

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION,

Appellant,

vs.

SIMONE RUSSO,

Respondent.

Case No. 83115 Electronically Filed
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APPELLANT'S APPENDIX
VOLUME 1

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	<u>Exhibit 1</u> : Order on Motion to Substitute		12	2655-2660
91.	Minute Order: Pending Motions	5/3/21	12	2661-2662
92.	Motion to Amend and/or Modify Order	5/7/21	12	2663-2668
	<u>Exhibit A</u> : Minute Order for March 31, 2021		12	2669-2671
	<u>Exhibit B</u> : April 1, 2021 Email Correspondence		12	2672-2675

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 92)	<u>Exhibit C</u> : April 5, 2021 Email Correspondence		12	2676-2678
	<u>Exhibit D</u> : April 5, 2021 Email Correspondence with a redline version of the Order		12	2679-2687
	<u>Exhibit E</u> : April 22, 2021 Email Correspondence		12	2688-2698
	<u>Exhibit F</u> : Order on Motion to Intervene to Enforce Settlement [April 22, 2021]		12	2699-2711
	<u>Exhibit G</u> : Proposed Order Re: Motion to Intervene to Enforce Settlement, clean version of the redlined Order (Ex. D)		12	2712-2717
93.	Defendant Sunrise Villas IX Homeowners Association's Joinder to Intervenor QBE Insurance Corporation's Motion to Amend and/or Modify Order	5/10/21	12	2718-2720
94.	Opposition to Motion to Amend and/or Modify Order	5/13/21	13	2721-2731
	<u>Exhibit 1</u> : Minute Order for March 31, 2021		13	2732-2734
	<u>Exhibit 2</u> : April 1, 2021 Email Correspondence from Russo's Counsel re proposed Order		13	2735-2736
	<u>Exhibit 3</u> : Order on Motion to Intervene to Enforce Settlement		13	2737-2742
	<u>Exhibit 4</u> : April 1, 2021 Email Correspondence from QBE's Counsel re Order in Word format		13	2743-2746
	<u>Exhibit 5</u> : April 1, 2021 Email Correspondence from Sunrise's Counsel re Order		13	2747-2749
	<u>Exhibit 6</u> : April 5, 2021 Email Correspondence from Russo's Counsel circulating proposed Order		13	2450-2751

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(Cont. 94)	<u>Exhibit 7</u> : Order on Motion to Intervene to Enforce Settlement		13	2752-2760
	<u>Exhibit 8</u> : April 5, 2021 Email Correspondence from QBE's Counsel re suggested changes to Order		13	2761-2763
	<u>Exhibit 9</u> : April 22, 2021 Email Correspondence from Sunrise's Counsel re "extraneous" facts included in the Order		13	2764-2780
95.	Supplement to Opposition to Motion to Amend and/or Modify Order	5/18/21	13	2781-2784
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100.	Reply to Opposition to Motion to Amend and/or Modify Order	6/1/21	13	2872-2874
101.	Opposition to Sunrise's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/2/21	13	2875-2880
	<u>Exhibit 1</u> : Minute Order: Pending Motions on May 3, 2021		13	2881-2883
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102.	Court Minutes Re: Hearing on Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/3/21	13	2909
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	<u>Exhibit A:</u> Minute Order: Pending Motions on May 3, 2021		13	2925-2927
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	<u>Exhibit C:</u> Stipulation between Sunrise Villas IX Homeowners Association and Simone Russo related to case A-17-753606 (Simone Russo v. Cox Communications Las Vegas, Inc.) [November 12, 2019]		13	2948-2950
105.	Notice of Entry of Order Granting Defendant Sunrise Villas IX Homeowners Association's Motion to Release Exhibits from Evidence Vault on Order Shortening Time	6/8/21	13	2951-2952
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	<u>Exhibit 1: Medical Treatment Timeline</u>		13	2965-2968
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	<u>Exhibit 3: Medical Records and Billing Records from Center for Disease & Surgery of the Spine</u>		14	2971-3059
	<u>Exhibit 4: Medical Records and Billing Records Kozmary Center for Pain Management</u>		14 15	3060-3210 3211-3235
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107.	Notice of Appeal	6/23/21	15	3288-3290
	<u>Exhibit A: Order on Defendant's Motion to Set Aside and/or Amend Judgment, and Order on Plaintiff's Motion to Enforce Settlement [May 26, 2021]</u>		15	3291-3310

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113.	Reporter's Transcript of Hearing (Telephonic Conference) Re: Settlement	11/8/19	16	3435-3474
114.	Reporter's Transcript of Hearing [E-filed November 7, 2019 Hearing Transcript]	1/25/21	16	3475-3520
115.	Reporter's Transcript of Hearing [Telephonic Hearing on February 11, 2019]	2/11/21	16	3521-3607
116.	Reporter's Transcript of Hearing Re: Motions	3/3/21	17	3608-3750
<u>ADDITIONAL DOCUMENTS</u>				
117.	Plaintiff's Motion to Compel Settlement on Order Shortening Time	11/1/19	17	3751-3770
	<u>Exhibit 1</u> : Email from Fink (Sunrise) Re: proposed release and waiting for carrier to sign off		17	3762-3768
	<u>Exhibit 2</u> : Email from Turtzo (Cox) re: also waiting for approval of the release		17	3769-3770

DISTRICT COURT CIVIL COVER SHEET A-17-753606-C

County, Nevada

Case No. _____

XVI

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

SIMONE RUSSO

Defendant(s) (name/address/phone):

Cox Communications Las Vegas, Inc.,
et. al.

Attorney (name/address/phone):

David Sampson

630 S. 3rd Street

Las Vegas, NV 89101

(702) 605-1099

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input checked="" type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

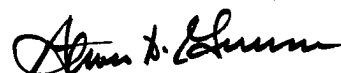
4-5-17

Date

Signature of initiating party or representative

See other side for family-related case filings.

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CLERK OF THE COURT

COMP

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

COX COMMUNICATIONS LAS VEGAS,)
INC., D/B/A COX COMMUNICATIONS,)
IES RESIDENTIAL, INC., SUNRISE)
VILLAS IX HOMEOWNERS)
ASSOCIATION, J & G LAWN)
MAINTENANCE, KEVIN BUSHBAKER,)
PWJAMES MANAGEMENT &)
CONSULTING, LLC., AND DOES I - V,)
and ROE CORPORATIONS I - V,)
inclusive,)

Defendants.

A-17-753606-C

CASE NO:

DEPT. NO:

XVI

COMPLAINT

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys, LAW
OFFICE OF DAVID SAMPSON, LLC., and for his causes of action, complains of Defendants,
and each of them, as follows:

FIRST CAUSE OF ACTION

1. Upon information and belief, that at all times relevant to this action, the Defendant, COX
COMMUNICATIONS LAS VEGAS, INC., doing business as COX

1 COMMUNICATIONS (“COX”) was a Nevada corporation duly licensed to conduct
2 business in the State of Nevada.

3 2. Upon information and belief, that at all times relevant to this action, the Defendant, IES
4 RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the
5 State of Nevada.
6

7 3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G
8 LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in
9 the State of Nevada.
10

11 4. Upon information and belief, that at all times relevant to this action, the Defendant,
12 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation
13 duly licensed to conduct business in the State of Nevada.

14 5. Upon information and belief, that at all times relevant to this action, the Defendant,
15 PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly
16 licensed to conduct business in the State of Nevada.
17

18 6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of
19 the State of Indiana.

20 7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the
21 State of Nevada.
22

23 8. That the true names and capacities, whether individual, corporate, partnership, associate
24 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
25 sues said Defendants by such fictitious names. Plaintiff is informed and believes and
26 thereon alleges that each of the Defendants designated herein as DOE is responsible in
27 some manner for the events and happenings referred to and caused damages proximately
28

1 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
2 Complaint to insert the true names and capacities of DOES I through V, when the same
3 have been ascertained, and to join such Defendants in this action.
4

5 9. That upon information and belief, at all times relevant to this action, the Defendant,
6 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
7 premises located at 4617 Madreperla Street, Las Vegas, Nevada.

8 10. That upon information and belief, at all times relevant to this action, the Defendant,
9 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
10 and operated, maintained and controlled those premises located at 4617 Madreperla Street,
11 Las Vegas, Nevada.
12

13 11. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of
14 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable
15 line, and as such did transport, ship, introduce and/or cause said products to be installed
16 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.
17

18 12. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing
19 business in the State of Nevada, with its principal place of business located within the
20 State of Nevada and was and is the designer, manufacturer, producer, packager,
21 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and
22 hinges, and as such did transport, ship, introduce and/or cause said products to be
23 introduced into the State of Nevada for the purpose of their sale, distribution, installation
24 and/or use within the State of Nevada.
25

26 13. The true names or capacities, whether individual, corporate, associate or otherwise, of
27 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
28

1 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
2 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
3 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
4 some manner for the events and happenings referred to and caused damages proximately
5 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
6 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
7 CORPORATION III through ROE CORPORATION V, when the same have been
8 ascertained and to join such Defendants in this action.
9
10

- 11 14. That on or about the 27th day of August, 2016, and for some time prior thereto, the
12 Defendants, and each of them (by and through their authorized agents, servants, and
13 employees, acting within the course and scope of their employment), negligently and
14 carelessly owned, maintained, operated, occupied, and controlled the said premises,
15 located at 3535 Las Vegas Boulevard South, Las Vegas, Nevada, so as to cause and allow
16 a cable/wire to be installed by Defendant COX to come out of the front yard of the said
17 premises, to remain above the ground and stretch from the yard of the said premises,
18 across the driveway of the said premises, and to then be buried under the ground on the
19 opposite side of the driveway adjacent from the yard of the said premises, making the
20 driveway hazardous and dangerous. In that they allowed the area to remain in such a
21 manner that it presented a dangerous and hazardous condition in an area intended for the
22 use and commonly and regularly used by residents and invitees of the said premises. In so
23 acting, the Defendants, and each of them, caused the driveway of the said premises to be
24 hazardous and dangerous to persons walking in the area; and more particularly the
25 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,
26
27
28

1 allowed and caused said unsafe condition to remain even though Defendants knew or,
2 through the exercise of ordinary care and diligence, should have known, that the wore
3 stretched across the driveway and constituted a defective and dangerous condition; that
4 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably
5 safe condition; and that Defendant, and each of them, negligently, carelessly and
6 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,
7 SIMONE RUSSO, of the defect therein.
8

9
10 15. At all times herein concerned or relevant to this action, the Defendants, and each of them,
11 acted by and through their duly authorized agents, servants, workmen and/or employees then
12 and there acting within the course of their employment and scope of their authority for the
13 Defendants, and each of them.

14
15 16. That the carelessness and negligence of the Defendants, and each of them, in breaching a
16 duty owed to the Plaintiff, SIMONE RUSSO, which directly and proximately caused the
17 injuries and damages to the Plaintiff; SIMONE RUSSO, consisting in and of, but not
18 limited to, the following acts, to wit:

- 19 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
20 the driveway;
21
22 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous
23 condition then and there existing in said premises;
24
25 c) Failure to properly and adequately inspect the said dangerous condition in the
26 driveway to ascertain its hazardous and dangerous condition;
27
28 d) Failure to properly and adequately maintain the driveway;

1 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous
2 condition;

3 f) The Defendants, and each of them, had, or should have had, knowledge or notice
4 of the existence of the said dangerous and defective condition which existed on
5 said premises. At all times pertinent hereto, Defendants, and each of them,
6 expressly and/or impliedly warranted that the certain driveway in question was in
7 all respects fit for due purposes and uses for which it was intended and was of
8 merchantable quality.
9
10

11 17. The Defendants, and each of them, may have violated certain Nevada Revised Statutes
12 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff
13 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the
14 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all
15 persons who could reasonably be foreseen to be situated in and around the driveway in
16 question, and such a duty was specifically owed to Plaintiff.
17

18 18. That on or about the 24th day of August, 2016, the Plaintiff, SIMONE RUSSO, while
19 lawfully upon the said premises, as a direct and proximate result of the said negligence and
20 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the
21 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing
22 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter
23 more particularly alleged.
24

25 19. By reason of the premises and as a direct and proximate result of the aforesaid negligence
26 and carelessness of the Defendants, and each of them, the Plaintiff, SIMONE RUSSO, was
27 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical
28

1 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and
2 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about
3 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all
4 or some of the same are chronic and may result in permanent disability and are disabling, all
5 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in
6 excess of the Justice Court jurisdictional limit of \$15,000.00.
7

8 20. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
9 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been
10 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of
11 thousands of dollars, for medical expenses, and will in the future be caused to expend monies
12 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in
13 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court
14 to insert the total amount of the medical and miscellaneous expenses when the same have
15 been fully determined at the time of the trial of this action.
16
17

18 21. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied
19 male, capable of being gainfully employed and capable of engaging in all other activities for
20 which he was otherwise suited, and at the time of the incident complained of herein, had no
21 disabilities. By reason of the premises, and as a direct and proximate result of the negligence
22 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be
23 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to
24 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which
25 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.
26
27
28

22. Plaintiff has been required to retain the law firm of LAW OFFICE OF DAVID SAMPSON, LLC. to prosecute this action, and is entitled to a reasonable attorney's fee.

WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of damage, demands judgment against the Defendants, and each of them, as follows:

1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the Justice Court jurisdictional limit of \$15,000.00;
2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous expenses, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Special damages for lost wages in a presently unascertainable amount, and/or diminution of Plaintiff's earning capacity, plus possible future loss of earnings and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount.
4. Costs of this suit;
5. Attorney's fees; and
6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED THIS 5th day of April, 2017

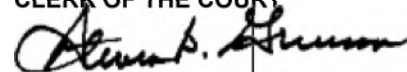
LAW OFFICE OF DAVID SAMPSON, LLC

BY: 

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Attorney for Plaintiff

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Steven D. Grierson
CLERK OF THE COURT


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Nevada Bar No. 6811
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Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C
DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)
INC., D/B/A COX COMMUNICATIONS,)
IES RESIDENTIAL, INC., SUNRISE)
VILLAS IX HOMEOWNERS)
ASSOCIATION, J & G LAWN)
MAINTENANCE, KEVIN BUSHBAKER,)
PWJAMES MANAGEMENT &)
CONSULTING, LLC., AND DOES I - V,)
and ROE CORPORATIONS I - V,)
inclusive,)

MOTION TO AMEND COMPLAINT

Defendants.)

Date of Hearing: 01/16/18

Time of Hearing: 9:00 AM

COMES NOW, the Plaintiff, SIMONE RUSSO, by and through his attorneys, THE
LAW OFFICE OF DAVID SAMPSON, LLC., and moves for leave to amend the Complaint in
this matter.

///

///

1 This Motion is made and based upon all the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities below, the Exhibits attached hereto, and any oral
3 argument of counsel at any hearing hereon.
4

5 DATED this 29th day of November, 2017

6 LAW OFFICE OF DAVID SAMPSON, LLC.

7
8 BY: /s/ *David Sampson*

9 DAVID SAMPSON, ESQ.

10 Nevada Bar No.6811

11 LAW OFFICE OF DAVID SAMPSON

12 630 S. 3rd Street

13 Las Vegas, Nevada 89101

14 Fax No: 888-209-4199

15 Attorney for Plaintiff
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NOTICE OF MOTION

To: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that Plaintiff SIMONE RUSSO will bring the foregoing MOTION TO AMEND COMPLAINT on for hearing in Department XVI of the above entitled court on the 16 day of January, 2018, at 9:00 am./~~p.m.~~, or as soon thereafter as counsel may be heard.

DATED this 29th day of November, 2017

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.
Nevada Bar No.6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, Nevada 89101
Fax No: 888-209-4199
Attorney for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

On August 27, 2016, Plaintiff, Simone Russo, was very seriously injured when the Defendants placed, caused to be placed, or otherwise installed a cable/wire at 4617 Madreperla Street, Las Vegas, Nevada, or allowed to be placed and/or allowed the same to remain on the subject property. The said cable/wire came out of the front yard of the said premises, remained above the ground and stretched from the yard of the said premises, across the driveway of the said premises, and then was buried under the ground on the opposite side of the driveway adjacent from the yard of the said premises, essentially leaving a snare across the base of the driveway of the subject property, making the driveway hazardous and dangerous. Simone arrived at the property late one night after flying home from New York, got out of a taxicab, stepped onto the driveway and caught his foot on the cable/wire, which then caused Simone to be violently thrown to the ground and seriously injured.

J. Chris Scarcelli was the property manager in charge of 4617 Madreperla Street, Las Vegas, Nevada, at which Plaintiff's fall took place. On November 20, 2017 Mr. Scarecelli gave deposition testimony in which he admitted he had seen the subject exposed cable/wire in the said driveway prior to Dr. and Mrs. Russo moving in. Mr. Scarecelli further testified he never told Dr. or Mrs. Russo, nor any other person or entity about the tripping hazard.

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II

ARGUMENT

MOTION TO AMEND

Pursuant to NRCP 15(a), a party may amend its Complaint by leave of court or by written consent of the adverse party. Under this rule leave shall be freely given when justice so requires. In Stevens v. Southern Nev. Musical Co., 89 Nev. 104, 507 P.2d 138 (1973), the Nevada Supreme Court held that absent of an apparent or declared reason such as undue delay, bad faith or dilatory motive on the part of the movant, leave to amend should be freely given.

Plaintiff has no dilatory motive in seeking leave to amend its Complaint. Recently Plaintiff has determined that , J. Chris Scarcelli should be named as a Defendant in the instant action. There is no reason why the Complaint should not be amended to reflect the correct information. No substantive changes have been made to Plaintiff's Complaint.

A copy of Plaintiff's Proposed Amended Complaint is attached hereto in compliance with EDCR 2.30.

///

///

///

1 **CONCLUSION**

2 Plaintiff respectfully requests this Court grant his Motion for Leave to File an Amended
3 Complaint to add J. Chris Scarcelli as a Defendant.

4
5 DATED this 29th day of November, 2017

6 LAW OFFICE OF DAVID SAMPSON, LLC.

7
8
9 BY: /s/ *David Sampson*

10 DAVID SAMPSON, ESQ.

11 Nevada Bar No.6811

12 LAW OFFICE OF DAVID SAMPSON

13 630 S. 3rd Street

14 Las Vegas, Nevada 89101

15 Fax No: 888-209-4199

16 Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, L.L.C., and that on this 29th day of November, 2017, I served a copy of the **MOTION TO AMEND COMPLAINT** as follows:

☒ Electronic Service through the Court's online filing system.

RICHARD J. PYATT, ESQ.
PYATT SILVESTTI
701 Bridger Ave., Suite 600
Las Vegas NV 89101
Counsel for Defendant
J&G LAWN SERVICE

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
BUSHBAKER

WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

JONATHAN C. PATTILLO, ESQ.
SPRINGEL & FINK, LLP
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Attorney for Defendant
SUNRISE VILLAS IX HOA

/s/ Amanda Nalder
An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

EXHIBIT “1”

COMP

DAVID F. SAMPSON, ESQ.,
 Nevada Bar No. 6811
 LAW OFFICE OF DAVID SAMPSON
 630 S. 3rd Street
 Las Vegas, NV 89101
 Tel: 702-605-1099
 Fax: 888-209-4199
 Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C
 DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,
 INC., D/B/A COX COMMUNICATIONS,
 IES RESIDENTIAL, INC., SUNRISE
 VILLAS IX HOMEOWNERS
 ASSOCIATION, J & G LAWN
 MAINTENANCE, KEVIN BUSHBAKER,
 PWJAMES MANAGEMENT &
 CONSULTING, LLC., J. CHRIS
 SCARCELLI AND DOES I - V, and ROE
 CORPORATIONS I - V, inclusive,

Defendants.

AMENDED COMPLAINT

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys, LAW
 OFFICE OF DAVID SAMPSON, LLC., and for his causes of action, complains of Defendants,
 and each of them, as follows:

FIRST CAUSE OF ACTION

1. Upon information and belief, that at all times relevant to this action, the Defendant, COX
 COMMUNICATIONS LAS VEGAS, INC., doing business as COX

1 COMMUNICATIONS ("COX") was a Nevada corporation duly licensed to conduct
2 business in the State of Nevada.

3 2. Upon information and belief, that at all times relevant to this action, the Defendant, IES
4 RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the
5 State of Nevada.

6 3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G
7 LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in
8 the State of Nevada.

9 4. Upon information and belief, that at all times relevant to this action, the Defendant,
10 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation
11 duly licensed to conduct business in the State of Nevada.

12 5. Upon information and belief, that at all times relevant to this action, the Defendant,
13 PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly
14 licensed to conduct business in the State of Nevada.

15 6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of
16 the State of Indiana.

17 7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the
18 State of Nevada.

19 8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of
20 the State of Nevada

21 9. That the true names and capacities, whether individual, corporate, partnership, associate
22 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
23 sues said Defendants by such fictitious names. Plaintiff is informed and believes and
24

1 thereon alleges that each of the Defendants designated herein as DOE is responsible in
2 some manner for the events and happenings referred to and caused damages proximately
3 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
4 Complaint to insert the true names and capacities of DOES I through V, when the same
5 have been ascertained, and to join such Defendants in this action.
6

7 10. That upon information and belief, at all times relevant to this action, the Defendant,
8 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
9 premises located at 4617 Madreperla Street, Las Vegas, Nevada.
10

11 11. That upon information and belief, at all times relevant to this action, the Defendant,
12 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
13 and operated, maintained and controlled those premises located at 4617 Madreperla Street,
14 Las Vegas, Nevada.
15

16 12. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of
17 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable
18 line, and as such did transport, ship, introduce and/or cause said products to be installed
19 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.
20

21 13. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing
22 business in the State of Nevada, with its principal place of business located within the
23 State of Nevada and was and is the designer, manufacturer, producer, packager,
24 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and
25 hinges, and as such did transport, ship, introduce and/or cause said products to be
26 introduced into the State of Nevada for the purpose of their sale, distribution, installation
27 and/or use within the State of Nevada.
28

1 14. The true names or capacities, whether individual, corporate, associate or otherwise, of
2 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
3 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
4 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
5 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
6 some manner for the events and happenings referred to and caused damages proximately
7 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
8 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
9 CORPORATION III through ROE CORPORATION V, when the same have been
10 ascertained and to join such Defendants in this action.
11

12
13 15. That on or about the 27th day of August, 2016, and for some time prior thereto, the
14 Defendants, and each of them (by and through their authorized agents, servants, and
15 employees, acting within the course and scope of their employment), negligently and
16 carelessly owned, maintained, operated, occupied, and controlled the said premises,
17 located at 4617 Madreperla Street, Las Vegas, Nevada, so as to cause and allow a
18 cable/wire to be installed by Defendant COX to come out of the front yard of the said
19 premises, to remain above the ground and stretch from the yard of the said premises,
20 across the driveway of the said premises, and to then be buried under the ground on the
21 opposite side of the driveway adjacent from the yard of the said premises, making the
22 driveway hazardous and dangerous. In that they allowed the area to remain in such a
23 manner that it presented a dangerous and hazardous condition in an area intended for the
24 use and commonly and regularly used by residents and invitees of the said premises. In so
25 acting, the Defendants, and each of them, caused the driveway of the said premises to be
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1 hazardous and dangerous to persons walking in the area; and more particularly the
2 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,
3 allowed and caused said unsafe condition to remain even though Defendants knew or,
4 through the exercise of ordinary care and diligence, should have known, that the wore
5 stretched across the driveway and constituted a defective and dangerous condition; that
6 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably
7 safe condition; and that Defendant, and each of them, negligently, carelessly and
8 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,
9 SIMONE RUSSO, of the defect therein.
10

11
12 16. At all times herein concerned or relevant to this action, the Defendants, and each of them,
13 acted by and through their duly authorized agents, servants, workmen and/or employees then
14 and there acting within the course of their employment and scope of their authority for the
15 Defendants, and each of them.
16

17 17. That the carelessness and negligence of the Defendants, and each of them, in breaching a
18 duty owed to the Plaintiff, SIMONE RUSSO, which directly and proximately caused the
19 injuries and damages to the Plaintiff; SIMONE RUSSO, consisting in and of, but not
20 limited to, the following acts, to wit:
21

- 22 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
23 the driveway;
- 24 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous
25 condition then and there existing in said premises;
- 26 c) Failure to properly and adequately inspect the said dangerous condition in the
27 driveway to ascertain its hazardous and dangerous condition;
28

- 1 d) Failure to properly and adequately maintain the driveway;
- 2 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous
- 3 condition;
- 4
- 5 f) The Defendants, and each of them, had, or should have had, knowledge or notice
- 6 of the existence of the said dangerous and defective condition which existed on
- 7 said premises. At all times pertinent hereto, Defendants, and each of them,
- 8 expressly and/or impliedly warranted that the certain driveway in question was in
- 9 all respects fit for due purposes and uses for which it was intended and was of
- 10 merchantable quality.
- 11

12 18. The Defendants, and each of them, may have violated certain Nevada Revised Statutes

13 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff

14 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the

15 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all

16 persons who could reasonably be foreseen to be situated in and around the driveway in

17 question, and such a duty was specifically owed to Plaintiff.

18

19 19. That on or about the 27th day of August, 2016, the Plaintiff, SIMONE RUSSO, while

20 lawfully upon the said premises, as a direct and proximate result of the said negligence and

21 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the

22 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing

23 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter

24 more particularly alleged.

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26 20. By reason of the premises and as a direct and proximate result of the aforesaid negligence

27 and carelessness of the Defendants, and each of them, the Plaintiff, SIMONE RUSSO, was

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1 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical
2 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and
3 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about
4 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all
5 or some of the same are chronic and may result in permanent disability and are disabling, all
6 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in
7 excess of the Justice Court jurisdictional limit of \$15,000.00.
8

9
10 21. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
11 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been
12 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of
13 thousands of dollars, for medical expenses, and will in the future be caused to expend monies
14 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in
15 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court
16 to insert the total amount of the medical and miscellaneous expenses when the same have
17 been fully determined at the time of the trial of this action.
18

19 22. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied
20 male, capable of being gainfully employed and capable of engaging in all other activities for
21 which he was otherwise suited, and at the time of the incident complained of herein, had no
22 disabilities. By reason of the premises, and as a direct and proximate result of the negligence
23 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be
24 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to
25 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which
26 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.
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23. Plaintiff has been required to retain the law firm of LAW OFFICE OF DAVID SAMPSON, LLC. to prosecute this action, and is entitled to a reasonable attorney's fee.

WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of damage, demands judgment against the Defendants, and each of them, as follows:

1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the Justice Court jurisdictional limit of \$15,000.00;
2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous expenses, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;
3. Special damages for lost wages in a presently unascertainable amount, and/or diminution of Plaintiff's earning capacity, plus possible future loss of earnings and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount.
4. Costs of this suit;
5. Attorney's fees; and
6. For such other and further relief as to the Court may seem just and proper in the premises.

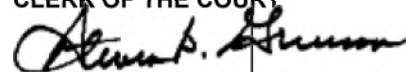
DATED THIS 27 day of Nov, 2017.

LAW OFFICE OF DAVID SAMPSON, LLC

BY: 

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Attorney for Plaintiff

Electronically Filed
12/22/2017 10:59 AM
Steven D. Grierson
CLERK OF THE COURT


MOT

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
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630 S. 3rd Street
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Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C
DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)
INC., D/B/A COX COMMUNICATIONS,)
IES RESIDENTIAL, INC., SUNRISE)
VILLAS IX HOMEOWNERS)
ASSOCIATION, J & G LAWN)
MAINTENANCE, KEVIN BUSHBAKER,)
PWJAMES MANAGEMENT &)
CONSULTING, LLC., AND DOES I - V,)
and ROE CORPORATIONS I - V,)
inclusive,)

**SUPPLEMENT TO MOTION TO
AMEND COMPLAINT**

Defendants.)

Date of Hearing: January 16, 2018Time of Hearing: 9:00 a.m.

COMES NOW, the Plaintiff, SIMONE RUSSO, by and through his attorneys, THE
LAW OFFICE OF DAVID SAMPSON, LLC., and hereby supplements his move for leave to
amend the Complaint in this matter.

///

///

1 This Motion is made and based upon all the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities below, the Exhibits attached hereto, and any oral
3 argument of counsel at any hearing hereon.
4

5 DATED this 22nd day of December, 2017

6 LAW OFFICE OF DAVID SAMPSON, LLC.

7
8 BY: /s/ *David Sampson*

9 DAVID SAMPSON, ESQ.

10 Nevada Bar No.6811

11 LAW OFFICE OF DAVID SAMPSON

12 630 S. 3rd Street

13 Las Vegas, Nevada 89101

14 Fax No: 888-209-4199

15 Attorney for Plaintiff

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I**

18 **INTRODUCTION**

19 On August 27, 2016, Plaintiff, Simone Russo, was very seriously injured when the
20 Defendants placed, caused to be placed, or otherwise installed a cable/wire at 4617 Madreperla
21 Street, Las Vegas, Nevada, or allowed to be placed and/or allowed the same to remain on the
22 subject property. The said cable/wire came out of the front yard of the said premises, remained
23 above the ground and stretched from the yard of the said premises, across the driveway of the
24 said premises, and then was buried under the ground on the opposite side of the driveway
25 adjacent from the yard of the said premises, essentially leaving a snare across the base of the
26 driveway of the subject property, making the driveway hazardous and dangerous. Simone
27
28

1 arrived at the property late one night after flying home from New York, got out of a taxicab,
2 stepped onto the driveway and caught his foot on the cable/wire, which then caused Simone to
3 be violently thrown to the ground and seriously injured.
4

5 J. Chris Scarcelli was the property manager in charge of 4617 Madreperla Street, Las
6 Vegas, Nevada, at which Plaintiff's fall took place. On November 20, 2017 Mr. Scarecelli gave
7 deposition testimony in which he admitted he had seen the subject exposed cable/wire in the
8 said driveway prior to Dr. and Mrs. Russo moving in. Mr. Scarecelli further testified he never
9 told Dr. or Mrs. Russo, nor any other person or entity about the tripping hazard.
10

11 The PMK for J&G Lawn Maintenance was Deposed on December 6, 2017. The PMK
12 gave testimony that revealed that J&G Lawn Maintenance was not the landscaping company
13 that was contracted with the Homeowners Association at the time of the Simone Russo's fall.
14 For this reason, we also ask that DOE Landscaper be added as a Defendant.
15

16 II

17 ARGUMENT

18 MOTION TO AMEND

19 Pursuant to NRCPC 15(a), a party may amend its Complaint by leave of court or by
20 written consent of the adverse party. Under this rule leave shall be freely given when justice so
21 requires. In Stevens v. Southern Nev. Musical Co., 89 Nev. 104, 507 P.2d 138 (1973), the
22 Nevada Supreme Court held that absent of an apparent or declared reason such as undue delay,
23 bad faith or dilatory motive on the part of the movant, leave to amend should be freely given.
24

25 Plaintiff has no dilatory motive in seeking leave to amend its Complaint. Recently
26 Plaintiff has determined that J&G Landscaping may not, and likely was not, the landscaping
27 company responsible for the subject HOA development when the incident occurred. A DOE
28

1 landscaping company should be named as a Defendant in the instant action until such time as
2 the actual landscaping company can be identified. There is no reason why the Complaint should
3 not be amended to reflect the correct information. No substantive changes have been made to
4 Plaintiff's Complaint.
5

6 A copy of Plaintiff's Proposed Amended Complaint is attached hereto in compliance
7 with EDCR 2.30.

8 ///

9 ///

10 ///

1 **CONCLUSION**

2 Plaintiff respectfully requests this Court grant his Motion for Leave to File an Amended
3 Complaint to add J. Chris Scarcelli as a Defendant.

4
5 DATED this 22nd day of December, 2017

6 LAW OFFICE OF DAVID SAMPSON, LLC.

7
8
9 BY: /s/ *David Sampson*

10 DAVID SAMPSON, ESQ.

11 Nevada Bar No.6811

12 LAW OFFICE OF DAVID SAMPSON

13 630 S. 3rd Street

14 Las Vegas, Nevada 89101

15 Fax No: 888-209-4199

16 Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, L.L.C., and that on this 22nd day of December, 2017, I served a copy of the **SUPPLEMENT TO MOTION TO AMEND COMPLAINT** as follows:

X Electronic Service through the Court's online filing system.

RICHARD J. PYATT, ESQ.
PYATT SILVESTTI
701 Bridger Ave., Suite 600
Las Vegas NV 89101
Counsel for Defendant
J&G LAWN SERVICE

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
BUSHBAKER

WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

JONATHAN C. PATTILLO, ESQ.
SPRINGEL & FINK, LLP
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Attorney for Defendant
SUNRISE VILLAS IX HOA

/s/ Amanda Nalder

An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

EXHIBIT “1”

COMP

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
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Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C
DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)
INC., D/B/A COX COMMUNICATIONS,)
IES RESIDENTIAL, INC., SUNRISE)
VILLAS IX HOMEOWNERS)
ASSOCIATION, J & G LAWN)
MAINTENANCE, KEVIN BUSHBAKER,)
PWJAMES MANAGEMENT &)
CONSULTING, LLC., J. CHRIS)
SCARCELLI, DOE LANDSCAPER, AND)
DOES I - V, and ROE CORPORATIONS)
I - V, inclusive,)

Defendants.

AMENDED COMPLAINT

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys, LAW
OFFICE OF DAVID SAMPSON, LLC., and for his causes of action, complains of Defendants,
and each of them, as follows:

///

///

FIRST CAUSE OF ACTION

1. Upon information and belief, that at all times relevant to this action, the Defendant, COX COMMUNICATIONS LAS VEGAS, INC., doing business as COX COMMUNICATIONS (“COX”) was a Nevada corporation duly licensed to conduct business in the State of Nevada.
2. Upon information and belief, that at all times relevant to this action, the Defendant, IES RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the State of Nevada.
3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in the State of Nevada.
4. Upon information and belief, that at all times relevant to this action, the Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation duly licensed to conduct business in the State of Nevada.
5. Upon information and belief, that at all times relevant to this action, the Defendant, PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly licensed to conduct business in the State of Nevada.
6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of the State of Indiana.
7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the State of Nevada.
8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of the State of Nevada

- 1 9. That the true names and capacities, whether individual, corporate, partnership, associate
2 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
3 sues said Defendants by such fictitious names. Plaintiff is informed and believes and
4 thereon alleges that each of the Defendants designated herein as DOE is responsible in
5 some manner for the events and happenings referred to and caused damages proximately
6 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
7 Complaint to insert the true names and capacities of DOES I through V, when the same
8 have been ascertained, and to join such Defendants in this action.
- 10 10. That upon information and belief, at all times relevant to this action, the Defendant,
11 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
12 premises located at 4617 Madreperla Street, Las Vegas, Nevada.
- 14 11. That upon information and belief, at all times relevant to this action, the Defendant,
15 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
16 and operated, maintained and controlled those premises located at 4617 Madreperla Street,
17 Las Vegas, Nevada.
- 19 12. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of
20 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable
21 line, and as such did transport, ship, introduce and/or cause said products to be installed
22 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.
- 24 13. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing
25 business in the State of Nevada, with its principal place of business located within the
26 State of Nevada and was and is the designer, manufacturer, producer, packager,
27 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and
28

1 hinges, and as such did transport, ship, introduce and/or cause said products to be
2 introduced into the State of Nevada for the purpose of their sale, distribution, installation
3 and/or use within the State of Nevada.
4

5 14. The true names or capacities, whether individual, corporate, associate or otherwise, of
6 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
7 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
8 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
9 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
10 some manner for the events and happenings referred to and caused damages proximately
11 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
12 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
13 CORPORATION III through ROE CORPORATION V, when the same have been
14 ascertained and to join such Defendants in this action.
15
16

17 15. That on or about the 27th day of August, 2016, and for some time prior thereto, the
18 Defendants, and each of them (by and through their authorized agents, servants, and
19 employees, acting within the course and scope of their employment), negligently and
20 carelessly owned, maintained, operated, occupied, and controlled the said premises,
21 located at 4617 Madreperla Street, Las Vegas, Nevada, so as to cause and allow a
22 cable/wire to be installed by Defendant COX to come out of the front yard of the said
23 premises, to remain above the ground and stretch from the yard of the said premises,
24 across the driveway of the said premises, and to then be buried under the ground on the
25 opposite side of the driveway adjacent from the yard of the said premises, making the
26 driveway hazardous and dangerous. In that they allowed the area to remain in such a
27
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1 manner that it presented a dangerous and hazardous condition in an area intended for the
2 use and commonly and regularly used by residents and invitees of the said premises. In so
3 acting, the Defendants, and each of them, caused the driveway of the said premises to be
4 hazardous and dangerous to persons walking in the area; and more particularly the
5 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,
6 allowed and caused said unsafe condition to remain even though Defendants knew or,
7 through the exercise of ordinary care and diligence, should have known, that the wore
8 stretched across the driveway and constituted a defective and dangerous condition; that
9 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably
10 safe condition; and that Defendant, and each of them, negligently, carelessly and
11 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,
12 SIMONE RUSSO, of the defect therein.

15 16. At all times herein concerned or relevant to this action, the Defendants, and each of them,
16 acted by and through their duly authorized agents, servants, workmen and/or employees then
17 and there acting within the course of their employment and scope of their authority for the
18 Defendants, and each of them.

20 17. That the carelessness and negligence of the Defendants, and each of them, in breaching a
21 duty owed to the Plaintiff, SIMONE RUSSO, which directly and proximately caused the
22 injuries and damages to the Plaintiff; SIMONE RUSSO, consisting in and of, but not
23 limited to, the following acts, to wit:

- 25 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
26 the driveway;
27
28

- 1 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous
2 condition then and there existing in said premises;
3 c) Failure to properly and adequately inspect the said dangerous condition in the
4 driveway to ascertain its hazardous and dangerous condition;
5 d) Failure to properly and adequately maintain the driveway;
6 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous
7 condition;
8 f) The Defendants, and each of them, had, or should have had, knowledge or notice
9 of the existence of the said dangerous and defective condition which existed on
10 said premises. At all times pertinent hereto, Defendants, and each of them,
11 expressly and/or impliedly warranted that the certain driveway in question was in
12 all respects fit for due purposes and uses for which it was intended and was of
13 merchantable quality.
14

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16
17 18. The Defendants, and each of them, may have violated certain Nevada Revised Statutes
18 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff
19 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the
20 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all
21 persons who could reasonably be foreseen to be situated in and around the driveway in
22 question, and such a duty was specifically owed to Plaintiff.
23

24 19. That on or about the 27th day of August, 2016, the Plaintiff, SIMONE RUSSO, while
25 lawfully upon the said premises, as a direct and proximate result of the said negligence and
26 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the
27 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing
28

1 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter
2 more particularly alleged.

3
4 20. By reason of the premises and as a direct and proximate result of the aforesaid negligence
5 and carelessness of the Defendants, and each of them, the Plaintiff, SIMONE RUSSO, was
6 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical
7 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and
8 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about
9 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all
10 or some of the same are chronic and may result in permanent disability and are disabling, all
11 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in
12 excess of the Justice Court jurisdictional limit of \$15,000.00.
13

14 21. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
15 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been
16 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of
17 thousands of dollars, for medical expenses, and will in the future be caused to expend monies
18 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in
19 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court
20 to insert the total amount of the medical and miscellaneous expenses when the same have
21 been fully determined at the time of the trial of this action.
22

23
24 22. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied
25 male, capable of being gainfully employed and capable of engaging in all other activities for
26 which he was otherwise suited, and at the time of the incident complained of herein, had no
27 disabilities. By reason of the premises, and as a direct and proximate result of the negligence
28

1 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be
2 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to
3 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which
4 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.
5

6 23. Plaintiff has been required to retain the law firm of LAW OFFICE OF DAVID SAMPSON,
7 LLC. to prosecute this action, and is entitled to a reasonable attorney's fee.

8 WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of
9 damage, demands judgment against the Defendants, and each of them, as follows:
10

- 11 1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the
12 Justice Court jurisdictional limit of \$15,000.00;
- 13 2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous
14 expenses, plus future medical expenses and the miscellaneous expenses incidental
15 thereto in a presently unascertainable amount;
- 16 3. Special damages for lost wages in a presently unascertainable amount, and/or
17 diminution of Plaintiff's earning capacity, plus possible future loss of earnings
18 and/or diminution of Plaintiff's earning capacity in a presently unascertainable
19 amount.
20
- 21 4. Costs of this suit;
- 22 5. Attorney's fees; and
23

24 ///

25 ///

26 ///

27 ///

DATED THIS _____ day of _____, 20__.

BY: _____
 DAVID F. SAMPSON, ESQ.,
 Nevada Bar No. 6811
 LAW OFFICE OF DAVID SAMPSON
 630 S. 3rd Street
 Las Vegas, NV 89101
 Tel: 702-605-1099
Attorney for Plaintiff

A-17-753606-C

**DISTRICT COURT
CLARK COUNTY, NEVADA****Negligence - Premises Liability****COURT MINUTES****January 16, 2018**

A-17-753606-C Simone Russo, Plaintiff(s)
vs.
Cox Communications Las Vegas, Inc., Defendant(s)

January 16, 2018 09:00 AM Plaintiff's Motion to Amend Complaint

HEARD BY: Williams, Timothy C. **COURTROOM:** RJC Courtroom 12D

COURT CLERK: Vargas, Elizabeth

RECORDER:

REPORTER: Isom, Peggy

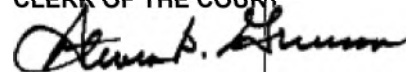
PARTIES PRESENT:

JOURNAL ENTRIES

Roger Bailey, Esq. present on behalf of Defendant Kevin Bushbaker. Mr. Sampson argued there was no opposition and it was not appropriate to reset trial and cause further delay. Mr. Turtzo stated there was no opposition to the Motion, however requested the trial be continued. Mr. Bailey stated he had no opposition to a trial continuance, as long as it would not greatly affect the case. Court reviewed dates and deadlines, and ORDERED, Motion GRANTED; Status Check SET.

3/13/18 9:00 AM STATUS CHECK: STATUS OF CASE

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1/16/2018 12:18 PM
Steven D. Grierson
CLERK OF THE COURT


COMP

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C
DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,
INC., D/B/A COX COMMUNICATIONS,
IES RESIDENTIAL, INC., SUNRISE
VILLAS IX HOMEOWNERS
ASSOCIATION, J & G LAWN
MAINTENANCE, KEVIN BUSHBAKER,
PWJAMES MANAGEMENT &
CONSULTING, LLC., J. CHRIS
SCARCELLI, DOE LANDSCAPER,
RICHARD DUSLAK, JUSTIN SESMAN,
AND DOES I - V, and ROE
CORPORATIONS I - V, inclusive,

Defendants.

AMENDED COMPLAINT

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys, LAW
OFFICE OF DAVID SAMPSON, LLC., and for his causes of action, complains of Defendants,
and each of them, as follows:

///

///

FIRST CAUSE OF ACTION

1. Upon information and belief, that at all times relevant to this action, the Defendant, COX COMMUNICATIONS LAS VEGAS, INC., doing business as COX COMMUNICATIONS ("COX") was a Nevada corporation duly licensed to conduct business in the State of Nevada.
2. Upon information and belief, that at all times relevant to this action, the Defendant, IES RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the State of Nevada.
3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in the State of Nevada.
4. Upon information and belief, that at all times relevant to this action, the Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation duly licensed to conduct business in the State of Nevada.
5. Upon information and belief, that at all times relevant to this action, the Defendant, PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly licensed to conduct business in the State of Nevada.
6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of the State of Indiana.
7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the State of Nevada.
8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of the State of Nevada

- 1 9. That Defendant, RICHARD DUSLAK, was at all times relevant to this action a resident of
2 the State of Nevada
- 3 10. That Defendant, JUSTIN SESMAN, was at all times relevant to this action a resident of the
4 State of Nevada
- 5 11. That the true names and capacities, whether individual, corporate, partnership, associate
6 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
7 sues said Defendants by such fictitious names. Plaintiff is informed and believes and
8 thereon alleges that each of the Defendants designated herein as DOE is responsible in
9 some manner for the events and happenings referred to and caused damages proximately
10 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
11 Complaint to insert the true names and capacities of DOES I through V, when the same
12 have been ascertained, and to join such Defendants in this action.
- 13 12. That upon information and belief, at all times relevant to this action, the Defendant,
14 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
15 premises located at 4617 Madreperla Street, Las Vegas, Nevada.
- 16 13. That upon information and belief, at all times relevant to this action, the Defendants,
17 RICHARD DUSLAK and JUSTIN SESMAN, maintained and controlled those premises
18 located at 4617 Madreperla Street, Las Vegas, Nevada.
- 19 14. That upon information and belief, at all times relevant to this action, the Defendant, J.
20 CHRIS SCARCELLI, operated, maintained and controlled those premises located at 4617
21 Madreperla Street, Las Vegas, Nevada.
- 22 15. That upon information and belief, at all times relevant to this action, the Defendant,
23 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
24
25
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1 and operated, maintained and controlled those premises located at 4617 Madreperla Street,
2 Las Vegas, Nevada.

3 16. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of
4 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable
5 line, and as such did transport, ship, introduce and/or cause said products to be installed
6 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.

7
8 17. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing
9 business in the State of Nevada, with its principal place of business located within the
10 State of Nevada and was and is the designer, manufacturer, producer, packager,
11 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and
12 hinges, and as such did transport, ship, introduce and/or cause said products to be
13 introduced into the State of Nevada for the purpose of their sale, distribution, installation
14 and/or use within the State of Nevada.

15
16 18. The true names or capacities, whether individual, corporate, associate or otherwise, of
17 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
18 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
19 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
20 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
21 some manner for the events and happenings referred to and caused damages proximately
22 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
23 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
24 CORPORATION III through ROE CORPORATION V, when the same have been
25 ascertained and to join such Defendants in this action.
26
27
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1 19. That on or about the 27th day of August, 2016, and for some time prior thereto, the
2 Defendants, and each of them (by and through their authorized agents, servants, and
3 employees, acting within the course and scope of their employment), negligently and
4 carelessly owned, maintained, operated, occupied, and controlled the said premises,
5 located at 4617 Madreperla Street, Las Vegas, Nevada, so as to cause and allow a
6 cable/wire to be installed by Defendant COX to come out of the front yard of the said
7 premises, to remain above the ground and stretch from the yard of the said premises,
8 across the driveway of the said premises, and to then be buried under the ground on the
9 opposite side of the driveway adjacent from the yard of the said premises, making the
10 driveway hazardous and dangerous. In that they allowed the area to remain in such a
11 manner that it presented a dangerous and hazardous condition in an area intended for the
12 use and commonly and regularly used by residents and invitees of the said premises. In so
13 acting, the Defendants, and each of them, caused the driveway of the said premises to be
14 hazardous and dangerous to persons walking in the area; and more particularly the
15 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,
16 allowed and caused said unsafe condition to remain even though Defendants knew or,
17 through the exercise of ordinary care and diligence, should have known, that the wire
18 stretched across the driveway and constituted a defective and dangerous condition; that
19 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably
20 safe condition; and that Defendant, and each of them, negligently, carelessly and
21 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,
22 SIMONE RUSSO, of the defect therein.
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1 20. At all times herein concerned or relevant to this action, the Defendants, and each of them,
2 acted by and through their duly authorized agents, servants, workmen and/or employees then
3 and there acting within the course of their employment and scope of their authority for the
4 Defendants, and each of them.
5

6 21. That the carelessness and negligence of the Defendants, and each of them, in breaching a
7 duty owed to the Plaintiff, SIMONE RUSSO, which directly and proximately caused the
8 injuries and damages to the Plaintiff; SIMONE RUSSO, consisting in and of, but not
9 limited to, the following acts, to wit:
10

11 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
12 the driveway;

13 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous
14 condition then and there existing in said premises;

15 c) Failure to properly and adequately inspect the said dangerous condition in the
16 driveway to ascertain its hazardous and dangerous condition;

17 d) Failure to properly and adequately maintain the driveway;

18 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous
19 condition;
20

21 f) The Defendants, and each of them, had, or should have had, knowledge or notice
22 of the existence of the said dangerous and defective condition which existed on
23 said premises. At all times pertinent hereto, Defendants, and each of them,
24 expressly and/or impliedly warranted that the certain driveway in question was in
25 all respects fit for due purposes and uses for which it was intended and was of
26 merchantable quality.
27
28

1 22. The Defendants, and each of them, may have violated certain Nevada Revised Statutes
2 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff
3 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the
4 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all
5 persons who could reasonably be foreseen to be situated in and around the driveway in
6 question, and such a duty was specifically owed to Plaintiff.

7
8 23. That on or about the 27th day of August, 2016, the Plaintiff, SIMONE RUSSO, while
9 lawfully upon the said premises, as a direct and proximate result of the said negligence and
10 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the
11 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing
12 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter
13 more particularly alleged.

14
15 24. By reason of the premises and as a direct and proximate result of the aforesaid negligence
16 and carelessness of the Defendants, and each of them, the Plaintiff, SIMONE RUSSO, was
17 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical
18 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and
19 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about
20 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all
21 or some of the same are chronic and may result in permanent disability and are disabling, all
22 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in
23 excess of the Justice Court jurisdictional limit of \$15,000.00.

24
25
26 25. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
27 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been
28

1 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of
2 thousands of dollars, for medical expenses, and will in the future be caused to expend monies
3 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in
4 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court
5 to insert the total amount of the medical and miscellaneous expenses when the same have
6 been fully determined at the time of the trial of this action.
7

8 26. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied
9 male, capable of being gainfully employed and capable of engaging in all other activities for
10 which he was otherwise suited, and at the time of the incident complained of herein, had no
11 disabilities. By reason of the premises, and as a direct and proximate result of the negligence
12 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be
13 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to
14 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which
15 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.
16
17

18 27. Plaintiff has been required to retain the law firm of LAW OFFICE OF DAVID SAMPSON,
19 LLC. to prosecute this action, and is entitled to a reasonable attorney's fee.
20

21 WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of
22 damage, demands judgment against the Defendants, and each of them, as follows:

- 23 1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the
24 Justice Court jurisdictional limit of \$15,000.00;
- 25 2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous
26 expenses, plus future medical expenses and the miscellaneous expenses incidental
27 thereto in a presently unascertainable amount;
28

- 1 3. Special damages for lost wages in a presently unascertainable amount, and/or
2 diminution of Plaintiff's earning capacity, plus possible future loss of earnings
3 and/or diminution of Plaintiff's earning capacity in a presently unascertainable
4 amount.
5
6 4. Costs of this suit;
7
8 5. Attorney's fees; and
9
10 6. For such other and further relief as to the Court may seem just and proper in the
11 premises.

DATED THIS 16 day of July, 2017.

LAW OFFICE OF DAVID SAMPSON, LLC

BY: 

DAVID F. SAMPSON, ESQ.,

Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON

630 S. 3rd Street

Las Vegas, NV 89101

Tel: 702-605-1099

Attorney for Plaintiff

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Steven D. Grierson
CLERK OF THE COURT



ANAC
LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
JONATHAN C. PATTILLO, ESQ.
Nevada Bar No. 13929
SPRINGEL & FINK LLP
10655 Park Run Drive, Suite 275
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Telephone: (702) 804-0706
Facsimile: (702) 804-0798
E-Mail: lfink@springelfink.com
jpattillo@springelfink.com

Attorneys for Defendant,
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

12	SIMONE RUSSO,) Case No.: A-17-753606-C
13	Plaintiffs,) Dept. No.: XVI
14	v.)
15	COX COMMUNICATIONS LAS VEGAS, INC.)) DEFENDANT SUNRISE VILLAS IX
16	D/B/A COX COMMUNICATIONS; IES)) HOMEOWNERS ASSOCIATION'S
17	RESIDENTIAL, INC.; SUNRISE VILLAS IX)) ANSWER TO PLAINTIFF'S AMENDED
18	HOMEOWNERS ASSOCIATION; J&G LAWN)) COMPLAINT
19	MAINTENANCE; KEVIN BUSHBAKER; PW))
20	JAMES MANAGEMENT & CONSULTING,))
21	LLC; AND DOES 1-V, AND ROE))
22	CORPORATIONS I-V, inclusive)
23	Defendants)

**DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION,
(hereinafter "SUNRISE VILLAS"), by and through its counsel of record, the law firm of Springel &
Fink LLP, and hereby answers Plaintiff SIMONE RUSSO'S (hereinafter "PLAINTIFF") Amended
Complaint as follows:

///

I.

FIRST CAUSE OF ACTION

1. Answering Paragraphs 1 through 3 of PLAINTIFF'S Amended Complaint, SUNRISE VILLAS is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the same, and upon said grounds, denies each and every allegation contained therein.

2. Answering Paragraphs 4 of PLAINTIFF'S Amended Complaint, SUNRISE VILLAS admits.

3. Answering Paragraphs 5 through 27 of PLAINTIFF'S Amended Complaint, SUNRISE VILLAS is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the same, and upon said grounds, denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

4. Failure to State a Claim. PLAINTIFF'S Amended Complaint, and each and every purported cause of action therein, fails to state a claim for which relief can be granted against SUNRISE VILLAS.

SECOND AFFIRMATIVE DEFENSE

5. Statute of Limitations. SUNRISE VILLAS alleges that the causes of action set forth in PLAINTIFF'S Amended Complaint are barred by all applicable Nevada Statutes of Limitations and/or Repose.

THIRD AFFIRMATIVE DEFENSE

6. Failure to Mitigate. PLAINTIFF, though under a duty to do so, has failed and neglected to mitigate his alleged damage. Said failure was the direct and proximate cause of any and all alleged damages and, therefore, PLAINTIFF cannot recover against SUNRISE VILLAS, whether as alleged or otherwise.

FOURTH AFFIRMATIVE DEFENSE

7. Contribution. SUNRISE VILLAS alleges that the damage suffered by PLAINTIFF, if any, was the direct and proximate result of the negligence of parties, persons, corporations and/or

1 entities other than SUNRISE VILLAS, and that the liability of SUNRISE VILLAS, if any, is limited in
2 direct proportion to the percentage of fault actually attributable to SUNRISE VILLAS.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 8. Contributory Negligence. SUNRISE VILLAS is informed and believes, and thereon
5 alleges, that at all times mentioned herein, PLAINTIFF was negligent, careless, reckless, and unlawfully
6 conducted himself as to directly and proximately contribute to the happening of the incident and the
7 occurrence of the alleged damages. Said negligence bars either completely or partially the recovery
8 sought by PLAINTIFF.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 9. Estoppel. SUNRISE VILLAS is informed and believes, and thereon alleges, that
11 PLAINTIFF engaged in conduct and/or activities with respect to the subject of PLAINTIFF'S Amended
12 Complaint, and by reason of said conduct and/or activities PLAINTIFF is estopped from asserting any
13 claims for damages or seeking any other relief against SUNRISE VILLAS.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 10. Waiver. SUNRISE VILLAS is informed and believes, and thereon alleges, that
16 PLAINTIFF and other Defendants (other than SUNRISE VILLAS) have engaged in conduct and
17 activities sufficient to constitute a waiver of any alleged breach of duty, negligence, act, omission, or
18 any other conduct, if any, as set forth in PLAINTIFF'S Amended Complaint.

19 **EIGHTH AFFIRMATIVE DEFENSE**

20 11. Intervening and Superseding Causes. SUNRISE VILLAS is informed and believes, and
21 thereon alleges, that the injuries and damages of which PLAINTIFF complains were proximately
22 caused by or contributed to by the acts of other Defendants (other than SUNRISE VILLAS), persons
23 and/or other entities, and that said acts were an intervening and superseding cause of the injuries and
24 damages, if any, of which PLAINTIFF complains, thus barring PLAINTIFF from any recovery
25 against SUNRISE VILLAS.

26 **NINTH AFFIRMATIVE DEFENSE**

27 12. Assumption of the Risk. SUNRISE VILLAS alleges that PLAINTIFF expressly,
28 voluntarily and knowingly assumed all risks about which PLAINTIFF complains of in his Amended

1 Complaint and, therefore, is barred either totally or to the extent of said assumption from any
2 damages.

3 **TENTH AFFIRMATIVE DEFENSE**

4 13. Active and Primary Liability. PLAINTIFF'S conduct, as alleged in the principal action,
5 and as described in PLAINTIFF'S Amended Complaint, was such that any and all liability based
6 thereon was active and primary in nature, so as to preclude any recovery sought in PLAINTIFF'S
7 Amended Complaint.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 14. Laches. PLAINTIFF waited an unreasonable period of time before asserting such
10 claims under the doctrine of laches.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 15. Unclean Hands. PLAINTIFF is barred by the equitable doctrine of unclean hands from
13 obtaining the relief requested.

14 **THIRTEENTH AFFIRMATIVE DEFENSE**

15 16. Costs. SUNRISE VILLAS is informed and believes, and thereon alleges, that
16 PLAINTIFF'S Amended Complaint was brought without reasonable cause and without a good faith
17 belief that there was a justifiable controversy under the facts or the law which warranted the filing of
18 PLAINTIFF'S Amended Complaint against SUNRISE VILLAS. PLAINTIFF should therefore be
19 responsible for all of SUNRISE VILLAS necessary and reasonable defense costs.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**

21 17. Conduct Was Justified. The conduct of SUNRISE VILLAS in regard to the matters alleged
22 in PLAINTIFF'S Amended Complaint was justified, and by reason of the foregoing, PLAINTIFF is
23 barred from any recovery against SUNRISE VILLAS herein.

24 **FIFTEENTH AFFIRMATIVE DEFENSE**

25 18. Comparative Fault of Third-Parties. SUNRISE VILLAS is informed and believes, and
26 thereon alleges, that the accident and the injuries, if any, allegedly suffered by PLAINTIFF were
27 proximately caused and contributed to by the negligence of third-parties (not PLAINTIFF or SUNRISE
28 VILLAS), and that said third-parties failed to exercise reasonable care at and prior to the time of said

1 damages, and by reason thereof any recovery by PLAINTIFF against SUNRISE VILLAS must be reduced
2 by an amount equal to the proportionate fault of said third-parties.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 19. Several Liability for Non-Economic Damages. PLAINTIFF'S liability for the claims
5 asserted is greater than the liability, if any, of SUNRISE VILLAS.

6 **SEVENTEENTH AFFIRMATIVE DEFENSE**

7 20. Comparative Negligence of Plaintiff. PLAINTIFF has failed to exercise ordinary care on
8 his own behalf, which negligence and carelessness was a proximate cause of some portion, up to and
9 including the whole thereof, of the injuries and damages complained of in this action. PLAINTIFF'S
10 recovery, therefore, against SUNRISE VILLAS should be barred or reduced according to principles of
11 comparative negligence.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 21. Implied Assumption of Risk. Prior to the event in which PLAINTIFF was allegedly
14 injured as a result of SUNRISE VILLAS' alleged negligence, PLAINTIFF, by his conduct, impliedly
15 assumed the risk of a known and appreciated danger, and thus may not recover damages from SUNRISE
16 VILLAS for his injury.

17 **NINETEENTH AFFIRMATIVE DEFENSE**

18 22. Lack of Standing. SUNRISE VILLAS is informed and believes, and thereon alleges, that
19 PLAINTIFF herein lacks standing to bring said action against SUNRISE VILLAS.

20 **TWENTIETH AFFIRMATIVE DEFENSE**

21 23. Non-Joinder of Necessary Parties. PLAINTIFF has failed to join all parties necessary for
22 full and final resolution of this lawsuit.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 24. Standard of Care. SUNRISE VILLAS is informed and believes, and thereon alleges, that
25 at no time prior to the filing of this action did PLAINTIFF, or any agent, representative or employee(s)
26 thereof, notify SUNRISE VILLAS of any breach of any duty to PLAINTIFF. By failing to notify
27 SUNRISE VILLAS, PLAINTIFF is barred from any alleged right of recovery from SUNRISE VILLAS.
28 Furthermore, SUNRISE VILLAS alleges that PLAINTIFF is barred from any recovery against

SUNRISE VILLAS in this action, because at all times SUNRISE VILLAS complied with the applicable standard of care required at the time and location of the subject incident.

TWENTY-SECOND AFFIRMATIVE DEFENSE

25. Reservation. SUNRISE VILLAS presently has insufficient knowledge or information on which to form a belief as to whether it may have any additional, as yet unstated, affirmative defenses available. SUNRISE VILLAS reserves the right to assert additional defenses in the event that discovery indicates that they would be appropriate.

TWENTY-THIRD AFFIRMATIVE DEFENSE

26. Not Waiving Defenses. SUNRISE VILLAS hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as is fully set forth herein. In the event further investigation and/or discovery reveals the applicability of any such defenses, SUNRISE VILLAS reserves the right to seek leave of Court to amend this Answer to specifically assert any such defenses. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

WHEREFORE, DEFENDANT prays:

1. That PLAINTIFF take nothing by way of his Amended Complaint;
2. For costs and attorney fees incurred in the defense of this action;
3. That if liability is assessed upon SUNRISE VILLAS, the liability attributed to SUNRISE VILLAS be limited in direct proportion to the percentage of fault actually attributable to SUNRISE VILLAS; and

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1 4. For any such other and further relief as the Court deems just and proper.
2

3 DATED this 6th day of February, 2018.

4 SPRINGEL & FINK LLP

5
6 By: /s/ Jonathan C. Pattillo
7 LEONARD T. FINK, ESQ.
8 Nevada Bar No. 6296
9 JONATHAN C. PATTILLO, ESQ.
 Nevada Bar No. 13929
 10655 Park Run Drive, Suite 275
 Las Vegas, Nevada 89144

10 Attorneys for Defendant,
11 SUNRISE VILLAS IX HOMEOWNERS
12 ASSOCIATION
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CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Phaedra L. Calaway, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada, 89144.

On February 6, 2018, I served the document described as **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** on the following parties:

SERVED VIA DISTRICT COURT'S E-FILING VENDOR SYSTEM

 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business


 VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

 X
 VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

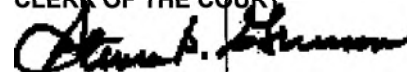
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of February, 2018 at Las Vegas Nevada

By:


 Phaedra L. Calaway

Electronically Filed
2/7/2018 10:31 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ORD**

2 DAVID F. SAMPSON, ESQ.,
3 Nevada Bar No. 6811
4 LAW OFFICE OF DAVID SAMPSON
5 630 S. 3rd Street
6 Las Vegas, NV 89101
7 Tel: 702-605-1099
8 Fax: 888-209-4199
9 Email: david@davidsampsonlaw.com
10 *Attorney for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,)

14 Plaintiff,)

15 vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

16 COX COMMUNICATIONS LAS VEGAS,)
17 INC., D/B/A COX COMMUNICATIONS,)
18 IES RESIDENTIAL, INC., SUNRISE)
19 VILLAS IX HOMEOWNERS)
20 ASSOCIATION, J & G LAWN)
21 MAINTENANCE, KEVIN BUSHBAKER,)
22 PWJAMES MANAGEMENT &)
23 CONSULTING, LLC., AND DOES I - V,)
24 and ROE CORPORATIONS I - V,)
25 inclusive,)

26 Defendants.)

27 **ORDER ON PLAINTIFFS' MOTION TO AMEND COMPLAINT**

28 Plaintiff's Motion to Amend Complaint, having come on before this Court the 16th of
January, 2018, David Sampson, Esq., appeared on behalf of Plaintiff, Roger Bailey, Esq.,
appeared on behalf of Defendant, Kevin Bushbaker, Christopher Turtzo, Esq., appeared on
behalf of Defendant, IES Residential Inc. and Cox Communications Las Vegas, Inc., the Court
having considered the papers presented and having heard oral argument on the same, therefore

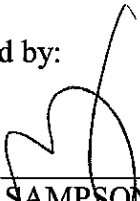
JAN 29 2018

1 IT IS HEREBY ORDERED ADJUDGED AND DECREED Plaintiff's Motion to
2 Amend Complaint is GRANTED; Status Check Set for March 13, 2018 at 9:00 a.m. to check
3 status of the case.
4

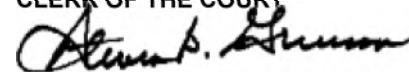
5 DATED this 30th day of January, 2018.

6 
7 DISTRICT JUDGE

8 Submitted by:

9 
10 DAVID SAMPSON, ESQ.
11 LAW OFFICE OF DAVID SAMPSON
12 630 S. Third St.
13 Las Vegas, Nevada 89101
14 Fax No: 888-209-4199
15 Attorney for Plaintiff
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Steven D. Grierson
CLERK OF THE COURT



SUMM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C

DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,
INC., D/B/A COX COMMUNICATIONS,
IES RESIDENTIAL, INC., SUNRISE
VILLAS IX HOMEOWNERS

ASSOCIATION, J & G LAWN
MAINTENANCE, KEVIN BUSHBAKER,
PWJAMES MANAGEMENT &
CONSULTING, LLC., J. CHRIS
SCARCELLI, DOE LANDSCAPER,
RICHARD DUSLAK, JUSTIN SESMAN,
AND DOES I - V, and ROE
CORPORATIONS I - V, inclusive,

Defendants.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW

To THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

RICHARD DUSLAK

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of
LAW OFFICE OF DAVID SAMPSON

By: 

David R. Sampson, Esq.,
Nevada Bar No: 6811
630 S 3rd Street
Las Vegas, NV 89101
Attorney for Plaintiff


CLERK OF COURT

Deputy Clerk

County Court House
200 Lewis Avenue
Las Vegas, Nevada 89155

1/17/2018

Date

Shimaya Ladson

NOTE: When service is by publication, add a brief statement of the object of the action. See NRCP 4(b). *Revised 03/99/jb*

AFFIDAVIT OF SERVICE

Case: A-17-753606-C	Court: District Court	County: Clark, NV	Job: <u>1996392</u>
Plaintiff / Petitioner: Simone Russo		Defendant / Respondent: Cox Communications et al	
Received by: Serve Vegas LLC		For: DAVID F. SAMPSON	
To be served upon: Richard Duslak			

I, Adam Schwartz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Tabby Duslak, 4012 Abrams Ave, Las Vegas, NV 89110

Manner of Service: Substitute Service - Usual place of abode, Feb 14, 2018, 5:39 pm PST

Documents: Amended Complaint, Summons

Additional Comments:

1) Unsuccessful Attempt: Feb 8, 2018, 5:51 pm PST at 4775 TOPAZ ST APT 249, LAS VEGAS, NV 89121
Spoke to Hispanic male who recently moved into unit. He does not recognize defendant's name.

2) Successful Attempt: Feb 14, 2018, 5:39 pm PST at 4012 Abrams Ave, Las Vegas, NV 89110 received by Co-resident Tabby Duslak. Age: 24;
Ethnicity: Caucasian; Gender: Female; Weight: 110; Height: 5'6"; Hair: Other; Relationship: Daughter;

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



02/14/2018

Adam Schwartz
R-088182

Date

Serve Vegas LLC
9811 W. Charleston Blvd 2-732
Las Vegas, NV 89117
702-508-1055

Electronically Filed
7/10/2018 5:03 PM
Steven D. Grierson
CLERK OF THE COURT


MSJD

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

JONATHAN C. PATTILLO, ESQ.

Nevada Bar No. 13929

SPRINGEL & FINK LLP

10655 Park Run Drive, Suite 275

Las Vegas, Nevada 89144

Telephone: (702) 804-0706

Facsimile: (702) 804-0798

E-Mail: *lfink@springelfink.com*
jpattillo@springelfink.com

Attorneys for Defendant,

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiffs,

v.

COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS; IES
RESIDENTIAL, INC.; SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION; J&G LAWN
MAINTENANCE; KEVIN BUSHBAKER; PW
JAMES MANAGEMENT & CONSULTING,
LLC; AND DOES 1-V, AND ROE
CORPORATIONS I-V, inclusive

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE "), by and through its counsel of record, the law firm of Springel & Fink LLP, hereby submits its Motion for Summary Judgment.

This Motion is based upon the supporting Memorandum of Points and Authorities and all exhibits thereto, all pleadings and papers on file in this action, and upon such further, oral, or documentary evidence as may be presented at the time of hearing on this matter.

DATED this 10th day of July, 2018.

SPRINGEL & FINK LLP

/s/ Jonathan C. Pattillo, Esq.

By:

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
JONATHAN C. PATTILLO, ESQ.
Nevada Bar No. 13929
10655 Park Run Drive, Suite 275
Las Vegas, NV 89144
Attorneys for Defendant,
*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

NOTICE OF HEARING

TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION will bring the foregoing MOTION FOR SUMMARY JUDGMENT on for hearing before the above-entitled Court on the 15 day of AUGUST, 2018, at 9:00A, at __.m., or as soon thereafter as counsel may be heard.

DATED this 10th day of July, 2018.

SPRINGEL & FINK LLP

/s/ Jonathan C. Pattillo, Esq.

By: _____

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

JONATHAN C. PATTILLO, ESQ.

Nevada Bar No. 13929

10655 Park Run Drive, Suite 275

Las Vegas, NV 89144

Attorneys for Defendant,

*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a personal injury action that began on August 26, 2017 when Plaintiff, SIMONE RUSSO (hereinafter “Plaintiff”), allegedly tripped and fell over a coaxial cable while walking up his driveway. Plaintiff had been exiting a cab that had taken him and his wife to his home at 4617 Madreperla St., Las Vegas, Nevada 89121 (hereinafter the “Property”). Plaintiff and his wife had just recently moved into the Property and said that the cable was not exposed when they left ten (10) days prior, on August 16, 2017. The day after the fall, Plaintiff’s wife came out to discover the cable exposed from an expansion joint between the driveway and the curb.

The Property is located within the Sunrise Villas IX Homeowners Association (hereinafter “Sunrise”). Plaintiff and his wife were renting it from Kevin Bushbaker (hereinafter “Bushbaker”). They had previously contacted Cox Communications (hereinafter “Cox”) to set up their cable feed. Plaintiff originally filed suit against Sunrise, Cox, IES Residential, Inc. (hereinafter “IES” – Cox’s subcontractor) and Bushbaker. He later amended his Complaint to add Bushbaker’s property manager and two (2) independent lawn maintenance contractors that Sunrise had hired to mow the residents’ lawns.

In short, the Court has no choice but to grant summary judgment in favor of Sunrise because Plaintiff and Bushbaker had the sole maintenance responsibility for Plaintiff’s driveway and the area where the cable lay.

II. CONCISE STATEMENT OF UNDISPUTED FACTS

	Concise Statement of Undisputed Facts	Citation
1.	The Property is a part of the Sunrise Villas IX Homeowners Association.	<i>See</i> Affidavit of Al Stubblefield, attached hereto as Exhibit “A.”
2.	The HOA recorded its Declaration of Covenants, Conditions and Restrictions (CC&Rs) on November 23, 1996.	<i>Id.</i> ; Sunrise’s CC&Rs, attached hereto as Exhibit “B.”
3.	Pursuant to Section 2.07 of the CC&Rs, Common Utility Facilities are sewer pipes, water, electrical, gas and telephone lines. Sunrise has the authority to repair, replace and maintain those areas. The term does not include television or internet lines, and Sunrise does not have the authority to repair, replace or maintain those areas.	<i>Id.</i> at Section 2.07 at 7-8.

4.	Pursuant to Section 2.08 of the CC&Rs, Plaintiff had the exclusive right to use the driveway in front of the Property.	<i>Id.</i> at 8.
5.	Plaintiff alleges COX installed the cable in or around Plaintiff's driveway.	<i>See</i> , Plaintiffs Amended Complaint at ¶ 19, attached hereto as Exhibit "C."
6.	Pursuant to an Amendment to Section 5.05 of the CC&Rs, Sunrise had no duty or control over the cable wire.	<i>See</i> Amendment 8 at 1, attached hereto as Exhibit "D."
7.	Sunrise has no responsibility for the acts or omission of third-parties.	<i>Id.</i>

III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when, after review of the record viewed in the light most favorable to the non-moving party, there remain no issues of material fact.¹ “In determining whether summary judgment is proper, the non-moving party is entitled to have the evidence and all reasonable inferences accepted as true.”² The slightest doubt standard is no longer applicable in Nevada; thus, a party opposing a Motion for Summary Judgment must do more than “simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor.”³ Additionally, the Supreme Court of Nevada has ruled the non-moving party “is not entitled to build a case on the gossamer thread of whimsy, speculation and conjecture.”⁴ Rather, “the non-moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him.”⁵

Nevada law is clear that the party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact.⁶ If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will

¹ NRCp 56; *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

² *See, Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989).

³ *See, Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) citing *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

⁴ *See, Wood* at 1031 quoting *Collins v. Union Fed. Savings & Loan*, 662 P.2d 610, 621 (1983) (citations omitted).

⁵ *See, Collins v. Union Fed. Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983).

⁶ *See, Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007).

bear the burden of persuasion, that party must “present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.”⁷

If the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either “(1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) pointing out that there is an absence of evidence to support the nonmoving party's case.”⁸ In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.⁹ In this particular case, a review of the applicable governing statutes and codes show Sunrise had no duty to maintain Plaintiff's driveway or the cable that ran across it.

III. LEGAL ANALYSIS

Because Sunrise had no responsibility for Plaintiff's driveway under the CC&Rs and also had no responsibility for the negligent acts of any guests or invitees on the Property (Cox and/or IES), it has no responsibility for the exposed cable across Plaintiff's driveway. Thus, Plaintiff cannot establish that there are any triable issue of material fact that Sunrise is legally responsible for his injuries.

A. Plaintiff Must Prove Sunrise Owed Him A Duty To Keep His Premises Safe

Plaintiff has sued Sunrise under the general theory of Negligence. To prevail, he must prove: (1) Sunrise owed him a **duty** of care, (2) Sunrise breached that **duty**, (3) the breach was the legal cause of his injuries, and (4) he suffered actual damages.¹⁰ In order to be entitled to judgment as a matter of **law**, Sunrise must negate at least one of these elements.¹¹ An indispensable predicate to tort liability founded upon negligence is the existence of a duty of care.¹² Whether there is a duty is always a question of law for the court to determine.¹³

A duty is defined as an obligation, to which the law will give recognition and effect, to comport to a particular standard of conduct toward another. In negligence cases, the duty is invariably the same

⁷ See, *Cuzze*, 123 Nev. at 602-03.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Turner v. Mandalay Sports Entertainment, LLC*, 134 Nev. 213, 217, 180 P.3d 1172, 1175 (2008).

¹¹ *Harrington v. Syufy Enters.*, 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997)

¹² *Mangeris v. Gordon*, 900 Nev. 400, 402, 580 P.2d 481, 483 (1978).

one must “conform to the legal standard of reasonable conduct in the light of the apparent risk.”¹⁴ Other Courts have said that a court may establish and define the standard of care by looking to the common law, statutes, administrative regulations, industry standards, or a defendant's own policies and guidelines.¹⁵

B. Sunrise Has No Duty To Maintain Any Part Of Plaintiff's Driveway

1. Sunrise Has No Responsibility Under NRS Chapter 116

NRS Chapter 116 *et. seq.* governs the obligations and responsibilities for common-interest communities. HOAs only have duties for a community's common elements. NRS 116.3102(1)(f) gives HOAs the power to maintain, repair, replace and modify common elements.¹⁶ NRS 116.017 defines common elements as “all portions of the common-interest community other than the units, including easements in favor of units or the common elements over the units.”¹⁷ Chapter 116 does not give any authority for common-interest communities to repair, replace and modify private property like Plaintiff's driveway or a limited common element like the easement where the cable lay.

First, CC&R Section 2.08 states the driveway is for the owner's exclusive use. Chapter 116 would not consider it as part of the common elements. Likewise, Chapter 116 does not provide Sunrise with any authority to maintain or modify “limited common-elements” which solely serve one particular unit. NRS 116.059 defines “Limited-common elements” as:

“portion of the common elements allocated by the declaration or by operation of subsection 2 or 4 of NRS 116.2102 for the exclusive use of one or more but fewer than all of the units.”¹⁸

NRS 116.2102¹⁹(2) goes on to makes clear that any area that solely serves one unit is the responsibility of the unit's owner and not a common element that a common-interest community like Sunrise has any obligations for:

“chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only

¹³ *Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009)

¹⁴ *Merluzzi v. Larson*, 96 Nev. 409, 412, 610 P.2d 739, 742 (1980).

¹⁵ *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016),

¹⁶ NRS § 117.3102(1)(f) (“Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association . . . [m]ay regulate the use, maintenance, repair, replacement and modification of common elements.”)

¹⁷ NRS 116.012(1)(a).

¹⁸ NRS 116.059 (emphasis added).

¹⁹ NRS 116.2012(2) (emphasis added).

that unit is a limited common element allocated solely to that unit, any any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.”

In other words Chapter 116 states if a portion serves just one unit, it is a limited common element and the unit owner’s responsibility to maintain. If it serves more than one unit, then it is part of the common elements, and part of the HOA’s duty to maintain.

In this instance, the easement in front of Plaintiff’s driveway on Plaintiff’s Property just serves his home. It does not serve multiple homes and Plaintiff cannot claim that the area is a limited common element that Sunrise has responsibility for. There is no statutory justification under Chapter 116 which gives Sunrise a duty towards the area where the cable lay.

2. *Sunrise Has No Responsibility For The Cable’s Easement Under The CC&Rs*

There is no dispute that Sunrise has no responsibility to maintain the private property of its residents. Under the CC&Rs, each unit owner is responsible for maintaining areas like his/her driveway area where Plaintiff claimed that he tripped over the cable. Section 2.08 states driveways are for the owner’s “exclusive use.” Further, under Section 5.05, the responsibility for the cable’s easement also rests with the Owner.

Plaintiff’s most likely assertion that Sunrise is responsible for the cable that he tripped over because it is a “Community Utility Facility,” would be wrong under any analysis of the CC&Rs. Whereas Section 5.05 does establish that Sunrise has some responsibility for exterior maintenance, it specifically excludes utility facilities on a lot that **are not** defined as “Common Utility Facilities.”²⁰ Section 2.07 defines a “Common Utility Facility” as: sanitary sewer house pipes and facilities, water house pipes and facilities, and electrical, gas and telephone lines installed or located in or upon a lot or lots.²¹ As the Court can see, the cable does not meet that definition.

The cable that Plaintiff claims he tripped over is not a “Common Utility Facility” for two reasons. First, it does not meet any of the definitions under section 2.07, which does not include either television or internet cable. In fact, Plaintiff, himself, admits that Cox installed the cable.²² Second, the easement where the cable sits serves Plaintiff’s home and his home alone. Because of this, Sunrise has

²⁰ Section 5.05 (emphasis added).

²¹ Section 2.07.

no duty to Plaintiff whatsoever (at least with respect to this issue). The fact there was an exposed wire across the driveway matters little because Sunrise could no more have responsibility for that cable than it would for any other potential hazard on an owner's driveway.

3. *Sunrise Has No Responsibility For The Area As Plaintiff's Landlord*

Plaintiff may try to assert that his tenant status for the Property creates a higher duty for Sunrise. CC&R Section 3.22 states all leases are subject to the CC&Rs. Even if Plaintiff contends Sunrise is Plaintiff's landlord, it would have no additional duties or responsibilities to the area where the cable lay that the CC&Rs and Chapter 116 already cover. It would only have responsibilities for the common areas. The CC&Rs do not create any higher standard or additional duty for tenants that do not exist for owners.

Also, Sunrise's responsibility for residences' exteriors does not create any additional duty for a hazard on the driveway, even if the hazard is out in the open. Plaintiff no doubt will claim a duty Nevada courts do not recognize for Sunrise to proactively address the hazard on the driveway. Just as Sunrise or any of its employees would not have the right to enter the Residence to address a potential hazard in there, it would not have the right to enter any of the other private property including the driveways. The CC&R section that governs exterior maintenance, Section 5.05, only gives authority to really paint exterior walls and mow lawns.

C. Sunrise Is Not Responsible For Exterior Maintenance For The Negligent Act Of Guests, Invitees or Independent Contractors.

1. *Sunrise Has No Liability For Third-Parties Under the CC&Rs*

Even if the Court feels Sunrise had some responsibility even though this occurred on Plaintiff's driveway and the cable is not a Common Utility Facility, Sunrise is still entitled to summary judgment because it has no responsibility for someone else pulling it out. Sunrise has no responsibility for the cable because the CC&Rs exclude responsibility for other parties' negligent acts; specifically, for a tenant's guests or invitees. See Section 5.05(c).²³ Plaintiff has no evidence to create a triable issue of

²² See, Plaintiff's Amended Complaint at ¶ 19.

²³ Id.

material fact for how anyone affiliated with Sunrise caused the cable to become exposed.²⁴ Whether Cox, IES, Bushbaker or some random-passerby exposed the wire, has no impact on Sunrise. The CC&Rs are clear that it has no responsibility for those acts.

2. *Sunrise Has No Responsibility For The Negligent Acts Of Independent Contractors*

Even if Plaintiff could present evidence that the two people (Sesman and Duslak) that Sunrise hired to mow the residents' lawns had some responsibility for this incident, it is not legally responsible for their acts because they are independent contractors. Absent control, negligent hiring, or other basis for direct liability, a person who hires an independent contractor to provide a service is not ordinarily liable for any torts they commit.²⁵ Plaintiff has no evidence on control, negligent hiring or other basis on which to base liability. Thus there is no way the Court can find Sunrise liable for either Sesman's or Duslak's negligence, and the Court has no choice but to enter summary judgment in Sunrise's favor.

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²⁴ Sunrise only asks this Court to address whether a duty existed as a matter of law. However, Plaintiff still has no evidence to show how Sunrise's acts or omissions were either the actual or proximate cause of his accident actual and proximate cause of.

²⁵ *San Juan v. PSC Indus. Outsourcing*, 126 Nev. 355, 363, 240 P.3d 1026, 1031 (2010)

IV. CONCLUSION

Sunrise is not legally responsible for everything that happens on an owner's property. Both NRS Chapter 116, *et. seq.* and the CC&Rs clearly lay out what its responsibility is as opposed to the individual owners/residents. Under the CC&Rs, Plaintiff and/or Bushbaker are responsible for maintaining both the cable and the driveway. Plaintiff will not be able to meet his burden that there is a triable issue of material fact that Sunrise has any legal responsibility under any factual scenario supported by admissible evidence. The law, therefore, dictates that this Court must grant summary judgment in Sunrise's favor.

DATED this 10th day of July, 2018.

SPRINGEL & FINK LLP

/s/ Jonathan C. Pattillo, Esq.

By:

LEONARD T. FINK, ESQ.
 Nevada Bar No. 6296
 JONATHAN C. PATTILLO, ESQ.
 Nevada Bar No. 13929
 10655 Park Run Drive, Suite 275
 Las Vegas, NV 89144
 Attorneys for Defendant,
*SUNRISE VILLAS IX HOMEOWNERS
 ASSOCIATION*

CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Julianna K. Ferguson, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada, 89144.

On **July 10, 2018**, I served the document described as **DEFENDANT, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** on the following parties:

*****SEE ELECTRONIC SERVICE LIST*****

- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
- _____ VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.
- X VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

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

/s/ Julianna K. Ferguson

 An employee of Springel & Fink LLP

EXHIBIT A

AFFIDAVIT OF AL STUBBLEFIELD IN SUPPORT OF SUNRISE VILLAS IX HOMEOWNER'S
ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)

COUNTY OF CLARK) ss.

I, AL STUBBLEFIELD, declare as follows:

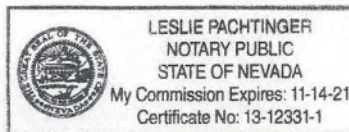
1. I am over eighteen (18) years of age and have personal knowledge of the facts set forth herein, and I am competent to testify to these facts.
2. I am the board president of Sunrise Villas IX Homeowners Association ("Sunrise").
3. I make this Affidavit based upon my personal knowledge and observations, and that I am competent to testify as to the matters set forth herein.
4. On November 23, 1996, Sunrise recorded its Declaration of Covenants, Conditions and Restrictions.
5. Attached hereto as Exhibit "B" to this affidavit is a true and correct copy of the Declaration of Covenants, Conditions and Restrictions along with all applicable Amendments.
6. Attached hereto as Exhibit "D" to this affidavit is a true and correct copy of Amendment 8 of the Declaration of Covenants, Conditions and Restrictions along with all applicable Amendments.
7. I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of Nevada.

FURTHER THE AFFIANT SAYETH NAUGHT

DATED this 6 day of July, 2018.

AL STUBBLEFIED
AL STUBBLEFIED

SUBSCRIBED and SWORN to before me
this 6 day of July, 2018.



Leslie Pachtinger
Notary Public

EXHIBIT B

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
SUNRISE VILLAS IX

THIS DECLARATION is made on the date ~~hereinafter~~
set forth by Emerson Development Company, a Nevada corpora-
tion, hereinafter referred to as "Declarant."

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain improved
real property in the County of Clark, State of Nevada, known
as Sunrise Villas IX, and described more particularly in
Exhibit "A" attached hereto and hereby incorporated by
reference; and

WHEREAS, it is the desire and intention of Declar-
ant to develop and improve said tract of land, to impose on
the lots and other parcels of land included in said tract
mutual and beneficial restrictions, covenants, agreements,
easements, conditions and charges as hereinafter set forth
under a general plan or scheme of improvements for the
benefit of all the land in the tract and the future owners
of said lands, and to offer for sale the lots and other
parcels of land included in said tract;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the above-described real property and be binding on all the parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

SECTION I

DEFINITIONS

1.01. "Association" shall mean and refer to Sunrise Villas IX Homeowners' Association, its successors and assigns.

1.02. "Common area" shall mean the real property and improvements thereon excepting the lots. The common area is described in Exhibit "B" attached hereto and incorporated herein by reference.

1.03. "Declarant" shall mean and refer to Emerson Development Company, its successors and assigns, if such successors or assigns should acquire more than one previously unsold lot from Declarant for the purpose of resale.

1.04. "Lease" shall mean any agreement for the leasing or rental of a lot.

1.05. "Lot" shall mean and refer to any lot shown upon any recorded subdivision map of the properties.

1.06. "Mortgage" shall mean a deed of trust as well as a mortgage.

1.07. "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee.

1.08. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, but excluding those having such interest merely as security for the performance of an obligation. However, whenever Declarant contracts for the sale of a lot, the contract purchaser shall be deemed the owner thereof.

1.09. "Properties" shall mean and refer to that certain real property described in Exhibit "A".

SECTION 2

PROPERTY RIGHTS

2.01. There shall be conveyed to each owner together with his respective lot a one one hundred twenty-fourth (1/124th) undivided interest in the common area. Declarant, its successors, assigns and grantees, covenant and agree that the undivided one one hundred twenty-fourth

(1/124th) interest in the common area and the fee title to the respective lot conveyed therewith shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective lot even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the lot.

2.02.1. Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(a) The right of the association to establish rules and regulations pertaining to the use of the common area;

(b) The right of the association to suspend the voting rights and right to use of the recreational facilities by an owner for a period during which any assessment against his lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its rules and regulations (each day of a continuing infraction shall be considered a separate infraction);

(c) The right of the association to limit the number of guests using the common area;

(d) The right of the association to dedicate or transfer all or any part of the common area to

any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the association;

(e) All restrictions, conditions, reservations, rights, rights of way, and easements of record; and

(f) The right of Declarant, its sales agents and representatives to the nonexclusive use of the common area and the facilities thereon for display and exhibit purposes in connection with the sale of lots, including lots in other subdivisions, which right Declarant hereby reserves; provided, however, that no such use by Declarant, its sales agents or representatives shall unreasonably restrict the owners in their use and enjoyment of the common area.

2.02.2 Every owner shall have a right of ingress and egress to and from his lot which shall be appurtenant to and shall pass with the title to every lot.

2.03. Any owner may delegate, in such manner as the association may provide, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

2.04. Each lot shall have an easement over all adjoining lots and over the common area for the purpose of

accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of buildings on such lot, or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting. In the event a structure on any lot is partially or totally destroyed, and then repaired or rebuilt, each owner agrees that encroachments over adjoining lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

2.05.1. Each lot shall be conveyed to owners other than Declarant, and thereafter held by such owners, subject to any and all easements of record at the time of the initial conveyance of such lot to an owner other than Declarant for the use and benefit of the several authorized public and/or other utilities which may include, but not be limited to, easements for cable television, sanitary sewers, water, gas, electrical and drainage facilities, and no owner shall damage or interfere with the installation and maintenance of such utilities, or in any manner change the direction or flow of drainage channels in any such easements, or in any manner obstruct or retard the flow of water through drainage channels in any such easements.

2.05.2. Easements on, over and under the properties for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, and for drainage facilities as shown on the recorded map of the properties, and as may be hereafter required or needed to service the properties, are hereby reserved to the association, together with the right to grant and transfer such easements.

2.06. Each wall or fence which is built as part of the original construction of a building and placed on the dividing line between lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. Except as provided in Section 2.07 with respect to Common Utility Facilities, the cost of reasonable repair and maintenance and any necessary rebuilding or restoration of a party wall shall be shared by the owners who make use of the wall in proportion to such use. The right of any owner to contribution from any other owner under this Section 2.06 shall be appurtenant to the land and shall pass to such owner's successors in title.

2.07. Sanitary sewer house pipes and facilities, water house pipes and facilities, and electrical, gas and

telephone lines installed or located in or upon a lot or lots and which serve more than one lot are herein called "Common Utility Facilities." The association shall have the right, and is hereby granted easements to the full extent necessary therefor, to enter upon the lot or lots in or upon which the Common Utility Facilities, or any portion thereof, lie to repair, replace and maintain the Common Utility Facilities. As provided in Section 5.05 hereof, such repair, replacement and maintenance are the duties, and shall be at the expense, of the association.

2.08. Each owner shall have an exclusive right of use of the driveway to and from his lot and of the garage located thereon. No other owner may use such driveway or garage for any purpose whatsoever without approval of the owner having such right of use.

SECTION 3

USE RESTRICTIONS

3.01. None of the lots shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain other than a row of single story townhouses used as single-family dwellings.

3.02. Nothing shall be done or kept on or in any common area or lot which will increase the rate of insurance on any common area or any other lot without the approval of the association. No owner shall permit anything to be done

or kept on or in any common area or lot which will result in the cancellation of insurance on any common area or any other lot or which would be in violation of any law.

3.03. No sign of any kind shall be displayed to the public view on or from any lot or any common area, without the approval of the Architectural Control Committee, as such committee is hereinafter designated, except such signs as may be used by the Declarant in connection with the development of the properties and sale of lots, including lots in other subdivisions, and except one "for rent" or "for sale" sign displayed by an owner and not exceeding twelve inches (12") by eighteen inches (18").

3.04. No animals of any kind shall be raised, bred, or kept on any lot, or in any common area, except that dogs, cats, or other household pets may be kept on lots subject to approval of the association, provided that no animal shall be kept, bred or maintained for any commercial purpose. The total number of animals kept by any owner shall not exceed such number as is established, from time to time, by the association.

3.05. Except for the original buildings constructed by Declarant, there shall be no alteration, addition, construction or removal of any structure on any real property subject to these covenants, conditions and restrictions without the prior approval of the Architectural

Control Committee. No building, fence or other structure shall be constructed upon any portion of any common area other than such buildings and structures as shall be constructed by the Declarant (or a person to whom the Declarant assigns its rights as developer), or by the association. No landscaping may be installed or modified without the prior approval of the Architectural Control Committee.

3.06. Within thirty(30) days from the date he becomes an owner, each owner other than Declarant shall install draperies and permanent window coverings for all windows and glass doors on his lot. Such draperies and window coverings must be approved of by the Architectural Control Committee. No windows or doors may be covered with aluminum foil or any similar material.

3.07. No professional, commercial or industrial operation of any kind shall be conducted in or upon any lot or the common area except such temporary uses as shall be permitted by Declarant while the development is being constructed and lots, including lots in other subdivisions, are being sold by the Declarant.

3.08. Except as may be used by Declarant while the development is being constructed and lots are being sold by Declarant, no vehicle shall be repaired or rebuilt nor shall any owner park any truck, trailer, boat, camper or other commercial or recreational vehicle on any lot or

common area, street or driveway, including, but not limited to, public thoroughfares adjacent to the properties, so that the same is visible from the adjacent public thoroughfare or other lots or common areas. However, the Architectural Control Committee may establish rules and regulations for parking of recreational vehicles. Such vehicles may be parked in accordance with such rules and regulations, provided such parking is also specifically approved of by the Architectural Control Committee.

3.09. No noxious or offensive activity shall be carried on upon the properties nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

3.10. There will be no oil drilling, oil development, oil refining, quarrying or mining operations of any kind permitted on or in the properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted in, on or under the properties.

3.11. No derrick or other structure designed for use in boring, mining or quarrying for water, oil, natural gas, or precious minerals shall be erected, maintained or permitted upon the properties.

3.12. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a

clean and sanitary condition and shall be enclosed so as not to be visible from any public street or from any other lot or common area except when placed at the curbing for the purposes of and on the days of regularly scheduled collection.

3.13. No owner shall permit or suffer anything to be done or kept upon the properties which will obstruct or interfere with the rights of other owners or annoy them by unreasonable noise or otherwise, nor will he commit or permit any nuisance on the properties or commit or suffer any immoral or illegal act to be committed thereon. The owner shall comply with all the requirements of the Board of Health and of all other governmental authorities with respect to said premises.

3.14. All clotheslines, woodpiles, storage areas and equipment shall be prohibited upon any lot, unless obscured from view from public streets, the common area, and other lots by a fence or appropriate screen approved by the Architectural Control Committee.

3.15. No machinery, junk, debris, building materials, or similar matter shall be placed, stored or kept on any lot or street within or adjoining the properties.

3.16. No alteration to or modification of the radio and/or television antenna system, if any, as installed by Declarant, shall be permitted and no owner shall be permitted to construct and/or use and operate his own external radio and/or television antenna.

3.17. Each owner shall at all times maintain and repair the interior of all buildings and structures on his lot, including interior walls, windows, glass, ceilings, floors, patios, fixtures and appurtenances thereto in a clean, neat, sanitary and orderly condition. Should the Architectural Control Committee permit an owner to erect a wall or fence around his lot, or any portion thereof, such owner shall maintain said wall or fence in a clean, neat, sanitary and orderly condition.

3.18. Except as may be used by Declarant while the development is being constructed and lots are being sold by Declarant, no structure of a temporary character, tent, shack, garage, barn or other out-building shall be used on any lot at any time as a residence, either temporarily or permanently.

3.19. Each owner shall pay when due, before delinquency, all taxes, assessments, levies, fees and all other public charges and utility fees and charges of every kind and nature, whether of a like or different nature, imposed upon or assessed against his lot and/or his interest in the common area.

3.20. No garage shall be converted to any other use than parking of cars and other garage functions without the prior approval of the Architectural Control Committee and any governmental agency having jurisdiction.

3.21. No lot shall be rented by the owner thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days or (b) any rental if the occupant of the lot is provided customary hotel services, such as room service for food and beverages, maid service, furnishing laundry and linen, or bell boy service.

3.22. Any lease of a lot shall be in writing and shall expressly provide that such lease is subject in all respects to this Declaration and the Articles of Incorporation and By-laws of the association and that any failure of the tenant to comply with any of the foregoing shall constitute a default under such lease; provided, however, that the owner of any leased lot, and not the tenant, shall remain liable for all assessments with respect to such lot, and the association may refuse to accept payment from such tenant. The foregoing provisions regarding personal liability shall not limit the provisions hereof with respect to the lien for such assessments.

SECTION 4

ARCHITECTURAL CONTROL

4.01. No building, addition, accessory, fence, wall or other structure or improvement shall be commenced, erected, placed or maintained upon the properties nor shall any exterior addition to or change or alteration therein be

made until the plans and specifications showing the nature, kind, shape, heights, materials, color and location of the same shall have been submitted to and approved as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the association, or by an Architectural Control Committee composed of three or more representatives appointed by the Board. There shall be no alteration in the exterior color scheme of any structural improvement except with the prior written approval of the Architectural Control Committee.

4.02. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4.03. Neither the Board of Directors, the Architectural Control Committee nor any member thereof shall be liable to the association, any owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, or (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with

respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him.

4.04.1. Whenever, whether in this section or elsewhere, the approval of the Architectural Control Committee is required, said approval shall mean the written approval of the majority of the Board of Directors or of a majority of the Architectural Control Committee, if one is appointed. In the event said Board, which shall be deemed the Architectural Control Committee unless a separate committee is appointed, or the Architectural Control Committee, if such a committee is appointed, fails to grant, approve or disapprove such design and location within thirty (30) days after a request therefor has been submitted to it, approval will not be required and this section will be deemed to have been fully complied with except that the association will not be held to have waived any specific requirement of these covenants, conditions and restrictions.

4.04.2. Whenever the approval of the association is required, unless otherwise stated, said approval shall mean the written approval of a majority of the Board of Directors of the association. Whenever regulations or other requirements or actions of the association are referred to, unless otherwise stated, said regulations, requirements or actions shall be such as are adopted or authorized by the Board.

4.05 Any other provision hereof notwithstanding, until such time as Declarant shall own less than ten percent (10%) of the lots, Declarant shall have the right to require that a separate Architectural Control Committee be designated and Declarant shall have the sole right to appoint members and fill vacancies on such Committee.

4.06. Whenever under any provision of these covenants, conditions and restrictions, an owner shall be obligated to do any act or thing or to refrain from doing any act or thing, the association shall be entitled but shall not be obligated, to do any such act or thing required of the owner, or to do anything necessary to rectify any action by an owner in violation of these covenants, conditions and restrictions, all on behalf of and at the cost and for the account of said owner, and in such event the association may levy an individual special assessment against such owner to reimburse the association for the cost thereof.

SECTION 5

MEMBERSHIP AND VOTING RIGHTS

5.01. The association shall be organized pursuant to and governed by Nevada Revised Statutes 81.410 - 81.540 (1979) and successor statutes governing non-stock, non-profit cooperative corporations and shall have all the powers provided for herein, therein, or elsewhere by law.

5.02. Every owner of a lot subject to these covenants, conditions and restrictions, shall be a member of the association. Membership shall be appurtenant to and may not be separated from any lot which is subject to these covenants, conditions and restrictions.

5.03. The association shall have two classes of voting membership:

(a) Class A members shall be all owners with the exception of Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot, nor shall fractional votes be allowed. If more than one person is the owner of a lot, and such persons are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any such person or persons jointly owning a certain lot cast a vote representing that lot, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other such persons. In the event more than one vote is cast for a parti-

cular lot, such votes shall be void and shall not be counted.

(b) The Class B member (s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. At any time, at the sole discretion of Declarant, Class B membership, for one or any number of lots, may be converted to Class A membership, by sending the Board of Directors of the association notice thereof, said notice to be given in such manner as the by-laws of the association designate for the giving of notices. In any event, however, all Class B memberships shall be converted to Class A memberships upon the earlier of (i) 120 days after close of sales by Declarant of 75% of the lots and (ii) two (2) years after close of Declarant's first sale of a lot.

5.04. The association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the association under this Declaration and its Articles and by-laws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the association, including, without limitation, the power and authority:

(a) To enter into or upon any lot or the

common area for the purpose of performing the duties of the association provided for herein or enforcing by peaceful means any of the provisions of this Declaration.

(b) To employ a manager, an independent contractor, managing agent (which may be a corporation) and such other employees as it deems necessary, and to prescribe their duties; provided, however, that no management agreement shall be for a term in excess of one year (renewable by agreement of the parties for successive one year periods) and that any such agreement shall be terminable by the association for cause upon thirty (30) days' written notice.

(c) To promulgate, amend and repeal rules and regulations concerning the use of the lots and the common area.

(d) To levy a reasonable fine against any owner for violation of these covenants, conditions and restrictions, the Articles of Incorporation, the by-laws or rules and regulations of the association. Said fine shall be a lien against said owner's lot and shall be enforced as herein provided for other liens and assessments.

5.05. The association shall have the obligation to perform each of the following duties:

(a) To maintain and otherwise manage all of the common area and all facilities, improvements and landscaping thereon, and all property that may be acquired by the association. The duty to maintain any landscaped portion of the common area shall not commence until the date Declarant certifies pursuant to Section 6.05 that the landscaping thereof is completed.

(b) Except as otherwise herein provided, to pay taxes and assessments which are or could become a lien on the common area, or any portion thereof.

(c) To provide exterior maintenance of each residence building within the properties, which maintenance shall include painting, maintaining, repairing and replacing roofs, gutters, downspouts and exterior building walls. Such exterior maintenance shall not include any action with respect to glass surfaces, air conditioning units, landscaping patios, courtyards and other open areas on a lot, patio covers or other additions built or maintained on or within a lot by an owner, or utility facilities on a lot which are not Common Utility Facilities, and shall not include maintenance, repairs or replacements required by reason of the negligent or willful act of an owner, his

family, guests or invitees, or by reason of damage or destruction caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement or caused by flood, earthquake or other Act of God. Except as provided in Section 8 hereof, such excluded maintenance, repairs and replacements shall be the responsibility of each owner.

(d) To accomplish required repairs, replacements and maintenance of the Common Utility Facilities described in Section 2.07 hereof.

(e) To pay all sewer service bills in accordance with one annual or quarterly composite statement from the Clark County Sanitation District. The association will collect sewer service fees from the individual owners for all property, common and personal.

5.06. Should the association employ or contract with a manager, the association may terminate such employment or contract at any time, subject to the terms of any agreement with such manager. Subject to Section 5.01(b) hereof, the association may thereupon either employ or contract with such new manager and upon such terms as it may elect, but the association shall not assume such management itself without the consent of first mortgagees holding at least 75% of the first mortgages encumbering the lots.

SECTION 6

COVENANT FOR MAINTENANCE ASSESSMENT

6.01. Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association (a) annual assessments or charges (b) general special assessments for capital improvements, (c) individual special assessments levied against individual lot owners to reimburse the association as provided for in Section 4.06, and (d) such other assessments as are provided for or permitted herein. Such assessments are to be established and collected as provided for herein and in the Articles of Incorporation and by-laws of the association. The annual, general special, individual special assessments and such other assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligations for delinquent assessments shall not pass to a successor in title unless expressly assumed by such successor.

6.02. The funds and expenditures of the association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenditures:

(a) Current expenses, which shall include all funds and expenditures to be made within the year for which funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or to capital improvements;

(b) Reserve for deferred maintenance, which shall include funds for maintenance which occurs less frequently than annually;

(c) Reserve for replacement, which shall include funds for repair or replacement required because of damage, destruction or obsolescence.

6.03. The assessments levied by the association shall be used exclusively for the improvement, management and maintenance and care of the common area, for the maintenance of building exteriors to the extent provided for herein, for organizational expenses of the association, and for the performance of the association's duties and rights hereunder.

6.04. The Board of Directors with the vote or written approval of 51% of the voting power of the Association, shall fix the annual assessment. In no event shall

the annual assessments be less than that necessary to raise revenue sufficient to meet all requirements and fulfill all the purposes of Section 6.03. If, for any reason whatsoever, including, but not limited to, increased expenses, emergencies, delinquencies, or termination of assessments pursuant to Section 7 hereof, an annual assessment is inadequate for such purposes, the Board may at any time levy a further assessment with the vote or written approval of 51% of the voting power of the Association. Annual assessments shall be due in twelve (12) equal monthly installments payable on the first of each month.

6.05. No assessment shall be levied until Declarant's first sale of a lot. At such time the Board of Directors shall determine the assessments for the remainder of the calendar year in which such first sale occurs. The first installment of such assessment shall be due and payable at the close of escrow for such first sale. If said escrow shall close on other than a first day of a calendar month, such first installment shall be prorated for said fractional month. Any other provision hereof to the contrary notwithstanding, no assessment shall be levied against any lot until Declarant completes construction of a residential building thereon, as evidenced by issuance of a certificate of occupancy, and landscaping of the adjoining common area, as evidenced by Declarant's certificate to the association; provided, however, that full assessments shall

be levied on each lot owned by Declarant commencing on the earliest of (i) completion of the residential building thereon, (ii) occupancy thereof, or (iii) sixty (60) days after close of Declarant's first sale of a lot.

6.06. In addition to the annual assessments, the Board of Directors may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment in excess of Five Thousand (\$5,000) Dollars shall have the vote or written assent of members representing fifty-one percent (51%) of the voting power in the association. Said \$5,000 amount shall be deemed automatically increased to reflect any increase in the cost of living between the date hereof and the date of such assessment.

6.07. Both annual and general special assessments shall be fixed at a uniform rate for all lots.

6.08. Any assessment provided for elsewhere herein may be enforced as provided for in this Section 6.

6.09. Assessments and installments thereon paid on or before ten (10) days after the date when due shall not bear interest, but all sums not paid on or before ten (10) days after the date when due shall bear interest at the highest legal rate from the date when due until paid. All

payments on account shall be first applied to interest and then to the assessment payment first due. The association may bring any action at law or in equity against the owner personally obligated to pay the same, or foreclose the lien against the property without waiving any right to a deficiency. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

6.10. If an owner shall be in default in the payment of an installment upon an assessment, the Board may accelerate the remaining installments of the assessment upon notice thereof to the owner, and thereupon the unpaid balance of the assessment shall come due on the date stated in the notice.

6.11. The provisions of Nevada Revised Statutes 278A.150-170 (1979) or any successor statute or statutes are hereby adopted and incorporated herein for the purpose, among other things, of establishing the manner in which assessments and other charges referred to herein shall be and become a lien against a lot, the priority of such liens, and the manner in which they are enforced. Any lien so created shall also secure reasonable attorneys' fees incurred by the association incident to the collection of such assessment or the enforcement of such lien. The lien may also be enforced in any other manner permitted by law.

SECTION 7

MORTGAGEE PROTECTION

7.01. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure, or a deed or assignment in lieu of foreclosure, shall extinguish the lien of such assessment as to payments which accrue prior to the time such transferee comes into possession of the lot. No sale or transfer shall relieve such lot from liability for any assessments thereafter accruing or from the lien thereof.

7.02. Every mortgagee shall receive written notice from the association of any default in performance of any obligation provided for herein, or in the Articles of Incorporation, bylaws or rules and regulations of the association by an owner whose lot is subject to a mortgage of such mortgagee. Such mortgagees shall also receive written notice from the association of association membership meetings, notice of substantial damage or destruction of the improvements on a lot or of any part of the common area, and notice if any lot or portion thereof or the common area or any portion thereof is made the subject matter of a condemnation of eminent domain proceeding. Said mortgagees shall also receive copies of any financial statements sent by the association to its members. A mortgagee shall only be

entitled to the foregoing notices and copies if prior to the time the event with respect to which said notices are sent occurs or the time said statements are sent, as the case may be, such mortgagee shall deliver to the association a written request for such notices and copies specifying the address to which such notices and copies are to be sent. The association shall be deemed to have complied with this Section 7.02 if such notice is mailed, postage prepaid, to the mortgagee at such address.

7.03. Unless all mortgagees give their prior written approval, the association shall not (i) increase the pro rata interest or obligations of any lot for purposes of levying assessments and charges or decrease said lot's share of the common area and proceeds of the properties, (ii) partition or subdivide any lot or the common area, or (iii) alienate, release, transfer, hypothecate or otherwise encumber the common area, except as provided in Section 2.02 (d) hereof.

7.04. All first mortgagees shall have the right to inspect the books and records of the association at reasonable times upon reasonable notice.

7.05. By an appropriate subordination agreement executed by the association, the benefits of Section 7.01, 7.02, 7.03 and 7.04 hereof may be extended to mortgagees not otherwise entitled thereto.

7.06. No breach of any of these covenants, conditions and restrictions shall cause any forfeiture of title or reversion or bestow any right to re-entry whatsoever but violation of any one or more of these covenants, conditions and restrictions may be enjoined or abated by the Declarant, its successors and assigns, and by the association, by action of any court of competent jurisdiction, and damages may also be awarded against such violation; provided, however, that any such violation shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to said property or any part thereof, but said covenants and restrictions shall be binding upon and effective against any owner of said property, or portion thereof, whose title thereto is acquired by foreclosure or otherwise.

7.07. In the event of any conflict between the provisions of this Section 7 and any other term, covenant or condition hereof, the provisions of this Section 7 shall prevail.

SECTION 8

INSURANCE

8.01.1. The association shall obtain and maintain in force comprehensive public liability insurance insuring the association, the manager, if any, Declarant, the owners,

and the agents and employees of all of them, against any liability incident to the ownership or use of the common area and including, if obtainable, a cross liability endorsement insuring each insured against liability of each other insured. The limits of such insurance shall not be less than \$500,000 for death of or injury to any one person and \$1,000,000 for death of or injury to more than one person in any one occurrence, and \$50,000 for property damage in any one occurrence.

8.01.2. The association shall also obtain and maintain in force a master or blanket policy of fire insurance for the full insurable value of all of the improvements within the properties. Such policy and any endorsements thereon shall be in the form and content, for such term and in such company as may be satisfactory to any mortgagee; and, if more than one mortgagee has a loan of record against the properties, or any part thereof, such policy and endorsements shall meet the maximum standard of the various mortgagees represented in the properties. Such policy shall contain extended coverage and replacement cost endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause to permit cash settlement

covering full value of the improvements in the event of partial destruction and decision not to rebuild. Such policy shall be in such amounts as shall be determined from time to time by the association, shall name as insured the association, the owners and Declarant, so long as Declarant is the owner of any of the lots, and all mortgagees as their respective interests may appear.

8.01.3. All insurance proceeds payable under Section 8.01.2 shall be paid to the association, to be held and expended for the benefit of the owners, mortgagees and others, as their respective interests shall appear. In the event repair or reconstruction is authorized, the association shall have the duty to contract for such work as provided for herein.

8.01.4. The association may purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and decision not to rebuild. The association may also purchase and maintain fidelity bonds, insurance on commonly-owned personal property, and such other insurance as it deems necessary. Notwithstanding any other provisions herein, the association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by the Federal

National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a lot within the properties, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or Government National Mortgage Association, as the case may be.

8.01.5. An owner may carry such personal liability and property damage insurance respecting his lot as he may desire; however, any such policy shall include a waiver of subrogation clause.

8.02.1. In the event of damage to or the partial destruction of the improvements on the properties, and if the available proceeds of the insurance carried pursuant to Section 8.01 hereof are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof and less than seventy-five percent (75%) of the improvements on the properties have been destroyed or substantially damaged, the damaged or destroyed improvements shall be promptly repaired and rebuilt unless, within ninety (90) days from the date of such damage or destruction, at a duly constituted meeting of the association, members representing seventy-five percent (75%) of the total voting power of the association determine that such repair and reconstruction shall not take place. If the available proceeds of such insurance cover eighty-five percent (85%) of the cost of reconstruction or repair but seventy-five

percent (75%) or more of said improvements have been destroyed or substantially damaged, such reconstruction or repair may, nevertheless, take place unless disapproved of at such meeting by owners representing greater than a fifty percent (50%) interest in the common area.

8.02.2. If the available proceeds of such insurance are less than eighty-five percent (85%) of the cost of repair or reconstruction, such repair or reconstruction may, nevertheless, take place if, within ninety (90) days from the date of such damage or destruction, members representing a majority of the total voting power of the association so elect at a duly constituted meeting of the association; provided that if greater than seventy-five percent (75%) of the improvements are destroyed or substantially damaged the owners opposing such reconstruction and repair do not represent more than a fifty percent (50%) interest in the common area.

8.03. If it is determined to rebuild, either pursuant to Sections 8.02.1 or 8.02.2 hereof, each owner shall be obligated to contribute such funds as may be necessary to pay his proportionate share of the cost of reconstruction, over and above the insurance proceeds, and the proportionate share of each owner shall be the same as his proportionate share of general assessments. In the event of the failure or refusal of any owner to make his proportionate contribution, the association may levy a

BOOK 1280

1239888

special assessment against such owner, and enforce such assessment as provided in Section 6 hereof.

8.04. If it is determined to rebuild the association shall obtain bids from at least two (2) reputable contractors and award the reconstruction work to the lowest bidder. The association shall have the authority to enter into a written agreement with such contractor for such reconstruction. The association shall take all necessary actions to assure the commencement of such reconstruction within one hundred twenty (120) days after such destruction and to assure the diligent prosecution of such reconstruction to completion.

8.05. Proceeds of insurance policies received by the association shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be used to defray the cost thereof as herein provided. Any proceeds remaining after defraying such costs shall be distributed equally to all lots, remittances being payable jointly to owners and their mortgagees.

(b) If it is determined in the manner herein provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the lots

(except that such proceeds shall be distributed to the association with respect to damage to the common area) in such a way as to give consideration to the relative degree of damage to such improvements and the relative original value of improvements, remittances being payable jointly to owners and their mortgagees.

8.06. Any reconstruction undertaken pursuant to the foregoing provisions shall cover only the common area and the exterior and structural components of the damaged or destroyed buildings and such other damage to such buildings as may be covered by insurance maintained by the association. If a destroyed building is so rebuilt, the owner of such building shall be obligated to repair and rebuild the remainder of the damaged portions of the building on his lot in a good and workmanlike manner at such owner's expense.

8.07. In the event of a dispute among the owners with respect to the provisions of Sections 8.02 through 8.06 hereof, any owner may cause such dispute to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Board of Directors of the association and all other owners within ten (10) days after reference to arbitration, and all owners shall have an opportunity to appear in such arbitration

proceedings. The decision of such arbitrator shall be final and conclusive upon all owners. The arbitrator may include in his decision an award for costs and/or attorneys' fees against any one or more parties to the arbitration. A judgment of specific performance upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

8.08. In the event that all or part of the properties shall be condemned by any governmental body having the right of eminent domain, the compensation for such condemnation shall be distributed to the lots on the basis of each lot's share of general assessments, unless the judgment of condemnation shall by its terms otherwise apportion such compensation among the lots. Remittances to lots shall be paid jointly to owners and their mortgagees.

SECTION 9

GENERAL PROVISIONS

9.01. The association, and any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these covenants, conditions and restrictions, the Articles of Incorporation and By-laws of the association, or adopted pursuant thereto. Failure by the association or by any

owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

9.02. The violation of any restriction, condition, covenant or reservation contained herein is hereby declared to be a nuisance, and the association, or any owner, shall have the right to seek equitable relief against such nuisance.

9.03. The remedies provided for herein for the enforcement of the restrictions, conditions, covenants, reservations, liens and charges imposed hereby or adopted hereunder shall be deemed cumulative, and no such remedy shall be construed as exclusive of any other, or of any right, option, election or remedy provided by law.

9.04. No owner may bring an action for partition of the properties or any portion thereof except as provided in NRS 117.050 (1979), and every owner by accepting title to a lot covenants and agrees to waive and does waive, for himself, his heirs, executors, successors and assigns, any and all other rights of partition. Any references in such statute to a condominium shall be deemed, for the purposes of this Section 9.04, to be a reference to a lot. Any reference in such statute to a condominium project shall be deemed, for the purposes of this Section 9.04, to be a reference to the properties. No right of partition pursuant

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1239888

to this Section 9.04 shall be allowed if not approved by all mortgagees pursuant to Section 7.04 hereof.

9.05. Invalidation of any one of these covenants, conditions or restrictions or any application thereof by judgment or court order shall in no manner affect any other provision or application thereof which shall remain in full force and effect.

9.06. These covenants, conditions and restrictions shall run with and bind the land until December 31, 2029, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise herein expressly provided this Declaration may be amended only by an instrument signed by members representing not less than fifty-one percent (51%) of the voting power in the association; provided, however, that prior to the initial sale of all the lots by Declarant, no amendment shall be effective unless consented to by Declarant. Any amendment must be recorded. Except as otherwise herein expressly provided, any amendment must be consented to by first mortgagees holding not less than seventy-five percent (75%) of the first mortgages encumbering the lots. No amendment to this Declaration shall be valid which would tend to defeat the priority position of a mortgagee with respect to its lien or which would make the mortgage illegal under then applicable governmental regulations unless consent is obtained in writing from such mortgagee.

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9.07. The captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference to these covenants, conditions and restrictions and in no way whatsoever define, limit or describe the scope or intent of these covenants, conditions and restrictions, nor in any way affect these covenants, conditions and restrictions.

9.08. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution or substitutions.

9.09. The liability of any owner arising out of any contract made by the association or any other act or omission of the association shall be limited to such proportion of the total liability as the number of lots owned by such owner bears to the number of all lots subject to these covenants, conditions and restrictions; provided, however, that nothing in this section shall be deemed to impose on any owner any liability to any party which would not otherwise exist.

RECEIVED

MAR 30 2001

**AMENDMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION**

This Amendment shall amend, supplement and modify those certain Covenants, Conditions & Restrictions (CC&Rs) recorded on September 11, 1980 and executed by SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION and recorded in the Records of Clark County, Nevada, at Book 1280 as Instrument No. 1239888. In the event of any conflict between the original CC&Rs and this Amendment, this Amendment shall control. Except as amended, supplemented and modified hereby, the original CC&Rs shall remain in full force and effect.

The CC&Rs are hereby supplemented by adding as Paragraph 3.23 of Article III thereof the following:

Lease of Units. Upon recordation of this Amendment, the total number of leased or rental condominium units within the community shall be restricted and limited to a total of 10% of the units within the Association. This restriction shall apply only to each and every condominium unit that is sold, or for which the current ownership is otherwise transferred, subsequent to the recordation of this Amendment.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 28 day of February, 2001.

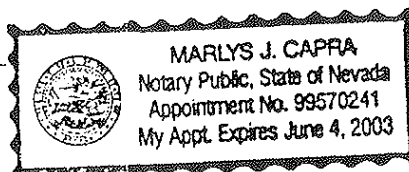
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

By: Jay Hiner President
JAY HINER, PRESIDENT

STATE OF NEVADA)
): ss
COUNTY OF CLARK)

This instrument was acknowledged before me on the 28 day of February, 2001, by JAY HINER.

Marlys J. Capra
NOTARY PUBLIC



WHEN RECORDED RETURN TO:
The Law Offices of Jay Hampton & Associates
701 N. Green Valley Pkwy., #200
Henderson, Nevada 89014

CLARK COUNTY, NEVADA			
JUDITH A. VANDEVER, RECORDER			
RECORDED AT REQUEST OF:			
LAW OFFICES OF JAY HAMPTON & ASS			
03-28-2001	11:58	JBR	1
BOOK	20010328	INST	01270
FEE:	7.00	RPT:	.00
AM	RESTRICTIONS		
CONFIRMED COPY HAS NOT BEEN COMPARED TO THE ORIGINAL			

BOOK 1280

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EXHIBIT A

All lots in Sunrise Villas IX as shown by map thereof, recorded October 22, 1979 at Page 33, Book 25 of Plats, Official Records, Office of the County Recorder, Clark County, Nevada (excluding that portion reverted pursuant to that map filed May 6, 1980 at Page 94, Book 25 of Plats, Official Records, Office of the County Recorder, Clark County, Nevada) and in Sunrise Villas IX-B as shown by map thereof, recorded May 6, 1980 at Page 95, Book 25 of Plats, Official Records, Office of the County Recorder, Clark County, Nevada.

EXHIBIT B

All that area indicated as private street or common area on that Plat of Sunrise Villas IX, recorded October 22, 1979 at Page 33, Book 25 of Plats, Official Records, Office of the County Recorder, Clark County, Nevada, (excluding that portion reverted pursuant to that map filed May 6, 1980 at Page 94, Book 25 of Plats, Official Records, Office of the County Recorder, Clark County, Nevada) and of Sunrise Villas IX-B as shown by map thereof, recorded May 6, 1980 at Page 95, Book 25 of Plats, Official Records, Office of the County Recorder, Clark County, Nevada.

RETURN TO:

Lionel, Sawyer and Collins

~~300~~

1700 Valley Bank Plaza

300 South Fourth Street

Las Vegas, Nevada 89101

CLARK COUNTY NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF

Lionel, Sawyer et al

SEP 12 2 08 PM '80

FEE *45.00* DEPUTY *[Signature]*
OFFICIAL RECORDS
BOOK INSTRUMENT

1280

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IN WITNESS WHEREOF, the undersigned, being the
 Declarant herein, has hereunto executed these covenants,
 conditions and restrictions this 11th day of September,
 1980.

EMERSON DEVELOPMENT COMPANY,
 a Nevada corporation

By Leo Duzant

STATE OF NEVADA)
) ss:
 COUNTY OF CLARK)

On September 11, 1980, personally appeared before
 me, a Notary Public, Leo Duzant, who acknowledged he executed
 the above instrument.

Susan Burrows
 Notary Public



Notary Public - State of Nevada
 CLARK COUNTY
 Susan Burrows
 My Commission Expires Aug. 24, 1982

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SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 1.

Change Sub-section 3.19 to read as follows:

3.19. Each owner shall pay when due, before delinquency, all taxes, assessments, levies, fees and all other public charges and utility fees, including sewer service fees, and charges of every kind and nature, whether of a like or different nature, imposed upon or assessed against his lot and/or his interest in the common area.

This is an amendment to the Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX, originally recorded September 12, 1980, Book 1280, Instrument 1239888.

WHEN RECORDED RETURN TO:
LEVY REALTY COMPANY
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

Book 1745

1704249
2SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 2.

Change Sub-section 5.05 Paragraph (c), second sentence, to
read as follows:

(c) -----and exterior building walls. Such
exterior maintenance shall not include any action with respect
to glass surfaces; heating, ventilating and air conditioning
units; garage and entrance doors (except maintenance painting);
landscaping patios, courtyards and-----

This is an amendment to the Declaration of Covenants, Conditions
and Restrictions for Sunrise Villas IX, originally recorded
September 12, 1980, Book 1280, Instrument 1239888.

When recorded/ return to:
LEVY REALTY COMPANY
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

388X 1745

1704249

3

SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 3.

Remove completely Sub-section 5.05 Paragraph (e), pertaining
to sewer service fees, collection and payment by the Association.

This is an amendment to the Declaration of Covenants, Conditions
and Restrictions for Sunrise Villas IX, originally recorded
September 12, 1980, Book 1280, Instrument 1239888.

WHEN RECORDED RETURN TO:

LEVY REALTY CO
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

216

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41745
SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 4.

Conditions and Restrictions Pertaining to Installation of Window, Door and Entrance Wrought Iron Security Guard Systems.

1. Homeowners shall comply, in all respects, to Section 4 "Architectural Control" of the Covenants, Conditions and Restrictions for Sunrise Villas IX.
2. Wrought iron guard gates and closures at front courtyard areas of interior home units have been approved.
3. Wrought iron guard gates at front entrances of end home units have been approved.
4. Wrought iron window guards on entrance walls of end home units facing Madreperla St. or Billman St. extension through the guard house, are prohibited.
5. Wrought iron window guards on entrance walls of end home units facing each other, parallel or at an angle, are prohibited unless owner of the facing property gives written approval to the Board of Directors.
6. Wrought iron window guards or sliding door guards on rear patio of all home units abutting the interior common areas of Block 2 (La Fortuna to La Cara), Block 3 (La Cara to Malabar) and Block 4 (Malabar to Laconia), are prohibited.
7. Homeowner will be responsible for acceptable maintenance of all the guard material installed, including all covered window and wall areas, plus an 18 inch border outside the periphery of the guard material.
8. Whenever a homeowners structure is painted by the Association, the homeowner will also paint the guard material and areas specified in No. 7 above, unless detrimental rusting dictates that additional painting is required.
9. The outside surface of all main wrought iron guard material shall not project more than 2 1/2 inches from the face of the structure wall.
10. The Board of Directors may specify paint color of the guard materials.
11. Notwithstanding all of the above, the Board of Directors of Sunrise Villas IX, reserves the right to change or cancel this Amendment No. 4.

This is an amendment to the Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX, originally recorded September 12, 1980, Book 1280, Instrument 1239888.

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CLARIFICATION

AMENDMENT TO THE CC&Rs

OF

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

This amendment to the CC&Rs of Sunrise Villas IX Homeowners Association is made this 26th day of November 1991. The Amendment reads as follows:

Regarding architectural control, the Association shall be permitted to allow for approval of design security bars for doors and/or window as approved by the Board of Directors.

I hereby certify that the above and foregoing Amendment to the By-Laws is a true and correct copy of Sunrise Villas IX Homeowners Association as adopted on this 26 day November, 1991.

Merle L. Capra
 Secretary
 Sunrise Villas IX H.O.A.
 Merle L. Capra

Nicole Milner
January 14, 1992



NOTARY PUBLIC
 STATE OF NEVADA
 County of Clark
 Nicole Milner
 My Appointment Expires April 1, 1995

CLARK COUNTY, NEVADA
 JOAN L. SWIFT, RECORDER
 RECORDED AT REQUEST OF:
 COMMUNITY MANAGEMENT SERVICES

03-03-92 15:40 ISJ 2
 OFFICIAL RECORDS
 BOOK: 920303 INST: 01166
 FEE: 5.00 RPTT: .00

BOOK 1745

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SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved May 17, 1983 by action of the Board of Directors

AMENDMENT NO. 5.

ANIMAL CONTROL

The following rules and regulations are intended to supplement Sub-section 3.04 of the Covenants, Conditions and Restrictions.

1. Each residential unit shall be limited to two (2) pets.
2. Pet owners are responsible for preventing their pets from becoming a public nuisance or annoyance.
3. Pets will be on a leash at all times when outside of its owner's residential unit. Clark County, Nevada, has a leash law which can also be applied.
4. To avoid the nuisance and annoyance of pet urine and droppings in Sunrise Villas IX and damage to lawns, trees, shrubs and structures, pets must be walked to the outside of the complex via the streets and curbs. Any droppings en route will be picked up and properly disposed of by the pet attendant.
5. The exterior perimeter sidewalk is a part of Sunrise Villas IX complex; therefore, pets will be walked in the street curb and not allowed to produce droppings on the sidewalk, corner lawn areas or planting areas unless immediately removed and properly disposed of by the pet attendant.
6. Violators of these rules and regulations are subject to the fines as established by the Board of Directors. If a violator is a renter, guest or dependent, fines will be assessed against the owner of the renter's residence.

This is an amendment to the Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX, originally recorded September 12, 1980, Book 1280, Instrument 1239888.

WHEN RECORDED RETURN TO
LEVY REALTY COMPANY
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF
Levy Realty Co.
JUN 3 12 25 PM '83
FEE *Joe* DEPUTY *Q*
OFFICIAL RECORDS
BOOK INSTRUMENT

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110

AMENDMENT NO. 8 TO THE CC&Rs
OF
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

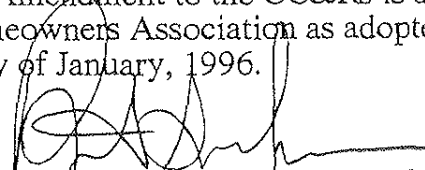
This amendment to the Covenant, Conditions and Restrictions (CC&Rs) originally recorded September 12, 1980, Book 1280, Instrument #1239888, of Sunrise Villas IX Homeowners Association is made this 10th day of January, 1996.

The amendment changes Sub-section 5.05, paragraph (c) to read as follows:

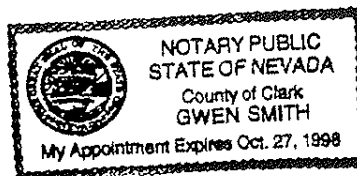
(c) To provide exterior maintenance of each residence building within the properties, which maintenance shall include painting, fascia boards and exterior building walls. Such exterior maintenance shall not include any action with respect to glass surfaces; heating, ventilating and air conditioning units; roofs, gutters, downspouts; garage and entrance doors (except maintenance painting); landscaping and retaining walls of the patios, entryways, courtyards and other open areas on a lot; patio covers or other additions built or maintained on a lot by an owner; or utility facilities on a lot which are not Common Utility Facilities; and shall not include maintenance, repairs or replacements required by reason of the negligent or willful act of an owner, his family or tenants, guests or invitees, or by reason of damage or destruction caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement, or caused by flood, earthquake or other Act of God. Except as provided in Section 8 hereof, such excluded maintenance, repairs and replacements shall be the responsibility of each owner.

I certify that the above and foregoing Amendment to the CC&Rs is a true and correct copy of Sunrise Villas IX Homeowners Association as adopted by action of the Board of Directors on this 10th day of January, 1996.

*On the 23rd day of
January 1996 Robert
H. Ackerman personally
appeared before me.*


Robert G. Ackerman
Secretary
Sunrise Villas IX Homeowners Association

Gwen Smith



#7-

AMENDMENT TO THE CC&RS

OF

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

This amendment to the Covenant, Conditions and Restrictions originally recorded September 12, 1980, Book 1280, Instrument #1239888, of Sunrise Villas IX Homeowners Association is made this 9th day of December 1993. The Amendment reads as follows:

SECTION 6

COVENANT FOR MAINTENANCE ASSESSMENT

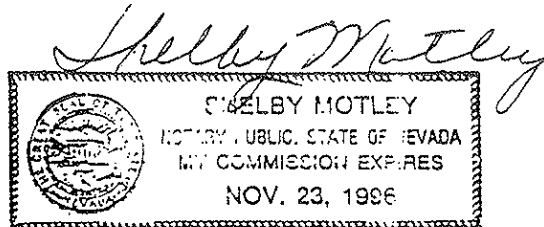
Section 6.02 (d) Homeowners will have the financial responsibility for the repair and/or replacement of their roofs.

I hereby certify that the above and foregoing Amendment to the CC&Rs are a true and correct copy of Sunrise Villas IX Homeowner Association as adopted on this ___9th___ day of December, 1993.



signature

Secretary,
Sunrise Villas IX H.O.A.
Charles Erickson



CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
A GRIECO

01-04-94 09:43 VJT 1
BOOK: 940104 INST: 00754

FEE: 7.00 RPT: .00
AM RESTRICTIONS

RETURN TO:

SUNRISE VILLAS IX HOA
PO BOX 12505
LAS VEGAS, NV 89112-0505

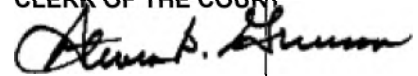
CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

SUNRISE VILLAS IX HOA

01-23-96 10:57 NLE 2
OFFICIAL RECORDS
BOOK: 960123 INST: 00892
FEE: 8.00 RPT: .00

EXHIBIT C

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1/16/2018 12:18 PM
Steven D. Grierson
CLERK OF THE COURT


COMP

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C
DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,
INC., D/B/A COX COMMUNICATIONS,
IES RESIDENTIAL, INC., SUNRISE
VILLAS IX HOMEOWNERS
ASSOCIATION, J & G LAWN
MAINTENANCE, KEVIN BUSHBAKER,
PWJAMES MANAGEMENT &
CONSULTING, LLC., J. CHRIS
SCARCELLI, DOE LANDSCAPER,
RICHARD DUSLAK, JUSTIN SESMAN,
AND DOES I - V, and ROE
CORPORATIONS I - V, inclusive,

Defendants.

AMENDED COMPLAINT

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys, LAW
OFFICE OF DAVID SAMPSON, LLC., and for his causes of action, complains of Defendants,
and each of them, as follows:

///

///

FIRST CAUSE OF ACTION

- 1
2 1. Upon information and belief, that at all times relevant to this action, the Defendant, COX
3 COMMUNICATIONS LAS VEGAS, INC., doing business as COX
4 COMMUNICATIONS ("COX") was a Nevada corporation duly licensed to conduct
5 business in the State of Nevada.
6
- 7 2. Upon information and belief, that at all times relevant to this action, the Defendant, IES
8 RESIDENTIAL, INC. was a Nevada corporation duly licensed to conduct business in the
9 State of Nevada.
10
- 11 3. Upon information and belief, that at all times relevant to this action, the Defendant, J&G
12 LAWN MAINTENANCE, was a Nevada corporation duly licensed to conduct business in
13 the State of Nevada.
14
- 15 4. Upon information and belief, that at all times relevant to this action, the Defendant,
16 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION was a Nevada corporation
17 duly licensed to conduct business in the State of Nevada.
- 18 5. Upon information and belief, that at all times relevant to this action, the Defendant,
19 PWJAMES MANAGEMENT & CONSULTING, LLC., was a Nevada corporation duly
20 licensed to conduct business in the State of Nevada.
21
- 22 6. That Defendant, KEVIN BUSHBAKER, was at all times relevant to this action a resident of
23 the State of Indiana.
- 24 7. That Plaintiff, SIMONE RUSSO, was at all times relevant to this action a resident of the
25 State of Nevada.
26
- 27 8. That Defendant, J. CHRIS SCARCELLI, was at all times relevant to this action a resident of
28 the State of Nevada

- 1 9. That Defendant, RICHARD DUSLAK, was at all times relevant to this action a resident of
2 the State of Nevada
- 3 10. That Defendant, JUSTIN SESMAN, was at all times relevant to this action a resident of the
4 State of Nevada
- 5 11. That the true names and capacities, whether individual, corporate, partnership, associate
6 or otherwise, of Defendants, DOES I through V, are unknown to Plaintiff, who therefore
7 sues said Defendants by such fictitious names. Plaintiff is informed and believes and
8 thereon alleges that each of the Defendants designated herein as DOE is responsible in
9 some manner for the events and happenings referred to and caused damages proximately
10 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
11 Complaint to insert the true names and capacities of DOES I through V, when the same
12 have been ascertained, and to join such Defendants in this action.
- 13 12. That upon information and belief, at all times relevant to this action, the Defendant,
14 KEVIN BUSHBAKER was the owner and operated, maintained and controlled those
15 premises located at 4617 Madreperla Street, Las Vegas, Nevada.
- 16 13. That upon information and belief, at all times relevant to this action, the Defendants,
17 RICHARD DUSLAK and JUSTIN SESMAN, maintained and controlled those premises
18 located at 4617 Madreperla Street, Las Vegas, Nevada.
- 19 14. That upon information and belief, at all times relevant to this action, the Defendant, J.
20 CHRIS SCARCELLI, operated, maintained and controlled those premises located at 4617
21 Madreperla Street, Las Vegas, Nevada.
- 22 15. That upon information and belief, at all times relevant to this action, the Defendant,
23 PWJAMES MANAGEMENT & CONSULTING, LLC., was the management company
24
25
26
27
28

1 and operated, maintained and controlled those premises located at 4617 Madreperla Street,
2 Las Vegas, Nevada.

3 16. IES RESIDENTIAL, INC., was and is a corporation doing business in the State of
4 Nevada, and was and is the remover, installer, reinstaller and repairer of that certain cable
5 line, and as such did transport, ship, introduce and/or cause said products to be installed
6 and/or used at 4617 Madreperla Street, Las Vegas, Nevada.

7
8 17. That at all times mentioned herein, Defendant, ROE IV, was and is a corporation doing
9 business in the State of Nevada, with its principal place of business located within the
10 State of Nevada and was and is the designer, manufacturer, producer, packager,
11 distributor, retailer, remover, installer, reinstaller and repairer of that certain door and
12 hinges, and as such did transport, ship, introduce and/or cause said products to be
13 introduced into the State of Nevada for the purpose of their sale, distribution, installation
14 and/or use within the State of Nevada.

15
16 18. The true names or capacities, whether individual, corporate, associate or otherwise, of
17 Defendants DOE I through DOE V, and ROE CORPORATION III through ROE
18 CORPORATION V, are unknown to Plaintiff, who therefore sues said Defendants by
19 such fictitious names; Plaintiff is informed and believes and thereon alleges that each of
20 the Defendants designated herein as DOE and ROE CORPORATION are responsible in
21 some manner for the events and happenings referred to and caused damages proximately
22 to Plaintiff as herein alleged, and that Plaintiff will ask leave of this Court to amend this
23 complaint, to insert the true names and capacities of DOE I through DOE V and ROE
24 CORPORATION III through ROE CORPORATION V, when the same have been
25 ascertained and to join such Defendants in this action.
26
27
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1 19. That on or about the 27th day of August, 2016, and for some time prior thereto, the
2 Defendants, and each of them (by and through their authorized agents, servants, and
3 employees, acting within the course and scope of their employment), negligently and
4 carelessly owned, maintained, operated, occupied, and controlled the said premises,
5 located at 4617 Madreperla Street, Las Vegas, Nevada, so as to cause and allow a
6 cable/wire to be installed by Defendant COX to come out of the front yard of the said
7 premises, to remain above the ground and stretch from the yard of the said premises,
8 across the driveway of the said premises, and to then be buried under the ground on the
9 opposite side of the driveway adjacent from the yard of the said premises, making the
10 driveway hazardous and dangerous. In that they allowed the area to remain in such a
11 manner that it presented a dangerous and hazardous condition in an area intended for the
12 use and commonly and regularly used by residents and invitees of the said premises. In so
13 acting, the Defendants, and each of them, caused the driveway of the said premises to be
14 hazardous and dangerous to persons walking in the area; and more particularly the
15 Plaintiff, SIMONE RUSSO; and thereafter the Defendants, and each of them, permitted,
16 allowed and caused said unsafe condition to remain even though Defendants knew or,
17 through the exercise of ordinary care and diligence, should have known, that the wire
18 stretched across the driveway and constituted a defective and dangerous condition; that
19 Defendants, and each of them, failed to maintain the aforesaid premises in a reasonably
20 safe condition; and that Defendant, and each of them, negligently, carelessly and
21 recklessly failed to inspect, repair and remedy the said condition, or warn the Plaintiff,
22 SIMONE RUSSO, of the defect therein.
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1 20. At all times herein concerned or relevant to this action, the Defendants, and each of them,
2 acted by and through their duly authorized agents, servants, workmen and/or employees then
3 and there acting within the course of their employment and scope of their authority for the
4 Defendants, and each of them.
5

6 21. That the carelessness and negligence of the Defendants, and each of them, in breaching a
7 duty owed to the Plaintiff, SIMONE RUSSO, which directly and proximately caused the
8 injuries and damages to the Plaintiff; SIMONE RUSSO, consisting in and of, but not
9 limited to, the following acts, to wit:
10

- 11 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
12 the driveway;
- 13 b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous
14 condition then and there existing in said premises;
- 15 c) Failure to properly and adequately inspect the said dangerous condition in the
16 driveway to ascertain its hazardous and dangerous condition;
- 17 d) Failure to properly and adequately maintain the driveway;
- 18 e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous
19 condition;
- 20 f) The Defendants, and each of them, had, or should have had, knowledge or notice
21 of the existence of the said dangerous and defective condition which existed on
22 said premises. At all times pertinent hereto, Defendants, and each of them,
23 expressly and/or impliedly warranted that the certain driveway in question was in
24 all respects fit for due purposes and uses for which it was intended and was of
25 merchantable quality.
26
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1 22. The Defendants, and each of them, may have violated certain Nevada Revised Statutes
2 and Las Vegas, Nevada, ordinances and Las Vegas building codes, which the Plaintiff
3 prays leave of Court to insert the exact statutes or ordinances or codes at the time of the
4 trial. At all times mentioned herein, Defendants, and each of them, owed a duty to all
5 persons who could reasonably be foreseen to be situated in and around the driveway in
6 question, and such a duty was specifically owed to Plaintiff.

7
8 23. That on or about the 27th day of August, 2016, the Plaintiff, SIMONE RUSSO, while
9 lawfully upon the said premises, as a direct and proximate result of the said negligence and
10 carelessness of the Defendants, and each of them, as alleged herein, was caused to suffer the
11 injuries and damages hereinafter set forth when he caught his foot on the cable/wire, causing
12 him to fall to the ground, proximately causing to him the injuries and damages as hereinafter
13 more particularly alleged.

14
15 24. By reason of the premises and as a direct and proximate result of the aforesaid negligence
16 and carelessness of the Defendants, and each of them, the Plaintiff, SIMONE RUSSO, was
17 caused to suffer cervical, thoracic, and lumbar contusions and strains, post-traumatic cervical
18 herniated disc, aggravation of pre-existing cervical arthritis and cervical radiculitis and
19 neurological injuries, and Plaintiff, SIMONE RUSSO, was otherwise injured in and about
20 the head, neck, and back, appendages, and caused to suffer great pain of body and mind, all
21 or some of the same are chronic and may result in permanent disability and are disabling, all
22 to Plaintiff, SIMONE RUSSO, damage in an amount in excess of \$10,000.00 and indeed in
23 excess of the Justice Court jurisdictional limit of \$15,000.00.

24
25 25. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
26 and carelessness of the Defendants, and each of them, Plaintiff, SIMONE RUSSO, has been
27
28

1 caused to incur expenses in excess of \$50,000.00, and likely in the amount of hundreds of
2 thousands of dollars, for medical expenses, and will in the future be caused to expend monies
3 for medical expenses and additional monies for miscellaneous expenses incidental thereto, in
4 a sum presently unascertainable. The Plaintiff, SIMONE RUSSO, will pray leave of Court
5 to insert the total amount of the medical and miscellaneous expenses when the same have
6 been fully determined at the time of the trial of this action.
7

8 26. Prior to the injuries complained of herein, Plaintiff, SIMONE RUSSO, was an able-bodied
9 male, capable of being gainfully employed and capable of engaging in all other activities for
10 which he was otherwise suited, and at the time of the incident complained of herein, had no
11 disabilities. By reason of the premises, and as a direct and proximate result of the negligence
12 of the said Defendants, and each of them, Plaintiff, SIMONE RUSSO, was caused to be
13 disabled and limited and restricted in Plaintiff's occupations and activities, which caused to
14 Plaintiff a loss of wages in a presently unascertainable amount, the allegations of which
15 Plaintiff prays leave of Court to insert herein when the same shall be fully determined.
16
17

18 27. Plaintiff has been required to retain the law firm of LAW OFFICE OF DAVID SAMPSON,
19 LLC. to prosecute this action, and is entitled to a reasonable attorney's fee.
20

21 WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of
22 damage, demands judgment against the Defendants, and each of them, as follows:

- 23 1. General damages in an amount in excess of \$10,000.00 and indeed in excess of the
24 Justice Court jurisdictional limit of \$15,000.00;
- 25 2. Special damages for Plaintiff, SIMONE RUSSO'S medical and miscellaneous
26 expenses, plus future medical expenses and the miscellaneous expenses incidental
27 thereto in a presently unascertainable amount;
28

- 1 3. Special damages for lost wages in a presently unascertainable amount, and/or
2 diminution of Plaintiff's earning capacity, plus possible future loss of earnings
3 and/or diminution of Plaintiff's earning capacity in a presently unascertainable
4 amount.
5
6 4. Costs of this suit;
7
8 5. Attorney's fees; and
9
10 6. For such other and further relief as to the Court may seem just and proper in the
11 premises.

DATED THIS 16 day of July, 2017.

LAW OFFICE OF DAVID SAMPSON, LLC

BY: 

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811

LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Attorney for Plaintiff

EXHIBIT D

AMENDMENT NO. 8 TO THE CC&Rs
OF
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

This amendment to the Covenant, Conditions and Restrictions (CC&Rs) originally recorded September 12, 1980, Book 1280, Instrument #1239888, of Sunrise Villas IX Homeowners Association is made this 10th day of January, 1996.

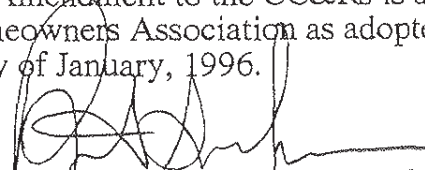
The amendment changes Sub-section 5.05, paragraph (c) to read as follows:

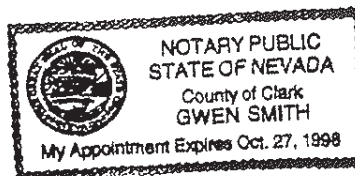
(c) To provide exterior maintenance of each residence building within the properties, which maintenance shall include painting, fascia boards and exterior building walls. Such exterior maintenance shall not include any action with respect to glass surfaces; heating, ventilating and air conditioning units; roofs, gutters, downspouts; garage and entrance doors (except maintenance painting); landscaping and retaining walls of the patios, entryways, courtyards and other open areas on a lot; patio covers or other additions built or maintained on a lot by an owner; or utility facilities on a lot which are not Common Utility Facilities; and shall not include maintenance, repairs or replacements required by reason of the negligent or willful act of an owner, his family or tenants, guests or invitees, or by reason of damage or destruction caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement, or caused by flood, earthquake or other Act of God. Except as provided in Section 8 hereof, such excluded maintenance, repairs and replacements shall be the responsibility of each owner.

I certify that the above and foregoing Amendment to the CC&Rs is a true and correct copy of Sunrise Villas IX Homeowners Association as adopted by action of the Board of Directors on this 10th day of January, 1996.

*On the 23rd day of
January 1996 Robert
H. Ackerman personally
appeared before me.*

Gwen Smith


Robert G. Ackerman
Secretary
Sunrise Villas IX Homeowners Association



RETURN TO:

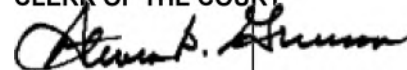
SUNRISE VILLAS IX HOA
PO BOX 12505
LAS VEGAS, NV 89112-0505

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

SUNRISE VILLAS IX HOA

01-23-96 10:57 NLE 2
OFFICIAL RECORDS
BOOK: 960123 INST: 00892
FEE: 8.00 RPTT: .00

Electronically Filed
7/27/2018 4:09 PM
Steven D. Grierson
CLERK OF THE COURT



DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON, LLC
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)
)
Plaintiff,)
)
vs.)
)
COX COMMUNICATIONS LAS VEGAS,)
)
INC., D/B/A COX COMMUNICATIONS,)
)
IES RESIDENTIAL, INC., SUNRISE)
)
VILLAS IX HOMEOWNERS)
)
ASSOCIATION, J & G LAWN)
)
MAINTENANCE, KEVIN BUSHBAKER,)
)
PWJAMES MANAGEMENT &)
)
CONSULTING, LLC., AND DOES I - V,)
)
and ROE CORPORATIONS I - V,)
)
inclusive,)
)
Defendants.)
)

CASE NO: A-17-753606-C
DEPT. NO: XVI

**PLAINTIFF'S OPPOSITION TO DEFENDANT SUNRISE WILLAS IX HOA'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys of record and hereby opposes Defendant's motion for summary judgment. This opposition is made and based on the pleadings and papers on file herein, the attached memorandum of points and authorities, and any oral argument the court may wish to entertain in this matter.

///

Page 2 of 14

For the past few decades COX Cable has installed cable wires all over Las Vegas Nevada. In placing cables all over our Las Vegas community COX has a responsibility to make sure its cables are placed safely so as not to create any hazardous, or potentially hazardous, conditions in our community. The owners of the properties where the cables are installed have a duty to make sure the installed cables are not and/or do not become hazards. Years ago COX installed its cable system in SUNRISE VILLAS IX, one of several Sunrise HOA condominium communities in Las Vegas. COX buried its cables under the front yard grass at each home. When the cable had to cross a driveway, rather than ensuring that the cables ran underground like they did in the yard, COX merely set its cables *in the seam at the base where the driveway meets the gutter*. See Exhibit “1”. Once the cable reached the adjacent yard across the driveway COX would again bury its cable under the yard. COX’s decision to merely place its cable in the seam between the driveway and the community gutter resulted in the cable coming out of the driveway seam and creating the ridiculously hazardous condition depicted in the photographs below:



According to COX's records, and statements from a COX representative, in mid-August 2016 COX was working at SUNRUSE VILLAS IX, specifically performing work at 4617 Madreperla Street, Las Vegas, Nevada.¹ The work included digging a trench adjacent to the driveway at 4617 Madreperla to accommodate COX's cable wire (depicted at the bottom of the following photograph):

¹ Records establishing the work was performed are subject to a protective order and can be provided to the court under seal if there is any dispute on this issue.



The work from the trenching caused the COX cable to become dislodged from the seam in the concrete between the gutter and the driveway causing the cable to loosely run across the bottom of the driveway creating a literal snare hazard. Because the cable was placed in the seam between the driveway and the gutter, after the cable came loose, sometimes the cable would run across the base of the driveway as depicted above, and *sometimes the cable would run into the gutter and street before disappearing back into the adjacent yard.* See Exhibit “1”. SUNRISE VILLAS IX hired landscapers to care for the yards in the community. *Id.* Even though the clear tripping hazard ran from the yard over which SUNRISE VILLAS IX had a duty

1 to tend, and ran across the driveway, gutter, *and sometimes street* in front of the home in
2 SUNRISE VILLAS IX, neither COX, nor SUNRISE VILLAS IX took any steps to fix the
3 clearly hazardous condition.

4
5 In mid-August 2016 Dr. Simone Russo, M.D., and his wife moved into 4617 Madreperla
6 and rented the property. A few days after moving in, Simone and his wife flew to New York to
7 visit Simone's daughter who had recently given birth to Simone's grandchild. Simone and his
8 wife spent approximately two weeks in New York before returning to their home in Las Vegas.
9 *Id.*

10
11 On August 27, 2016 Simone and his wife landed in Las Vegas at approximately 10:00
12 p.m., retrieved their luggage from baggage claim, and took a taxi to their home. Sometime
13 before 11:00 p.m. the taxi pulled up at 4617 Mardeperla. Simone's wife got out of the taxi and
14 took some of the luggage into the garage. Simone got out of the cab and took a step or two up
15 his driveway when he felt his foot simply stop moving. At the time Simone would use a walker
16 now and then for balance when he was exerting significant energy or had a particularly long
17 day. At the time, Simone did not know that the COX cable had caught his foot. Simone fell
18 forward, over the top of his walker, and crashed onto the cement driveway. *Id.*

19
20 As a result of the COX cable being in his driveway, Simone Russo was very seriously
21 injured. Simone suffered injuries to his cervical spine, which have required multiple surgeries
22 to address. Simone also aggravated prior injuries to his lumbar spine as well as his neurological
23 systems. Treatment for these injuries resulted in over \$500,000.00 in medical expenses.

24
25 The following day Simone's wife told SUNRISE VILLAS IX about the cable wire that
26 was running across the base of the driveway. Simone's wife specifically approached the
27 SUNRISE landscaper who was driving a golf cart around the community and told the
28

1 landscaper about the cable. *Id.* Neither Simone nor his wife knew why the cable wire was
2 there, and did not know who had installed it. SUNRISE VILLAS IX took no steps to fix the
3 hazardous situation, and instead merely placed small yellow flags at the location where the wire
4 left the driveway and was buried underground as depicted in the prior photograph. *Id.*
5

6 The exposed cable wire remained at the base of Simone's driveway for over two months
7 after Simone fell, with no one taking any steps to fix the hazard. Finally, in October 2016, a
8 COX van parked in front of the home next to 4617 Madreperla. Simone's wife spoke with the
9 COX employee and showed the COX employee the exposed cable wire. The COX employee
10 told Simone's wife the wire was a COX cable wire and when inspecting the area more closely
11 exclaimed, "Well that's not safe." Very shortly thereafter another COX vehicle arrived at 4617
12 Madreperla and fixed the exposed cable wire. This time COX not only placed the cable wire
13 into the seam between the base of the driveway and the gutter, but also, as depicted in the
14 photograph below, cemented over the wire to make sure it would not come out of the seam.
15
16



1 Summary judgment is only appropriate when a review of the record in the light most
2 favorable to the nonmoving party reveals no genuine issues of material fact, and the pleadings,
3 depositions, answers to interrogatories, admissions and affidavits on file, show there exists no
4 genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of
5 law. *Butler v. Bogdanovich*, 101 Nev. 449, 451 (1985); *Bird v. Casa Royale*, 97 Nev. 67, 624
6 P.2d 17 (1981); *Montgomery v. Ponderosa Construction, Inc.*, 101 Nev. 416, 705 P.2d 652
7 (1985). Additionally, "A factual dispute is genuine when the evidence is such that a rational
8 trier of fact could return a verdict for the nonmoving party." *Wood v. Safeway*, 121 Nev. 724,
9 732, 121 P.3d 1026, 1031 (2005). As such, if the nonmoving party, by affidavit or otherwise,
10 sets forth specific facts demonstrating the existence of a genuine issue for trial, summary
11 judgment should not be entered against him. *Id*, citing *Bulbman Inc. v. Nevada Bell*, 108 Nev.
12 105, 110, 825 P.2d 588, 591 (1992).

13 Analysis of the facts in this matter demonstrates significant issues of material fact
14 regarding the liability of SUNRISE VILLAS IX, that summary judgment should not be entered,
15 and that Dr. Russo should have his day in court.

16
17
18
19 **I. SUNRISE VILLAS IX HOA HAD A DUTY TO KEEP COMMON AREAS SUCH**
20 **AS THE SEAM BETWEEN THE SUBJECT DRIVEWAY AND THE COMMON**
21 **GUTTER SAFE.**

22 Contrary to Defendant's motion, the cable was not placed in the subject driveway.
23 Instead the cable was placed in the seam between the subject driveway and the gutter that
24 serviced the neighborhood homes in SUNRISE VILLAS IX. As noted in the photographs
25 above, and in the affidavits attached as Exhibit "1" at the base of the subject driveway was a
26 seam, and on the other side of the seam was the gutter that serviced the neighboring homes in
27 SUNRISE VILLAS IX by allowing water to flow out of the neighborhood and into the sewer.
28

1 The cable was placed in this seam that lay between the subject driveway and the community
2 gutter. *Id.*

3 SUNRISE's motion is based on the flawed notion that the cable was situated on the
4 subject driveway. This is simply not the case. The cable was first placed in the seam between
5 the driveway and the community gutter. Once the cable was removed from the seam between
6 the driveway and the community gutter it would sometimes lay in the driveway, would
7 sometimes lay in the gutter, and at times even lay in the street. *See*, Exhibit "1". Additionally,
8 ***the subject cable serviced Dr. Russo's neighbor's home***, and ran from Dr. Russo's yard, across
9 the seam between the driveway and gutter, and then ran to Dr. Russo's neighbor's home. *Id.*
10 Defendant's claim that the subject wire only served Dr. Russo's home is simply inaccurate. *Id.*

11 Defendant's motion admits that a wire or any other fixture that lies partially within and
12 partially outside the designated boundaries of a unit (such as the seam between the driveway and
13 gutter) "or any portion thereof serving more than one unit or any portion of the common
14 elements is a part of the common elements." *See* Defendant's motion at P. 7 L. 23 – P. 8 L. 2
15 (Citing NRS 116.2102(2)). ***The subject wire serviced Dr. Russo's neighbor's home***. The
16 subject wire, and the portion thereof that ran between the driveway and gutter, is therefore part
17 of the common elements.

18 Additionally, the gutter services more than one unit as it works to direct water away
19 from the homes and streets in the community. The subject gutter is a "chute" which services
20 "more than one unit of the common elements". *Id.* As such the gutter, and certainly the portion
21 thereof in front of the subject home, "is part of the common element" as defined in NRS
22 116.2102(2).

1 The gutter lay outside the designated boundaries of the subject unit. The cable was in
2 the seam adjacent to the gutter and thus lay partially within and partially outside the designated
3 boundaries of the subject unit. As the gutter and the adjacent seam, as well as the wire itself, all
4 service more than the one unit, they all qualify as common elements under the law.
5

6 Defendant's motion admits HOA's "have duties for a communities common elements."
7 See Defendant's motion at P. 7 L. 8. While Defendant may or may not have a duty to maintain
8 the subject driveway, the HOA clearly has a duty to maintain the gutter and the cable which
9 serviced the neighboring homes as common elements.
10

11 Additionally, the CC&Rs for SUNRISE specifically state ***SUNRISE retains all duties***
12 ***and responsibilities for easements, including easements for cable television and gutters.*** The
13 CC&Rs state:

14 Each lot shall be conveyed to owners other than Declarant, and thereafter held by
15 such owners, subject to any and all easements of record at the time of the initial
16 conveyance of such lot to an owner other than Declarant for the use and benefit of
17 the several authorized public and/or other utilities which may include, but not be
18 limited to, easements for ***cable television***, sanitary ***sewers***, water, gas, electrical
19 and ***drainage*** facilities, ***and no owner shall damage or interfere with the***
20 ***installation and maintenance of such utilities***, or in any manner change the
direction or flow of drainage channels in any such easements, or in any manner
obstruct or retard the flow of water through drainage channels-in any such
easements.

21 See Exhibit "2" Declaration of Covenants, Conditions and Restrictions for Sunrise
22 Villas IX § 2.05.1 (emphasis added).
23

24 Indeed after specifically listing cable television the CC&Rs state "no owner shall
25 damage or interfere with the installation and maintenance of such utilities". As such, once the
26 cable was removed from the seam between the subject driveway and gutter, ***it was the***
27 ***responsibility for the HOA to maintain it and no one other than the HOA was permitted to***
28 ***maintain the utility.*** SUNRISE therefore not only had a duty to maintain the utility, it had the

only duty to maintain the utility and the CC&Rs specifically prohibited anyone except SUNRISE from maintaining the utility.

The CC&Rs further state:

The association shall have the obligation to perform each of the following duties:

(a) To maintain and otherwise manage all of the common area and all facilities, improvements and landscaping thereon, and all property that may be acquired by the association.

(c) ***To provide exterior maintenance of*** each residence building within the properties, which maintenance shall include painting, maintaining, repairing and replacing roofs, ***gutters***, downspouts and exterior building walls.

Id., Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX § 5.05(a),(c) (emphasis added).

Again, the CC&Rs specifically place the obligation of maintaining gutters on SUNRISE. As such SUNRISE clearly had a duty regarding the cable wire that was placed in the seam between the driveway and gutter. Summary judgment is inappropriate.

II. SUNRISE VILLAS IX IS RESPONSIBLE FOR THE NEGLIGENT CONDUCT OF THE MAINTENANCE WORKERS OVER WHOM SUNRISE VILLAS IX EXERCISED CONTROL.

1. Evidence gives rise to a question of fact as to whether SUNRISE's landscapers created the hazard by unearthing and exposing the cable.

SUNRISE's motion admits SUNRISE hired two landscapers, Sesman and Duslak to tend and care for the yards in the neighborhood. The fact that the COX claims it placed the cable in the seam between the driveway and gutter, coupled with the fact that the cable was pulled from the seam, gives rise to a question of fact as to whether Sesman and/or Duslak were responsible for pulling the cable out of the seam. Additionally, the photographs on page 4 of this opposition shows that work had been recently performed in the subject yard. The evidence indicates COX

1 dug a trench to install the cable. COX however denies that such took place. If the jury believes
2 COX, that would only leave the SUNRISE landscapers as the party who performed the work
3 which unearthed the cable. These facts give rise to a genuine issue as to whether SUNRISE's
4 landscapers caused the cable to become exposed.
5

6 **2. SUNRISE is responsible for the conduct of Sesman and Duslak.**

7 It is well established, and SUNRISE's motion admits, that a person or entity (such as
8 SUNRISE) is responsible for the actions of independent contractors (such as Sesman and
9 Duslak) if the person or entity exercised control over the manner in which the independent
10 contractors performed their work. *See* Defendant's motion at P. 10 L. 8-11. *See also, San Juan*
11 *v. PSC Indus Outsourcing*, 126 Nev. 335, 363; 240 P.3d 1026, 1031 (2010).
12

13 "At common law, an employment relationship was defined by agency principles"
14 *Boucher v. Shaw*, 124 Nev. 1164, 1167, 196 P.3d 959, 961 (2008). "An agency relationship results
15 when one person possesses the contractual right to control another's manner of performing the
16 duties for which he or she was hired." *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290,
17 299, 183 P.3d 895, 902 (2008). To determine control in an employment relationship under Nevada
18 law, the Nevada Supreme Court has instructed courts consider the following indicia: "whether the
19 employer has the right to direct the daily manner and means of a person's work, whether the worker
20 is required to follow the putative employer's instructions, and whether the worker can refuse work
21 offered without ramification." *Catholic Diocese of Green Bay, Inc. v. Doe*, 349 P.3d 518, 522
22 (Nev. 2015).
23
24

25 In the instant action, evidence shows that not only did SUNRISE have the right to direct
26 the daily manner and means of the work performed by Sesman and Duslak, SUNRISE actively
27 and exclusively directed the work Sesman and Duslak performed. SUNRISE also provided the
28

1 sole and complete means for Sesman and Duslak to perform their work. While living at
2 SUNRISE VILLAS IX, Dr. Russo and his wife specifically asked the landscapers to perform
3 various landscaping tasks. These included trimming the palm tree in Dr. Russo's yard. *See*
4 Exhibit "1". When Dr. Russo's wife asked that the tree be trimmed, the landscapers told her
5 they could not perform the work unless and until SUNRISE authorized it and instructed the
6 landscapers to perform the work. *Id.*

8 Further, on November 30, 2016 a representative from SUNRISE interviewed one of the
9 landscapers regarding the work he performed for SUNRISE. The landscaper stated "I stay on
10 my own the whole time, and do either what my boss texts me to do, or *whatever the community*
11 *lets me know needs to get done.*" *See* Exhibit "3". This is strong evidence that SUNRISE
12 controlled and directed the landscapers regarding what they were supposed to do.

14 Additionally, Dr. Russo and his wife personally witnessed the landscapers at SUNRISE
15 VILLAS IX use the golf cart and other equipment to perform their landscaping responsibilities
16 at SUNRISE. *Id.* Even though SUNRISE changed landscapers while Dr. Russo and his wife
17 lived in the subject home, the landscapers continued to use the same golf cart and other
18 landscaping equipment that was provided by SUNRISE.

20 The evidence set forth above demonstrates (and certainly gives rise to a genuine issue of
21 material fact concerning whether) the HOA had control of the daily manner and means in which
22 the "independent contractor" landscaping crew conducted their daily operations. As there is
23 evidence and are issues of fact concerning whether SUNRISE exercised control over Sesman
24 and Duslak by directing the manner and means of their work, summary judgment should not be
25 granted.

27 ///

1 **III. SUNRISE IS LIABLE FOR INADEQUATE LIGHTING IN THE AREA WHERE**
2 **THE FALL OCCURRED.**

3 The subject fall took place around midnight. *See* Exhibit “1”. Both Dr. Russo and his
4 wife believe the lighting in the area (which is the exclusive obligation of SUNRISE VILLAS
5 IX) was insufficient. *Id.* There are factual issues related to whether the lighting was
6 appropriate and whether the lack of lighting caused or contributed to Dr. Russo falling. *See,*
7 *Lietaert v. Shinnars*, 75 Nev. 509 (1959) (holding that a landowner can be held liable for
8 inadequate lighting on their property). Summary judgment should not be granted in this
9 matter.
10

11 **CONCLUSION**

12 For the foregoing reasons Defendant SUNRISE’s motion for summary judgment should
13 be denied.
14

15
16 DATED THIS 27th day of July, 2018

17
18 LAW OFFICE OF DAVID SAMPSON, LLC.

19
20
21 BY: /s/ *David Sampson*
22 DAVID F. SAMPSON, ESQ.
23 Nevada Bar No.6811
24 LAW OFFICE OF DAVID SAMPSON
25 630 S. 3rd Street
26 Las Vegas, NV 89101
27 Fax No: 888-209-4199
28 Email:david@davidsamspsonlaw.com
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, and that
on this 27th day of July, 2018, I served a copy of the foregoing **OPPOSITION** as follows:

X Electronic Service through the Court's online filing system.

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
BUSHBAKER

WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

JONATHAN C. PATTILLO, ESQ.
SPRINGEL & FINK, LLP
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Attorney for Defendant
SUNRISE VILLAS IX HOA

/s/ Amanda Nalder
An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

EXHIBIT “1”

AFFIDAVIT OF SIMONE RUSSO, M.D.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

SIMONE RUSSO, M.D., being first duly sworn, deposes and says:

1. I am the Plaintiff in Case No. A-17-753606-C.

2. I am personally familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.

3. As I understand it, COX cable installed a cable wire to service my neighbor's home. COX buried its cable under the front yard of the home I was renting. When the cable had to cross my driveway, rather than ensuring that the cable ran underground like they did in my yard, COX merely set its cable in the seam at the base where the driveway met the gutter. Once the cable reached my neighbor's yard, COX would buried its cable under that yard.

4. COX's decision to merely place its cable in the seam between the base of my driveway and the community gutter resulted in the cable coming out of the driveway seam and creating a ridiculously hazardous condition.

5. As I understand it, in mid-August 2016 COX was working at SUNRUSE VILLAS IX, specifically performing work at the home I would rent at 4617 Madreperla Street, Las Vegas, Nevada. The work included digging a trench adjacent to the driveway at 4617 Madreperla to accommodate COX's cable wire. The work from the trenching caused the COX cable to become dislodged from the seam in the concrete between the gutter and the driveway causing the cable to loosely run across the bottom of the driveway creating a literal snare hazard.



1 6. Because the cable was placed in the seam between the driveway and the gutter, after
2 the cable came loose, sometimes the cable would run across the base of the driveway as
3 depicted above, and sometimes the cable would run into the gutter and street before
4 disappearing back into the adjacent yard.
5

6 7. SUNRISE VILLAS IX hired landscapers to care for the yards in the community.
7 Even though the cable ran from my yard over which SUNRISE VILLAS IX had a duty to tend,
8 and ran across the seam between the driveway and gutter, and sometimes street in front of the
9 home in SUNRISE VILLAS IX, neither COX, nor SUNRISE VILLAS IX took any steps to fix
10 the condition for a few months.
11

12 8. In mid-August 2016 my wife and I moved into 4617 Madreperla and rented the
13 property. A few days after we moved in, my wife and I flew to New York to visit my daughter
14 who had recently given birth to my grandchild. My wife and I spent approximately two weeks
15 in New York before returning to our home in Las Vegas.
16

17 9. On August 27, 2016 my wife and I landed in Las Vegas at approximately 10:00 p.m.,
18 retrieved our luggage from baggage claim, and took a taxi to our home. Sometime before 11:00
19 p.m. the taxi pulled up at 4617 Mardeperla. My wife got out of the taxi and took some of the
20 luggage into the garage. I got out of the cab and took a step or two up my driveway when I felt
21 my foot simply stop moving. At the time I would use a walker now and then for balance when I
22 was exerting significant energy or had a particularly long day. At the time, I did not know that
23 the COX cable had caught my foot. I fell forward, over the top of my walker, and crashed onto
24 the cement driveway.
25

26 10. The following day my wife told SUNRISE VILLAS IX about the cable wire that
27 was running across the base of the driveway. My wife specifically approached the SUNRISE
28

1 landscaper who was driving a golf cart around the community and told the landscaper about the
2 cable. At the time neither myself nor my wife knew why the cable wire was there, and we did
3 not know who had installed it. SUNRISE VILLAS IX took no steps to fix the hazardous
4 situation, and instead merely placed small yellow flags at the location where the wire left the
5 driveway and was buried underground.
6

7 11. The exposed cable wire remained at the base of my driveway for over two months
8 after I fell, with no one taking any steps to fix the hazard. Finally, in October 2016, a COX van
9 parked in front of the home next to 4617 Madreperla. My wife spoke with the COX employee
10 and showed the COX employee the exposed cable wire. The COX employee told my wife the
11 wire was a COX cable wire and when inspecting the area more closely exclaimed, "Well that's
12 not safe." Very shortly thereafter another COX vehicle arrived at 4617 Madreperla and fixed
13 the exposed cable wire. This time COX not only placed the cable wire into the seam between
14 the base of the driveway and the gutter, but also cemented over the wire to make sure it would
15 not come out of the seam.
16
17

18 12. COX did not place the cable in my driveway. COX placed the cable in the seam
19 between my driveway and the gutter that serviced the neighborhood homes in SUNRISE
20 VILLAS IX. At the base of my driveway was a seam, and on the other side of the seam was the
21 gutter that serviced the neighboring homes in SUNRISE VILLAS IX by allowing water to flow
22 out of the neighborhood and into the sewer. The cable was placed in this seam that lay between
23 the subject driveway and the community gutter.
24

25 13. COX first placed the cable in the seam between my driveway and the community
26 gutter. Once the cable was removed from the seam between the driveway and the community
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1 gutter it would sometimes lay in the driveway, would sometimes lay in the gutter, and at times
2 even lay in the street.

3 14. The subject cable serviced my neighbor's home, and ran from my yard, across the
4 seam between the driveway and gutter, and then ran to my neighbor's home.

6 15. The HOA has stated it hired two landscapers, Sesman and Duslak to tend and care
7 for the yards in the neighborhood. It is my understanding COX performed work in the yard next
8 to my driveway by digging a trench to install the cable. COX denies they dug the trench. If
9 COX is telling the truth, that would only leave the SUNRISE landscapers as the party who
10 performed the work which unearthed the cable.

12 16. While living at SUNRISE VILLAS IX, my wife and I specifically asked the
13 landscapers to perform various landscaping tasks. These included trimming the palm tree in our
14 yard. When my wife asked that the tree be trimmed, the landscapers told her they could not
15 perform the work unless and until SUNRISE authorized it and instructed the landscapers to
16 perform the work.

18 17. I personally witnessed the landscapers at SUNRISE VILLAS IX use the SUNRISE
19 golf cart and other equipment to perform their landscaping responsibilities at SUNRISE. Even
20 though SUNRISE changed landscapers while my wife and I lived in the subject home, the
21 landscapers continued to use the same golf cart and other landscaping equipment that was
22 provided by SUNRISE.

24 ///

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26 ///

DATED this _____ day of _____, 20____.

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 20____.

Notary Public in and for said County and State.



AFFIDAVIT OF BARBARA RUSSO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

BARBARA RUSSO, being first duly sworn, deposes and says:

1. My husband is the Plaintiff in Case No. A-17-753606-C.

2. I am personally familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.

3. As I understand it, COX cable installed a cable wire to service my neighbor's home. COX buried its cable under the front yard of the home I was renting. When the cable had to cross my driveway, rather than ensuring that the cable ran underground like they did in my yard, COX merely set its cable in the seam at the base where the driveway met the gutter. Once the cable reached my neighbor's yard, COX would buried its cable under that yard.

4. COX's decision to merely place its cable in the seam between the base of my driveway and the community gutter resulted in the cable coming out of the driveway seam and creating a ridiculously hazardous condition.

5. As I understand it, in mid-August 2016 COX was working at SUNRUSE VILLAS IX, specifically performing work at the home I would rent at 4617 Madreperla Street, Las Vegas, Nevada. The work included digging a trench adjacent to the driveway at 4617 Madreperla to accommodate COX's cable wire. The work from the trenching caused the COX cable to become dislodged from the seam in the concrete between the gutter and the driveway causing the cable to loosely run across the bottom of the driveway creating a literal snare hazard.



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10 the condition for a few months.
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13 property. A few days after we moved in, my husband and I flew to New York to visit my
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15 approximately two weeks in New York before returning to our home in Las Vegas.
16

17 9. On August 27, 2016 my husband and I landed in Las Vegas at approximately 10:00
18 p.m., retrieved our luggage from baggage claim, and took a taxi to our home. Sometime before
19 11:00 p.m. the taxi pulled up at 4617 Mardeperla. I got out of the taxi and took some of the
20 luggage into the garage. My husband got out of the cab and took a step or two up my driveway
21 when he fell forward, over the top of his walker, and crashed onto the cement driveway.
22

23 10. The following day I told SUNRISE VILLAS IX about the cable wire that was
24 running across the base of the driveway. I specifically approached the SUNRISE landscaper
25 who was driving a golf cart around the community and told the landscaper about the cable. At
26 the time neither I nor my husband knew why the cable wire was there, and we did not know
27 who had installed it. SUNRISE VILLAS IX took no steps to fix the hazardous situation, and
28

1 instead merely placed small yellow flags at the location where the wire left the driveway and
2 was buried underground.

3 11. The exposed cable wire remained at the base of my driveway for over two months
4 after my husband fell, with no one taking any steps to fix the hazard. Finally, in October 2016,
5 a COX van parked in front of the home next to 4617 Madreperla. I spoke with the COX
6 employee and showed the COX employee the exposed cable wire. The COX employee told me
7 the wire was a COX cable wire and when inspecting the area more closely exclaimed, "Well
8 that's not safe." Very shortly thereafter another COX vehicle arrived at 4617 Madreperla and
9 fixed the exposed cable wire. This time COX not only placed the cable wire into the seam
10 between the base of the driveway and the gutter, but also cemented over the wire to make sure it
11 would not come out of the seam.
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16 VILLAS IX. At the base of my driveway was a seam, and on the other side of the seam was the
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15 though SUNRISE changed landscapers while my husband and I lived in the subject home, the
16 landscapers continued to use the same golf cart and other landscaping equipment that was
17 provided by SUNRISE.
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DATED this _____ day of _____, 20____.

SUBSCRIBED AND SWORN TO before me
this _____ day of _____, 20____.

Notary Public in and for said County and State.



EXHIBIT “2”

1764249

1776

SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 1.

Change Sub-section 3.19 to read as follows:

3.19. Each owner shall pay when due. before delinquency, all taxes, assessments, levies, fees and all other public charges and utility fees, including sewer service fees, and charges of every kind and nature, whether of a like or different nature, imposed upon or assessed against his lot and/or his interest in the common area.

This is an amendment to the Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX, originally recorded September 12, 1980, Book 1280, Instrument 1239888.

WHEN RECORDED RETURN TO:
LEVY REALTY COMPANY
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

Box 1 735

1704249
2


SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 2.

Change Sub-section 5.05 Paragraph (c), second sentence, to
read as follows:



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1704249
3SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENTS TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved April 22, 1983 by action of the Board of Directors

AMENDMENT NO. 3.

Remove completely Sub-section 5.05 Paragraph (e), pertaining
to sewer service fees, collection and payment by the Association.This is an amendment to the Declaration of Covenants, Conditions
and Restrictions for Sunrise Villas IX, originally recorded
September 12, 1980, Book 1280, Instrument 1239888.

WHEN RECORDED RETURN TO:

LEVY REALTY CO
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

Restrictions for Sunrise Villas IX.

2. Wrought iron guard gates and closures at front courtyard areas of interior home units have been approved.
3. Wrought iron guard gates at front entrances of end home units have been approved.
4. Wrought iron window guards on entrance walls of end home units facing Madreperla St. or Billman St. extension through the guard house, are prohibited.
5. Wrought iron window guards on entrance walls of end home units facing each other, parallel or at an angle, are prohibited unless owner of the facing property gives written approval to the Board of Directors.
6. Wrought iron window guards or sliding door guards on rear patio of all home units abutting the interior common areas of Block 2 (La Fortuna to La Cara), Block 3 (La Cara to Malabar) and Block 4 (Malabar to Laconia), are prohibited.
7. Homeowner will be responsible for acceptable maintenance of all the guard material installed, including all covered window and wall areas, plus an 18 inch border outside the periphery of the guard material.
8. Whenever a homeowners structure is painted by the Association, the homeowner will also paint the guard material and areas specified in No. 7 above, unless detrimental rusting dictates that additional painting is required.
9. The outside surface of all main wrought iron guard material shall not project more than 2 1/2 inches from the face of the structure wall.
10. The Board of Directors may specify paint color of the guard materials.
11. Notwithstanding all of the above, the Board of Directors of Sunrise Villas IX, reserves the right to change or cancel this Amendment No. 4.

This is an amendment to the Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX, originally recorded September 12, 1980, Book 1280, Instrument 1239888.

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1704241

SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION INC.

AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS

Approved May 17, 1983 by action of the Board of Directors

AMENDMENT NO. 5.

ANIMAL CONTROL

The following rules and regulations are intended to supplement Sub-section 3.04 of the Covenants, Conditions and Restrictions.

1. Each residential unit shall be limited to two (2) pets.
2. Pet owners are responsible for preventing their pets from becoming a public nuisance or annoyance.
3. Pets will be on a leash at all times when outside of its owner's residential unit. Clark County, Nevada, has a leash law which can also be applied.
4. To avoid the nuisance and annoyance of pet urine and droppings in Sunrise Villas IX and damage to lawns, trees, shrubs and structures, pets must be walked to the outside of the complex via the streets and curbs. Any droppings en route will be picked up and properly disposed of by the pet attendant.
5. The exterior perimeter sidewalk is a part of Sunrise Villas IX complex; therefore, pets will be walked in the street curb and not allowed to produce droppings on the sidewalk, corner lawn areas or planting areas unless immediately removed and properly disposed of by the pet attendant.
6. Violators of these rules and regulations are subject to the fines as established by the Board of Directors. If a violator is a renter, guest or dependent, fines will be assessed against the owner of the renter's residence.

This is an amendment to the Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX, originally recorded September 12, 1980, Book 1280, Instrument 1239888.

WHEN RECORDED RETURN TO
LEVY REALTY COMPANY
3233 W CHARLESTON SUITE 110
LAS VEGAS NEV 89102

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED IN INSTRUMENT
Levy Realty Co.
JUN 3 12 25 PM '83
FEE *Joe* DEPUTY *Q*
OFFICIAL RECORDS
BOOK INSTRUMENT

- 15

SVHA000098

9 2 0 3 0 3 0 1 1 6 6

CLARIFICATION

AMENDMENT TO THE CC&Rs
OF
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

This amendment to the CC&Rs of Sunrise Villas IX Homeowners Association is made this 26th day of November 1991. The Amendment reads as follows:

Regarding architectural control, the Association shall be permitted to allow for approval of design security bars for doors and/or window as approved by the Board of Directors.

I hereby certify that the above and foregoing Amendment to the By-Laws is a true and correct copy of Sunrise Villas IX Homeowners Association as adopted on this 26 day November, 1991.

Merle L. Capra
Secretary
Sunrise Villas IX H.O.A.
Merle L. Capra

Nicole Milner
January 14, 1992



NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Nicole Milner
My Appointment Expires April 1, 1995

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
COMMUNITY MANAGEMENT SERVICES

03-03-92 15:40 ISJ 2
OFFICIAL RECORDS
BOOK: 920303 INST: 01166
FEE: 5.00 RPTT: .00

SVHA000099

#7-

AMENDMENT TO THE CC&RS
OF
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

This amendment to the Covenant, Conditions and Restrictions originally recorded September 12, 1980, Book 1280, Instrument #1239888, of Sunrise Villas IX Homeowners Association is made this 9th day of December 1993. The Amendment reads as follows:

SECTION 6

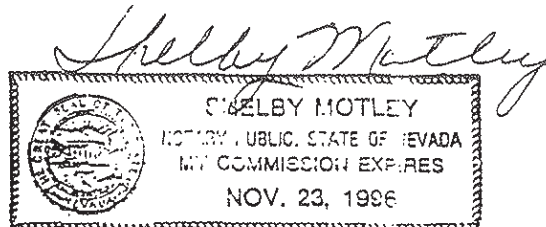
COVENANT FOR MAINTENANCE ASSESSMENT

Section 6.02 (d) Homeowners will have the financial responsibility for the repair and/or replacement of their roofs.

I hereby certify that the above and foregoing Amendment to the CC&Rs are a true and correct copy of Sunrise Villas IX Homeowner Association as adopted on this ___9th___ day of December, 1993.


signature

Secretary,
Sunrise Villas IX H.O.A.
Charles Erickson



CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
A GRIECO

01-04-94 09:43 VJT 1
BOOK: 940104 INST: 00754
FEE: 7.00 AM RESTRICTIONS .00

AMENDMENT NO. 8 TO THE CC&Rs
OF
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

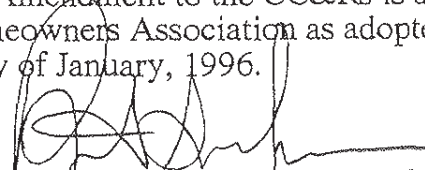
This amendment to the Covenant, Conditions and Restrictions (CC&Rs) originally recorded September 12, 1980, Book 1280, Instrument #1239888, of Sunrise Villas IX Homeowners Association is made this 10th day of January, 1996.

The amendment changes Sub-section 5.05, paragraph (c) to read as follows:

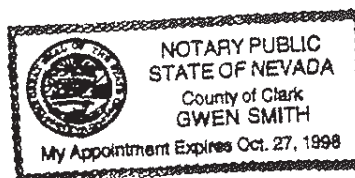
(c) To provide exterior maintenance of each residence building within the properties, which maintenance shall include painting, fascia boards and exterior building walls. Such exterior maintenance shall not include any action with respect to glass surfaces; heating, ventilating and air conditioning units; roofs, gutters, downspouts; garage and entrance doors (except maintenance painting); landscaping and retaining walls of the patios, entryways, courtyards and other open areas on a lot; patio covers or other additions built or maintained on a lot by an owner; or utility facilities on a lot which are not Common Utility Facilities; and shall not include maintenance, repairs or replacements required by reason of the negligent or willful act of an owner, his family or tenants, guests or invitees, or by reason of damage or destruction caused by any of the perils covered by a standard form fire insurance policy with extended coverage endorsement, or caused by flood, earthquake or other Act of God. Except as provided in Section 8 hereof, such excluded maintenance, repairs and replacements shall be the responsibility of each owner.

I certify that the above and foregoing Amendment to the CC&Rs is a true and correct copy of Sunrise Villas IX Homeowners Association as adopted by action of the Board of Directors on this 10th day of January, 1996.

*On the 23rd day of
January 1996 Robert
H. Ackerman personally
appeared before me.*


Robert G. Ackerman
Secretary
Sunrise Villas IX Homeowners Association

Gwen Smith



RETURN TO:

SUNRISE VILLAS IX HOA
PO BOX 12505
LAS VEGAS, NV 89112-0505

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

SUNRISE VILLAS IX HOA

01-23-96 10:57 NLE 2
OFFICIAL RECORDS
BOOK: 960123 INST: 00892
FEE: 8.00 RPTT: .00

SVHA000102

RECEIVED

MAR 30 2001

**AMENDMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION**

This Amendment shall amend, supplement and modify those certain Covenants, Conditions & Restrictions (CC&Rs) recorded on September 11, 1980 and executed by SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION and recorded in the Records of Clark County, Nevada, at Book 1280 as Instrument No. 1239888. In the event of any conflict between the original CC&Rs and this Amendment, this Amendment shall control. Except as amended, supplemented and modified hereby, the original CC&Rs shall remain in full force and effect.

The CC&Rs are hereby supplemented by adding as Paragraph 3.23 of Article III thereof the following:

Lease of Units. Upon recordation of this Amendment, the total number of leased or rental condominium units within the community shall be restricted and limited to a total of 10% of the units within the Association. This restriction shall apply only to each and every condominium unit that is sold, or for which the current ownership is otherwise transferred, subsequent to the recordation of this Amendment.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 28 day of February, 2001.

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

By: Jay Hiner President
JAY HINER, PRESIDENT

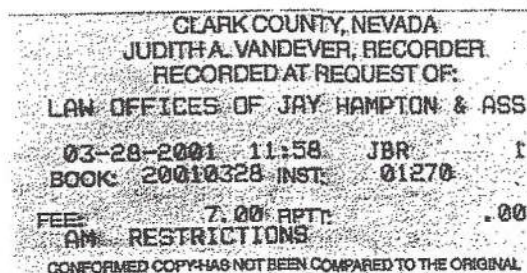
STATE OF NEVADA)
): ss
COUNTY OF CLARK)

This instrument was acknowledged before me on the 28 day of February, 2001, by JAY HINER.

Marlys J. Capra
NOTARY PUBLIC



WHEN RECORDED RETURN TO:
The Law Offices of Jay Hampton & Associates
701 N. Green Valley Pkwy., #200
Henderson, Nevada 89014



SVHA000103



APN#s:

162-24-310-001 through 162-24-310-093, and
162-24-313-001 through 162-24-313-031, and
162-24-395-001 through 162-24-395-002, and
162-24-397-001 through 162-24-397-007

Inst #: 20140402-0001220
Fees: \$20.00
N/C Fee: \$0.00
04/02/2014 11:49:42 AM
Receipt #: 1980951
Requestor:
WRIGHT LAW FIRM LTD
Recorded By: ARO Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

Tenth Amendment to Restrictions
(Document Type)

Recording Requested by:

Sunrise Villas IX Homeowners' Association

Return to:

Wright Law Firm Ltd
7065 West Ann Road, Suite 130-663
Las Vegas, Nevada 89130

**TENTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR SUNRISE VILLAS IX**

THIS TENTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUNRISE VILLAS IX ("Tenth Amendment") for Sunrise Villas IX Homeowners' Association, a Nevada non-profit corporation ("Association"), is made with respect to that certain real property located in Clark County, Nevada, commonly known as Sunrise Villas IX ("Property"), more particularly described in the Declaration. Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to such terms in the Declaration.

WITNESSETH:

WHEREAS, On September 11, 1980, Emerson Development Company, a Nevada Corporation ("Developer" or "Declarant") executed that certain Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX ("Declaration"), and recorded the same on September 11, 1980, as Instrument No. 1239888, in Book No. 1280, [Instrument #: 198009120039888] in the Official Records of Clark County, Nevada; and

WHEREAS, On June 3, 1983, the Association recorded that certain Amendments to Covenants, Conditions and Restrictions ("Amendment No.'s 1 - 5"), as Instrument No. 198306030004249, in the Official Records of Clark County, Nevada; and

WHEREAS, On November 26, 1991, the Association executed that certain Amendment to the CC&Rs of Sunrise Villas IX Homeowners Association ("Sixth Amendment"), and recorded the same on March 3, 1992, as Instrument No. 01166, in Book No. 920303, [Instrument #: 199203030001166] in the Official Records of Clark County, Nevada; and

WHEREAS, On December 9, 1993, the Association executed that certain Amendment to the CC&Rs of Sunrise Villas IX Homeowners Association ("Seventh Amendment"), and recorded the same on January 4, 1994, as Instrument No. 00754, in Book No. 940104, [Instrument #: 199401040000754] in the Official Records of Clark County, Nevada; and

WHEREAS, On January 10, 1996, the Association executed that certain Amendment No. 8 to the CC&Rs of Sunrise Villas IX Homeowners Association ("Eighth Amendment"), and recorded the same on January 23, 1996, as Instrument No. 00892, in Book No. 960123, [Instrument #: 199601230000892] in the Official Records of Clark County, Nevada; and

WHEREAS, On February 28, 2001, the Association executed that certain Amendment of Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX Homeowners Association ("Ninth Amendment"), and recorded the same on March 28, 2001, as Instrument No. 01270, in Book No. 20010328, [Instrument #: 200103280001270] in the Official Records of Clark County, Nevada; and

WHEREAS, Section 9 *General Provisions*, Subsection 9.06, of the Declaration allows amendment of the Declaration by an instrument ("Instrument") signed by members of the Association ("Members") representing not less than fifty-one percent (51%) of the voting power in the Association; and

WHEREAS, the Association desires to amend certain provisions of the Declaration;

NOW THEREFORE, the following sections of the Declaration are hereby amended, changed, deleted, or added as follows:

A new Section 10 *Right to Assign Future Income* is hereby added to the Declaration:

SECTION 10

RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its right to future income, including the right to receive assessments for common expenses, only upon the approval by vote or written consent of members representing not less than fifty-one percent (51%) of the voting power in the Association.

All other provisions of the Declaration not amended, changed, deleted, or added as outlined herein shall remain in full force and effect.

///

CERTIFICATION

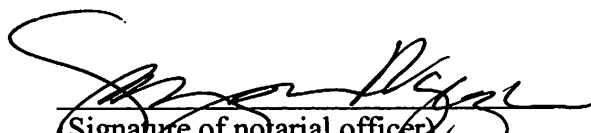
I, the undersigned, do hereby certify that I am the President of Sunrise Villas IX Homeowners' Association. I further certify that the foregoing Tenth Amendment to Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX was adopted by an Instrument signed by Members representing not less than fifty-one percent (51%) of the voting power in the Association, the original ballots (collectively constituting the Instrument) of which are on file in the Association's official records as of this date.


 [Signature] Rita V. Ehresman [Date] 3/31/14

Rita V. Ehresman, its President
 [Written Name]

State of Nevada
County of Clark

This instrument was acknowledged before me on March 31, 2014 by Rita V. Ehresman as President of Sunrise Villas IX Homeowners' Association.


 (Signature of notarial officer)

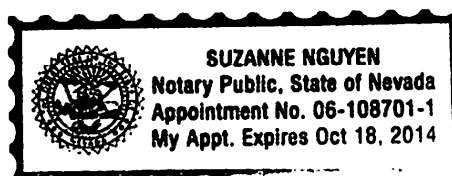


EXHIBIT “3”

Recorded Interview of J&G Lawn Maintenance Employee, Tom Bastian 11/30/2016

JOHN: Alright, today is the 30th of November, 2016. My name is John Drase and I'm interviewing Tom, is it Bas-teen?

TOM: *B-ah-st-chun*

JOHN: Bastian. Tom, are you aware that I'm recording our conversation?

TOM: Yes

JOHN: Is it with your permission that I am doing so?

TOM: Yes

JOHN: ok, for the record, would you state your full name and spell your last name, please?

TOM: Thomas Wayne Bastian, B-A-S-T-I-A-N

JOHN: for ID purposes, can I have a date of birth

TOM: March 30th, '94

JOHN: Wow.*chuckles* Yeah! Ok, you're a Las Vegas?

TOM: yeah

JOHN: How long you been in Vegas?

TOM: Uh, my whole life. I moved up to Reno for 4-ish years for school and stuff, but I'm back here so

JOHN: So you're a native, so yeah, you know, my daughter's there, so I know it's possible. And actually, you're employed, by whom?

TOM: uh, J&G Landscaping

JOHN: J&D is it?

TOM: J&G

JOHN: J&G Landscaping, yep. And how long you been with them?

TOM: um almost 3 months

JOHN: How long have you been in the landscaping business?

TOM: uh, I did it up in Reno, for the summers and stuff like that, uh, when I was off from school and stuff, so

JOHN: so you've got experience

TOM: hit or miss, I mean, with my dad, about 10 years, but I mean like, other than that, its been like 3-4 professional years

JOHN: Ok, 3 on your own. And, um, ok so you work at like Sunrise Villas 9

TOM: mm-hmm

JOHN: that's your, you're the on-site

TOM: yeah, I'm technically the landscaper, maintenance guy here, I mean, pretty much anything plant-wise or water-wise

JOHN: so you tend to the plants, the irrigation

TOM: mm-hmm

JOHN: um and if someone complains and says their drain isn't working, they don't call you?

TOM: no, that's not my

JOHN: you don't do that

TOM: We stay on the outside of all the housing units, we only focus on like the grass, the bushes and the trees

JOHN: common areas?

TOM: yeah

JOHN: you have anything to do with the easements, do you do anything (um)with easements?

TOM: No

JOHN: you don't even dig around there, I don't think, do you?

TOM: No

JOHN: and you are aware there are easements here for phones, and for cables

TOM: yeah, no, we stay away from that because that's not us, and we don't even want to cut anything accidentally, so that's why we stay to our own territory.

JOHN: You don't have any sprin- you have PVC sprinkler lines, and what are they, half inch?

TOM: yeah, half inch

JOHN: half inch, so and their offset probably 12- 15 inches at least

TOM: yeah

JOHN: so 15 inches offset

TOM: err, you know, there's plenty of room from like the separation of those two things

JOHN: so, you've got plenty of clearance?

TOM: yeah

JOHN: mmk, so you, when you go through the community in the morning, you look at things, right? I mean, I mean, you not necessarily look at things, but you're aware of things

TOM: yeah

JOHN: like if you saw a bush broken, or a tree-limb broken, you would tend to it?

TOM: yeah

JOHN: and uh, if you saw someone had dug a hole in the middle of the common area, you'd probably stop and ask "what's this?"

TOM: yeah

JOHN: but if you saw anybody like working in the areas, on their garage or on their bushes or something, or any stuff like that on their own property, or a vendor doing something, you wouldn't be do much with that, you wouldn't have anything to do with that--

TOM: no, I stay on my own the whole time, and do, either what my boss texts me to do, or whatever the community lets me know needs to be done. Or like you said, I find something that needs to be fixed

JOHN: ok. So actually, you know, I mean like if you opened up an irrigation line, you would close it up before you left

TOM: oh, definitely

JOHN: *chuckles* you wouldn't leave anything overnight err—

TOM: You don't leave breadcrumbs or laying around. You just have to finish the job, whatever you're doing.

JOHN: or secure it or

TOM: yeah

JOHN: or make sure that it's safe. You would not do anything like that

TOM: mm-hmm

JOHN: ok. Did you ever notice, (umm umm uh) I'm going to talk about the property, I'm sorry, I'm going to change modes here for a moment-the property on 4617 Madreperla St.

TOM: yeah, it's right over there

JOHN: just down the block

TOM: yeah

JOHN: and I'm going to show you a photo of something, and you tell me if you've ever seen anything like this, and what you know about this, ok

TOM: yeah

JOHN: ok, so I'll show you this, it shows like a line on a driveway, looks like a, looks like some type of line, phone(inaudible) did you ever see this?

TOM: I've seen it, but all I ever did, I checked to make sure it was an electrical line, and I left it completely alone

JOHN: cuz you wouldn't be doing anything electrical

TOM: yeah

JOHN: especially with wire

TOM: I even called my boss right there, I was like "this isn't irrigation" and he told me to just go away, and I just, you know, I just stayed on my own, and just didn't level with it

JOHN: Did you notice people working around that area?

TOM: Um, it was a couple weeks after I started working here. I think I say, like, some kind of, like Cox or something like that. Like, some kind of cable company

JOHN: and were they handling that line we're talking about?

TOM: for the most part, I mean, I had only passed them on the golf cart, you know, a few times, but every time I saw them, they were doing something with that house in the front, and I just was assuming it was the line

JOHN: ok, but again, you don't get involved in that

TOM: No

JOHN: they don't call you and tell you "we're digging" or anything?

TOM: yeah, no, that's not my thing

JOHN: They don't do that

TOM: I was on the outside of the property that day, doing some trimming for the bushes

JOHN: So, about what time did you first see that? It was in the morning that you saw that lying in the--

TOM: yeah, it was somewhere between 10:00 and 12:00, something like that

JOHN: and the cable guys had gone, or left or they were here, or they were—

TOM: umm, I had only seen them once, and then, when I was leaving for my day, I had seen the truck just there again, but I had no idea, so

JOHN: so you don't know if they cleaned up the area, or if they left it, you don't know?

TOM: no

JOHN: I mean, it's for sure, you didn't do this

TOM: No

JOHN: you wouldn't have pulled up and thrown it on the driveway

TOM No

JOHN: you just, you don't handle those things

TOM: mm-mm

JOHN: and nobody in the community would've dug that up

TOM: yeah

JOHN: I don't see anyone going in there and doing that and leaving that, so it looks like, umm, the cable was just left there. And I don't know if there's a problem with the instillation, or whatever it was. I don't know, and I don't really care, really. But I'm just concerned that it was left there

TOM: mm-hmm

JOHN: and had you known that as gonna be there all night, you probably would've said something, or you know, wouldn't you

TOM: well, I mean, I let my boss know about like, you know, like that's something I can't handle. But past that, nothing

JOHN: but it would be unfair for me to say you should've been over, taking care of business, I mean cuz like, that's not your business

TOM: yeah no, I don't do anything electrical. I would never do anything electrical

JOHN: No. Then you don't interfere

TOM: uhh-uhh(no)

JOHN: Ok, so one more time, I want to just remind you that I was recording our entire conversation

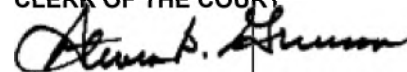
TOM: Yes

JOHN: And was it with your permission that I was doing so?

TOM: Yep

JOHN: Great. I want to thank you so much.

Electronically Filed
7/30/2018 3:53 PM
Steven D. Grierson
CLERK OF THE COURT



DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON, LLC
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)
)
Plaintiff,)
)
vs.)
)
COX COMMUNICATIONS LAS VEGAS,)
INC., D/B/A COX COMMUNICATIONS,)
IES RESIDENTIAL, INC., SUNRISE)
VILLAS IX HOMEOWNERS)
ASSOCIATION, J & G LAWN)
MAINTENANCE, KEVIN BUSHBAKER,)
PWJAMES MANAGEMENT &)
CONSULTING, LLC., AND DOES I - V,)
and ROE CORPORATIONS I - V,)
inclusive,)
)
Defendants.)
)

CASE NO: A-17-753606-C
DEPT. NO: XVI

**SUPPLEMENT TO PLAINTIFF'S OPPOSITION TO DEFENDANT SUNRISE WILLAS
IX HOA'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff, SIMONE RUSSO, by and through his attorneys of record and hereby supplements his Opposition to Defendant's motion for summary judgment.

The unsigned affidavits of Simone Russo and Barbara Russo were inadvertently attached to Plaintiff's Opposition to Defendant's motion for summary judgment. Plaintiff provides the

///

1 signed affidavits in supplement to his Opposition, attached hereto as Exhibit "1"

2 DATED THIS 30th day of July, 2018

3
4 LAW OFFICE OF DAVID SAMPSON, LLC.

5
6
7 BY: /s/ *David Sampson*

8 DAVID F. SAMPSON, ESQ.

9 Nevada Bar No.6811

10 LAW OFFICE OF DAVID SAMPSON

11 630 S. 3rd Street

12 Las Vegas, NV 89101

13 Fax No: 888-209-4199

14 Email:david@davidsamsponlaw.com

15 Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I certify that I am an employee of THE LAW OFFICE OF DAVID SAMPSON, and that on this 30th day of July, 2018, I served a copy of the foregoing **SUPPLEMENT TO OPPOSITION** as follows:

X Electronic Service through the Court's online filing system.

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
BUSHBAKER

WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

JONATHAN C. PATTILLO, ESQ.
SPRINGEL & FINK, LLP
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Attorney for Defendant
SUNRISE VILLAS IX HOA

/s/ Amanda Nalder
An Employee of The LAW OFFICE OF DAVID SAMPSON, LLC.

EXHIBIT “1”

1 6. Because the cable was placed in the seam between the driveway and the gutter, after
2 the cable came loose, sometimes the cable would run across the base of the driveway as
3 depicted above, and sometimes the cable would run into the gutter and street before
4 disappearing back into the adjacent yard.
5

6 7. SUNRISE VILLAS IX hired landscapers to care for the yards in the community.
7 Even though the cable ran from my yard over which SUNRISE VILLAS IX had a duty to tend,
8 and ran across the seam between the driveway and gutter, and sometimes street in front of the
9 home in SUNRISE VILLAS IX, neither COX, nor SUNRISE VILLAS IX took any steps to fix
10 the condition for a few months.
11

12 8. In mid-August 2016 my wife and I moved into 4617 Madreperla and rented the
13 property. A few days after we moved in, my wife and I flew to New York to visit my daughter
14 who had recently given birth to my grandchild. My wife and I spent approximately two weeks
15 in New York before returning to our home in Las Vegas.
16

17 9. On August 27, 2016 my wife and I landed in Las Vegas at approximately 10:00 p.m.,
18 retrieved our luggage from baggage claim, and took a taxi to our home. Sometime before 11:00
19 p.m. the taxi pulled up at 4617 Mardeperla. My wife got out of the taxi and took some of the
20 luggage into the garage. I got out of the cab and took a step or two up my driveway when I felt
21 my foot simply stop moving. At the time I would use a walker now and then for balance when I
22 was exerting significant energy or had a particularly long day. At the time, I did not know that
23 the COX cable had caught my foot. I fell forward, over the top of my walker, and crashed onto
24 the cement driveway.
25

26 10. The following day my wife told SUNRISE VILLAS IX about the cable wire that
27 was running across the base of the driveway. My wife specifically approached the SUNRISE
28

1 landscaper who was driving a golf cart around the community and told the landscaper about the
2 cable. At the time neither myself nor my wife knew why the cable wire was there, and we did
3 not know who had installed it. SUNRISE VILLAS IX took no steps to fix the hazardous
4 situation, and instead merely placed small yellow flags at the location where the wire left the
5 driveway and was buried underground.
6

7 11. The exposed cable wire remained at the base of my driveway for over two months
8 after I fell, with no one taking any steps to fix the hazard. Finally, in October 2016, a COX van
9 parked in front of the home next to 4617 Madreperla. My wife spoke with the COX employee
10 and showed the COX employee the exposed cable wire. The COX employee told my wife the
11 wire was a COX cable wire and when inspecting the area more closely exclaimed, "Well that's
12 not safe." Very shortly thereafter another COX vehicle arrived at 4617 Madreperla and fixed
13 the exposed cable wire. This time COX not only placed the cable wire into the seam between
14 the base of the driveway and the gutter, but also cemented over the wire to make sure it would
15 not come out of the seam.
16
17

18 12. COX did not place the cable in my driveway. COX placed the cable in the seam
19 between my driveway and the gutter that serviced the neighborhood homes in SUNRISE
20 VILLAS IX. At the base of my driveway was a seam, and on the other side of the seam was the
21 gutter that serviced the neighboring homes in SUNRISE VILLAS IX by allowing water to flow
22 out of the neighborhood and into the sewer. The cable was placed in this seam that lay between
23 the subject driveway and the community gutter.
24

25 13. COX first placed the cable in the seam between my driveway and the community
26 gutter. Once the cable was removed from the seam between the driveway and the community
27
28

1 gutter it would sometimes lay in the driveway, would sometimes lay in the gutter, and at times
2 even lay in the street.

3 14. The subject cable serviced my neighbor's home, and ran from my yard, across the
4 seam between the driveway and gutter, and then ran to my neighbor's home.
5

6 15. The HOA has stated it hired two landscapers, Sesman and Duslak to tend and care
7 for the yards in the neighborhood. It is my understanding COX performed work in the yard next
8 to my driveway by digging a trench to install the cable. COX denies they dug the trench. If
9 COX is telling the truth, that would only leave the SUNRISE landscapers as the party who
10 performed the work which unearthed the cable.
11

12 16. While living at SUNRISE VILLAS IX, my wife and I specifically asked the
13 landscapers to perform various landscaping tasks. These included trimming the palm tree in our
14 yard. When my wife asked that the tree be trimmed, the landscapers told her they could not
15 perform the work unless and until SUNRISE authorized it and instructed the landscapers to
16 perform the work.
17

18 17. I personally witnessed the landscapers at SUNRISE VILLAS IX use the SUNRISE
19 golf cart and other equipment to perform their landscaping responsibilities at SUNRISE. Even
20 though SUNRISE changed landscapers while my wife and I lived in the subject home, the
21 landscapers continued to use the same golf cart and other landscaping equipment that was
22 provided by SUNRISE.
23

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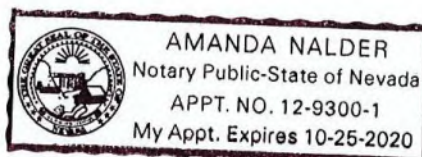
1 18. When I fell it was around midnight. I believe the lighting in the area (which is the
2 exclusive obligation of SUNRISE VILLAS IX) was insufficient. I believe the lack of lighting
3 caused or contributed to me falling as I had no chance to see the cable.
4

5
6 DATED this 27 day of July, 20 18.

7
8 Simone Russo, M.D.
9 SIMONE RUSSO, M.D.

10
11 SUBSCRIBED AND SWORN TO before me
12 this 27 day of July, 20 18.

13 Al Nalder



14 Notary Public in and for said County and State.
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AFFIDAVIT OF BARBARA RUSSO

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

BARBARA RUSSO, being first duly sworn, deposes and says:

1. My husband is the Plaintiff in Case No. A-17-753606-C.
2. I am personally familiar with the facts and circumstances surrounding this matter and am competent to testify hereto.
3. As I understand it, COX cable installed a cable wire to service my neighbor's home. COX buried its cable under the front yard of the home I was renting. When the cable had to cross my driveway, rather than ensuring that the cable ran underground like they did in my yard, COX merely set its cable in the seam at the base where the driveway met the gutter. Once the cable reached my neighbor's yard, COX would buried its cable under that yard.
4. COX's decision to merely place its cable in the seam between the base of my driveway and the community gutter resulted in the cable coming out of the driveway seam and creating a ridiculously hazardous condition.
5. As I understand it, in mid-August 2016 COX was working at SUNRISE VILLAS IX, specifically performing work at the home I would rent at 4617 Madreperla Street, Las Vegas, Nevada. The work included digging a trench adjacent to the driveway at 4617 Madreperla to accommodate COX's cable wire. The work from the trenching caused the COX cable to become dislodged from the seam in the concrete between the gutter and the driveway causing the cable to loosely run across the bottom of the driveway creating a literal snare hazard.
6. Because the cable was placed in the seam between the driveway and the gutter, after the cable came loose, sometimes the cable would run across the base of the driveway as



1 6. Because the cable was placed in the seam between the driveway and the gutter, after
2 the cable came loose, sometimes the cable would run across the base of the driveway as
3 depicted above, and sometimes the cable would run into the gutter and street before
4 disappearing back into the adjacent yard.
5

6 7. SUNRISE VILLAS IX hired landscapers to care for the yards in the community.
7 Even though the cable ran from my yard over which SUNRISE VILLAS IX had a duty to tend,
8 and ran across the seam between the driveway and gutter, and sometimes street in front of the
9 home in SUNRISE VILLAS IX, neither COX, nor SUNRISE VILLAS IX took any steps to fix
10 the condition for a few months.
11

12 8. In mid-August 2016 my husband and I moved into 4617 Madreperla and rented the
13 property. A few days after we moved in, my husband and I flew to New York to visit my
14 daughter who had recently given birth to my husband's grandchild. My husband and I spent
15 approximately two weeks in New York before returning to our home in Las Vegas.
16

17 9. On August 27, 2016 my husband and I landed in Las Vegas at approximately 10:00
18 p.m., retrieved our luggage from baggage claim, and took a taxi to our home. Sometime before
19 11:00 p.m. the taxi pulled up at 4617 Mardeperla. I got out of the taxi and took some of the
20 luggage into the garage. My husband got out of the cab and took a step or two up my driveway
21 when he fell forward, over the top of his walker, and crashed onto the cement driveway.
22

23 10. The following day I told SUNRISE VILLAS IX about the cable wire that was
24 running across the base of the driveway. I specifically approached the SUNRISE landscaper
25 who was driving a golf cart around the community and told the landscaper about the cable. At
26 the time neither I nor my husband knew why the cable wire was there, and we did not know
27 who had installed it. SUNRISE VILLAS IX took no steps to fix the hazardous situation, and
28

1 instead merely placed small yellow flags at the location where the wire left the driveway and
2 was buried underground.

3
4 11. The exposed cable wire remained at the base of my driveway for over two months
5 after my husband fell, with no one taking any steps to fix the hazard. Finally, in October 2016,
6 a COX van parked in front of the home next to 4617 Madreperla. I spoke with the COX
7 employee and showed the COX employee the exposed cable wire. The COX employee told me
8 the wire was a COX cable wire and when inspecting the area more closely exclaimed, "Well
9 that's not safe." Very shortly thereafter another COX vehicle arrived at 4617 Madreperla and
10 fixed the exposed cable wire. This time COX not only placed the cable wire into the seam
11 between the base of the driveway and the gutter, but also cemented over the wire to make sure it
12 would not come out of the seam.
13

14 12. COX did not place the cable in my driveway. COX placed the cable in the seam
15 between my driveway and the gutter that serviced the neighborhood homes in SUNRISE
16 VILLAS IX. At the base of my driveway was a seam, and on the other side of the seam was the
17 gutter that serviced the neighboring homes in SUNRISE VILLAS IX by allowing water to flow
18 out of the neighborhood and into the sewer. The cable was placed in this seam that lay between
19 the subject driveway and the community gutter.
20

21 13. COX first placed the cable in the seam between my driveway and the community
22 gutter. Once the cable was removed from the seam between the driveway and the community
23 gutter it would sometimes lay in the driveway, would sometimes lay in the gutter, and at times
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27 seam between the driveway and gutter, and then ran to my neighbor's home.
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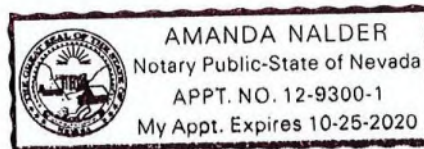
5
6 DATED this 27 day of July, 2018.

7
8 Barbara Russo
9 BARBARA RUSSO

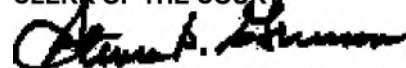
10
11 SUBSCRIBED AND SWORN TO before me
12 this 27 day of July, 2018.

13 Amanda Nalder

14 Notary Public in an for said County and State.



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Steven D. Grierson
CLERK OF THE COURT


RPLY

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Nevada Bar No. 6296

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Attorneys for Defendant,

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiffs,

v.

COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS; IES
RESIDENTIAL, INC.; SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION; J&G LAWN
MAINTENANCE; KEVIN BUSHBAKER; PW
JAMES MANAGEMENT & CONSULTING,
LLC; AND DOES 1-V, AND ROE
CORPORATIONS I-V, inclusive

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**DEFENDANT, SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION'S
OMNIBUS REPLY IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

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DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S OMNIBUS REPLY
BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "Sunrise"), by and through its counsel of record, the law firm of Springel & Fink LLP, hereby submits its Omnibus Reply in support of its Motion For Summary Judgment.

This Reply is based upon the supporting Memorandum of Points and Authorities and all exhibits thereto, all pleadings and papers on file in this action, and upon such further, oral, or documentary evidence as may be presented at the time of hearing on this matter.

DATED this 10th day of August, 2018.

SPRINGEL & FINK LLP

/s/ Jonathan C. Pattillo, Esq.

By:

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Nevada Bar No. 6296

JONATHAN C. PATTILLO, ESQ.

Nevada Bar No. 13929

10655 Park Run Drive, Suite 275

Las Vegas, NV 89144

Attorneys for Defendant,

*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 26, 2018, Plaintiff, SIMONE RUSSO (hereinafter “Plaintiff”) tripped on an exposed coaxial cable located on his private driveway. It is undisputed that this cable sat in a crevice in between the driveway and the street curb. These areas were private property and not Sunrise’s responsibility to maintain. They were separate and apart from the common areas. The driveway did not belong to Sunrise. The cable did not belong to Sunrise. Because these areas were not within Sunrise’s control, and it had no responsibility for creating or remedying the situation the Court should enter summary judgment in its favor. Sunrise simply had no duty to maintain the hazard on Plaintiff’s driveway. Neither Plaintiff’s nor Cox/IES’ Oppositions to Sunrise’s Motion for Summary Judgment offered anything to create any triable issues of material fact to dispute this. Thus, it should be a sunset for Plaintiff’s claim.

Sunrise moved for summary judgment on the premise that it had no legal duty to maintain the area where Plaintiff fell, which included the cable wire. In other words, Plaintiff bore the burden for any hazards that may have been on his driveway. Both Plaintiff and Defendants, COX COMMUNICATIONS LAS VEGAS, INC. (hereinafter “Cox”) and IES RESIDENTIAL, INC. (hereinafter “IES”, collectively “Cox”), opposed the Motion, arguing that Sunrise did have a duty. They based their arguments on inadmissible “evidence” or simple arguments claiming that Sunrise had a duty to maintain the coaxial cable because (as they assert) it served other properties or otherwise impacted both the driveway and the adjacent curb.¹ Further, their arguments that Sunrise had a responsibility for the surrounding areas like the gutters and lawn and that Sunrise should be responsible for its independent contractors Richard Duslak and Justin Sesman, are not persuasive and do not meet their burdens.² Cox even argues that Sunrise failed to meet its burden in their Motion to assert the independent contractor defense.³

Neither Opposition, however, establishes that there are any triable issues of material fact as to whether Sunrise had a duty to maintain the driveway, the crevice or the cable wire itself. Nowhere in any of their Oppositions did either Cox or Plaintiff point this court to anywhere within the CC&Rs that

¹ See, Cox’s Opposition at pg 6, lines 10-17; Plaintiff’s Opposition at pg 8, lines 18-20.

² See, Plaintiff’s Opposition at pg 10, lines 9-11; pg 11, lines 7 – 12, lines 26.

state Sunrise responsible for maintaining any of these. Nor did they address Section 5.05(c) that absolves Sunrise for the negligent acts of third parties. Instead, they both try to use hypotheticals, inadmissible “evidence,” arguments and self-serving affidavits to try to create a triable issue of material fact, where there is none.

Although Cox does not have a claim against Sunrise, they still filed an Opposition. This Opposition supports Plaintiff’s claims and, therefore, should be treated as if Plaintiff wrote it when determining the parties’ relative legal obligations concerning Motions for Summary Judgment. Importantly, neither Plaintiff nor Cox fail met their burden under *Cuzze v. University & Community College Systems of Nevada* (citing to the U.S. Supreme Court case of *Celotex Corp. v. Catrett* (477 U.S. 317 (1986)) to transcend the pleadings and submit admissible evidence that create a genuine issue of material fact.⁴ Sunrise’s obligation is to point out that there is an absence of evidence to support Plaintiff’s claims, although it certainly did more in its Motion. Sunrise established that it did not have any legal responsibility to maintain the driveway. Neither the CC&Rs nor NRS statutes say otherwise. Instead, they can only point to other clauses to try to somehow convince this Court that there is a triable issue of material fact that Sunrise had some responsibility for areas surrounding the driveway. That does not establish a duty for the events in THIS case.

II. LEGAL ANALYSIS

Both Plaintiff and Cox premise their Oppositions on the idea that Sunrise had a legal responsibility for the cable or for the crevice where the cable sat. They, however, do not and cannot provide evidence or point to a definitive section in the CC&Rs that support their positions. They can only point to other clauses to try to create the inference of responsibility. But in order to have responsibility, the governing documents and statutes must clearly lay out what Sunrise could and could not do, and nowhere does it say that it had the responsibility for owners’ driveways or the crevices on which they sit. Additionally, as the Court can see by the attached affidavit of PW James property manager Amanda Davis, Sesman and Duslak were independent contractors.

Plaintiff counters with nothing more than hearsay to try to create a fact issue. .In fact, neither

³ See, Cox’s Opposition at 7, lines 7-25.

⁴ *Cuzze v. Univ. & Cmty. Coll. Sys. Of Nevada*, 123 Nev. 598, 602-03, 172 P.2d 131, 134 (2007).

party can present any definitive proof that Sunrise had control over Sesman and Duslak or that they even exposed the wire to begin with or noticed it. What this Motion and the Oppositions boil down to *is whether Sunrise as the HOA had a duty to maintain the area and any dangerous condition on it*. The answer definitively is no.

A. SUNRISE HAD NO DUTY FOR THIS AREA OR THE HAZARDS ON IT

i. The Driveway And Crevice Are Private Property

We are dealing with a small physical area and Sunrise's maintenance responsibility must end somewhere. Sunrise will admit it had to keep the street clean. But the homeowner must accept responsibility for his own property at some point. Plaintiff in his Opposition argues that Sunrise's responsibility for gutters (as stated in CC&R Section 5.05(c) makes Sunrise responsible for the crevice. Plaintiff confuses the meaning of the word "gutter" in this Section. The CC&Rs clearly refer to responsibility for rain gutters on the sides of houses, not any area adjacent to curbs. Regardless, these statements are all circumstantial. Plaintiff nor Cox in their Oppositions do not present admissible evidence that indicates Sunrise had a responsibility for the driveway or the crevice where the cable us.

It is very clear through the CC&Rs, as Plaintiff had the exclusive right of possession, that Plaintiff had the maintenance responsibility for the driveway.⁵ Plaintiff even admitted in his Opposition that Plaintiff very well himself could be responsible to maintain his driveway.⁶ Arguing that Sunrise had a responsibility for the areas *around* the private property does not create the affirmative duty to enter private property and correct any dangerous conditions.

ii. Sunrise Does Not Have The Same Duties As A Landowner

Cox implies that Sunrise has a blanket duty to act reasonably under the circumstances.⁷ No Nevada court has ever established this duty. Cox cites *Foster v. Costco* to support this proposition. This case concerned a trip and fall at a supermarket.⁸ This case involved the *landowner*, Costco.⁹ An HOA's

⁵ See, Declaration of Covenants, Conditions and Restricts § 2.07.

⁶ See, Plaintiff's Opposition at pg 9, line 7-8. ("While Defendant may or may not have a duty to maintain the subject driveway...")

⁷ See, Cox's Opposition at 6:23-25; *Foster v. Costco*, 128 Nev. 773, 780 (2012).

⁸ *Foster*, 128 Nev. at 774.

⁹ *Id.* at 775.

duties only extends to the common areas.¹⁰ Sunrise is not the landowner. Cox cites a standard that applies to a different class of defendants, and that standard does not apply to Sunrise as the homeowners' association. Sunrise only has a duty to maintain the common areas.

iii. The Cable Itself Is Inconsequential

Both Cox and Plaintiff claim the underground cable went through the crevice, underneath Plaintiff's lawn and to a neighbor's residence. They argue, then that because it went to another residence, Sunrise is responsible for it. First, neither has presented any admissible evidence to support this position. Cox's work orders are hearsay and have not been authenticated by any custodian of records. Cox also provides its expert Stanley Luhr's hearsay expert report. Nevada law and NRCP 56 does not allow hearsay expert reports to create a fact issue to defeat a motion for summary judgment.¹¹ The Court cannot conclude there is a genuine issue of material fact based on their Oppositions.

Second, even if true, it is irrelevant. Sunrise was very clear in its Motion that the Court should enter summary judgment because Sunrise did not have responsibility for the *cable's easement* (or crevice) where the cable sat.¹² The determining factor is much more about the area where the hazard was, not the hazard itself. If the cable ran across the entrance to the community, then Sunrise would admit it needed to do something – but Sunrise does not have a responsibility if the cable is on private property and the cable does not belong to Sunrise.

Plaintiff puts a great deal of emphasis in that the cable at times went out into the street and did not just remain on the driveway.¹³ Plaintiff has not presented any evidence that indicated Sunrise ever knew *before the accident* that the cable sat in the street. Plaintiff only presents two irrelevant affidavits from himself and his wife stating they told someone about it *after* the accident. Any observations about where the wire was *after* fall do not have any bearing on this analysis. The Court should also dismiss these affidavits on their face because they are a blatant self-serving attempt to create an issue of fact based on observations each witness for things that occurred after Plaintiff fell to speculate somehow on what happened before. Speculation is not evidence. Plaintiff cannot use these affidavits alone to create a

¹⁰ NRS § 116.3102(1)(f).

¹¹ See, *Shuffle Master, Inc. v. MP Games, LLC*, 553 F.Supp.2d 1202 (D. Nev. 2008)

¹² See, Sunrise's Motion for Summary Judgment at pg. 8, line 10.

¹³ See, Plaintiff's Opposition at pg. 5, lines 1; pg. 8, lines 7-8.

fact issue by, without any evidence, claim they saw the cable in the street.¹⁴ Sunrise would also not have any responsibility for it as the CC&Rs state the cable television instrument is not a common utility.¹⁵ Plaintiff cannot present any proof the cable was actually in the street *before* Plaintiff allegedly tripped and fell. This possibility is only a hypothetical and is not enough to create a genuine issue of material fact.

Plaintiff also misconstrues Section 2.05.01 of Sunrise's CC&Rs in trying to claim Sunrise was responsible for cable television easements¹⁶ That section states that no owner "shall damage or interfere with the installation and maintenance of such utilities."¹⁷ The section states the utilities can include cable television. This section clearly states though *owners* should *not* maintain the easements for cable television. It does not say that Sunrise has that affirmative duty. The purpose of this clause is clearly to prevent homeowners from interfering with things that belong to outside firms such as Cox. In fact, the inclusion of cable television in Section 2.05.01 and its omission from being included in the common utility easement definition in 2.07 indicates the drafters did not intend for Sunrise to maintain any cable television wires.

iv. Sunrise Did Not Have A Duty To Light The Area

Lastly, Plaintiff tries to create a duty when there is none under the CC&Rs. Plaintiff in his Opposition says Sunrise failed to adequately light the driveway.¹⁸ This is the first time that Plaintiff has raised nay point regarding inadequate lighting. Plaintiff never disclosed any expert to give an opinion about how Sunrise failed to properly light the area. He does not provide any expert affidavit in his Opposition either. The Court should dismiss this outright.

Plaintiff cites *Lietaert v. Shinnors* to support his theory that an HOA has the duty for adequate lighting. However, *Lietaert* concerned a *landlord* who had a duty under a local ordinance.¹⁹ As Sunrise

¹⁴ See, *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), (holding a conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact); *Dennison v. Allen Group Leasing Co.*, 110 Nev. 181, 185, 871 P.2d 288, 291 (1994) (holding a bare record and unsupported affidavit cannot support a motion for summary judgment); *Clauson v. Lloyd*, 103 Nev. 432, 434, 743 P.2d 631, 633 (1987) (holding that a self-serving affidavit alone could not support a motion for summary judgment).

¹⁵ See, Declaration of Covenants, Conditions and Restrictions Section 2.07.

¹⁶ See, Plaintiff's Opposition at pg. 9, line 11-22.

¹⁷ See, Declaration of Covenants, Conditions and Restricts Section 2.05.01.

¹⁸ See, Plaintiff's Opposition at 13:3-10.

¹⁹ *Lietart v. Shinnors*, 75 Nev. 509, 511, 347 P.2d 282, 283 (1959).

has already made clear, it neither has a landlord-tenant relationship with Plaintiff nor is he the actual property owner. Other courts have clearly stated that a homeowners association only has a duty to light an area when it would be foreseeable that there is a need.²⁰ By all accounts, this was a bizarre accident. Plaintiff has not presented any evidence that a similar incident occurred anywhere on the premises. Plaintiff has not demonstrated nor shown Sunrise knew or should have known about trip hazards on driveways because of inadequate lighting. Thus any arguments by Plaintiff about duty and breach because of inadequate lighting have no merit.

B. SUNRISE IS NOT RESPONSIBLE FOR THE ACTS OF SESMAN AND DUSLAK, IF THEY DID ANYTHING AT ALL

i. Sunrise Can Present Affidavit Testimony That Sesman And Duslak Were Independent Contractors.

Cox argues Sunrise failed to meet its burden in stating it had no liability for the act of its independent contractors, Sesman and Duslak. Sunrise has admitted that it had a maintenance contract with Sesman and Duslak. Employees of Sunrise's previous management company will testify to their employee status. By all accounts, they were independent contractors and not actual employees.²¹ Sunrise never employed them directly as employees of the homeowners association.²² Sesman and Duslak had their own equipment, made their own hours and had the discretion to do particular tasks as they saw fit.²³ Thus Sunrise has met its burden to prove Sesman and Duslak were independent contractors.

Plaintiff has not done anything to prove his case that Sesman or Duslak did pull the cable out. In his affidavit, Plaintiff tried to make the huge logical leaps that if Cox did not pull out the cable, then it must have been Sesman or Duslak.²⁴ This is an argument, not based on any evidence whatsoever. It is complete speculation. That wire could have been loosened by any one of a number of reasons that no one seems to know. Further, as Sunrise stated in its motion, Sesman and Duslak would have had no affirmative duty to do anything to fix the exposed cable because it was located on Plaintiff's private property, his driveway.

²⁰ See, *Frances T v Village Green Owners Assn.*, 42 Cal.3d 490, 503, 723 P.2d 573, 579 (1986).

²¹ See, Affidavit of Amanda Davis, attached hereto as **Exhibit "A."**

²² *Id.*

²³ *Id.*

ii. *Plaintiff's Self-Serving Affidavits Do Not Create An Issue Of Material Fact*

The burden is on Plaintiff to counter with admissible evidence that first (1) Sesman and Duslak pulled the cable out and (2) Sunrise had a sufficient amount of control over those two. Plaintiff can do neither. His only “evidence” are self-serving affidavits from Plaintiff and his wife that Sunrise directed the duties of the lawn contractors. However, those affidavits are based on hearsay from what they say that the landscapers told them. Thus, they are not evidence at all, and the Court cannot rely on it to create a triable issue of material fact at all. Additionally, the transcript from the interview with Tom Bastian that Plaintiff attaches as Exhibit 3 to his Opposition is a hearsay statement that Plaintiff cannot use to meet his burden. Even further, Mr. Bastian worked for a landscape company that Sunrise used *after* it retained Sesman and Duslak, J&G Lawn Maintenance and *after* the accident. Sunrise’s relationship with J&G and its conversation with J&G employees has no bearing on its relationship with Sesman and Duslak and this particular accident

In fact, Plaintiff cannot present any admissible evidence to support their statements. As Sunrise has already stated about these affidavits, a conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.²⁵ Without something more, either independent eyewitness testimony that Sesman and Duslak did what Plaintiff accuses them of, Plaintiff is just speculating.

III. CONCLUSION

The Court must look at this accident’s very basic causes and ask whether Sunrise had a responsibility for either the cause, the maintenance or to discover the hazard; which there are no triable issues of material fact to support. Plaintiff tripped over a cable located on his driveway. The facts and applicable law make clear Sunrise has no more responsibility for that condition than it would have for an oil patch that a homeowner slipped on. The facts and applicable law also make clear that Sunrise met its burden in showing Sesman and Duslak were independent contractors and the other parties can do

²⁴ See, Plaintiff’s Affidavit at ¶ 15.

²⁵ See, *F.T.C. v. Publ’g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), as amended (Apr. 11, 1997) (“a conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact”); *Dennison v. Allen Group Leasing Co.*, 110 Nev. 181, 185, 871 P.2d 288, 291 (1994) (holding a bare record and unsupported affidavit cannot support a motion for summary judgment); *Clauson v. Lloyd*, 103 Nev. 432, 434, 743 P.2d 631, 633 (1987) (holding that a self-serving affidavit alone could not support a motion for summary judgment).

nothing more than speculate as to what they did without any supporting proof. Because the law and community governing documents make clear Plaintiff has the responsibility for the crevice and driveway, and that Sunrise had no responsibility for the area, and neither Plaintiff nor Cox has produced any *admissible* evidence to create triable issues of material fact, the law directs this court to grant summary judgment for Sunrise.

DATED this 10th day of August, 2018.

SPRINGEL & FINK LLP

/s/ Jonathan C. Pattillo, Esq.

By:

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Nevada Bar No. 6296
JONATHAN C. PATTILLO, ESQ.
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CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Julianna K. Ferguson, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada, 89144.

On **August 10, 2018**, I served the document described as **DEFENDANT, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S OMNIBUS REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** on the following parties:

*****SEE ELECTRONIC SERVICE LIST*****

- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
- _____ VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.
- X VIA ELECTRONIC SERVICE: by submitting the foregoing to the Court's E-filing System for Electronic Service upon the Court's Service List pursuant to EDCR 8. The copy of the document electronically served bears a notation of the date and time of service. The original document will be maintained with the document(s) served and be made available, upon reasonable notice, for inspection by counsel or the Court.

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

/s/ Julianna K. Ferguson

 An employee of Springel & Fink LLP

EXHIBIT A

AFFIDAVIT OF AMANDA DAVIS IN SUPPORT OF SUNRISE VILLAS IX HOMEOWNER'S
ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Amanda Davis, declare as follows:

1. I am over eighteen (18) years of age and have personal knowledge of the facts set forth herein, and I am competent to testify to these facts.
2. I previously worked for PW James Management, which managed Sunrise Villas IX Homeowners Association during the year 2016. .
3. I make this Affidavit based upon my personal knowledge and observations, and that I am competent to testify as to the matters set forth herein.
4. Sunrise employed two gentleman named Richard Duslak and Justin Sesman as Independent Contractors as lawn maintenance workers.
5. They kept their own hours, had their own equipment and had a wide amount of discretion to perform their own duties.
6. Sunrise gave them basic projects such as lawn maintenance and then they determined the means in which to go about them.
7. I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of Nevada.

FURTHER THE AFFIANT SAYETH NAUGHT

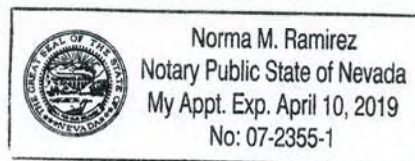
DATED this 6 day of August, 2018.


Amanda Davis

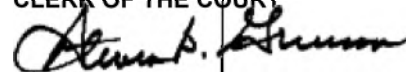
SUBSCRIBED and SWORN to before me

1 this 6TH day of August, 2018.

2
3 Norma Ramirez
4 Notary Public



Electronically Filed
9/26/2018 9:08 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ORD**

2 DAVID F. SAMPSON, ESQ.,
3 Nevada Bar No. 6811
4 LAW OFFICE OF DAVID SAMPSON
5 630 S. 3rd Street
6 Las Vegas, NV 89101
7 Tel: 702-605-1099
8 Fax: 888-209-4199
9 Email: david@davidsampsonlaw.com
10 *Attorney for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,)

14 Plaintiff,)

15 vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

16 COX COMMUNICATIONS LAS VEGAS,)
17 INC., D/B/A COX COMMUNICATIONS,)
18 IES RESIDENTIAL, INC., SUNRISE)
19 VILLAS IX HOMEOWNERS)
20 ASSOCIATION, KEVIN BUSHBAKER,)
21 PWJAMES MANAGEMENT &)
22 CONSULTING, LLC., et al.)

23 Defendants.)

24 **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

25 The motion for summary judgment filed by Defendant SUNRISE VILLAS IX
26 HOMEOWNERS ASSOCIATION, having come on before this Court the 11th day of
27 September, 2018, the parties appearing by and through their respective counsel of record, the
28 Court having reviewed the pleadings, heard argument, and good cause appearing:

SEP 14 2018

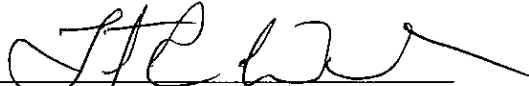

1 THE COURT HEREBY FINDS there is a duty on the part of the HOA to inspect and
2 maintain common elements as well as components such as the subject cable which travel from
3 one common area, through additional common areas, to other common areas.
4

5 THE COURT FURTHER FINDS the seam between the subject driveway and the
6 subject cub/gutter area qualifies as a common area, and is certainly qualifies as a fixture that
7 lies partially within and partially outside the designated area of a unit, or any portion thereof
8 serving more than one unit or any portion of the common elements, and is therefore part of the
9 common elements.
10

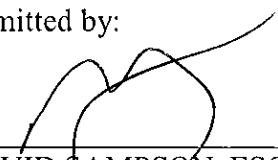
11 THE COURT FURTHER FINDS the HOA has certain nondelegable duties regarding
12 work performed by "independent contractors" on units and/or common areas that may subject
13 the HOA to liability for the subject loss.

14 IT IS THEREFORE ORDERED ADJDGED AND DECREED that the said motion for
15 summary judgment be, and hereby is DENIED.
16

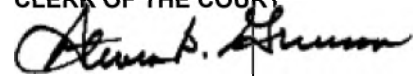
17
18 DATED this 20 day of September, 2018

19 
20 DISTRICT JUDGE
21 

21 Submitted by:

22 
23 _____
24 DAVID SAMPSON, ESQ.
25 LAW OFFICE OF DAVID SAMPSON
26 630 S. Third St.
27 Las Vegas, Nevada 89101
28 Fax No: 888-209-4199
Attorney for Plaintiff

Electronically Filed
9/26/2018 9:41 AM
Steven D. Grierson
CLERK OF THE COURT



1 **NOE**

2 DAVID F. SAMPSON, ESQ.,
3 Nevada Bar No. 6811
4 LAW OFFICE OF DAVID SAMPSON
5 630 S. 3rd Street
6 Las Vegas, NV 89101
7 Tel: 702-605-1099
8 Fax: 888-209-4199
9 Email: david@davidsampsonlaw.com
10 *Attorney for Plaintiff*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 SIMONE RUSSO,)

9 Plaintiff,)

10 vs.)

CASE NO: A-17-753606-C
DEPT. NO: XVI

11 COX COMMUNICATIONS LAS VEGAS,)
12 INC., D/B/A COX COMMUNICATIONS,)
13 IES RESIDENTIAL, INC., SUNRISE)
14 VILLAS IX HOMEOWNERS)
15 ASSOCIATION, J & G LAWN)
16 MAINTENANCE, KEVIN BUSHBAKER,)
17 PWJAMES MANAGEMENT &)
18 CONSULTING, LLC., AND DOES I - V,)
19 and ROE CORPORATIONS I - V,)
inclusive,)

Defendants.)

NOTICE OF ENTRY

20 TO: All Defendants
21 TO: Counsel for Defendants

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order Denying
23 Defendant's Motion for Summary Judgment was entered in the above entitled matter on the 26th
24 day of September, 2018.

25 ///

26 ///

1 a copy of which is attached hereto.

2 DATED THIS 26th day of September, 2018

3 LAW OFFICE OF DAVID SAMPSON, LLC.

4
5 BY: /s/ *David Sampson*

6 DAVID SAMPSON, ESQ.

7 Nevada Bar No. 6811

8 LAW OFFICE OF DAVID SAMPSON

9 630 S. 3rd Street

10 Las Vegas, NV 89101

11 Tel: 702-605-1099

12 Fax: 888-209-4199

13 Email: david@davidsampsonlaw.com

14 *Attorney for Plaintiff*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, and that on this 26th day of September, 2018, I served a copy of the foregoing **NOTICE OF ENTRY** as follows:

X Electronic Service via the Court's Online filing System

ANTHONY SGRO, ESQ.
720 S. Seventh St. 3rd Floor
Las Vegas NV 89101
Attorney for Defendant
BUSHBAKER

WILL LEMKUL, ESQ.
CHRISTOPHER A. TURTZO, ESQ.
3770 Howard Hughes, Pkwy Suite 170
Las Vegas NV 89169
Attorney for Defendant
IES RESIDENTIAL INC. and
COX COMMUNICATIONS

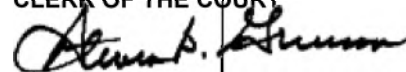
LEONARD FINK, ESQ.
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Attorney for Defendant
SUNRISE VILLAS IX HOA

DAVID CLARK, ESQ.
9900 Covington Cross Dr., Suite 120
Las Vegas, NV 89144
Attorney for Defendant
J. CHRIS SCARCELLI

/s/ Amanda Nalder
An employee of The Law Office of David Sampson, LLC

EXHIBIT “1”

Electronically Filed
9/26/2018 9:08 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ORD**

2 DAVID F. SAMPSON, ESQ.,
3 Nevada Bar No. 6811
4 LAW OFFICE OF DAVID SAMPSON
5 630 S. 3rd Street
6 Las Vegas, NV 89101
7 Tel: 702-605-1099
8 Fax: 888-209-4199
9 Email: david@davidsampsonlaw.com
10 *Attorney for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,)

14 Plaintiff,)

15 vs.)

CASE NO: A-17-753606-C

DEPT. NO: XVI

16 COX COMMUNICATIONS LAS VEGAS,)
17 INC., D/B/A COX COMMUNICATIONS,)
18 IES RESIDENTIAL, INC., SUNRISE)
19 VILLAS IX HOMEOWNERS)
20 ASSOCIATION, KEVIN BUSHBAKER,)
21 PWJAMES MANAGEMENT &)
22 CONSULTING, LLC., et al.)

23 Defendants.)

24 **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

25 The motion for summary judgment filed by Defendant SUNRISE VILLAS IX
26 HOMEOWNERS ASSOCIATION, having come on before this Court the 11th day of
27 September, 2018, the parties appearing by and through their respective counsel of record, the
28 Court having reviewed the pleadings, heard argument, and good cause appearing:

SEP 14 2018

1 THE COURT HEREBY FINDS there is a duty on the part of the HOA to inspect and
2 maintain common elements as well as components such as the subject cable which travel from
3 one common area, through additional common areas, to other common areas.
4

5 THE COURT FURTHER FINDS the seam between the subject driveway and the
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8 serving more than one unit or any portion of the common elements, and is therefore part of the
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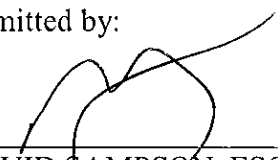
11 THE COURT FURTHER FINDS the HOA has certain nondelegable duties regarding
12 work performed by "independent contractors" on units and/or common areas that may subject
13 the HOA to liability for the subject loss.

14 IT IS THEREFORE ORDERED ADJDGED AND DECREED that the said motion for
15 summary judgment be, and hereby is DENIED.
16

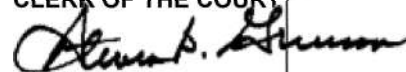
17
18 DATED this 20 day of September, 2018

19 
20 DISTRICT JUDGE
21 

21 Submitted by:

22 
23 _____
24 DAVID SAMPSON, ESQ.
25 LAW OFFICE OF DAVID SAMPSON
26 630 S. Third St.
27 Las Vegas, Nevada 89101
28 Fax No: 888-209-4199
Attorney for Plaintiff

Electronically Filed
11/20/2018 11:25 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ODM**

2 LEONARD T. FINK, ESQ.

3 Nevada Bar No.: 6296

4 THOMAS G. LEVINE, ESQ.

5 Nevada Bar No.: 14230

6 **SPRINGEL & FINK LLP**

7 10655 Park Run Drive, Suite 275

8 Las Vegas, Nevada 89144

9 Telephone: (702) 804-0706

10 Facsimile: (702) 804-0798

11 E-Mail: *lfink@springelfink.com*

12 *tlevine@springelfink.com*

13 Attorneys for Defendant,

14 *SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,

14 Plaintiff,

15 vs.

16 COX COMMUNICATIONS LAS VEGAS, INC.,
17 DBA COX COMMUNICATIONS; IES
18 RESIDENTIAL, INC.; SUNRISE VILLAS IX
19 HOMEOWNERS ASSOCIATION; J & G LAWN
20 MAINTENANCE; KEVIN BUSHBAKER;
21 PWJAMES MANAGEMENT & CONSULTING,
22 LLC; AND DOES 1-V, and ROE
23 CORPORATIONS I-V, inclusive,

24 Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

AMENDED

**ORDER DENYING SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION'S MOTION
FOR SUMMARY JUDGMENT**

24 Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "Sunrise")
25 brought its Motion for Summary Judgment on Tuesday, September 11, 2018 at 10:00 a.m. Jonathan C.
26 Pattillo appeared for Sunrise. David Samson appeared for Plaintiff, SIMONE RUSSO. Christopher Turtzo
27 appeared for Defendants, COX COMMUNICATIONS LAS VEGAS, INC. and IES RESIDENTIAL,
28

1 INC. David Clark appeared for Defendant, CHRIS SCARCELLI. After considering the papers and
2 arguments of counsel, the Court ruled as follows:

3 After considering all papers and arguments of counsel, the Court ruled as follows:

- 4 1. Sunrise Villas' Motion is denied without prejudice.
- 5 2. Sunrise Villas had a duty to inspect and maintain common elements and components.
- 6 3. Sunrise Villas has certain non-delegable duties regarding work performed by independent
7 contractors.
- 8 4. Whether or not the seam between the subject driveway and the subject curb gutter qualifies
9 as a "common area" is a question of fact ~~that requires expert testimony.~~ JCO

10 DATED this 15th day of ~~October~~, 2018

11 November

12 JFCOJ
13 DISTRICT COURT JUDGE

14 Respectfully submitted,

15 SPRINGEL & FINK, LLP

16
17 By: [Signature]

18 LEONARD T. FINK, ESQ.

19 Nevada Bar No.: 6296

20 THOMAS G. LEVINE, ESQ.

21 Nevada Bar No.: 14230

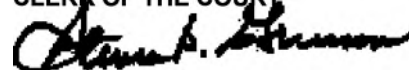
22 10655 Park Run Drive, Suite 275

23 Las Vegas, Nevada 89144

24 Attorneys for Defendant,

25 *SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION*
26
27
28

Electronically Filed
 11/30/2018 12:42 PM
 Steven D. Grierson
 CLERK OF THE COURT



NEO
 LEONARD T. FINK, ESQ.
 Nevada Bar No. 6296
 THOMAS G. LEVINE, ESQ.
 Nevada Bar No. 14230
SPRINGEL & FINK LLP
 10655 Park Run Drive, Suite 275
 Las Vegas, Nevada 89144
 Telephone: (702) 804-0706
 Facsimile: (702) 804-0798
 E-Mail: *lfink@springelfink.com*
tlevine@springelfink.com

Attorneys for Defendant,
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

**DISTRICT COURT
 CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiffs,

v.

COX COMMUNICATIONS LAS VEGAS, INC.
 D/B/A COX COMMUNICATIONS; IES
 RESIDENTIAL, INC.; SUNRISE VILLAS IX
 HOMEOWNERS ASSOCIATION; J&G LAWN
 MAINTENANCE; KEVIN BUSHBAKER; PW
 JAMES MANAGEMENT & CONSULTING,
 LLC; AND DOES 1-V, AND ROE
 CORPORATIONS I-V, inclusive

Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

**NOTICE OF ENTRY OF AMENDED ORDER
 DENYING SUNRISE VILLAS IX
 HOMEOWNERS ASSOCIATION'S MOTION
 FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE, that an Amended Order Denying Sunrise Villas IX Homeowners Association's Motion for Summary Judgment was entered in the above-entitled Court on November 20,

///

///

///

2018, a copy of which is attached hereto as **Exhibit “A.”**

DATED this 30th day of November, 2018.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

THOMAS G. LEVINE, ESQ.

Nevada Bar No. 14230

10655 Park Run Drive, Ste. 275

Las Vegas, Nevada 89144

Attorneys for Defendant,

*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

CERTIFICATE OF SERVICE
Simone Russo v. Cox Communications Las Vegas, Inc., et al.
District Court Case No. A-17-753606-C

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

I, Julianna K. Ferguson, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 10655 Park Run Drive, Suite 275, Las Vegas, Nevada, 89144.

On **November 30, 2018**, I served the document described as **NOTICE OF ENTRY OF AMENDED ORDER DENYING SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** on the following parties:

*****SEE ELECTRONIC SERVICE LIST*****

- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
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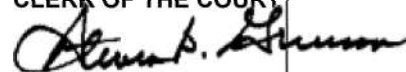
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Julianna K. Ferguson

 An employee of Springel & Fink LLP

EXHIBIT A

Electronically Filed
11/20/2018 11:25 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ODM**

2 LEONARD T. FINK, ESQ.

3 Nevada Bar No.: 6296

4 THOMAS G. LEVINE, ESQ.

5 Nevada Bar No.: 14230

6 **SPRINGEL & FINK LLP**

7 10655 Park Run Drive, Suite 275

8 Las Vegas, Nevada 89144

9 Telephone: (702) 804-0706

10 Facsimile: (702) 804-0798

11 E-Mail: *lfink@springelfink.com*

12 *tlevine@springelfink.com*

13 Attorneys for Defendant,

14 *SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 SIMONE RUSSO,

14 Plaintiff,

15 vs.

16 COX COMMUNICATIONS LAS VEGAS, INC.,
17 DBA COX COMMUNICATIONS; IES
18 RESIDENTIAL, INC.; SUNRISE VILLAS IX
19 HOMEOWNERS ASSOCIATION; J & G LAWN
20 MAINTENANCE; KEVIN BUSHBAKER;
21 PWJAMES MANAGEMENT & CONSULTING,
22 LLC; AND DOES 1-V, and ROE
23 CORPORATIONS I-V, inclusive,

24 Defendants.

Case No.: A-17-753606-C

Dept. No.: XVI

AMENDED

**ORDER DENYING SUNRISE VILLAS IX
HOMEOWNERS ASSOCIATION'S MOTION
FOR SUMMARY JUDGMENT**

24 Defendant, SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "Sunrise")
25 brought its Motion for Summary Judgment on Tuesday, September 11, 2018 at 10:00 a.m. Jonathan C.
26 Pattillo appeared for Sunrise. David Samson appeared for Plaintiff, SIMONE RUSSO. Christopher Turtzo
27 appeared for Defendants, COX COMMUNICATIONS LAS VEGAS, INC. and IES RESIDENTIAL,
28

1 INC. David Clark appeared for Defendant, CHRIS SCARCELLI. After considering the papers and
2 arguments of counsel, the Court ruled as follows:

3 After considering all papers and arguments of counsel, the Court ruled as follows:

- 4 1. Sunrise Villas' Motion is denied without prejudice.
- 5 2. Sunrise Villas had a duty to inspect and maintain common elements and components.
- 6 3. Sunrise Villas has certain non-delegable duties regarding work performed by independent
7 contractors.
- 8 4. Whether or not the seam between the subject driveway and the subject curb gutter qualifies
9 as a "common area" is a question of fact ~~that requires expert testimony.~~ JCO

10 DATED this 15th day of ~~October~~, 2018

11 November

12 JFCOJ
13 DISTRICT COURT JUDGE

14 Respectfully submitted,

15 SPRINGEL & FINK, LLP

16
17 By:

18 LEONARD T. FINK, ESQ.

19 Nevada Bar No.: 6296

20 THOMAS G. LEVINE, ESQ.

21 Nevada Bar No.: 14230

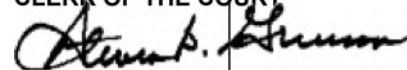
22 10655 Park Run Drive, Suite 275

23 Las Vegas, Nevada 89144

24 Attorneys for Defendant,

25 *SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION*

Electronically Filed
9/4/2019 11:21 AM
Steven D. Grierson
CLERK OF THE COURT



DFLT
DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)
)
Plaintiff,)
)
vs.)
)
COX COMMUNICATIONS LAS VEGAS,)
)
INC., D/B/A COX COMMUNICATIONS,)
)
IES RESIDENTIAL, INC., SUNRISE)
)
VILLAS IX HOMEOWNERS)
)
ASSOCIATION, J & G LAWN)
)
MAINTENANCE, KEVIN BUSHBAKER,)
)
PWJAMES MANAGEMENT &)
)
CONSULTING, LLC., J. CHRIS)
)
SCARCELLI, DOE LANDSCAPER,)
)
RICHARD DUSLAK, JUSTIN SESMAN,)
)
AND DOES I V, and ROE)
)
CORPORATIONS I V, inclusive,)
)
Defendants.)

CASE NO: A-17-753606-C
DEPT. NO: XVI

DEFAULT

It appearing from the files and records in the above entitled action that RICHARD DUSLAK, Defendant herein, being duly served with a copy of the Summons and Amended Complaint on the 18th day of February, 2018; that more than 20 days, exclusive of the day of service, having expired since service upon the Defendant(s); that no answer or other appearance

1 having been filed and no further time having been granted, the default of the above-named
2 Defendant(s) for failing to answer or otherwise plead to Plaintiff's Complaint is hereby entered.

3 STEVEN D. GRIERSON
4 CLERK OF COURT

5
6 By:  9/4/2019

7 Deputy Clerk

8 Michelle McCarthy A-17-753606-C

9 LAW OFFICE OF DAVID SAMPSON, LLC.

10 BY: 

11 DAVID SAMPSON, ESQ.

12 Nevada Bar No.6811

13 LAW OFFICE OF DAVID SAMPSON

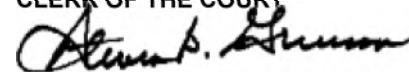
14 630 S. 3rd Street

15 Las Vegas, Nevada 89101

16 Fax No: 888-209-4199

17 Attorney for Plaintiff

Electronically Filed
9/5/2019 1:44 PM
Steven D. Grierson
CLERK OF THE COURT



SUMM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,

Plaintiff,

vs.

CASE NO: A-17-753606-C

DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,
INC., D/B/A COX COMMUNICATIONS,
IES RESIDENTIAL, INC., SUNRISE

VILLAS IX HOMEOWNERS

ASSOCIATION, J & G LAWN

MAINTENANCE, KEVIN BUSHBAKER,

PWJAMES MANAGEMENT &

CONSULTING, LLC., J. CHRIS

SCARCELLI, DOE LANDSCAPER,

RICHARD DUSLAK, JUSTIN SESMAN,

AND DOES I - V, and ROE

CORPORATIONS I - V, inclusive,

Defendants.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW

To THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

JUSTIN SESMAN

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of
LAW OFFICE OF DAVID SAMPSON

By:

David F. Sampson, Esq.,
Nevada Bar No: 6811
630 S 3rd Street
Las Vegas, NV 89101
Attorney for Plaintiff

CLERK OF COURT

Deputy Clerk

County Court House
200 Lewis Avenue
Las Vegas, Nevada 89155

1/17/2018

Date

Shimaya Ladson

NOTE: When service is by publication, add a brief statement of the object of the action. See NRCP 4(b). Revised 03/99/jb

AFFIDAVIT OF SERVICE

Case: A-17-753606-C	Court: District Court	County: Clark, NV	Job: <u>1996386</u>
Plaintiff / Petitioner: Simone Russo		Defendant / Respondent: Cox Communications et al	
Received by: Serve Vegas LLC		For: DAVID F. SAMPSON	
To be served upon: Justin Sesman			

I, Adam Schwartz, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Lamar Love, 4775 TOPAZ ST APT 235, LAS VEGAS, NV 89121

Manner of Service: Substitute Service - Usual place of abode, Feb 13, 2018, 5:46 pm PST

Documents: Amended complaint, Summons

Additional Comments:

1) Unsuccessful Attempt: Feb 8, 2018, 5:53 pm PST at 4775 TOPAZ ST APT 249, LAS VEGAS, NV 89121
Spoke to Hispanic male who recently moved into unit. He does not recognize defendant's name.

2) Successful Attempt: Feb 13, 2018, 5:46 pm PST at 4775 TOPAZ ST APT 235, LAS VEGAS, NV 89121 received by Co-resident Lamar Love. Age: 35; Ethnicity: African American; Gender: Male; Weight: 230; Height: 6'2"; Hair: Black; Eyes: Brown;

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



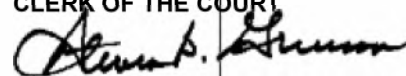
02/13/2018

Adam Schwartz
R-088182

Date

Serve Vegas LLC
9811 W. Charleston Blvd 2-732
Las Vegas, NV 89117
702-508-1055

Electronically Filed
9/13/2019 3:41 PM
Steven D. Grierson
CLERK OF THE COURT



DFLT

DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

SIMONE RUSSO,)

Plaintiff,)

vs.)

CASE NO: A-17-753606-C
DEPT. NO: XVI

COX COMMUNICATIONS LAS VEGAS,)
INC., D/B/A COX COMMUNICATIONS,)
IES RESIDENTIAL, INC., SUNRISE)
VILLAS IX HOMEOWNERS)
ASSOCIATION, J & G LAWN)
MAINTENANCE, KEVIN BUSHBAKER,)
PWJAMES MANAGEMENT &)
CONSULTING, LLC., J. CHRIS)
SCARCELLI, DOE LANDSCAPER,)
RICHARD DUSLAK, JUSTIN SESMAN,)
AND DOES I V, and ROE)
CORPORATIONS I V, inclusive,)

Defendants.)

DEFAULT

It appearing from the files and records in the above entitled action that JUSTIN SESMAN, Defendant herein, being duly served with a copy of the Summons and Amended Complaint on the 13th day of February, 2018; that more than 20 days, exclusive of the day of service, having expired since service upon the Defendant(s); that no answer or other appearance

1 having been filed and no further time having been granted, the default of the above-named
2 Defendant(s) for failing to answer or otherwise plead to Plaintiff's Complaint is hereby entered.

3 STEVEN D. GRIERSON

4 CLERK OF COURT

5
6 By:  9/16/2019

7 Deputy Clerk

8 Michelle McCarthy

A-17-753606-C

9
10 LAW OFFICE OF DAVID SAMPSON, LLC.

11 BY: 

12 DAVID SAMPSON, ESQ.

13 Nevada Bar No. 6811

14 LAW OFFICE OF DAVID SAMPSON

15 630 S. 3rd Street

16 Las Vegas, Nevada 89101

17 Fax No: 888-209-4199

18 Attorney for Plaintiff