a true, correct, authentic and genuine copy of the initial rebuttal expert report of Defendant's surveyor expert, Mr. Rick Byrem.
8. **Exhibit G**, attached to this Motion, is a true, correct, authentic and genuine copy of EPCC's Bylaws effective July 7, 2018, as referenced by Plaintiff's Complaint and attached thereto.
9. **Exhibit H**, attached to this Motion, is a true, correct, authentic and genuine copy of Plaintiff's Initial NRCP 16.1 Disclosures, served on April 14, 2020.

///

10. This Declaratation of Counsel is attached as **Exhibit I**.

11. Further, Declarant sayeth naught.

I declare under the penalty of perjury that the foregoing is true and correct, to the best of my understanding, memory and knowledge.

DATED this 2nd day of November, 2020.

Respectfully submitted by:

RESNICK & LOUIS, P.C.



JOSHUA Y. ANG (NV Bar #14026)
8925 W. Russell Road, Ste. 220
Las Vegas, NV 89148
Attorneys for Defendants
Elk Point Country Club
Homeowners Association, Inc.

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 2, PART 3**

TODD R. ALEXANDER
Nevada Bar No. 10846
ROBERT L. EISENBERG
Nevada Bar No. 0950
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
T: (775) 786-6868; F: (775) 786-9716
tra@lge.net
rle@lge.net

Attorneys for Appellant
JEROME MORETTO, TRUSTEE OF THE
JEROME F. MORETTO 2006 TRUST

FILED

RECEIVED No. _____

NOV 13 2020

20 NOV 16 P3:03

Douglas County
District Court Clerk

RECEIVED WILLIAMS

M. BIAGGINI

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.

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COME NOW Plaintiff Jerome Moretto, by and through his attorney, Karen L. Winters of
LAW OFFICE OF KAREN L. WINTERS, and opposes Defendant Elk Point Country Club
Homeowners, Association, Inc.'s ("EPCC") Motion for Summary Judgment as follows.
Concurrently with the filing of Defendant's Motion for Summary Judgment, Plaintiff has filed a
Motion for Summary Judgment as well. By reference hereto, Plaintiff incorporates Plaintiff's
Motion for Summary Judgment and its supporting documentation into Plaintiff's Opposition to
Defendant's Motion for Summary Judgment, as though fully set forth here.

**I. RESPONSE TO DEFENDANT'S STATEMENT OF RELEVANT/UNDISPUTED
FACTS.**

Plaintiff must initially address Defendant's "Statement of Relevant/Undisputed Facts"
contained in Section II of Defendant's Motion. In support of a motion for summary judgment,
under the Nevada Rules of Civil Procedure and the Ninth Judicial District Court Rules the moving
party is required to set forth its alleged undisputed facts, and the source of those allegations.

1 (1) Supporting Factual Positions. - A party asserting that a fact cannot be or is
2 genuinely disputed must support the assertion by:
3 (A) citing to particular parts of materials in the record, including depositions,
4 documents, electronically stored information, affidavits or declarations, stipulations
5 (including those made for purposes of the motion only), admissions, interrogatory
6 answers, or other materials; or
7 (B) showing that the materials cited do not establish the absence or presence of a
8 genuine dispute, or that an adverse party cannot produce admissible evidence to
9 support the fact.

6 NRCP 56(c)(1)

7 On motions for summary judgment, each party shall file a concise statement setting
8 forth each fact material to the disposition of the motion that the party claims is or is
9 not genuinely in issue, or is in dispute but is not material to the motion, and cite the
particular portions of any pleading, affidavit, deposition, interrogatory, answer,
admission, or other matter upon which he or she relies in making such argument.

10 NJDC Rule 6(f)

11 Defendant has set forth seven alleged “undisputed facts” in support of its motion, each of
12 which is addressed as follows:

13 First, Defendant contends that: “Plaintiff’s Complaint does not dispute that EPCC’s
14 Bylaws do not prohibit and do permit the enactment of guidelines such as the ACDSG
15 [Architectural Design Control Standards and Guidelines] at issue, but rather only alleges that
16 certain contents of the ACDSG violate the bylaws.” In support of that assertion, Defendant cites to
17 the Plaintiff’s Complaint, without any specific reference to a particular paragraph or cause of
18 action. Plaintiff disputes this conclusory statement, in that the First Cause of Action, Breach of
19 EPCC Bylaws, and Fifth Cause of Action, Declaratory Relief, both assert that the Bylaws DO
20 prohibit the creation of the Architectural Review Committee and the Architectural Design Control
21 Standards and Guidelines (“Guidelines”), both under the terms of the Bylaws themselves and
22 NRS 116.3106, making them void *ab initio*.

23 Second, EPCC contends that: “NRS Chapter 116 does not prohibit Architectural
24 Guidelines such as the subject ACDSG.” Plaintiff objects to this statement on the grounds this is
25 not a “fact”, let alone an undisputed fact. This is a general assertion of the laws stated in Chapter
26 116 of the NRS. As set forth in Plaintiff’s Motion for Summary Judgment filed concurrently with
27 Defendant’s Motion herein, this is not even an accurate statement of the law.

28 Third, EPCC contends that: “Plaintiff admits that the subject ACDSG never delegated any

1 authority of the EPCC's Executive Board to the Architectural Design Review Committee ('ARC'),
2 but instead merely permits the ARC to issue non-binding recommendations that must be accepted
3 or rejected by EPCC's Executive Board." Plaintiff objects to this contention not only because it is
4 factually inaccurate, but because it is asserting a legal conclusion, not a factual statement. One of
5 the references made by EPCC in support of this statement is a portion of Jerome Moretto's
6 deposition, however it fails to include previous pages of Mr. Moretto's deposition, in which his
7 undersigned counsel raised objections to the questions on the grounds EPCC's counsel was asking
8 Mr. Moretto to make legal conclusions and asking vague, general questions regarding legal claims.
9 *See, Deposition of Jerome Moretto*, p.12, l. - p.13, l.8, attached as Exhibit A to the Declaration of
10 Karen L. Winters in support of this Opposition, filed herewith. In addition to the fact that the
11 excerpts cited by Defendant were objected to by Plaintiff's counsel as asking for a legal
12 conclusion, the Defense counsel was explicitly asking for Mr. Moretto's personal opinion as to
13 that legal conclusion, not for any factual contention. As a result, the cited portions of Mr.
14 Moretto's deposition do not support the third contention raised in Defendant's Motion. It should
15 also be noted that Mr. Moretto's deposition had not yet been finalized and certified at the time
16 EPCC filed its Motion for Summary Judgment, and Mr. Moretto has submitted an "Errata" to his
17 deposition, for insertion in the referenced pages, a true and correct copy of which is included in
18 Exhibit B to the Declaration of Karen L. Winters in support of this Opposition, filed herewith.

19 The other two cites given by EPCC in support of its third contention are the original set of
20 Guidelines allegedly enacted on March 31, 2018, and the latest version approved in December
21 2019. EPCC asserts that both these Guideline versions simply allow the Committee "to issue non-
22 binding recommendations" to the EPCC Board, however both versions specifically state that:
23 "Committee's duties shall be...to apply and enforce those ADCSG which have been approved and
24 adopted by the Board" (emphasis added). *See*, Defendant's Exhibit C at paragraph numbered VI on
25 the first page, and Defendant's Exhibit D at paragraph numbered 8 on the second and third pages,
26 attached to Defendant's Motion for Summary Judgment. As argued in Plaintiff's Motion for
27 Summary Judgment, this phrase authorizes the Committee to act in violation of the Bylaws and
28 NRS 116.31065. As a result of the foregoing discussion of EPCC's third "undisputed fact",

1 EPCC's contentions therein are simply legal conclusions and assertions of Plaintiff's opinion of a
2 legal conclusion. It is not a "fact".

3 Fourth, EPCC contends that: "Plaintiff admits that he knows of no specific instances of
4 arbitrary and capricious enforcement of the ACDSG rules by the ARC, nor where the said ACDSG
5 rules lent themselves to such arbitrary and capricious enforcement." Plaintiff argues the first part
6 of this statement is irrelevant, particularly considering the fact that the Committee failed to provide
7 notices to anyone of its meetings, in which the Committee's actions are taken. *See, Deposition of*
8 *Charles Jennings*, p. 14, ll. 17-22. In addition, Plaintiff asserts that whether he is aware of any
9 "specific instances of arbitrary and capricious enforcement of the ACDSG rules by the ARC" is
10 not relevant to the issue of whether the Guidelines allow the Committee to act arbitrarily and
11 capriciously. Finally, the second phrase of EPCC's fourth contention is a legal conclusion, not a
12 fact, and is not supported by the sole cite given in support of that contention.

13 Fifth, EPCC contends that: "The currently effective 2019 version of the ACDSG permits
14 rebuilding to restore buildings damaged or destroyed by fire or other similar calamities to a form in
15 substantial compliance with the design of the original structure, exempting such rebuilding from
16 the ARC's design review process." Plaintiff admits that the current version of the Guidelines state
17 that:

18 "Exempt activities are structural repair, structural modifications, structural
19 remodeling, replacement of an existing roof with a metal roof, interior remodeling,
20 buildings damaged or
21 destroyed by fire or other similar calamity that are rebuilt in substantial compliance
22 with the design of the original structure, non-permanent structures, ... and
23 demolition. This also includes like-kind (size, color, quantity, etc.) replacement, or
24 re-painting a residence the exact same color as previously approved and painted..."

25 Defendant's Exhibit D at paragraph numbered 14(b) on the fifth page, attached to Defendant's
26 Motion for Summary Judgment.

27 Sixth, EPCC contends that: "Plaintiff cannot demonstrate that he has suffered any
28 monetary damages; his experts reviewed a version of the ACDSG dated March 2018, which is
different from the current effective December 2019 version that Defendant's appraiser expert has
opined would permit Plaintiff's property to be developed to the same size as before the March
2018 guidelines were adopted." Plaintiff disputes this statement, in that Plaintiff's expert appraiser

1 has a very different opinion of the effect of the Guidelines on Plaintiff's property. *See, eg.,*
2 *Plaintiff's expert, Ben Johnson's Appraisal*, attached as Exhibit E to Defendant's "Ex Parte
3 Request for an Order Shortening Time and Motion for Limited Extension of Discovery" filed
4 herein on or about September 25, 2020. This disputed statement, however, is not relevant to either
5 Defendant's Motion for Summary Judgment or Plaintiff's Motion for Summary Judgment, since
6 the diminution of value to Plaintiff's property is only relevant if the Court decides the Guidelines
7 were not only properly enacted, but that by allowing them to be permanently enforceable is also
8 allowing them to take some value away from Plaintiff's property. That result is highly unlikely,
9 given that if the Guidelines do, in fact, diminish Plaintiff's property value, then Plaintiff would
10 argue that taking makes the Guidelines void *ab initio*. Further, though, Plaintiff has asserted
11 money damages for the Board's violation of NRS 116.31175, for failure to produce documents
12 demanded from the Board in May 2018, and for attorney fees pursuant to NRS 116.4117(6),
13 neither of which are addressed in Defendant's assertion that there can be no money damages.

14 Seventh, EPCC contends that: "Plaintiff's experts improperly rely on the hypothetical
15 condition of the effectiveness of the March 2018 version of the ACDSG (which is not effective,
16 the December 2019 version supercedes), and upon the flawed methodology of Plaintiff's surveyor
17 expert witness in determining an alleged loss of building square footage under said outdated
18 March 2018 ACDSG rules; Plaintiff's damages are thus wholly speculative in nature." Plaintiff
19 objects to this statement on the grounds this is not a "fact", let alone an undisputed fact. This is a
20 legal argument. EPCC is simply arguing that Plaintiff's damages are speculative, an argument that
21 is addressed in Plaintiff's Motion for Summary Judgment and an argument that cannot stand when
22 discussing an encroachment on property rights.

23 In final response to Defendant's "Statement of Relevant/Undisputed Facts", Plaintiff
24 further incorporates Plaintiff's "Separate Statement of Undisputed/Relevant Facts" set forth in
25 Section II of Plaintiff's Motion for Summary Judgment filed herein on November 2, 2020.

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28 ///

1 **II. ARGUMENT**

2 **A. Plaintiff's First Cause of Action for Violation of EPCC's Bylaws is**
3 **Supported by the Law and Undisputed Facts**

4 Defendant relies entirely on its argument that the creation of the Guidelines and the
5 Architectural Review Committee was not a delegation of the Board's duties, to support its position
6 that the Board did not violate the EPCC Bylaws. EPCC's argument cites only to selected portions
7 of the Guidelines and Mr. Moretto's stated opinion about legal positions taken in the Complaint.
8 There is no other cite, and no cite to legal authority to support this argument as required by DCR
9 Rule 13. In opposition to Defendant's argument, Plaintiff incorporates his Motion for Summary
10 Judgment as though fully set forth herein, and in particular Section IV(C) and (D), which
11 references the Second Cause of Action, but more accurately supports summary judgment in favor
12 of both Plaintiff's First Cause of Action for Violation of the Bylaws and Second Cause of Action
13 for Violation of NRS 116.31065.

14 It appears Defendant's entire argument is that the Board did not delegate any power to the
15 Architectural Review Committee, therefore it did not violate NRS 116.3106(1)(d), which states
16 that: "The bylaws of the association must: ... (d) Specify the powers the executive board or the
17 officers of the association may delegate to other persons or to a community manager." In support
18 of this contention, EPCC cites to selected portions of the Guidelines that allegedly limit the
19 Committee's authority to "considering and making recommendations" to the Board regarding the
20 contents of the Guidelines and whether any unit member's "Application" for projects on the unit
21 member's own property complies with the Guidelines.

22 This argument, however, fails to address the underlying violation of the Bylaws. As set
23 forth in Plaintiff's Motion for Summary Judgment, the Board did not have the authority to create
24 the Guidelines to begin with, since they go beyond the scope of the Board's authority over
25 individual unit members' properties. That authority is limited under Article XVI of the current
26 Bylaws:

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

1 Section 2. The property of Unit Owners shall be used for single family residential
2 purposes only.

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

9 Section 4. No Unit Owner, either individually, or in the name of a family trust,
10 spouse, corporation, limited liability company, partnership, limited partnership or
11 retirement plan, shall own more than three (3) lots at the same time.

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

17 EPCC Bylaws, Article XVI "Property Rights of Owners", attached as Exhibit 1 to Plaintiff's
18 Complaint on file herein, which is also attached as Exhibit A Defendant's instant motion.

19 A corporation can exercise no power not granted to it by the legislature. *George v. Nevada*
20 *Cent. R.R. Co.*, 22 Nev. 228, 238, 38 P. 441 (Nev. 1894). NRS 78.125(1) gives the Board the
21 authority to manage the business and affairs of the corporation only, not the Unit Owners'
22 property. Officers of private corporations have only the authorities delegated to them by their
23 governing corporate agreements. *See George, supra*, at 239. Neither the above-cited law nor the
24 authority given in the EPCC Bylaws give the Board the authority to impose "written guidelines,
25 controls, standards, rules and regulations concerning the design, architecture and/or construction of
26 structures" restricting building heights, building envelopes, design, view corridors, fencing,
27 lighting, and landscaping on a Unit Owner's property. The only authority the Board has is to limit
28 construction to permanent homes, and approve the home construction plans, as set forth in
29 subparagraph 3 of Article XVI of the EPCC Bylaws, stated above. The additional "guidelines" go
30 beyond that authority. "[I]f an act is in excess of the chartered purposes of a corporation, it will
31 always be outside of the powers delegated to the company's agents, as well as in excess of the
32 corporate powers which the company is authorized by law to exercise." *Id.*

33 Even if, however, the Board had any authority to create any rules imposing restrictions on
34 Unit Owners' property, it may not give any of that authority to a Committee, which is what the

1 Board is doing in this case, when it gave the Committee the discretion to determine whether a Unit
2 Owner's Application to make changes to the Unit Owner's property complies with the Guidelines.
3 One of the paragraphs cited in EPCC's argument, specifically gives the Committee this authority
4 to exercise its own discretion. (See, EPCC's Motion for Summary Judgment, p.7, ll. 20-22, in
5 which the Guidelines give the Committee discretion to determine if an Application complies.)
6 That power and duty must be limited to the Board and not delegated to any Committee under NRS
7 116.31065(d) unless the Bylaws are amended.

8 In addition, despite efforts by EPCC not to acknowledge delegation of the Board's duties in
9 the Guidelines, the Guidelines specifically include as a part of the Committee's duties, that the
10 Committee shall "apply and enforce those ADCSG [Guidelines] which have been approved and
11 adopted by the Board". This provision is contained in the original Guidelines, as well as the
12 current Guidelines. (See, paragraph 8 of Exhibit D and paragraph 6 of Exhibit C, attached to
13 EPCC's Motion for Summary Judgment, on file herein.)

14 Based on the foregoing, Defendant's motion as to Plaintiff's First and Second Causes of
15 Action fail, and Plaintiff's Motion for Summary Judgment as to these causes of action must be
16 granted.

17 **B. Plaintiff's Second Cause of Action for Violation of NRS 116.31065 is**
18 **Supported by the Law and Undisputed Facts**

19 EPCC is apparently arguing that there has not yet been any instances of arbitrary and
20 capricious enforcement of the Guidelines, therefore the Guidelines themselves are not arbitrary
21 and capricious. This misses the points made in Plaintiff's Second Cause of Action for violation of
22 NRS 116.31065. The Plaintiff's cited violations address four subsections of NRS 116.31065, only
23 one of which addresses the arbitrary restriction of conduct. EPCC's Motion for Summary
24 Judgment mischaracterizes Plaintiff's Complaint on file herein, in that it fails to address all the
25 sections of NRS 116.31065 Plaintiff alleges were violated.

26 Once again, EPCC's Motion on this issue cites to Mr. Moretto's stated opinion in his
27 deposition about legal positions, which has no bearing on the validity of the disputed Guidelines.
28 On their face, the Guidelines violate NRS 116.31065, therefore whether Mr. Moretto is aware of

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 2, PART 4**

TODD R. ALEXANDER
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JEROME MORETTO, TRUSTEE OF THE
JEROME F. MORETTO 2006 TRUST

1 any specific instances in which those vague or inconsistent Guidelines were enforced on an
2 unsuspecting Unit Owner is irrelevant. It is not surprising Mr. Moretto is unaware of the
3 Committee's enforcement action, as unit owners are not noticed of the meetings, nor given
4 minutes. This is the substance of his due process violations claim against EPCC. Plaintiff's Motion
5 for Summary Judgment on file herein addresses the EPCC Guidelines' violation of NRS
6 116.31065 in detail and need not be restated here. *See*, "Plaintiff's Motion for Summary
7 Judgment" filed herein, p. 26, l. 19 through p. 30, l. 1.

8 Based on Plaintiff's argument set forth in Plaintiff's Motion for Summary Judgment on file
9 herein, and the foregoing, EPCC's motion as to Plaintiff's Second Cause of Action fail, and
10 Plaintiff's Motion for Summary Judgment as to that cause of action must be granted.

11 **C. Plaintiff's Third Cause of Action for Violation of Plaintiff's Property Rights is**
12 **Supported by the Law and Undisputed Facts.**

13 Defendant's argument against the third cause of action cites only to a selected portion of
14 the Bylaws, without reference to any legal authority. EPCC simply says there is no such cognizable
15 cause of action for violation of property rights, without cite to any authority as required by DCR
16 Rule 13. No matter the name of the claim, violation of property rights has been recognized in case
17 law, as well as the Nevada Constitution. For example, *Gladstone v. Gregory*, 95 Nev. 474, 596
18 P.2d 491 (1979) found a neighbor violated a property owner's property rights when the neighbor
19 chose to disregard a restrictive covenant and build a two-story home. The Court granted permanent
20 injunctive, requiring the neighbor to remove the second story. In another example, a zoning
21 ordinance which required the written permission of the owners of property within a certain
22 distance for construction of a building in the residential district for nonresidential purposes,
23 violated the Nevada Constitution, Art. 1, §§ 1, 4 and 8, as applied to the construction of a church,
24 since the ordinance bore no substantial relationship to the promotion of the health, safety, morals,
25 convenience, property, or general welfare of the city or of its residential district, and because the
26 ordinance constituted an invasion of property rights. *State ex rel. Roman Catholic Bishop v. Hill*,
27 59 Nev. 231, 90 P.2d 217, 1939. In a case of inverse condemnation involving another government
28 entity, a Nevada landowner held a property right in the usable airspace above his property up to

1 500 feet; where height restriction ordinances authorized airplanes to make a permanent, physical
2 invasion of the landowner's airspace lower than 500 feet, a regulatory taking occurred. *McCarran*
3 *Int'l Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006), *cert. denied*, 549 U.S. 1206, 127 S.
4 Ct. 1260, 167 L. Ed. 2d 76, 2007 U.S. LEXIS 2086 (U.S. 2007). Each of these cases include
5 claims in which the offending party violated property rights. Although it is often the case that such
6 disputes involve eminent domain or inverse condemnation based on the acts of a government
7 body, the claims are not limited to those types of violations, as seen in *Gladstone, supra*, as well as
8 claims of trespass.

9 The violation of Plaintiff's property rights, and due process violations stemming from that
10 invasion of his property rights, is set forth in detail in Plaintiff's Motion for Summary Judgment
11 on file herein, at Section IV(B), and need not be reiterated here.

12 Based on Plaintiff's argument set forth in Plaintiff's Motion for Summary Judgment on file
13 herein, and the foregoing, EPCC's motion as to Plaintiff's Third Cause of Action fail, and
14 Plaintiff's Motion for Summary Judgment as to that cause of action must be granted.

15 **D. Plaintiff's Fourth Cause of Action for Violations of NRS 116.31175 is Supported**
16 **by the Law and Undisputed Facts.**

17 Defendant's argument against Plaintiff's fourth cause of action is solely based on
18 Defendant's statement that Plaintiff "has not been able to clearly establish that all required
19 documentation was not provided during discovery". (See, "Defendant's Motion for Summary
20 Judgment", p.11, ll.11-12.) Plaintiff's claim, however, was based on the allegation that EPCC did
21 not timely produce documents requested by Plaintiff on May 12, 2018 as required pursuant to NRS
22 116.31175, a year and a half prior to the filing of the Complaint and two years prior to Plaintiff's
23 requests in discovery for those same documents.

24 For example, Plaintiff's May 12, 2018 request for documents includes an item numbered 9,
25 which requested: "All Board communications regarding amending the Architectural Guidelines,
26 including any electronic correspondence, written correspondence, notes from Facetime
27 communications, any other telephonic communications, minutes, meeting notes or any other
28 communication of any kind, between Board members, regarding the amendment of the

1 Architectural Guidelines.” (See, “Declaration of Karen L. Winters in Support of Plaintiff’s Motion
2 for Summary Judgment”, on file herein, Exhibit 7, p. 2, item number 9.) Those same documents
3 were again requested in Plaintiff’s Request for Production of Documents, as Document Request
4 No. 9: “All Board communications with anyone regarding amending the Architectural Guidelines,
5 including but not limited to any electronic correspondence, written correspondence, notes from
6 Facetime communications, any other telephonic communications whether recorded or
7 memorialized in writing, minutes, meeting notes or any other communication of any kind.” (See,
8 “Declaration of Karen L. Winters in Support of Plaintiff’s Motion to Compel”, on file herein,
9 Exhibit 2, p.3, l. 25 - p.4, l.2.) A similar request was made in both the May 12, 2018 request from
10 Plaintiff and the discovery requests, for communications on the same subject by the Board. (See,
11 “Declaration of Karen L. Winters in Support of Plaintiff’s Motion for Summary Judgment”, on file
12 herein, Exhibit 7, p. 2, item number 10; “Declaration of Karen L. Winters in Support of Plaintiff’s
13 Motion to Compel”, on file herein, Exhibit 2, p.4, ll. 3-4) .

14 Some of that documentation was provided for the first time on or about October 7, 2020
15 following the “Order Compelling Further Responses”, two and a half years after it was requested,
16 rather than the 21 days required under NRS 116.31175. (“Declaration of Karen L. Winters in
17 Support of Opposition to Defendant’s Motion for Summary Judgment”, and Exhibit C thereto,
18 filed herewith.) Even those provided, however, did not include any electronic correspondence
19 regarding amending the Guidelines that predate the May 12, 2018 request by Plaintiff. (*Id.*) As Mr.
20 Jennings stated in his deposition taken in the course of this action, most of his electronic
21 communications as a member of the Board were not included in any official records of EPCC.
22 Prior to being a Board member, he was on the Architectural Committee.

23 Q. What is your position on the Board?

24 A. I’m the vice president.

25 Q. Have you had any other positions on the Elk Point Country Club Homeowners
26 Association? A. I was a member of the Architectural Committee.

Deposition of Charles Jennings, dated July 2, 2020, attached as Exhibit D to the Declaration of
Karen L. Winters, filed herewith, p.10, ll.2 - 7

27 [Q. D]o you maintain a copy of the emails you get and give out regarding the
28 homeowner association Board?

THE WITNESS: The Board members, in general, have correspondence on their

1 individual email accounts, and, of course, that includes a lot of other emails from --
2 related to other subjects, so the official record of correspondence is kept by the
secretary.

3 BY MS. WINTERS:

4 Q. Do you provide the secretary with a copy of all of your emails regarding
homeowner association business?

A. No.

5 Deposition of Charles Jennings, dated July 2, 2020, attached as Exhibit D to the Declaration of
Karen L. Winters, filed herewith, pp. 96:21 to 97:10.

6 Q. Do you keep the electronic copy of emails that you send out regarding
7 homeowner association business?

8 THE WITNESS: I am not the secretary, so it's a personal email account that has
emails from all different sources.

9 BY MS. WINTERS:

10 Q. So you don't keep separate anything that has to do with business of the
homeowner association Board, correct?

11 A. No, that's correct.

12 Deposition of Charles Jennings, dated July 2, 2020, attached as Exhibit D to the Declaration of
Karen L. Winters, filed herewith, p. 98, ll.1-12.

13
14 Mr. Jennings remains as a member of the EPCC Board, therefore he has a fiduciary duty to
15 cooperate with the Board and its counsel pursuant to NRS 116.3103(1). Yet, to date, the only
16 emails regarding the Guidelines in Plaintiff's possession are those in which Plaintiff was one of
17 the participants, and three emails obtained and addressed in Mr. Jennings' deposition. "Declaration
18 of Karen L. Winters", filed herewith.

19 The undisputed facts do not support Defendant's motion for summary judgment on this
20 claim. The undisputed facts and law regarding this fourth cause of action are further addressed in
21 Plaintiff's Motion for Summary Judgment, filed herein, at Section IV(E). Based on Plaintiff's
22 argument set forth in Plaintiff's Motion for Summary Judgment on file herein, and the foregoing,
23 EPCC's motion as to Plaintiff's Fourth Cause of Action fail, and Plaintiff's Motion for Summary
24 Judgment as to that cause of action must be granted.

25 **E. Plaintiff's Fifth Cause of Action for Declaratory Relief is Supported by the Law**
26 **and Undisputed Facts.**

27 Defendant's argument to find in its favor on the claim for declaratory relief seems only to
28 address the unrelated issue of Plaintiff's appraisal expert's opinion as to the level of the diminution

1 of value in Mr. Moretto's property if the Guidelines remain in place. The cause of action for
2 declaratory relief sets forth the controversies between the parties arising from the EPCC Board's
3 enactment of Guidelines and creation of a Committee. As detailed in Plaintiff's Motion for
4 Summary Judgment, filed herein, at Section IV(F), the undisputed facts and law throughout the
5 Plaintiff's Summary Judgment recognize this controversy must be resolved in favor of Plaintiff's
6 contentions. To the extent Defendant is simply arguing that its expert concluded that Plaintiff is
7 not damaged by the Guidelines' encroachment on Plaintiff's property rights, then that would be a
8 disputed fact to be tried by the trier of facts who would necessarily consider both experts'
9 opinions. We need never address that disputed fact, however, if the Guidelines are stricken and
10 Plaintiff's summary judgment is granted, since a temporary diminution in value is not
11 compensable in these circumstances.

12 Based on Plaintiff's argument set forth in Plaintiff's Motion for Summary Judgment at
13 Section IV(F), on file herein, and the foregoing, EPCC's motion as to Plaintiff's Fifth Cause of
14 Action fail, and Plaintiff's Motion for Summary Judgment as to that cause of action must be
15 granted.

16 **F. Plaintiff's Claims for Monetary Damages Are Properly Before the Trier of**
17 **Fact, and Are Supported by Admissible Evidence.**

18 Finally, Defendant argues that Plaintiff failed to comply with NRCP 16.1(a)(1)(A)(iv) by
19 failing to provide Defendant with a computation of those monetary damages. In support of that,
20 Defendant cites to a case in which the failure to provide a computation of future medical bills not
21 provided prior to trial was not sufficient to require a new trial under the circumstances. (*Pizarro-*
22 *Ortega v. Cervantes-Lopez*, 396 P.3d 783, 133 Nev Adv Rep 37 (2017). The majority of Plaintiff's
23 requested relief is in equity, to obtain a permanent injunction preventing EPCC from imposing any
24 restrictions on his use of his individual unit beyond the narrow restrictions set forth in the Bylaws
25 of EPCC.

26 There are three categories of monetary damages sought by Plaintiff. First, in the event the
27 Court allows EPCC to continue to impose restrictions on Plaintiff's property through guidelines
28 and committees, then those restrictions diminish Plaintiff's property values in an amount which

1 remains in dispute. Plaintiff provided that computation of damages in his expert's opinion
2 regarding the effect of the Guidelines on Plaintiff's property. As set forth above and in Plaintiff's
3 Motion for Summary Judgment on file herein, those portions of the Guidelines most effecting
4 Plaintiff's property values remain in the current set of Guidelines. The expert's opinion was
5 provided as required under NRCP 16.1 and remains as Plaintiff's computation of damages under
6 the scenario of the Court allowing EPCC to retain the Guidelines.

7 The second category of damages is Plaintiff's claim for a \$25 per day statutory fine based
8 on Defendant's failure to comply with the requirement that it produce requested documents to a
9 unit member within twenty-one days of the unit member's request. The fine is ongoing until the
10 demanded documents are produced. The documents were demanded on May 12, 2018. As set forth
11 in Plaintiff's Motion for Summary Judgment, the accumulated amount was \$31,500 as of the day
12 that Motion was filed. It continues to accrue. This is simple math, for which EPCC has already
13 been supplied the figures (\$25 per day times the number of days between June 2, 2018 and
14 whenever EPCC produces all the remaining documents requested). It is disingenuous to argue that
15 Plaintiff would be required to supply EPCC with the answer to a simple math problem.

16 Finally, the third category of damages is Plaintiff's attorney fees, allowed pursuant to NRS
17 116.4117(6). As in the case of the fine under NRS 116.31175, this amount also changes as the case
18 progresses, therefore any fees sought would necessarily be the subject of a future motion, upon
19 completion of this initial phase of the case.

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1 **III. CONCLUSION**

2 Defendant's Motion for Summary Judgment is based on legal conclusions and assertions
3 without support in the undisputed facts or the law. Based on the foregoing, and on Plaintiff's
4 Motion for Summary Judgment on file herein, Plaintiff respectfully requests this Court DENY
5 Defendant's Motion for Summary Judgment.

6 Dated: November 16, 2020

RESPECTFULLY SUBMITTED:

LAW OFFICE OF KAREN L. WINTERS

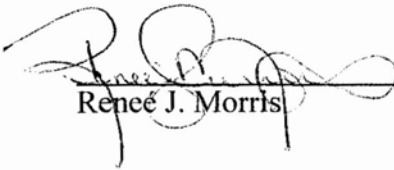
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9 
10 KAREN L. WINTERS
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13 Minden, NV 89423
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15 Kwinters@nevada-law.us
16 Attorney for Plaintiff
17
18
19
20
21
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28

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
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 prepaid,
5 a true and correct copy of the **OPPOSITION TO DEFENDANT'S MOTION FOR**
6 **SUMMARY JUDGMENT** on November 16, 2020 as follows:

7 Prescott Jones, Esq.
8 Joshua Y. Ang, Esq.
9 Resnick & Louis, P.C.
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148

10 Dated this 16th day of November, 2020

11 
12 Renee J. Morris
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Douglas County
District Court Clerk

20 NOV 16 P3:03

BOBBIE 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.

**DECLARATION OF KAREN L.
WINTERS IN SUPPORT OF
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

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 A is a true and correct copy of the Deposition of Jerome Moretto, pp.12 - 13.

3. Attached hereto as Exhibit B is a true and correct copy of the "Errata" to the Deposition of Jerome Moretto, for insertion in the referenced pages.

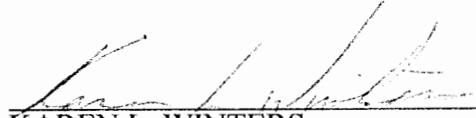
4. Documentation, including some emails, listed in Plaintiff's May 12, 2018 letter referenced above was provided for the first time on or about October 7, 2020, when I received Defendant's "First Supplemental Disclosure of Witnesses and Production of Documents", a true and correct copy of which is attached hereto as Exhibit C. None of the emails listed include any electronic correspondence regarding amending the Guidelines that predate the May 12, 2018

1 request by Plaintiff.

2 5. Attached hereto as Exhibit D is a true and correct copy of the Deposition of
3 Charles Jennings, dated July 2, 2020, pp. 10, 96-98.

4 6. The only emails regarding the Guidelines in Plaintiff's possession are those in
5 which Plaintiff was one of the participants, and three emails obtained and addressed in Mr.
6 Jennings' deposition.

7 I declare under penalty of perjury that the foregoing is true and correct and executed on
8 this 16th day of November, 2020.

9
10 
11 KAREN L. WINTERS

12 Submitted by:
13 Karen L. Winters, Esq.
14 Nevada Bar No. 3086
15 LAW OFFICE OF KAREN L. WINTERS
16 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 OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY**
7 **JUDGMENT** 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 16, 2020

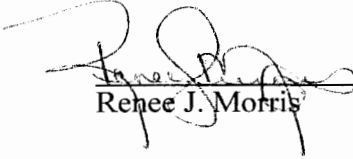
12 
Renee J. Morris

EXHIBIT A

1 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF DOUGLAS
3
4 JEROME MORETTO, Trustee of the Jerome)
5 F. Moretto 2006 Trust,)
6 Plaintiffs,)
7 vs.) Case No.
8 ELK POINT COUNTRY CLUB) 19-CV-0242
9 HOMEOWNERS ASSOCIATION, INC., a)
10 Nevada non-profit corporation, and)
11 DOES 1-10 inclusive,)
12 Defendants.)
13 _____

14 ZOOM VIDEOCONFERENCE DEPOSITION OF JEROME MORETTO

16 Taken at the Law Offices of Karen L. Winters
17 Minden, Nevada

19 On Monday, September 28, 2020

20 At 9:20 a.m.

24 Job Number. 665346

25 Reported by: Deborah Ann Hines, CCR #473, RPR

1 Appearances:

2 For the Plaintiffs:

3 KAREN L. WINTERS, ESQ.
4 Law Office of Karen L. Winters
5 P.O. Box 1987
6 Minden, NV 89423
7 (775) 782-7933
8 klwinters1987@gmail.com
9 (Via Zoom Videoconference)

10 For the Defendants:

11 PRESCOTT JONES, ESQ.
12 Resnick & Louis
13 8925 W. Russell Road
14 Suite 220
15 Las Vegas, NV 89148
16 (702) 997-3800
17 pjones@rlattorneys.com
18 (Via Zoom Videoconference)

19 Also Present:

20 DEBORAH MORETTO
21 (Via Zoom Videoconference)

22
23
24
25

1	WITNESS	Page 3
2	JEROME MORETTO	PAGE
3	Examination By Mr. Jones	4
4	Examination By Ms. Winters	58
5		
6		
7		
8		
9		
10		
11		
12	E X H I B I T S	
13		
14	NUMBER DESCRIPTION PAGE	
15	Defendant's	
16	1 Complaint	6
17	2 ADCSG - Plaintiff's Production	16
18	3 Mr. Moretto's Handwritten Notes	41
19	4 Plaintiff Jerome Moretto's Responses	
20	to Defendant Elk Point Country Club	
21	Homeowners Association, Inc.'s	
22	Interrogatories	43
23		
24		
25		

1 A. Yes.

2 Q. Great. The first -- you have the objections
3 numbered 1 through 8, and I want to draw your
4 attention to number 1. And I'll read it just briefly
5 into the record. "The Executive Board had no
6 authority under the Bylaws to create a 'Design Review
7 Committee' delegating the Executive Board's authority
8 to develop rules and regulations governing the
9 design, architecture and construction of improvements
10 within EPCC boundaries in violation of NRS 116.3106."
11 Do you see where I'm talking about, sir?

12 A. Yes.

13 Q. Okay. What authority is it that you're
14 alleging has been delegated by the executive board?

15 MS. WINTERS: Objection. That calls for a
16 legal conclusion. Mr. Moretto is not an attorney.

17 BY MR. JONES:

18 Q. Go ahead, sir.

19 A. I didn't get the question. What was the
20 last thing you said, sir?

21 Q. Sure. What authority -- what authority are
22 you alleging has been delegated by the executive
23 board?

24 MS. WINTERS: Objection. It's vague and it
25 calls for a legal conclusion.

1 BY MR. JONES:

2 Q. Go ahead, sir.

3 MS. WINTERS: If you understand that you can
4 answer it.

5 THE WITNESS: Yes.

6 BY MR. JONES:

7 Q. Okay.

8 A. What my attorney said.

9 Q. Okay. I understand that, sir. Your
10 attorney will -- I should have mentioned this
11 earlier. Your attorney from time to time will state
12 objections for the record. Unless she instructs you
13 to not answer, you're still to answer the question.
14 She's just making an objection for the record.

15 So I'm going to go ahead and ask the
16 question one more time, sir. What authority do you
17 allege is being delegated by the executive board?

18 A. None.

19 Q. Are you alleging that the authority of the
20 executive board is being delegated to some other
21 party in your complaint?

22 A. I'm not sure.

23 Q. Okay. Let's go to -- one second here. Go
24 to number two on paragraph 11, and I'm just going to
25 read that again very quickly into the record. "The

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3 SS:

4 COUNTY OF CLARK)

5 I, Deborah Ann Hines, RPR, Nevada CCR No. 473,
6 California CSR No. 11691, Certified Court Reporter,
7 certify:


8 That I reported the taking of the deposition
9 of the witness, Jerome Moretto, commencing on Monday,
10 September 28, 2020, at 9:20 a.m.;

11 That prior to being examined, the witness
12 was by me duly sworn to testify to the truth, the
13 whole truth, and nothing but the truth;

14 That I thereafter transcribed my shorthand
15 notes into typewriting and that the typewritten
16 transcript of said deposition is a complete, true and
17 accurate record of testimony provided by the witness
18 at said time to the best of my ability;

19 I further certify (1) that I am not a
20 relative, employee or independent contractor of
21 counsel of any of the parties; nor a relative,
22 employee or independent contractor of the parties
23 involved in said action; nor a person financially
24 interested in the action; nor do I have any other
25 relationship with any of the parties or with counsel
of any of the parties involved in the action that
may reasonably cause my impartiality to be
questioned; and (2) that transcript review pursuant
to NRCP 30(e) was not requested.

IN WITNESS WHEREOF, I have hereunto set my
hand in my office in the County of Clark, State of
Nevada, this 13th day of October, 2020.



Deborah Ann Hines, CCR #473, RPR

EXHIBIT B

ERRATA SHEET

I declare under penalty of perjury that I have read the

forgoing 62 pages of my testimony, taken

On 9-28-2020 (date) at

Minden (city), Nevada (state),

and that the same is a true record of the testimony given

By me at the time and place herein

Above set forth, with the following exceptions:

Page	Line	Should Read:	Reason for Change:
13.	18.	None to I don't know	After all objections and response, I
		did not understand the question.	
14.	12.	"No" to "As stated in the Complaint"	"I said no, because I could not
		remember which sections from memory."	
15.	9.	"I don't know" to "As stated in the Complaint.@"	Same as 12 above
15.	18.	Add "Arc committee Meetings are held in secret: I needed to explain my	
		answer. No Notice, No Minutes given to Unit Owners and I have not been allowed to	
		attend, so I don't know what variances they have issued. Nancy Gilbert testified at her	

ERRATA SHEET

Page 64

	Page	Line	Should Read:	Reason for Change:
23			<u>deposition was on Committee said they gave variances to Jennings and Felton, but when</u>	
24			<u>I attended a Board meeting, a variance was denied to Kathleen Graf."</u>	
25	24	3 and 17.	<u>"No" to "I do not understand the question. I am not a lawyer.</u>	
26				<u>"After all the lawyer discussion, I</u>
27			<u>did not understand the question.</u>	
28	28	5 and 7	<u>Same as above</u>	
29	32	14	<u>"No" to "I do not understand the question. I am not a lawyer. My</u>	
30			<u>expert's report says I suffered \$1 million in property damage by adoption of the</u>	
			<u>3/31/2018 Guidelines."</u>	
30				<u>Same as 24 above.</u>
31	33	18	<u>"Not right now" to same as 32.</u>	<u>Same as 32</u>
32	48	23	<u>"right" Should be rights'.</u>	<u>Typo</u>
33	10-11		<u>"problem" should be "right".</u>	<u>I meant right, but misspoke the</u>
34				<u>wrong word.</u>

35

36 Date: 11-10-2020

Jerome Moretto
Signature of Witness

37

Jerome Moretto
Name Typed or Printed

38

39

EXHIBIT C

1 **ECC**
2 **RESNICK & LOUIS, P.C.**
3 Prescott Jones, Esq.,
4 Nevada Bar No. 11617
5 pjones@rlattorneys.com
6 8925 W. Russell Road, Suite 220
7 Las Vegas, NV 89148
8 Telephone: (702) 997-3800
9 Facsimile: (702) 997-3800
10 *Attorneys for Defendant,*
11 *Elk Point Country Club Homeowners Assn., Inc.*

12
13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
14
15 **IN AND FOR THE COUNTY OF DOUGLAS**

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

18 Plaintiffs,

19 v.

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

24 Defendants.

CASE NO.: 19-CV-0242

DEPT: 1

**DEFENDANT ELK POINT COUNTRY
CLUB HOMEOWNERS
ASSOCIATION, INC.'S FIRST
SUPPLEMENTAL DISCLOSURE OF
WITNESSES AND PRODUCTION OF
DOCUMENTS PURSUANT TO NRCP
16.1**

25 Defendant, ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.
26 (hereinafter "Defendant"), by and through their attorney, Prescott T. Jones, Esq., of the law firm
27 of RESNICK & LOUIS, P.C., hereby submits the following First Supplemental Early Case
28 Conference Disclosure of Witnesses and Production of Documents Pursuant to NRCP 16.1 as
follows:

///

///

///

///

1 I.

2 WITNESSES

- 3 1. The Person(s) Most Knowledgeable and/or
4 Custodian of Records for
5 TRUSTEE OF THE JEROME F. MORETTO 2006 TRUST
6 c/o Karen L. Winters, Esq.
1594 Mono Ave.
Minden, NV 89423

7 The Person(s) Most Knowledgeable for TRUSTEE OF THE JEROME F. MORETTO
8 2006 TRUST is expected to testify as to the facts and circumstances personally known to
9 him/her regarding the incident that is the subject of this Complaint. The custodians of records
10 are expected to testify as to the authenticity of records.

- 11 2. Jerome Moretto
12 c/o Karen L. Winters, Esq.
1594 Mono Ave.
Minden, NV 89423

13 Jerome Moretto is expected to testify as to the facts and circumstances personally known
14 to him regarding the incident that is the subject of this Complaint.

- 15 3. Deborah Moretto
16 c/o Karen L. Winters, Esq.
1594 Mono Ave.
17 Minden, NV 89423

18 Deborah Moretto is expected to testify as to the facts and circumstances personally
19 known to her regarding the incident that is the subject of this Complaint.

- 20 4. The Person(s) Most Knowledgeable and/or
21 Custodian of Records for
Elk Point Country Club Homeowner's Association, Inc.
22 c/o Resnick & Louis, P.C.
8925 W. Russell Rd., Suite 220
23 Las Vegas, NV 89148

24 The Person(s) Most Knowledgeable for Elk Point Country Club Homeowner's
25 Association, Inc. is expected to testify as to the facts and circumstances personally known to
26 him/her regarding the incident that is the subject of this Complaint. The custodians of records
27 are expected to testify as to the authenticity of records.

28 ///

1 5. Robert Felton
2 c/o Resnick & Louis, P.C.
3 8925 W. Russell Rd., Suite 220
4 Las Vegas, NV 89148

5 Robert Felton is the President of the Board of Directors for Elk Point Country Club
6 Homeowner's Association and is expected to testify as to the facts and circumstances personally
7 known to him regarding the incident that is the subject of this Complaint.

8 6. Charles Jennings
9 c/o Resnick & Louis, P.C.
10 8925 W. Russell Rd., Suite 220
11 Las Vegas, NV 89148

12 Charles Jennings is the Vice President of the Board of Directors for Elk Point Country
13 Club Homeowner's Association and is expected to testify as to the facts and circumstances
14 personally known to him regarding the incident that is the subject of this Complaint.

15 7. James Gosline
16 PO Box 9
17 Zephyr Cove, NV 89448

18 James Gosline is the former Secretary to the Board of Directors for Elk Point Country
19 Club Homeowner's Association and is expected to testify as to the facts and circumstances
20 personally known to him regarding the incident that is the subject of this Complaint.

21 8. William Zeller
22 PO Box 9
23 Zephyr Cove, NV 89448

24 William Zeller is a Member of the Board of Directors for Elk Point Country Club
25 Homeowner's Association and is expected to testify as to the facts and circumstances personally
26 known to him regarding the incident that is the subject of this Complaint.

27 9. Cathy Oster
28 PO Box 9
 Zephyr Cove, NV 89448

 Cathy Oster is the Treasurer for the Board of Directors for Elk Point Country Club
Homeowner's Association and is expected to testify as to the facts and circumstances personally
known to her regarding the incident that is the subject of this Complaint.

////

10. Kelly Morford
PO Box 9
Zephyr Cove, NV 89448

Kelly Morford is the Executive Secretary for the Board of Directors for Elk Point Country Club Homeowner's Association and is expected to testify as to the facts and circumstances personally known to her regarding the incident that is the subject of this Complaint.

11. Any and all witnesses named by any other party in this action.

12. Any individual or corporation which is identified through discovery as possessing information or documents which may reasonably lead to the discovery of relevant information pertaining to Plaintiff's claims, or Defendant's defenses.

13. Any experts identified by Plaintiff or any other party in this action.

14. Rebuttal witnesses, if necessary.

Defendants hereby reserve the right to supplement the above list of witnesses as discovery continues in this litigation and specifically incorporates herein any individuals later identified in any documents produced.

II.

DOCUMENTS

NO.	Document	Bates Range
1.	Insurance Policy	DEFT-ELK 000001-24
2.	Architectural & Design Control Standards & Guidelines	DEFT-ELK 000025-55
3.	EPCC Architectural Statements	DEFT-ELK 000056-58
4.	EPCC Advisory Ballot	DEFT-ELK 000059-63
5.	EPCC Advisory Ballot Responses	DEFT-ELK 000064-118
6.	EPCC Board Presentation Outlines	DEFT-ELK 000119-120
7.	Elk Point Coverage Analysis	DEFT-ELK 000121-125
8.	Architectural Review Applications for Minor Projects	DEFT-ELK 000126-135
9.	Email Correspondences	DEFT-ELK 000136-168
10.	EPCC HOA Architectural Committee Meeting Minutes	DEFT-ELK 000169-176
11.	EPCC- New Construction Operating Policies Rules and Regulations Approval	DEFT-ELK 000177-179
12.	Assessments, Plans, Maps and Photographs	DEFT-ELK 000180-249

<i>*All materials below this line were newly supplemented on 10/01/20 in Defendant's 1st Supplemental NRCP 16.1 Disclosures</i>		
13.	EPCC Articles of Incorporation – 1921	DEFT-ELK 000250-254
14.	EPCC Amendment to Articles of Incorporation - 1927	DEFT-ELK 000255-257
15.	EPCC Articles of Incorporation, Amendment and Renewal – 1975	DEFT-ELK 000258-274
16.	EPCC Articles of Incorporation, Amendment and Renewal – 1997	DEFT-ELK 000275-287
17.	Deck Reservation Guidelines – 10.17.2010	DEFT-ELK 000288
18.	2018 EPCC Bylaws	DEFT-ELK 000289-307
19.	EPCC HOA Rules, Regulations and Guidelines	DEFT-ELK 000308-350
20.	Ad Hoc Committee Charter - 2020	DEFT-ELK 000351
21.	Architectural Committee Charter – 2020	DEFT-ELK 000352
22.	Marina Committee Charter – 2020	DEFT-ELK 000353
23.	Rental Committee Charter – 2020	DEFT-ELK 000354
24.	Security Committee Charter – 2020	DEFT-ELK 000355
25.	E-mail from Charles Jennings – Fw: ARC Review 10.06.2019	DEFT-ELK 000356
26.	ARC Process Flow Chart	DEFT-ELK 000357
27.	E-mail from Charles Jennings – Agenda and Attachments 10.04.2019	DEFT-ELK 000358
28.	E-mail from Robert Felton – Fw: Agenda & Attachments 10.14.2019	DEFT-ELK 000359
29.	E-mail from Robert Felton – Re: Architectural Guidelines 11.25.2019	DEFT-ELK 000360-361
31.	WBA Comments on Elk Point Country Club Homeowners Association Architectural and Design Control Standards and Guidelines 09.30.2018	DEFT-ELK 000362-371
<i><u>Documents [Redacted] Pursuant to Attorney-Client Privilege; Please See Separate Privilege Log</u></i>		
30.	E-mail chain from Charles Jennings – Re: Elk Point – RE: Approval of any Architectural Project 09.01.2020 [Redacted]	DEFT-ELK 000372-378
<i><u>Documents [Withheld] Pursuant to Attorney-Client Privilege; Please See Separate Privilege Log</u></i>		
32.	E-mail chain from James R. Cavilia, Esq. – RE: Elk Point – RE: Approval of any Architectural Project 08.25.2020	DEFT-ELK 000379-381