

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

ELK POINT COUNTRY CLUB
HOMEOWNERS ASSOCIATION, INC.,

Respondent.

Supreme Court
Case No. 82565
District Court
Case No. 2019-CV-00242
Electronically Filed
Jul 23 2021 03:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

**APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME 3, PART 1**

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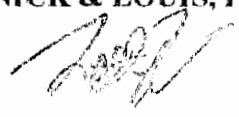
1 Defendants hereby incorporate by reference and reserve the right to use any and all
2 documents/exhibits, demonstrative or otherwise, produced by all parties pursuant to NRCP
3 16.1(a)(3)(C).

4 Defendants hereby reserve the right to object to all documents produced by all parties
5 pursuant to NRCP 16.1(a)(3)(C).

6 Defendants hereby reserve the right to supplement the above list of documents as
7 discovery continues in this litigation.

8 DATED this 7th day of October, 2020.

RESNICK & LOUIS, P.C.



By: _____

Prescott Jones, Esq.,
Nevada Bar No. 11617
Joshua Y. Ang, Esq.,
Nevada Bar No. 14026
8925 W. Russell Road, Suite 220
Las Vegas, NV 89148
Attorneys for Defendant,
Elk Point Country Club Homeowners Assn., Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **DEFENDANT ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC.'S FIRST SUPPLEMENTAL DISCLOSURE OF WITNESSES AND PRODUCTION OF DOCUMENTS PURSUANT TO NRCP 16.1** was served this 7th day of October, 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.

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

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

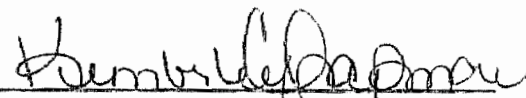

An Employee of Resnick & Louis, P.C.

EXHIBIT D

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

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

Plaintiffs,

vs.

Case No. 19-CV-0242

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

Defendant.

_____ /

DEPOSITION OF
CHARLES JENNINGS

Wednesday, July 22, 2020

REPORTED BY: DIANE K. LUSICH, Nevada CSR NO. 181

Calif. CSR NO. 5218

Job No. L20-119

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A P P E A R A N C E S

On Behalf of the Plaintiff:

LAW OFFICES OF KAREN L. WINTERS
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BY: KAREN L. WINTERS, Attorney at Law

On Behalf of the Defendant:

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8925 West Russell Road
Suite 220
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702.997.1029 - Phone
pjones@rlattorneys.com

BY: PRESCOTT JONES, Attorney at Law

Also Present:

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I N D E X

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E X H I B I T S

PLAINTIFF EXHIBITS
MARKED FOR IDENTIFICATION

- 1 A copy of a Memorandum to Petar Kontich from Jim Cavilia dated November 21, 2017, Re: HOA Board Authority Regarding Rules (2 pages) 6
- 2 A copy of EPCC Architectural Committee Minutes dated February 13, 2017, conference call 7:00 - 8:30 p.m., Draft (1 page) 6
- 3 A copy of an email from Charles Jennings to Fred Hanker, Petar Kontich, Cathy Oyster, Ralf Nielsen and William Zeller sent Sunday, January 28, 2018, 3:34 p.m., Subject: Minutes Architectural Committee Meeting 1.26.18 (3 pages) 6
- 4 A copy of a cover letter dated December 1, 2017, to the members of Elk Point Country Club - HOA, Subject: Proposed Architectural Guidelines and Standards with information package and advisory ballot presenting guidelines for construction within EPCC (13 pages) 6
- 5 A copy of an EPCC Architectural Committee Analysis Advisory Ballot Response January 30, 2018 (1 page) 6
- 6 A copy of Elk Point Board of Directors Meeting Board Minutes, Saturday, March 31, 2018 at 12:00 p.m. (3 pages) 6

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5	Homeowners Association General Rules	
6	and Regulations Adopted July 4, 1998,	
7	Last Revised April 24, 2017 (4 pages)	
8		
9	8	6
10	A copy of Elk Point Country Club	
11	Homeowners Association Board of	
12	Directors Meeting Board Minutes,	
13	Saturday, October 21, 2017 at 12:00	
14	p.m. (3 pages)	
15		
16	9	6
17	A copy of Elk Point Country Club	
18	Homeowners Association Board of	
19	Directors Meeting Board Minutes,	
20	Monday, November 27, 2017 at 12:00	
21	p.m. (4 pages)	
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24	A copy of an EPCC Architectural	
25	Committee Analysis Advisory Ballot	
	Response January 30, 2018, Revised	
	February 20, 2018 (1 page)	
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	A copy of an email from Jerry and Deb	
	Moretto dated Sat, Nov 3, 2018 at 6:02	
	p.m., to Bob Felton (1 page)	
	12	6
	A copy of an email from Suzanne Dante	
	to Charles Jennings dated Monday,	
	January 29, 2018, Subject: Vote from	
	Suzanne Dante, with attached advisory	
	ballots and homeowner information	
	(22 pages)	
	13	6
	A copy of an email from Charles	
	Jennings to Fred Hanker, Petar	
	Kontich, Cathy Oyster, Ralf Nielsen,	
	William Zeller, Doreen Andriacchi,	
	Nancy Gilbert, Martha Zeller, James	
	Gosline and Jim Cavilia, dated Friday,	
	January 19, 2018, Subject: EPCC	
	Advisory Ballot Response (1 page)	
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	A copy of a letter dated May 12, 2018,	
	to the Board Re: Architectural	
	Guidelines Amendment Document Request,	

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15	Copies of communications between the Morettos and Robert Felton, JM0171 through JM0180 (10 pages)	6
16	A copy of Elk Point Country Club, Inc. Executive Board Meeting Agenda, Saturday, July 6, 2019 (2 pages)	6
17	A copy of Elk Point Country Club Response to Moretto Letter November 1, 2018 (14 pages)	6
18	A copy of Elk Point Country Club General Ledger as of March 31, 2020 (31 pages)	6

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1 A. A little over two years.

2 Q. What is your position on the Board?

3 A. I'm the vice president.

4 Q. Have you had any other positions on the
5 Elk Point Country Club Homeowners Association?

6 A. I was a member of the Architectural
7 Committee.

8 Q. What dates were you a member of that
9 committee?

10 A. Repeat the question?

11 Q. What dates were you a member of that
12 committee?

13 A. From my recollection, it was somewhere
14 late 2015 that that committee was formed. It could
15 have been early 2016.

16 Q. What position did you have on the
17 Architectural Committee?

18 A. Initially it was a group of homeowners
19 that volunteered, so there was really no formal
20 hierarchy. And then eventually, after we moved up to
21 Elk Point probably in, sometime in late 2016, it was
22 formalized into a chair and four volunteer members.

23 Q. And when it was formally created in 2016,
24 were you the chair?

25 A. Yes.

1 meeting and then sign back in.

2 MS. WINTERS: Yes.

3 (Mr. Jennings and Mr. Jones dropped out of
4 the zoom meeting deposition. Off the record.)

5 (The time is approximately 3:30 p.m.)

6 BY MS. WINTERS:

7 Q. Let me run through a couple of things that
8 I do have here noted, then we can take like a
9 five-minute break, then I can double check everything.
10 I want to ask Mr. Jennings if, can you hear me well
11 enough?

12 A. Yes. Can you hear me?

13 Q. Yes.

14 MS. WINTERS: And I assume that the
15 reporter can also hear you.

16 THE REPORTER: Yes.

17 BY MS. WINTERS:

18 Q. Okay. You mentioned that you don't recall
19 specific emails that I have provided to you as
20 exhibits in the course of this deposition, and so I
21 have to ask, do you maintain a copy of the emails you
22 get and give out regarding the homeowner association
23 Board?

24 MR. JONES: Object to form.

25 THE WITNESS: The Board members, in

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

6 BY MS. WINTERS:

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

10 A. No.

11 Q. So where would those records of your
12 business with the homeowner association be kept?

13 MR. JONES: Object to form.

14 THE WITNESS: The meeting Minutes.

15 BY MS. WINTERS:

16 Q. I am talking about any communications that
17 you have from and to people regarding HOA business
18 that would be in emails or written documents.

19 A. That's kept by the secretary. There is
20 electronic copies of correspondence, and there is also
21 attachments to the meeting Minutes. Those are part of
22 our record.

23 Q. Do you keep copies of your emails that you
24 send out regarding homeowner association business?

25 A. Not as a general rule.

1 Q. Do you keep the electronic copy of emails
2 that you send out regarding homeowner association
3 business?

4 MR. JONES: Objection --

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

8 BY MS. WINTERS:

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

12 A. No, that's correct.

13 Q. So the secretary wouldn't have a copy of
14 anyone's correspondence either that she would keep?

15 MR. JONES: Object to form.

16 THE WITNESS: As far as I know.

17 BY MS. WINTERS:

18 Q. Do you recall who would -- do you recall
19 who recommended that there be an advisory board -- an
20 advisory vote of the membership regarding the
21 guidelines?

22 A. I don't recall any specific individual.
23 It might have been the Board, it might have been the
24 Board's attorney. I wasn't on the Board, so...

25 Q. In all of the emails that I showed you

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Attorneys for Defendant

Elk Point Country Club Homeowners Assn., Inc.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: 19-CV-0242

DEPT: 1

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

Defendant, ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC (hereinafter "Defendant" or "EPCC"), by and through their counsel of record, Prescott T. Jones, Esq. and Joshua Y. Ang, Esq. of the law firm Resnick & Louis, P.C., hereby submits this Opposition to the Plaintiff's Motion for Summary Judgment.

This Opposition is made and based upon the papers and pleadings on file with the Court, any exhibits attached, the Memorandum of Points and Authorities, and any oral argument

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1 the Court may decide to entertain.

2 DATED this 19th day of November, 2020.

3
4 **RESNICK & LOUIS, P.C.**



5
6 _____
7 PRESCOTT JONES
8 Nevada Bar No. 11617
9 JOSHUA ANG
10 Nevada Bar No. 14026
11 8925 W. Russell Road, Suite 220
12 Las Vegas, NV 89148
13 *Attorneys for Defendant*
14 *Elk Point Country Club Homeowners Assn., Inc.*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. RESPONSE TO PLAINTIFF'S STATEMENT OF "UNDISPUTED" FACTS**

No.	Fact Allegedly "Undisputed"	Defendant's Position
1. 14	15 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. 16	17 Undisputed, but irrelevant to the outcome of this motion.
2. 18	19 EPCC's current corporate Bylaws ("Bylaws") are the Amended and Restated Bylaws recorded as Document No. 0653319 on August 26, 2005 in the Official Records of Douglas County, Nevada, with further recorded amendments through August 7, 2018 as of the date of the Complaint on file herein 20	21 Not disputed. 22
3. 23	24 EPCC was originally incorporated as the "Nevada Elks Tahoe Association" in 1925 as a "social club" for the Reno and Tahoe Elks Club members. 25	26 Undisputed, but irrelevant to the outcome of this motion. 27
4. 26	27 The Bylaws of EPCC only allow the Board to create an audit committee and an election committee. 28	29 Disputed; the subject Bylaws' language explicitly grants the Board broad powers to form various committee types and delegate its authority thereto. <i>See Exhibit C, [EPCC Bylaws (pg 4-9)].</i>

1	5.	The EPCC Bylaws only allow the Executive Board to delegate its duties to an Election Committee for annual elections, and a Finance Committee for an annual audit.	<i>Id.</i>
2	6.	Article III, Section 2 of the current Bylaws states that "The Executive Board shall have the power to conduct, manage and control the affairs and business of the Corporation, and to make rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation, and the Bylaws of the Corporation."	Undisputed that this is language within the Bylaws, but Plaintiff's interpretation thereof is disputed. <i>See Exhibit C</i> , [EPCC Bylaws (pg 4-7)].
3	7.	The Architectural Review Committee meetings were not properly noticed to any unit members.	Disputed that any notice requirement existed at all. <i>See NRS 116.31083 and NRS 116.31085 and plain language contrary to this interpretation.</i>
4	8.	EPCC operates common areas and facilities for the benefit of the fee title owners of individual units within its development.	Undisputed to the extent that this describes in part the scope of the EPCC Board's duties, but irrelevant to the outcome of this motion.
5	9.	The development currently consists of approximately 99 parcels ("units").	Undisputed that this is roughly correct, but irrelevant to the outcome of this motion.
6	10.	When EPCC first chose to allow for fee title transfer of parcels within the EPCC to individual members through amendments to its Bylaws in 1929, each deed of conveyance contained a provision stating that: "It is expressly understood that the Grantee hereof and the property and premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said granter, which shall in turn bind every subsequent grantee, his or her executors, administrators, successors, or assigns."	Positions taken in inadmissible prior briefing are non-binding at the time of trial, and Plaintiff has not presented any affirmative evidence that this is true. Thus, disputed. Nevertheless, even if it is true that each deed of conveyance contained this provision, as assumed below, its meaning and manner application does not lead to Plaintiff's desired conclusion.
7	11.	For the last 95 years, from the inception of EPCC in 1925 to the present, the only "rules and regulations" effecting individual units addressed general construction of improvement requirements on the individual parcels.	Positions taken in inadmissible prior briefing are non-binding at the time of trial, and Plaintiff has not presented any affirmative evidence that this is true. Thus, disputed. Nevertheless, even if this fact is true, it is wholly irrelevant to the outcome of this motion, which is about whether the Board may enact such guidelines, regardless of
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		whether they previously existed
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2	12.	The remainder of the "rules and regulations" addressed the community governance and use of the beach, marina and common areas, capital improvements on the commonly owned portions of EPCC, governance of the Executive Board and EPCC, and the role of EPCC in approving transfers of the members' parcels. (The 2019 set of rules also includes rules regarding renters, which is the subject of separate litigation with EPCC)
3		Not disputed that the EPCC has rules and regulations addressing such issues in 2019, but this is not the full extent of all rules and regulation of EPCC during this timeframe. <i>See Exhibit D</i> , [December 2019 ACDSG version + Declaration of Authenticity].
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8	13.	Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust ("Moretto") is the fee title owner of that certain residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which is located within, and a part of the EPCC development.
9		Undisputed, but irrelevant to the outcome of this motion.
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13	14.	Moretto, either as trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990.
14		<i>Id.</i>
15	15.	Moretto's fee title interest in this property contains no view restrictions, view easements, building setback requirements, minimum garage space restrictions, building size restrictions, landscaping restrictions, easements for public sidewalks, or any other real property restriction set forth in the initial "Architectural and Design Control Standards and Guidelines" ("Guidelines") enacted on March 31, 2018.
16		Disputed insofar as the meaning of "fee title interest" is vague and ambiguous. Undisputed insofar as it appears to imply that restrictions imposed by the March 31, 2018 architectural guidelines of EPCC are not written into Moretto's deed of ownership over the subject property; nevertheless, irrelevant to the outcome of this motion.
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22	16.	Parts of the Moretto residence are 80 years old and not constructed to today's building codes and requirements.
23		Undisputed, but irrelevant to the outcome of this motion.
24	17.	On March 31, 2018, the Executive Board of EPCC enacted the Guidelines purportedly regulating design, architecture and construction of improvements on real property individual units within the boundaries of EPCC.
25		<i>Id.</i>
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28	18.	The initial Guidelines adopted on
		Undisputed that the quoted language exists

1	March 31, 2018 state that the duties of the Architectural Review Committee created in the Guidelines (the "Committee") include applying and enforcing the Guidelines as the Committee "sees fit".	within the March 31, 2018 version of the subject architectural guidelines, but Plaintiff's interpretation thereof, and the meaning in the total context thereof is disputed. Moreover, this version of the guidelines was superseded by a December 2019 version changing this provision. <i>See Exhibit E</i> , [March 2018 ACDSG].
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6	19. The Board changed Section 6 of the initial Guidelines in the current version of the Guidelines, in that the Committee is identified as an "agent of the EPCC, as directed by the Board", its duties continue to include applying and enforcing the Guidelines.	Disputed; this quotes the operative December 2019 guidelines out of context. Not directly relevant to the dispute at hand, however. <i>See Exhibit D</i> , [December 2019 ACDSG version at pg. 11 + Declaration of Authenticity].
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10	20. The March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto's individual unit. by imposing setback requirements on improvements that would effectively take Moretto's property right to rebuild even in the event of fire or natural catastrophe without Moretto's consent; and impose easements, including view easements which restrict buildings and landscaping on the Moretto property, beyond those originally in place at the time Moretto purchased the property and beyond the governmental restrictions placed on all land by the Tahoe Regional Planning Agency and Douglas County.	Undisputed only that restrictions were imposed by said set of March 31, 2018 architectural guidelines as to setbacks and as to the manner in which Moretto would be able to build/rebuild on his property, but dispute Plaintiff's specific interpretations of these restrictions. However, wholly irrelevant to the outcome of this motion as superseded by a December 2019 version of said architectural guidelines. <i>See Exhibit E</i> , [March 2018 ACDSG].
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20	21. The current version of the Guidelines, in Subparagraph 14(b) states that: "Exempt activities [from the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other calamity that are rebuilt in substantial compliance with the design of the original structure."	Undisputed that the quoted language exists within the operative December 2019 version of the subject architectural guidelines, but Plaintiff's interpretation thereof, and the meaning in the total context thereof is disputed. <i>See Exhibit D</i> , [December 2019 ACDSG version at pg. 14 + Declaration of Authenticity].
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25	22. The Guidelines have been amended twice since they were originally forced upon Mr. Moretto, in June and September 2018, and merged into a consolidated set of "Rules, Regulations and Guidelines" for EPCC on	Undisputed, but irrelevant to the outcome of this motion.
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1		September 14, 2019, which were later reiterated along with the rules governing the common areas, in December 2019.	
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3	23.	Moretto objected to the initial Guidelines and requested to present those objections to the Executive Board through a letter dated from May 12, 2018.	<i>Id.</i>
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6	24.	The Executive Board finally included Moretto's objections and issues on the December 15, 2018 agenda of the Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the Executive Board and a certified court reporter on said date.	Undisputed, but irrelevant to the outcome of this motion.
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12	25.	Moretto's objections, contained in his May 12, 2018 letter, include that: (1) the Executive Board had no authority over the individual units under the Bylaws to create a "Design Review Committee" (hereinafter, the "Committee") delegating the Executive Board's authority to a committee to develop rules and regulations governing the design, architecture and construction of improvements within EPCC boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not sufficiently explicit to inform unit property owners for compliance in violation of NRS 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard in violation of NRS 116.31065(5); (6) the	Undisputed as this fact only refers to the contents of Moretto's own letter to the Board, which is irrelevant to the outcome of this motion.
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1		Guidelines purport to create real property restrictions which are restrictive covenants on individual units taken ultra vires; (7) the Guidelines impose setback requirements, without Moretto's consent, on improvements that would effectively take Moretto's property right to rebuild for any reason; and (8) the Guidelines impose easements, including view easements and a pedestrian walkway easement, which are restrictive covenants taken ultra vires on individual units.	
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9	26.	Subparagraph XII(2) of the initial Guidelines states that the Committee is given 45 days to review any 'Application' for modification, new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or complexity of the proposed work to be done.	Undisputed that the quoted language existed in the March 31, 2018 set of architectural guidelines, but dispute Plaintiff's specific interpretations of these restrictions. However, wholly irrelevant to the outcome of this motion as superseded by a December 2019 version of said architectural guidelines. <i>See Exhibit E</i> , [March 2018 ACDSG at pg. 4-6].
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14	27.	The 45-day review period has no connection to the size of the project, and further fails to take into consideration the time of year at which any Application is made which would effect some projects under TRPA rules and regulations.	Disputed- this is a subjective, out of context qualitative assessment of the subject architectural guidelines made by Plaintiff, and as assessment of law as to their interaction with TRPA regulations. <i>See Exhibit E</i> , [March 2018 ACDSG at pg. 4-6].
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18	28.	At XII(3), the Guidelines state that the "Committee may recommend disapproval ... [of] any Application ... for purely aesthetic reasons."	Undisputed that the quoted language existed in the March 31, 2018 set of architectural guidelines, but dispute Plaintiff's specific interpretations of these restrictions. <i>See Exhibit E</i> , [March 2018 ACDSG at pg. 4-6]. However, wholly irrelevant to the outcome of this motion as superseded by a December 2019 version of said architectural guidelines.
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23	29.	"Aesthetics", by definition, are the subjective conclusions of individuals as to what constitutes "beauty" and "good taste". As a result, any Committee or Board member can decide to disapprove an Application based solely on their individual sense of beauty or good taste, without even considering the aesthetic value to the unit owner. The two examples stated in Undisputed	Disputed. The applicable December 2019 version of the architectural guidelines provide specific parameters for "aesthetic acceptability." <i>See Exhibit D</i> , [December 2019 ACDSG version at pg. 14-15 + Declaration of Authenticity].
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1		Fact Nos. 26 and 28 remain in the current version Guidelines.	
2	30.	Not only does the Major Application process increase the cost to be paid to the Committee, but it increases the cost of the project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted to the Committee for any "Major Project".	Disputed, but also irrelevant to the outcome of this motion.
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6	31.	The Committee could decide that something as simple as replacing a garage door to be a "Major Project", greatly increasing the cost of each planned improvement of a residence. The current version of the Guidelines reduces this application review fee to \$200, but imposes the same extensive documentation as the initial Guidelines.	Disputed, the December 2019 version of the architectural guidelines specifies in detail what is a "Major Project." See Exhibit D , [December 2019 ACDSG version at pg. 16-17 + Declaration of Authenticity].
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11	32.	The latest iteration of the Guidelines also retains restrictive covenants that would impose setback requirements and view easements restricting building size and height and landscaping on the Moretto property.	Undisputed that language which could have this effect exists in the current set of architectural guidelines, but dispute Plaintiff's specific interpretations of the total scope of the applicability of these restrictions. See Exhibit D , [December 2019 ACDSG version at pg. 12-14 + Declaration of Authenticity].
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16	33.	Nowhere in the initial Guidelines is there any stated amounts for any fines (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	Undisputed that the quoted language existed in the March 31, 2018 set of architectural guidelines, but dispute Plaintiff's specific interpretations of the effects of this language. In any case, this set for guidelines has been superseded and is irrelevant. See Exhibit E , [March 2018 ACDSG at pg. 5].
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21	34.	As in the initial Guidelines, nowhere in the Current Guidelines is there any stated amounts for any fines (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	Undisputed that the quoted language existed in the current set of architectural guidelines, but dispute Plaintiff's specific interpretations of the effects of this language. See Exhibit D , [December 2019 ACDSG version at pg. 14 + Declaration of Authenticity].
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26	35.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit	Undisputed that the quoted language existed in the March 31, 2018 set of architectural guidelines, but dispute Plaintiff's specific interpretations of the effects of this language. In any case, this set for guidelines has been
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1	owner to request a variance of the	superseded and is irrelevant. <i>See Exhibit E,</i>
2	"recommendation" that all	[March 2018 ACDSG at pg. 3-5].
3	construction not exceed 3500 square	
4	feet of floor area, but gives no	
5	indication why or under what	
6	circumstances a variance would be	
7	approved.	
8	36. Subparagraph XII of the initial	Undisputed that the quoted language existed
9	Guidelines states that all Applications	in the March 31, 2018 set of architectural
10	that include a variance would first be	guidelines, but dispute Plaintiff's specific
11	reviewed by the Committee, then	interpretations of the effects of this language.
12	forwarded to the Executive Board with	In any case, this set for guidelines has been
13	the Committee's recommendation to	superseded and is irrelevant. <i>See Exhibit E,</i>
14	approve or disapprove, however there is	[March 2018 ACDSG at pg. 3-5].
15	no guidance in that short paragraph to	
16	either the Committee or Executive	
17	Board in reaching their decisions. As a	
18	result, the requests for variances can be	
19	treated differently from unit owner to	
20	unit owner, with no consistency.	
21	37. The current Guidelines appear to	Undisputed that the quoted language existed
22	attempt to resolve this issue, through a	in the current set of architectural guidelines,
23	more restrictive process for variances in	but dispute Plaintiff's specific interpretations
24	Subparagraph 14(f), however Paragraph	of the effects of this language. <i>See Exhibit</i>
25	11 of the current Guidelines allow for	D, [December 2019 ACDSG version
26	amendments to the Guidelines on the	(context of totality) + Declaration of
27	recommendations of the Architectural	Authenticity].
28	Review Committee "as it sees fit",	
	thereby allowing an amendment,	
	however temporary, to be made on	
	the recommendation of the Committee	
	to the Board and without any unit	
	owner involvement	
	38. The initial Guidelines allow for a	Undisputed that the quoted language existed
	variance from the Guidelines at the	in the March 31, 2018 set of architectural
	discretion of the Committee with no	guidelines, but dispute Plaintiff's specific
	objective standard. At Subparagraph	interpretations of the effects of this language.
	XI(4), it allows a unit owner to request	In any case, this set for guidelines has been
	a variance of the "recommendation"	superseded and is irrelevant. <i>See Exhibit E,</i>
	that all construction not exceed 3500	[March 2018 ACDSG at pg. 3-5].
	square feet of floor area, but gives no	
	indication why or under what	
	circumstances a variance would be	
	approved.	
	39. Moretto's objections were not resolved	Undisputed, but irrelevant to the outcome of
	at the Executive Board meeting,	this motion.
	therefore Moretto filed an "Alternative	

1	Dispute Resolution Claim Form with the Nevada Department of	
2	Business and Industry Real Estate	
3	Division, Office of the Ombudsman for	
4	Common-Interest Communities and	
	Condominium Hotels" on March 28,	
	2019, requesting mediation.	
5	40. Mediation between Moretto and EPCC	<i>Id.</i>
6	occurred on May 31, 2019, which did	
7	not result in a resolution. The claim was	
	closed by the Nevada Real Estate	
	Division by letter dated June 20, 2019.	
8	41. On August 3, 2019, the EPCC	<i>Id.</i>
9	Executive Board held its monthly	
10	meeting. Included in the agenda	
11	was an item regarding "Revision and	
12	Consolidation of EPCC Rules and	
	Regulations", and to "[d]iscuss the plan	
	to review the ADCSG [the Guidelines]	
	by ARC [the Committee].	
13	42. On August 13, 2019, Moretto received	<i>Id.</i>
14	the proposed new EPCC "Rules,	
15	Regulations and Guidelines" intended	
	to consolidate the individuals rules,	
	including the Guidelines.	
16	43. The proposed new guidelines contained	Undisputed that the quoted language existed
17	substantially the same rules as those	in the current set of architectural guidelines,
18	imposed by the March 31, 2018	but dispute Plaintiff's specific interpretations
19	Guidelines, with the exception that the	of the effects of this language. <i>See Exhibit</i>
20	three-foot sidewalk easement imposed	D , [December 2019 ACDSG version at pg.
21	on unit owners became a	12-14 + Declaration of Authenticity].
22	'recommendation' rather than a	
	requirement. The Guidelines have been	
	amended at least twice, with the latest	
	iteration contained within a set of	
	"Rules and Regulations" issued in	
	December 2019.	
23	44. Mr. Moretto made a demand for EPCC	Do not dispute the date of Moretto's request
24	records on May 12, 2018. Although	letter, dispute that any affirmative evidence
25	some requested documents were	to meet Plaintiff's burden that applicable
26	provided prior to the 21 day statutory	statutory documents were not timely
27	deadline, a number were not presented	provided has been presented by Plaintiff. <i>See</i>
28	until December 7, 2018, and later.	NRS 116.31175 & NRS 116.3118.
	45. Further requested documents were not	<i>Id.</i>
	provided until after the instant litigation	
	began and at the hearing on the	
	preliminary injunction in this matter on	

1	March 9, 2020.	
2	46. Others were not provided at all to date and were the subject of the Order Compelling Further Responses to discovery.	Dispute that any statutorily required documents provided late during discovery; Plaintiff has not presented evidence to this effect. <i>See</i> NRS 116.31175 & NRS 116.3118.
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4	47. In the Opposition to that Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were provided in the further documents supplied.	<i>Id.</i> - also irrelevant to the dispute at hand. <i>See</i> NRS 116.31175 & NRS 116.3118.
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8 **II. LEGAL ARGUMENT**

9 The subject motion by Plaintiff relies on numerous mischaracterizations of fact and law,
10 as articulated in detail below. Summary judgment in Plaintiff’s favor is not warranted as to any
11 of his causes of action. In fact, Defendant contends that Plaintiff’s claims are so legally and
12 factually deficient that Defendant is entitled to summary judgment as to all of them. Yet, even if
13 the Court does not find this to be the case, it is clear that questions of material fact remain as to
14 each and every one of Plaintiff’s causes of action, sufficient to defeat the subject motion for
15 summary judgment.
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18 **1) Plaintiff’s Cause Of Action Alleging “Violation Of Constitutional Property Rights” Fails As A Matter Of Fact And Law (Discussed in Section “B” of the Subject Motion)**

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20 First and foremost, Plaintiff has simply not pled a cognizable claim under Nevada law as
21 to this cause of action. There is no specific cause of action under Nevada law specifying that
22 relief may be obtained for a “Violation of Plaintiff’s Property Rights,” as pled in Plaintiff’s
23 Complaint. Indeed, the manner in which this cause of action was articulated in the subject
24 motion for summary judgment closely mirrors what was pled as to Plaintiff’s first cause of action
25 for “Violation of EPCC’s Bylaws.” *See Exhibit A*, [Plaintiff’s Complaint]. Yet even by this line
26 of logic articulated in the subject motion, Plaintiff’s claim fails. The simple crux of Plaintiff’s
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1 argument in the corresponding section of the subject motion is that, (**allegedly and wrongly**),
2 EPCC simply never possessed the authority to enact the subject architectural guidelines to begin
3 with, selectively quoting sections of the Bylaws and other documents as “evidence” that no such
4 grant of authority exists.

5 The irony is that Plaintiff’s own arguments herein undercut his assertion that EPCC’s
6 Bylaws do not grant the authority to enact the sort of restrictions imposed by the subject
7 Architectural Guidelines. Plaintiff concedes on pages 20-21 of the subject motion for summary
8 judgment that it is permissible under Nevada law for the Bylaws of a Homeowner’s Association
9 to grant the Executive Board the type of rule-making powers necessary to enacting the subject
10 architectural guidelines. *See Exhibit B*, [Plaintiff’s MSJ at pg. 20-21]. Said Bylaws explicitly
11 provide that:
12

13 “The enumeration of the powers and duties of the Executive Board in these Bylaws shall
14 not be construed to exclude all or any of the powers and duties, except insofar as the
15 same are expressly prohibited or restricted by the provisions of these Bylaws or Articles
16 of Incorporation, and the Board shall have and exercise all other powers and perform all
17 such duties as may be granted by the laws of the State of Nevada and do not conflict with
18 the provisions of these Bylaws and the Articles of Incorporation.” *See Exhibit C*, [EPCC
19 Bylaws (pg 7-8)].

20 Plaintiff has pointed out no provisions of the subject Bylaws which explicitly prohibit
21 EPCC’s Board from enacting architectural guidelines in the vein of those at issue; each and
22 every provision thereof cited to by Plaintiff only *omits* to specifically discuss this type of
23 authority necessary for EPCC’s Board to enact the subject architectural guidelines altogether.
24 *See Exhibit B*, [Plaintiff’s MSJ at pg. 18-22]. In fact, the clause of the Bylaws cited to by
25 Plaintiff stating, “The Executive Board shall have the power to conduct, manage and control the
26 affairs and business of the Corporation, and to make rules and regulations not inconsistent with
27 the laws of the State of Nevada, the Articles of Incorporation, and the Bylaws of the
28 Corporation," *only serves to further support* the notion that it was originally intended by said

1 Bylaws that the EPCC Executive Board should have *any and all legal powers* not specifically
2 prohibited by said Bylaws, including the power to enact the subject architectural guidelines. .”
3 *See Exhibit C*, [EPCC Bylaws (pg 7-8)].

4 The deed of conveyance clause cited to by Plaintiff stating, "It is expressly understood
5 that the Grantee hereof and the property and premises hereby conveyed shall be subject at all
6 times to the by-laws, rules and regulations of said grantor, which shall in turn bind every
7 subsequent grantee, his or her executors, administrators, successors, or assigns," also only *omits*
8 to specifically discuss the type of authority necessary for EPCC’s Board to enact the subject
9 architectural guidelines altogether.

11 Thus, in the clear absence of any explicit prohibitions *everywhere and anywhere* against
12 the EPCC Board exercising the type of powers necessary to enact the architectural guidelines at
13 issue, where such powers may clearly be granted by an association’s bylaws under Nevada law
14 (as conceded by Plaintiff), the subject Bylaws necessarily clearly and unambiguously granted
15 such powers to EPCC’s Executive Board, through stating “...except insofar as the same are
16 expressly prohibited or restricted by the provisions of these Bylaws or Articles of Incorporation,
17 and the Board **shall have and exercise all other powers and perform all such duties as may**
18 **be granted by the laws of the State of Nevada** and do not conflict with the provisions of these
19 Bylaws and the Articles of Incorporation...” and “The Executive Board shall have the power to
20 conduct, manage and control the affairs and business of the Corporation, and to make rules and
21 regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation,
22 and the Bylaws of the Corporation.” *See Exhibit B*, [Plaintiff’s MSJ at pg. 18-22]; *See Exhibit*
23 *C*, [EPCC Bylaws (pg 7-8)]. The powers to enact the subject architectural guidelines squarely
24 fall within the aforementioned category of permissible powers for an association under Nevada
25 law, as conceded by Plaintiff, and also necessarily fall into the category of powers explicitly
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1 afforded to EPCC's Executive Board by its Bylaws, given its explicit grant of all such legal
2 powers insofar as not explicitly prohibited elsewhere (whereas articulated above, Plaintiff cannot
3 demonstrate that any such explicit prohibits (express or implied) exist).

4 Furthermore, given this operative language of EPCC's Bylaws (and the above articulated
5 manner of operation), Plaintiff's other arguments about the "corporate authority" of EPCC's
6 Executive Board being inadequate to permit the enactment of are wholly moot and inapposite.

7
8 Indeed, in this manner, it is clear that summary judgment should be granted to *Defendant*
9 and not Plaintiff. Nevertheless, even if the Court declines to grant Defendant summary judgment
10 with regard to this issue at present, a substantial issue of material fact necessarily remains as to
11 the how the subject Bylaws of EPCC should be interpreted and whether their language permits
12 Defendant to enact the subject architectural guidelines.

13
14 **a. Ancillary Points As To The Scope Of The Present Version Of The
Subject Architectural Guidelines**

15 Though moot per the aforementioned arguments, Defendant will address Plaintiff's
16 wrongful analysis as to the scope of current 2019 version of the subject architectural guidelines.
17 The clause of the subject architectural guidelines' 2019 version cited to by Plaintiff does not
18 impose the types of restrictions alleged by Plaintiff, that would "eliminate Mr. Moretto' s right
19 to remodel his home and bring it to current building codes in the event of fire or natural
20 catastrophe, or prevent Mr. Moretto from tearing down the house and building a more modern,
21 very different, house on the same footprint." See **Exhibit D**, [December 2019 ACDSG version
22 + Declaration of Authenticity (pg 14)]. In fact, quite the contrary.

23
24
25 In full, the clause of the 2019 version of the subject architectural guidelines at issue
26 states:

27 "Exempt Activities; Exempt activities are structural repair, structural modifications,
28 structural remodeling, replacement of an existing roof with a metal roof, interior

1 remodeling, buildings damaged or destroyed by fire or other similar calamity that are
2 rebuilt in substantial compliance with the design of the original structure, non-permanent
3 structures, ordinary maintenance and repair, repair of fences, removal of dead trees, and
4 demolition. This also includes like-kind (size, color, quantity, etc.) replacement, or re-
5 painting a residence the exact same color as previously approved and painted; and for
6 like-kind (size, quantity, etc.) landscape replacement.” See **Exhibit D**, [December 2019
7 ACDSG version + Declaration of Authenticity (pg 14)].

8 The clause specifically exempts “structural repair, structural modifications, structural
9 remodeling” from needing Board permission to be performed, only loosely requiring
10 “substantial compliance with the design of the original structure”- squarely encompassing the
11 type of “modernization renovations upon the same footprint” discussed by Plaintiff in the
12 subject motion. The same applies to remodeling that occurs as a result of destruction from a fire
13 or natural catastrophe to bring it to current building codes; again, the sole loose requirement of
14 “substantial compliance with the design of the original structure” has no appreciable detrimental
15 effect on the ability of Plaintiff to perform such a rebuild without committee approval.

16 **2) The Same Arguments Undercut Plaintiff’s Cause Of Action Alleging “Breach
17 Of Bylaws And Laws Governing Bylaws” (Discussed in Section “C” of the
18 Subject Motion)**

19 Defendant reiterates that the Bylaws of EPCC explicitly afford to the Executive Board
20 all legal powers not “expressly prohibited or restricted by the provisions of these Bylaws or
21 Articles of Incorporation.” See **Exhibit C**, [EPCC Bylaws (pg 7-8)]. This is a specific blanket
22 grant of power and authority in compliance with the provisions of NRS 116.3106 for the
23 Bylaws of a homeowner’s association, which must be interpreted to include the authority to
24 create the Architectural Committee at issue, and for the Executive Board to delegate powers
25 thereto as necessary/as it sees fit. Thus, again, Plaintiff’s arguments based upon the proper
26 scope of “corporate authority” are wholly moot and inapposite.

27 Furthermore, no powers of the EPCC Executive Board were delegated to the subject
28 Architectural Committee to begin with, even if this were not permissible under the subject

1 Bylaws of EPCC. Wheresoever the duties of the subject Architectural Committee to are
2 described in relation to the Executive Board in the subject architectural guidelines (applicable to
3 both the currently controlling December 2019 version and the March 2018 version utilized by
4 Plaintiff's experts), it is clearly explained that the Architectural Committee may only make
5 recommendations that must then be subsequently considered and adopted by the Executive
6 Board itself to become effective. *See Exhibit E*, [March 2018 ACDSG]; *See Exhibit D*,
7 [December 2019 ACDSG version + Declaration of Authenticity]. Example excerpts include:
8

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

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

22 "If, in the opinion of the Committee, the Application is in substantial compliance with the
23 ADCSG, a recommendation for approval will be made to the Board. Should the design be
24 a substantial variance with the ADCSG or violate any of these guidelines, a
25 recommendation for disapproval will be made to the Board." *See Exhibit D*, [December
26 2019 ACDSG version + Declaration of Authenticity (eighth page)].

27 Plaintiff appears to rely solely upon taking out of context the provision of the subject
28 2019 version of said architectural guidelines stating that the Architectural Committee is to "(2) to
apply and enforce those ADCSG which have been approved and adopted by the Board" to allege
a delegation of powers from the Board to the Committee (which if prohibited by the Bylaws
[Defendant contends it is not], would be improper). However, the totality of context provided by
the detailed provisions as to the *process through which such application and enforcement should*

1 *be carried out* by the Architectural Committee clearly demonstrates that no direct delegation of
2 powers and authority exists, explicitly requiring the Architectural Committee to make
3 recommendations requiring Executive Board approval at every turn and for all substantial
4 actions. *See Exhibit D*, [December 2019 ACDSG version at pg. 14-17 + Declaration of
5 Authenticity]

6 Thus, in Defendant's opinion, it is evident that no question of material fact remains as to
7 whether the effective architectural guidelines at issue were enacted in violation of EPCC's
8 bylaws in the manner alleged by Plaintiff- as its plain language explicitly prohibits such a
9 delegation of the powers of the Executive Board to the ARC, which can only promulgate
10 recommendations to the Executive Board for consideration and approval thereby. Indeed,
11 Plaintiff himself conceded this point during his deposition.
12

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

15 A: None.

16 ...

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

18 A: I see that.

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

21 ...

22 BY MR. JONES:

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

26 A: Yes. I found it now.

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

A: No.

Q: Thank you. The next sentence reads, "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. Do you see where I'm reading, sir?

A: Yes.

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

A: Yes.

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

2 A. No.”

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

4 And as with the previous cause of action, if the Court finds that summary judgment is
5 not warranted in favor of Defendant at this time for whatever reason, it is clear that a substantial
6 issue of material fact remains for the jury to decide as to the proper interpretation of the subject
7 architectural guidelines.

8 **3) Section “D” Of The Subject Motion Further Fails To Demonstrate That**
9 **Summary Judgment Is Warranted In Plaintiff’s Favor In Any Manner**
10 **Whatsoever**

11 **a. As To Redundant Parts Of Section “D” Of The Subject Motion**

12 Insofar as Section “D” of Plaintiff’s subject motion restates previously asserted
13 arguments that the subject Architectural Committee and architectural guidelines were
14 created/enacted in violation of that which was permitted under Nevada law/under the Bylaws
15 themselves, and that excessive authority was delegated to the architectural committee,
16 Defendant will not belabor the point. Each and every such argument has been wholly debunked
17 by the previous sections of this opposition. Consequently, all arguments asserted by Plaintiff as
18 to the need for amendment of the subject Bylaws and the proper manner in which this must
19 occur are rendered moot and inapposite.

20
21 Insofar as this section alleges that the Architectural Committee meetings required notice
22 to all unit owners by law to permit them an opportunity to attend, this argument is also
23 incorrect. As stated by Plaintiff, NRS 116.31083(2) asks that: “[T]he secretary or other officer
24 specified in the bylaws of the association shall, not less than 10 days before the date of a
25 meeting of the executive board, cause notice of the meeting to be given to the units' owners.”
26 and NRS 116.31085(1) further asserts that: “[A] unit's owner may attend any meeting of the
27
28

1 units' owners or of the executive board and speak at any such meeting.” Neither statutory
2 provision requires that unit owners be included for meetings of mere Committees, only referring
3 specifically to the Executive Board’s meetings. Plaintiff further attempts to argue that
4 delegation of Board powers to the subject Architectural Committee effectively incorporates this
5 notice and attendance opportunity requirement as to the subject Architectural Committee.
6 However, this interpretation goes against the plain-language interpretation of the
7 aforementioned statutes. It is also wholly moot and inapposite where as articulated in previous
8 sections of this opposition, the Executive Board of EPCC has not in fact delegated any
9 meaningful decision-making authority or powers to the subject Architectural Committee.
10

11 **b. As To Arguments In Section “D” Of The Subject Motion About Alleged**
12 **Vagueness And Arbitrary Enforcement Of The Subject Architectural**
13 **Guidelines**

14 Plaintiff attempts to assert various examples of vague drafting of the subject
15 architectural guidelines that have allegedly created arbitrary and capricious enforcement and/or
16 confusion as to how to comply in the part of unit owners, which would be in violation of NRS
17 116.31065’s various provisions. However, each and every one of these “examples” is based
18 upon an omission of additional context within the subject architectural guidelines which
19 *invariably* provides the specificity that Plaintiff claims is missing, or wholly extricates said
20 provisions from the purview of said statutes. Defendant will not belabor each and every
21 example asserted by Plaintiff, but will discuss many of the most prominent as exemplars.
22

23 For example, Plaintiff takes issue with an allegedly extant and operative clause of the
24 subject architectural guidelines as “encouraging arbitrary enforcement,” purportedly permitting
25 the Architectural Committee to "enforce ... [Guidelines] ... as the Committee sees fit". However,
26 the words “sees fit” have been removed from the current 2019 version of this portion of the
27 subject architectural guidelines, which merely states “to apply and enforce those ADCSG which
28

1 have been approved and adopted by the Board.” *See Exhibit D*, [December 2019 ACDSG
2 version (top of pg. 12) + Declaration of Authenticity]. Moreover, the totality of the subject
3 architectural guidelines makes it abundantly clear that the Architectural Committee has *no*
4 unilateral discretion as to the enforcement of the subject architectural guidelines, and instead
5 must follow the specific provision set forth in each and every part thereof in enforcement, which
6 can only occur in the form of recommendations, wholly subject to the Executive Board’s review
7 and approval. *See Exhibit D*, [December 2019 ACDSG version + Declaration of Authenticity].

9 Plaintiff also alleges based upon a furtively incomplete excerpt of the subject
10 architectural guidelines that the Architectural Committee may make recommendations to the
11 Board for disapproval of applications of unit owners for any “aesthetic reason”- the excerpt
12 utilized was ““Committee may recommend disapproval ... [of] any Application ... for purely
13 aesthetic reasons.” *See Exhibit B*, [Plaintiff’s MSJ at pg. 27]. The full language of this clause in
14 the operative 2019 version of the subject architectural guidelines in facts states:

- 15
16 “d. Grounds for Disapproval: The Committee may recommend disapproval and the Board
may disapprove any Application:
- 17 i. If such Application does not comply with EPCC Governing Documents
including any ADCSG adopted by the Board.
 - 18 ii. Because of the reasonable dissatisfaction with grading plans; location of the
19 proposed improvement on a lot; finished ground elevation; color scheme; exterior
20 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.
 - 21 iii. Because the plans are not harmonious with the design and character of the
existing house, or adjacent houses and structures.
 - 22 iv. Because plans are not consistent with TRPA Plan Area Statement 069, Elk
23 Point.” *See Exhibit D*, [December 2019 ACDSG version at pg. 14-15 +
24 Declaration of Authenticity].

25 Various specifics as to the types of “aesthetic” reasons that may warrant disapproval
26 were provided therein, including “color scheme; exterior finish; design, proportions,
27 architecture, shape, height or style of the proposed improvement; materials used; the kind, pitch
28

1 or type of roof proposed” and “because the plans are not harmonious with the design and
2 character of the existing house, or adjacent houses and structures.” There is *nothing* arbitrary or
3 vague that could lead to uneven enforcement, contrary to Plaintiff’s allegations.

4 Plaintiff also claims that what constitutes a “Major Project” is not clearly defined by the
5 subject architectural guidelines, which prevents unit owners from being able to comply
6 therewith in submitting applications. This is patently false; the architectural guidelines’
7 operative 2019 version clearly defines Major Projects as being “...new construction, exterior
8 remodels, and building additions.” See **Exhibit D**, [December 2019 ACDSG version at top of
9 pg. 16 + Declaration of Authenticity].

11 Plaintiff’s allegation that an imposition of fines in violation of operative statutes
12 concerning fines exists within the subject architectural guidelines is also incorrect. Insofar as the
13 subject guidelines did not specify an amount for a fine, it is clearly implicit that such fine
14 amounts must be in compliance with the applicable provisions of the NRS (such as NRS
15 116.31031). The same applies to any relevant statutes permitting unit owners to take remedial
16 measure in lieu of being fined, such as NRS 116.31031 (1)(c). It is implicit by omission that the
17 Architectural Committee must apply any fines in compliance with the applicable statutory
18 provisions, and there are no provisions in the subject guidelines that undercut such statutory
19 provisions. See **Exhibit D**, [December 2019 ACDSG version at top of pg. 14 + Declaration of
20 Authenticity].
21
22

23 In parallel, the same premise applies to Plaintiff’s discussion regarding the manner in
24 which the subject architectural guidelines deal with variances, falsely alleging that no guidance
25 as to when a variance may be approved is provided therein. In fact, the operative 2019 version
26 of the architectural guidelines clearly state in detail as follows:

27 ///
28

1 “f. Variances: Any Applications that require a variance to the ADCSG shall be reviewed
2 by the Committee. A majority of the Committee may recommend to the Board to grant
3 or deny variances from the ADCSG. Variances shall not be construed as precedent-
4 setting in any way or manner. A variance may be authorized by the Board when the
5 Board finds that there are exceptional shapes or topographical conditions of a property
6 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.” See **Exhibit D**,
[December 2019 ACDSG version at pg. 15 + Declaration of Authenticity].

7 The plain language herein clearly provides specific guidance as to variances, such as “A
8 variance may be authorized by the Board when the Board finds that there are exceptional shapes
9 or topographical conditions of a property that would result in exceptional practical difficulties
10 or exceptional undue hardships upon a unit owner,” and more. Plaintiff’s assertion that such
11 specifics are absent is thus wholly false.
12

13 Plaintiff has also not demonstrated any instances wherein actual arbitrary and capricious
14 enforcement of the ACDSG has actually occurred. No examples of such conduct by
15 Architectural Committee or the Executive Board were uncovered during discovery by Plaintiff.
16 Indeed, Plaintiff himself admits during his deposition that he did not know of any specific
17 instances of arbitrary and capricious enforcement.
18

19 “Q: Okay. Let's go to -- one second here. Go to number two on paragraph 11, and I'm
20 just going to read that again very quickly into the record. "The Guidelines create rules
21 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
enforcement, sir?

22 ...

BY MR. JONES:

23 Q: Go ahead and answer, sir.

A: I object.

24 MS. WINTERS: Do you know?

THE WITNESS: No.

25 BY MR. JONES:

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

A: Yes.

27 Q: Okay. And let me move on to the next one then very quickly, number 3. "The
28 Guidelines are vague and not sufficiently explicit to inform unit property owners for

1 compliance in violation of NRS 116.31065(2)."· What guidelines do you believe are
2 vague and not sufficiently explicit to inform unit property owners for compliance?

3 ...

4 BY MR. JONES:

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

7 A: I don't know.

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

13 A: Not really."

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

15 In the absence of any concrete examples of actual arbitrary and capricious, it is doubly
16 evident by extension (in addition to all other arguments asserted above) that the subject
17 architectural guidelines are sufficiently specific as to avoid any such illegal arbitrary and
18 capricious enforcement.

19 Thus, Plaintiff has failed to demonstrate that vague drafting of the subject architectural
20 guidelines that have created arbitrary and capricious enforcement and/or confusion as to how to
21 comply in the part of unit owners, and his request for summary judgment as to these issues must
22 fail. Again, also, even if the Court finds that summary judgment in favor of Defendant is
23 unwarranted at this time, a substantial issue of material fact remains as to these issues, as clearly
24 articulated herein.

25 **4) Section "E" Of The Subject Motion Further Fails To Demonstrate Any Failure**
26 **Of Defendant To Timely Provide Required Documents Under NRS 116.31175**

27 Plaintiff's fourth cause of action alleges that Defendant did not timely provide copies of
28 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. Plaintiff's subject motion

1 does not specify at all what documentation was improperly withheld aside from “various emails
2 between board members potentially discussing the subject architectural guidelines.”

3 The plain language of the applicable statutes, NRS 116.31175 and NRS 116.3118,
4 however, make absolutely no provision that communications between board members need to be
5 preserved or produced, let alone communications regarding architectural guidelines. Such
6 materials clearly fall outside of the scope of said statutes, and Plaintiff has not specified in the
7 subject motion that any other types of documents other than such communications were not
8 timely produced. Moreover, of these emails, those determined to be relevant were produced
9 during discovery upon reasonable inquiry (Plaintiff concedes that not all of these emails were
10 relevant, and Defendant is only required to disclose insofar as relevant).

11
12 Thus, Plaintiff has not met his burden of proof as to this claim, and it appearing that all
13 documents that must be provided to unit owners pursuant to a NRS 116.31175 and NRS
14 116.3118 were provided to Plaintiff timely by extension, there remains no issue of material fact
15 as to this cause of action in favor of Defendant and not Plaintiff- or at the very least indicative of
16 a triable issue of fact as to this cause of action.

17
18 **5) Plaintiff’s Fifth Cause Of Action For Declaratory Relief Fails As No Actual**
19 **Controversy Exists**

20 As fully articulated in all of the above sections of this opposition, no actual controversy
21 continues to exist, as in fact, summary judgment is warranted in favor of Defendant as to each
22 and every issue raised by Plaintiff in his subject motion. Thus, there also remains no question of
23 material fact as to this cause of action, and Plaintiff is entitled to no declaratory relief. However,
24 even if the Court does not find that summary judgment in favor of Defendant is warranted, it is
25 beyond dispute that questions of material fact remain as to all of Plaintiff’s causes of action, and
26
27
28

1 that by extension, a determination as to whether any declaratory relief is warranted must be
2 reserved for the time of trial.

3 **6) Conclusion**

4 Plaintiff Motion has repeatedly mischaracterized or furtively obfuscated the true nature
5 of the applicable law and the Bylaws of EPCC in this matter, as well as various applicable facts.
6 Defendant contends that summary judgment is in fact warranted in Defendant's favor rather
7 than Plaintiff's- yet in any case, it is clear that substantial issues of material fact remain as to
8 each and every one of Plaintiff's causes of action, as fully articulated herein, even in the event
9 that the Court does not find that Defendant is entitled to summary judgment.
10

11 DATED this 19th day of November, 2020.

12 **RESNICK & LOUIS, P.C.**

13
14 By: 

15 _____
16 PRESCOTT JONES
17 Nevada Bar No. 11617
18 JOSHUA ANG
19 Nevada Bar No. 14026
20 8925 W. Russell Road, Suite 220
21 Las Vegas, NV 89148
22 *Attorneys for Defendant*
23 *Elk Point Country Club Homeowners Assn., Inc.*
24
25
26
27
28

1
2
3 **CERTIFICATE OF SERVICE**
4

5 I HEREBY CERTIFY that service of the foregoing DEFENDANT'S
6 OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT was served
7 this 19th day of November, 2020, by:

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

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

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

18 Karen L. Winters, Esq.
19 LAW OFFICE OF KAREN L. WINTERS
20 P.O. Box 1987
21 Minden, NV 89423
22 Counsel for Plaintiff
23 *Attorneys for Plaintiff*

24
25
26
27
28


An Employee of Resnick & Louis, P.C.

Exhibit A

Exhibit A

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District Court Clerk

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CLERK
M. BIAGGINI
DEPUTY

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**
10 **Jerome F. Moretto 2006 Trust,**

11 **Plaintiff,**

COMPLAINT

EXEMPT FROM ARBITRATION

12 v.

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

17 **Defendants.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 WHEREFORE, Plaintiff prays for relief as follows:

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

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

Dated: August 16, 2019

LAW OFFICE OF KAREN L. WINTERS



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

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

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

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

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

9 **-OR-**

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

11 A specific state or federal law, to wit:

12 _____
(State specific state or federal law)

13 **-or-**

14 For the administration of a public program

15 **-or-**

16 For an application for a federal or state grant

17 **-or-**

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

19
20 Date: August 16, 2019

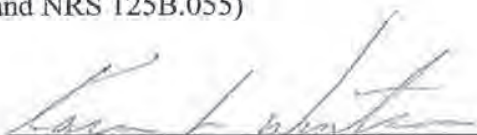
21 
22 _____
23 KAREN L. WINTERS
24 Attorney for Plaintiff
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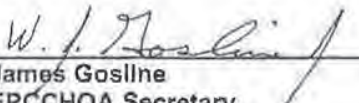
EXHIBIT 1

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 hanging boards, posts, etc., shall be promptly repaired. Fences subject to sun and water damage should be treated each spring as soon as outdoor temperatures allow for painting and/or staining. Perimeter lot fences shall be treated in a consistent manner throughout. Fences may be repaired, painted or stained in order to restore them to their original condition. Any changes, including but not limited to, paint and stain color, shall be pre-approved in writing by the Board. Owners, who have a fence and/or wall in disrepair after having been sent written notice to repair or replace fences and/or walls, shall be subject to fines and penalties.

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

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

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

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

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

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

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

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

XII. The Architectural Review Committee Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. Submittal of Application with Preliminary Design for Major Projects

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

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

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

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

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

The preliminary design Application submittal shall include:

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

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

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

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

XIV. Submittal of Application with Final Design for Major Projects

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

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

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

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

XV. Site Inspection

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

XVI. Pre-Construction Conference

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

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

XVII. Compliance Deposit for Major Projects

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

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

XVIII. Commencement of Construction

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

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

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

XIX. Inspections of Work in Progress

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

XX. Subsequent Changes

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

XXI. Final Release

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

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

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

XXII. Right of Waiver

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

XXIII. Exemptions

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

XXIV. Review of Minor or Major Alterations to Existing Structures

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

Exhibit B

Exhibit B

1 CASE NO. 19-CV-0242

2 DEPT. NO. I

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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,

Plaintiff,

11

v.

12

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

14

Defendants.

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NOTICE IS HEREBY GIVEN and Plaintiff, JEROME MORETTO, Trustee of the Jerome
17 F. Moretto 2006 Trust, by and through his attorney, KAREN L. WINTERS, ESQ., hereby moves for
18 summary judgment or, in the alternative, summary adjudication of issues. This motion is made on
19 the grounds that the creation of the Architectural Design and Review Guidelines ("Guidelines") and
20 the Architectural Review Committee ("Committee") created therein were formed in violation of
21 Nevada law and the Bylaws governing the Defendant.

22

This Motion is based upon the Statement of Undisputed Facts hereunder, the Declaration of
23 Karen L. Winters and the Request for Judicial Notice filed herewith, and on the attached
24 Memorandum of Points and Authorities.

25

DATED: November 2, 2020

26

LAW OFFICE OF KAREN L. WINTERS

27



28

Karen L. Winters, Esq., SB# 3086
P.O. Box 1987
Minden, NV 89423
(775) 782-7933
Attorney for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Jerome Moretto, Trustee, by and through his attorney of record, Karen L. Winters,
3 hereby submits Memorandum of Points and Authorities in support of the Motion for Summary
4 Judgment or, in the alternative, Summary Adjudication of Issues.

5 **I. STATEMENT OF THE CASE**

6 This matter was filed on August 16, 2019. This was followed closely by a Motion for
7 Preliminary Injunction. On October 3, 2019, Nancy Gilbert filed a Motion to Intervene in the action.
8 On March 9, 2020, the Court held the hearing on the Motion for Preliminary Injunction, which was
9 denied. On that same date, the Court denied Ms. Gilbert’s Motion to Intervene. The Court issued a
10 Scheduling Order on May 13, 2020, and an Amended Scheduling Order and Trial Setting were filed
11 on July 13, 2020.

12 **II. SEPARATE STATEMENT OF UNDISPUTED RELEVANT FACTS**

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<u>Fact No.</u>	<u>Fact</u>	<u>Source</u>
14 1.	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.	Admitted in Defendant’s Answer to Paragraph 2 of the Complaint, on file herein.
15 2.	EPCC’s current corporate Bylaws (“Bylaws”) are the Amended and Restated Bylaws recorded as Document No. 0653319 on August 26, 2005 in the Official Records of Douglas County, Nevada, with further recorded amendments through August 7, 2018 as of the date of the Complaint on file herein.	Admitted in Defendant’s Answer to Paragraph 6 of the Complaint, on file herein.
16 3.	EPCC was originally incorporated as the “Nevada Elks Tahoe Association” in 1925 as a “social club” for the Reno and Tahoe Elks Club members.	Admitted in Defendant’s Answer to Paragraph 2 of the Complaint, on file herein; Declaration of Robert Felton in Support to Opposition to Motion for Preliminary Injunction filed herein on or about September 28, 2019; <i>see, also, State v. University Club</i> , 35 Nev. 475, 130 P. 468 (1913)

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1	4.	The Bylaws of EPCC only allow the Board to create an audit committee and an election committee.	Exhibit 1 to Complaint admitted in Defendant's Answer to Paragraph 6 of the Complaint, on file herein.
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3	5.	The EPCC Bylaws only allow the Executive Board to delegate its duties to an Election Committee for annual elections, and a Finance Committee for an annual audit.	Exhibit to Complaint admitted in Defendant's Answer to Paragraph 6 of the Complaint, on file herein.
4			
5	6.	Article III, Section 2 of the current Bylaws states that "The Executive Board shall have the power to conduct, manage and control the affairs and business of the Corporation, and to make rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation, and the Bylaws of the Corporation."	<i>Id.</i>
6			
7	7.	The Architectural Review Committee meetings were not properly noticed to any unit members.	Deposition of Nancy Gilbert, p.33, ll. 1-4 and 10-16; Deposition of Charles Jennings, p. 14, ll. 17-22, each are attached as Exhibits to the Declaration of Karen L. Winters, filed herewith.
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9	8.	EPCC operates common areas and facilities for the benefit of the fee title owners of individual units within its development.	Admitted in Defendant's Answer to Paragraph 7 of the Complaint, on file herein.
10			
11	9.	The development currently consists of approximately 99 parcels ("units").	Declaration of Jerome Moretto, filed herein on August 28, 2019, ¶4 in support of the Motion for Preliminary Injunction; Deposition of Charles Jennings, p. 50, ll. 17-21, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith
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13	10.	When EPCC first chose to allow for fee title transfer of parcels within the EPCC to individual members through amendments to its Bylaws in 1929, each deed of conveyance contained a provision stating that: "It is expressly understood that the Grantee hereof and the property and premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators, successors, or assigns."	"Reply in Support of Counter-motion to Cure Illegibility", at Exhibit "B" attached thereto, filed herein on or about November 15, 2019.
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11.	For the last 95 years, from the inception of EPCC in 1925 to the present, the only “rules and regulations” effecting individual units addressed general construction of improvement requirements on the individual parcels.	“Reply in Support of Countermotion to Cure Illegibility”, at Exhibit “B” attached thereto, filed herein on or about November 15, 2019; 2005 Bylaws, recorded 8/26/2005, at page 14, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
12.	The remainder of the “rules and regulations” addressed the community governance and use of the beach, marina and common areas, capital improvements on the commonly owned portions of EPCC, governance of the Executive Board and EPCC, and the role of EPCC in approving transfers of the members’ parcels. (The 2019 set of rules also includes rules regarding renters, which is the subject of separate litigation with EPCC)	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, identifying the dates of each rule adopted at the end of each Section, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
13.	Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust (“Moretto”) is the fee title owner of that certain residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which is located within, and a part of the EPCC development.	Admitted in Defendant’s Answer to Paragraph 8 of the Complaint, on file herein.
14.	Moretto, either as trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990.	Id.
15.	Moretto’s fee title interest in this property contains no view restrictions, view easements, building setback requirements, minimum garage space restrictions, building size restrictions, landscaping restrictions, easements for public sidewalks, or any other real property restriction set forth in the initial “Architectural and Design Control Standards and Guidelines” (“Guidelines”) enacted on March 31, 2018.	Id.

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16.	Parts of the Moretto residence are 80 years old and not constructed to today's building codes and requirements.	Douglas County Assessor's record of original construction year of 1936, attached as an Exhibit to Declaration of Karen L. Winters, filed herewith; <i>see, also</i> , Exhibit H at p. 16-17, attached to Defendant's "Ex Parte Request for An Order Shortening Time and Motion for Limited Extension of Discovery", filed herein on or about September 26, 2020.
17.	On March 31, 2018, the Executive Board of EPCC enacted the Guidelines purportedly regulating design, architecture and construction of improvements on real property individual units within the boundaries of EPCC.	Admitted in Defendant's Answer to Paragraph 9 of the Complaint, on file herein.
18.	The initial Guidelines adopted on March 31, 2018 state that the duties of the Architectural Review Committee created in the Guidelines (the "Committee") include <u>applying and enforcing</u> the Guidelines as the Committee "sees fit".	Section VI of the Guidelines, attached to the Complaint as Exhibit 2, on file herein.
19.	The Board changed Section 6 of the initial Guidelines in the current version of the Guidelines, in that the Committee is identified as an "agent of the EPCC, as directed by the Board", its duties continue to include <u>applying and enforcing</u> the Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at pp. 11-12, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
20.	The March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto's individual unit. by imposing setback requirements on improvements that would effectively take Moretto's property right to rebuild even in the event of fire or natural catastrophe without Moretto's consent; and impose easements, including view easements which restrict buildings and landscaping on the Moretto property, beyond those originally in place at the time Moretto purchased the property and beyond the governmental restrictions placed on all land by the Tahoe Regional Planning Agency and Douglas County.	Admitted in Defendant's Answer to Paragraph 9 of the Complaint, on file herein, and Exhibit 2 attached to the Complaint, on file herein.

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21.	The current version of the Guidelines, in Subparagraph 14(b) states that: "Exempt activities [from the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other calamity that <u>are rebuilt in substantial compliance with the design of the original structure</u> ".	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
22.	The Guidelines have been amended twice since they were originally forced upon Mr. Moretto, in June and September 2018, and merged into a consolidated set of "Rules, Regulations and Guidelines" for EPCC on September 14, 2019, which were later reiterated along with the rules governing the common areas, in December 2019.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 18 (EPCC ELK0325) identifying the dates of adoption and amendments, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
23.	Moretto objected to the initial Guidelines and requested to present those objections to the Executive Board through a letter dated from May 12, 2018.	Admitted in Defendant's Answer to Paragraph 10 of the Complaint, on file herein.
24.	The Executive Board finally included Moretto's objections and issues on the December 15, 2018 agenda of the Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the Executive Board and a certified court reporter on said date.	<i>Id.</i>

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,

District Court

vs.

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 3, PART 2**

TODD R. ALEXANDER
Nevada Bar No. 10846
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Nevada Bar No. 0950
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Attorneys for Appellant
JEROME MORETTO, TRUSTEE OF THE
JEROME F. MORETTO 2006 TRUST

1	25.	Moretto's objections, contained in his May 12, 2018 letter, include that: (1) the Executive Board had no authority over the individual units under the Bylaws to create a "Design Review Committee" (hereinafter, the "Committee") delegating the Executive Board's authority to a committee to develop rules and regulations governing the design, architecture and construction of improvements within EPCC boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not sufficiently explicit to inform unit property owners for compliance in violation of NRS 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard in violation of NRS 116.31065(5); (6) the Guidelines purport to create real property restrictions which are restrictive covenants on individual units taken <i>ultra vires</i> ; (7) the Guidelines impose setback requirements, without Moretto's consent, on improvements that would effectively take Moretto's property right to rebuild for any reason; and (8) the Guidelines impose easements, including view easements and a pedestrian walkway easement, which are restrictive covenants taken <i>ultra vires</i> on individual units.	<i>See</i> , Complaint filed herein; <i>see, also</i> , the "Alternative Dispute Resolution Claim Form" filed with the Nevada Real Estate Division on March 28, 2019 referred to therein and attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
2	26.	Subparagraph XII(2) of the initial Guidelines states that the Committee is given 45 days to review any 'Application' for modification, new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or complexity of the proposed work to be done.	Exhibit 2 of the Complaint on file herein.
3	27.	The 45-day review period has no connection to the size of the project, and further fails to take into consideration the time of year at which any Application is made which would effect some projects under TRPA rules and regulations.	<i>Id.</i>
4	28.	At XII(3), the Guidelines state that the "Committee may recommend disapproval ...[of] any Application ... for purely aesthetic reasons."	<i>Id.</i>

1	29.	“Aesthetics”, by definition, are the subjective conclusions of individuals as to what constitutes “beauty” and “good taste”. As a result, any Committee or Board member can decide to disapprove an Application based solely on their individual sense of beauty or good taste, without even considering the aesthetic value to the unit owner. The two examples stated in Undisputed Fact Nos. 26 and 28 remain in the current version Guidelines.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, at p. 14 (EPCC ELK0321), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
2	30.	Not only does the Major Application process increase the cost to be paid to the Committee, but it increases the cost of the project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted to the Committee for any “Major Project”.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, at p. 16 (EPCC ELK0323), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
3	31.	The Committee could decide that something as simple as replacing a garage door to be a “Major Project”, greatly increasing the cost of each planned improvement of a residence. The current version of the Guidelines reduces this application review fee to \$200, but imposes the same extensive documentation as the initial Guidelines.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, at pp. 15-16 (EPCC ELK0322-323), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
4	32.	The latest iteration of the Guidelines also retains restrictive covenants that would impose setback requirements and view easements restricting building size and height and landscaping on the Moretto property.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, at p. 13 (EPCC ELK0320), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
5	33.	Nowhere in the initial Guidelines is there any stated amounts for any fines (although there is an allusion to a “Fine Schedule” at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	Exhibit 2 attached to the Complaint on file herein.
6	34.	As in the initial Guidelines, nowhere in the current Guidelines is there any stated amounts for any fines (although there is an allusion to a “Fine Schedule” at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, at p. 14 (EPCC ELK0321), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.

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35.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit owner to request a variance of the “recommendation” that all construction not exceed 3500 square feet of floor area, but gives no indication why or under what circumstances a variance would be approved.	Exhibit 2 attached to the Complaint on file herein.
36.	Subparagraph XII of the initial Guidelines states that all Applications that include a variance would first be reviewed by the Committee, then forwarded to the Executive Board with the Committee’s recommendation to approve or disapprove, however there is no guidance in that short paragraph to either the Committee or Executive Board in reaching their decisions. As a result, the requests for variances can be treated differently from unit owner to unit owner, with no consistency.	Exhibit 2 attached to the Complaint on file herein.
37.	The current Guidelines appear to attempt to resolve this issue, through a more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the current Guidelines allow for amendments to the Guidelines on the recommendations of the Architectural Review Committee “as it sees fit”, thereby allowing an amendment, however temporary, to be made on the recommendation of the Committee to the Board and without any unit owner involvement.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, (EPCC ELK0317-325), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
38.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit owner to request a variance of the “recommendation” that all construction not exceed 3500 square feet of floor area, but gives no indication why or under what circumstances a variance would be approved.	Exhibit 2 attached to the Complaint on file herein.
39.	Moretto’s objections were not resolved at the Executive Board meeting, therefore Moretto filed an “Alternative Dispute Resolution Claim Form with the Nevada Department of Business and Industry Real Estate Division, Office of the Ombudsman for Common-Interest Communities and Condominium Hotels” on March 28, 2019, requesting mediation.	<i>See</i> , Complaint filed herein; <i>see, also</i> , the “Alternative Dispute Resolution Claim Form” filed with the Nevada Real Estate Division on March 28, 2019 referred to therein and attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.

1	40.	Mediation between Moretto and EPCC occurred on May 31, 2019, which did not result in a resolution. The claim was closed by the Nevada Real Estate Division by letter dated June 20, 2019.	Admitted in Defendant's Answer to Paragraph 14 of the Complaint, on file herein.
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4	41.	On August 3, 2019, the EPCC Executive Board held its monthly meeting. Included in the agenda was an item regarding "Revision and Consolidation of EPCC Rules and Regulations", and to "[d]iscuss the plan to review the ADCSG [the Guidelines] by ARC [the Committee].	"Declaration of Jerome Moretto filed in support of Motion for Preliminary Injunction", filed herein on 9/2/2019, and Exhibit 7 thereto.
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7	42.	On August 13, 2019, Moretto received the proposed new EPCC "Rules, Regulations and Guidelines" intended to consolidate the individuals rules, including the Guidelines.	<i>Id.</i> , and Exhibit 8 attached thereto.
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10	43.	The proposed new guidelines contained substantially the same rules as those imposed by the March 31, 2018 Guidelines, with the exception that the three-foot sidewalk easement imposed on unit owners became a 'recommendation' rather than a requirement. The Guidelines have been amended at least twice, with the latest iteration contained within a set of "Rules and Regulations" issued in December 2019.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, (EPCC ELK0317-325) identifying the dates of adoption and amendments, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
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15	44.	Mr. Moretto made a demand for EPCC records on May 12, 2018. Although some requested documents were provided prior to the 21 day statutory deadline, a number were not presented until December 7, 2018, and later.	Letter dated 5/12/18 (Bates Nos. JM107-108) attached as Exhibit to Declaration of Karen L. Winters, filed herewith; <i>see, also</i> , Recorded documents first provided as Exhibits attached to EPCC's "Reply in Support of Countermotion to Cure Illegibility", filed herein on or about November 15, 2019
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21	45.	Further requested documents were not provided until after the instant litigation began and at the hearing on the preliminary injunction in this matter on March 9, 2020.	<i>Id.</i>
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24	46.	Others were not provided at all to date and were the subject of the Order Compelling Further Responses to discovery.	<i>See</i> , "Motion to Compel Defendant to Further Respond to Discovery" filed herein on September 1, 2020 and the "Order Granting Motion" for further discovery, filed herein on October 2, 2020.
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1 2 3 4	47. In the Opposition to that Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were provided in the further documents supplied.	<i>See</i> , “Defendant’s Opposition to Plaintiff’s Motion to Compel” filed herein on or about September 16, 2020; Declaration of Karen L. Winters, filed herewith.
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5 **III. STATEMENT OF RELEVANT FACTS**

6 Defendant ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION,
7 INC. (“EPCC”) is a Nevada non-profit corporation formed on March 23, 1925 as a “social club” for
8 Reno and Tahoe Elks Club members, with its principal place of business in Douglas County,
9 Nevada. Undisputed Fact No. 1. EPCC’s current corporate Bylaws (“Bylaws”) are the Amended and
10 Restated Bylaws recorded as Document No. 0653319 on August 26, 2005 in the Official Records
11 of Douglas County, Nevada, with further recorded amendments through August 7, 2018 as of the
12 date of the Complaint on file herein. Undisputed Fact No. 2. The Articles of Incorporation and
13 Bylaws currently govern EPCC. There is no Declaration of Covenants, Conditions, or Restrictions
14 for EPCC. The Bylaws of EPCC only allow the Board to create an audit committee and an election
15 committee and to delegate duties to the Election Committee for annual elections, and the Finance
16 Committee for an annual audit. Undisputed Facts No. 4. The EPCC Bylaws do not allow the
17 Executive Board to delegate any of its other duties under the Bylaws, either through an explicit
18 delegation or through an agent. It has been given no authority under the Bylaws to impose property
19 restrictions on individual units.

20 When EPCC first chose to allow for fee title transfer of parcels within the EPCC to
21 individual members, through amendments to its Bylaws in 1929, each deed of conveyance contained
22 a provision stating that: “It is expressly understood that the Grantee hereof and the property and
23 premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said
24 grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators,
25 successors, or assigns.” Undisputed Fact No. 10. For the last 95 years, from the inception of EPCC
26 in 1925 to the present, the only “rules and regulations” affecting individual units is set forth in the
27 Bylaws addressed only that the Executive Board must approve any construction of improvement on
28

1 the individual parcels. Undisputed Fact No. 11. The remainder of the “rules and regulations”
2 addressed the community governance and use of the beach, marina and common areas, capital
3 improvements on the commonly owned portions of EPCC, governance of the Executive Board and
4 EPCC, and the role of EPCC in approving transfers of the members’ parcels. Undisputed Fact No.
5 12.

6 In the current Bylaws, Article III, Section 2 states “The Executive Board shall have the power
7 to conduct, manage and control the affairs and business of the Corporation, and to make rules and
8 regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation, and
9 the Bylaws of the Corporation.” Undisputed Fact No. 6 (Emphasis added.) The Board cannot
10 delegate to a Committee the authority to act in a manner the Board itself cannot.

11 EPCC operates common areas and facilities for the benefit of its members, who are the fee
12 title owners of individual units within its development. Undisputed Fact No. 8. The development
13 currently consists of approximately 99 parcels (“units”). Undisputed Fact No. 9. Jerome Moretto,
14 Trustee of the Jerome F. Moretto 2006 Trust (“Moretto”) is the fee title owner of that certain
15 residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which
16 is located within, and a part of the EPCC development. Undisputed Fact No. 13. Moretto, either as
17 trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990. *Id.*
18 Nevada adopted the Common Interest Development Act a year later, in 1991. Moretto’s fee title
19 interest in this property contains no view restrictions, view easements, building setback
20 requirements, minimum garage space restrictions, building size or height restrictions, landscaping
21 restrictions, easements for public sidewalks, or any other real property restriction set forth in the
22 initial “Architectural and Design Control Standards and Guidelines” (“Guidelines”) enacted on
23 March 31, 2018. *Id.* Parts of the Moretto residence are more than 80 years old and are not
24 constructed to today’s building codes and requirements. Undisputed Fact No. 16.

25 On March 31, 2018, without any authority by any recorded Declaration of Covenants,
26 Conditions or Restrictions, or authority in the Bylaws, the Executive Board of EPCC enacted the
27 Guidelines purportedly regulating design, architecture and construction of improvements on the
28 individual units within the boundaries of EPCC. Undisputed Fact No. 17. The initial Guidelines

1 created on March 31, 2018, in Paragraph VI, include, as part of the Committee’s duties, that it shall
2 “apply and enforce those [Guidelines] which have been approved and adopted by the Board and as
3 the Committee sees fit”. (Emphasis added.) Undisputed Fact No. 18. Although the Board has
4 attempted to soften this clear violation of the Bylaws and NRS 116.3106 in later versions of the
5 Guidelines, in that the Committee is identified as an “agent of the EPCC, as directed by the Board”,
6 its duties continue to include applying and enforcing the Guidelines. Undisputed Fact No. 19. No
7 authority to do this was on record when Mr. Moretto purchased his property in 1990.

8 The Guidelines have been amended at least twice since they were originally forced upon Mr.
9 Moretto on March 31, 2018, in June and September 2018, and merged into a consolidated set of
10 “Rules, Regulations and Guidelines” for EPCC on September 14, 2019, which were later reiterated
11 along with the rules governing the common areas, in December 2019. Undisputed Fact No. 22. On
12 August 3, 2019, the EPCC Executive Board held its monthly meeting. Included in the agenda was
13 an item regarding “Revision and Consolidation of EPCC Rules and Regulations”, and to “[d]iscuss
14 the plan to review the ADCSG [the Guidelines] by ARC [the Committee]. Undisputed Fact No. 41.
15 On August 13, 2019, Moretto received the proposed new EPCC “Rules, Regulations and Guidelines”
16 intended to consolidate the individuals rules, including the Guidelines. *Id.* The proposed new
17 Guidelines contained substantially the same rules as those imposed by the March 31, 2018
18 Guidelines, with the exception that the three-foot sidewalk easement imposed on unit owners became
19 a ‘recommendation’ rather than a requirement. The Guidelines have been amended at least twice,
20 with the latest iteration contained within a set of “Rules and Regulations” issued in December 2019.
21 Undisputed Fact No. 22. Though many changes were made, most of the illegal Guidelines to which
22 Mr. Moretto objected, remain.

23 The initial March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto’s
24 individual unit by imposing setback requirements on improvements that effectively take Moretto’s
25 existing property right, including the right to rebuild in the event of fire or natural catastrophe,
26 without Moretto’s consent; and impose easements, including view easements which restrict
27 buildings and landscaping on the Moretto property, beyond those originally in place at the time
28 Moretto purchased the property and beyond the governmental restrictions placed on all land by the

1 Tahoe Regional Planning Agency and Douglas County. Undisputed Fact No. 20. The current version
2 of the Guidelines attempts to cure this fatal defect, by asserting, in Subparagraph 14(b) that: “Exempt
3 activities [from the Architectural Review Committee Process] are buildings damaged or destroyed
4 by fire or other calamity that are rebuilt in substantial compliance with the design of the original
5 structure”. Undisputed Fact No. 21. This would still prevent Mr. Moretto from employing his
6 existing property rights to tear down his home and rebuild it on the same footprint, with the same
7 height, in a different style and floor plan, or to modernize his home.

8 Moretto objected to the initial Guidelines and requested to present those objections to the
9 Executive Board through a letter dated from May 12, 2018. Undisputed Fact No. 23. The Executive
10 Board finally included Moretto’s objections and issues on the December 15, 2018 agenda of the
11 Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled
12 (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the
13 Executive Board and a certified court reporter on said date. Undisputed Fact No. 24.

14 Moretto’s original objections included that: (1) (1) the Executive Board had no authority
15 over the individual units under the Bylaws to create a “Design Review Committee” (hereinafter, the
16 “Committee”) delegating the Executive Board’s authority to a committee to develop rules and
17 regulations governing the design, architecture and construction of improvements within EPCC
18 boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and
19 capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not
20 sufficiently explicit to inform unit property owners for compliance in violation of NRS
21 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set
22 forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a
23 variance from the Guidelines at the discretion of the Committee with no objective standard in
24 violation of NRS 116.31065(5); (6) the Guidelines purport to create real property restrictions which
25 are restrictive covenants taken *ultra vires* on individual units; (7) the Guidelines impose setback
26 requirements, without Moretto’s consent, on improvements that would effectively take Moretto’s
27 property right to rebuild for any reason; and (8) the Guidelines impose easements, including view
28 easements and a pedestrian walkway easement which are restrictive covenants taken *ultra vires* on

1 individual units. *Undisputed Fact No. 25.*

2 An example of the issues raised by Mr. Moretto is found in Subparagraph XII(2) of the initial
3 Guidelines, in which the Committee is given 45 days to review any 'Application' for modification,
4 new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or
5 complexity of the proposed work to be done. *Undisputed Fact No. 26.* The 45-day review period has
6 no connection to the size of the project, and further fails to take into consideration the time of year
7 at which any Application is made which would effect some projects under TRPA rules and
8 regulations. *Undisputed Fact No. 27.*

9 Another example is found in the following subparagraph. At XII(3), the Guidelines state that
10 the "Committee may recommend disapproval ...[of] any Application ... for purely aesthetic reasons."
11 *Undisputed Fact No. 28.* "Aesthetics", by definition, are the subjective conclusions of individuals
12 as to what constitutes "beauty" and "good taste". As a result, any Committee or Board member can
13 decide to disapprove an Application based solely on their individual sense of beauty or good taste,
14 without even considering the aesthetic value to the unit owner. These last two examples remain in
15 the current version Guidelines. *Undisputed Fact No. 29.* Further, not only does the Major
16 Application process increase the cost to be paid to the Committee, but it increases the cost of the
17 project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted
18 to the Committee for any "Major Project". *Undisputed Fact No. 30.* As a result, the Committee could
19 decide that something as simple as replacing a garage door is a "Major Project", greatly increasing
20 the cost of each planned improvement of a residence. The current version of the Guidelines reduces
21 this application review fee from \$1,500 to \$200, but imposes the same extensive documentation as
22 the initial Guidelines. *Undisputed Fact No. 31.*

23 In addition, nowhere in the initial Guidelines is there any stated amounts for any fines
24 (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in
25 the Guidelines), which could result in fines exceeding those allowed under NRS 116.31031(1)(c).
26 *Undisputed Fact No. 33.* This is carried over into the current Guidelines as well. *Undisputed Fact*
27 *No. 34.*

28 The initial Guidelines allow for a variance from the Guidelines at the discretion of the

1 Committee with no objective standards. At Subparagraph XI(4), it allows a unit owner to request a
2 variance of the “recommendation” that all construction not exceed 3500 square feet of floor area,
3 but gives no indication why or under what circumstances a variance would be approved. Undisputed
4 Fact No. 35. Subparagraph XII of the initial Guidelines states that all Applications that include a
5 variance would first be reviewed by the Committee, then forwarded to the Executive Board with the
6 Committee’s recommendation to approve or disapprove, however there is no guidance in that short
7 paragraph to either the Committee or Executive Board in reaching their decisions. As a result, the
8 requests for variances can be treated differently from unit owner to unit owner, with no consistency.
9 Undisputed Fact No. 36. The current Guidelines appear to attempt to resolve this issue, through a
10 more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the current
11 Guidelines allow for amendments to the Guidelines on the recommendations of the Architectural
12 Review Committee “as it sees fit”, thereby allowing an amendment, however temporary, to be made
13 on the recommendation of the Committee to the Board and without any unit owner involvement.
14 Undisputed Fact No. 37. This effectively allows the Board to alter the Guidelines to allow a variance
15 on an individual basis, only to reverse the change after the variance has been accomplished.

16 In addition, although the Architectural Review Committee purportedly received its authority
17 from the Board, it disregarded the due process requirement that its meetings be noticed to the unit
18 owners, just as the Board meetings must be. The Architectural Review Committee meetings were
19 never properly noticed to any unit members. Undisputed Fact No. 7.

20 Moretto’s objections were not resolved at the Executive Board meeting, therefore
21 Moretto filed an “Alternative Dispute Resolution Claim Form with the Nevada Department of
22 Business and Industry Real Estate Division, Office of the Ombudsman for Common-Interest
23 Communities and Condominium Hotels” on March 28, 2019, requesting mediation. Undisputed Fact
24 No. 31. Mediation between Moretto and EPCC occurred on May 31, 2019, which did not result in
25 a resolution. The claim was closed by the Nevada Real Estate Division by letter dated June 20, 2019.
26 Undisputed Fact No. 40.

27 The failure of EPCC to comply with the law is no clearer than in its failure to comply with
28 Plaintiff’s demand for EPCC records on May 12, 2018. Although some requested documents were

1 provided prior to the 21 day statutory deadline, a number were not presented until December 7, 2018.
2 Undisputed Fact No. 44. Further requested documents were not provided until after the instant
3 litigation began and at the hearing on the preliminary injunction in this matter on March 9, 2020.
4 Undisputed Fact No. 45. Others were not provided at all to date and were the subject of the Order
5 Compelling Further Responses to discovery. Undisputed Fact No. 46. In the Opposition to that
6 Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board
7 members. Less than a dozen were provided in the further documents supplied. Undisputed Fact No.
8 47. It is apparent EPCC is secreting records from unit owners, including Mr. Moretto, in violation
9 of their due process rights.

10 IV. ARGUMENT

11 A. This Motion is Timely and Appropriate or -

12 I. Standards for Summary Judgment and Summary Adjudication of Issues

13 NRCP 56 provides, in relevant part, that:

14 Motions for summary judgment and responses thereto shall include a concise
15 statement setting forth each fact material to the disposition of the motion which the
16 party claims is or is not genuinely in issue, citing the particular portions of any
17 pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence
18 upon which the party relies. The judgment sought shall be rendered forthwith if the
19 pleadings, depositions, answers to interrogatories, and admissions on file, together
20 with the affidavits, if any, show that there is no genuine issue as to any material fact
21 and that the moving party is entitled to a judgment as a matter of law. A summary
22 judgment, interlocutory in character, may be rendered on the issue of liability alone
23 although there is a genuine issue as to the amount of damages. An order granting
24 summary judgment shall set forth the undisputed material facts and legal
25 determinations on which the court granted summary judgment.

26 Summary judgment is proper when the moving party is entitled to judgment as a matter of
27 law, and no genuine issue remains for trial. A party opposing such a motion for summary judgment
28 must set forth specific facts showing that there is a genuine issue for trial.

29 Van Cleave v. Kietz-Mill Mini Mart, 97 Nev. 414, 415; 633 P.2d 1220, 1221 (1981).

30 A genuine issue of material fact is one where the evidence is such that a reasonable
31 jury could return a verdict for the non-moving party. The pleadings and proof offered
32 below are construed in the light most favorable to the non-moving party. However,
33 the non-moving party must, by affidavit or otherwise, set forth specific facts
34 demonstrating the existence of a genuine issue for trial or have summary judgment
35 entered against him. The non-moving party's documentation must be admissible
36 evidence, and he or she "is not entitled to build a case on the gossamer threads of

1 whimsy, speculation and conjecture.”

2 Posadas v. City of Reno, 109 Nev. 448, 452; 851 P.2d 438, 441-42 (1993).

3 In accordance with the Scheduling Order issued in this action on July 13, 2020, this Motion
4 is timely filed prior to November 2, 2020.

5 **B. The Undisputed Facts Support Summary Judgment as to the Third Cause of**
6 **Action Where Plaintiff’s Property Rights Were Violated By Adoption of the “Architectural**
7 **Design and Review Guidelines”**

8 One of the essential sticks in the bundle of property rights is the right to exclude others.
9 *Kaiser Aetna v. United States*, 444 U.S. 164, 179–180, 100 S.Ct. 383, 392–393, 62 L.Ed.2d 332
10 (1979). The power to exclude has traditionally been considered one of the most treasured strands in
11 an owner’s bundle of property rights. *See, Kaiser Aetna*, 444 U.S., at 179–180, 100 S.Ct., at
12 392–393; *see also, Restatement of Property § 7* (1936).

13 “Authorities to prove that a fee-simple estate is the highest tenure known to the law are quite
14 unnecessary, as the principle is elementary and needs no support.” *Lycoming Fire Ins. Co. of Muncy,*
15 *Pa. v. Haven*, 95 U.S. 242, 245, 24 L.Ed. 473 (1877). An owner in fee simple is presumed to be the
16 “entire, unconditional, and sole owner[] of [any] buildings as well as the land” *Id.* (Emphasis
17 added.) That presumption, of course, can be overcome by the laws of the state and the legal contracts
18 created under those laws. “Property rights are created by the State.” *Palazzolo v. Rhode Island*, 533
19 U.S. 606, 626, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001). As such “the existence of a property interest
20 is determined by reference to ‘existing rules or understandings that stem from ... source[s] such as
21 state law.’ ” *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164, 118 S.Ct. 1925, 141 L.Ed.2d 174
22 (1998) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972));
23 *accord United States v. Causby*, 328 U.S. 256, 266, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946).

24 The focus of the Complaint is not only on EPCC’s violation of Mr. Moretto’s property rights
25 and basic due process rights, but on how the Guidelines were initially created, including how they
26 were written, all of which violate the law governing Defendant EPCC. The Guidelines fail to comply
27 with property rights law, as well as statutory law governing common-interest communities and
28 corporations, and cannot be enforced under either legal theory.

1 Article III, Section 2 of the current Bylaws states that “The Executive Board shall have the
2 power to conduct, manage and control the affairs and business of the Corporation, and to make rules
3 and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation,
4 and the Bylaws of the Corporation.” Undisputed Fact No. 6. (Emphasis added.)

5 The State laws governing EPCC are found in our Constitution as well as in our statutes. The
6 very first article of the Nevada Constitution identifies our inalienable rights: “All men are by Nature
7 free and equal and have certain inalienable rights among which are those of enjoying and defending
8 life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and
9 happiness (Emphasis added.) Title 10 of our Nevada Revised Statutes is wholly devoted to further
10 detailing those rights, and Chapter 116 of Title 10 addresses the particular rights and obligations
11 created in a common-interest community such as the Elk Point Country Club Homeowners
12 Association.

13 When EPCC first chose to allow for fee title transfer of parcels within the EPCC to
14 individual members through amendments to its Bylaws in 1929, each deed of conveyance contained
15 a provision stating that: “It is expressly understood that the Grantee hereof and the property and
16 premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said
17 grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators,
18 successors, or assigns.” Undisputed Fact No. 10. This is the only legal constraint on Moretto’s fee
19 title ownership of his residential property within EPCC’s boundaries. EPCC’s authority is set forth
20 in its Articles of Incorporation, as well as the Bylaws, neither of which retain any rights to EPCC to
21 enact or enforce restrictive covenants on individual units, contained in the Guidelines. Nevada has
22 recognized “restrictive covenants” as a property right. *See, Meredith v. Washoe County School*
23 *District*, 84 Nev. 15, 17, 435 P.2d 750, 752 (1968). As such, they cannot be created on Moretto’s
24 property without his consent. The March 31, 2018 Guidelines attempt to impose restrictive
25 covenants on Moretto’s individual unit, by imposing setback requirements on improvements that
26 would effectively take Moretto’s property right to even rebuild in the event of fire or natural
27 catastrophe without Moretto’s consent; and impose easements, including view easements which
28 restrict buildings and landscaping on the Moretto property, beyond those originally in place at the

1 time Moretto purchased the property and beyond the governmental restrictions placed on all land by
2 the Tahoe Regional Planning Agency and Douglas County. The current version of the Guidelines
3 attempts to cure this fatal defect, by asserting, in Subparagraph 14(b) that: “Exempt activities [from
4 the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other
5 calamity that are rebuilt in substantial compliance with the design of the original structure”.
6 Undisputed Fact No. 21. Parts of the Moretto residence are more than 80 years old and not
7 constructed to today’s building codes and requirements. Undisputed Fact No. 16. This eliminates Mr.
8 Moretto’s right to remodel his home and bring it to current building codes in the event of fire or
9 natural catastrophe. Further, this would still prevent Mr. Moretto from tearing down the house and
10 building a more modern, very different, house on the same footprint. As a result, those Guidelines
11 are not within EPCC’s authority and are *ultra vires*; i.e. *void ab initio*.

12 A competent grantor by appropriate covenants could, of course, convey the right
13 claimed here, and equity would enforce it. But when a right ‘consists in restraining
14 the owner from doing that with, and upon, his property which, but for the grant or
15 covenant, he might lawfully have done,’ it is an easement, sometimes called a
16 negative easement, or an amenity. *Trustees of Columbia College v. Lynch*, 70 N.Y.
17 440, 447, 26 Am.Rep. 615 (1877). ‘An equitable restriction,’ which prevents
18 development of property by building on it, has been said to be ‘an easement, or
19 servitude in the nature of an easement,’ a ‘right in the nature of an easement,’ and an
20 ‘interest in a contractual stipulation which is made for their common benefit.’ Such
21 ‘equitable restrictions’ are real estate, part and parcel of the land to which they are
22 attached and pass by conveyance. *River-bank Improvement Co. v. Chadwick*, 228
23 Mass. 242, 246, 117 N.E. 244, 245 (1917). A contractual restriction which limits the
24 use one may make of his own lands in favor of another and his lands is ‘sometimes
25 called a negative easement, which is the right in the owner of the dominant tenement
26 to restrict the owner of the servient tenement in the exercise of general and natural
27 rights of property.’ It is an interest in lands which can pass only by deed and is in
28 every legal sense an incumbrance. *Uihlein v. Matthews*, 172 N.Y. 154, 158, 64 N.E.
792, 793 (1902). (Emphasis added.)

Chapman v. Sheridan-Wyoming Coal Co., 338 U.S. 621, 626-27 (1950).

23 Under property rights laws, common-interest development boards are in charge of corporate
24 business and the common areas, but not the individual units, unless something further is contained
25 in a recorded declaration of covenants, conditions and restrictions, or the initial Articles and Bylaws
26 or agreed to by all members of an association, giving the board that additional power. This Board
27 is attempting to use its corporate rule-making powers to impose property restrictions on the
28 individual units, such as Mr. Moretto’s individual unit. This is not a typical common-interest

1 community where there are recorded Covenants, Conditions, and Restrictions in place, prior to
2 purchase of the individual units, that give the Board the power to impose property restrictions on the
3 individual units. The only proper method to do this is to obtain a vote of the members to amend their
4 Bylaws to give the Board authority to act as it apparently intends; however, to impose property
5 restrictions on individual unit owners requires consent of that unit owner. As Mr. Moretto does not
6 agree to these property restrictions that did not exist when he purchased his individual unit, they
7 cannot be retroactively imposed upon him now under the corporation's rule-making authority. A
8 good example of this is the three foot easement that was given in the initial guidelines from the front
9 property line of each property. This is simply theft of and abetting trespass on Mr. Moretto's
10 property, without any reason or authority.

11 Restrictive covenants on real property can only be created through a deed restriction imposed
12 by the prior property owner at the time of transfer, or by contract between the current property owner,
13 as the owner of the servient tenement, and the entity desiring the restrictive covenants, the dominant
14 tenement holder, upon payment of valid consideration. Neither has occurred on the Moretto property.

15 The clearest explanation of why EPCC's efforts to impose restrictions through corporate
16 rules, rather than its governing documents, is a violation of Mr. Moretto's property rights is best
17 summed up in the Restatement (Third) of Property:

18 Unless a statute, or the declaration, provides a more expansive power, an
19 association's authority to impose restrictions on individually owned property, under
20 a generally worded rulemaking power, is limited to prevention of nuisance-like
21 activities (in addition to prevention of damage to common property, a power enjoyed
22 by the association even in the absence of statute, or authorizing provision in the
23 governing documents).

24 The rationale for not giving an expansive interpretation to an association's power to
25 make rules restricting use of individually owned property is based in the traditional
26 expectations of property owners that they are free to use their property for uses that
27 are not prohibited and do not unreasonably interfere with the neighbors' use and
28 enjoyment of their property. People purchasing property in a common-interest
community, which is usually subject to specific use restrictions set forth in the
declaration, are not likely to expect that the association would be able, under a
generally worded rulemaking power, to impose additional use restrictions on their
property. On the other hand, they are likely to expect that the association will be able
to protect them from neighborhood nuisances by adoption of preventative rules.
Securing private protection from nuisance-like activity is one of the frequently cited
attractions of common-interest communities. By exercising its rulemaking power, the
association can provide a more efficient means to prevent or abate nuisances than
resort to municipal authorities or to the judicial system.

1 *Restatement (Third) of Property (Servitudes) § 6.7 (2000), comment (b). (Emphasis added.)*

2 It is undisputed EPCC has no recorded declaration of property restrictions. As analyzed
3 above, EPCC has gone beyond the general corporate rule-making powers given in the Bylaws to
4 impose additional property restrictions on Mr. Moretto and the other property owners within the
5 boundaries of EPCC. As a result, the Guidelines imposing restrictive covenants must fall and
6 summary judgment on the Third Cause of Action regarding violation of Plaintiff's Property Rights
7 must be granted, imposing a permanent injunction against EPCC to prevent any effort to impose
8 restrictions on Mr. Moretto's individual unit property that is not specifically set forth in the Articles
9 of Incorporation and Bylaws.

10 In addition to an award of a permanent injunction, Mr. Moretto is entitled to attorney fees
11 pursuant to NRS 116.4117.

12 1. Subject to the requirements set forth in subsection 2, if a declarant, community
13 manager or any other person subject to this chapter fails to comply with any of its
14 provisions or any provision of the declaration or bylaws, any person or class of
15 persons suffering actual damages from the failure to comply may bring a civil action
16 for damages or other appropriate relief.
17 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise
18 provided in NRS 116.3111, a civil action for damages or other appropriate relief for
19 a failure or refusal to comply with any provision of this chapter or the governing
20 documents of an association may be brought:

21 ...
22 (b) By a unit's owner against:
23 (1) The association;

24 ...
25 6. The court may award reasonable attorney's fees to the prevailing party.
26 7. The civil remedy provided by this section is in addition to, and not exclusive of,
27 any other available remedy or penalty.

28 NRS 116.4117.

29 The primary relief sought in this action is a permanent injunction to prevent the Board and
30 the EPCC Homeowners Association from imposing illegal property restrictions on Plaintiff's
31 property. This "appropriate relief" therefore allows for attorney fees in this matter. Should the
32 injunction not be granted, then the damages for loss in value to Plaintiff's property remains as an
33 issue for trial.

34 ////

35 ////

1 **C. The Undisputed Facts Support Summary Judgment for Breach of the Bylaws**
2 **and the Laws Governing the Bylaws, set forth in the Second Cause of Action**

3 Creation of the Architectural Review Committee (“Committee”) in the Guidelines violates
4 the Bylaws and the laws governing those Bylaws. Under corporate law, at NRS 78.125(1), the Board
5 of Directors’ powers to enact rules is limited to corporate business, without any powers to enact
6 property restrictions. “Unless it is otherwise provided in the Articles of Incorporation, the board of
7 directors may designate one or more committees which, to the extent provided in the resolution or
8 resolutions or in the bylaws of the corporation, have and may exercise the powers of the board of
9 directors in the management of the business and affairs of the corporation.” (Emphasis added.) There
10 is no provision allowing the corporation to create rules to manage property it does not own. As
11 analyzed above, the deed restriction contained on each deed within the Elk Point Country Club
12 Homeowner’s Association, binds the property owner only to the properly amended Bylaws, and the
13 rules and regulations governing the corporation and common areas. The limits of a corporation under
14 Chapter 78 are further restricted for community interest development corporations under NRS
15 116.3106(1)(d), which dictates that the board cannot delegate its duties without the bylaws
16 specifically giving the board power to do so. “The bylaws of the association must: ... (d) Specify the
17 powers the executive board or the officers of the association may delegate to other persons or to a
18 community manager”. The Bylaws of EPCC only allow the Board to create an audit committee and
19 an election committee. Undisputed Fact. No. 4. As is clear under the property laws addressed above,
20 even if the Board could create any other type of committee, its purpose is limited to corporate
21 business, not to impose property restrictions on the unit members. The Board cannot delegate to a
22 committee powers it does not have.

23 The Guidelines have been amended at least twice since they were originally forced upon Mr.
24 Moretto on March 31, 2018, including in June and September 2018, and merged into a consolidated
25 set of “Rules, Regulations and Guidelines” for EPCC on September 14, 2019, which were later
26 reiterated along with the rules governing the common areas, in December 2019. Undisputed Fact No.
27 22. The initial Guidelines adopted on March 31, 2018 state that the duties of the Architectural
28 Review Committee created in the Guidelines (the “Committee”) include applying and enforcing the

1 Guidelines (Section 6 of the Guidelines, attached to the Complaint on file herein). Although the
2 Board has attempted to soften this clear violation of the Bylaws and NRS 116.3106 in later versions
3 of the Guidelines, in that the Committee is identified as an “agent of the EPCC, as directed by the
4 Board”, its duties continue to include applying and enforcing the Guidelines. Undisputed Fact No.
5 19. Identifying the Committee as an “agent of the Board” still does not delegate to the Committee
6 any authority to apply and enforce the Guidelines, without an amendment to the Bylaws allowing
7 the Board to do so, as the Board has no legal authority to impose property restrictions on individual
8 units.

9 The foregoing violations of the Bylaws and its governing laws require a permanent injunction
10 be granted, enjoining the Board (and any committee) from imposing guidelines or “rules” that
11 attempt to govern the individual units, beyond managing the affairs of the corporation and its
12 common areas.

13 As stated herein above, in addition to an award of a permanent injunction, Mr. Moretto is
14 entitled to attorney fees pursuant to NRS 116.4117.

15 The primary relief sought in this action is a permanent injunction to prevent the Board and
16 the EPCC Homeowners Association and any committee from imposing rules and restrictions beyond
17 those stated in the Bylaws. This appropriate relief therefore allows for attorney fees in this matter.
18 Should the injunction not be granted, then the damages for loss in value to Plaintiff’s property
19 remains as an issue for trial. Without an injunction, the Guidelines are a taking of Plaintiff’s property
20 rights, for which Plaintiff is entitled to compensation.

21 **D. The Undisputed Facts Support Summary Judgment as to the Second Cause of**
22 **Action Where Guidelines Imposed Failed to Comply with Statutory Requirements and the**
23 **Bylaws.**

24 EPCC was originally incorporated in 1925 as a “social club” for the Reno and Tahoe Elks
25 Club members. Undisputed Fact No. 3. For the last 95 years, from the inception of EPCC in 1925
26 to the present, the only “rules and regulations” addressed general construction of improvement
27 requirements on the individual parcels. Undisputed Fact No. 11. The remainder of the “rules and
28 regulations” addressed the community governance and use of the beach, marina and common areas,

1 capital improvements on the commonly owned portions of EPCC, governance of the Executive
2 Board and EPCC, and the role of EPCC in approving transfers of the members' parcels. Undisputed
3 Fact No. 12.

4 EPCC is subject to and governed by NRS 116.001 through 116.795, excepting therefrom
5 NRS 116.2101 through 116.2122. NRS 116.3106(1)(d) requires that the Bylaws "[s]pecify the
6 powers the executive board or the officers of the association may delegate to other persons or to a
7 community manager." The EPCC Bylaws only allow the Executive Board to delegate its duties to
8 an Election Committee for annual elections, and a Finance Committee for an annual audit.
9 Undisputed Facts Nos. 4 and 5. The EPCC Bylaws do not allow the Executive Board to delegate
10 any of its other duties under the Bylaws, either through an explicit delegation or through an agent.
11 Nevertheless, the "Guidelines" created on March 31, 2018 delegate to the Committee the duties of
12 developing and enforcing rules, regulations, standards, protocols and procedures for the design,
13 architecture, and construction of structures and landscaping within the EPCC on the individual units
14 such as Mr. Moretto's, in violation of the Bylaws. For example, in Paragraph VI, it includes, as part
15 of the Committee's duties, that it shall "apply and enforce those [Guidelines] which have been
16 approved and adopted by the Board and as the Committee sees fit". (Emphasis added.) Undisputed
17 Fact No. 18.

18 This Paragraph VI of the March 31, 2018 Guidelines is carried over to the current version,
19 in Paragraph 8, which states that "Committee duties shall be ...(2) to apply and enforce those
20 ADCSG which have been approved and adopted by the Board". Undisputed Fact No. 19. Once
21 again, therefore the current Guidelines violate NRS 116.3106(1)(d) in that the Bylaws do not allow
22 such a delegation of the Board's duties.

23 Even if the Bylaws were amended to allow delegation of its duties to a committee, the
24 committee would still be required to follow the laws governing the Board. NRS 116.31083(2)
25 requires that: "[T]he secretary or other officer specified in the bylaws of the association shall, not
26 less than 10 days before the date of a meeting of the executive board, cause notice of the meeting to
27 be given to the units' owners." NRS 116.31085(1) further requires that: "[A] unit's owner may
28 attend any meeting of the units' owners or of the executive board and speak at any such meeting. The

1 executive board may establish reasonable limitations on the time a unit's owner may speak at such
2 a meeting." If the Board were allowed to delegate any duties to the Committee, then that delegation
3 of powers is limited to the powers of the Board, including the statutory requirements that unit owners
4 be given basic due process rights as to committee meetings, including to be noticed of all meetings
5 of the Committee and an opportunity to be heard. The Board cannot delegate to a Committee the
6 authority to act in a manner the Board itself cannot. The Architectural Review Committee meetings
7 were not properly noticed to any unit members, and the Morettos, as well as other unit owners, were
8 not given the opportunity to attend. Undisputed Fact No. 7.

9 In addition to Chapter 116, EPCC, as a nonprofit cooperative association created in 1925,
10 is governed by Chapters 78 and 81. Pursuant to NRS 81.080(3) and the Bylaws, the Bylaws can only
11 be amended by a two-thirds affirmative vote of all its members, or 66 members. If two-thirds of the
12 members choose to amend the Bylaws of EPCC, to allow for delegation of the Board's authority over
13 enforcement of the rules and regulations in place, then and only then could an "Architectural Review
14 Committee" be delegated any duties at all. To date, no effort has been made to amend the Bylaws
15 to allow for this delegation of the Board's duties. Even then, though, the rules and regulations
16 created by anything less than a 100% affirmative vote by the members would not be valid to impose
17 property restrictions on the Moretto property that exceed the initial statement and intent of the
18 Articles of Incorporation and Bylaws, as argued herein above.

19 The Guidelines violate several other provisions of Chapter 116 of the Nevada Revised
20 Statutes, as outlined herein above. The requirements of Chapter 116 include NRS 116.31065, which
21 specifically requires the following:

22 The rules adopted by an association:

- 23 1. Must be reasonably related to the purpose for which they are adopted.
- 24 2. Must be sufficiently explicit in their prohibition, direction or limitation to inform
25 a person of any action or omission required for compliance.
- 26 3. Must not be adopted to evade any obligation of the association.
- 27 4. Must be consistent with the governing documents of the association and must not
28 arbitrarily restrict conduct or require the construction of any capital improvement by
a unit's owner that is not required by the governing documents of the association.
5. Must be uniformly enforced under the same or similar circumstances against all
units' owners. Any rule that is not so uniformly enforced may not be enforced against
any unit's owner.
6. May be enforced by the association through the imposition of a fine only if the
association complies with the requirements set forth in NRS 116.31031.

1 NRS 116.31065. (Emphasis added.)

2 First, in violation of NRS 116.31065(1), the Guidelines create rules that result in arbitrary
3 and capricious enforcement. One example of this in the initial Guidelines, is where the Guidelines
4 allow the Committee to “enforce ... [Guidelines] ... as the Committee sees fit”. Undisputed Fact No.
5 18. Another example in the initial Guidelines is found in Subparagraph XII(2), in which the
6 Committee is given 45 days to review any ‘Application’ for modification, new construction,
7 painting, replacing light fixtures, etc. on any unit, without regard to the size or complexity of the
8 proposed work to be done. Undisputed Fact No. 26. The 45-day review period has no connection
9 to the size of the project, and further fails to take into consideration the time of year at which any
10 Application is made which would effect some projects under TRPA rules and regulations.
11 Undisputed Fact No. 27. A third example is found in the following subparagraph. At XII(3), the
12 Guidelines state that the “Committee may recommend disapproval ...[of] any Application ... for
13 purely aesthetic reasons.” Undisputed Fact No. 28. “Aesthetics” by definition, are the subjective
14 conclusions of individuals as to what constitutes “beauty” and “good taste”. As a result, any
15 Committee or Board member can decide to disapprove an Application based solely on their
16 individual sense of beauty or good taste, without even considering the aesthetic value to the unit
17 owner. These last two examples remain in the current version of the Guidelines. Undisputed Fact
18 No. 29. Second, in violation of NRS 116.31065(2), the Guidelines are vague and not sufficiently
19 explicit to inform unit property owners for compliance. An example of this is found in the section
20 regarding the Committee review process of Applications. In Subparagraph XII(6) of the initial
21 Guidelines, the Guidelines impose a \$1,500 “application review fee” of any “Application of a Major
22 Project”, however nowhere in the Guidelines is “Major” defined, leaving the definition solely to the
23 Major Project Application itself, which can be changed without unit member input. Not only does
24 it increase the cost to be paid to the Committee, but it increases the cost of the project itself, since
25 Paragraph XIII requires extensive blueprints and documentation to be submitted to the Committee
26 for any “Major Project”. Undisputed Fact No. 30. As a result, the Committee could decide that
27 something as simple as replacing a garage door is a “Major Project”, greatly increasing the time and
28 cost of each planned improvement of a residence. The current version of the Guidelines reduces this

1 application review fee from \$1,500 to \$200, but imposes the same extensive documentation as the
2 initial Guidelines. Undisputed Fact No. 31. Further, neither version of the Guidelines give objective
3 standards for consideration by the Committee, resulting in a potential for arbitrary and capricious
4 enforcement of the Guidelines as to any particular project.

5 Third, the Guidelines are not consistent with the governing documents and arbitrarily restrict
6 conduct and the construction of the residence by a unit's owner that is not required by the governing
7 documents of the association.

8 The latest iteration of the Guidelines also retains restrictive covenants that would impose
9 setback requirements and view easements restricting building size and height and landscaping on the
10 Moretto property. Undisputed Fact No. 32. If not enjoined in the instant litigation, nothing would
11 prevent EPCC from reimposing the restrictive covenants previously contained in the March 31, 2018
12 version, including "creating" a three-foot or larger easement across the Moretto property for public
13 pedestrian use, and imposing restrictions on any type of rebuilding of his residence, other than an
14 exact copy of his current residence, including the portion built in 1936.

15 Third, the Guidelines allow for imposition of fines in violation of the requirements set forth
16 in NRS 116.31031 which is a violation of NRS 116.31065(6). NRS 116.31065(6) states that: "The
17 rules adopted by an association: ...(6) May be enforced by the association through the imposition of
18 a fine only if the association complies with the requirements set forth in NRS 116.31031."

19 NRS 116.31031 only allows fines that:

20 1. [I]f a unit's owner or a tenant or an invitee of a unit's owner or a tenant violates any
21 provision of the governing documents of an association, the executive board may, if
the governing documents so provide:

22 ...

(b) Impose a fine against the unit's owner or the tenant or the invitee of the unit's
owner or the tenant for each violation, except that:

23 ...

If the violation does not pose an imminent threat of causing a substantial adverse
effect on the health, safety or welfare of the units' owners or residents of the
common-interest community, the amount of the fine must be commensurate with the
severity of the violation and must be determined by the executive board in
accordance with the governing documents, but the amount of the fine must not
exceed \$100 for each violation or a total amount of \$1,000, whichever is less.

24
25
26
27 NRS 116.31031.

28 Nowhere in the initial Guidelines is there any stated amounts for any fines (although there is an

1 allusion to a “Fine Schedule” at Paragraph XII, the schedule is not included in the Guidelines), which
2 could result in fines exceeding those allowed under this statute. Undisputed Fact No. 33. This is
3 carried over into the current Guidelines as well. Undisputed Fact No. 34. Further, and of potentially
4 more consequence, neither the initial Guidelines nor the current Guidelines provide for any cure of
5 any violation prior to imposition of a fine, in violation of NRS 116.31031(1)(c).

6 [T]he executive board may, if the governing documents so provide:

- 7 (c) Send a written notice to cure an alleged violation, without the imposition of a
8 fine, to the unit's owner and, if different, the person responsible for curing the alleged
9 violation. Any such written notice must:
10 (1) Include an explanation of the applicable provisions of the governing documents
11 that form the basis of the alleged violation;
12 (2) Specify in detail the alleged violation and the proposed action to cure the alleged
13 violation;
14 (3) Provide a clear and detailed photograph of the alleged violation, if the alleged
15 violation relates to the physical condition of the unit or the grounds of the unit or an
16 act or a failure to act of which it is possible to obtain a photograph; and
17 (4) Provide the unit's owner or the tenant a reasonable opportunity to cure the alleged
18 violation before the executive board may take additional actions, including, without
19 limitation, other remedies available pursuant to this section.

20 NRS 116.31031(1)(c) (emphasis added).

21 Finally, in violation of NRS 116.31065(5), the initial Guidelines allow for a variance from
22 the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4),
23 it allows a unit owner to request a variance of the “recommendation” that all construction not exceed
24 3500 square feet of floor area, but gives no indication why or under what circumstance a variance
25 would be approved. Undisputed Fact No. 35. Subparagraph XII states that all Applications that
26 include a variance would first be reviewed by the Committee, then forwarded to the Executive Board
27 with the Committee’s recommendation to approve or disapprove, however, there is no guidance in
28 that short paragraph to either the Committee or Executive Board in reaching their decisions. As a
result, the requests for variances can be treated differently from unit owner to unit owner, with no
consistency. Undisputed Fact No. 36. The current Guidelines appear to attempt to resolve this issue,
through a more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the
current Guidelines allow for amendments to the Guidelines on the recommendations of the
Architectural Review Committee “as it sees fit”, thereby allowing an amendment, however
temporary, to be made on the recommendation of the Committee to the Board and without any unit

1 owner involvement. Undisputed Fact No. 37.

2 Under any one of the foregoing arguments, EPCC's enactment of the Guidelines are in
3 violation of the Bylaws and relevant statutes, therefore summary judgment on the First, Second and
4 Third Causes of Action is appropriate. Taken together, though, it is clear EPCC created a committee
5 and guidelines outside its authority and containing numerous violations of Nevada law, requiring a
6 complete dismantling of these new rules, summary judgment and the entry of a permanent
7 injunction.

8 Further, as stated herein above, in addition to an award of a permanent injunction, Mr.
9 Moretto is entitled to attorney fees pursuant to NRS 116.4117.

10 The primary relief sought in this action is a permanent injunction to prevent the EPCC,
11 through the and any committee from imposing rules and restrictions beyond those stated in the
12 Bylaws. This appropriate relief, therefore, allows for attorney fees in this matter. Should the
13 injunction not be granted, then the damages for loss in value to Plaintiff's property remain at issue
14 for trial. Without an injunction, the Guidelines are a taking of Plaintiff's property rights, for which
15 Plaintiff is entitled to compensation.

16 **E. Plaintiff is entitled to Summary Judgment as to the Fourth Cause of Action for**
17 **Violation of NRS 116.31175**

18 Plaintiff has asserted a claim for statutory fines under NRS 116.31175 for Defendant's failure
19 to timely produce requested corporate records to Plaintiff, as a member of the nonprofit benefit
20 corporation. Moretto objected to the initial Guidelines and requested to present those objections
21 to the Executive Board through letter dated from May 12, 2018. Undisputed Fact No. 23. In that
22 same letter, Plaintiff demanded, in writing, that the Executive Board provide him with copies of all
23 governing documents, documents pertaining to enactment of the Guidelines, and any records of the
24 Design Review Committee. Undisputed Fact No. 44.

25 1. Except as otherwise provided in subsection 4, the executive board of an
26 association shall, upon the written request of a unit's owner, make available the
27 books, records and other papers of the association for review at the business office
28 of the association or a designated business location not to exceed 60 miles from the
physical location of the common-interest community and during the regular working
hours of the association ...

2. The executive board shall provide a copy of any of the records described in

1 paragraphs (a), (b) and (c) of subsection 1 to a unit's owner or the Ombudsman
within 21 days after receiving a written request therefor...

2 3. If the executive board fails to provide a copy of any of the records pursuant to
3 subsection 2 within 21 days, the executive board must pay a penalty of \$25 for each
day the executive board fails to provide the records.

4 NRS 116.31175.

5 EPCC's duty to allow full access to its records to its members are further clarified in NRS
6 116.3118(2):

7 2. All financial and other records of the association must be:

8 (a) Maintained and made available for review at the business office of the
9 association or some other suitable location within the county where the
common-interest community is situated or, if it is situated in more than one county,
within one of those counties; and

10 (b) Made reasonably available for any unit's owner and his or her authorized
agents to inspect, examine, photocopy and audit.

11 This failure of EPCC is no clearer than in its failure to comply with Plaintiff's demand for
12 the records on May 12, 2018. Although some requested documents were provided prior to the 21 day
13 statutory deadline, a number were not presented until December 7, 2018. Undisputed Fact No. 44.
14 Further requested documents were not provided until after the instant litigation began and at the
15 hearing on the preliminary injunction in this matter on March 9, 2020. Undisputed Fact No. 45.
16 Others were not provided at all to date and were the subject of the Order Compelling Further
17 Responses to discovery. Undisputed Fact No. 46. In the Opposition to that Motion, EPCC identified
18 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were
19 provided in the further documents supplied. Undisputed Fact No. 47. As of the date of the instant
20 motion, therefore, it has been 1,260 days (to 11/2/20) of failure to provide copies of the requested
21 records, therefore Plaintiff is requesting a penalty of \$31,500 be levied as damages for violation of
22 NRS 116.31175.

23 **F. Plaintiff is entitled to Summary Judgment as to the Fifth Cause of Action for**
24 **Declaratory Relief**

25 The final Cause of Action for Declaratory Relief requests the Court recognize Plaintiff's
26 assertions that the Guidelines were illegally and improperly imposed on him, as well as all other
27 property owners within the Association, as set forth in the first three causes of action. In accordance
28 with the foregoing discussions regarding those claims, Plaintiff respectfully requests this Court

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,

District Court

vs.

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 3, PART 3**

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

1 acknowledge the dispute as stated in the final claim, and find the Guidelines and the Architectural
2 Review Committee overseeing and enforcing them were illegally enacted and void.

3 Any person interested under a deed, written contract or other writings constituting a
4 contract, or whose rights, status or other legal relations are affected by a statute,
5 municipal ordinance, contract or franchise, may have determined any question of
6 construction or validity arising under the instrument, statute, ordinance, contract or
7 franchise and obtain a declaration of rights, status or other legal relations thereunder.

8 NRS 30.040(1).

9 By the Complaint filed herein, Plaintiff has set forth allegations challenging the validity of
10 any real property guidelines imposed on him as a property owner within the EPCC Homeowner's
11 Association that extend the Board's authority over his individual unit beyond its limited authority
12 set forth in the Bylaws, without his approval. As outlined in the instant motion, by creating the
13 Guidelines and the Architectural Review Committee, the Board violated the Bylaws, and Nevada
14 laws governing real property, community-interest communities, and non-profit corporation law.
15 Plaintiff is now requesting this Court recognize those violations and find Plaintiff's right to quiet
16 enjoyment of his residence has been violated through those violations. Mr. Moretto requests the
17 Court grant him declaratory relief, as set forth in the Complaint.

18 V. CONCLUSION

19 When "an alleged deprivation of a constitutional right is involved, most courts hold that no
20 further showing of irreparable injury is necessary" to grant an injunction. 11A *Fed. Prac. & Proc.*
21 *Civ.* § 2948.1 (Wright & Miller) (3d ed., Oct. 2020) "As a constitutional violation may be difficult
22 or impossible to remedy through money damages, such a violation may, by itself, be sufficient to
23 constitute irreparable harm." *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997),
24 cited with approval in *City of Sparks v. Municipal Court*, 129 Nev. 348, 357 (2013). Further, a
25 violation of a constitutional requirement "must be permanently enjoined." *Schwartz v. Lopez*, 132
26 Nev. 732, 755 (2016). Finally, our courts have recognized that "real property and its attributes are
27 considered unique and loss of real property rights generally results in irreparable harm". *Dixon v.*
28 *Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987).

The Executive Board has enacted a set of corporate rules in violation of Moretto's property
rights and in violation of NRS Chapter 116. It put an illegally formed committee in charge of

1 applying and enforcing those illegally enacted rules. EPCC has violated Mr. Moretto's constitutional
2 right to acquire, possess and protect his property from intrusion by others, and to have peaceable
3 enjoyment of his property without illegal restrictions on its use. Further, the Committee itself
4 violated Mr. Moretto's due process rights. In accordance with the foregoing, Mr. Moretto is entitled
5 to a permanent injunction, enjoining EPCC from imposing any restrictions on his use of his
6 individual unit beyond the narrow restrictions set forth in the Bylaws of EPCC.

7 In the event this Court lets any part of the Board's actions stand, Mr. Moretto's property will
8 have a reduced monetary value, in an amount to be established at trial. As a result, summary
9 adjudication of the issue of liability is appropriate and requested here, in the alternative.

10 Finally, NRS 116.4117(6) entitles Plaintiff to attorney fees as the prevailing party following
11 the permanent injunction requested here. Although EPCC may have attempted to alter that
12 requirement, NRS 116.1104 provides that: "Except as expressly provided in this chapter, its
13 provisions may not be varied by agreement, and rights conferred by it may not be waived." Plaintiff
14 therefore requests attorney fees be awarded concurrently with the injunction.

15 DATED: November 2, 2020

RESPECTFULLY SUBMITTED:
LAW OFFICE OF KAREN L. WINTERS



Karen L. Winters, Esq., SB# 3086
P.O. Box 1987
Minden, Nevada 89423
775-782-7933
Attorney for Plaintiff

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(a), I certify that I am over the age of 18 years, an employee of the LAW OFFICE OF KAREN L. WINTERS, and that on this date, I caused to be deposited for mailing at the United States Post Office at Minden, Nevada, with postage thereupon fully prepaid, a true and correct copy of the NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES addressed as follows:

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

Dated: November 2, 2020


Judy M. Sheldrew

Exhibit C

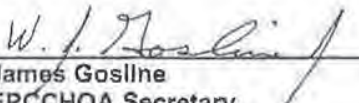
Exhibit C

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 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 onto 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. Variations: 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 variations from the ADCSG. Variations 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

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 hanging boards, posts, etc., shall be promptly repaired. Fences subject to sun and water damage should be treated each spring as soon as outdoor temperatures allow for painting and/or staining. Perimeter lot fences shall be treated in a consistent manner throughout. Fences may be repaired, painted or stained in order to restore them to their original condition. Any changes, including but not limited to, paint and stain color, shall be pre-approved in writing by the Board. Owners, who have a fence and/or wall in disrepair after having been sent written notice to repair or replace fences and/or walls, shall be subject to fines and penalties.

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

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

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

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

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

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

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

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

XII. The Architectural Review Committee Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. Submittal of Application with Preliminary Design for Major Projects

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

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

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

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

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

The preliminary design Application submittal shall include:

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

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

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

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

XIV. Submittal of Application with Final Design for Major Projects

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

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

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

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

XV. Site Inspection

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

XVI. Pre-Construction Conference

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

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

XVII. Compliance Deposit for Major Projects

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

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

XVIII. Commencement of Construction

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

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

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

XIX. Inspections of Work in Progress

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

XX. Subsequent Changes

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

XXI. Final Release

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

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

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

XXII. Right of Waiver

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

XXIII. Exemptions

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

XXIV. Review of Minor or Major Alterations to Existing Structures

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

Exhibit F

Exhibit F

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)
F. Moretto 2006 Trust,)

5)
6 Plaintiffs,)

7 vs.) Case No.

8) 19-CV-0242

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

10 Defendants.)

11 _____)

12

13

14

ZOOM VIDEOCONFERENCE DEPOSITION OF JEROME MORETTO

15

16

Taken at the Law Offices of Karen L. Winters

17

Minden, Nevada

18

19

On Monday, September 28, 2020

20

At 9:20 a.m.

21

22

23

24 Job 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

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CERTIFICATE OF REPORTER

STATE OF NEVADA)

SS:

COUNTY OF CLARK)

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

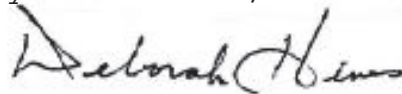
That I reported the taking of the deposition of the witness, Jerome Moretto, commencing on Monday, September 28, 2020, at 9:20 a.m.;

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

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

I further certify (1) that I am not a 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.

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

NOV 24 2020

FILED

Douglas County
District Court Clerk

NO _____

1 CASE NO. 19-CV-0242

2 DEPT. NO. I

20 NOV 24 P4:29

BOBBIE S. WILLIAMS
M. BIAGGINI

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
10 Jerome F. Moretto 2006 Trust,

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

11 Plaintiff,

11 v.
12 ELK POINT COUNTRY CLUB
13 HOMEOWNERS, ASSOCIATION, INC., a
14 Nevada non-profit corporation , and DOES
15 1- 10, inclusive,

14 Defendants.

16 COME NOW Plaintiff Jerome Moretto, by and through his attorney, Karen L. Winters of
17 LAW OFFICE OF KAREN L. WINTERS, and replies to Defendant Elk Point Country Club
18 Homeowners, Association, Inc.'s ("EPCC") Opposition to Plaintiff's Motion for Summary
19 Judgment as follows. Concurrently with the filing of Plaintiff's Motion for Summary Judgment,
20 Defendant EPCC filed a Motion for Summary Judgment, to which Plaintiff filed a timely
21 Opposition on November 13, 2020. By reference hereto, Plaintiff incorporates Plaintiff's
22 Opposition to Defendant's Motion for Summary Judgment and its supporting documentation into
23 this Reply, as though fully set forth here.

24 **I. Objection to Untimeliness of EPCC's Opposition to Plaintiff's Motion for**
25 **Summary Judgment.**

26 Plaintiff initially raises an objection to the late filing and service of EPCC's Opposition to
27 the instant Motion for Summary Judgment. Plaintiff's Motion for Summary Judgment was filed
28 and mailed on November 2, 2020. Pursuant to NRCPP 6(a)(1) and (d) and DCR 13(3), EPCC's

1 Opposition to the motion was to have been filed and mailed or served on or before November 16,
2 2020. The Ninth Judicial District Court Rules do not change those deadlines. Although Plaintiff's
3 counsel received an unofficial copy of EPCC's Opposition by email late on November 19, 2020,
4 proper service was not timely made, leaving Plaintiff at a disadvantage.

5 **II. Defendant's Response to Plaintiff's Statement of Undisputed Facts Fails to**
6 **Provide Countervailing Facts to Identify the Alleged Dispute**

7 EPCC's responses to Plaintiff's separately stated undisputed facts recognizes over two-
8 thirds of the listed facts as undisputed. The remainder, however, are not disputed by specific
9 reference to particular facts showing a dispute. Instead, broad reference is made to whole
10 documents.

11 The first fact disputed by EPCC is Plaintiff's Undisputed Fact No. 4, which states that
12 "The Bylaws of EPCC only allow the Board to create an audit committee and an election
13 committee." EPCC simply asserts that the "subject Bylaws' language explicitly grants the Board
14 broad powers to form various committee types and delegate its authority thereto" with a cite to six
15 pages of the Bylaws. Those six pages cover sections entitled Preamble, Meetings of Unit Owners,
16 Executive Board, Powers of Executive Board, Limitations of Powers, Duties of Executive Board,
17 Officers, and President. There is no further reference to any particular portion of the Bylaws.
18 Article II, Section 9 of the Bylaws authorizes the Board to create a nominating committee for the
19 following year's Board election. Article V, Section (1)(f) authorizes the Board to create a financial
20 review committee to review the annual financial condition of the corporation. EPCC identifies no
21 section of the Bylaws authorizing other committees or delegation of duties to other committees.

22 This undisputed fact only sets up Plaintiff's legal argument against the creation of an
23 Architectural Review Committee ("Committee") and delegation of powers to that committee, as
24 set forth in Plaintiff's Motion for Summary Judgment (and Opposition to EPCC's Motion for
25 Summary Judgment). EPCC has argued in its own Motion for Summary Judgment, as well as in its
26 Opposition to the instant motion, that the Board did not delegate any authority to the Committee,
27 yet Defendant's position regarding Plaintiff's Undisputed Fact No. 4 now asserts that the Bylaws
28 do allow the Board to delegate its authority. (See, EPCC's Motion for Summary Judgment, filed

1 herein, at page 7, l.1; and EPCC's Opposition to the instant motion, filed herein, p. 15, l.27 - p. 16,
2 l. 7.)

3 The second disputed fact is Plaintiff's Undisputed Fact No. 4, which states that: "The
4 Architectural Review Committee meetings were not properly noticed to any unit members." In
5 support of the dispute, EPCC merely cites to the statutory notice requirements of all Board
6 meetings, which requires the Board to give notice to all unit owners in advance of any Board
7 meetings. There is no cite to any evidence alleging the Committee meetings were noticed to Unit
8 Owners.

9 The third set of facts disputed by EPCC is Plaintiff's Undisputed Facts Nos. 10 and 11,
10 which address the historical deed restriction and practices of EPCC. In response, EPCC appears to
11 dispute those facts stating that "positions taken in inadmissible prior briefing are non-binding at
12 the time of trial", which seems to have missed the purpose of the references Plaintiff made in
13 support of those undisputed facts. In support of those undisputed facts, Plaintiff included reference
14 to the only clean and clear copy of the 1929 Bylaws, which were attached as authentic to EPCC's
15 pleading in a prior motion. Plaintiff was not making any reference to EPCC's pleading to which
16 the exhibit was attached. The balance of the supporting references to Plaintiff's Undisputed Facts
17 Nos. 10, 11 (and 12) are not disputed by any evidence cited by EPCC.

18 The fourth disputed fact is Plaintiff's Undisputed Fact No. 15, which EPCC disputes
19 simply "insofar as the meaning of 'fee title interest' is vague and ambiguous." NRS 111.070
20 recognizes "fee simple" interests in property, which is the intent in Plaintiff's Undisputed Fact No.
21 15, therefore any vagueness or ambiguity is clarified here.

22 The fourth disputed fact is Plaintiff's Undisputed Fact No. 19 states that "The Board
23 changed Section 6 of the initial Guidelines in the current version of the Guidelines, in that the
24 Committee is identified as an "agent of the EPCC, as directed by the Board", its duties continue to
25 include applying and enforcing the Guidelines." The only reason for EPCC's dispute of this fact is
26 that it alleges the fact was "taken out of context", which is not a legitimate dispute about the fact
27 so much as it is an argument against Plaintiff's use of that fact. The fifth disputed fact, Plaintiff's
28 Undisputed Fact No. 27, appears to also be disputed solely due to EPCC's perception that the fact

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,

District Court

vs.

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 3, PART 4**

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

1 is taken out of context.

2 The sixth disputed fact is Plaintiff's Undisputed Fact No. 29, which states that:
3 "Aesthetics", by definition, are the subjective conclusions of individuals as to what constitutes
4 "beauty" and "good taste". As a result, any Committee or Board member can decide to disapprove
5 an Application based solely on their individual sense of beauty or good taste, without even
6 considering the aesthetic value to the unit owner. The two examples stated in Undisputed Fact
7 Nos. 26 and 28 remain in the current version Guidelines." In support of that dispute, EPCC points
8 to two pages of the current Guidelines, arguing that there are "specific parameters for 'aesthetic
9 acceptability'." In those two pages, however, is Section 14(d)(2), which states: d. Grounds for
10 Disapproval [of an Application]: The Committee may recommend disapproval and the Board may
11 disapprove any Application: ... ii. Because of the reasonable dissatisfaction with grading plans;
12 location of the proposed improvement on a lot; finished ground elevation; color scheme; exterior
13 finish; design, proportions, architecture, shape, height or style of the proposed improvement;
14 materials used; the kind, pitch or type of roof proposed; or for purely aesthetic reasons." There is
15 no stated parameters to that final phrase.

16 The seventh disputed fact is Plaintiff's Undisputed Fact No. 30, however no evidence is
17 provided to support that dispute. In support of that undisputed fact is Plaintiff's reference to page
18 16 of the Guidelines, which are attached as an Exhibit to the Declaration of Karen L. Winters, filed
19 concurrently with Plaintiff's Motion for Summary Judgment.

20 The eighth disputed fact is Plaintiff's Undisputed Fact No. 31, which states that: "The
21 Committee could decide that something as simple as replacing a garage door to be a 'Major
22 Project', greatly increasing the cost of each planned improvement of a residence. The current
23 version of the Guidelines reduces this application review fee to \$200, but imposes the same
24 extensive documentation as the initial Guidelines." In support of that dispute, EPCC cites to two
25 pages of the Guidelines. The only reference to a definition of "Major Project" in those two pages is
26 at the top of page 16, which states that: "Major Projects are new construction, exterior remodels,
27 and building additions." No other definition is given, therefore something as simple as putting
28 outside shutters around windows, or extending the eaves over a porch would qualify as a "Major

1 Project”.

2 Finally, the ninth disputed fact is Plaintiff’s Undisputed Facts No. 46 and 47, which state
3 that some of the documents demanded from EPCC by Mr. Moretto on May 12, 2018 “were not
4 provided at all to date and were the subject of the Order Compelling Further Responses” to
5 discovery.” EPCC simply references the statutes and argues that “Plaintiff has not presented
6 evidence to this effect.” Plaintiff did, however, support those undisputed facts in support of
7 Undisputed Facts Nos. 44 and 45, as well as the pleadings filed in the course of Plaintiff’s Motion
8 to Compel Further Responses to discovery.

9 It should also be noted that EPCC failed to provide any additional facts, whether disputed
10 or undisputed, in its opposition, thereby acquiescing to limiting argument on the instant motion to
11 Plaintiff’s Undisputed Facts. Based on the foregoing analysis of Defendant’s Response to
12 Plaintiff’s Undisputed Facts, there is no genuine dispute as to any material fact, and Plaintiff’s
13 motion is entitled to judgment as a matter of law as set forth in Plaintiff’s initial pleadings on the
14 motion and the following reply.

15 **III. Plaintiff’s Cause of Action Alleging Violation of Property Rights Is a Cognizable**
16 **Claim Under Nevada Law.**

17 EPCC continues to argue that Plaintiff’s Third Cause of Action is not a cognizable claim
18 simply because EPCC does not recognize the label put to the claim. Whether labeled as a violation
19 of Plaintiff’s property rights under the Nevada Constitution, Article I, Section 1, a violation of
20 Plaintiff’s due process rights under the Nevada Constitution, Article 1, Section 8(2), or simply a
21 claim for a permanent injunction under NRS 33.010(1), Nevada Courts have recognized such a
22 claim throughout its history. *See, eg., State ex rel. Roman Catholic Bishop v. Hill*, 59 Nev. 231, 90
23 P.2d 217, 1939 Nev. LEXIS 17 (Nev. 1939); *McCarran Internat’l. Airport v. Sisolak*, 122 Nev.
24 645, 137 P.3d 1110 (2006); *Bing Construction Co. Of Nevada v. County of Douglas*, 107 Nev.
25 262, 810 P.2d 768 (1991); *Bd. Of Clark County Commissioners v. Excite Corp.*, 98 Nev 153, 643
26 P.2d 1209 (1982); *Nevada Constitution, Art. 1, § 8(2)*: “No person shall be deprived of life, liberty,
27 or property, without due process of law.” Plaintiff has set forth its full argument of this issue in
28 Section IV(B) of the Motion for Summary Judgment and Section II(C) of its Opposition to

1 Defendant's Motion for Summary Judgment, both of which are on file herein and need not be
2 repeated. Of note, however, EPCC continues to provide a legal argument without cite to any law or
3 authority outside the actual Bylaws in support of its Opposition to this cause of action, and little to
4 no legal authority in support of its entire Opposition to this Motion for Summary Judgment.

5 **IV. The Governing Law Does Not Allow EPCC to Impose "Architectural Guidelines".**

6 Unless it is otherwise provided in the Articles of Incorporation, the board of
7 directors may designate one or more committees which, to the extent provided in
8 the resolution or resolutions or in the bylaws of the corporation, have and may
9 exercise the powers of the board of directors in the management of the business and
10 affairs of the corporation.

11 NRS 78.125. (Emphasis added.)

12 The principles of law and equity, including the law of corporations and any other
13 form of organization authorized by law of this State, the law of unincorporated
14 associations, the law of real property, and the law relative to capacity to contract,
15 principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress,
16 coercion, mistake, receivership, substantial performance, or other validating or
17 invalidating cause supplement the provisions of this chapter, except to the extent
18 inconsistent with this chapter.

19 NRS 116.1108. (Emphasis added.)

20 "The bylaws of the association must: ...(d) Specify the powers the executive board or the
21 officers of the association may delegate to other persons or to a community manager" NRS

22 116.3106. (Emphasis added.)

23 A corporation may not apply corporate rules to impose real property restrictions on
24 property not owned by the corporation, but by the unit owners. There is a difference between
25 corporate rules and servitudes. commonly contained in a Declaration of Covenants, Conditions,
26 and Restrictions ("CC&Rs") which EPCC does not have. Mr. Moretto bought into a social club,
27 not a common-interest development. Further, under NRS 116.1206, any provisions of the
28 governing documents that conflicts with Chapter 116 of the Nevada Revised Statute, Chapter 116
controls.

Applying real property law is best summarized in the Restatement of Servitudes, which
states that: "Absent specific authorization in the declaration. the common-interest community does
not have the power to adopt rules ... that restrict the use or occupancy of, or behavior within,
individually owned lots or units." *Restatement (Third) of Property (Servitudes)* § 6.7(3) (2000),

1 (See, Exhibit 9, attached to Plaintiff's Request for Judicial Notice, filed concurrently with
2 Plaintiff's Motion for Summary Judgment.) The Restatement also addresses a common-interest
3 community's authority to dictate a unit owner's choices of his property's design. "Except to the
4 extent provided by statute or authorized by the declaration, a common-interest community may not
5 impose restrictions on the structures or landscaping that may be placed on individually owned
6 property, or on the design, materials, colors, or plants that may be used." *Restatement (Third) of*
7 *Property (Servitudes) § 6.9 (2000), Design -Control Powers.* This is further explained in Comment
8 a:

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

14 *Id.*

15 Accordingly, under NRS 116.3106, and explained in the foregoing Restatements, EPCC
16 may only impose the Architectural Guidelines and its enforcing Committee on the unit members if
17 EPCC had an affirmative authority to do so. It does not. EPCC Bylaws, Article III, Section 2 states
18 that: "The Board shall have power to conduct the power to conduct, manage and control the affairs
19 and business of the Corporation and to make rules and regulations not inconsistent with the laws
20 of the State of Nevada, the Articles of Incorporation and the Bylaws of the Corporation." There is
21 nothing in this Article III on the Powers of Executive Board granting them power to impose
22 property restrictions, the equivalent of a Declaration of Covenants, Conditions, or Restrictions
23 recorded prior to the sale of any parcels within the community, on the individual units or owners.

24 EPCC's argument appears to be that it can do anything it chooses, as long as it is not barred
25 by the law governing the community. In reliance, it cites Article IV, Section 1 of the Bylaws,
26 which states that:

27 The enumeration of the powers and duties of the Executive Board in these Bylaws
28 shall not be construed to exclude all or any of the powers and duties, except insofar
29 as the same are expressly prohibited or restricted by the provisions of these Bylaws
30 or Articles of Incorporation. and the Board shall have and exercise all other powers
31 and perform all such duties as may be granted by the laws of the State of Nevada
32 and do not conflict with the provisions of these Bylaws and the Articles of
33 Incorporation.

1 Declaration of Karen L. Winters, filed concurrently with Plaintiff's Motion for Summary
2 Judgment, Exhibit 3.

3 The problem with EPCC's argument is that there are laws that conflict with EPCC's
4 enactment of the Architectural Guidelines and its Committee, as set forth above, including
5 violating Plaintiff's constitutional property rights, the right to prevent criminal trespass on
6 Plaintiff's property under NRS 207.200, violation of NRS 116.31065, and violation of the Bylaws
7 themselves. Based on the foregoing, summary judgment on the first three causes of action is
8 appropriate, and requested here.

9 **V. The Board Cannot Create Property Restrictions, It Cannot Delegate An Authority**
10 **It Does Not Have, It Cannot Authorize A Committee To Act Without Notice When the Board**
11 **Cannot Act Without Notice, and It Cannot Act Arbitrarily.**

12 Plaintiff contends the Board does not have the authority to create the Guidelines and the
13 Architectural Review Committee, as set forth in the foregoing, as well as in Plaintiff's initial
14 arguments in the Motion for Summary Judgment, therefore it cannot delegate an authority it does
15 not have. If it did have any authority to enact any portion of the Guidelines, however, it did not
16 have the authority to delegate that authority. As stated in Section 4 of the current Guidelines, "The
17 Committee shall serve as an agent of the EPCC, as directed by the Board, concerning the review,
18 enforcement, and other matters." (Declaration of Karen L. Winters, filed concurrently with
19 Plaintiff's Motion for Summary Judgment, Exhibit 4.) Under principal and agency law, a principal
20 giving an agent any authority is a delegation of duties. *See, eg., George, v. The Nevada Central*
21 *Railroad Co.*, 22 Nev. 228, 38 P 441 (1894); *Rankin, v. New England And Nevada Silver Mining*
22 *Co.*, 4 Nev. 78 (1868). The sentence cited above, in Section 4 of the current Guidelines,
23 specifically delegates authority to the Committee to review and enforce the Guidelines, and leaves
24 open the possibility of a delegation of other duties. The authority quoted by EPCC in its opposition
25 to the instant motion is simply an authority over community-owned common areas, not member
26 owned property.

27 Further, a principal cannot give authority to an agent that the principal itself does not have.
28 *See, eg., Tarleton v. DeVeuve*, 113 F.2d 290 (1940). This common sense proposition, one cannot

1 give to someone else what one does not have. An agent is authorized by the principal to act for the
2 principal, in the principal's stead. (*See, Black's Law Dictionary, 5th Ed., West.*) The Board is
3 required under NRS 116.31083 to give notice of all Board meetings to all unit members at least ten
4 days in advance of Board meetings. By extension, the Committee would be required to give the
5 same notice for any of its meetings. Without notice, unit members, including Mr. Moretto, would
6 have no way to inform themselves on the acts of the Committee. As a result, unit members would
7 have no way of knowing whether the Committee is properly "reviewing and enforcing" the terms
8 in the Guidelines, arbitrarily granting variances or denying proper applications before the
9 Committee prior to any "recommendations" being made by the Committee to the Board. This lack
10 of due process is another instance of violation of Plaintiff's property rights when the Board
11 implemented the Guidelines. If unit members are not noticed of Committee meetings, they are not
12 given an opportunity to be heard on any matters before the Committee. NRS 116.1113 imposes an
13 obligation of good faith in the Board's performance or enforcement of its duties. Board Members
14 are fiduciaries, therefore this duty necessarily requires the Board to provide notice of all meetings
15 before which EPCC business is discussed, whether it is a Board meeting or a committee meeting.

16 EPCC continues to argue that since there has been little or no evidence of arbitrary or
17 capricious enforcement of the Guidelines to date, then the Guidelines cannot be arbitrary or
18 capricious, pointing to Plaintiff's deposition taken in this matter in support of that proposition. It
19 should be noted initially, however, that the quoted portion of Plaintiff's deposition contained in
20 Defendant's Opposition to the instant motion had been corrected by the Plaintiff prior to finalizing
21 the transcript of the deposition. (*See, Declaration of Karen L. Winters filed concurrently with and*
22 *in support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit B.*) As
23 Learned Hand stated in a 1911 opinion, however, it has no import what a layperson or 20 bishops
24 may opine as to their interpretation of the terms of a legal document, such terms are to be
25 determined objectively. *Hotchkiss v. National City Bank, 200 F.287, 293 (SDNY, 2011).* The
26 terms in the Guidelines are insufficiently stated to prevent arbitrary application; for instance,
27 recommending disapproval of an application based solely on "aesthetic reasons" as set for at page
28 14 of the Guidelines (Exhibit D, Section 14(d)(ii), attached to Defendant's Opposition to

1 Plaintiff's Motion for Summary Judgment).

2 **VI. The Evidence of the Board's Violation of NRS 116.31175 Supports a Finding that**
3 **the Board Failed to Timely Produce Requested Documents to Plaintiff.**

4 EPCC argues Plaintiff has provided no evidence specifying which documents had not been
5 timely produced, as required by NRS 116.31175, and as set forth in the Fourth Cause of Action.
6 Once again EPCC's opposition fails to provide any cite to any legal authority in its argument, and
7 fails to point to any facts in support of its conclusion. As Plaintiff outlined in the instant motion,
8 EPCC's Board's failure to provide the requested documents in a timely manner is supported by the
9 Defendant's "Reply in Support of Countermotion to Cure Illegibility", filed herein on or about
10 November 15, 2019, in which it acknowledges providing legible copies of the governing
11 documents for the first time. In addition, however, Defendant has been supplied with substantial
12 evidence of its failure to timely produce the requested documents through the documents provided
13 in the initial production of documents following the early case conference in this case. Declaration
14 of Deborah Moretto, filed herewith, including exhibits showing a string of communications
15 between the Plaintiff and the EPCC Board regarding this issue and the relevant portion of a
16 transcript of a Board meeting held on December 15, 2018 describing the late and missing
17 documents. It is disingenuous for Defendant to now argue that there is no evidence of its failures.

18 **VI. Conclusion.**

19 EPCC's Opposition to Plaintiff's Motion for Summary Judgment has failed to adequately
20 identify any relevant fact genuinely in dispute in Plaintiff's motion, has failed to cite to any
21 supporting legal authority for its propositions and failed to provide any legitimate argument in
22 opposition to Plaintiff's position. Yet, at the conclusion of each section of its argument, EPCC
23 makes the blanket statement that even if its motion for summary judgment is not granted,
24 Plaintiff's motion should be denied because "a substantial issue of material fact" remains on each
25 cause of action. These blanket statements are made without cite to any fact or law. As an example,
26 it argues that how the Bylaws should be interpreted is "a substantial issue of material fact", and
27 interpreting the Guidelines is "a substantial issue of material fact". Each of these documents,
28 however, are akin to a contract and, as Judge Learned Hand explained while a District Court Judge

1 in 2011,

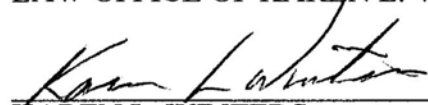
2 A contract has, strictly speaking, nothing to do with the personal, or individual,
3 intent of the parties. A contract is an obligation attached by the mere force of law to
4 certain acts of the parties, usually words, which ordinarily accompany and represent
5 a known intent. If, however, it were proved by twenty bishops that either party,
6 when he used the words, intended something else than the usual meaning which the
7 law imposes upon them, he would still be held, unless there were some mutual
8 mistake, or something else of the sort.

9 *Hotchkiss, supra.*

10 Based on the foregoing, Plaintiff respectfully requests this Court grant Plaintiff's Motion
11 for Summary Judgment.

12 Dated: November 24, 2020

RESPECTFULLY SUBMITTED:
LAW OFFICE OF KAREN L. WINTERS



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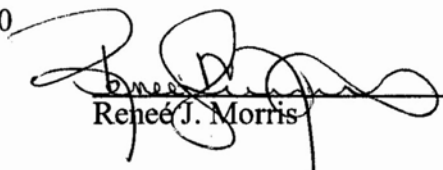
1 CERTIFICATE OF MAILING

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 **REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S**
6 **MOTION FOR 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 And courtesy copies by email to:
11 Prescott Jones at pjones@rlattorneys.com
Joshua Ang at jang@rlattorneys.com

12 Dated this 24th day of November, 2020

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14 Renee J. Morris
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CASE NO. 19-CV-0242

DEPT. NO. I

RECEIVED

NOV 24 2020

Douglas County
Clerk of Court

NO. _____

20 NOV 24 P 4:29

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 DEBORAH
MORETTO IN SUPPORT OF REPLY TO
DEFENDANT'S OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

I, DEBORAH MORETTO, declare as follows:

1. I am not a party to this action. I am the spouse of Jerome Moretto, the Plaintiff in the above-styled action, over the age of 18 and competent to testify to the matters stated herein, which I state on personal knowledge except those matters stated on information and belief, which I believe to be true.
2. Attached hereto as Exhibit 1 is a true and correct transcript of relevant portions of the Elk Point Country Club Homeowners Association, Inc.'s ("EPCC") Executive Board meeting held on December 15, 2018, at which I was present.
3. Attached hereto as Exhibit 2 is a true and correct of my letter dated May 12, 2018 to the EPCC Board.
4. Attached hereto as Exhibit 3 is a true and correct of my letter dated June 9, 2018 to the EPCC Board.
5. Attached hereto as Exhibit 4 is a true and correct of a letter I received from Robert

1 Felton, President of the EPCC Board dated August 21, 2018.

2 6. Attached hereto as Exhibit 5 is a true and correct of emails to and from Robert
3 Felton, President of the EPCC Board dated September 22, 2018.

4 7. Attached hereto as Exhibit 6 is a true and correct of my email dated October 31, 2018
5 to Robert Felton, President of the EPCC Board.

6 8. Attached hereto as Exhibit 7 is a true and correct of my letter dated November 1,
7 2018 to the EPCC Board.

8 I declare under penalty of perjury that the foregoing is true and correct and executed on this
9 24th day of November, 2020.

10

11


DEBORAH MORETTO

12

13 Submitted by:
14 Karen L. Winters, Esq.
15 Nevada Bar No. 3086
16 LAW OFFICE OF KAREN L. WINTERS
17 P.O. Box 1987
18 Minden, Nevada 89423
19 775-782-7933
20 Attorney for Plaintiff

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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(a), I certify that I am over the age of 18 years, an employee of the LAW
3 OFFICE OF KAREN L. WINTERS, and that on this date, I caused to be deposited for mailing at the
4 United States Post Office at Minden, Nevada, with postage thereupon fully prepaid, a true and
5 correct copy of the **DECLARATION OF DEBORAH MORETTO IN SUPPORT OF REPLY**
6 **TO DEFENDANT'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** addressed
7 as follows:

8 Prescott Jones, Esq.
9 Joshua Y. Ang, Esq.
10 Resnick & Louis, P.C.
11 8925 W. Russell Road, Suite 220
12 Las Vegas, NV 89148

13 And courtesy copies by email to:
14 Prescott Jones at pjones@rlattorneys.com
15 Joshua Ang at jang@rlattorneys.com

16 Dated this 24th day of November, 2020

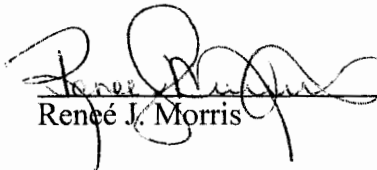
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18 Renee J. Morris

EXHIBIT 1

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ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION

EXECUTIVE BOARD MEETING

P.O. BOX 9

ZEPHYR COVE, NEVADA 89448

--oOo--

Saturday, December 15, 2018

REPORTED BY: DIANE K. LUSICH, Nevada CSR NO. 181
Calif. CSR NO. 5218
Job No. L19-169a

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A P P E A R A N C E S

- ROBERT FELTON, President
- CHARLES JENNINGS, Vice President
- JAMES GOSLINE, Secretary
- CATHY OYSTER, Treasurer
- WILLIAM ZELLER, Board Member
- JAMES CAVILIA, Association Counsel
- JEROME MORETTO, Homeowner, Trustee
- DEBORAH MORETTO, Successor Trustee

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I N D E X

PAGE

EXAMINATIONS

WITNESS

CHARLES JENNINGS BY MS. MORETTO	22
ROBERT FELTON BY MS. MORETTO	36
WILLIAM JAMES GOSLINE BY MS. MORETTO	40
WILLIAM ZELLER BY MS. MORETTO	45

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E X H I B I T S

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PAGE

MORETTO EXHIBITS
MARKED FOR IDENTIFICATION

1	Board of Directors Agenda for 12-15-2018 Hearing	5
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3	Articles of Incorporation	5
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5	Architectural Committee Guidelines, as Amended	5
6	Unit Owners' Advisory Ballots with Tallies	5
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12	Itemization of EPCC Document Productions	5
13	EPCC Architectural Committee Analysis Advisory Ballot Response January 30, 2018	5

--oOo--

1 these Architectural Control guidelines, as amended, by
2 grandfather rights.

3 And finally, this is kind of adding insult to
4 injury, we asked for documents on May 12th. We didn't
5 get them. Under the law we are supposed to get records
6 upon request within 21 days. The legislature, in its
7 infinite wisdom, decided that a reasonable amount of time
8 for a Board to give access to documents to an owner that
9 requests them in writing is 21 days, and the Board -- and
10 the legislature, when it enacted that statute, added
11 teeth. It said if you don't get the documents within
12 your 21 days, the Board is liable at \$25.00 a day for
13 every day we don't get the documents.

14 We have a list in my Exhibit 12 of everything
15 we got from the Board and when. Let me get Exhibit 12
16 out here. I have put them all here in the box. You are
17 welcome to look at what you gave me. They are right
18 there.

19 In that Exhibit 12 -- let me grab the cover
20 here. Here it is.

21 On May 25th we received an email from your
22 accounting firm, Jennifer Frates, with a list attached of
23 what she gave us. It's two pages long. We also received
24 by email a second group. It's mainly Board minutes. And
25 they are right there in the box. You are welcome to look

1 at them. That was within the 21 days. That was valid.

2 If that was everything we asked for I
3 wouldn't be bringing up this issue of document
4 production. Sadly, it was not. On June 9th we sent
5 another letter to the Board advising that we didn't get
6 more than half of the documents that we requested. We
7 asked you to give us the documents. We did not get
8 anything.

9 When the new Board came on, Mr. Felton, to
10 his credit, coming in as incoming president said he would
11 respond to our requests and make sure that this Board
12 followed the law. We didn't get anything until September
13 30th.

14 On September 30th my husband received a
15 packet of documents and a, we call them thumb drives --

16 PRESIDENT ROBERT FELTON: Memory stick.

17 MS. MORETTO: -- and Mr. Felton calls it a
18 stick. But we got a little thumb drive, it's here in the
19 box, that included a lot of the records from the
20 Architectural Control Committee. Why these were not
21 given to us back on June 3rd, between May 12 and June
22 3rd, which was 21 days, there was no reason given by this
23 Board.

24 We received on 10-31 a letter to -- I sent a
25 letter to Mr. Felton, and I got a response from James

1 Gosline, the secretary, hand-delivered by Mr. Felton to
2 us with a parcel map. We had asked for that, because the
3 parcel map is considered part of the governing documents.
4 If we go to the ombudsman, the very first thing they ask
5 is for us to give them the governing documents. We have
6 to do that to file our claim. I have been asking for it
7 since May 12. I got it on November 2nd.

8 The next thing is, on November 12 I got an
9 email from Mr. Felton indicating that he was sending
10 another document, a recorded document, basically the
11 Articles of Incorporation, again, a governing document,
12 and that I would be getting it next week. We got that
13 finally on November 19th. Actually, it shows it was
14 mailed on November 19th. But we, obviously, didn't get
15 it on November 19th. It was sent by mail. But I will
16 just take the postmark date November 19. So we were
17 still getting governing documents by November 19th.

18 The last production we got was November
19 30th -- well, let me back up.

20 There is a letter to us that was from
21 President Felton with an envelope, it's dated, the letter
22 itself is dated November 30th, 2018. It was actually
23 sent by certified mail on December 4th, 2018. We got it
24 December 7th. Basically, I am still getting documents as
25 of last week.

1 If I just take the lateness of these
2 documents, there is really no reason given why we did not
3 get the documents within 21 days as requested. We are
4 requesting that you pay us \$25.00 a day from June 3rd
5 until December 4th. And I am giving you the benefit of
6 the doubt. That is the day you mailed it, even though we
7 didn't get it until the 7th. But that request comes up
8 with a demand that you pay us \$3,475 for failing to give
9 us documents.

10 Because I am trying to make a record, I will
11 be submitting into evidence all of these documents that
12 you have provided to me. And I have a list, and I have
13 the documents right here. Excuse me.

14 I will be presenting them to the court
15 reporter to be made a part of the record.

16 And I would like to be sworn in as a witness,
17 and my husband sworn in as a witness, to testify that all
18 of the facts set forth in our hearing memorandum and
19 everything I have just said is true.

20 (Jerome Moretto and Deborah Moretto sworn.)

21 MS. MORETTO: I would also like to call one
22 witness, if I may, to also include that as part of the
23 record. My witness is Charles Jennings.

24 Madam Court Reporter, would you please --

25 BOARD MEMBER CHARLES JENNINGS: Is this a

1 Q. Can you give me an idea if it was in the
2 spring?

3 A. It was about the time that I reported to the
4 Board the results of the balloting.

5 Q. Why were they in your sole possession, sir?

6 A. As far as I'm concerned, the ballots were
7 part of the Architectural Committee's review, and that's
8 why I had them. I was a part of that committee at that
9 time.

10 Q. How did the ballots get from the secretary,
11 Jennifer Frates, to you?

12 A. Hand-delivered.

13 Q. By whom?

14 A. I picked them up in Jennifer's office.

15 Q. Do you remember, in general, when that was?

16 A. I can't recall exactly, no.

17 Q. I was given a thumb drive of the
18 Architectural Committee records. Did you prepare that
19 yourself?

20 A. That was -- clarify what you are referring
21 to.

22 Q. Sure. I requested all the documents related
23 to the Architectural Control Committee for purposes of
24 this hearing, and I requested it on May 12th, 2018. I
25 received, on November 21st, I believe it was the 21st of

1 -- the 19th, excuse me, I received in November a thumb
2 drive that contained many records of the Architectural
3 Control Committee, and I am wondering who prepared that
4 thumb drive, do you know?

5 A. I can't -- I can't recall that it was any
6 specific person. I mean, it was a compilation of a lot
7 of the correspondence with that committee.

8 Q. I'm asking who made the thumb drive of those
9 records?

10 A. It was from records that were given to Bob
11 Felton, and that was assembled into the thumb drive that
12 you received, as I recall. Again, this is from memory.

13 Q. Where are all of those Architectural Control
14 records right now?

15 A. The records themselves?

16 Q. Yes, sir.

17 A. Electronic copies are in various laptop
18 computers, which were people that were involved in the
19 correspondence. So it's a variety of people that
20 inputted.

21 Q. Are these on personal computers?

22 A. You would have to ask all of the people that
23 were part of the correspondence. I really can't answer
24 that question.

25 Q. I am going to ask you, sir, everything --

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,

District Court

vs.

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 3, PART 5**

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

1 A. I don't know.

2 Q. You don't know?

3 A. I don't know.

4 Q. Do you have on your laptop computer the
5 records of the Architectural Control Committee?

6 A. I have some.

7 Q. When I looked at the records, I noticed that
8 the meetings were held by teleconference.

9 Were all of the Architectural Control
10 Committee meetings held by teleconference?

11 A. I don't recall.

12 Q. Were there any actually here at Elk Point at
13 a meeting?

14 A. I believe so.

15 Q. How many?

16 A. I don't recall.

17 Q. Was the vote, the advisory vote that was
18 taken, was that counted -- where was that counted?

19 A. It was largely at the secretary, Elk Point
20 secretary. They were basically opened and counted and
21 assembled into a spread sheet as they were received.

22 Q. Who prepared that spread sheet?

23 A. I did.

24 Q. And where did you do that?

25 A. It was here.

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CERTIFICATE

I, DIANE K. LUSICH, hereby certify that the proceeding was taken down in shorthand by me, a certified shorthand reporter and a disinterested person, at the time and place therein stated, and that it constitutes a full, true and correct transcription of my shorthand notes, and was thereafter reduced to typewriting by computer under my direction and supervision, to the best of my ability.

Dated this 28th day of February, 2019.

Certified Shorthand Reporter
License No. 5218
State of California

EXHIBIT 2

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.

EXHIBIT 3

June 9, 2018

Elk Point Country Club, Inc. ("EPCC")
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. On May 12, 2018, we requested to review records, copy attached. We received only a partial response to date.

Request No. 1 requested all governing documents. We only received an unsigned, unrecorded copy of the Bylaws. If you do not have the Articles of Incorporation, the Declaration of Protective Covenants, Conditions and Restrictions, the Committee Rules for your Committees, specifically covering the Committee that adopted the Architectural Guidelines and their Amendment, a signed and record stamped copy of the Bylaws and the Elk Point Country Club, Inc. Plats and Plans, please tell us so. If you do have them, provide them to us. These are very relevant to our submission to the State Ombudsman whether or not these Architectural Guidelines, as amended, are valid.

Request No. 2 regarding Board Minutes, we received a response.

Request No. 3: We received no Architectural Control Committee Minutes.

Request No. 4-12, we did not receive any response, except the summary of the EPCC vote provided to the Board presented by one committee member. We did not see any documentation on how the advisory vote was taken, who counted the votes, whether the vote was pursuant to our Bylaws and NRS Chapter 116, nor any of the returned ballots. We received no minutes or documentation of which members of the Committee prepared the Guidelines or their Amendment or who counted the votes. All of these are relevant documents to our inquiry.

Pursuant to NRS 116.31087, we are entitled to review all EPCC documents upon written request. To date, you have not made these documents available to us, as required by law, more than 21 days from the request.

Therefore, pursuant to NRS116.31087, we request that the Board place on its next agenda a hearing on whether it is violating our rights to review documents, pursuant to NRS 116.31087. We demand that the Board respond to our requests for documents, or we will submit the violation to the State Ombudsman's office to subpoena them.

Also, pursuant to NRS 116.31087, we request the Board place on its next agenda a hearing on whether it violated EPCC's governing documents, NRS Chapter 116, as well as other pertinent Nevada law,

Page 2

by adopting the Architectural Guidelines Amendment on March 31, 2018. Specifically, we contend these Architectural Guidelines were adopted by the EPCC Board, outside of its jurisdiction, by law. We contend the Board has no authority to adopt Architectural Guidelines, to include an easement (a right to use) over individual units. Its authority to grant easements is limited to common areas, not individual units. We intend to present authority and evidence at the hearing to prove that the Board acted outside its authority and jurisdiction when it adopted the Architectural Guidelines, as amended.

If you have any questions about the above, please do not hesitate to contact us.

Sincerely,

Jerry and Deb Moretto

Attachment

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.

EXHIBIT 4

Elk Point Country Club
Executive Board
PO Box 9
Zephyr Cove, NV 89448

Mr. and Mrs. Moretto
880 E. Front St.
Fallon, NV 89406

August 21, 2018


Re: Moretto Letters of May 12 and June 9, 2018

Mr. & Mrs. Moretto:

We have reviewed the information contained in your above referenced letters. As an Executive Board we have decided to place an Action Item on the September 23, 2018 Board Agenda to consider the revision Article XI of the ADCSG Design Guidelines Section 3(b) concerning the 3-foot walkway. We intend to consider changing the walkway from a requirement to merely a recommendation. We believe that such a revision will address your concern about the Board requiring easements over individual lots.

In the event the proposed revision is adopted by the Board we believe this will fully resolve the concerns expressed in your above referenced letters.

Sincerely,



Robert W. Felton
President EPCC Executive Committee

EXHIBIT 5



Deborah Moretto <dmoretto943@gmail.com>

EPCC/Jerry and Deb Moretto

Deborah Moretto <dmoretto943@gmail.com>

Sat, Sep 22, 2018 at 10:18 AM

To: bfelton@msn.com

Bcc: dmoretto943@gmail.com

Dear Mr. Felton: You sent us a certified letter, dated August 21, 2018, received August 27, 2018. It advises the Board will meet on September 23, 2018, to respond to our two letters, dated May 12, 2018, and June 9, 2018. However, we have received no Agenda or Notice of a Board meeting on September 23, 2018. We have received an Agenda for a Board Meeting on September 30, 2018, but do not see us and our letters on the Agenda, nor any official notice that our Complaint under NRS 116.31087 for hearing on our documents request will be heard. Please advise at your earliest convenience if a hearing on our letters is scheduled, on what date, time and location. Thank you. I tried to call you today without success.

Deb and Jerry Moretto

Deborah Moretto
PO Box 97
Zephyr Cove, NV 89448
775-588-0522 (home)
775-790-5798 (cell)
Dmoretto943@gmail.com



Deborah Moretto <dmoretto943@gmail.com>

EPCC/Jerry and Deb Moretto

Robert Felton <bfelton@msn.com>
To: Deborah Moretto <dmoretto943@gmail.com>

Sat, Sep 22, 2018 at 11:35 AM

Deb:

We just talked on the phone and I hope that our response and the actions we are taking satisfies your questions.

Bob
Mobile 510 928 2711

From: Deborah Moretto <dmoretto943@gmail.com>
Sent: Saturday, September 22, 2018 10:18 AM
To: bfelton@msn.com
Subject: EPCC/Jerry and Deb Moretto

[Quoted text hidden]





Deborah Moretto <dmoretto943@gmail.com>

EPCC/Jerry and Deb Moretto

Deb Moretto <dmoretto943@gmail.com>
To: Robert Felton <bfelton@msn.com>
Bcc: dmoretto943@gmail.com

Sat, Sep 22, 2018 at 1:19 PM

Mr. Felton: Thank you for the return call. Regrettably, our issues have not been resolved. We made a request for documents in writing on May 12, 2018. By law, the Board had 21 days to respond. We received a partial response, without a complete response to our 12 requests. We sent our subsequent letter on June 9, 2018, identifying our missing documents. To date we have not received the requested documents. In our June 9, 2018 letter, we requested a public hearing by the Board on why it has refused to give us access to these documents. Pursuant to NRS 116.31087, upon receipt of that request, the Board is mandated by law to hold a hearing on the documents issue at its next meeting. That would have been in July. To date we have not had our issue put on any agenda by the Board.

You confirmed today, by phone, that we are not on the agenda on September 23 or 30, 2018. You indicated you would have staff get us all requested documents by your next September 30, 2018, Board Meeting. We look forward to receiving all documents requested in May ASAP.

We understand you have an action item to amend your architectural guidelines at your September 30, 2018, Board Meeting. That only addresses one item we have brought to your attention, both orally and in writing. We do not believe the Board has jurisdiction to promulgate architectural rules, without a vote of the members. That would require an amendment to the Bylaws, which requires a vote of the members, not the Board. To date, you have provided us with no documentation that shows the Board has the authority to adopt architectural guidelines, with enforcement powers over individual units. We look forward to reviewing all the documents requested to see if such authority exists.

Sincerely,

Jerry and Deb Moretto

Sent from:

Deborah Moretto
P.O. Box 97
Zephyr Cove, NV. 89448
775-588-0522 (home)
775-790-5798 (cell)
Dmoretto943@gmail.com

[Quoted text hidden]

EPCC
PO Box 9
Zephyr Cove, NV 89448
September 21, 2018

Mr. and Mrs. Moretto
880 E. Front St.
Fallon, NV 89406
September 30, 2018

Re: Moretto Letter of Sep 9, 2018

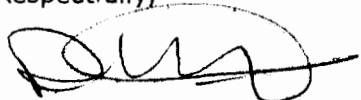
Mr. & Mrs. Moretto:

We are in receipt of the above referenced letter. The requested documents are in the package that we are providing which includes a stick. We have also provided a summary of the documents you requested and our disposition of them. These documents are the complete set of documents associated with this issue and are all of the documents that we have at EPCC that are responsive to your request.

With this submission we believe that we have been totally responsive to your document request. Therefore we consider this issue closed.

If you have additional questions or document requests please send EPCC a new written request and we will be pleased to attempt to provide the information that you require.

Respectfully,



Robert Felton
President, EPCC

Moretto Document Request

The following is a list of EPCC's actions concerning the requests of the Moretto's June 9th 2018 letter.

Item 1.

Documents are provided

Item 2.

Completed earlier

Item 3.

Minutes are provided electronically on the stick that we will provide to you at the Sep 30 Executive Board Meeting.

Request 4-12

All requested documents that EPCC has are provided electronically on the stick that we will provide to you at the Sep 30 Executive Board Meeting.

Last paragraph concerning violation of EPCC's governing documents.

Please see the attached Memorandum from Mr. Jim Cavilia of Allison.MacKenzie dated November 21, 2017 concerning EPCC's authority to adopt and amend rules and regulations.

EXHIBIT 6



Deborah Moretto <dmoretto943@gmail.com>

EPCC/Jerry and Deb Moretto

1 message

Deborah Moretto <dmoretto943@gmail.com>

Wed, Oct 31, 2018 at 2:47 PM

To: Robert Felton <rfelton@msn.com>

Mr. Felton: As you know, Jerry and I are EPCC Members in good standing, residents at 476 Lakeview Avenue, Zephyr Cove, NV 89448. On May 12, 2018, we objected to the Board, in writing, to the adoption of the Architectural Rules, as amended, on March 31, 2018. Our specific objection concerned the jurisdiction of the Board to impose an easement or any other restriction on our individual unit, without a vote of the unit owners to amend the Bylaws with such restriction. We suggested that the issue be presented to the State Ombudsman's office, if the Board would not acknowledge the illegality of its acts.

To support our position, we requested 13 different categories of documents to be produced, necessary to present the issue to the Ombudsman. By law, a document request is required to be responded to within 21 days. We received a partial response, but not everything we requested. Thus, on June 9, 2018, we requested by letter the balance of the documents. We also requested a hearing on the matters raised in our May 12, 2018, letter. On September 30, 2018, Jerry was given some additional documents, but some important documents remain missing, such as the plats and plans for EPCC and any recorded CC&Rs (Declaration of Protective Restrictions).

Apparently, the Board thought if it made another amendment to the Architectural Rules it would solve the problem. I see under Paragraph 11 of the September 30, 2018, Minutes that an "ARC Rules Revision" was approved by the Board, however, no copy of this new Rule is provided in the Minutes or noted in the Notice. May we please have a copy of whatever it was that was unanimously approved, at your earliest convenience? Thank you.

Also, although we appreciate your attempt to get us more documents in response to our request made in May, important documents are still missing from the request. Although we have requested a hearing on the legality of the Board adopting Architectural Committee Rules that impact our individual unit, and the Board's failure to timely provide us documents on the issue, the Board still has not given us a hearing. **Please set an agenda action item for a public hearing on the legality of the Architectural Rules, as Revised, adopted March 31, 2018, including the issue of the Board's failure to timely respond to the Moretto's May 12, 2018 Document Request, at your next noticed Board Meeting. We agree to a public hearing on these matters.**

Sincerely,

Jerry and Deb Moretto
476 Lakeview Avenue
Zephyr Cove, NV 89448
775-588-0522

EXHIBIT 7

Jerome and Deborah Moretto
880 E. Front Street
Fallon, NV 89406
775-588-0522 (phone and fax)
jfmoretto@gmail.com
dmoretto943@gmail.com

November 1, 2018

VIA CERTIFIED MAIL

Elk Point Country Club, Inc. ("EPCC")
Attn: Board of Directors
P.O. Box 9
Zephyr Cove, NV 89448

**Re: Morettos' Objection to Architectural Guidelines Amendment, approved 3/31/2018; and
Morettos' Document Request, dated May 12, 2018**

Dear Board:

My husband, Jerry Moretto, and I live full time at 476 Lakeview Avenue, Zephyr Cove, NV 89448. The purpose of this letter is to demand a hearing, pursuant to NRS 116.31087.

On May 12, 2018, we sent a letter to you, wherein we objected to the Architectural Guidelines, as Amended, approved by the Board on March 31, 2018, and requested documents in support of the Objection. We got some documents. On June 9, 2018, we requested the balance of the documents, and we requested a hearing on two issues: (1) Our Objection to the Architectural Guidelines, as amended; and (2) EPCC's failure to timely respond to our request for documents. A copy of both letters is enclosed. To date, we have received a partial response to our document request and no hearing. These inactions by the Board violate Nevada law.

Nevada Law provides that the Board is obligated to have a hearing at its next Board Meeting, upon request of a unit owner. Please see NRS 116.31087(1): "If an executive board receives a written complaint from a unit's owner alleging that the executive board has violated any provision of this chapter or any provision of the governing documents of the association, the executive board shall, upon the written request of the unit's owner, place the subject of the complaint on the Agenda of the next regularly scheduled meeting of the executive board."

Further, NRS 116.31087 provides the Board is to acknowledge within 10 days receipt of the complaint and that the matter will be placed on the agenda of the next Board meeting. We made our Complaint on May 12, 2018. We requested a hearing on June 9, 2018. To date, we have not received any notice acknowledging our Complaint or that the matter will be heard. You held Board meetings on July 7, August 18, September 30, and have one scheduled on November 3, 2018. The Board has failed to set this for hearing to date.

Further, we requested documents in support of our Complaint, since May 12, 2018. NRS 116.31175(1) provides that the "executive board of an association shall, upon the written request of a unit's owner, make available the books, records, and other papers of the association for review..." We have requested documents

since May 12, 2018, and to date, have only received a partial response. This makes the Board, personally, liable for fines. Please note that NRS 116.31175(3) provides "If the executive board fails to provide a copy of any of the records pursuant to subsection (2) within 21 days, the executive board must pay a penalty of \$25 for each day the executive board fails to provide the records." Further, subsection (6) provides that if the Board refuses to allow the unit owner to review records, the State Ombudsman has subpoena power to get them.

We gave you an itemized list of documents on May 12, 2018. On June 9, 2018, we itemized what was missing. On September 30, 2018, we received another partial response. To date, you are 150 days delinquent in responding (since June 3, 2018, 21 days after May 12, 2018). We demand payment from the Executive Board for its delinquency of \$3,750.00, accruing at \$25 per day until we receive the documents.

Pursuant to NRS116.31087, we request the Board place on its next agenda a hearing on whether it is violating our unit owners' rights, specifically, whether:

- (1) EPCC's Board violated EPCC's governing documents, NRS Chapter 116, as well as other pertinent Nevada law, by adopting the Architectural Guidelines Amendment on March 31, 2018. Specifically, we contend the Board has no authority to adopt Architectural Guidelines, to include an easement (a right to use) over individual units or enact any other property restriction as a Rule, such as contained in the Amendment. We intend to present authority and evidence at the hearing to prove that the Board acted outside its authority and jurisdiction when it adopted the Architectural Guidelines, as amended; and**
- (2) EPCC's Board violated our rights to examine EPCC's books, records and papers as requested on May 12, 2018, due June 3, 2019 (21 days after our request). To date, we have not received all the requested documents, most importantly, any EPCC plats or plans, Articles of Incorporation, with amendments, or any recorded Declaration of Protective Restrictions, all of which are deemed part of EPCC's governing documents, as a matter of law. In addition, we claim at hearing the \$25 per day fine, which is \$3,750.00 as of November 1, 2018, 150 days from June 3, 2018, and accrue at \$25 per day, until we receive access or copies of the documents we requested on May 12, 2018.**

We requested this hearing by letter on June 9, 2018. To date, no hearing has been placed on the Board's Agenda. This certified letter is your last notice. We will submit this to the Ombudsman forthwith, if you do not acknowledge this letter and set the matter for hearing, as required by NRS 116.31087.

Sincerely,

Jerome and Deborah Moretto

Enclosures

1 **RESNICK & LOUIS, P.C.**

Prescott Jones, Esq., SBN: 11617

pjones@rlattorneys.com

2 Joshua Ang, Esq., SBN: 14026

jang@rlattorneys.com

3 8925 W. Russell Road, Suite 220

4 Las Vegas, NV 89148

Telephone: (702) 997-3800

5 Facsimile: (702) 997-3800

Attorneys for Defendant

6 *Elk Point Country Club Homeowners Assn., Inc.*

7 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

8 **IN AND FOR THE COUNTY OF DOUGLAS**

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

12 Plaintiffs,

13 v.

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

18 Defendants.

CASE NO.: 19-CV-0242

DEPT: 1

**DEFENDANT'S REPLY IN SUPPORT
OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

19 Defendant, ELK POINT COUNTRY CLUB HOMEOWNERS ASSOCIATION, INC
20 (hereinafter "Defendant" or "EPCC"), by and through their counsel of record, Prescott T. Jones,
21 Esq. and Joshua Y. Ang, Esq. of the law firm Resnick & Louis, P.C., hereby submits this Reply
22 in Support of Defendant's Motion for Summary Judgment.

23
24 This Reply is made and based upon the papers and pleadings on file with the Court, any
25 exhibits attached, the Memorandum of Points and Authorities, and any oral argument

26 ///


27 ///

28

1 the Court may decide to entertain.

2 DATED this 24th day of November, 2020.

3 **RESNICK & LOUIS, P.C.**

4 
5 _____
6 PRESCOTT JONES
7 Nevada Bar No. 11617
8 JOSHUA ANG
9 Nevada Bar No. 14026
10 8925 W. Russell Road, Suite 220
11 Las Vegas, NV 89148
12 *Attorneys for Defendant*
13 *Elk Point Country Club Homeowners Assn., Inc.*

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. LEGAL ARGUMENT**

16 **1) Plaintiff's First Cause Of Action Alleging Violation Of EPCC's Bylaws Fails**
17 **Because The Bylaws Permitted The Creation Of The ACDSG And The Alleged**
18 **Delegation Of Powers Thereto, Which Nevertheless Did Not Occur**

19 Plaintiff's opposition to Defendant's request for summary judgment as to this cause of
20 action rests upon three prongs- his allegation that EPCC's Bylaws prohibit the creation of the
21 subject Architectural Design Control Standards and Guidelines ("ACDSG"), that said Bylaws
22 also prohibit the delegation of powers to the Architectural Review Committee ("ARC"), and that
23 such an improper delegation of powers actually occurred. None of these arguments are
24 meritorious.

25 First, EPCC's Bylaws squarely permit the creation of the subject ACDSG and the
26 restrictions contained therein. Plaintiff's own arguments in his own Motion for Summary
27 Judgment ("MSJ") undercut his assertion that EPCC's Bylaws do not grant the authority to enact
28 the sort of restrictions imposed by the ACDSG. To begin with, Plaintiff concedes on pages 20-21
of his MSJ that it is permissible under Nevada law for the Bylaws of a Homeowner's Association

1 to grant the Executive Board the type of rule-making powers necessary to enacting the subject
2 architectural guidelines. See **Exhibit A**, [Plaintiff's MSJ at pg. 20-21]. Said Bylaws further
3 explicitly provide that:

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

10 In tandem with this, there are simply no provisions of the subject Bylaws which explicitly
11 prohibit EPCC's Board from enacting architectural guidelines in the vein of the ACDSG at issue.

12 In fact, each and every provision thereof cited to by Plaintiff in his opposition to this motion only
13 *omits* to specifically discuss this type of authority necessary for EPCC's Board to enact the
14 subject ACDSG altogether. (The provisions that Plaintiff's opposition cited to were as follows):

15 Article XVI of the Bylaws:

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

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

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

27 Section 4. No Unit Owner, either individually, or in the name of a family trust, spouse,
28 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

1 every subsequent grantee, the executors, administrators, successors and or assigns of such
2 grantee.
3 See **Exhibit B**, [Pl's Opposition to Def's MSJ at pg. 6-7]; See **Exhibit C**, [EPCC
4 Bylaws].

5 In this explicit absence of any prohibition against the creation of rules in the vein of the
6 subject ACDSG, it is clear that Defendant was fully authorized to do so by the subject Bylaws
7 (in tandem with Nevada law). In fact, another clause of the Bylaws further supports this notion
8 stating that, "The Executive Board shall have the power to conduct, manage and control the
9 affairs and business of the Corporation, and to make rules and regulations not inconsistent with
10 the laws of the State of Nevada, the Articles of Incorporation, and the Bylaws of the
11 Corporation." See **Exhibit C**, [EPCC Bylaws (pg 7-8)]. It was clearly originally intended by said
12 Bylaws that the EPCC Executive Board should have *any and all legal powers* not specifically
13 prohibited by said Bylaws, including the power to enact the subject ACDSG.

14 These same provisions of the subject Bylaws of EPCC which explicitly afford to the
15 Executive Board of EPCC all legal powers not "expressly prohibited or restricted by the
16 provisions of these Bylaws or Articles of Incorporation" also constitute a specific blanket grant
17 of power and authority, in compliance with the provisions of NRS 116.3106 for the Bylaws of
18 a homeowner's association, encompassing the authority to create the ARC, and for the
19 Executive Board to delegate powers thereto as necessary/as it sees fit. See **Exhibit C**, [EPCC
20 Bylaws (pg 7-8)]. Thus, any delegation of powers to the ARC that occurred was permissible and
21 proper.
22

23 Furthermore, even if such a delegation of powers to the ARC were to be impermissible,
24 no powers of the EPCC Executive Board were delegated to the ARC to begin with, regardless
25 of Plaintiff's allegations. Wheresoever the duties of the subject ARC are described in relation to
26 the Executive Board in the subject ACDSG (applicable to both the currently controlling
27
28

1 December 2019 version and the March 2018 version utilized by Plaintiff's experts), it is clearly
2 explained that the ARC may only make recommendations that must then be subsequently
3 considered and adopted by the Executive Board itself to become effective. See **Exhibit E**,
4 [March 2018 ACDSG]; See **Exhibit D**, [December 2019 ACDSG version + Declaration of
5 Authenticity]. Example excerpts include:

6 "The EPCC "Board" pursuant to NRS 116.31065 and NRS 116.3102 (1) (t) has the
7 authority to establish and maintain a Design Review Committee ("Committee") on behalf
8 of EPCC to consider and recommend written guidelines, controls, standards, rules and
9 regulations concerning the design, architecture and/or construction of structures within
10 EPCC consistent with EPCC's historical character. The Committee shall develop and
11 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)].

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

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

19 Plaintiff appears to rely solely upon taking out of context the provision of the subject
20 2019 version of said ACDSG stating that the ARC is to "(2) to apply and enforce those ADCSG
21 which have been approved and adopted by the Board" to allege a delegation of powers from the
22 Board to the Committee (which if prohibited by the Bylaws [Defendant contends it is not], would
23 be improper). However, the totality of context provided by the detailed provisions as to the
24 *process through which such application and enforcement should be carried out* by the ARC
25 clearly demonstrates that no direct delegation of powers and authority exists, explicitly requiring
26 the ARC to make recommendations requiring Executive Board approval at every turn and for all
27
28

1 substantial actions. *See Exhibit D*, [December 2019 ACDSG version at pg. 14-17 + Declaration
2 of Authenticity].

3 Summary judgment should thus be granted to Defendant as to this cause of action,
4 because the Executive Board of EPCC was permitted by the Bylaws to enact the subject
5 ACDSG, to delegate any authority to the ARC, but did not in fact delegate any authority to the
6 ARC. Plaintiff's appeals to the scope of "corporate authority" in the subject opposition are
7 inapplicable and inapposite, where as articulated above, all authorities alleged to be absent under
8 such a theory were granted to the Executive Board of EPCC through the subject Bylaws. No
9 question of material fact remains.
10

11 **2) Plaintiff's Second Cause Of Action Alleging Violation Of NRS 116.31065 Also**
12 **Fails, Even In Appealing To The Arguments In Plaintiff's Motion For**
13 **Summary Judgment**

14 Plaintiff incorporates his arguments from his own MSJ in futile attempts to assert that
15 vague drafting of the ACDSG has allegedly created arbitrary and capricious enforcement and/or
16 confusion as to how to comply in the part of unit owners, which would be in violation of NRS
17 116.31065's various provisions. *See Exhibit A*, [Plaintiff's MSJ at pg. 27-30]. However, each
18 and every one of these "examples" in the subject MSJ by Plaintiff is based upon an omission of
19 additional context within the subject ACDSG which *invariably* provides the specificity that
20 Plaintiff claims is missing, or wholly extricates said provisions from the purview of said
21 statutes. *See Id.* Defendant will not belabor each and every example asserted by Plaintiff, but
22 will discuss many of the most prominent as exemplars.
23

24 For example, in Plaintiff's MSJ, Plaintiff takes issue with an allegedly extant and
25 operative clause of the subject ACDSG as "encouraging arbitrary enforcement," purportedly
26 permitting the ARC to "enforce ... [Guidelines] ... as the Committee sees fit". *See Exhibit A*,
27 [Plaintiff's MSJ at pg. 27-30]. However, the words "sees fit" have been removed from the
28

1 current 2019 version of this portion of the subject ACDSG, which merely states “to apply and
2 enforce those ADCSG which have been approved and adopted by the Board.” See **Exhibit D**,
3 [December 2019 ACDSG version (top of pg. 12) + Declaration of Authenticity]. Moreover, the
4 totality of the ACDSG makes it abundantly clear that the ARC has *no* unilateral discretion as to
5 the enforcement of the ACDSG, and instead must follow the specific provisions set forth in
6 each and every part thereof in enforcement, which can only occur in the form of
7 recommendations, wholly subject to the Executive Board’s review and approval. See **Exhibit D**,
8 [December 2019 ACDSG version + Declaration of Authenticity].
9

10 Plaintiff’s MSJ also alleges based upon a furtively incomplete excerpt of the ACDSG
11 that the ARC may make recommendations to the Board for disapproval of applications of unit
12 owners for any “aesthetic reason”- the excerpt utilized was ““Committee may recommend
13 disapproval ... [of] any Application ... for purely aesthetic reasons.” See **Exhibit A**, [Plaintiff’s
14 MSJ at pg. 27-30]. The full language of this clause in the operative 2019 version of the ACDSG
15 in facts states:
16

17 “d. Grounds for Disapproval: The Committee may recommend disapproval and the Board
18 may disapprove any Application:

- 19 i. If such Application does not comply with EPCC Governing Documents
20 including any ADCSG adopted by the Board.
- 21 ii. Because of the reasonable dissatisfaction with grading plans; location of the
22 proposed improvement on a lot; finished ground elevation; color scheme; exterior
23 finish; design, proportions, architecture, shape, height or style of the proposed
24 improvement; materials used; the kind, pitch or type of roof proposed; or for
25 purely aesthetic reasons.
- 26 iii. Because the plans are not harmonious with the design and character of the
27 existing house, or adjacent houses and structures.
- 28 iv. Because plans are not consistent with TRPA Plan Area Statement 069, Elk
Point.” See **Exhibit D**, [December 2019 ACDSG version at pg. 14-15 +
Declaration of Authenticity].

26 Various specifics as to the types of “aesthetic” reasons that may warrant disapproval
27 were provided therein, including “color scheme; exterior finish; design, proportions,
28

1 architecture, shape, height or style of the proposed improvement; materials used; the kind, pitch
2 or type of roof proposed” and “because the plans are not harmonious with the design and
3 character of the existing house, or adjacent houses and structures.” There is *nothing* arbitrary or
4 vague that could lead to uneven enforcement, contrary to Plaintiff’s allegations.

5 Plaintiff’s MSJ also claims that what constitutes a “Major Project” is not clearly defined
6 by the ACDSG, which prevents unit owners from being able to comply therewith in submitting
7 applications. *See Exhibit A*, [Plaintiff’s MSJ at pg. 27-30]. This is patently false; the ACDSG’s
8 operative 2019 version clearly defines Major Projects as being “...new construction, exterior
9 remodels, and building additions.” *See Exhibit D*, [December 2019 ACDSG version at top of
10 pg. 16 + Declaration of Authenticity].

11
12 Plaintiff’s MSJ’s allegation that an imposition of fines in violation of operative statutes
13 concerning fines exists within the subject ACDSG is also incorrect. *See Exhibit A*, [Plaintiff’s
14 MSJ at pg. 27-30]. Insofar as the subject ACDSG did not specify an amount for a fine, it is
15 clearly implicit that such fine amounts must be in compliance with the applicable provisions of
16 the NRS (such as NRS 116.31031). The same applies to any relevant statutes permitting unit
17 owners to take remedial measure in lieu of being fined, such as NRS 116.31031 (1)(c). It is
18 implicit by omission that the ARC must apply any fines in compliance with the applicable
19 statutory provisions, and there are no provisions in the subject ACDSG that undercut such
20 statutory provisions. *See Exhibit D*, [December 2019 ACDSG version at top of pg. 14 +
21 Declaration of Authenticity].

22
23
24 In parallel, the same premise applies to Plaintiff’s discussion in his MSJ regarding the
25 manner in which the subject ACDSG deal with variances, falsely alleging that no guidance as to
26 when a variance may be approved is provided therein. *See Exhibit A*, [Plaintiff’s MSJ at pg.
27 27-30]. In fact, the operative 2019 version of the ACDSG clearly state in detail as follows:
28

1 "f. Variances: Any Applications that require a variance to the ADCSG shall be reviewed
2 by the Committee. A majority of the Committee may recommend to the Board to grant
3 or deny variances from the ADCSG. Variances shall not be construed as precedent-
4 setting in any way or manner. A variance may be authorized by the Board when the
5 Board finds that there are exceptional shapes or topographical conditions of a property
6 that would result in exceptional practical difficulties or exceptional undue hardships
7 upon a unit owner. A variance may only be granted when it will relieve the difficulties
8 or hardships and will not be detrimental to the public good, impair affected natural
9 resources, or substantially impair the intent and purpose of the ADCSG." See Exhibit D,
10 [December 2019 ACDSG version at pg. 15 + Declaration of Authenticity].

11 The plain language herein clearly provides specific guidance as to variances, such as "A
12 variance may be authorized by the Board when the Board finds that there are exceptional shapes
13 or topographical conditions of a property that would result in exceptional practical difficulties
14 or exceptional undue hardships upon a unit owner," and more. Plaintiff's assertion that such
15 specifics are absent is thus wholly false.

16 Defendant also reiterates that Plaintiff has also not demonstrated any instances wherein
17 actual arbitrary and capricious enforcement of the ACDSG has actually occurred, and that it is
18 Plaintiff's burden to provide such proof. No examples of such conduct by ARC or the Executive
19 Board were uncovered during discovery by Plaintiff. Indeed, Plaintiff himself admits during his
20 deposition that he did not know of any specific instances of arbitrary and capricious
21 enforcement.

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

27 ...

28 BY MR. JONES:

Q: Go ahead and answer, sir.

A: I object.

MS. WINTERS: Do you know?

THE WITNESS: No.

BY MR. JONES:

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

A: Yes.

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

5 ...

6 BY MR. JONES:

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

9 A: I don't know.

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

15 A: Not really."

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

17 In the absence of any concrete examples of actual arbitrary and capricious, it only makes
18 it doubly evident by extension (in addition to all other arguments asserted above) that the subject
19 ACDSG are sufficiently specific as to avoid any such illegal arbitrary and capricious
20 enforcement.

21 Thus, Plaintiff has failed to demonstrate in any meaningful way that vague drafting of
22 the subject ACDSG that have created arbitrary and capricious enforcement and/or confusion as
23 to how to comply in the part of unit owners, and summary judgment must be granted to
24 Defendant as to this issue as no question of material fact remains.

25 **3) Plaintiff's Third Cause Of Action Alleging "Violation Of Constitutional
26 Property Rights" Fails As A Matter Of Fact And Law**

27 First and foremost, Defendant reiterates that Plaintiff has simply not pled a cognizable
28 claim under Nevada law as to this cause of action. There is no specific cause of action under
29 Nevada law specifying that relief may be obtained for a "Violation of Plaintiff's Property
30 Rights," as pled in Plaintiff's Complaint. The subject opposition by Plaintiff cites to a bevy of
31 cases alleging that Plaintiff may sue on the basis of an improper "invasion of property rights"
32 occurring because the subject ACDSG are akin to a restrictive covenant, but provides no

1 authority wherein Nevada courts have recognized a cause of action in this regard as applicable to
2 rules enacted by an HOA.

3 Furthermore, as fully explained in **Section I** above, the Bylaws grant all legal powers to
4 the Executive Board not explicitly excluded by its language, which necessarily includes the
5 power to enact and enforce the subject ACDSG, and to form the ARC and delegate authority to
6 it, as the balance of the Bylaws makes no explicit mention of such powers, which are legal under
7 Nevada law. Thus, even if a cause of action to “constitutional property rights” hypothetically did
8 exist, it would be moot, as explicit authority was granted to the EPCC Executive Board as stated
9 above by the Bylaws.
10

11 Indeed, in this manner, it is clear that summary judgment should be granted to *Defendant*
12 and not Plaintiff as to this cause of action for which no question of material fact remains.

13 **4) Plaintiff's Fourth Cause Of Action About The Alleged Failure Of Defendant To**
14 **Timely Provide Required Documents Under NRS 116.31175 Also Fails**

15 Plaintiff's fourth cause of action alleges that Defendant did not timely provide copies of
16 all documents that must be provided to unit owners upon request under NRS 116.31175,
17 pursuant to a request made by Plaintiff on May 12, 2018. Plaintiff simply has not been able to
18 clearly establish that all required documentation was not provided. Plaintiff's opposition does not
19 specify at all what documentation was improperly withheld aside from “various
20 communications/correspondence, etc. between board members potentially discussing the subject
21 ACDSG being amended.”
22

23 The plain language of the applicable statutes, NRS 116.31175 and NRS 116.3118,
24 however, make absolutely no provision that communications between board members need to be
25 preserved or produced, let alone communications regarding architectural guidelines. Such
26 materials clearly fall outside of the scope of said statutes, and Plaintiff has not specified in the
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1 subject opposition that any other types of documents other than such communications were not
2 timely produced. Moreover, of these emails/correspondences, those determined to be relevant
3 were produced during discovery upon reasonable inquiry (Plaintiff concedes that not all of these
4 emails were relevant, and Defendant is only required to disclose insofar as relevant).

5 Thus, Plaintiff has not met his burden of proof as to this claim, and it appearing that all
6 documents that must be provided to unit owners pursuant to a NRS 116.31175 and NRS
7 116.3118 were provided to Plaintiff timely by extension, there remains no issue of material fact
8 as to this cause of action in favor of Defendant and not Plaintiff.

9
10 **5) Plaintiff's Fifth Cause Of Action For Declaratory Relief Fails As No Actual**
11 **Controversy Exists**

12 As fully articulated in all of the above sections of this opposition, no actual controversy
13 continues to exist, as in fact, summary judgment is warranted in favor of Defendant as to each
14 and every issue raised by Plaintiff in his subject motion. Thus, there also remains no question of
15 material fact as to this cause of action, and Plaintiff is entitled to no declaratory relief. However,
16 even if the Court does not find that summary judgment in favor of Defendant is warranted, it is
17 beyond dispute that questions of material fact remain as to all of Plaintiff's causes of action, and
18 that by extension, a determination as to whether any declaratory relief is warranted must be
19 reserved for the time of trial.

20
21 **6) Plaintiff's Opposition Misstates Nevada Law Set Forth In Pizarro-Ortega As To**
22 **The NRC 16.1 Computation Of Damages Requirement**

23 *Pizarro-Ortega v. Cervantes-Lopez* squarely states that if an expert is to testify to future
24 damages (as is the scenario here where Plaintiff's experts are to testify as to diminution of value
25 occurring on a future potential sale of Plaintiff's property), a computation of damages must be
26 provided for such testimony to be properly admissible. *See Pizarro-Ortega v. Cervantes-Lopez*,
27 396 P.3d 783, 787-8, 791 (2017). Plaintiff has provided no such computation to date, past the
28

1 close of discovery, and thus testimony regarding such future damages must be prohibited by the
2 Court. Plaintiff's claims that Nevada law states otherwise is incorrect.

3 Plaintiff's argument that his alleged damages for the \$25 per day statutory late fee for the
4 production of documents continues to accrue and is "easily calculable" also does not absolve him
5 of the requirement to provide a computation for it under NRCP 16.1. Per *Pizarro-Ortega*, it is
6 also explicitly stated that, "...to the extent that the aforementioned general understanding amongst
7 Nevada practitioners is premised on the perceived difficulty in providing a precise dollar figure
8 for a future surgery, that premise is not a valid basis for disregarding NRCP 16.1(a)(1)(C)." See
9 *Pizarro-Ortega v. Cervantes-Lopez*, 396 P.3d at 787. Thus, Plaintiff must also provide a
10 computation as to these damages or be foreclosed from asserting them at trial.

11
12 Thus, summary judgment should be granted as a matter of law as to all monetary
13 damages alleged by Plaintiff.

14 As for Plaintiff's discussion of attorney's fees, such an award only becomes potentially
15 relevant if Plaintiff prevails in this litigation, and is moot if summary judgment is granted to
16 Defendant.

17
18 **7) Plaintiff's Attempt to Utilize an "Errata" to His Deposition Transcript Must be**
19 **Stricken as Neither Plaintiff Nor His Counsel Requested Transcript Review**
20 **Pursuant to Rule 30(e)**

21 On page 3 of his Opposition, Plaintiff notes that "Mr. Moretto has submitted an 'Errata'
22 to his deposition, for insertion in the referenced pages," and Plaintiff then attaches the "Errata"
23 as Exhibit B to the Declaration of his Counsel. In Nevada, unlike other states, a transcript review
24 that allows for an errata to be produced must be specifically requested by the deponent or his
25 counsel prior to the end of the deposition. NRCP 30(e)(1) ("[o]n request by the deponent or a
26 party before the deposition is completed, the deponent must be allowed 30 days after being
27 notified by the officer that the transcript or recording is available in which: (A) to review the
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1 transcript or recording; and (B) if there are changes in form or substance, to sign a statement
2 listing the changes and the reasons for making them.”). Here, the “Certificate of Reporter”
3 contained on page 62 of Plaintiff’s Exhibit A to his Opposition, lines 19-20, notes “that transcript
4 review pursuant to NRCPC 30(e) was not requested.” Accordingly, the “Errata” must be stricken,
5 and Plaintiff’s counsel must be precluded from referencing or relying on any information
6 contained therein on the hearing of the instant Motion.

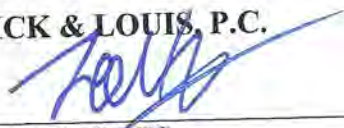
7
8 **8) Conclusion**

9 Plaintiff’s opposition has failed to demonstrate that a question of material fact remains
10 as to any of his causes of action or damages. Thus, summary judgment must be entered in favor
11 of Defendant EPCC.

12 DATED this 24th day of November, 2020.

13 **RESNICK & LOUIS, P.C.**

14 By:


15 _____
16 PRESCOTT JONES
17 Nevada Bar No. 11617
18 JOSHUA ANG
19 Nevada Bar No. 14026
20 8925 W. Russell Road, Suite 220
21 Las Vegas, NV 89148
22 *Attorneys for Defendant*
23 *Elk Point Country Club Homeowners Assn., Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing **DEFENDANT'S REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was served this 24th 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

Attorneys for Plaintiff



An Employee of Resnick & Louis, P.C.

Exhibit A

Exhibit A

1 CASE NO. 19-CV-0242

2 DEPT. NO. I

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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
F. Moretto 2006 Trust,

10

Plaintiff,

11

v.

12

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

13

14

Defendants.

15

16

NOTICE IS HEREBY GIVEN and Plaintiff, JEROME MORETTO, Trustee of the Jerome
17 F. Moretto 2006 Trust, by and through his attorney, KAREN L. WINTERS, ESQ., hereby moves for
18 summary judgment or, in the alternative, summary adjudication of issues. This motion is made on
19 the grounds that the creation of the Architectural Design and Review Guidelines ("Guidelines") and
20 the Architectural Review Committee ("Committee") created therein were formed in violation of
21 Nevada law and the Bylaws governing the Defendant.

22

This Motion is based upon the Statement of Undisputed Facts hereunder, the Declaration of
23 Karen L. Winters and the Request for Judicial Notice filed herewith, and on the attached
24 Memorandum of Points and Authorities.

25

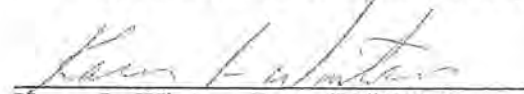
DATED: November 2, 2020

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LAW OFFICE OF KAREN L. WINTERS



Karen L. Winters, Esq., SB# 3086
P.O. Box 1987
Minden, NV 89423
(775) 782-7933
Attorney for Plaintiff

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff Jerome Moretto, Trustee, by and through his attorney of record, Karen L. Winters,
3 hereby submits Memorandum of Points and Authorities in support of the Motion for Summary
4 Judgment or, in the alternative, Summary Adjudication of Issues.

5 **I. STATEMENT OF THE CASE**

6 This matter was filed on August 16, 2019. This was followed closely by a Motion for
7 Preliminary Injunction. On October 3, 2019, Nancy Gilbert filed a Motion to Intervene in the action.
8 On March 9, 2020, the Court held the hearing on the Motion for Preliminary Injunction, which was
9 denied. On that same date, the Court denied Ms. Gilbert’s Motion to Intervene. The Court issued a
10 Scheduling Order on May 13, 2020, and an Amended Scheduling Order and Trial Setting were filed
11 on July 13, 2020.

12 **II. SEPARATE STATEMENT OF UNDISPUTED RELEVANT FACTS**

13

<u>Fact No.</u>	<u>Fact</u>	<u>Source</u>
14 1.	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.	Admitted in Defendant’s Answer to Paragraph 2 of the Complaint, on file herein.
15 2.	EPCC’s current corporate Bylaws (“Bylaws”) are the Amended and Restated Bylaws recorded as Document No. 0653319 on August 26, 2005 in the Official Records of Douglas County, Nevada, with further recorded amendments through August 7, 2018 as of the date of the Complaint on file herein.	Admitted in Defendant’s Answer to Paragraph 6 of the Complaint, on file herein.
16 3.	EPCC was originally incorporated as the “Nevada Elks Tahoe Association” in 1925 as a “social club” for the Reno and Tahoe Elks Club members.	Admitted in Defendant’s Answer to Paragraph 2 of the Complaint, on file herein; Declaration of Robert Felton in Support to Opposition to Motion for Preliminary Injunction filed herein on or about September 28, 2019; <i>see, also, State v. University Club</i> , 35 Nev. 475, 130 P. 468 (1913)

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4.	The Bylaws of EPCC only allow the Board to create an audit committee and an election committee.	Exhibit 1 to Complaint admitted in Defendant's Answer to Paragraph 6 of the Complaint, on file herein.
5.	The EPCC Bylaws only allow the Executive Board to delegate its duties to an Election Committee for annual elections, and a Finance Committee for an annual audit.	Exhibit to Complaint admitted in Defendant's Answer to Paragraph 6 of the Complaint, on file herein.
6.	Article III, Section 2 of the current Bylaws states that "The Executive Board shall have the power to conduct, manage and control the affairs and business of the Corporation, and to make rules and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation, and the Bylaws of the Corporation."	<i>Id.</i>
7.	The Architectural Review Committee meetings were not properly noticed to any unit members.	Deposition of Nancy Gilbert, p.33, ll. 1-4 and 10-16; Deposition of Charles Jennings, p. 14, ll. 17-22, each are attached as Exhibits to the Declaration of Karen L. Winters, filed herewith.
8.	EPCC operates common areas and facilities for the benefit of the fee title owners of individual units within its development.	Admitted in Defendant's Answer to Paragraph 7 of the Complaint, on file herein.
9.	The development currently consists of approximately 99 parcels ("units").	Declaration of Jerome Moretto, filed herein on August 28, 2019, ¶4 in support of the Motion for Preliminary Injunction; Deposition of Charles Jennings, p. 50, ll. 17-21, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith
10.	When EPCC first chose to allow for fee title transfer of parcels within the EPCC to individual members through amendments to its Bylaws in 1929, each deed of conveyance contained a provision stating that: "It is expressly understood that the Grantee hereof and the property and premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators, successors, or assigns."	"Reply in Support of Counter-motion to Cure Illegibility", at Exhibit "B" attached thereto, filed herein on or about November 15, 2019.

1	11.	For the last 95 years, from the inception of EPCC in 1925 to the present, the only "rules and regulations" effecting individual units addressed general construction of improvement requirements on the individual parcels.	"Reply in Support of Countermotion to Cure Illegibility", at Exhibit "B" attached thereto, filed herein on or about November 15, 2019; 2005 Bylaws, recorded 8/26/2005, at page 14, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
2	12.	The remainder of the "rules and regulations" addressed the community governance and use of the beach, marina and common areas, capital improvements on the commonly owned portions of EPCC, governance of the Executive Board and EPCC, and the role of EPCC in approving transfers of the members' parcels. (The 2019 set of rules also includes rules regarding renters, which is the subject of separate litigation with EPCC)	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, identifying the dates of each rule adopted at the end of each Section, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
3	13.	Jerome Moretto, Trustee of the Jerome F. Moretto 2006 Trust ("Moretto") is the fee title owner of that certain residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which is located within, and a part of the EPCC development.	Admitted in Defendant's Answer to Paragraph 8 of the Complaint, on file herein.
4	14.	Moretto, either as trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990.	Id.
5	15.	Moretto's fee title interest in this property contains no view restrictions, view easements, building setback requirements, minimum garage space restrictions, building size restrictions, landscaping restrictions, easements for public sidewalks, or any other real property restriction set forth in the initial "Architectural and Design Control Standards and Guidelines" ("Guidelines") enacted on March 31, 2018.	Id.
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1	16.	Parts of the Moretto residence are 80 years old and not constructed to today's building codes and requirements.	Douglas County Assessor's record of original construction year of 1936, attached as an Exhibit to Declaration of Karen L. Winters, filed herewith; <i>see, also</i> , Exhibit H at p. 16-17, attached to Defendant's "Ex Parte Request for An Order Shortening Time and Motion for Limited Extension of Discovery", filed herein on or about September 26, 2020.
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8	17.	On March 31, 2018, the Executive Board of EPCC enacted the Guidelines purportedly regulating design, architecture and construction of improvements on real property individual units within the boundaries of EPCC.	Admitted in Defendant's Answer to Paragraph 9 of the Complaint, on file herein.
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11	18.	The initial Guidelines adopted on March 31, 2018 state that the duties of the Architectural Review Committee created in the Guidelines (the "Committee") include <u>applying and enforcing</u> the Guidelines as the Committee "sees fit".	Section VI of the Guidelines, attached to the Complaint as Exhibit 2, on file herein.
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14	19.	The Board changed Section 6 of the initial Guidelines in the current version of the Guidelines, in that the Committee is identified as an "agent of the EPCC, as directed by the Board", its duties continue to include <u>applying and enforcing</u> the Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at pp. 11-12, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
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18	20.	The March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto's individual unit. by imposing setback requirements on improvements that would effectively take Moretto's property right to rebuild even in the event of fire or natural catastrophe without Moretto's consent; and impose easements, including view easements which restrict buildings and landscaping on the Moretto property, beyond those originally in place at the time Moretto purchased the property and beyond the governmental restrictions placed on all land by the Tahoe Regional Planning Agency and Douglas County.	Admitted in Defendant's Answer to Paragraph 9 of the Complaint, on file herein, and Exhibit 2 attached to the Complaint, on file herein.
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1 2 3 4	21.	The current version of the Guidelines, in Subparagraph 14(b) states that: "Exempt activities [from the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other calamity that <u>are rebuilt in substantial compliance with the design of the original structure</u> ".	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
5 6 7 8 9	22.	The Guidelines have been amended twice since they were originally forced upon Mr. Moretto, in June and September 2018, and merged into a consolidated set of "Rules, Regulations and Guidelines" for EPCC on September 14, 2019, which were later reiterated along with the rules governing the common areas, in December 2019.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 18 (EPCC ELK0325) identifying the dates of adoption and amendments, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
10 11 12	23.	Moretto objected to the initial Guidelines and requested to present those objections to the Executive Board through a letter dated from May 12, 2018.	Admitted in Defendant's Answer to Paragraph 10 of the Complaint, on file herein.
13 14 15 16	24.	The Executive Board finally included Moretto's objections and issues on the December 15, 2018 agenda of the Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the Executive Board and a certified court reporter on said date.	<i>Id.</i>

25.	<p>Moretto's objections, contained in his May 12, 2018 letter, include that: (1) the Executive Board had no authority over the individual units under the Bylaws to create a "Design Review Committee" (hereinafter, the "Committee") delegating the Executive Board's authority to a committee to develop rules and regulations governing the design, architecture and construction of improvements within EPCC boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not sufficiently explicit to inform unit property owners for compliance in violation of NRS 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard in violation of NRS 116.31065(5); (6) the Guidelines purport to create real property restrictions which are restrictive covenants on individual units taken <i>ultra vires</i>; (7) the Guidelines impose setback requirements, without Moretto's consent, on improvements that would effectively take Moretto's property right to rebuild for any reason; and (8) the Guidelines impose easements, including view easements and a pedestrian walkway easement, which are restrictive covenants taken <i>ultra vires</i> on individual units.</p>	<p><i>See</i>, Complaint filed herein; <i>see, also</i>, the "Alternative Dispute Resolution Claim Form" filed with the Nevada Real Estate Division on March 28, 2019 referred to therein and attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.</p>
26.	<p>Subparagraph XII(2) of the initial Guidelines states that the Committee is given 45 days to review any 'Application' for modification, new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or complexity of the proposed work to be done.</p>	<p>Exhibit 2 of the Complaint on file herein.</p>
27.	<p>The 45-day review period has no connection to the size of the project, and further fails to take into consideration the time of year at which any Application is made which would effect some projects under TRPA rules and regulations.</p>	<p><i>Id.</i></p>
28.	<p>At XII(3), the Guidelines state that the "Committee may recommend disapproval ...[of] any Application ... for purely aesthetic reasons."</p>	<p><i>Id.</i></p>

1	29.	"Aesthetics", by definition, are the subjective conclusions of individuals as to what constitutes "beauty" and "good taste". As a result, any Committee or Board member can decide to disapprove an Application based solely on their individual sense of beauty or good taste, without even considering the aesthetic value to the unit owner. The two examples stated in Undisputed Fact Nos. 26 and 28 remain in the current version Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 14 (EPCC ELK0321), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
2	30.	Not only does the Major Application process increase the cost to be paid to the Committee, but it increases the cost of the project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted to the Committee for any "Major Project".	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 16 (EPCC ELK0323), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
3	31.	The Committee could decide that something as simple as replacing a garage door to be a "Major Project", greatly increasing the cost of each planned improvement of a residence. The current version of the Guidelines reduces this application review fee to \$200, but imposes the same extensive documentation as the initial Guidelines.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at pp. 15-16 (EPCC ELK0322-323), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
4	32.	The latest iteration of the Guidelines also retains restrictive covenants that would impose setback requirements and view easements restricting building size and height and landscaping on the Moretto property.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 13 (EPCC ELK0320), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
5	33.	Nowhere in the initial Guidelines is there any stated amounts for any fines (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	Exhibit 2 attached to the Complaint on file herein.
6	34.	As in the initial Guidelines, nowhere in the current Guidelines is there any stated amounts for any fines (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in the Guidelines), which could result in fines exceeding those allowed under this statute.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, at p. 14 (EPCC ELK0321), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.

1	35.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit owner to request a variance of the “recommendation” that all construction not exceed 3500 square feet of floor area, but gives no indication why or under what circumstances a variance would be approved.	Exhibit 2 attached to the Complaint on file herein.
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6	36.	Subparagraph XII of the initial Guidelines states that all Applications that include a variance would first be reviewed by the Committee, then forwarded to the Executive Board with the Committee’s recommendation to approve or disapprove, however there is no guidance in that short paragraph to either the Committee or Executive Board in reaching their decisions. As a result, the requests for variances can be treated differently from unit owner to unit owner, with no consistency.	Exhibit 2 attached to the Complaint on file herein.
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12	37.	The current Guidelines appear to attempt to resolve this issue, through a more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the current Guidelines allow for amendments to the Guidelines on the recommendations of the Architectural Review Committee “as it sees fit”, thereby allowing an amendment, however temporary, to be made on the recommendation of the Committee to the Board and without any unit owner involvement.	“EPCC Rules, Regulations and Guidelines adopted 9/14/2019”, produced by EPCC, (EPCC ELK0317-325), attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
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17	38.	The initial Guidelines allow for a variance from the Guidelines at the discretion of the Committee with no objective standard. At Subparagraph XI(4), it allows a unit owner to request a variance of the “recommendation” that all construction not exceed 3500 square feet of floor area, but gives no indication why or under what circumstances a variance would be approved.	Exhibit 2 attached to the Complaint on file herein.
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21	39.	Moretto’s objections were not resolved at the Executive Board meeting, therefore Moretto filed an “Alternative Dispute Resolution Claim Form with the Nevada Department of Business and Industry Real Estate Division, Office of the Ombudsman for Common-Interest Communities and Condominium Hotels” on March 28, 2019, requesting mediation.	<i>See</i> , Complaint filed herein; <i>see, also</i> , the “Alternative Dispute Resolution Claim Form” filed with the Nevada Real Estate Division on March 28, 2019 referred to therein and attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
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1	40.	Mediation between Moretto and EPCC occurred on May 31, 2019, which did not result in a resolution. The claim was closed by the Nevada Real Estate Division by letter dated June 20, 2019.	Admitted in Defendant's Answer to Paragraph 14 of the Complaint, on file herein.
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4	41.	On August 3, 2019, the EPCC Executive Board held its monthly meeting. Included in the agenda was an item regarding "Revision and Consolidation of EPCC Rules and Regulations", and to "[d]iscuss the plan to review the ADCSG [the Guidelines] by ARC [the Committee].	"Declaration of Jerome Moretto filed in support of Motion for Preliminary Injunction", filed herein on 9/2/2019, and Exhibit 7 thereto.
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7	42.	On August 13, 2019, Moretto received the proposed new EPCC "Rules, Regulations and Guidelines" intended to consolidate the individuals rules, including the Guidelines.	<i>Id.</i> , and Exhibit 8 attached thereto.
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10	43.	The proposed new guidelines contained substantially the same rules as those imposed by the March 31, 2018 Guidelines, with the exception that the three-foot sidewalk easement imposed on unit owners became a 'recommendation' rather than a requirement. The Guidelines have been amended at least twice, with the latest iteration contained within a set of "Rules and Regulations" issued in December 2019.	"EPCC Rules, Regulations and Guidelines adopted 9/14/2019", produced by EPCC, (EPCC ELK0317-325) identifying the dates of adoption and amendments, attached as an Exhibit to the Declaration of Karen L. Winters, filed herewith.
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15	44.	Mr. Moretto made a demand for EPCC records on May 12, 2018. Although some requested documents were provided prior to the 21 day statutory deadline, a number were not presented until December 7, 2018, and later.	Letter dated 5/12/18 (Bates Nos. JM107-108) attached as Exhibit to Declaration of Karen L. Winters, filed herewith; <i>see, also</i> , Recorded documents first provided as Exhibits attached to EPCC's "Reply in Support of Countermotion to Cure Illegibility", filed herein on or about November 15, 2019
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21	45.	Further requested documents were not provided until after the instant litigation began and at the hearing on the preliminary injunction in this matter on March 9, 2020.	<i>Id.</i>
22			
23			
24	46.	Others were not provided at all to date and were the subject of the Order Compelling Further Responses to discovery.	<i>See</i> , "Motion to Compel Defendant to Further Respond to Discovery" filed herein on September 1, 2020 and the "Order Granting Motion" for further discovery, filed herein on October 2, 2020.
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1 2 3 4	47. In the Opposition to that Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board members. Less than a dozen were provided in the further documents supplied.	<i>See</i> , “Defendant’s Opposition to Plaintiff’s Motion to Compel” filed herein on or about September 16, 2020; Declaration of Karen L. Winters, filed herewith.
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5 **III. STATEMENT OF RELEVANT FACTS**

6 Defendant ELK POINT COUNTRY CLUB HOMEOWNERS, ASSOCIATION,
7 INC. (“EPCC”) is a Nevada non-profit corporation formed on March 23, 1925 as a “social club” for
8 Reno and Tahoe Elks Club members, with its principal place of business in Douglas County,
9 Nevada. Undisputed Fact No. 1. EPCC’s current corporate Bylaws (“Bylaws”) are the Amended and
10 Restated Bylaws recorded as Document No. 0653319 on August 26, 2005 in the Official Records
11 of Douglas County, Nevada, with further recorded amendments through August 7, 2018 as of the
12 date of the Complaint on file herein. Undisputed Fact No. 2. The Articles of Incorporation and
13 Bylaws currently govern EPCC. There is no Declaration of Covenants, Conditions, or Restrictions
14 for EPCC. The Bylaws of EPCC only allow the Board to create an audit committee and an election
15 committee and to delegate duties to the Election Committee for annual elections, and the Finance
16 Committee for an annual audit. Undisputed Facts No. 4. The EPCC Bylaws do not allow the
17 Executive Board to delegate any of its other duties under the Bylaws, either through an explicit
18 delegation or through an agent. It has been given no authority under the Bylaws to impose property
19 restrictions on individual units.

20 When EPCC first chose to allow for fee title transfer of parcels within the EPCC to
21 individual members, through amendments to its Bylaws in 1929, each deed of conveyance contained
22 a provision stating that: “It is expressly understood that the Grantee hereof and the property and
23 premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said
24 grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators,
25 successors, or assigns.” Undisputed Fact No. 10. For the last 95 years, from the inception of EPCC
26 in 1925 to the present, the only “rules and regulations” affecting individual units is set forth in the
27 Bylaws addressed only that the Executive Board must approve any construction of improvement on
28

1 the individual parcels. Undisputed Fact No. 11. The remainder of the “rules and regulations”
2 addressed the community governance and use of the beach, marina and common areas, capital
3 improvements on the commonly owned portions of EPCC, governance of the Executive Board and
4 EPCC, and the role of EPCC in approving transfers of the members’ parcels. Undisputed Fact No.
5 12.

6 In the current Bylaws, Article III, Section 2 states “The Executive Board shall have the power
7 to conduct, manage and control the affairs and business of the Corporation, and to make rules and
8 regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation, and
9 the Bylaws of the Corporation.” Undisputed Fact No. 6 (Emphasis added.) The Board cannot
10 delegate to a Committee the authority to act in a manner the Board itself cannot.

11 EPCC operates common areas and facilities for the benefit of its members, who are the fee
12 title owners of individual units within its development. Undisputed Fact No. 8. The development
13 currently consists of approximately 99 parcels (“units”). Undisputed Fact No. 9. Jerome Moretto,
14 Trustee of the Jerome F. Moretto 2006 Trust (“Moretto”) is the fee title owner of that certain
15 residential individual unit commonly known as 476 Lakeview Avenue, Zephyr Cove, Nevada, which
16 is located within, and a part of the EPCC development. Undisputed Fact No. 13. Moretto, either as
17 trustee of the Jerome F. Moretto 2006 Trust or individually, has owned the residence since 1990. *Id.*
18 Nevada adopted the Common Interest Development Act a year later, in 1991. Moretto’s fee title
19 interest in this property contains no view restrictions, view easements, building setback
20 requirements, minimum garage space restrictions, building size or height restrictions, landscaping
21 restrictions, easements for public sidewalks, or any other real property restriction set forth in the
22 initial “Architectural and Design Control Standards and Guidelines” (“Guidelines”) enacted on
23 March 31, 2018. *Id.* Parts of the Moretto residence are more than 80 years old and are not
24 constructed to today’s building codes and requirements. Undisputed Fact No. 16.

25 On March 31, 2018, without any authority by any recorded Declaration of Covenants,
26 Conditions or Restrictons, or authority in the Bylaws, the Executive Board of EPCC enacted the
27 Guidelines purportedly regulating design, architecture and construction of improvements on the
28 individual units within the boundaries of EPCC. Undisputed Fact No. 17. The initial Guidelines

1 created on March 31, 2018, in Paragraph VI, include, as part of the Committee's duties, that it shall
2 "apply and enforce those [Guidelines] which have been approved and adopted by the Board and as
3 the Committee sees fit". (Emphasis added.) Undisputed Fact No. 18. Although the Board has
4 attempted to soften this clear violation of the Bylaws and NRS 116.3106 in later versions of the
5 Guidelines, in that the Committee is identified as an "agent of the EPCC, as directed by the Board",
6 its duties continue to include applying and enforcing the Guidelines. Undisputed Fact No. 19. No
7 authority to do this was on record when Mr. Moretto purchased his property in 1990.

8 The Guidelines have been amended at least twice since they were originally forced upon Mr.
9 Moretto on March 31, 2018, in June and September 2018, and merged into a consolidated set of
10 "Rules, Regulations and Guidelines" for EPCC on September 14, 2019, which were later reiterated
11 along with the rules governing the common areas, in December 2019. Undisputed Fact No. 22. On
12 August 3, 2019, the EPCC Executive Board held its monthly meeting. Included in the agenda was
13 an item regarding "Revision and Consolidation of EPCC Rules and Regulations", and to "[d]iscuss
14 the plan to review the ADCSG [the Guidelines] by ARC [the Committee]. Undisputed Fact No. 41.
15 On August 13, 2019, Moretto received the proposed new EPCC "Rules, Regulations and Guidelines"
16 intended to consolidate the individuals rules, including the Guidelines. *Id.* The proposed new
17 Guidelines contained substantially the same rules as those imposed by the March 31, 2018
18 Guidelines, with the exception that the three-foot sidewalk easement imposed on unit owners became
19 a 'recommendation' rather than a requirement. The Guidelines have been amended at least twice,
20 with the latest iteration contained within a set of "Rules and Regulations" issued in December 2019.
21 Undisputed Fact No. 22. Though many changes were made, most of the illegal Guidelines to which
22 Mr. Moretto objected, remain.

23 The initial March 31, 2018 Guidelines attempt to impose restrictive covenants on Moretto's
24 individual unit by imposing setback requirements on improvements that effectively take Moretto's
25 existing property right, including the right to rebuild in the event of fire or natural catastrophe,
26 without Moretto's consent; and impose easements, including view easements which restrict
27 buildings and landscaping on the Moretto property, beyond those originally in place at the time
28 Moretto purchased the property and beyond the governmental restrictions placed on all land by the

1 Tahoe Regional Planning Agency and Douglas County. Undisputed Fact No. 20. The current version
2 of the Guidelines attempts to cure this fatal defect, by asserting, in Subparagraph 14(b) that: “Exempt
3 activities [from the Architectural Review Committee Process] are buildings damaged or destroyed
4 by fire or other calamity that are rebuilt in substantial compliance with the design of the original
5 structure”. Undisputed Fact No. 21. This would still prevent Mr. Moretto from employing his
6 existing property rights to tear down his home and rebuild it on the same footprint, with the same
7 height, in a different style and floor plan, or to modernize his home.

8 Moretto objected to the initial Guidelines and requested to present those objections to the
9 Executive Board through a letter dated from May 12, 2018. Undisputed Fact No. 23. The Executive
10 Board finally included Moretto’s objections and issues on the December 15, 2018 agenda of the
11 Executive Board monthly meeting. NRS 116.31087 requires a hearing at the next regularly scheduled
12 (monthly) meeting. It took seven months. The hearing on December 15, 2018 occurred before the
13 Executive Board and a certified court reporter on said date. Undisputed Fact No. 24.

14 Moretto’s original objections included that: (1) (1) the Executive Board had no authority
15 over the individual units under the Bylaws to create a “Design Review Committee” (hereinafter, the
16 “Committee”) delegating the Executive Board’s authority to a committee to develop rules and
17 regulations governing the design, architecture and construction of improvements within EPCC
18 boundaries in violation of NRS 116.3106; (2) the Guidelines create rules that result in arbitrary and
19 capricious enforcement in violation of NRS 116.31065(1); (3) the Guidelines are vague and not
20 sufficiently explicit to inform unit property owners for compliance in violation of NRS
21 116.31065(2); (4) the Guidelines allow for imposition of fines in violation of the requirements set
22 forth in NRS 116.31031 which is a violation of NRS 116.31065(6); (5) the Guidelines allow for a
23 variance from the Guidelines at the discretion of the Committee with no objective standard in
24 violation of NRS 116.31065(5); (6) the Guidelines purport to create real property restrictions which
25 are restrictive covenants taken *ultra vires* on individual units; (7) the Guidelines impose setback
26 requirements, without Moretto’s consent, on improvements that would effectively take Moretto’s
27 property right to rebuild for any reason; and (8) the Guidelines impose easements, including view
28 easements and a pedestrian walkway easement which are restrictive covenants taken *ultra vires* on

1 individual units. *Undisputed Fact No. 25.*

2 An example of the issues raised by Mr. Moretto is found in Subparagraph XII(2) of the initial
3 Guidelines, in which the Committee is given 45 days to review any 'Application' for modification,
4 new construction, painting, replacing light fixtures, etc. on any unit, without regard to the size or
5 complexity of the proposed work to be done. *Undisputed Fact No. 26.* The 45-day review period has
6 no connection to the size of the project, and further fails to take into consideration the time of year
7 at which any Application is made which would effect some projects under TRPA rules and
8 regulations. *Undisputed Fact No. 27.*

9 Another example is found in the following subparagraph. At XII(3), the Guidelines state that
10 the "Committee may recommend disapproval ...[of] any Application ... for purely aesthetic reasons."
11 *Undisputed Fact No. 28.* "Aesthetics", by definition, are the subjective conclusions of individuals
12 as to what constitutes "beauty" and "good taste". As a result, any Committee or Board member can
13 decide to disapprove an Application based solely on their individual sense of beauty or good taste,
14 without even considering the aesthetic value to the unit owner. These last two examples remain in
15 the current version Guidelines. *Undisputed Fact No. 29.* Further, not only does the Major
16 Application process increase the cost to be paid to the Committee, but it increases the cost of the
17 project itself, since Paragraph XIII requires extensive blueprints and documentation to be submitted
18 to the Committee for any "Major Project". *Undisputed Fact No. 30.* As a result, the Committee could
19 decide that something as simple as replacing a garage door is a "Major Project", greatly increasing
20 the cost of each planned improvement of a residence. The current version of the Guidelines reduces
21 this application review fee from \$1,500 to \$200, but imposes the same extensive documentation as
22 the initial Guidelines. *Undisputed Fact No. 31.*

23 In addition, nowhere in the initial Guidelines is there any stated amounts for any fines
24 (although there is an allusion to a "Fine Schedule" at Paragraph XII, the schedule is not included in
25 the Guidelines), which could result in fines exceeding those allowed under NRS 116.31031(1)(c).
26 *Undisputed Fact No. 33.* This is carried over into the current Guidelines as well. *Undisputed Fact*
27 *No. 34.*

28 The initial Guidelines allow for a variance from the Guidelines at the discretion of the

1 Committee with no objective standards. At Subparagraph XI(4), it allows a unit owner to request a
2 variance of the “recommendation” that all construction not exceed 3500 square feet of floor area,
3 but gives no indication why or under what circumstances a variance would be approved. Undisputed
4 Fact No. 35. Subparagraph XII of the initial Guidelines states that all Applications that include a
5 variance would first be reviewed by the Committee, then forwarded to the Executive Board with the
6 Committee’s recommendation to approve or disapprove, however there is no guidance in that short
7 paragraph to either the Committee or Executive Board in reaching their decisions. As a result, the
8 requests for variances can be treated differently from unit owner to unit owner, with no consistency.
9 Undisputed Fact No. 36. The current Guidelines appear to attempt to resolve this issue, through a
10 more restrictive process for variances in Subparagraph 14(f), however Paragraph 11 of the current
11 Guidelines allow for amendments to the Guidelines on the recommendations of the Architectural
12 Review Committee “as it sees fit”, thereby allowing an amendment, however temporary, to be made
13 on the recommendation of the Committee to the Board and without any unit owner involvement.
14 Undisputed Fact No. 37. This effectively allows the Board to alter the Guidelines to allow a variance
15 on an individual basis, only to reverse the change after the variance has been accomplished.

16 In addition, although the Architectural Review Committee purportedly received its authority
17 from the Board, it disregarded the due process requirement that its meetings be noticed to the unit
18 owners, just as the Board meetings must be. The Architectural Review Committee meetings were
19 never properly noticed to any unit members. Undisputed Fact No. 7.

20 Moretto’s objections were not resolved at the Executive Board meeting, therefore
21 Moretto filed an “Alternative Dispute Resolution Claim Form with the Nevada Department of
22 Business and Industry Real Estate Division, Office of the Ombudsman for Common-Interest
23 Communities and Condominium Hotels” on March 28, 2019, requesting mediation. Undisputed Fact
24 No. 31. Mediation between Moretto and EPCC occurred on May 31, 2019, which did not result in
25 a resolution. The claim was closed by the Nevada Real Estate Division by letter dated June 20, 2019.
26 Undisputed Fact No. 40.

27 The failure of EPCC to comply with the law is no clearer than in its failure to comply with
28 Plaintiff’s demand for EPCC records on May 12, 2018. Although some requested documents were

1 provided prior to the 21 day statutory deadline, a number were not presented until December 7, 2018.
2 Undisputed Fact No. 44. Further requested documents were not provided until after the instant
3 litigation began and at the hearing on the preliminary injunction in this matter on March 9, 2020.
4 Undisputed Fact No. 45. Others were not provided at all to date and were the subject of the Order
5 Compelling Further Responses to discovery. Undisputed Fact No. 46. In the Opposition to that
6 Motion, EPCC identified 5,422 e-mails potentially discussing the Guidelines between Board
7 members. Less than a dozen were provided in the further documents supplied. Undisputed Fact No.
8 47. It is apparent EPCC is secreting records from unit owners, including Mr. Moretto, in violation
9 of their due process rights.

10 IV. ARGUMENT

11 A. This Motion is Timely and Appropriate or -

12 I. Standards for Summary Judgment and Summary Adjudication of Issues

13 NRCP 56 provides, in relevant part, that:

14 Motions for summary judgment and responses thereto shall include a concise
15 statement setting forth each fact material to the disposition of the motion which the
16 party claims is or is not genuinely in issue, citing the particular portions of any
17 pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence
18 upon which the party relies. The judgment sought shall be rendered forthwith if the
19 pleadings, depositions, answers to interrogatories, and admissions on file, together
20 with the affidavits, if any, show that there is no genuine issue as to any material fact
and that the moving party is entitled to a judgment as a matter of law. A summary
judgment, interlocutory in character, may be rendered on the issue of liability alone
although there is a genuine issue as to the amount of damages. An order granting
summary judgment shall set forth the undisputed material facts and legal
determinations on which the court granted summary judgment.

21 Summary judgment is proper when the moving party is entitled to judgment as a matter of
22 law, and no genuine issue remains for trial. A party opposing such a motion for summary judgment
23 must set forth specific facts showing that there is a genuine issue for trial.

24 Van Cleave v. Kietz-Mill Mini Mart, 97 Nev. 414, 415; 633 P.2d 1220, 1221 (1981).

25 A genuine issue of material fact is one where the evidence is such that a reasonable
26 jury could return a verdict for the non-moving party. The pleadings and proof offered
27 below are construed in the light most favorable to the non-moving party. However,
28 the non-moving party must, by affidavit or otherwise, set forth specific facts
demonstrating the existence of a genuine issue for trial or have summary judgment
evidence, and he or she "is not entitled to build a case on the gossamer threads of

1 whimsy, speculation and conjecture.”

2 Posadas v. City of Reno, 109 Nev. 448, 452; 851 P.2d 438, 441-42 (1993).

3 In accordance with the Scheduling Order issued in this action on July 13, 2020, this Motion
4 is timely filed prior to November 2, 2020.

5 **B. The Undisputed Facts Support Summary Judgment as to the Third Cause of**
6 **Action Where Plaintiff’s Property Rights Were Violated By Adoption of the “Architectural**
7 **Design and Review Guidelines”**

8 One of the essential sticks in the bundle of property rights is the right to exclude others.
9 *Kaiser Aetna v. United States*, 444 U.S. 164, 179–180, 100 S.Ct. 383, 392–393, 62 L.Ed.2d 332
10 (1979). The power to exclude has traditionally been considered one of the most treasured strands in
11 an owner's bundle of property rights. *See, Kaiser Aetna*, 444 U.S., at 179–180, 100 S.Ct., at
12 392–393; *see also, Restatement of Property* § 7 (1936).

13 “Authorities to prove that a fee-simple estate is the highest tenure known to the law are quite
14 unnecessary, as the principle is elementary and needs no support.” *Lycoming Fire Ins. Co. of Muncy,*
15 *Pa. v. Haven*, 95 U.S. 242, 245, 24 L.Ed. 473 (1877). An owner in fee simple is presumed to be the
16 “entire, unconditional, and sole owner[] of [any] buildings as well as the land” *Id.* (Emphasis
17 added.) That presumption, of course, can be overcome by the laws of the state and the legal contracts
18 created under those laws. “Property rights are created by the State.” *Palazzolo v. Rhode Island*, 533
19 U.S. 606, 626, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001). As such “the existence of a property interest
20 is determined by reference to ‘existing rules or understandings that stem from ... source[s] such as
21 state law.’ ” *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164, 118 S.Ct. 1925, 141 L.Ed.2d 174
22 (1998) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972));
23 *accord United States v. Causby*, 328 U.S. 256, 266, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946).

24 The focus of the Complaint is not only on EPCC’s violation of Mr. Moretto’s property rights
25 and basic due process rights, but on how the Guidelines were initially created, including how they
26 were written, all of which violate the law governing Defendant EPCC. The Guidelines fail to comply
27 with property rights law, as well as statutory law governing common-interest communities and
28 corporations, and cannot be enforced under either legal theory.

1 Article III, Section 2 of the current Bylaws states that “The Executive Board shall have the
2 power to conduct, manage and control the affairs and business of the Corporation, and to make rules
3 and regulations not inconsistent with the laws of the State of Nevada, the Articles of Incorporation,
4 and the Bylaws of the Corporation.” Undisputed Fact No. 6. (Emphasis added.)

5 The State laws governing EPCC are found in our Constitution as well as in our statutes. The
6 very first article of the Nevada Constitution identifies our inalienable rights: “All men are by Nature
7 free and equal and have certain inalienable rights among which are those of enjoying and defending
8 life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and
9 happiness (Emphasis added.) Title 10 of our Nevada Revised Statutes is wholly devoted to further
10 detailing those rights, and Chapter 116 of Title 10 addresses the particular rights and obligations
11 created in a common-interest community such as the Elk Point Country Club Homeowners
12 Association.

13 When EPCC first chose to allow for fee title transfer of parcels within the EPCC to
14 individual members through amendments to its Bylaws in 1929, each deed of conveyance contained
15 a provision stating that: “It is expressly understood that the Grantee hereof and the property and
16 premises hereby conveyed shall be subject at all times to the by-laws, rules and regulations of said
17 grantor, which shall in turn bind every subsequent grantee, his or her executors, administrators,
18 successors, or assigns.” Undisputed Fact No. 10. This is the only legal constraint on Moretto’s fee
19 title ownership of his residential property within EPCC’s boundaries. EPCC’s authority is set forth
20 in its Articles of Incorporation, as well as the Bylaws, neither of which retain any rights to EPCC to
21 enact or enforce restrictive covenants on individual units, contained in the Guidelines. Nevada has
22 recognized “restrictive covenants” as a property right. *See, Meredith v. Washoe County School*
23 *District*, 84 Nev. 15, 17, 435 P.2d 750, 752 (1968). As such, they cannot be created on Moretto’s
24 property without his consent. The March 31, 2018 Guidelines attempt to impose restrictive
25 covenants on Moretto’s individual unit. by imposing setback requirements on improvements that
26 would effectively take Moretto’s property right to even rebuild in the event of fire or natural
27 catastrophe without Moretto’s consent; and impose easements, including view easements which
28 restrict buildings and landscaping on the Moretto property, beyond those originally in place at the

1 time Moretto purchased the property and beyond the governmental restrictions placed on all land by
2 the Tahoe Regional Planning Agency and Douglas County. The current version of the Guidelines
3 attempts to cure this fatal defect, by asserting, in Subparagraph 14(b) that: "Exempt activities [from
4 the Architectural Review Committee Process] are buildings damaged or destroyed by fire or other
5 calamity that are rebuilt in substantial compliance with the design of the original structure".
6 Undisputed Fact No. 21. Parts of the Moretto residence are more than 80 years old and not
7 constructed to today's building codes and requirements. Undisputed Fact No. 16. This eliminates Mr.
8 Moretto's right to remodel his home and bring it to current building codes in the event of fire or
9 natural catastrophe. Further, this would still prevent Mr. Moretto from tearing down the house and
10 building a more modern, very different, house on the same footprint. As a result, those Guidelines
11 are not within EPCC's authority and are *ultra vires*; i.e. *void ab initio*.

12 A competent grantor by appropriate covenants could, of course, convey the right
13 claimed here, and equity would enforce it. But when a right 'consists in restraining
14 the owner from doing that with, and upon, his property which, but for the grant or
15 covenant, he might lawfully have done,' it is an easement, sometimes called a
16 negative easement, or an amenity. *Trustees of Columbia College v. Lynch*, 70 N.Y.
17 440, 447, 26 Am.Rep. 615 (1877). 'An equitable restriction,' which prevents
18 development of property by building on it, has been said to be 'an easement, or
19 servitude in the nature of an easement,' a 'right in the nature of an easement,' and an
20 'interest in a contractual stipulation which is made for their common benefit.' Such
21 'equitable restrictions' are real estate, part and parcel of the land to which they are
22 attached and pass by conveyance. *River-bank Improvement Co. v. Chadwick*, 228
23 Mass. 242, 246, 117 N.E. 244, 245 (1917). A contractual restriction which limits the
24 use one may make of his own lands in favor of another and his lands is 'sometimes
25 called a negative easement, which is the right in the owner of the dominant tenement
26 to restrict the owner of the servient tenement in the exercise of general and natural
27 rights of property.' It is an interest in lands which can pass only by deed and is in
28 every legal sense an incumbrance. *Uihlein v. Matthews*, 172 N.Y. 154, 158, 64 N.E.
792, 793 (1902). (Emphasis added.)

Chapman v. Sheridan-Wyoming Coal Co., 338 U.S. 621, 626-27 (1950).

23 Under property rights laws, common-interest development boards are in charge of corporate
24 business and the common areas, but not the individual units, unless something further is contained
25 in a recorded declaration of covenants, conditions and restrictions, or the initial Articles and Bylaws
26 or agreed to by all members of an association, giving the board that additional power. This Board
27 is attempting to use its corporate rule-making powers to impose property restrictions on the
28 individual units, such as Mr. Moretto's individual unit. This is not a typical common-interest

1 community where there are recorded Covenants, Conditions, and Restrictions in place, prior to
2 purchase of the individual units, that give the Board the power to impose property restrictions on the
3 individual units. The only proper method to do this is to obtain a vote of the members to amend their
4 Bylaws to give the Board authority to act as it apparently intends; however, to impose property
5 restrictions on individual unit owners requires consent of that unit owner. As Mr. Moretto does not
6 agree to these property restrictions that did not exist when he purchased his individual unit, they
7 cannot be retroactively imposed upon him now under the corporation's rule-making authority. A
8 good example of this is the three foot easement that was given in the initial guidelines from the front
9 property line of each property. This is simply theft of and abetting trespass on Mr. Moretto's
10 property, without any reason or authority.

11 Restrictive covenants on real property can only be created through a deed restriction imposed
12 by the prior property owner at the time of transfer, or by contract between the current property owner,
13 as the owner of the servient tenement, and the entity desiring the restrictive covenants, the dominant
14 tenement holder, upon payment of valid consideration. Neither has occurred on the Moretto property.

15 The clearest explanation of why EPCC's efforts to impose restrictions through corporate
16 rules, rather than its governing documents, is a violation of Mr. Moretto's property rights is best
17 summed up in the Restatement (Third) of Property:

18 Unless a statute, or the declaration, provides a more expansive power, an
19 association's authority to impose restrictions on individually owned property, under
20 a generally worded rulemaking power, is limited to prevention of nuisance-like
21 activities (in addition to prevention of damage to common property, a power enjoyed
22 by the association even in the absence of statute, or authorizing provision in the
23 governing documents).

22 The rationale for not giving an expansive interpretation to an association's power to
23 make rules restricting use of individually owned property is based in the traditional
24 expectations of property owners that they are free to use their property for uses that
25 are not prohibited and do not unreasonably interfere with the neighbors' use and
26 enjoyment of their property. People purchasing property in a common-interest
27 community, which is usually subject to specific use restrictions set forth in the
28 declaration, are not likely to expect that the association would be able, under a
generally worded rulemaking power, to impose additional use restrictions on their
property. On the other hand, they are likely to expect that the association will be able
to protect them from neighborhood nuisances by adoption of preventative rules.
Securing private protection from nuisance-like activity is one of the frequently cited
attractions of common-interest communities. By exercising its rulemaking power, the
association can provide a more efficient means to prevent or abate nuisances than
resort to municipal authorities or to the judicial system.

1 *Restatement (Third) of Property (Servitudes) § 6.7 (2000), comment (b). (Emphasis added.)*

2 It is undisputed EPCC has no recorded declaration of property restrictions. As analyzed
3 above, EPCC has gone beyond the general corporate rule-making powers given in the Bylaws to
4 impose additional property restrictions on Mr. Moretto and the other property owners within the
5 boundaries of EPCC. As a result, the Guidelines imposing restrictive covenants must fall and
6 summary judgment on the Third Cause of Action regarding violation of Plaintiff's Property Rights
7 must be granted, imposing a permanent injunction against EPCC to prevent any effort to impose
8 restrictions on Mr. Moretto's individual unit property that is not specifically set forth in the Articles
9 of Incorporation and Bylaws.

10 In addition to an award of a permanent injunction, Mr. Moretto is entitled to attorney fees
11 pursuant to NRS 116.4117.

12 1. Subject to the requirements set forth in subsection 2, if a declarant, community
13 manager or any other person subject to this chapter fails to comply with any of its
14 provisions or any provision of the declaration or bylaws, any person or class of
persons suffering actual damages from the failure to comply may bring a civil action
for damages or other appropriate relief.

15 2. Subject to the requirements set forth in NRS 38.310 and except as otherwise
16 provided in NRS 116.3111, a civil action for damages or other appropriate relief for
a failure or refusal to comply with any provision of this chapter or the governing
documents of an association may be brought:

17 ...
(b) By a unit's owner against:
(1) The association;

18 ...
19 6. The court may award reasonable attorney's fees to the prevailing party.
20 7. The civil remedy provided by this section is in addition to, and not exclusive of,
any other available remedy or penalty.

21 NRS 116.4117.

22 The primary relief sought in this action is a permanent injunction to prevent the Board and
23 the EPCC Homeowners Association from imposing illegal property restrictions on Plaintiff's
24 property. This "appropriate relief" therefore allows for attorney fees in this matter. Should the
25 injunction not be granted, then the damages for loss in value to Plaintiff's property remains as an
26 issue for trial.

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1 **C. The Undisputed Facts Support Summary Judgment for Breach of the Bylaws**
2 **and the Laws Governing the Bylaws, set forth in the Second Cause of Action**

3 Creation of the Architectural Review Committee (“Committee”) in the Guidelines violates
4 the Bylaws and the laws governing those Bylaws. Under corporate law, at NRS 78.125(1), the Board
5 of Directors’ powers to enact rules is limited to corporate business, without any powers to enact
6 property restrictions. “Unless it is otherwise provided in the Articles of Incorporation, the board of
7 directors may designate one or more committees which, to the extent provided in the resolution or
8 resolutions or in the bylaws of the corporation, have and may exercise the powers of the board of
9 directors in the management of the business and affairs of the corporation.” (Emphasis added.) There
10 is no provision allowing the corporation to create rules to manage property it does not own. As
11 analyzed above, the deed restriction contained on each deed within the Elk Point Country Club
12 Homeowner’s Association, binds the property owner only to the properly amended Bylaws, and the
13 rules and regulations governing the corporation and common areas. The limits of a corporation under
14 Chapter 78 are further restricted for community interest development corporations under NRS
15 116.3106(1)(d), which dictates that the board cannot delegate its duties without the bylaws
16 specifically giving the board power to do so. “The bylaws of the association must: ... (d) Specify the
17 powers the executive board or the officers of the association may delegate to other persons or to a
18 community manager”. The Bylaws of EPCC only allow the Board to create an audit committee and
19 an election committee. Undisputed Fact. No. 4. As is clear under the property laws addressed above,
20 even if the Board could create any other type of committee, its purpose is limited to corporate
21 business, not to impose property restrictions on the unit members. The Board cannot delegate to a
22 committee powers it does not have.

23 The Guidelines have been amended at least twice since they were originally forced upon Mr.
24 Moretto on March 31, 2018, including in June and September 2018, and merged into a consolidated
25 set of “Rules, Regulations and Guidelines” for EPCC on September 14, 2019, which were later
26 reiterated along with the rules governing the common areas, in December 2019. Undisputed Fact No.
27 22. The initial Guidelines adopted on March 31, 2018 state that the duties of the Architectural
28 Review Committee created in the Guidelines (the “Committee”) include applying and enforcing the

1 Guidelines (Section 6 of the Guidelines, attached to the Complaint on file herein). Although the
2 Board has attempted to soften this clear violation of the Bylaws and NRS 116.3106 in later versions
3 of the Guidelines, in that the Committee is identified as an “agent of the EPCC, as directed by the
4 Board”, its duties continue to include applying and enforcing the Guidelines. Undisputed Fact No.
5 19. Identifying the Committee as an “agent of the Board” still does not delegate to the Committee
6 any authority to apply and enforce the Guidelines, without an amendment to the Bylaws allowing
7 the Board to do so, as the Board has no legal authority to impose property restrictions on individual
8 units.

9 The foregoing violations of the Bylaws and its governing laws require a permanent injunction
10 be granted, enjoining the Board (and any committee) from imposing guidelines or “rules” that
11 attempt to govern the individual units, beyond managing the affairs of the corporation and its
12 common areas.

13 As stated herein above, in addition to an award of a permanent injunction, Mr. Moretto is
14 entitled to attorney fees pursuant to NRS 116.4117.

15 The primary relief sought in this action is a permanent injunction to prevent the Board and
16 the EPCC Homeowners Association and any committee from imposing rules and restrictions beyond
17 those stated in the Bylaws. This appropriate relief therefore allows for attorney fees in this matter.
18 Should the injunction not be granted, then the damages for loss in value to Plaintiff’s property
19 remains as an issue for trial. Without an injunction, the Guidelines are a taking of Plaintiff’s property
20 rights, for which Plaintiff is entitled to compensation.

21 **D. The Undisputed Facts Support Summary Judgment as to the Second Cause of**
22 **Action Where Guidelines Imposed Failed to Comply with Statutory Requirements and the**
23 **Bylaws.**

24 EPCC was originally incorporated in 1925 as a “social club” for the Reno and Tahoe Elks
25 Club members. Undisputed Fact No. 3. For the last 95 years, from the inception of EPCC in 1925
26 to the present, the only “rules and regulations” addressed general construction of improvement
27 requirements on the individual parcels. Undisputed Fact No. 11. The remainder of the “rules and
28 regulations” addressed the community governance and use of the beach, marina and common areas,