

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 4

ROBERT L. EISENBERG (SBN 950)
SARAH M. MOLLECK (SBN 13830)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868
775-786-9716 fax
rle@lge.net
[smm@lge.net](mailto:mm@lge.net)
ATTORNEYS FOR APPELLANT

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90.	Notice of Entry	4/22/21	12	2652-2654
	<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

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	<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
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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
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	<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
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EXHIBIT “B”



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Agreement") is entered into by and between:

1. Dr. SIMONE RUSSO (hereinafter "PLAINTIFF");
2. SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. – but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners;
3. IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;
4. COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;
5. PW JAMES MANAGEMENT & CONSULTING, LLC (hereinafter "PW JAMES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, employees, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers (potentially Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc.);
6. KEVIN BUSHBAKER (hereinafter "BUSHBAKER") and his successors, assigns, heirs, and insurers; and
7. CHRIS SCARCELLI (hereinafter "SCARCELLI") and his successors, assigns, heirs, and insurers.

Any of the above-named entities may be referred to as a "PARTY" herein or all of the above-named entities may collectively be referred to as the "PARTIES" herein and/or "SETTLING PARTIES." SUNRISE, IES, COX, PW JAMES, BUSHBAKER and SCARCELLI will also be referred to as "DEFENDANTS."

This Agreement shall be effective as of the date the Agreement is fully executed.

RECITALS

This Agreement is entered into with reference to the following facts:

PLAINTIFF asserts that on or about August 20, 2015 he tripped and fell when exiting a cab in front of the home that he rented from BUSHBAKER. PLAINTIFF subsequently filed a lawsuit entitled *Russo v. Cox Communications Las Vegas, Inc. D/B/A Cox Communications, et al.*, Eighth Judicial District Court Case No. A-17-753606-C, alleging that his injuries were caused by DEFENDANTS' negligence and seeking damages. This action shall be referred to as the "SUBJECT ACTION".

The PARTIES have conducted settlement discussions and direct arms-length negotiations and now wish to settle, dismiss, release, discharge, and terminate any and all claims, demands, controversies, causes of action, damages, rights, liabilities, and obligations between them relating to the SUBJECT ACTION.

The PARTIES hereby acknowledge the following: Under the Medicare Secondary Payer ("MSP") statute, 42 U.S.C. §1395y(b), and its accompanying regulations ("the MSP Provisions"), the Centers for Medicare and Medicaid Services (the "CMS"), in certain circumstances, have an obligation to seek reimbursement of conditional payments made by the Medicare program (Title XVIII of the Social Security Act) (the "Medicare Program") for the claim, items, and services relating to injuries allegedly sustained by PLAINTIFF as a consequence of the SUBJECT ACTION. The PARTIES seek to fully comply with all MSP Provisions as further detailed throughout this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, and subject to District Court's approval, the PARTIES hereto agree to enter into this settlement as follows:

1. SETTLEMENT PAYMENT TERMS AND CONDITIONS.

THE PARTIES hereby agree that in full and complete settlement of the claims in the SUBJECT ACTION, SUNRISE'S insurer will pay PLAINTIFF the total sum of ONE-HUNDRED-FORTY THOUSAND DOLLARS (\$140,000.00) for itself and PW JAMES. IES' insurer, on behalf of IES and COX, will pay PLAINTIFF the total sum of TWO-HUNDRED FIFTEEN THOUSAND DOLLARS (\$215,000). Both BUSHBAKER and SCARCELLI will pay nothing towards the settlement and agree to waive any rights that they may have from any other settled PARTY for fees and/or costs.

The settlement payments expressly include the payment of any and all damages PLAINTIFF may have recovered in the SUBJECT ACTION, including, but not limited to, general damages, special damages, attorneys' fees, expert fees, costs, prejudgment, liens and any and all other damages. PLAINTIFF acknowledges that the settlement funding is being paid by SUNRISE's, IES' and COX's insurers, and SUNRISE, IES, COX and PW JAMES shall not in any way act as a guarantor of any payments that are being funded by its insurer, but that full funding is a condition precedent to this Agreement being binding.

SUNRISE and IES agree that they will cause their insurers to deliver drafts for \$140,000.00 and \$215,000.00, respectively, made payable to "Simone Russo and his attorney, The Law Office of David Sampson, LLC" to RUSSO's counsel within fourteen days of PLAINTIFF'S signing this Agreement. The Law Office of David Sampson's referencing Tax ID No. is 45-3548937. These settlement funds shall then be held in trust until the Stipulation and Order for Dismissal with Prejudice of the SUBJECT ACTION has been signed by PLAINTIFF'S counsel and provided to counsel for DEFENDANTS. The PARTIES agree that none of the consideration for this release is for lost wages or earning capacity whether past, future or present, and that all sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

2. COVENANT NOT TO SUE AND DISMISSAL.

Upon full execution of this Confidential Agreement and receipt of the settlement payments of \$140,000.00, and \$215,000.00, PLAINTIFF shall dismiss his operative Complaint with prejudice as to DEFENDANTS. BUSHBAKER shall dismiss his Cross-Claim against COX and IES with prejudice. The PARTIES also agree that the Court shall retain jurisdiction to ensure that PLAINTIFF receives all settlement proceeds due under this Agreement.

Furthermore, PLAINTIFF covenants and agrees that he has not and that it will not, bring any other claim, action, suit or proceeding against DEFENDANTS (including their insurers except as noted on page 1 paragraph 2) related to the SUBJECT ACTION, except to enforce the terms of this Agreement.

3. WARRANTY AND HOLD HARMLESS REGARDING NON-ASSIGNMENT OF CLAIMS.

Each PARTY to this Agreement hereby represents and warrants to the others that it is a rightful owner of all rights, title, and interest in every claim and other matter which it releases herein and has not heretofore sold, assigned, conveyed or otherwise transferred all or a portion of any interest or any claim which they may have against the others or each of the other's respective parents, affiliates, subsidiaries, predecessors, and each other person, firm, insurer or other entity released and discharged pursuant to this Agreement. The PARTIES upon a proper and timely tender agree to hold each other and each of the other's parents, affiliates, subsidiaries, predecessors, and each other person, firm, insurer or other entity released pursuant to this Agreement harmless from any liabilities, claims, demands, damages, costs, expenses and attorneys' fees incurred as a



result of any person asserting any claim or cause of action based upon any such assignment or transfer.

4. RELEASE.

i) In consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, including, but not limited to, all releases, dismissals, waivers, covenants, warranties, and representations, PLAINTIFF: hereby releases and forever discharges DEFENDANTS and all of their heirs, executors, administrators, insurers, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates and related entities, and each of the foregoing respective officers, directors, stockholders, controlling persons, principals, agents, servants, employees **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the Stipulation, Attached as Exhibit "A")** sureties, attorneys, consultants, and experts, who are or may ever become liable to them, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, expert fees, costs, interest, and any other expenses of any kind and nature whatsoever, at law or in equity, direct or derivative, known or unknown, fixed, liquidated or contingent, tort, contract, statutory or mixed, by reason of any act or omission, matter, cause or thing arising out of or connected with the SUBJECT ACTION that was or could have been filed, including any representation, misrepresentation or omission in connection with any of the above, any and all claims for incidental, consequential, ensuing, or resulting damage therefrom, including, without limitation, claims for injuries, or any other economic loss or non-economic loss, the prosecution of any complaint or cross-complaint, and the defense, handling or settlement of the actions, as well as any and all matters and issues raised, or which could have been raised, or in the future might have been raised. It is the intention of the PARTIES to hereby fully, finally, and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, as to the released matters.

ii) Nothing in this release shall release, discharge, or in any way impact PLAINTIFF's rights against RICHARD DUSLAK and/or JUSTIN SESMAN in any manner (per the Stipulation attached as Exhibit "A"). Additionally, any rights RICHARD DUSLAK and/or JUSTIN SESMAN have had, currently have, or may have, other than those specifically disposed of by the Court in a prior hearing regarding good faith settlement, shall not be released, discharged or in any way impacted by this release. PLAINTIFF shall retain all rights to pursue any claims against RICHARD DUSLAK and/or JUSTIN SESMAN, and shall retain all powers to pursue any claims RICHARD DUSLAK and/or JUSTIN SESMAN have had, have, or may have if the same are ever obtained by PLAINTIFF **INCLUDING CLAIMS AGAINST ANY ACTUAL OR POTENTIAL INSURER OF DUSLAK AND/OR SESMAN.** ANY LANGUAGE IN THIS RELEASE THAT IS CONTRARY TO THE LANGUAGE OF THIS SPECIFIC PARAGRAPH, AND/OR ANY LANGUAGE THAT WOULD BE READ TO IN ANY WAY IMPACT PLAINTIFF'S RIGHTS AGAINST RICHARD DUSLAK and/or JUSTIN SESMAN, THEIR INSURED, EMPLOYERS, OR ANY OTHER RELATED OR AFFILIATED PERSONS OR ENTITIES OR THE RIGHTS RICHARD DUSLAK and/or JUSTIN SESMAN HAVE HAD, HAVE, OR MAY HAVE AGAINST ANY PERSON OR ENTITY AT ANY TIME (INCLUDING PLAINTIFF'S RIGHTS TO PURSUE THE SAME ON BEHALF OF DUSLAK AND/OR SESMAN) SHALL BE DEEMED NULL AND VOID

iii) In further consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, including, but not limited to, all releases, dismissals, waivers, covenants, warranties, and representations, DEFENDANTS: hereby releases and forever discharge PLAINTIFF and every other DEFENDANT and all of their heirs, executors, administrators, insurers, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, partners, partnerships, parents, subsidiaries, affiliates and related entities, and each of the foregoing respective officers, directors, stockholders, controlling persons, principals, agents, servants, employees, representatives, and all persons, firms, and entities connected with them, including, without limitation, its insurers, sureties, attorneys, consultants, and experts, who are or may ever become liable to them, of and from any and all claims, demands, causes of action, obligations, liens, taxes, damages, losses, costs, attorneys' fees, expert fees, costs, interest, and any other expenses of any kind and nature whatsoever, at law or in equity, direct or derivative, known or unknown, fixed, liquidated or contingent, tort, contract, statutory or mixed, including any and all other potential entitlements that DEFENDANTS ever had, may now have or may hereafter have by reason of any act or omission, matter, cause or thing arising out of or connected with the SUBJECT ACTION that was or could have been filed, including any representation, misrepresentation or omission in connection with any of the above, any and all claims for incidental, consequential, ensuing, or resulting damage therefrom, including, without limitation, claims for injuries, or any other economic loss or non-economic loss, the prosecution of any complaint or cross-complaint, and the defense, handling or settlement of the actions, as well as any and all matters and issues raised, or which could have been raised, or in the future might have been raised. It is the intention of the PARTIES to hereby fully, finally, and forever settle and release any and all disputes and differences, known or unknown, suspected or unsuspected, as to the released matters.

iii) Notwithstanding any provision to the contrary, the PARTIES, and each of them, recognize and acknowledge that this Agreement is not intended to, and shall not, release any of the PARTIES from liability or damages, if any, caused by, or arising out of, the failure or refusal of a PARTY to perform any or all of the acts required on their respective parts to be done, as per the terms and conditions of this Agreement.

5. HANDLING OF SETTLEMENT FUNDS.

PLAINTIFF agrees that he will be solely and completely responsible for any necessary outstanding payments, repayments or reimbursements for treatment, liens (including attorney liens) and/or other types of damages related to the events that are the subject of the SUBJECT ACTION. PLAINTIFF further agrees to, UPON PROPER AND TIMELY TENDER, fully and expressly indemnify, save and hold harmless DEFENDANTS for and against all claims, liens (including attorney liens), demands, causes of action, damages, costs, losses, and liabilities, including, but not limited to, attorneys' fees and other legal costs, if any, arising out of any lien relating to the proceeds of any recovery or any failure to make any outstanding payments or repayments, as referenced above.

6. REPRESENTATION BY COUNSEL.

The PARTIES hereto acknowledge that they have been represented by or had the opportunity to rely upon counsel of their own choosing in the negotiations for the preparation of



this Agreement, that they have read this Agreement, have had its contents fully explained to them or had the opportunity to have the contents fully explained to them by such counsel, and are fully aware of and understand all of its terms and the legal consequences thereof. It is acknowledged that the PARTIES hereto have mutually participated in the preparation of this Agreement.

7. DISPUTED CLAIMS.

This Agreement represents the settlement of disputed claims and does not constitute any admission of liability by any PARTY to any other PARTY. Each PARTY to this Agreement hereby expressly denies any liability to the other PARTIES.

8. FURTHER ASSURANCES.

The PARTIES hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement, including, but not limited to the execution of the stipulation for dismissal with prejudice.

9. NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE IN THIS AGREEMENT.

Each of the PARTIES to this Agreement acknowledges that no other PARTY, nor any agent or attorney of any other PARTY has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce them to execute this Agreement, and acknowledges that he, she or it has not executed this instrument in reliance on any such promise, representation, or warranty not contained herein, and further acknowledges that there have not been, and are no other, agreements or understandings between the PARTIES relating to this settled litigation except as stated in this Agreement.

10. BENEFIT AND BURDEN.

This Agreement shall be binding upon and inure to the benefit of the PARTIES hereto and their respective heirs, representatives, successors, and assigns.

11. WAIVER AND AMENDMENT.

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by the PARTIES in interest at the time of the modification.

12. CAPTIONS AND INTERPRETATIONS.

Titles or captions contained herein are inserted as a matter of convenience and for reference, and no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Whenever the context hereof shall so require, the singular shall include the plural, and male gender shall include the female gender and the neuter, and vice versa. Furthermore, no

provision in this Agreement is to be interpreted for or against any PARTY because that PARTY or his legal representative drafted such provision.

13. AUTHORITY TO EXECUTE.

Each of the PARTIES represents and warrants that it is competent to enter into this Agreement and has the full right, power and authority to enter into and perform the obligations under this Agreement.

14. INTEGRATION.

This Agreement constitutes the entire, final, and integrated agreement between the PARTIES hereto pertaining to the subject matter hereof, fully supersedes all prior understandings, representations, warranties, and agreements between the PARTIES hereto, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all the PARTIES in interest at the time of the modification.

15. SEVERANCE.

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such provision will be deemed to be severed and deleted from the Agreement as a whole, and neither such provision nor its severance and deletion shall in any way affect the validity of the remaining provisions of the Agreement.

16. VOLUNTARY AGREEMENT.

The PARTIES hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

17. GOVERNING LAW.

This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the internal laws of the State of Nevada.

18. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Additionally, facsimile or scanned copies of signatures shall be considered an original signature.

19. ATTORNEYS' FEES.

i) Attorney's Fees and Costs: All PARTIES to this Agreement agree to bear their own attorneys' fees, expert fees and costs incurred in connection with the defense and prosecution of this action except as otherwise set forth in this Agreement. PLAINTIFF acknowledges that the



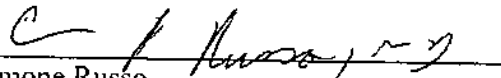
settlement payments it shall receive include full payment of all statutory attorney's fees, expert fees and costs that it could be entitled to receive.

ii) Attorney's Fees For Future Action: Should any PARTY hereto reasonably retain counsel for the purpose of enforcing or preventing the breach of any provision of this Agreement, the prevailing PARTY shall be reimbursed by the losing PARTY for all costs and expenses incurred thereby including, but not limited to, reasonable attorneys' fees, expert fees and costs.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO


Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

**COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS**

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

/s/
Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Maria J. Hoffman-Neinstein
Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: _____

**COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS**

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

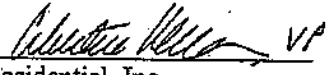
Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.



IES Residential, Inc.

Dated: _____

**COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS**

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

**COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS**

Stephane Houe
COX Communications Las Vegas, Inc., dba COX Communications

Dated: _____

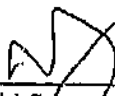
PW JAMES MANAGEMENT & CONSULTING, LLC

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 
David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

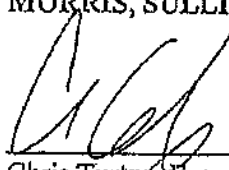
Dated: _____

SPRINGEL & FINK, LLP

By: _____
Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 
Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications


Dated: _____

SGRO & ROGER

By: _____
Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: 1/10/20

SPRINGEL & FINK LLP

By: 

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

APPROVED AS TO FORM AND CONTENT:

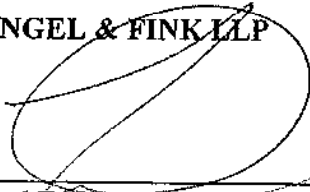
Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____
David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: 1/10/20

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

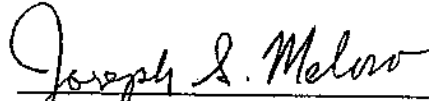
Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: _____
Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: 12/05/19

SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: _____

LIPSON NEILSON

By: _____

Julie Funai, Esq.
Attorneys for Defendant, Chris Scarcelli

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

**SUNRISE VILLAS IX HOMEOWNERS'
ASSOCIATION**

Sunrise Villas IX Homeowner's Association

Dated: 12/4/19

IES RESIDENTIAL, INC.

Christina Villan VP
IES Residential, Inc.

Dated: _____

**COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS**

COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date affixed by their signature.

Dated: _____

SIMONE RUSSO

Simone Russo

Dated: _____

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Sunrise Villas IX Homeowner's Association

Dated: _____

IES RESIDENTIAL, INC.

IES Residential, Inc.

Dated: 1/2/20

**COX COMMUNICATIONS LAS VEGAS, INC.
D/B/A COX COMMUNICATIONS**

Stephen Hou
COX Communications Las Vegas, Inc., dba COX
Communications

Dated: _____

**PW JAMES MANAGEMENT &
CONSULTING, LLC**

PW James Management & Consulting, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By: 

David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

By: 

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: _____

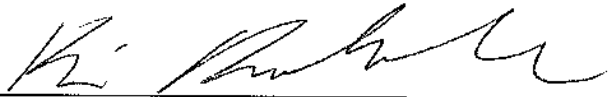
SGRO & ROGER

By: _____

Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

Dated: 11/22/2019

KEVIN BUSHBAKER



Kevin Bushbaker

Dated: _____

CHRIS SCARCELLI

Chris Scarcelli

SIGNATURES TO FOLLOW ON NEXT PAGE

APPROVED AS TO FORM AND CONTENT:

Dated: _____

LAW OFFICE OF DAVID SAMPSON, LLC

By: _____

David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By: _____

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

Dated: _____

MORRIS, SULLIVAN & LEMKUL

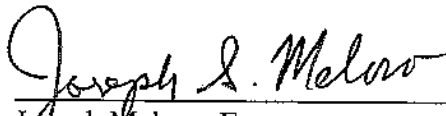
By: _____

Chris Turtzo, Esq.
Attorneys for Defendants,
IES Residential, Inc. and COX Communications Las
Vegas, Inc., dba COX Communications

Dated: 12/05/19

SGRO & ROGER

By: _____


Joseph Meloro, Esq.
Attorneys for Defendant, Kevin Bushbaker

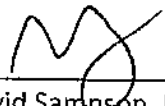
STIPULATION BETWEEN SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AND SIMONE RUSSO RELATED TO CASE A-17-753606 (SIMONE RUSSO V. COX COMMUNICATIONS LAS VEGAS, INC.).

IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUES RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED, AND WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION HAD THE NON-EXCLUSIVE RIGHT TO DIRECT AND CONTROL BY ASSIGNING PROJECTS WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.

Dated: 11-12-19

LAW OFFICE OF DAVID SAMPSON, LLC

By:



David Sampson, Esq.
Law Office of David Sampson, LLC
Attorneys for Plaintiff

Dated: _____

SPRINGEL & FINK LLP

By:

Leonard T. Fink, Esq.
Attorneys for Defendant,
Sunrise Villas IX Homeowners' Association

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EXHIBIT “C”



SDIS

LEONARD T. FINK, ESQ.

Nevada Bar No. 6296

JONATHAN C. PATILLO, 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,

) Case No.: A-17-753606-C

) Dept. No.: XVI

Plaintiffs,

)

v.

)

DEFENDANT SUNRISE VILLAS IX**HOMEOWNERS ASSOCIATION'S****FOURTH SUPPLEMENTAL INITIAL NRCP****16.1 DISCLOSURE OF WITNESSES AND****DOCUMENTS**

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)

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**DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S FOURTH
SUPPLEMENTAL INITIAL NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS**

COMES NOW, Defendant SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION ("SUNRISE VILLAS"), by and through its counsel of record, the law firm of Springel & Fink LLP, and hereby submits its Fourth Supplemental Initial Disclosure of Witnesses and Documents pursuant to NRCP 16.1 (**new information indicated in bold**).

I. THE NAME AND, IF KNOWN, THE ADDRESS AND TELEPHONE NUMBER OF EACH INDIVIDUAL LIKELY TO HAVE DISCOVERABLE INFORMATION, ALONG WITH THE SUBJECTS OF THAT INFORMATION THAT DEFENDANT MAY USE TO SUPPORT ITS CLAIMS OR DEFENSES:

1. SIMONE RUSSO
c/o DAVID F. SAMPSON, ESQ.
Law Offices of David Sampson
630 S. Third Street
Las Vegas, Nevada 89101
Telephone: (702) 605-1099

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

2. Person Most Knowledgeable
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION
c/o LEONARD T. FINK, ESQ.
Springel & Fink LLP
10655 Park Run Drive, Suite 275
Las Vegas, Nevada 89144
Telephone: (702) 804-0706

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

3. Person Most Knowledgeable
COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS
c/o MICHAEL MERRITT, ESQ.
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP
8337 West Sunset Road, Suite 350
Las Vegas, Nevada 89113
Telephone: (702) 949-1100

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

///

///

4. Person Most Knowledgeable
IES RESIDENTIAL, INC.
c/o WILL LEMKUL, ESQ.
Morris, Sullivan, Lemkul & Pitegoff, LLP
3770 Howard Hughes Parkway, Suite 170
Las Vegas, Nevada 89169
Telephone: (702) 405-8100

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

5. Person Most Knowledgeable
J&G LAWN MAINTENANCE
c/o RICHARD J. PYATT, ESQ.
Pyatt Silvestri
701 Bridger Avenue, Suite 600
Las Vegas, Nevada 89101
Telephone: (702) 383-600

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

6. KEVIN BUSHBAKER
c/o ANTHONY P. SGRO, ESQ.
Sgro & Roger
720 S. Seventh Street, 3rd Floor
Las Vegas, Nevada 89101
Telephone: (702) 385-9595

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

7. Person Most Knowledgeable
PW JAMES MANAGEMENT & CONSULTING, LLC
Contact Information Currently Unknown

This witness is expected to testify to the facts and circumstances surrounding the incident serving as the basis for PLAINTIFF'S Complaint on file herein.

8. Christopher R. Grubbs, P.E., LEED AP, CXL
RIMKUS CONSTRUCTION GROUP, INC.
1160 N. Town Center Drive, Suite 150
Las Vegas, Nevada 89144

///

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///

1 Mr. Grubbs is a licensed professional Civil Engineer and is expected to testify regarding the
2 mechanism and dynamics of the subject accident, and the likelihood that PLAINTIFF sustained any
3 injury.

4 Mr. Grubbs may also testify regarding his opinions as they relate to other subjects that he is
5 qualified to testify to as these issues are raised in this lawsuit, including potential rebuttal and
6 impeachment testimony.

7
8 9. Michael McKelleb, Esq.
ANGUIS & TERRY LLP
9127 West Russell Road, Suite 220
9 Las Vegas, Nevada 89148

10
11 Mr. McKelleb is a licensed attorney who will testify regarding his interpretation of the
12 Declaration of Covenants, Conditions & Restrictions for SUNRISE VILLAS, and any Amendments
13 thereto as set forth in his report.

14 Mr. McKelleb will address and/or respond to the opinions, testimony and evidence offered by
15 PLAINTIFF and his respective lay witnesses and expert witnesses, whether in a written report or other
16 documentary evidence, or provided as testimony. Mr. McKelleb may also testify regarding his opinions
17 as they relate to other subjects that he is qualified to testify to as these issues are raised in this lawsuit,
18 including potential rebuttal and impeachment testimony.

19 10. Richard Duslak
20 Contact information currently unknown

21 This witness is expected to testify to the facts and circumstances surrounding the incident serving
22 as the basis for PLAINTIFF'S Complaint on file herein.

23 11. Justin Sesman
24 Contact information currently unknown

25 This witness is expected to testify to the facts and circumstances surrounding the incident serving
26 as the basis for PLAINTIFF'S Complaint on file herein.

27 12. PLAINTIFF'S treating physicians and/or person(s) most knowledgeable from
28 PLAINTIFF'S health care providers are expected to testify regarding the nature of PLAINTIFF'S

injuries and medical care received, including reasonableness of said care.

13. Custodian(s) of Records from the offices of PLAINTIFF'S health care providers who may testify regarding the authenticity of medical bills and medical records produced.

14. Any and all witnesses named by any other party.

SUNRISE VILLAS reserves the right to call expert witnesses.

SUNRISE VILLAS reserves the right to supplement its Witness List throughout the discovery process, to call upon any witness(es) identified by PLAINTIFF and any other party, and to call upon any witness(es) for purposes of rebuttal and impeachment.

SUNRISE VILLAS reserves the right to retain the services of an independent medical examiner to review PLAINTIFF'S medical records and to examine PLAINTIFF, and to call the examiner to testify at the trial of this matter.

II. THE DOCUMENTS WITHIN DEFENDANTS' CUSTODY, POSSESSION AND CONTROL UPON WHICH DEFENDANT BASES ITS CLAIMS, PRAYER(S) FOR DAMAGES OR OTHER RELIEF, DENIALS AND/OR DEFENSES ASSERTED IN ITS PLEADINGS:

NO.	DESCRIPTION	BATES NOS.
1.	PLAINTIFF'S Complaint	Un-numbered
2.	SUNRISE VILLAS Answer	Un-numbered
3.	CAU Insurance Policy <i>Redacted for privilege</i>	SVHA000001 – SVHA00039
4.	Interview with Thomas Bastain <i>On Disc served via US Mail</i>	SVHA000040
5.	Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX	SVHA000041 – SVHA000093
6.	Amendments to Declaration of Covenants, Conditions and Restrictions for Sunrise Villas IX	SVHA000094 – SVHA000107
7.	Rimkus Consulting Group, Inc. Report of Findings dated November 30, 2017	SVHA000108 – SVHA000121
8.	Michael W. McKelleb, Esq. Expert Report dated December 1, 2017	SVHA000122 – SVHA000470
9.	Sunrise Villas IX HOA Reserve Study Level 2 dated May 12, 2017	SVHA000471 – SVHA000524
10.	Plat Maps	SVHA000525 – SVHA000526
11.	Drase Adjusting Services, Inc. First Report dated December 8, 2016	SVHA000527 – SVHA000529
12.	Drase Adjusting Services, Inc. Second Report dated December 26, 2016	SVHA000530 – SVHA000531

NO.	DESCRIPTION	BATES NOS.
13.	Drase Adjusting Services, Inc. Closing Report dated February 22, 2017	SVHA000532
14.	Claim Notes, variously dated	SVHA000533 – SVHA000556
15.	Executive Session Meeting Minutes dated February 17, 2016	SVHA000557 – SVHA000558
16.	Board of Directors Meeting Minutes dated July 18, 2016	SVHA000559 – SVHA000560
17.	Open Meeting Minutes dated September 8, 2016	SVHA000561 – SVHA000562
18.	Holiday Gratuity for Duslak	SVHA000563 – SVHA000565
19.	Holiday Gratuity for Sesman	SVHA000566 – SVHA000568
20.	Lowes Statement dated May 2, 2015 <i>Redacted for privilege</i>	SVHA000569 – SVHA000588
21.	Nevada Pool Supply Credit Application dated July 15, 2015 <i>Redacted for privilege</i>	SVHA000589 – SVHA000590
22.	Start Up Cell Service Metro PCS October 8, 2015 <i>Redacted for privilege</i>	SVHA000591 – SVHA000594
23.	Receipts turned in by Rich on June 15, 2016	SVHA000595

SUNRISE VILLAS has attached a Privilege Log to this Rule 16.1 Disclosure as Exhibit A.

III. A COMPUTATION OF ANY CATEGORY OF DAMAGES CLAIMED BY THE DISCLOSING PARTY, MAKING AVAILABLE FOR INSPECTION AND COPYING, UNDER RULE 34, THE DOCUMENTS OR OTHER EVIDENTIARY MATERIAL, NOT PRIVILEGED OR PROTECTED FROM DISCLOSURE, ON WHICH SUCH COMPUTATION IS BASED, INCLUDING MATERIALS BEARING ON THE NATURE AND EXTENT OF INJURIES SUFFERED

SUNRISE VILLAS has been damaged by attorney's fees and costs in an amount to be determined.

IV. FOR INSPECTION AND COPYING UNDER RULE 34, ANY INSURANCE AGREEMENT UNDER WHICH ANY PERSON CARRYING ON AN INSURANCE BUSINESS MAY BE LIABLE TO SATISFY PART OF OR ALL OF A JUDGMENT WHICH MAY BE ENTERED IN THE ACTION OR TO INDEMNIFY OR REIMBURSE FOR PAYMENTS MADE TO SATISFY THE JUDGMENT

The Insurance Agreement is produced as Bates Numbers SVHA000001 – SVHA000039.

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1 **V. RESERVATION OF RIGHTS**

2 SUNRISE VILLAS has attempted in good faith to set forth information presently and reasonably
3 available to it that may be relevant to the subject matter. SUNRISE VILLAS reserves, without waiver,
4 all objections to production and admissibility. SUNRISE VILLAS further reserves all applicable
5 privileges, confidentiality, or other protections that may apply to documents or witnesses listed.
6 SUNRISE VILLAS reserves the right to use any witnesses and/or documents disclosed or listed by any
7 other party. SUNRISE VILLAS also reserves the right to amend and/or supplement this Disclosure as
8 additional witnesses and/or documents later become known and/or discovered, or as additional
9 documents are processed and indexed.

10
11 DATED this 10th day of January 2018.

12 SPRINGEL & FINK LLP

13
14 By: /s/ Jonathan C. Pattillo
15 LEONARD T. FINK, ESQ.
16 Nevada Bar No. 6296
17 JONATHAN C. PATTILLO, ESQ.
18 Nevada Bar No. 13929
19 10655 Park Run Drive, Suite 275
20 Las Vegas, Nevada 89144
21
22 Attorneys for Defendant,
23 SUNRISE VILLAS IX HOMEOWNERS
24 ASSOCIATION
25
26
27
28

EXHIBIT "A"
PRIVILEGE LOG

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

Bates Number(s)	Date of Document (If available)	Document Description	From	To	Copied To	Privilege Claimed
SVHA000569	05/02/15	Account Balance Summary	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000571	05/02/15	Payment Stub	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000573	05/02/15	Payment Stub	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000575	05/02/15	Current Invoice Details	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000577	05/02/15	Current Invoice Details	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000579	05/02/15	Current Invoice Details	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000581	05/02/15	Current Invoice Details	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000583	05/02/15	Current Invoice Details	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000588	05/27/15	Fax Invoices Report	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence

Bates Number(s)	Date of Document (If available)	Document Description	From	To	Copied To	Privilege Claimed
SVHA000589	07/15/15	Nevada Pool & Spa Supply Commercial Charge Account Application	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000592	10/08/15	Metro PCS Receipt	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence
SVHA000593	10/08/15	Metro PCS Start of Service Request	N/A	N/A	N/A	Account information. Proprietary information. Not reasonably calculated to lead to the discovery of admissible evidence

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 January 10, 2018, I served the document described as **DEFENDANT SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION'S FOURTH SUPPLEMENTAL INITIAL NRCP 16.1 DISCLOSURE OF WITNESSES AND DOCUMENTS** 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 10th day of January 2018 at Las Vegas, Nevada.

By: _____

Phaedra L. Calaway

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION
Executive Session Meeting of the Board of Directors – Closed Session
February 17, 2016 – Immediately Following the Open Session
Paradise Recreation Center, 2775 McLeod Drive, Las Vegas, NV 89121

BOARD MEMBERS:

President	Rita Ehresman (absent)
Vice President	Marie Spencer
Treasurer	Ruperta Alexis
Secretary	John Morales
Director	Jeremy Blomgren

OTHERS PRESENT:

Allan Frederick, PWJames Management
Penny Frederick, PWJames Management

CALL TO ORDER:

Vice President Spencer called the meeting to order at 6:37 pm.

APPROVAL OF MINUTES:

November 16, 2016 Board of Directors Meeting – Executive Session - A motion was made by Secretary Morales and seconded by Director Blomgren to approve the minutes of the November 16, 2016 Executive Session Board of Directors meeting. Motion carried unanimously.

HEARINGS:

None

COMMUNICATIONS / APPEALS:

2590 La Cara – The owner requested removal of a large, unsightly vine/bush, located on the wall by the front door of the home. A motion was made by Vice President Spencer and seconded by Secretary Morales to have the vine removed at a cost not to exceed \$100.00. Motion carried unanimously.

NON COMPLIANCE REPORT:

The Board reviewed the non compliance report.

DELINQUENT REPORT:

The Board reviewed the Delinquent Report.

COLLECTION STATUS REPORT:

Vice President Spencer advised the Board that she is continuing to work with the association's collection company, The Clarkson Law Group, on the association's accounts that are in arrears.

DISCUSS PERSONNEL, JOB DESCRIPTIONS AND QUALIFICATIONS

- The Board reviewed the job descriptions as submitted by employees Richard Duslak and Justin Sesman. Secretary Morales volunteered to oversee the work performed on property by Mr. Duslak and Mr. Sesman and will report to the Board regarding progress on

maintenance projects. A motion was made by Treasurer Alexis seconded by Secretary Morales for the petty cash to not be maintained by the employees at this time. Motion carried unanimously.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:20 p.m.

Sunrise Villas

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION

Board of Directors Meeting– Open Session

July 18, 2016 at 5:30pm

Paradise Recreation Center, 4775 McLeod Drive, Las Vegas, NV 89121

BOARD MEMBERS:

President	Rita Ehresman
Vice President	Marie Spencer
Treasurer	Rupertia Alexis
Secretary	John Morales
Director	Jeremy Blomgren -- Absent

OTHERS:

H. Amanda Davis PWJames Management

CALL TO ORDER:

President Ehresman called the meeting to order at 5:30 p.m. Rita called the meeting to order established a quorum and then proceeded with her resignation once she was done with her resignation she exited the meeting.

HOMEOWNERS FORUM: (For comments relating to agenda items only.)

An open forum was held for the homeowners in attendance at the meeting, the forum was conducted in accordance with NRS 116.

APPROVAL OF MINUTES:

A. May 2016 Board of Directors Meeting: A motion was made by Secretary Morales and seconded by Vice President Spencer to approve the minutes of the May, 2016 Board of Directors meeting. Motion carried unanimously.

ACCEPTANCE OF FINANCIAL REPORTS:

A. Treasurer's Report. Treasurer Alexis read the financial reports. There was a \$220.00 discrepancy she would like management to look into this and see why there is a \$220.00 and report back to her.

B. Acceptance of the June 30, 2016 – Per the board the financials were tabled until the question about the \$220.00 was answered.

BOARD BUSINESS

A. Rita's Resignation -- Board accepted resignation as presented

B. Landscaping -- Updates were given, and the board unanimously agreed to ratify the decision on hiring Pacific View landscaping for \$5000.00 per month and a onetime clean up fee of \$7000.00.

C. Security Contract -- Updates given no action taken on this item

D. Rentals and Rental Restriction -- Updates given no action taken on this item

E. Concrete Driveway Repairs -- This item was tabled the board opened and reviewed the bids they would like additional time to look at the bids and this item is to be placed on the next agenda for further discussion and possible action.

F. Fascia Painting - This item was tabled the board opened and reviewed the bids they would like additional time to look at the bids and this item is to be placed on the next agenda for further discussion and possible action. They also would like management to find out how many Liner Feet Intertex is proposing to paint.

G. Richard - the board unanimously agreed to terminate the petty cash for Richard they agreed to give him

\$66.00 a month for his cell phone bill.

- H. Pickle Ball – Peter Jungren gave an overview of Pickle Ball and explained the bid to the community and the board. John made the motion to approve stripping both sides of the tennis court for Pickle Ball Marie seconded the motion and Ruperta abstained, the motion was passed.

HOMEOWNERS' FORUM:

Homeowner Forum was conducted in accordance with NRS 116.

Maxine Pafford addressed the board regarding a welcoming committee she wants her written statement to be attached to the minutes and she would like welcoming committee placed on the next agenda.

NEXT MEETING:

TBD

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:01pm

Sunrise Villas IX Board Member

Date

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION
 Board of Directors Meeting– Open Session
 September 8, 2016 at 5:30pm
 Paradise Recreation Center, 4775 McLeod Drive, Las Vegas, NV 89121

DRAFT MINUTES

BOARD MEMBERS:

President	None
Vice President	Marie Spencer
Treasurer	Ruperta Alexis
Secretary	John Morales
Director	Jeremy Blomgren

OTHERS:

H. Amanda Davis	PWJames Management
Danny	J&G Landscaping

CALL TO ORDER:

Vice President Marie Spencer called the meeting to order at 5:30 p.m and established a quorum

HOMEOWNERS FORUM: (For comments relating to agenda items only.)

An open forum was held for the homeowners in attendance at the meeting, the forum was conducted in accordance with NRS 116.

APPROVAL OF MINUTES:

- A. May 2016 Board of Directors Meeting: A motion was made by Vice President Spencer and seconded by Treasurer Alexis to approve the minutes of the July 18, 2016 Board of Directors meeting. Motion carried unanimously.

ACCEPTANCE OF FINANCIAL REPORTS:

- A. Treasurer's Report. Treasurer Alexis read the financial reports. \$220.00 discrepancy discussed management explained that when the account was set up in VMS by Covenant Management they did not set up to account for the interest earned and the \$220.00 was actually interest. Treasure Alexis would like to know the amount transferred to reserve management to email her that number.
- B. Acceptance of the June / July 2016 – Secretary Morales made the motion to approve the June and July financials subject to audit Director Blomgren seconded the motion. Motion carried

BOARD BUSINESS

- A. Concrete Driveway Repairs – Treasurer Alexis made the motion to approve the repairs at 2563 Laconia Director Blomgren seconded the motion. Motion carried. Board would like to meet contractor on site to go over the rest of the bid and identify the worst areas.
- B. Fascia Painting –No action was taken at this time the board would like to meet with RSI on property to go over bid and they would also like references.
- C. Landscaping – Danny from J&G present, He gave an overview of the community he discussed his bid and services with the Board. Vice President Spencer made the motion to approve J&G's contract Secretary Morales. Motion carried.
- D.** Richard Dulsak – Board unanimously agreed to terminate the position of a onsite maintenance / pool man the board is in agreement that there is no longer a need for this position therefore they are all in agreement to terminate Mr. Dulsak.
- E. Ratify Decision on hiring professional pool company – Secretary Morales made the motion to ratify the

decision on hiring Steve the Pool Service Director Blomgren seconded the motion and the motion carried.

- F. Ratify Decision on Palm tree trimming - Director Blomgren made the motion to ratify the decision to hire Noble Tree to trim the palm trees in the community Secretary Morales seconded the motion and the motion was carried.
- G. Rental Restriction - Manager gave update that 9 units still have not turned in their forms and are currently being fined 25 total rentals 7 of the 25 are family / friends or caretakers
- H. Welcome Committee – Board heard Maxine Pafford's ideas and agree to have her put together a welcome brochure and bring to the next meeting for review and possible approval.
- I. Proposed Changes to Rules and Regulations – Al Stubblefield contacted manager and asked that this item be removed from the agenda.
- J. Property Transfer Fees - Al Stubblefield contacted manager and asked that this item be removed from the agenda.

HOMEOWNERS' FORUM:

Homeowner Forum was conducted in accordance with NRS 116.

NEXT MEETING:

TBD

ADJOURNMENT:

There being no further business, the meeting was adjourned at 7:20pm

Sunrise Villas IX Board Member

Date



Check Request Form

Community Name: Sunrise Villas IX Homeowners Association

Date of Request: 12/03/15

Date Needed: ASAP

Vendor Name: Carson Pyle
Rita Ehresman
Malabar Ave
Las Vegas, NV 89121

C/O
2574

Vendor Number: _____

Description	G.L. Code	Unit Cost	Quantity	Extended	Taxable	Tax	Total
Holiday gratuity	6139	\$300.00					\$ 300.00
							\$ -
							\$ -
Total							\$ 300.00

Rita D. McLean

Community Manager Signature

Supervisor Signature

Accounting Signature

Date Received

Date Processed

SVHA000563

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION
Executive Session Meeting of the Board of Directors – Closed Session
November 16, 2015 at 5:30 pm
Whitney Library – Conference Room, 5175 E. Tropicana Ave., Las Vegas, NV 89122

BOARD MEMBERS:

President	Rita Ehresman
Vice President	Marie Spencer
Treasurer	Jeremy Blomgren (Absent)
Director	Gene Hotchkin

MANAGEMENT:

Brian Molina	Covenant Management
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CALL TO ORDER:

President Ehresman called the meeting to order at 6:45 pm.

APPROVAL OF MINUTES:

- Minutes for the Executive Session Board Meeting in Closed Session on September 28, 2015. Director Hotchkin moved to approve the minutes for the executive session meeting of the Board of Directors held in closed session on September 28, 2015, as submitted. The motion was seconded by Vice President Spencer and unanimously carried.

HEARINGS:

None

COMMUNICATIONS / APPEALS:

- 2569 La Cara – Action Request Form. The resident claimed an owner in the community confronted her for not picking up after her dog and alleged he had a bat and was threatened by it. The Board suggested the owner file a police report and a restraining order if she continues to be threatened.
- 2590 La Cara – Request to Plant Lantana in Common Area. The Board agreed to the owner's request. But, stipulated that if the Lantana dies, the HOA will not replace it.

NON COMPLIANCE REPORT:

- The Board reviewed the non compliance report.

DELINQUENT REPORT:

- The Board reviewed the Delinquent Report.

COLLECTION STATUS REPORT:

- 2582 Laconia. The community manager reported Covenant Management paid the HOA for the \$1,220 balance due on the account. Vice President Spencer requested proof of this action.
- 4521 Madreperla. The Board was informed this property had a government lien on it. The Board wants to know who placed the lien and if there is a mortgage on the property.

LEGAL:

OTHER: It was the consensus of the Board that Richard Dulkas, Justin, and Carson has provided valuable service to the community. The Board agreed to holiday gratuity of \$300 for Richard, \$300

for Carson, and \$100 for Justin and directed the manager to process payment for holiday gratuity through Covenant.

ADJOURNMENT:

Director Hotchkin moved to adjourn the meeting at 7:10 pm. The motion was seconded by Vice President Spencer and unanimously carried.

Submitted by:

Approved by:

Brian Molina, CMCA®, AMS®, PCAM®
Covenant Management

Marie Spencer, Vice President
Board of Directors, Sunrise Villas IX
Homeowners' Association



Check Request Form

Community Name: Sunrise Villas IX Homeowners Association

Date of Request: 12/03/15

Date Needed: ASAP

Vendor Name: Justin Sesman
C/O Rita Ehresman
2574 Malabar Ave
Las Vegas, NV 89121

Vendor Number: _____

Description	G.L. Code	Unit Cost	Quantity	Extended	Taxable	Tax	Total
Holiday gratuity	6139	\$100.00					\$ 100.00
							\$ -
							\$ -
Total							\$ 100.00

Therese D. Motina
Community Manager Signature

Supervisor Signature

Accounting Signature

Date Received

Date Processed

SVHA000566

SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION
Executive Session Meeting of the Board of Directors – Closed Session
November 16, 2015 at 5:30 pm
Whitney Library – Conference Room, 5175 E. Tropicana Ave., Las Vegas, NV 89122

BOARD MEMBERS:

President	Rita Ehresman
Vice President	Marie Spencer
Treasurer	Jeremy Blomgren (Absent)
Director	Gene Hotchkin

MANAGEMENT:

Brian Molina	Covenant Management
--------------	---------------------

CALL TO ORDER:

President Ehresman called the meeting to order at 6:45 pm.

APPROVAL OF MINUTES:

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HEARINGS:

None

COMMUNICATIONS / APPEALS:

- 2569 La Cara – Action Request Form. The resident claimed an owner in the community confronted her for not picking up after her dog and alleged he had a bat and was threatened by it. The Board suggested the owner file a police report and a restraining order if she continues to be threatened.
- 2590 La Cara – Request to Plant Lantana in Common Area. The Board agreed to the owner's request. But, stipulated that if the Lantana dies, the HOA will not replace it.

NON COMPLIANCE REPORT:

- The Board reviewed the non compliance report.

DELINQUENT REPORT:

- The Board reviewed the Delinquent Report.

COLLECTION STATUS REPORT:

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- 4521 Madreperla. The Board was informed this property had a government lien on it. The Board wants to know who placed the lien and if there is a mortgage on the property.

LEGAL:

- **OTHER:** It was the consensus of the Board that Richard Dulkas, Justin, and Carson has provided valuable service to the community. The Board agreed to holiday gratuity of \$300 for Richard, \$300

for Carson, and \$100 for Justin and directed the manager to process payment for holiday gratuity through Covenant.

ADJOURNMENT:

Director Hotchkin moved to adjourn the meeting at 7:10 pm. The motion was seconded by Vice President Spencer and unanimously carried.

Submitted by:

Approved by:

Brian Molina, CMCA®, AMS®, PCAM®
Covenant Management

Marie Spencer, Vice President
Board of Directors, Sunrise Villas IX
Homeowners' Association

LOWE'S

Account: [REDACTED] Statement Date: 05/02/15 Page: 1 of 8

5% EVERYDAY CREDIT DISCOUNT WAS APPLIED AT POINT OF SALE FOR ALL QUALIFYING INVOICES THAT APPEAR ON THIS STATEMENT. PLEASE CONSULT YOUR ORIGINAL SALES RECEIPT FOR LINE ITEM DETAIL ON THE 5% SAVINGS.



SUNRISE VILLAS 9 HOA
ATTN: DEBBIE LOSSA
C/O COVENANT MANAGEMENT
2001 S JONES BLVD SUITE D
LAS VEGAS, NV 89146-3165

145282

b-1

Customer Service Online at www.lowescredit.com
This account is already registered.
See your Online Admin to get a User ID & Password

Account Balance Summary

Current Invoices & Returns	\$ 994.36
1-30 Days Past Due	\$ 119.05
31-60 Days Past Due	\$ 0.83
Over 60 Days Past Due	\$ 55.29
Unapplied Payments & Adjustments	\$ 0.00
Statement Balance	\$ 1,169.53

844.95

RECEIVED
MAY 08 2015

Covenant Management
2001 S Jones Suite D • Las Vegas NV 89146

\$ Send payments to:
Lowe's
P.O. Box 530954
Atlanta GA 30353-0954



Send Inquiries
(not payments) to:
P.O. Box 965054
Orlando, FL 32896-5054



For Customer Service: call 1-866-232-7443

Purchases, returns, and payments made just prior to the statement date may not appear until the next month's statement. Any payments received after 5pm on any business day or on any day other than a business day, at the address above, will be credited on the next business day. If the payment is made at a location other than such address, credit may be delayed.

SVHA000569

-Continue-

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

SVHA000570



PAYMENT STUB

Page 2 of 8

Account: [REDACTED] Statement Date: 05/02/15 Page: 2 of 8

Account: 9800 441803 8



ACCOUNT ACTIVITY

Account Number : [REDACTED]

Payments Received

Date	Reference	Amount	Description
04/07/15	0001742	\$ (84.06)	PAYMENT RECEIVED - THANK YOU
04/07/15	0009144	\$ (158.30)	PAYMENT RECEIVED - THANK YOU
04/07/15	0001738	\$ (21.83)	PAYMENT RECEIVED - THANK YOU

1-9

Current Invoices & Returns

Date	Invoice	Original Amount	Due Date	Store/City Reference
04/07/15	901344	\$ 519.58	05/20/15	2271 LAS VEGAS, NV
04/10/15	901470	\$ (519.58)	05/20/15	2271 LAS VEGAS, NV
04/10/15	974811	\$ 438.53	05/20/15	2271 LAS VEGAS, NV
04/14/15	902911	\$ 70.08	05/20/15	2271 LAS VEGAS, NV
04/17/15	902390	\$ 31.78	05/20/15	2271 LAS VEGAS, NV
04/17/15	903680	\$ 222.72	05/20/15	2271 LAS VEGAS, NV
04/20/15	902758	\$ 70.01	05/20/15	2271 LAS VEGAS, NV
04/20/15	901700	\$ 41.51	05/20/15	2271 LAS VEGAS, NV
04/20/15	901703	\$ 41.51	05/20/15	2271 LAS VEGAS, NV
04/20/15	901702	\$ (41.51)	05/20/15	2271 LAS VEGAS, NV
04/21/15	902986	\$ 119.73	05/20/15	2271 LAS VEGAS, NV
Subtotal		\$ 994.36		

Date	Invoice	Amount Due
04/07/15	901344	\$ 519.58
04/10/15	901470	\$ (519.58)
04/10/15	974811	\$ 438.53
04/14/15	902911	\$ 70.08
04/17/15	902390	\$ 31.78
04/17/15	903680	\$ 222.72
04/20/15	902758	\$ 70.01
04/20/15	901700	\$ 41.51
04/20/15	901703	\$ 41.51
04/20/15	901702	\$ (41.51)
04/21/15	902986	\$ 119.73
Subtotal		\$ 994.36

Please Indicate by ☒ Invoices You are Paying

Past Due Invoices & Returns

Date	Invoice	Original Amount	Due Date	Store/City Reference
01/28/15	902781	\$ 55.29	02/20/15	2271 LAS VEGAS, NV
03/01/15	L150302	\$ 0.83	03/20/15	FINANCE CHARGE
03/28/15	902775	\$ 70.86	04/20/15	2477 LAS VEGAS, NV
03/29/15	902834	\$ 15.70	04/20/15	2271 LAS VEGAS, NV
03/29/15	902081	\$ 31.66	04/20/15	2477 LAS VEGAS, NV
04/01/15	L150402	\$ 0.83	04/20/15	FINANCE CHARGE
Subtotal		\$ 175.17		

Date	Invoice	Amount Due
01/28/15	902781	\$ 55.29
03/01/15	L150302	\$ 0.83
03/28/15	902775	\$ 70.86
03/29/15	902834	\$ 15.70
03/29/15	902081	\$ 31.66
04/01/15	L150402	\$ 0.83
Subtotal		\$ 175.17

Please Indicate by ☒ Invoices You are Paying

Total Here

-Continue-

SVHA000571

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

SVHA000572



PAYMENT STUB

Page 3 of 8

Account: [REDACTED] Statement Date: 05/02/15 Page: 3 of 8 Account: 9800 441803 8

1-1



Year Here

Account Balance Summary

Total
\$ 1,169.53

-Continue-

SVHA000573

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

LOWE'S

Account: [REDACTED] Statement Date: 05/02/15 Page: 4 of 8

Current Invoice Details

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA

Account : [REDACTED]
 Store/City: 2271 / LAS VEGAS, NV
 Buyer: DUSLAK RICHARD

Date of Sale: 04/07/15

Invoice: 901344

P.O. / JOB:

SHIP TO:

4596 EUCLID ST
 LAS VEGAS, NV 89121

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000274592	ARROW 10X12 HIGHPOINT	1.00	BO	407.55	407.55
00000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
00000000000002	DELIVERY FEE	1.00	EA	79.00	79.00
Subtotal: 486.55		Tax: 33.01		Balance Due: 519.56	

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA

Account : [REDACTED]
 Store/City: 2271 / LAS VEGAS, NV
 Buyer: DUSLAK RICHARD

Date of Sale: 04/10/15

Invoice: 901470

P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000274592	ARROW 10X12 HIGHPOINT	1.00	BO	(407.55)	(407.55)
00000000000002	DELIVERY FEE	1.00	EA	(79.00)	(79.00)
Subtotal: (486.55)		Tax: (33.01)		Balance Due: (519.56)	

-Continue-

SVHA000575

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.



Account: [REDACTED] Statement Date: 05/02/16 Page: 6 of 8

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA
Account : [REDACTED]
Store/City: 2271 / LAS VEGAS, NV
Buyer: DUSLAK RICHARD

Date of Sale: 04/10/15
Invoice: 974811
P.O. / JOB:

SHIP TO:

FRANK SHEARER
4596 EUCLID ST
LAS VEGAS, NV 89121

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
00000000399011	SOS ARROW 10X12 HIGHPOINT	1.00	BO	387.17	387.17
00000000000002	DELIVERY FEE	1.00	EA	20.00	20.00
Subtotal: 407.17		Tax: 31.38		Balance Due: 438.53	

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA
Account : [REDACTED]
Store/City: 2271 / LAS VEGAS, NV
Buyer: DUSLAK RICHARD

Date of Sale: 04/14/15
Invoice: 902911
P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000571432	144-OZ PINE SOL	1.00	EA	9.48	9.48
00000000224273	55GAL 40CT DRUM LINER BLK	1.00	EA	13.28	13.28
00000000194619	13GAL 100CT HEFTY SCENT (	1.00	EA	12.33	12.33
00000000095687	ORBT PLASTIC STRIP SHRUB	6.00	EA	0.83	4.98
00000000010437	50-LB FAST-SETTING CONCRE	2.00	BA	4.73	9.46
00000000354520	OSI 60W A15 DBL LIFE FAN	6.00	EA	2.66	15.90
00000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
Subtotal: 64.83		Tax: 5.25		Balance Due: 70.08	

-Continue-

SVHA000577

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

SVHA000578

LOWE'S

Account: [REDACTED] Statement Date: 05/02/15 Page: 6 of 8

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA

Account : [REDACTED]
 Store/City: 2271 / LAS VEGAS, NV
 Buyer: DUSLAK RICHARD

Date of Sale: 04/17/15

Invoice: 902390

P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
000000000111760	5 LB 3-IN FINE DRYWALL SC	1.00	EA	20.87	20.87
000000000416454	18CT SS DOUBLE ROLL BATH	1.00	PK	8.53	8.53
000000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
Subtotal: 29.40		Tax: 2.38		Balance Due: 31.78	

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA

Account : [REDACTED]
 Store/City: 2271 / LAS VEGAS, NV
 Buyer: DUSLAK RICHARD

Date of Sale: 04/17/15

Invoice: 903680

P.O. / JOB:

SHIP TO:

4596 EUCLID ST
 LAS VEGAS, NV 89121

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
000000000334575	4-4-12 BROWNTONE ACQ PT	7.00	EA	18.31	128.17
000000000334236	2-4-12 BROWNTONE ACQ	6.00	EA	7.76	46.56
00000000012214	19/32 CAT SE OSB SHEATHIN	1.00	PC	12.80	12.80
000000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
00000000000002	DELIVERY FEE	1.00	EA	20.00	20.00
Subtotal: 207.53		Tax: 15.19		Balance Due: 222.72	

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA

Account : [REDACTED]
 Store/City: 2271 / LAS VEGAS, NV
 Buyer: DUSLAK RICHARD

Date of Sale: 04/20/15

Invoice: 902758

P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
000000000069132	GR 1 LB 16D BRIGHT BOX NA	1.00	BO	3.53	3.53
00000000073963	GR 1 LB 8D BRIGHT R/S COMM	1.00	EA	4.25	4.25
000000000464289	SW 400-AMP TRUE RMS AC CL	1.00	EA	56.98	56.98
000000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
Subtotal: 64.76		Tax: 5.25		Balance Due: 70.01	

-Continue-

SVHA000579

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

SVHA000580

LOWE'S

Account: [REDACTED] Statement Date: 05/02/15 Page: 7 of 8

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA
Account : 9800 441803 8
Store/City: 2271 / LAS VEGAS, NV
Buyer: DUSLAK RICHARD

Date of Sale: 04/20/15
Invoice: 901700
P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000012214	19/32 CAT SE OSB SHEATHIN	3.00	PC	12.80	38.40
000000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
Subtotal: 38.40				Tax: 3.11	Balance Due: 41.51

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA
Account : [REDACTED]
Store/City: 2271 / LAS VEGAS, NV
Buyer: DUSLAK RICHARD

Date of Sale: 04/20/15
Invoice: 901703
P.O. / JOB:

SHIP TO:

2001 S JONES BLVD
SUITE D
LAS VEGAS, NV 89146

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000012214	19/32 CAT SE OSB SHEATHIN	3.00	PC	12.80	38.40
000000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
000000000000002	DELIVERY FEE	1.00	EA	0.00	0.00
Subtotal: 38.40				Tax: 3.11	Balance Due: 41.51

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA
Account : [REDACTED]
Store/City: 2271 / LAS VEGAS, NV
Buyer: DUSLAK RICHARD

Date of Sale: 04/20/15
Invoice: 901702
P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000012214	19/32 CAT SE OSB SHEATHIN	3.00	PC	(12.80)	(38.40)
Subtotal: (38.40)				Tax: (3.11)	Balance Due: (41.51)

-Continue-

SVHA000581

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

SVHA000582



Account: [REDACTED] Statement Date: 05/02/15 Page: 8 of 8

Mail Payments to:

LOWE'S
P.O. BOX 530954
ATLANTA, GA 30353-0954

SUNRISE VILLAS 9 HOA

Account : [REDACTED]
Store/City: 2271 / LAS VEGAS, NV
Buyer: DUSLAK RICHARD

Date of Sale: 04/21/15

Invoice: 902966

P.O. / JOB:

S.K.U.	DESCRIPTION	QUANTITY	UNIT	PRICE	EXT. PRICE
00000000070351	12/2 COPPR UF-8/WG OUTDOO	1.00	EA	99.75	99.75
00000000069765	1 GANG EXTENTION RING	1.00	EA	6.55	6.55
00000000069758	1 GANG BLANK COVER GREY	1.00	EA	1.13	1.13
00000000102203	PLASTIC CLOSUR PLUG KIT	1.00	EA	1.22	1.22
000000000204390	1/2- SCH 40 PVC CONDUIT 5	1.00	EA	1.23	1.23
000000000115888	1/2-IN PVC MALE TERMINAL	1.00	EA	0.30	0.30
00000000050916	1/2-IN SCH 40 90 DEG BLD	1.00	EA	0.58	0.58
000000000155670	PROMOTIONAL BARCODE SCANN	1.00	EA	0.00	0.00
Subtotal:	110.76	Tax:	8.97	Balance Due:	119.73

6-1



SVHA000583

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

SVHA000585

1-0



SUNRISE VILLAS 9 HOA
ATTN: DEBBIE LOSSA
C/O COVENANT MANAGEMENT
2001 S JONES BLVD SUITE D
LAS VEGAS NV 89146-3165

145282

|

Definitions

Payments Received: Money received and posted to the account since the previous billing period.

Current Invoices & Returns: New purchases and credits given for merchandise returned since the previous billing period.

Past Due Invoices & Returns: Previously billed invoices that have not been closed (by a payment or a credit) or merchandise returns that have not been applied to a specific invoice.

Unapplied Payments & Adjustments: Payments or non-merchandise credits that have been applied to the account, but not applied to a specific invoice.

|

Sunrise Villas IX Homeowners' Association	5/21/2015	Chk#: 1792	\$844.95	CAB
Lowes Business Acct - SR				Maintenance Supplies
Type	Amount	Invoice #	Invoice Date	Memo
6441 Maintenance Supplies	844.95	5/2/15	5/20/2015	Maintenance Supplies
	844.95			

SVHA000587

FX01/C12

5/27/2015 5:41:31 PM PAGE 11/018 Fax Server

Lowe's Accounts Receivables

Fax Invoices Report

Date: 27-MAY-15

Currency: US \$

Page: 10 Of 17

Company: SUNRISE VILLAS 9 HOA

To: ACCOUNTS PAYABLE

Fax: (866) 342-0776

From: A/R

Phone: (866) 232-7443

Send Inquiries to:
Lowe's HIW Inc./Lowe's Home C
P.O. Box 965054
Orlando, FL 32896

Send Payments to:
Lowe's Credit Services
P. O. Box 530954
Atlanta, GA 30353-0954

Name: SUNRISE VILLAS 9 HOA
Address: ATTN: DEBBIE LOSSA
C/O COVENANT MANAGEMENT
LAS VEGAS NV 89146
Account #: XXXXXXXXXX
Store: 2271

Invoice Date: 28-JAN-15
Due Date: 20-FEB-15
Invoice #: 902781
P.O.#/Job Name:
Buyer Name: DUSLAK RICHARD

Cust Agree #: 0000000000

SKU	Description	Quantity	Unit	Price	Ext.Price
0000000000990	12-OZ GLOSS BLACK	4	EA	3.78	15.12
46	STOPS R				
0000000000995	12-OZ GLOSS WHITE	2	EA	3.78	7.56
47	STOPS R				
0000000001556	PROMOTIONAL BARCODE	1	EA	0.00	0.00
70	SCANN				
0000000005733	KBLT 63PC 1/4&3/8 DR	1	EA	28.47	28.47
39	SAE/				

Subtotal: 51.15

MAIL BOX PAINT

POOL TOOL

POOL ROOM

Tax: 4.14

Total: 55.29

Adjustments: 0.00

Payments Applied: 0.00

Total Amt Outstanding: 55.29

Copy of Original Invoice

SVHA000588

4A.App.777

FOR OFFICE USE ONLY:

CREDIT LIMIT: \$ _____

ACCOUNT #: _____

STORE # _____



COMMERCIAL CHARGE ACCOUNT APPLICATION **FAX COMPLETED APPLICATION TO 702-900-9682**

BUSINESS INFORMATION

LEGAL BUSINESS NAME: SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION DUNS# C172-2001DOING BUSINESS AS: SUNRISE VILLAS IX HOABUSINESS SHIP TO ADDRESS: (CAN'T BE A P.O. BOX) 4596 EUCLID ST.CITY LAS VEGAS STATE NV ZIP 89121 PHONE# 702 871-8280 EXT 107 FAX# 702 405-5407EMAIL bmolina@COVENANTMENT.COM AUTHORIZED PURCHASER(S) RICHARD DULCAS - Primary
BRIAN MOLINA - Backup

BUSINESS CHARACTERISTICS

REQUESTED CREDIT LINE \$ 1000.00 TAX PAYER ID# 88-0178612 SSN# N/A ALL COMPANY TYPES MUST COMPLETE THIS SECTIONDATE BUSINESS ESTABLISHED: 10/06/80 NET ANNUAL ^{INCOME} SALES (PRIOR YEAR): 415,520 (IF SOLE PROPRIETORSHIP) TAX EXEMPT: Y/NCIRCLE ONE BUSINESS TYPE: CORPORATION GOVERNMENT SOLE PROPRIETORSHIP (NOT FOR PROFIT) LLC PARTNERSHIP (MUST INCLUDE CERTIFICATE)PARENT OR MANAGING COMPANY: COVENANT MANAGING EXISTING PARENT/MANAGING ACCT# _____ NAT'L ACCT# _____STREET ADDRESS 2001 S. JONES BLVD., SUITE D CITY LAS VEGAS STATE NV ZIP 89146

BILLING INFORMATION (IF DIFFERENT THAN ABOVE)

BILLING ADDRESS 2001 S. JONES BLVD., SUITE D CITY LAS VEGAS STATE NV ZIP 89146PAYMENT CONTACT BRIAN MOLINA PHONE# 702 871-8280 EXT. 107 P.O. REQUIRED Y/N

BANK AND TRADE REFERENCES

BUSINESS BANK NAME: MUTUAL OF DMAA CITY PHOENIX STATE AZ PH# 866-800-4656

CHECKING# _____ SAVINGS# _____ BUSINESS LOAN# _____

TRADE REF: PRIVATE GREENS OF NV CITY HENDERSON STATE NV PH# 702 399-6360TRADE REF: CAU CITY HENDERSON STATE NV PH# 702 862-8844

SIGNATURE REQUIRED BELOW

BY SIGNING BELOW YOU: (1) SUBMIT AN APPLICATION; (2) REPRESENT THAT YOU ARE AUTHORIZED TO EXECUTE THE APPLICATION ON BEHALF OF THE BUSINESS ENTITY; (3) REPRESENT THAT THE BUSINESS ENTITY HAS AUTHORIZED THE EXECUTION OF APPLICATION; (4) AUTHORIZE US TO CHECK CREDIT ON THE BUSINESS AND OWNERS, IF NECESSARY; (5) REPRESENT THAT THE INFORMATION PROVIDED IN THIS APPLICATION IS TRUE AND CORRECT AND UNDERSTAND THAT ANY FALSE INFORMATION MAY RESULT IN CANCELLATION OF THE ACCOUNT; (6) AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE BUSINESS ACCOUNT AGREEMENT AND DISCLOSURE STATEMENT (AGREEMENT), SET FORTH ON BOTH SIDES OF THIS COMBINED APPLICATION AND AGREEMENT, AND (7) MUST INCLUDE BUSINESS LICENSE. NO APPLICATION WILL BE PROCESSED WITHOUT THE SIGNATURE OF AN AUTHORIZED PERSON ON BEHALF OF THE BUSINESS ENTITY. YOU HAVE READ AND RECEIVED A COPY OF THIS AGREEMENT BEFORE MAKING ANY PURCHASE UNDER THIS ACCOUNT. TERMS ARE ATTACHED.

AUTHORIZED SIGNATURE [Signature] PRINT BRIAN D. MOLINATITLE: SUPERVISING COMMUNITY MANAGER DATE: 7/15/15

SVHA000589

CREDIT APPLICATION TERMS AND CONDITIONS

COMMERCIAL NET 10 ACCOUNT AGREEMENT: In accordance with the Truth in Lending Act, the following terms and conditions apply to NPS Pool Supply Commercial Credit Accounts. This is the entire agreement and no oral changes can be made.

GENERAL: In this agreement, the words "we", "us" and "our" refers to NPS Pool Supply. The words "you", "yours" and "user" refers to the Business applying for credit. If we accept your application to open an Account, we will extend credit so that you may purchase goods and services with NPS Pool Supply.

ACCEPTANCE OF AGREEMENT: All Users are bound by the terms of this Agreement.

PROMISE TO PAY: You agree to pay in U.S. Dollars for all purchases, late fees, over limit fees, return check charges, and other charges or fees under this Agreement incurred by you or any User, plus collection costs, court costs and reasonable attorney fees. All disputes must be received by written notice within 60 days of invoice and prior to payment.

BUSINESS PURPOSES: By signing and submitting the Application and Agreement, you represent that the Business (a) requests the credit line as stated in this application, (b) authorizes the receipt and exchange of credit information on the Business, (c) agrees to be liable for all charges to the Credit account, (d) agrees to be bound by the terms and conditions of the Credit Agreement established with NPS Pool Supply, and (e) represents that the credit issued on this account will be used for business or commercial purposes, only as defined in the Truth-in-Lending Act and that purchases made on this Account are subject to the Truth-in-Lending Act or to state statutes governing consumer credit purchases. You agree to keep NPS Pool Supply informed of changes to all Account information.

CREDIT LINE: You agree that we may establish a credit line for your use and that your credit purchases, at any one time will not exceed the amount of the credit limit established by us. You will be advised of your credit limit when your Account is approved. You agree that we may terminate or reduce your credit line at any time. Increases to your credit line may only be made after a request for an increase is received and credit worthiness is deemed acceptable.

PAYMENTS: You agree that any payment may be returned to you if your check is (1) not drawn on U.S. Dollars on deposit in the U.S.; (2) missing a signature; (3) drawn with different written and numeric amounts; (4) endorsed with a restrictive endorsement; (5) posted; or (6) not paid on presentment. All payment checks must include the Account Number and Invoices which to apply to check amount.

APPLICATION OF PAYMENTS: Payments will be made on Invoices as requested by Account holder. Should an account be in default, payment will be applied to all late fees and other charges first, then to the oldest invoices.

FINANCE CHARGES: The Business understands that we review all Accounts monthly and we will consider an account in default if payments are not received within 30 days of purchase. If any account terms are breached, or if the account is otherwise in default as defined in the Credit Agreement, the Business understands that a penalty will be assessed in the amount equal to 1-1/2 % (18% APR) of the balance overdue, and the Business will be responsible for paying any attorney's fees and costs incurred by N.P.S. Pool Supply in collecting the amount due.

RETURN CHECK FEE: If you make a payment with a check that is dishonored or returned for insufficient funds you agree to pay us an additional fee of \$25 for each such occurrence.

DEFAULT: The following are events of default under this Agreement.

1. You do not make payment when due.
2. You make any false or misleading statements on your credit application or you fail to supply us with updated financial information regarding the business within 30 days of request.
3. You file bankruptcy or a bankruptcy petition is filed against you.
4. Any natural person guaranteeing payment of this agreement dies, declares bankruptcy or has a bankruptcy petition filed against them.
5. There is an event that occurs which in our reasonable discretion causes the prospect of payment by you to be significantly impaired.
6. The goods securing this Agreement are lost or destroyed.
7. You breach any other terms of this agreement.

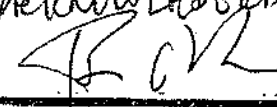
In the event of default, we may demand that the entire unpaid balance be paid immediately. If you are in default and we refer your Account to an attorney and/or collection agency for collection, we may charge you the cost associated with such collection, as applicable by law within the Fair Debt Collections Act. All liabilities of the Business and of the Guarantor shall mature immediately upon the insolvency of the Business, its inability to meet its obligations as they become due, the appointment of a receiver, custodian or trustee for the business, the filing of a voluntary or involuntary petition for relief in bankruptcy, reorganization, or arrangement, the making of an assignment for the benefit of creditor, or the calling of a meeting of creditors by the Business, or if any of the foregoing events shall occur with respect to any Guarantor.

ARBITRATION: Each party agrees to submit any and all disputes concerning this application or concerning the account established in connection with this application, if not resolved between the parties, to binding arbitration under one (1) neutral, independent and impartial arbitrator in accordance with the Commercial Rules of the American Arbitration Associations ("AAA"); provided, however, the arbitrator may not vary, modify or disregard any of the provisions contained in this paragraph. The decision and any award resulting from such arbitration shall be final and binding. The arbitrator is empowered to award attorney's fees to the prevailing party. The arbitration award will be in writing. The parties agree that any decision or award resulting from proceedings in accordance with this paragraph shall have no preclusive effect in any other matter involving third parties. All applicable statutes of limitation and defences based upon the passage of time will be tolled while the procedures specified in this paragraph are pending. The parties will take such action, if any, required to effectuate such tolling. The arbitration shall be governed by the United States Arbitration Act and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction.

CHANGES IN TERMS: We may change or terminate any terms, conditions, services or features of your Account or this Agreement at any time. Should changes in terms occur, we will communicate these changes by mail prior to the effective date.

LIABILITY FOR USE: You agree that you will keep your Account Number confidential and will contact us immediately should you believe purchases are being made by an unauthorized user. You will continue to keep N.P.S. Pool Supply informed of changes to authorized users. If you do not notify us within 30 days of an receipt of statement on which the information is contained, the statement will be presumed to be correct and all purchases contained on the statement will be presumed to be authorized.

CANCELLATION OF ACCOUNT: We have the right to cancel this Agreement/Account, as it relates to future purchases, at any time, without default. The Business will remain obligated to pay for all purchases made prior to cancellation and any charges associated with these purchases.

ACKNOWLEDGED

 7/10/16

SVHA000590



Check Request Form

Community Name: Sunrise Villas IX Homeowners Association

Date of Request: 10/08/15

Date Needed: ASAP

Vendor Name: Brian D. Molina
6043 Eganridge Ct.,
Las Vegas, NV 89081

N.

Vendor Number: _____

Description	G.L. Code	Unit Cost	Quantity	Extended	Taxable	Tax	Total
Reimbursement for start up of cell service with Metro PCS for Mtce Supvr.	6640	\$50.00					\$ 50.00
Reimbursement for accessories for cell phone for Mtce Supvr	6640	\$64.83					\$ 64.83
Total							\$ 114.83

Brian D. Molina

Community Manager Signature

Supervisor Signature

Accounting Signature

Date Received

Date Processed

SVHA000591

METROPCS STORE**#8303****CRAIG**

655 WEST CRAIG ROAD SUITE 100
NORTH LAS VEGAS NV, 89032
(702) 632-5880

Trans #: 34081164

Register: 830304

CSR Code: A10950

Date: Thu, Oct 08 2015 11:55 AM

1 Bill Payment	\$57.00
1 Items	Sub Total: \$57.00
	NV 8.100% TAX: \$0.00
	Total: \$57.00

Credit Card Visa 8938 \$57.00

Auth Code: 165058

Ref #534943615

Payments Received: \$57.00

Change: \$0.00

Customer: Sunrise Villas

Acc #: [REDACTED]

METROPCS STORE**#8303****CRAIG**

655 WEST CRAIG ROAD SUITE 100
NORTH LAS VEGAS NV, 89032
(702) 632-5880

Trans #: 34080797

Register: 830304

CSR Code: A10950

Date: Thu, Oct 08 2015 11:42 AM

1 KYO HYD WAVE BLAC TMUS KIT \$149.00
RSU
S/N: 014249002827456

1 GSMSIM \$0.00
S/N: 8901260632929897052F

1 Kyocera Wave \$110 IR -\$110.00
[610214695147]
Code: KYOWAVE110IR

1 Port-IN \$50IR Excludes T-MO & -\$39.00
All Partner Brands
[610214695147]
Code: PortIn50IR

1 CLASSIC UNIVERSAL EXTRA \$19.99
LARGE

1 KYO HYDRO WAVE BLACK GEL \$19.99
CASE

1 MP3 4GB MEMORY CARD \$19.99

7 Items	Sub Total:	\$59.97
8.100%	Sales Tax:	\$4.86
	Total:	\$64.83

Credit Card Visa 8938 \$64.83

Auth Code: 104824

Ref #534939222

Payments Received: \$64.83

Change: \$0.00

Customer: Sunrise Villas

Acc #: [REDACTED]

SVHA000592

Start of Service Request

Thank You for Joining MetroPCS!

metroPCS.

Name Mr SURGE VILLAS IV
 First Last
 Address 2001 S. JONES BLVD. SUITE D
 City LAS VEGAS State NV Zip 89146

Date 10 / 06 / 15
 Account password (eight-digit number) [REDACTED]
 Phone number (702) 683-4151
 Email [REDACTED]

☒ 9-1-1 Address Note: A 9-1-1 Address must be on file to be able to use Wi-Fi Calling.

Calling Plans

☐ \$40 Unlimited \$40/month

- Unlimited data, talk and text
- First 2GB of high-speed data at up to 4G LTE speeds* (4G LTE phone required)
- Nationwide coverage
- Visual Voicemail, voicemail, caller-ID, call waiting, 3-way calling
- Metro411 Directory Assistance
- Wi-Fi Calling (select phones only)
- Mobile Hotspot* (select phones only)

☒ \$50 Unlimited \$50/month

- Unlimited data, talk and text
- First 4GB of high-speed data at up to 4G LTE speeds* (4G LTE phone required)
- Nationwide coverage
- Visual Voicemail, voicemail, caller-ID, call waiting, 3-way calling
- Metro411 Directory Assistance
- Wi-Fi Calling (select phones only)
- Mobile Hotspot* (select phones only)

☐ \$60 Unlimited \$60/month

- Unlimited data, talk and text
- Unlimited high-speed data on your smartphone at up to 4G LTE speeds* (4G LTE phone required)
- Nationwide coverage
- Visual Voicemail, voicemail, caller-ID, call waiting, 3-way calling
- Metro411 Directory Assistance
- Wi-Fi Calling (select phones only)
- Mobile Hotspot* (select phones only)

Tablet Plans

☐ \$15 Unlimited \$15/month

- Unlimited data and text
- First 2GB of high-speed data at up to 4G speeds
- Mobile Hotspot*

☐ \$25 Unlimited \$25/month

- Unlimited data and text
- First 4GB of high-speed data at up to 4G speeds
- Mobile Hotspot*

☐ \$35 Unlimited \$35/month

- Unlimited data and text
- First 6GB of high-speed data at up to 4G speeds
- Mobile Hotspot*

Optional Tablet Service

☐ Unlimited international text messaging** \$5/month

☐ Promotional Rate Plan \$ /month

International long distance service available only to non-residents of the United States and Puerto Rico. Service and features subject to change. Not all services available in all areas. Taxes are included. Free library regulatory fees only and exclude non-resident customer fees. Offered only in select states. Coverage and service not available everywhere.
 *MetroPCS 4G or 4G LTE plans and services require a MetroPCS 4G or 4G LTE enabled phone. For portable service, you must be in the United States. Data speeds are limited to 128 Kbps. MetroPCS network speeds for download of 4G or 4G LTE data, at up to 4G or 4G LTE speeds in 4G or 4G LTE coverage areas. All data usage by you on MetroPCS network counts toward your monthly data allowance, but Wi-Fi usage does not count toward your monthly data allowance. Use at home, on the go, or on the go. Service may be subject to additional charges and fees. A portion of the data plan or service may be subject to additional charges and fees. See metropcs.com for Terms and Conditions of Service (including arbitration and dispute resolution).
 **MetroPCS data at high-speed based on plan's high-speed data allowance. Once high-speed data allowance is exhausted, speeds slow down. Unlimited smartphone LTE plan includes 6GB of high-speed data for hotspot use.
 ***Unlimited international text messaging service is subject to additional charges, restrictions, technologies and carriers. Specific unlimited international service examples, restrictions, technologies and carriers are subject to change without notice, as are Terms and Conditions of Service.

Account Detail

E-statement No Charge

View your statement summary online
 (only available in select states)

☐ Call Detail \$1/month

View your local calls made during the service cycle online

Payment Options

You will receive a text message reminder on your phone before payment is due.
 eWallet No Charge

Sign up for MyAccount on metropcs.com and create your own secure eWallet where you can safely store cards for quick payment and set up autopay.

Text to Pay No Charge

The secure and easy way to pay your monthly MetroPCS service. Register your credit or debit card with MetroPCS eWallet service and simply respond to a text from PAYNOW (729669) to pay.

Auto Pay No Charge

Credit or debit card is automatically debited five days before payment is due

Express Pay No Charge

Account Summary

MetroPCS account number: [REDACTED]

MetroPCS phone number: 702-123-4567

Default Voicemail Password: Last 4 digits of phone number

Monthly due date: 7/1

Monthly Service: \$

☐ Value Bundle \$5/month \$

- Call Forwarding
- Unlimited International Text Messaging*
- Screen-it*
- Unlimited Directory Assistance
- Voicemail to Text

Optional Services:

International Long Distance*

☐ Mexico Calling - Landlines \$5/month \$

☐ Mexico Unlimited* - Landlines and Mobiles \$5/month \$

☐ World Calling \$10/month \$

Music**

☐ MetroPCS Ringback Tones

Subscription 2 for \$5/month \$

☐ Rhapsody* Unlimited Music \$10/month \$

Protection and More

☐ Metro Block-it* \$1/month \$

☐ Call Detail \$1/month \$

☐ Lookout Mobile Security* Premium \$3/month \$

☐ Data Top-Up (1GB)*** \$5 \$

☐ Premium Handset Protection* \$6/month \$

Total monthly MetroPCS charges:

\$ (57)

Rate plans and features are inclusive of all applicable governmental taxes and regulatory fees. See metropcs.com for more details.

Service not available in all areas. Not all services available in all areas. Taxes are included. Free library regulatory fees only and exclude non-resident customer fees. Offered only in select states. Coverage and service not available everywhere.
 *MetroPCS 4G or 4G LTE plans and services require a MetroPCS 4G or 4G LTE enabled phone. For portable service, you must be in the United States. Data speeds are limited to 128 Kbps. MetroPCS network speeds for download of 4G or 4G LTE data, at up to 4G or 4G LTE speeds in 4G or 4G LTE coverage areas. All data usage by you on MetroPCS network counts toward your monthly data allowance, but Wi-Fi usage does not count toward your monthly data allowance. Use at home, on the go, or on the go. Service may be subject to additional charges and fees. A portion of the data plan or service may be subject to additional charges and fees. See metropcs.com for Terms and Conditions of Service (including arbitration and dispute resolution).
 **MetroPCS data at high-speed based on plan's high-speed data allowance. Once high-speed data allowance is exhausted, speeds slow down. Unlimited smartphone LTE plan includes 6GB of high-speed data for hotspot use.
 ***Unlimited international text messaging service is subject to additional charges, restrictions, technologies and carriers. Specific unlimited international service examples, restrictions, technologies and carriers are subject to change without notice, as are Terms and Conditions of Service.

Return Policy

MetroPCS customers activating a new device on a new line of service with MetroPCS who are dissatisfied with their new device or service may return their new device for a device and service refund.*

MetroPROMISE® Rules:

- The device must be returned within 7 days of purchase with less than one hour of talk time for a full refund.
- The device must be returned in "like new condition" and contain all original packaging and accessories.
- The device must be returned to the original place of purchase with accompanying device and service payment receipts.
- Online customers must return the device to the Online Returns Center per the instructions included in the shipment packaging.
- Device exchanges and upgrades are non-refundable under this policy, but may be covered by a limited manufacturer's warranty, if applicable.
- For purchases made at T-Mobile authorized retailer stores, T-Mobile's service cancellation and return policies apply.

*This policy only applies to new purchases of a device and service on a new line of service with MetroPCS. It does not apply to upgrades, replacements, or returns of a device or service. The policy is subject to change without notice. See metropcs.com for more details.

Upgrade Policy

Customers who wish to purchase a new device in-store or online within 90 days of their last new device purchase on a line of service must pay the full suggested retail price.

Returned Payment Policy

If your check, electronic funds transfer payment, including debit or Automated Clearing House payment, or any other payment is dishonored or returned, we may charge you up to \$35 or the maximum amount allowed under applicable law, and we may also generate a draft or electronically debit your account for any fee amount due, all as allowed by law.

4A.App.783

Receipts turned in by Rich on June 15, 2016

Date	Location	Amount
4.9.16	Terrible	\$10.00
3.24.16	Terrible	\$6.00
5.11.16	Terrible	\$10.00
3.31.16	Terrible	\$10.00
3.31.16	Terrible	\$8.94
4.05.16	Wireless Toys	\$63.00
5.06.16	Wireless Toys	\$63.00
3.24.16	Leslies Pool	\$602.79
5.30.16	Leslies Pool	\$186.98
5.29.16	Leslies Pool	\$448.25
6.08.16	Leslies Pool	\$229.67
6.08.16	Leslies Pool	\$8.82
6.01.16	Leslies Pool	\$17.84
6.06.16	Lowe's	\$4.04
5.22.16	Lowe's	\$176.47
6.03.16	Lowe's	\$3.32
6.03.16	Lowe's	\$54.72
5.18.16	Lowe's	\$295.29
6.12.16	Home Depot	\$63.64
Totals		
Terrible		\$44.94
Wireless Toys		\$129.00
Leslies Pool		\$1494.35
Home Depot / Lowe's		\$593.44
Home Depot / Rita		\$250.69

SVHA000595

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EXHIBIT “D”





January 27, 2016

Allan Fredeerick
 Sunrise Villas IX Homeowners Association
 C/O PW James Management
 6029 South Fort Apache, Suite 130
 Las Vegas, NV 89148

Re: **Policy Date: February 01, 2016**
CAU Account # [REDACTED]
Policy # CAU234378-1

Dear Allan,

We are pleased to enclose the association's package policy which is written for a one year term. In addition we are enclosing the Worker's Compensation and Volunteer Accident policies for your review.

We are also including a sample certificate of insurance for this association. The certificate includes basic policy coverage information. You may wish to use this in your resale packages or as a quick coverage reference. Unit owners requesting certificates of insurance should be directed to the CAU website at www.cauinsure.com. Simply click on "Certificates of Insurance" and follow the prompts. Certificates can also be ordered by calling 267-757-7110 and following the directions on the recording. Certificates can be ordered 24 hours a day, seven days a week.

Please take a moment now to review the following items:

- To assist you with the communication of insurance information to the members of your community, you will find a "**Unit Owners Fact Sheet**". This fact sheet includes a general description of the association's coverage, information about filing claims and instructions for ordering certificates of insurance. We recommend that this document be distributed to all of the unit owners in your community.
- The "**Environmental Impairment Liability**" brochure describes the type of protection provided by this coverage.
- Items we require from you are listed on the "**Needed Items**" document.
- Our "**Whom to Call**" directory provides the contact information for our accounting, claims and customer service representatives.

The limits of liability chosen by the association were based upon considerations of cost and risk factors. Please notify us in writing if you desire any changes or increases in these limits.

Please contact us if you have any questions regarding your policy or these documents. Thank you for choosing CAU as your insurance provider.

Sincerely,

Paula Lepone
 Customer Service Representative

cc: Barbara Westhoff

Enc.



Sunrise Villas IX Homeowners Association

Needed Items

Please forward the following items to us within 30 days:

Association's current financial statement or budget
The latest statement in file is dated 2012



CERTIFICATE OF INSURANCE REQUEST FORM

To obtain a Certificate of Insurance, please complete the information below.

Your request can be faxed to 267-757-7410, e-mailed to certs@cauinsure.com, or visit our website for processing at www.cauinsure.com.

Requests are processed in a timely manner and mailed directly to the Mortgage Holder, unless forwarding instructions are provided below.

ASSOCIATION/COMPLEX NAME:

UNIT OWNER/SHAREHOLDER:

(as they appear on mortgage loan, including middle names or initials)

COMPLETE UNIT ADDRESS:

(street name, unit #, city, state and zip code)

MORTGAGE LOAN NUMBER:

MORTGAGE/CERTIFICATE HOLDER:

(as should appear on the Certificate of Insurance; including address)

Forwarding instructions:

Company Name:

Attention:

Company Address:

Phone Number:

**By providing CAU with a Fax Number and/or E-mail Address,
you will be invoiced \$30.00 for expedited service.**

Fax Number:

E-Mail Address:



Sunrise Villas IX Homeowners Association

Welcome to Community Association Underwriters' insurance program. This two-page fact sheet is designed to assist you in:

- Purchasing your own insurance
- Filing claims
- Ordering certificates of insurance

Key information regarding the association's insurance policy:

1. The common elements, limited common elements and units are covered.
2. Units are covered based on original condominium plans and specifications. For example, fixtures, cabinets, floor coverings and appliances should be repaired or replaced with new items of like kind and quality to those originally installed. Upgrades are not covered. This includes, but is not limited to, upgraded carpeting, cabinets, appliances, wall coverings, finished basements, built-in bookshelves and other permanently installed fixtures.
3. The covered causes of loss include: fire, lightning, windstorm, hail, explosion, riot, aircraft and vehicle damage, smoke, vandalism, falling objects, weight of ice, snow or sleet, collapse, sudden and immediate water escape or overflow from plumbing or appliances, frozen pipes, and convector units.
4. No coverage is provided for wear and tear, deterioration, damage by insects or animals, settling or cracking of foundation, walls, basements or roofs. There is no coverage for damage caused by continuous or repeated leakage or seepage from appliances or plumbing. This includes, but is not limited to, leaking from around the shower, bathtub, toilet or sink. These events are properly classified as maintenance items.

Key information regarding unit owner's insurance needs:

1. You need a condominium owner's policy, also known as an HO-6, to pick up coverage for your personal property, furniture, additional living expenses (in the event your unit is uninhabitable due to a covered claim), all upgrades, improvements and betterments and personal liability.

In older communities, it may be difficult to differentiate between the original specifications of your unit and subsequent improvements that were made. If original plans and specifications can not be determined, local builders' grade is used to adjust a claim. In cases where you are uncertain about your needs, consult with your personal insurance agent about adding an estimated amount of insurance coverage to your HO-6 policy.

Note: This fact sheet is intended to provide a brief summary of insurance issues. In all cases, the declarations, terms, conditions and exclusions of the actual policy will apply.



Sunrise Villas IX Homeowners Association

2. The association insurance policy carries a deductible. In the event of a claim, the association may seek to recover the deductible from unit owners involved in the claim. Your obligation to pay the deductible may be offset by your HO-6 policy, subject to your own deductible, if you add building coverage. Ask your personal insurance agent.

Claims

If you have a claim, notify your association's management company or designated board member and your own homeowners insurance carrier. Claims that involve your personal property, furniture and upgrades must be submitted to your homeowners insurance carrier.

Claim payments under this policy are made to your board of directors as insurance trustee.

Certificates of Insurance

Unit owners can request certificates of insurance by either:

1. Going to our web site at: www.cauinsure.com. Click the "Certificate of Insurance" button and follow the prompts.
2. Calling (267) 757-7110 to obtain a CAU Certificate of Insurance Request Form. Send the completed form to CAU in one of the following ways:
 - Fax the CAU Certificate of Insurance Request Form to:
(267) 757-7410
 - Mail the CAU Certificate of Insurance Request Form to:
Certificate Department - CAU, 2 Caufield Place, Newtown, PA 18940

Web and faxed certificate of insurance requests are processed within 24 business hours.

We appreciate your association's business, and we are committed to providing you and your community with prompt and professional service. If we can be of further assistance, please call our customer service department at 800-228-1930.

Note: This fact sheet is intended to provide a brief summary of insurance issues. In all cases, the declarations, terms, conditions and exclusions of the actual policy will apply.



Call us toll free at **(800) 228-1930** or use our direct dial phone numbers. To expedite your call, please have your CAU account number or policy number available.

YOUR CUSTOMER SERVICE CONTACT

All service requests, such as change requests and coverage inquiries should be directed to our customer service representatives.

Paula Lepone

Extension: 7109

Direct Dial: (267) 757-7109

Fax: (267) 757-7409

Email: plepone@cauinsure.com

CLAIMS REPORTING

To report a claim:

Go to our web site at: www.cauinsure.com. Click the "Claims" button for Claims Forms and reporting instructions.

Direct Claims Email:

dclaims@cauinsure.com

Direct Claims Fax:

(267) 757-7424

For general claims questions call:

(267) 757-7128

(267) 757-7131

All claims must be reported by a member of the association's board of directors or your property manager.

CERTIFICATES OF INSURANCE

Unit owners can obtain certificates of insurance by means of the following:

1. Go to our web site at: www.cauinsure.com. Click the "Certificates of Insurance" button and follow the prompts.
2. Complete the CAU Certificate of Insurance Request Form which can be found in your policy packet or call (267) 757-7110 for instructions on how to obtain this form. Send the completed form to CAU in one of the following ways:
 - Fax the CAU Certificate of Insurance Request Form to:
(267) 757-7410
 - Mail the CAU Certificate of Insurance Request Form to:
Certificate Department – CAU, 2 Caufield Place, Newtown, PA 18940

Online and faxed certificate of insurance requests are processed within 24 business hours.

BILLING INQUIRIES

All questions about your payment plan or invoices should be directed to our accounting department.

Jean Collins

Extension: 7121

Direct Dial: (267) 757-7121

Fax: (267) 757-7421

Email: jcollins@cauinsure.com

Pat Williams

Extension: 7122

Direct Dial: (267) 757-7122

Fax: (267) 757-7422

Email: pwilliams@cauinsure.com

YOUR LOCAL OFFICE

Please direct inquiries pertaining to new or renewal policies or additional coverage to your local office.

Barbara Westhoff

Phone: (800) 228-1930

Fax: (267) 757-7474

Email: bwesthoff@cauinsure.com



Member of the QBE Insurance Group

Condominium Policy

■ Declarations

POLICY PERIOD

POLICY NUMBER:

CAU234378-1

FROM: 02/01/2016 TO: 02/01/2017

ANNUAL PREMIUM:

12:01 A.M. Standard Time at your mailing address

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE STATED IN THIS POLICY.

NAMED INSURED

Sunrise Villas IX Homeowners Association

MAILING ADDRESS

C/O PW James Management
6029 South Fort Apache, Suite 130
Las Vegas, NV 89148

■ Directory of Declarations

DECLARATIONS TITLE	PAGE NO.
POLICY DECLARATIONS	1
DESCRIPTION OF PREMISES DECLARATIONS	2
PROPERTY DIRECT COVERAGES DECLARATIONS	3, 4
PROPERTY CONSEQUENTIAL COVERAGES DECLARATIONS	5
PROPERTY ADDITIONAL CAUSES OF LOSS DECLARATIONS	6
PROPERTY SUPPLEMENTARY PAYMENTS DECLARATIONS	6
EARTHQUAKE AND "VOLCANIC ERUPTION" DECLARATIONS	6
LIABILITY COVERAGE DECLARATIONS	7
DIRECTORS AND OFFICERS LIABILITY COVERAGE DECLARATIONS	8
ENVIRONMENTAL IMPAIRMENT LIABILITY COVERAGE DECLARATIONS	9
AMENDATORY DECLARATIONS	10

CAU

1180 N. Town Center Drive, Suite 100
Las Vegas, NV 89144

COUNTERSIGNED

(DATE)

BY

(AUTHORIZED REPRESENTATIVE)



CAU

2 Caufield Place, Newtown, PA 18940

Description of Premises

■ Declarations

Coverage is provided for thirty one one-story stucco condominium buildings containing one hundred twenty four residential units. The premises is located at 2531, 2536, 2537, 2540, 2541, 2546, 2547, 2550, 2556, 2557, 2560, 2561, 2566, 2567, 2570, 2576, 2577, 2580, 2581, 2586, 2587, 2590, 2591, La Cara Ave; 2511, 2517, 2521, 2527, 2532, 2533, 2538, 2539, 2542, 2543, 2548, 2549, 2558, 2559, 2562, 2563, 2568, 2569, 2578, 2579, 2582, 2583, 2588, 2589, 2592, 2593, La Fortuna Ave; 2508, 2512, 2516, 2522, 2528, 2530, 2533, 2536, 2537, 2540, 2543, 2546, 2547, 2556, 2557, 2562, 2563, 2566, 2567, 2572, 2573, 2577, 2582, 2583, 2586, 2587, Laconia Ave; 4521, 4527, 4533, 4539, 4545, 4551, 4557, 4567, 4569, 4575, 4581, 4587, 4593, 4599, 4605, 4611, 4617, 4623, 4631, 4639, 4647, 4657, 4665, 4673, 4681, 4687, Madreperla street; 2534, 2535, 2538, 2539, 2544, 2545, 2548, 2549, 2552, 2558, 2559, 2564, 2565, 2568, 2569, 2574, 2575, 2578, 2579, 2584, 2585, 2588, 2589 Malabar Ave., Las Vegas, Clark County, NV 89121.

INSURANCE TRUSTEE

Property Coverage**■ Declarations**

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

VALUATION (15)

A/C	MEANS ACTUAL COST (15)	G/R/C	MEANS GUARANTEED REPLACEMENT COST (15)
A/C/V	MEANS ACTUAL CASH VALUE (15)	I/R/C	MEANS INCREASED REPLACEMENT COST (15)
A/L/S	MEANS ACTUAL LOSS SUSTAINED (15)	M/V	MEANS MARKET VALUE (16)
A/V	MEANS APPRAISED VALUE (16)	R/C	MEANS REPLACEMENT COST (15)
F/V	MEANS FACE VALUE (16)		

PROPERTY DIRECT COVERAGES DECLARATIONS

COVERAGE	LIMIT OF INSURANCE	VALUATION	DEDUCTIBLE
BUILDINGS AND STRUCTURES (1)			
BUILDINGS (1)	Guaranteed Replacement Cost	G/R/C	\$5,000
STRUCTURES (1)	Guaranteed Replacement Cost	G/R/C	\$5,000
"UNITS" (1)			
ORIGINAL SPECIFICATIONS (1)	Guaranteed Replacement Cost	G/R/C	\$5,000
ADDITIONAL INSTALLATIONS (1)	NONE		
COMMUNITY PERSONAL PROPERTY (1)	Guaranteed Replacement Cost	G/R/C	\$5,000
STRUCTURAL GLASS AND SIGNS (2)	Guaranteed Replacement Cost	G/R/C	\$250
BRIDGES, BULKHEADS, DOCKS, PIERS, RETAINING WALLS, WHARVES (2)	\$10,000	R/C	\$500
SATELLITE DISHES AND ANTENNAS (2)	\$10,000	R/C	\$500
NATURAL PROPERTY (2)	\$10,000	R/C	\$0
Maximum per tree, plant, shrub or lawn	\$500	R/C	\$0
NEWLY ACQUIRED OR CONSTRUCTED PROPERTY (2)			
NEWLY ACQUIRED BUILDINGS AND STRUCTURES (2)	\$250,000	R/C	\$5,000
NEWLY CONSTRUCTED BUILDINGS AND STRUCTURES (2)	\$250,000	R/C	\$5,000

Property Coverage**■ Declarations**

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

VALUATION (15)

A/C	MEANS ACTUAL COST (15)	G/R/C	MEANS GUARANTEED REPLACEMENT COST (15)
A/C/V	MEANS ACTUAL CASH VALUE (15)	I/R/C	MEANS INCREASED REPLACEMENT COST (15)
A/L/S	MEANS ACTUAL LOSS SUSTAINED (15)	M/V	MEANS MARKET VALUE (16)
A/V	MEANS APPRAISED VALUE (16)	R/C	MEANS REPLACEMENT COST (15)
F/V	MEANS FACE VALUE (16)		

PROPERTY DIRECT COVERAGES DECLARATIONS

COVERAGE	LIMIT OF INSURANCE	VALUATION	DEDUCTIBLE
NEWLY ACQUIRED COMMUNITY PERSONAL PROPERTY (2)	\$250,000	R/C	\$5,000
"MONEY" AND "SECURITIES" (2)	\$15,000	F/V, M/V	\$0
COMPUTER EQUIPMENT, "MEDIA" AND SUPPLIES (3)	\$25,000	R/C	\$500
PAPERS, RECEIVABLES AND RECORDS (3)	\$10,000	A/C	\$0
"FINE ARTS" (3)	\$15,000	A/V	\$500
"PERSONAL EFFECTS" (3)			
Per Person	\$5,000	A/C/V	\$0
Per Occurrence	\$15,000	A/C/V	\$0
PERSONAL PROPERTY OF OTHERS (3)			
Per Person	\$5,000	A/C/V	\$0
Per Occurrence	\$15,000	A/C/V	\$0
ELEVATOR COLLISION (3)	\$100,000	R/C	\$0
OFF "PREMISES" (3)	\$25,000	R/C	\$5,000
IN TRANSIT (3)	\$25,000	R/C	\$5,000
"RATABLE LIMIT" (56)	\$29,250,000		

Property Coverage**■ Declarations**

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

VALUATION (15)

A/C	MEANS ACTUAL COST (15)	G/R/C	MEANS GUARANTEED REPLACEMENT COST (15)
A/C/V	MEANS ACTUAL CASH VALUE (15)	I/R/C	MEANS INCREASED REPLACEMENT COST (15)
A/L/S	MEANS ACTUAL LOSS SUSTAINED (15)	M/V	MEANS MARKET VALUE (16)
A/V	MEANS APPRAISED VALUE (16)	R/C	MEANS REPLACEMENT COST (15)
F/V	MEANS FACE VALUE (16)		

PROPERTY CONSEQUENTIAL COVERAGE DECLARATIONS

COVERAGE	LIMIT OF INSURANCE	VALUATION	DEDUCTIBLE
MAINTENANCE FEES AND ASSESSMENTS (4)	FULL	A/L/S	\$0
COMMUNITY INCOME (4)	FULL	A/L/S	\$0
EXTRA EXPENSE (4)	FULL	A/C	\$0
ACCOUNTS RECEIVABLE EXPENSES (4)	FULL	A/L/S	\$0
"MEDIA" COSTS (4)	\$25,000	A/C	\$0
"VALUABLE PAPERS AND RECORDS" COSTS (4)	\$25,000	A/C	\$0
ORDINANCE OR LAW COVERAGE (4)			
COVERAGE FOR LOSS TO THE UNDAMAGED PORTION OF THE BUILDING (5)	Guaranteed Replacement Cost	G/R/C	\$5,000
DEMOLITION COST COVERAGE (5)	\$250,000	A/C	\$5,000
INCREASED COST OF CONSTRUCTION COVERAGE (5)	\$250,000	I/R/C	\$5,000
INCREASED PERIOD OF RESTORATION COVERAGE (5)	FULL	A/L/S, A/C	\$0
REMOVAL COVERAGES (5)			
DEBRIS REMOVAL (5)	\$250,000	A/C	\$0
PROPERTY REMOVAL (5)	\$250,000	R/C	\$0
REMOVAL OF FALLEN TREES (5)	\$10,000	R/C	\$0
Maximum per tree, plant, shrub or lawn	\$500	R/C	\$0

Property Coverage**■ Declarations**

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

VALUATION (15)

A/C	MEANS ACTUAL COST (15)	G/R/C	MEANS GUARANTEED REPLACEMENT COST (15)
A/C/V	MEANS ACTUAL CASH VALUE (15)	I/R/C	MEANS INCREASED REPLACEMENT COST (15)
A/L/S	MEANS ACTUAL LOSS SUSTAINED (15)	M/V	MEANS MARKET VALUE (16)
A/V	MEANS APPRAISED VALUE (16)	R/C	MEANS REPLACEMENT COST (15)
F/V	MEANS FACE VALUE (16)		

PROPERTY ADDITIONAL CAUSES OF LOSS COVERAGE DECLARATIONS

COVERAGE	LIMIT OF INSURANCE	VALUATION	DEDUCTIBLE
WORLDWIDE CRIME COVERAGES (10)			
"EMPLOYEE DISHONESTY" (10)	FULL	A/L/S	\$0
"COMPUTER FRAUD" (10)	\$50,000	A/C	\$0
"DEPOSITORS FORGERY" (11)	\$50,000	A/C	\$0

PROPERTY SUPPLEMENTARY PAYMENTS DECLARATIONS

COVERAGE	LIMIT OF INSURANCE	VALUATION	DEDUCTIBLE
ARSON, VANDALISM, AND DELIBERATE AND MALICIOUS ACTS REWARD (11)	\$5,000	10% of Paid Claim	\$0
FIRE DEPARTMENT SERVICE CHARGES (11)	\$10,000	A/C	\$0
FIRE EXTINGUISHER RECHARGE (11)	\$1,000	A/C	\$0
"POLLUTANT" CLEAN UP AND REMOVAL (11)	\$25,000 Per 12 month Period	A/C	\$0

EARTHQUAKE AND "VOLCANIC ERUPTION" DECLARATIONS

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO EARTHQUAKE AND "VOLCANIC ERUPTION" COVERAGE PART PAGE NUMBERS

COVERAGE	LIMIT OF INSURANCE	VALUATION	DEDUCTIBLE
EARTHQUAKE AND "VOLCANIC ERUPTION" (1)	No Coverage		

Liability Coverage**■ Declarations**

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

COVERAGE		LIMIT OF INSURANCE	TYPE OF LIMIT
"BODILY INJURY" AND "PROPERTY DAMAGE" (20)		\$3,000,000	"OCCURRENCE"
"PERSONAL INJURY" AND "ADVERTISING INJURY" (20)		\$3,000,000	"OFFENSE"
"HIRED AUTO" AND "NONOWNED AUTO" (20)		\$3,000,000	"OCCURRENCE"
PROPERTY DAMAGE LEGAL LIABILITY - REAL PROPERTY (21)		\$1,000,000	"OCCURRENCE"
GARAGE AND PARKING AREA LEGAL LIABILITY (21)	DEDUCTIBLE		
Comprehensive Coverage (21)	\$500	\$25,000	"OCCURRENCE"
Collision Coverage (21)	\$500	\$25,000	"OCCURRENCE"
MEDICAL PAYMENTS (21)		\$5,000	"OCCURRENCE"
PRODUCTS/COMPLETED OPERATIONS (36)		\$3,000,000	AGGREGATE
"EMPLOYERS LIABILITY" (36) Coverage is provided on excess basis only		\$3,000,000	AGGREGATE

SCHEDULE OF "UNDERLYING INSURANCE"

UNDERLYING INSURER	EFFECTIVE DATES	POLICY NUMBER	LIMITS OF INSURANCE
"EMPLOYERS LIABILITY"			Bodily Injury by Accident
MANUFACTURERS ALLIANCE INSURANCE CO.	02/01/2015 -- 02/01/2016	201501-76-46-01-1	\$500,000 Each Accident
			Bodily Injury by Disease
			\$500,000 Policy Limit
			\$500,000 Each Employee
"AUTO"			Bodily Injury
			Each Person
			Each Accident
"OWNED AUTO"			Property Damage
"HIRED AUTO"			Each Accident
"NONOWNED AUTO"			Combined Single Limit
			Each Accident
OTHER			General Aggregate
			Products - Completed
			Operations Aggregate
			Personal and
			Advertising Injury
			Each Occurrence

Directors & Officers Liability Coverage

■ Declarations

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE

COVERAGE	LIMIT OF INSURANCE
ERRORS AND OMISSIONS INSURANCE (38)	
EACH "LOSS" (38)	\$2,000,000
EACH "POLICY YEAR" (42)	\$2,000,000
RETAINED LIMIT (42)	NONE

RETROACTIVE DATE (38)

This insurance does not apply to "loss" from "wrongful acts" which took place before the Retroactive Date, if any, shown below:

RETROACTIVE DATE: NONE

(Enter Date or "None" if no Retroactive Date applies)

OPTIONAL EXTENDED REPORTING PERIOD (42)

The premium for the Optional Extended Reporting Period is: [REDACTED]

Environmental Impairment Liability Coverage

■ Declarations

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO ENVIRONMENTAL IMPAIRMENT LIABILITY COVERAGE PART PAGE NUMBERS

THIS COVERAGE PART PROVIDES CLAIMS MADE COVERAGE

COVERAGE	LIMIT OF INSURANCE
ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE (1)	
EACH "LOSS" (7)	\$500,000
EACH "POLICY YEAR" (6)	\$500,000
RETAINED LIMIT (4) (Applicable to each "loss")	\$5,000

RETROACTIVE DATE (5)

This insurance does not apply to "loss" which takes place before the Retroactive Date, if any, shown below:

RETROACTIVE DATE: NONE

(Enter Date or "None" if no Retroactive Date applies)

OPTIONAL EXTENDED REPORTING PERIOD: one year from the expiration date of the "policy period" (4)

The premium for the Optional Extended Reporting Period is: [REDACTED]

OTHER SCHEDULES & ENDORSEMENTS:

NOTICE

Any emergency arising out of "pollution conditions" covered by this Coverage Part should be reported immediately to the On Call 24 hour hotline at 1-800-823-7351, administered by XL Specialty Claims, a division of the XL Insurance companies.

Amendatory**■ Declarations**

(#) WHERE SHOWN ON THE DECLARATIONS REFERS TO POLICY PAGE NUMBERS

FORM NUMBER	FORM TITLE	EDITION DATE
CAU 1000	Condominium Policy	07/01
CAU 1101	Signature Page	12/12
CAU 1130	Employee Dishonesty - Property Manager	07/01
CAU 1180	Property Manager Directors and Officers	07/01
CAU 1184	Exclusion - Specified Activities	07/01
CAU 1229	Nevada Changes - Amendatory Endorsement	03/10
CAU 1930	Cap on Losses from "Certified Acts of Terrorism"	01/15
CAU 1985	Disclosure Pursuant to Terrorism Risk Insurance Act	01/15
CAU 1990	Nuclear, Biological, Chemical and Radiological Hazards Exclusion	08/15
CAU 1999	Exclusion of Certain Computer Related Losses	07/01
CAU 2200	Environmental Impairment Liability Coverage Part	07/01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This signature page replaces the Signature Page which is a part of the following policies:

CAU 1000 – Condominium Association Insurance Policy
CAU 1010 – Cooperative Apartment Insurance Policy
CAU 1020 – Homeowners Association Insurance Policy
CAU 1030 – Office Condominium Association Insurance Policy

SIGNATURE PAGE

YOUR COMPLETE POLICY CONSISTS OF THE POLICY JACKET WITH THE COVERAGE FORM, DECLARATIONS AND ENDORSEMENTS, IF ANY.

In Witness Whereof, QBE Insurance Corporation has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of QBE Insurance Corporation.



Bob James
President



Jose Ramon Gonzalez
Secretary

QBE INSURANCE CORPORATION
A Stock Company

Home Office
c/o CT Corporation System
116 Pine Street, Suite 320
Harrisburg, Pennsylvania 17101

Administrative Office
88 Pine Street
Wall Street Plaza
New York, New York 10005

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Employee Dishonesty - Property Manager**

This endorsement modifies insurance provided by the Property Coverage Part of the following:

CONDOMINIUM POLICY
COOPERATIVE APARTMENT POLICY
HOMEOWNERS ASSOCIATION POLICY
OFFICE CONDOMINIUM POLICY

Definition 15. "Covered Employee" (PROPERTY) of XXVIII. DEFINITIONS SECTION is replaced by:

15. "Covered Employee" (PROPERTY) means:

- a. Any natural person:
 - (1) While in your service (and for 30 days after termination of service); and
 - (2) Whom you compensate directly by salary, wages or commissions; and
 - (3) Whom you have the right to direct and control while performing services for you; or
- b. Any natural person employed by an employment contractor while that person is subject to your direction and control and performing services for you. However, any such person is excluded while having care and custody of property outside the "premises."
- c. Any natural person who is a duly elected or appointed director, trustee, officer, committee volunteer or member, whether salaried or not, and any other person acting on behalf or at the direction of an officer or board of directors of your Association with the exception of the developer when acting in a capacity as the developer.
- d. Any natural person or any organization while acting as your real estate manager.

But covered employee does not include any employee, director, officer, board member, or real estate manager immediately upon discovery by you or any of your officers and directors not in collusion with the employee, director, officer, board member, or real estate manager of any dishonest act committed by that employee, director, officer, board member, or real estate manager, whether before or after being hired or appointed by you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Property Manager Directors and Officers**

This endorsement modifies insurance provided by the Directors and Officers Liability Coverage Part under the following:

CONDOMINIUM POLICY
COOPERATIVE APARTMENT POLICY
HOMEOWNERS ASSOCIATION POLICY
OFFICE CONDOMINIUM POLICY

The following is added to A., XXIII. DIRECTORS AND OFFICERS LIABILITY WHO IS AN INSURED SECTION:

Any person or organization acting as real estate property manager for the Named Insured while performing real estate management duties for the Named Insured, but only with respect to liability for "wrongful acts" committed at the express direction of the Named Insured. However, your real estate property manager is not an insured for claims or "suits" brought against them by you.

B.2. under XXIII. DIRECTORS AND OFFICERS LIABILITY WHO IS AN INSURED SECTION is hereby deleted.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Exclusion - Specified Activities**

This endorsement modifies insurance provided by the Liability Coverage Part of the following:

CONDOMINIUM POLICY
COOPERATIVE APARTMENT POLICY
HOMEOWNERS ASSOCIATION POLICY
OFFICE CONDOMINIUM POLICY

The following exclusion is added and shall apply to:

XI. GENERAL LIABILITY EXCLUSION SECTION; and
XVI. EXCESS LIABILITY EXCLUSIONS SECTION

SPECIFIED ACTIVITIES

"Bodily injury," "property damage," "personal injury," or "advertising injury" arising out of the activities or operations described below, regardless of whether such activities or operations are conducted by you or on your behalf or whether the activities or operations are conducted for yourself or for others.

- a. Armed guards or dog services;
- b. Hunting or archery
- c. Indoor, outdoor pistol, trap or skeet shooting ranges;
- d. Day care, medical or nursing facilities;
- e. All terrain vehicles, ski areas, skiing activities, snowmobiling, parasailing, water skiing or water ski jets; or
- f. Saddle animals, horseback riding clubs or any other equestrian activities.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ Nevada Changes - Amendatory Endorsement

This endorsement modifies insurance provided under the following:

CONDOMINIUM POLICY
COOPERATIVE APARTMENT POLICY
HOMEOWNERS ASSOCIATION POLICY
OFFICE CONDOMINIUM POLICY

A. XXVII. COMMON POLICY CONDITIONS SECTION is amended as follows:

(i) A. CANCELLATION 2. and 3. are deleted and replaced by the following:

2.a. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

- (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

2.b. MIDTERM CANCELLATION

If this policy has been in effect for 70 days or more, or if this policy is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) Conviction of the insured of a crime arising out of acts increasing the hazard insured against;
- (3) Discovery of fraud or material misrepresentation in obtaining the policy or in presenting a claim thereunder;
- (4) Discovery of an act or omission or a violation of any condition of the policy which occurred after the first effective date of the current policy, and substantially and materially increases the hazard insured against;
- (5) A material change in the nature or extent of the risk, occurring after the first effective date of the current policy, which

causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

- (6) A determination by the commissioner that continuation of our present volume of premiums would jeopardize our solvency or be hazardous to the interests of our policyholders, creditors or the public;
- (7) A determination by the commissioner that the continuation of the policy would violate, or place us in violation of, any provision of the code.

2.c. ANNIVERSARY CANCELLATION

If this policy is written for a term longer than one year, we may cancel for any reason at an anniversary, by mailing or delivering written notice of cancellation to the first Named Insured at the last mailing address known to us at least 60 days before the anniversary date.

3. Notice of cancellation will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state the reason for cancellation.

(ii) The following is added to A. CANCELLATION:

7. We will also provide a copy of the notice of cancellation, for both policies in effect less than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.

(iii) B. NONRENEWAL 2. and 3. are deleted and replaced by the following:

2. If we elect not to renew this policy, we will mail or deliver to the first Named Insured shown in the "Declarations" a notice of intention not

to renew at least 60 days before the anniversary date or policy expiration date.

3. Notice of nonrenewal will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state the reason for nonrenewal.

(iv) The following is added to B. NONRENEWAL:

5. We need not provide this notice if:
 - a. You have accepted replacement coverage;
 - b. You have requested or agreed to nonrenewal; or
 - c. This policy is expressly designated as nonrenewable.

B. VI. PROPERTY CONDITIONS SECTION, A. CONCEALMENT, MISREPRESENTATION OR FRAUD is deleted and replaced by the following:

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Property Coverage Part may be cancelled in any case of fraud by you as it relates to this Property Coverage Part at any time. Also, this Property Coverage Part may be cancelled if you, or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. The Property Coverage Part;
2. The "covered property";
3. Your interest in the "covered property"; or
4. A claim under this Property Coverage Part

Under this condition you also means any officer, director, or trustee when acting on your behalf.

C. XI. GENERAL LIABILITY EXCLUSIONS, O. and X. and Z. are deleted and replaced as follows:

(i) O. "EMPLOYERS LIABILITY"

"Bodily injury" to:

1. An "employee" of the insured arising out of and in the course of:
 - a. Employment by the insured; or
 - b. Performing duties related to the conduct of the insured's business; or

2. The spouse, individual who is in a domestic partnership recognized under Nevada law, child, parent, brother, or sister of that "employee" as a consequence of subparagraph 1. above.

This exclusion applies:

1. Whether the insured may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

(ii) X. INJURY RELATING TO "NONOWNED AUTO" AND "HIRED AUTO"

"Bodily injury":

1. To an "employee" of the insured arising out and in the course of employment by the insured; or
2. To the spouse, individual who is in a domestic partnership under Nevada law, child, parent, brother, or sister of that "employee" as a consequence of subparagraph 1. above.

This exclusion applies:

1. Whether the insured may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

(iii) Z. EXPENSES RELATING TO MEDICAL PAYMENTS

"Bodily injury":

1. To any insured other than a unit owner, or a member of the unit owner's family residing in the unit including an individual who is in a domestic partnership under Nevada law;
2. To any unit owner or a member of the unit owner's family, including an individual who is in a domestic partnership under Nevada law, residing in the unit for injuries occurring on

that portion of the premises which is owned or maintained solely by the unit owner;

3. To a person hired to do work for or on behalf of any insured or a tenant of any insured;
4. To a person injured on that part of property you own or rent that the person normally occupies;
5. To a person while taking part in athletics;
6. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law;
7. Included within the "products-completed operations hazard"; or
8. Due to "war" or any act or condition incidental to "war".

D. XII. GENERAL LIABILITY WHO IS AN INSURED SECTION, A. WHO IS AN INSURED - "BODILY INJURY," "PROPERTY DAMAGE", "PERSONAL INJURY", "ADVERTISING INJURY" AND MEDICAL PAYMENTS, 6.a. is deleted and replaced as follows:

- a. "Bodily injury" or "personal injury" to you or to a "coemployee" while in the course of their employment, or the spouse, individual who is in a domestic partnership recognized under Nevada law, child, parent, brother or sister of that "coemployee" as a consequence of such "bodily injury" or "personal injury" or for any obligation to share damages with or repay someone else who must pay damages because of injury; or

E. XXIII. DIRECTORS AND OFFICERS LIABILITY WHO IS AN INSURED SECTION, A. 5. is deleted and replaced by the following:

5. Marital Estate

We shall cover "loss" arising from any "claim" made against the lawful (as determined by the applicable jurisdiction of the spouse) spouse or individual who is in a domestic partnership recognized under Nevada law, of any natural person insured in 2. or 3. above if such "claim" arises solely out of the spousal or domestic partnership recognized under Nevada law, relationship to the insured person. This coverage includes "claims" that

seek damages recoverable from marital community property, property jointly held by the insured person and spouse or individual who is in a domestic partnership recognized under Nevada law, and property transferred from the insured person to spouse or individual who is in a domestic partnership recognized under Nevada law. However, we shall not cover any "claim" for any actual or alleged "wrongful act" committed by the spouse or individual who is in a domestic partnership recognized under Nevada law, himself or herself, of any such insured person. All provisions of this Directors and Officers Liability Coverage Part, including the application of any retention, which apply to the insured person, also apply to the spouse or individual who is in a domestic partnership recognized under Nevada law.

F. As respects to the Environmental Impairment Liability Coverage Part, II. ENVIRONMENTAL IMPAIRMENT LIABILITY EXCLUSIONS SECTION C. "EMPLOYERS LIABILITY" Paragraph 2. is deleted and replaced by the following:

2. The spouse, individual who is in a domestic partnership recognized under Nevada law, child, parent, brother or sister of that "employee" as a consequence of subparagraph 1. above.

This exclusion applies:

1. Whether the insured may be liable as an employer or in any other capacity; and,
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Cap on Losses from “Certified Acts of Terrorism”**

This endorsement modifies insurance provided by the following policies:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

A. The following is applicable to the PROPERTY COVERAGE PART:

1. CAP ON CERTIFIED TERRORISM LOSSES

With respect to any one or more “certified acts of terrorism” under the federal Terrorism Risk Insurance Act we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

2. APPLICATION OF OTHER EXCLUSIONS

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Property Coverage Part, such as losses excluded by the III.B.1.d. NUCLEAR HAZARD exclusion, III.B.1.e. “WAR” AND MILITARY ACTION exclusion or III.B.2.e. POLLUTION exclusion.

B. The following is applicable to the LIABILITY COVERAGE PART, DIRECTORS AND OFFICERS LIABILITY COVERAGE PART, EMPLOYEE BENEFITS LIABILITY COVERAGE PART and ENVIRONMENTAL IMPAIRMENT LIABILITY COVERAGE PART:

1. CAP ON CERTIFIED TERRORISM LOSSES

With respect to any one or more “certified acts of terrorism” under the federal Terrorism Risk Insurance Act, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

2. APPLICATION OF OTHER EXCLUSIONS

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under these Coverage Parts, such as losses excluded by the “WAR” exclusion, HOSTILE ACTS exclusion, NUCLEAR ENERGY exclusion, NUCLEAR HAZARD exclusion or the POLLUTION exclusion.

C. The following definition is added to XXVIII. DEFINITIONS SECTION:

“Certified act of terrorism” (PROPERTY, LIABILITY, DIRECTORS AND OFFICERS LIABILITY, EMPLOYEE BENEFITS LIABILITY, and ENVIRONMENTAL IMPAIRMENT LIABILITY) means an act that is certified by the Secretary of the Treasury in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in that Act for a “certified act of terrorism” include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act;
and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

- D.** If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

■ Disclosure Pursuant to Terrorism Risk Insurance Act

This endorsement modifies insurance provided by the following policies:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
 COOPERATIVE APARTMENT INSURANCE POLICY
 HOMEOWNERS ASSOCIATION INSURANCE POLICY
 OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

This policy includes coverage for Certified Acts of Terrorism. Please refer to the applicable charge below.

SCHEDULE

		<u>PREMIUM</u>
Terrorism (<u>Certified Acts</u>)		
Federal share of terrorism losses	<u>84%</u> Year <u>2016</u>	
Federal share of terrorism losses	<u>83%</u> Year <u>2017</u>	

A. DISCLOSURE OF PREMIUM

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under that Act. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations.

B. DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage, as shown in the Schedule above, of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

C. CAP ON INSURER PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

D. ADDITIONAL OR RETURN PREMIUM

The premium for "certified acts of terrorism" coverage is calculated based in part on the federal participation in payment of terrorism losses as set forth in the Terrorism Risk Insurance Act. The federal program established by the Act is scheduled to terminate December 31, 2020, unless extended by the federal government. If the federal program terminates or if the level or terms of federal participation change, the estimated premium shown in the Schedule may not be appropriate.

If this policy contains a Conditional Exclusion, continuation of coverage for "certified acts of terrorism", or termination of such coverage, will be determined upon disposition of the federal program, subject to the terms and conditions of the Conditional Exclusion. If this policy does not contain a Conditional Exclusion, coverage for "certified acts of terrorism" will continue. In either case, when disposition of the federal program is determined, we will recalculate the premium shown in the Schedule and will charge additional premium or refund excess premium, if indicated.

If we notify you of an additional premium charge, the additional premium will be due as specified in such notice.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ NUCLEAR, BIOLOGICAL, CHEMICAL AND RADIOLOGICAL HAZARDS EXCLUSION

This endorsement modifies insurance provided under the following:

CONDOMINIUM ASSOCIATION INSURANCE POLICY
COOPERATIVE APARTMENT INSURANCE POLICY
HOMEOWNERS ASSOCIATION INSURANCE POLICY
OFFICE CONDOMINIUM ASSOCIATION INSURANCE POLICY

I. We will not pay for any loss, damage, cost or expense, whether real or alleged, that is caused, results from, is exacerbated by or otherwise impacted by, either directly or indirectly, any of the following:

This coverage does not apply to insurance provided under Business Income, Rental Value or Extra Expense coverage forms or endorsements that apply to those coverage forms.

- 1) **Nuclear Hazard** – including, but not limited to, nuclear reaction, nuclear detonation, nuclear radiation, radioactive contamination and all agents, materials, products or substances, whether engineered or naturally occurring, involved therein or released thereby;
- 2) **Biological Hazard** – including, but not limited to, any biological and/or poisonous or pathogenic agent, material, product or substance, whether engineered or naturally occurring, that induces or is capable of inducing physical distress, illness, or disease;
- 3) **Chemical Hazard** – including, but not limited to, any chemical agent, material, product or substance;
- 4) **Radioactive Hazard** – including, but not limited to, any electromagnetic, optical, or ionizing radiation or energy, including all generators and emitters thereof, whether engineered or naturally occurring.

All other terms and conditions of this policy remain unchanged.

II. The provisions of subparagraphs I. 2) and I. 3) will not apply where the agent, material, product or substance at issue is utilized in the course of business by an insured.

III. Only if and to the extent required by state law, the following exception to the exclusion in paragraph I. applies:

If a hazard excluded under paragraph I. results in fire, we will pay for the loss, damage, cost or expense caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

■ **Exclusion of Certain Computer Related Losses**

This endorsement modifies insurance provided by the following policies:

CONDOMINIUM POLICY
COOPERATIVE APARTMENT POLICY
HOMEOWNERS ASSOCIATION POLICY
OFFICE CONDOMINIUM POLICY

(i) The following is added to III. PROPERTY CAUSES OF LOSS, EXCLUSIONS AND LIMITATIONS SECTION, B. EXCLUSIONS:

A. We will not pay for loss or damage caused directly or indirectly by the following:

1. The failure, malfunction or inadequacy of:

a. Any of the following, whether belonging to any insured or to others:

- (1) Computer hardware, including microprocessors;
- (2) Computer application software;
- (3) Computer operating systems and related software;
- (4) Computer networks;
- (5) Microprocessors (computer chips) not part of any computer system; or
- (6) Any other computerized or electronic equipment or components; or

b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph A.1.a. above;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times.

2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph A.1. above.

Loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage.

B. If an excluded Cause of Loss as described in Paragraph A. above results in a "Specified Cause of Loss" we will pay only for the loss or damage caused by such "Specified Cause of Loss".

C. We will not pay for repair, replacement or modification of any items in Paragraphs A.1.a. and A.1.b. above to correct any deficiencies or change any features.

(ii) The following is added to XI. GENERAL LIABILITY EXCLUSIONS SECTION and XVI. EXCESS LIABILITY EXCLUSIONS SECTION:

This insurance does not apply to "bodily injury", "property damage" or "personal injury" and "advertising injury" arising directly or indirectly out of:

1. Any actual or alleged failure, malfunction or inadequacy of:
 - a. Any of the following, whether belonging to any insured or to others:
 - (1) Computer hardware, including microprocessors;
 - (2) Computer application software;
 - (3) Computer operating systems and related software;
 - (4) Computer networks;
 - (5) Microprocessors (computer chips) not part of any computer system; or
 - (6) Any other computerized or electronic equipment or components; or
 - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 1.a. above;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times.

2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 1. above.

(iii) The following is added to XXII. DIRECTORS AND OFFICERS LIABILITY EXCLUSIONS SECTION:

This insurance does not apply to any claim or "suit" arising directly or indirectly out of:

1. Any actual or alleged failure, malfunction or inadequacy of:
 - a. Any of the following, whether belonging to any insured or to others:
 - (1) Computer hardware, including microprocessors;
 - (2) Computer application software;
 - (3) Computer operating systems and related software;
 - (4) Computer networks;
 - (5) Microprocessors (computer chips) not part of any computer system; or
 - (6) Any other computerized or electronic equipment or components; or
 - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 1.a. above;

due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times.

2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 1. above.

Environmental Impairment Liability Coverage Part

Claims Made

Throughout this policy, the words, "you" and "your" refer to the named insured shown in the "Declarations". "we", "us" and "our" refer to the company providing this insurance. Other words and phrases that appear in quotation marks have special meanings. Refer to XXVIII. DEFINITIONS SECTION of the policy.

The word "insured" means any person or organization qualifying as such under III. ENVIRONMENTAL IMPAIRMENT LIABILITY WHO IS AN INSURED SECTION.

This Environmental Impairment Liability Coverage Part along with XXVII. COMMON POLICY CONDITIONS SECTION and XXVIII. DEFINITIONS SECTION of the policy contain all our obligations regarding this coverage. We have no other obligation unless the policy, that this Environmental Impairment Liability Coverage Part is part of, is amended accordingly.

I. ENVIRONMENTAL IMPAIRMENT LIABILITY COVERAGE SECTION

A. ENVIRONMENTAL IMPAIRMENT LIABILITY

We shall pay on behalf of the insured for "loss" such insured becomes legally obligated to pay as the result of "claims" first made against the insured during the "policy period". Insurance is provided by this Environmental Impairment Liability Coverage Part for any "claim" made or brought in the "coverage territory" and:

1. Arising out of "pollution conditions" on, at, under or emanating from the location(s) stated in the "Declarations"; and,
2. Reported to us in accordance with VI.C. ENVIRONMENTAL IMPAIRMENT LIABILITY CONDITIONS SECTION; and,
3. Reported to us during the "policy period" or extended reporting period, if exercised, in accordance with V. ENVIRONMENTAL LIABILITY EXTENDED REPORTING PERIOD SECTION.

B. DEFENSE AND PAYMENT

1. Even if the allegations are groundless, false or fraudulent, we will have the right and duty to defend against any "claim" or "suit".
2. "Defense costs" are subject to the following:
 - a. We may investigate any "claim" or "suit" at our discretion.
 - b. Our right and duty to defend ends when we have used up the limit of insurance in the payment of "loss".
 - c. Subject to I.B.3., we may, at our option, give you our consent to defend any "claim" or "suit".

- d. Subject to I.B.3., no "defense costs" will be incurred or settlements made without our consent, which will not be unreasonably withheld. We will not be liable for any settlements or "defense costs" to which we have not consented in writing.
3. Subject to the following, if the limits of insurance stated in the "Declarations" has been or soon will be exhausted, we will transfer to you control of any existing defense:
 - a. We will notify you in writing as soon as reasonably possible. We will advise you that our duty to defend either has terminated or is about to terminate subject to the payment of the limit of insurance. We will advise you that we will no longer handle the defense of any "claim" reported to us after the date we provide this notice.
 - b. We will take immediate and appropriate steps to transfer control to you of any existing defense at the time of or prior to exhaustion of the limit of insurance. You will agree to reimburse us for any reasonable costs we incur in connection with the transfer of the defense.
 - c. We will take appropriate steps necessary to defend the "claim" during the transfer of the defense and to attempt to avoid any unfavorable legal action provided that the insured cooperates with the transfer.
 - d. The exhaustion of the limit of insurance by the payment of "loss" will not be

Environmental Impairment Liability Coverage Part**Claims Made**

affected by our failure to comply with any of the provisions of this section.

"insured contract(s)", if any, stated in the "Insured Contracts" Schedule.

II. ENVIRONMENTAL IMPAIRMENT LIABILITY EXCLUSIONS SECTION

This insurance does not apply to "loss" arising out of any of the following:

A. KNOWN CONDITIONS

"Pollution conditions" existing prior to the inception of this policy that are known to any insured and that were not disclosed to us in writing in the application or related materials prior to the inception of this policy.

B. MULTIPLE DAMAGES/FINES/PENALTIES

Civil, administrative or criminal fines or penalties, assessments, punitive, exemplary or multiplied damages. However, this exclusion does not apply to punitive, exemplary or multiplied damages where insurance coverage is allowable by law.

C. "EMPLOYERS LIABILITY" "Bodily injury" to:

1. An "employee" of the insured arising out of and in the course of:
 - a. Employment by the insured; or
 - b. Performing duties related to the conduct of the insured's business; or
2. The spouse, child, parent, brother or sister of that "employee" as a consequence of subparagraph 1. above.

This exclusion applies:

1. Whether the insured may be liable as an employer or in any other capacity; and,
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

D. WORKERS' COMPENSATION AND SIMILAR LAWS

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

E. CONTRACTUAL LIABILITY

Liability of others assumed by any insured under any contract or agreement unless the liability would exist in the absence of a contract or agreement. This exclusion does not apply to

F. INSURED'S PROPERTY/BAILEE LIABILITY

"Property damage" to property owned, leased or operated by or in the care, custody or control of any insured, even if such "property damage" is incurred to avoid or mitigate "loss" which may be covered under this policy.

G. VEHICLES

The ownership, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft, rolling stock or all transportation, including any cargo carried thereby, beyond the legal boundaries of locations shown in the "Declarations".

H. DIVESTED PROPERTY

"Pollution conditions" on, at, under or emanating from the locations shown in the "Declarations" where the actual discharge, dispersal, release, seepage, migration or escape of "pollution conditions" begins subsequent to the time such locations are sold, given away or abandoned by the first named insured or condemned.

I. NUCLEAR HAZARD

1. Under any liability coverage, to "bodily injury", "property damage" or "remediation expense":
 - a. With respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of limits of liability; or,
 - b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which:
 - (1) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any amendment to that Act; or,
 - (2) The insured is or, had this policy not been issued, would be entitled to

Environmental Impairment Liability Coverage Part**Claims Made**

indemnity from the United States of America or any of its agencies under any agreement entered into by the United States of America or any of its agencies with any person or organization.

2. Under any liability coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

a. The "nuclear material":

(1) Is at any "nuclear facility" owned by or operated by or on behalf of an insured; or,

(2) Has been discharged or dispersed from such facility; or,

b. The "nuclear material" is contained in the "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or,

c. The "bodily injury" or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility". However, if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion, II. H.2.C. applies only to "property damage" to such "nuclear facility" and any property on its premises.

J. PRODUCTS LIABILITY

Goods or products manufactured, sold, handled, distributed, altered or repaired by the insured or by others trading under the insured's name including, with regard to such goods or products, any container, any failure to warn and any reliance on a representation or warranty made at any time. However, this exclusion applies only if the "pollution conditions" occur away from the locations owned, operated or leased by the insured and after physical possession of such has been relinquished to others.

K. INTENTIONAL ACTS

"Pollution conditions" that result from intentional noncompliance by any insured with any statute, regulation, ordinance, administrative complaint, notice, letter or instruction by any governmental agency or representative.

L. HOSTILE ACTS

Any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether or not war be declared), civil war, rebellion, revolution or insurrection.

M. ROT, MOLD, MILDEW OR OTHER FUNGI

Based upon or arising out of the exposure to, required removal or abatement of rot, mold, or mildew or other fungi, regardless of whether such rot, mold, or mildew or other fungi, ensues from any cause or condition or, at, under or emanating from or to the "premises," including but not limited to any such cause or condition involving the presence, discharge or infiltration of moisture, vapor, water or any other liquid, or any damage related to any of these.

N. UNDERGROUND STORAGE TANKS

The past or current existence of any underground storage tank (USTs) and associated piping on, at or under any location listed in the Location Schedule, but only if the existence of the UST is known to any insured. This exclusion does not apply to any UST described in the Underground Storage Tanks and Associated Piping Schedule.

O. "UNITS" AND PRIVATE STORAGE AREAS

"Pollution conditions" in, at or emanating from "units" or private storage areas regardless of where the "bodily injury" or "property damage" occurs.

However, this exclusion does not apply to the "defense costs" provided under I.B.2. DEFENSE AND PAYMENT.

III. ENVIRONMENTAL IMPAIRMENT LIABILITY WHO IS AN INSURED SECTION**A. Each of the following is an insured:**

1. You and any "subsidiary" named in the "Declarations";
2. Any person who has been, now is or shall become a duly elected or appointed director or trustee, a duly elected or appointed officer, an "employee", or committee member,

Environmental Impairment Liability Coverage Part**Claims Made**

whether or not salaried, and any of your members acting at the direction of your board of directors on your behalf in a voluntary capacity;

3. The estate of any insured in 2. above who is deceased; and
4. Legal representatives or assigns of any insured in 1. or 2. above who is insolvent, incompetent or bankrupt.
5. Any person, other than your "employee", or any organization while acting as your real estate manager.

B. None of the following is an insured:

Your builder, developer or sponsor or any person or organization affiliated with your builder, developer or sponsor in any capacity.

IV. ENVIRONMENTAL IMPAIRMENT LIABILITY LIMITS OF INSURANCE SECTION

A. The limits of insurance shown in the "Declarations" and the provisions of this section determine the most we will pay for damages regardless of the number of:

1. insureds and additional insureds;
2. "claims" made or "suits" brought; or
3. persons or organizations making "claims" or bringing "suits".

B. LIMITS OF INSURANCE ARE SUBJECT TO THE FOLLOWING:

1. The each "policy year" limit is the most we will pay for all damages because of "loss" covered by this Environmental Impairment Liability Coverage Part.
2. Subject to 1. above:
 - a. the each "loss" limit is the most we will pay for damages because of all "loss" arising out of the same or related "pollution conditions" at any one location; and,
 - b. all "loss" from one or more "claims" arising out of the same or related "pollution conditions" and reported to us, in writing, over more than one "policy period" shall be considered a single "loss". Such "loss"

will be subject to the limits of insurance in effect at the time of the first reported "pollution conditions" will apply.

3. The insured's retained limit in effect at the time the "claim" is first reported shall be deducted from the amount of each "loss". You must bear the retained limit and you are not permitted to insure it without our written consent.
4. We shall pay for "loss" only in excess of such retained limit up to the applicable limits of insurance. We may pay any part or all of the insured's retained limit to settle a "claim" or "suit" and you agree to promptly reimburse us for the part of the retained limit paid by us.

V. ENVIRONMENTAL IMPAIRMENT LIABILITY EXTENDED REPORTING PERIOD SECTION

We will provide an Automatic Extended Reporting Period as described in V.A. below and, if you purchase it, an Optional Extended Reporting Period described in V.B. in the event of any "termination of coverage".

A. AUTOMATIC EXTENDED REPORTING PERIOD

1. The Automatic Extended Reporting Period starts at the end of the "policy period" and lasts for 60 days. This extension is subject to the other provisions of this policy and applies to "claims" first made against the insured during the 60 days immediately following the end of the "policy period".
2. The Automatic Extended Reporting Period is provided without additional charge.
3. The Automatic Extended Reporting Period applies only if no subsequent insurance you purchase applies to the claim, or would apply but for the exhaustion of its limit of insurance.
4. The Automatic Extended Reporting Period may not be canceled.

B. OPTIONAL EXTENDED REPORTING PERIOD

1. If you purchase the Optional Extended Reporting Period, it will start immediately at the end of the "policy period", whether the policy is cancelled or nonrenewed by either you or us. The Automatic Extended Reporting Period is merged into the Optional Extended

Environmental Impairment Liability Coverage Part**Claims Made**

Reporting Period and is not in addition to this period.

2. The cost for the Optional Extended Reporting Period is shown in the "Declarations." We will notify you in writing, within 30 days of the end of the "policy period", of any provisions of the Optional Extended Reporting Period unless we cancel for nonpayment of premium or fraudulent activities of an insured. You may not construe our quotation of different terms and conditions as a nonrenewal.
3. We will only provide the Optional Extended Reporting Period upon your request, unless the policy is canceled for nonpayment of premium or fraudulent activities of an insured.
4. We will provide the Optional Extended Reporting Period if the first Named Insured makes a written request to us for it which we receive within 30 days after the end of the "policy period".
5. The Optional Extended Reporting Period will not take effect unless the additional premium is paid when due. If that premium is paid when due, the Optional Extended Reporting Period may not be canceled.

C. Extended Reporting Periods are subject to the following conditions:

1. A "claim" first made during the Extended Reporting Period will be deemed to have been made on the last day of the "policy period", provided that the "claim" is for "loss" from "pollution conditions" which took place before the end of the "policy period" but not before any applicable retroactive date.

Extended Reporting Periods do not extend the "policy period" or change the scope of coverage provided.

2. Extended Reporting Periods do not reinstate or increase the limits of liability applicable to any "claim" to which this Environmental Impairment Liability Coverage Part applies.
3. If this Environmental Impairment Liability Coverage Part is canceled and you elect to purchase the Optional Extended Reporting Period Endorsement:

- a. Any return premium due you for the cancellation will be credited to the premium due for the Optional Extended Reporting Period Endorsement; and
- b. Any additional premium due us for the period the policy was in force must be fully paid before any payments can be applied to the premium due for the Optional Extended Reporting Period Endorsement.

VI. ENVIRONMENTAL IMPAIRMENT LIABILITY CONDITIONS SECTION

The Environmental Impairment Liability Coverage Part is subject to the following conditions.

A. LEGAL ACTION AGAINST US

1. No person or organization has a right under this Environmental Impairment Liability Coverage Part:
 - a. To join us as a party or otherwise bring us into a "suit" against any insured; or
 - b. To sue us on this Environmental Impairment Liability Coverage Part unless all of its terms have been fully complied with.
2. A person or organization may sue us to recover on an "agreed settlement" or on a final judgment against an insured obtained after an actual trial; but we will not be liable for "loss" or "defense costs" that are not payable under the terms of this Environmental Impairment Liability Coverage Part or that are in excess of the applicable limit of insurance.

B. BANKRUPTCY

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligation under this Environmental Impairment Liability Coverage Part.

C. DUTIES IN THE EVENT OF "CLAIM" OR "SUIT"
Failure to perform these duties will impair your rights under this Environmental Impairment Liability Coverage Part.

1. You must see to it that we are notified as soon as practicable of any "loss", "claim" or "suit". To the extent possible, notice should include:

Environmental Impairment Liability Coverage Part**Claims Made**

- a. How, when and where the "loss", "claim" or "suit" came about;
 - b. The names and addresses of any persons involved; and
 - c. The nature of any resulting harm or damages.
2. In the event of oral notification, you agree to furnish a written report as soon as practicable.
 3. If a "claim" is made against or received by an insured, you must:
 - a. Immediately record the specifics of the "claim" and the date received;
 - b. Notify us as soon as practicable; and
 - c. Provide written notice of the "claim".
 4. You and any other involved insured must:
 - a. Immediately send us copies of any demands, notices, summonses, or legal papers received in connection with the "claim" or "suit";
 - b. Authorize us to obtain records and other information;
 - c. Cooperate with us in the investigation, settlement, or defense of the "claim" or "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of "loss" to which this insurance may apply.
 5. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, admit liability, or incur any expense without our consent. This provision does not apply to emergency response costs. Emergency response costs are any reasonable costs that need to be incurred immediately where any delay in response would cause significant harm to human health or the environment.

D. REPRESENTATIONS AND SEVERABILITY

1. In granting coverage under this Environmental Impairment Liability Coverage Part to any one of the insureds, we have relied upon the declarations and statements in the written application for coverage. Declarations and statements are the basis of coverage and will be considered as incorporated in and

constituting part of the Environmental Impairment Liability Coverage Part.

2. The written application for coverage will be construed as a separate application for coverage by each of the insureds.
3. Except with respect to the limits of insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:
 - a. As if each Named Insured were the only Named Insured; and
 - b. Separately to each insured against whom "claim" is made or "suit" is brought.

E. NEWLY CREATED OR ACQUIRED "SUBSIDIARIES"

1. If any "subsidiary", created or acquired by the Named Insured after the inception of this Environmental Impairment Liability Coverage Part, qualifies as a not-for-profit organization under the provision of the Internal Revenue Code and would have been included as an insured under ENVIRONMENTAL IMPAIRMENT LIABILITY WHO IS AN INSURED SECTION, such "subsidiary" will be included subject to:
 - a. The giving of written notice of such creation or acquisition to us as soon as practical, but in no event more than 120 days following such creation or acquisition; and
 - b. The giving of any underwriting information and the payment of any additional premium required by us.
2. If any "subsidiary", created or acquired by the Named Insured after the inception of this policy, does not qualify as a not-for-profit organization under the provisions of the Internal Revenue Code, such "subsidiary" will not be included until the insured has:
 - a. Given written notice of such creation or acquisition together with any underwriting information which may be required; and
 - b. Received written approval from us and paid any additional premium required.

F. CONSOLIDATION OR MERGER

In the event that the Named Insured acquires by merger, or consolidates with, or is merged into or

Environmental Impairment Liability Coverage Part**Claims Made**

acquired by any other organization after the inception of this policy, immediate written notice thereof will be given to us together with such information as we may require. You will pay any additional premium required by us.

G. OTHER INSURANCE

Subject to IV. ENVIRONMENTAL IMPAIRMENT LIABILITY LIMITS OF INSURANCE SECTION, this insurance will be in excess of the retained limit stated in the "Declarations" and any other valid and collectible insurance available to the insured whether such other insurance is stated to be primary, pro-rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the limits of insurance.

**VII. ENVIRONMENTAL IMPAIRMENT LIABILITY
ADDITIONAL CHANGES**

The policy this Environmental Impairment Liability Coverage Part is attached to is changed as follows:

A. The following defined terms of XXVIII.

DEFINITIONS SECTION of the policy are amended to also apply to the Environmental Impairment Liability Coverage Part:

- 3. "Agreed settlement";
- 10. "By-product material";
- 19. "Declarations";
- 23. "Employee";
- 25. "Employers Liability";
- 30. "Hazardous properties";
- 37. "Leased worker";
- 48. "Nuclear facility";
- 49. "Nuclear material";
- 50. "Nuclear reactor";
- 58. "Policy period";
- 59. "Policy year";
- 60. "Pollutants";
- 71. "Source material";
- 72. "Special nuclear material";
- 74. "Spent fuel";
- 75. "Subsidiary(ies)";
- 77. "Suit(s)";
- 79. "Temporary worker";
- 86. "Unit"; and
- 91. "Waste".

**B. The following defined terms are added to XXVIII.
DEFINITIONS SECTION of the policy:**

1. "Bodily Injury" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death resulting therefrom, caused by "pollution conditions".
2. "Claims" (ENVIRONMENTAL IMPAIRMENT LIABILITY):
 - a. means the assertion of a legal right alleging liability or responsibility on the part of the insured, arising out of "pollution conditions", and shall include but not be limited to lawsuits or petitions filed against the insured; and,
 - b. includes "remediation expense" resulting from "pollution conditions" which are:
 1. first discovered by any "insured"; and,
 2. reported to us,
 during the "policy period" or applicable extended reporting period.
3. "Coverage territory" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means the United States and its territories and possessions.
4. "Defense Costs" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means legal costs, charges and expenses, including expert fees, incurred in the investigation, adjustment, settlement and defense of "claims".
5. "Insured Contract(s)" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means any contract designated in the Schedule of "Insured Contracts".
6. "Loss" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means monetary judgment, award or settlement of compensatory damages arising from:
 - a. "bodily injury";
 - b. "property damage";
 - c. "remediation expense"; and,
 - d. "defense costs".
7. "Pollution Conditions" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means the discharge, dispersal, release, migration or escape of smoke, vapors, soot, fumes, acids, alkalis, electromagnetic fields, toxic chemicals,

Environmental Impairment Liability Coverage Part**Claims Made**

liquids or gases, waste materials, including medical, infectious and pathological wastes, or other irritants, contaminants or "pollutants" into or upon land or structures, the atmosphere or any watercourse or body of water including groundwater.

8. "Property Damage" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means:
 - a. Physical injury to or destruction of tangible property, including the personal property of third parties, including the loss of use thereof; or,
 - b. Loss of use of such property that has not been physically injured or destroyed; or,
 - c. Diminished third party property value.
9. "Remediation Expense" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means expenses incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of "pollution conditions" to the extent required by any Federal, State or Local Laws, Regulations or Statutes enacted to address "pollution conditions".

However, "remediation expense" does not include any expense incurred for or in connection with the investigation, monitoring, removal, disposal, treatment or neutralization of either lead paint, asbestos or both at any premises you own, operate or occupy.

10. "Termination of coverage" (ENVIRONMENTAL IMPAIRMENT LIABILITY) means cancellation or nonrenewal of the Environmental Impairment Liability Coverage Part by either party.

COMMUNITY ASSOCIATION UNDERWRITERS RENEWAL INVOICE

INSURED NAME AND MAILING ADDRESS Sunrise Villas IX Homeowners Association C/O PW James Management & Consulting, LLC 6029 S. Fort Apache, Suite 130 Las Vegas, NV 89130	PRODUCER NAME & ADDRESS CAU 1180 N. Town Center Drive, Suite 100 Las Vegas, NV 89144
C23	

ACCOUNT # [REDACTED]	POLICY # CAU234378-1	INSURANCE COMPANY QBE	LINE OF BUSINESS CPKGE	INVOICE DATE 01/28/2016
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THE INSURED HAS THE OPTION OF PAYING THE POLICY PREMIUM OF \$38,029.00 IN FULL BY 02/12/2016 OR CHOOSING OUR INSTALLMENT PAYMENT PLAN. IF THE INSURED CHOOSES TO BE BILLED IN INSTALLMENTS, A FIRST PAYMENT OF \$12,677.00 IS DUE BY 02/12/2016. THERE WILL BE AN INSTALLMENT CHARGE OF \$7.00 PER INSTALLMENT.

INSTALLMENT SCHEDULE

INSTALLMENT	DUE DATE	INSTALLMENT AMOUNT	INSTALLMENT CHARGE	TOTAL INSTALLMENT
DOWN PAYMENT	02/12/2016	[REDACTED]	[REDACTED]	[REDACTED]
1.	04/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
2.	05/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
3.	06/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
4.	07/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
5.	08/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
6.	09/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
7.	10/01/2016	[REDACTED]	[REDACTED]	[REDACTED]
8.	11/01/2016	[REDACTED]	[REDACTED]	[REDACTED]

NOTE: THIS INVOICE DOES NOT REFLECT ANY PAYMENTS ALREADY MADE. THIS INSTALLMENT SCHEDULE IS SUBJECT TO CHANGE IN THE EVENT OF AN ENDORSEMENT OR REVISION TO THE POLICY.

PLEASE MAKE CHECKS PAYABLE TO: Community Association Underwriters

MAIL TO: P.O. Box 1100
Newtown, PA 18940

If you have any questions, please call (800) 228-1930.

ACCOUNT # [REDACTED]	QBE POLICY # CAU234378-1	EFFECTIVE DATE 02/01/2016	EXPIRATION DATE 02/01/2017	PREMIUM [REDACTED]	STATE FEE [REDACTED]	TOTAL PREMIUM [REDACTED]
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INSURED NAME AND MAILING ADDRESS

Sunrise Villas IX Homeowners Association
C/O PW James Management & Consulting, LLC
6029 S. Fort Apache, Suite 130
Las Vegas, NV 89130

PLEASE MAKE CHECK PAYABLE TO:
Community Association Underwriters

PLEASE MAIL CHECK TO:
Community Association Underwriters
P.O. Box 1100
Newtown, PA 18940

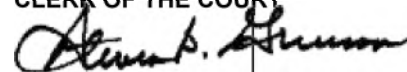
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EXHIBIT “E”



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


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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

**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 NRCp 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
6 DATED this 22nd day of December, 2017

7 LAW OFFICE OF DAVID SAMPSON, LLC.

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
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☒ 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

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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, 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
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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.

13
14
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.

19
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:

24
25 a) Failure to provide a safe premises for the Plaintiff, SIMONE RUSSO, to walk on
26 the driveway;
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- b) Failure to warn the Plaintiff, SIMONE RUSSO, of the dangerous and hazardous condition then and there existing in said premises;
- c) Failure to properly and adequately inspect the said dangerous condition in the driveway to ascertain its hazardous and dangerous condition;
- d) Failure to properly and adequately maintain the driveway;
- e) Failure to properly warn the Plaintiff, SIMONE RUSSO, of said dangerous condition;
- f) The Defendants, and each of them, had, or should have had, knowledge or notice of the existence of the said dangerous and defective condition which existed on said premises. At all times pertinent hereto, Defendants, and each of them, expressly and/or impliedly warranted that the certain driveway in question was in all respects fit for due purposes and uses for which it was intended and was of merchantable quality.

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

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

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 ///

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6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED THIS ____ day of _____, 20__.

LAW OFFICE OF DAVID SAMPSON, LLC

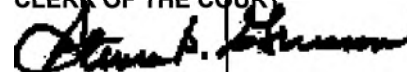
BY: DAVID F. SAMPSON, ESQ.,
Nevada Bar No. 6811
LAW OFFICE OF DAVID SAMPSON
630 S. 3rd Street
Las Vegas, NV 89101
Tel: 702-605-1099
Attorney for Plaintiff

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EXHIBIT “F”



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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

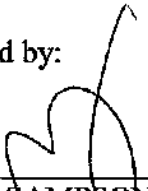
JAN 29 2018

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 137

8 Submitted by:

9
10 
11 DAVID SAMPSON, ESQ.
12 LAW OFFICE OF DAVID SAMPSON
13 630 S. Third St.
14 Las Vegas, Nevada 89101
15 Fax No: 888-209-4199
16 Attorney for Plaintiff
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EXHIBIT “G”





September 18, 2019

VIA FACSIMILE AND EMAIL

Community Association Underwriters Agency
2 Caufield Place
Newtown, PA 18940
Fax: 267-757-7434
Attn: Harry Stavrakis
Email: hstavrakis@cauinsure.com

Re: Our Client: Simone Russo
Date of Incident: 08/27/2016
Location: 4617 Madre Perla Street, Las Vegas, NV
Claim No.: 95126

Dear Harry:

As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. We write at this time to advise Community Association Underwriters Agency that the Court has entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. We have attached a copy of the defaults for your convenience.

Please contact our office with any questions.

Very truly yours,
LAW OFFICES OF DAVID SAMPSON

David Sampson

David Sampson, Esq.
DS:an

Attachments

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EXHIBIT “8”



1 DAVID F. SAMPSON, ESQ.
2 Nevada Bar No. 6811
3 THE LAW OFFICE OF DAVID SAMPSON, LLC.
4 630 South 3rd Street
5 Las Vegas, NV 89101
6 Tel: (702) 605-1099
7 Fax: (888) 209-4199
8 david@davidsampsonlaw.com
9 Attorneys for Defendant SIMONE RUSSO

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 QBE INSURANCE CORPORATION

Case No. 2:20-cv-02104-RFB-EJY

10 Plaintiff,

11 vs.

12
13 SIMONE RUSSO, RICHARD DUSLAK and JUSTIN
14 SESMAN

15 Defendants.

**SIMONE RUSSO'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT FOR DECLARATORY
RELIEF AND AMENDED
COUNTERCLAIM**

16 **ANSWER**

17
18 Defendant SIMONE RUSSO ("RUSSO") by and through his counsel of record DAVID
19 SAMPSON, ESQ., of THE LAW OFFICE OF DAVID SAMPSON, LLC., hereby answers
20 Plaintiff's Complaint for Declaratory Relief (ECF 1) as follows:

21 **PARTIES**

- 22
23 1. Answering paragraph 1 of the complaint, RUSSO does not have sufficient knowledge or
24 information upon which to base a belief as to the truth of the allegations that QBE
25 existed under the laws of Pennsylvania and, on that basis, denies the said allegation
26 contained therein. RUSSO admits that QBE was an insurance company eligible to do
27
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1 business as an insurer in the State of Nevada. RUSSO admits the remaining allegations
2 in paragraph 1.

3 2. Answering paragraph 2 of the complaint, RUSSO admits the allegations contained
4 therein.

5 3. Answering paragraph 3 of the complaint, RUSSO does not have sufficient knowledge or
6 information upon which to base a belief as to the truth of the allegations that DUSLAK
7 was and is a resident of Clark County Nevada and, on that basis, denies the said
8 allegation contained therein. RUSSO denies any remaining allegations in paragraph 3.

9 4. Answering paragraph 4 of the complaint, RUSSO does not have sufficient knowledge or
10 information upon which to base a belief as to the truth of the allegations that SESMAN
11 was and is a resident of Clark County Nevada and, on that basis, denies the said
12 allegation contained therein. RUSSO denies any remaining allegations in paragraph 4.

13
14
15 **JURISDICTION AND VENUE**

16 5. Answering paragraph 5 of the complaint, RUSSO admits the allegations contained
17 therein.

18 6. Answering paragraph 6 of the complaint, RUSSO denies that he, DUSLAK, and or
19 SESMAN were “doing business in Nevada”. RUSSO also states he does not have
20 sufficient information to admit or deny that DUSLAK and/or SESMAN were at all
21 relevant times residents of Nevada, and therefore denies the same. RUSSO admits the
22 remaining allegations contained in paragraph 6.

23
24
25 **GENERAL ALLEGATIONS**

26 7. Answering paragraph 7 of the complaint, RUSSO admits that it is his understanding and
27 contention that the language in the subject QBE insurance policy covering SUNRISE
28

1 VILLAS IV HOA ("SUNRISE"), and the law regarding insurance policies, includes
2 DUSLAK and SESMAN as covered insureds under the said QBE policy. RUSSO is
3 without sufficient information to admit or deny the remaining allegations in paragraph 7
4 and therefore denies the same.

5
6 8. Answering paragraph 8 of the complaint, RUSSO admits that he filed a complaint
7 against SUNRISE and others alleging that a cable wire that was part of the SUNRISE
8 common area, and was the duty of SUNRISE and its employees, among others, to
9 maintain, was negligently maintained and caused RUSSO injuries. RUSSO admits that
10 DUSLAK and SESMAN were not named in the original complaint as SUNRISE initially
11 advised RUSSO that J&G Lawn Maintenance was handling lawn care and maintenance
12 for SUNRISE at the time RUSSO was hurt. RUSSO denies Plaintiff's claim that the
13 initial complaint included "no alleged connection" between J&G Lawn Maintenance and
14 SUNRISE. RUSSO denies any remaining allegations contained in paragraph 8.

15
16 9. Answering paragraph 9 of the complaint, RUSSO admits that some time prior to
17 November 29, 2017 SUNRISE advised RUSSO that J&G Lawn Maintenance was
18 actually not providing lawn and maintenance care for SUNRISE in August 2016, and
19 that J&G Lawn Maintenance did not start providing such services until September 2016.
20 RUSSO denies that any imputed motives to RUSSO contained in this paragraph, and
21 specifically denies that he requested to amend the complaint "because the original J&G
22 Landscape defendant did not contract with SUNRISE VILLAS HOA" as RUSSO admits
23 that RUSSO has been informed by SUNRISE that the alleged contract between J&G and
24 SUNRISE did not begin until September 2016. RUSSO further admits that at some
25 point in late 2017 or early 2018 SUNRISE advised RUSSO that DUSLAK and
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1 SESMAN were the individuals who were actually performing lawn care and
2 maintenance services in the SUNRISE HOA in August 2016. RUSSO admits he moved
3 to amend his complaint to replace “Doe Landscaper” defendants because SUNRISE had
4 advised RUSSO that J&G Lawn Maintenance was not SUNRISE’s landscaper at the
5 time RUSSO was injured, but that DUSLAK and SESMAN were SUNRISE’s
6 landscapers in August 2016. RUSSO denies any remaining allegations contained in
7 paragraph 9.
8

9 10. Answering paragraph 10 of the complaint, RUSSO admits that the underlying Complaint
10 (Plaintiff’s Exhibit “3”) speaks for itself. RUSSO further admits that in late 2017 or
11 early 2018 SUNRISE advised RUSSO that DUSLAK and SESMAN were the
12 individuals who were actually performing lawn care and maintenance services in the
13 SUNRISE HOA in August 2016 and that because of SUNRISE’s admission that
14 DUSLAK and SESMAN were performing the said duties at SUNRISE, Russo amended
15 the complaint to add DUSLAK and SESMAN as Defendants. RUSSO admits that his
16 complaint alleged DUSLAK and SESMAN “maintained and controlled” and performed
17 lawn and maintenance duties at and for SUNRISE. RUSSO denies ever naming
18 DUSLAK and/or SESMAN as “landscaping contractors” in any complaint. *See*, Exhibit
19 3 to QBE’s Complaint in this matter. RUSSO further admits that on March 2, 2018
20 SUNRISE answered an interrogatory in the underlying action in which SUNRISE stated,
21 “SUNRISE VILLAS believes it employed Richard Duslak and Justin Sesman for lawn
22 maintenance repair and/or cleaning prior to September 2016 . . .”. *See* Exhibit “A” at P.
23 7 L. 8-9. Russo denies any remaining allegations contained in paragraph 10.
24
25
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- 1 11. Answering paragraph 11 of the complaint, RUSSO admits QBE issued a policy of
2 insurance to SUNRISE and that QBE provided SUNRISE with a defense in the
3 underlying action. RUSSO is without sufficient information to admit or deny any
4 allegations regarding CAU's relationship with QBE and therefore denies the same.
5 Russo denies the remainder of the allegations in paragraph 11 and further specifically
6 denies that RUSSO settled with SUNRISE "for a full and complete release" as the
7 release specifically excluded DUSLAK and SESMAN or anyone associated or affiliated
8 with them including any actual or potential insurer. *See*, Exhibit "B".
9
- 10 12. Answering paragraph 12 of the complaint, RUSSO denies the allegations contained
11 therein. It is RUSSO's understanding and belief that DUSLAK and SESMAN contacted
12 SUNRISE about the underlying action when DUSLAK and SESMAN were served with
13 the same, and that SUNRISE advised it had given the matter to SUNRISE's insurance
14 carrier, and that the carrier was "taking care of it".
15
- 16 13. Answering paragraph 13 of the complaint, RUSSO denies the allegations contained
17 therein. It is RUSSO's understanding and belief that DUSLAK and SESMAN have
18 always claimed to be employees of SUNRISE and thus covered by any policy(ies) of
19 insurance SUNRISE had that covered itself and/or its employees, which is consistent
20 with what SUNRISE stated in its interrogatory answer in the underlying matter when
21 SUNRISE said it "employed" DUSLAK and SESMAN. *See*, Exhibit "A".
22
- 23 14. Answering paragraph 14 of the complaint, RUSSO admits that the document contained
24 in Exhibit "4" to the Amended Complaint speaks for itself. RUSSO further admits that
25 the agreement between the parties specifically excluded DUSLAK and SESMAN and
26 made it more than clear that DUSLAK and SESMAN were not a part of any settlement
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1 agreement, that RUSSO had every right to continue his action and seek a Judgment
2 against DUSLAK and SESMAN, and that any language in the settlement agreement that
3 could be read to impact DUSLAK and SESMAN's rights to coverage under any
4 applicable insurance (including insurance procured through SUNRISE) was deemed null
5 and void. *See*, Exhibit "4" to the amended complaint. RUSSO denies any and all
6 remaining allegations in paragraph 14 and specifically denies Plaintiff's attempts to
7 know and/or understand what RUSSO's understanding was regarding any issue.
8

9 15. Answering paragraph 15 of the complaint RUSSO admits the allegations contained
10 therein. RUSSO further admits that, as QBE did not defend DUSLAK or SESMAN, the
11 court heard evidence in the underlying action and the judge determined that based on
12 that evidence a judgment should be entered in that matter against DUSLAK and
13 SESMAN in the amount of \$25,000,000.00.
14

15 16. Answering paragraph 16 of the complaint, RUSSO admits he filed, and later withdrew, a
16 motion for judicial assignment. RUSSO denies the remaining allegations contained in
17 paragraph 15, and specifically denies that November 2, 2020 was "the first time"
18 RUSSO claimed DUSLAK and SESMAN were insured by QBE. RUSSO also
19 specifically denies that he withdrew the motion for assignment because QBE sought to
20 oppose the same. RUSSO admits that the November 4, 2020 letter referenced in
21 paragraph 16 speaks for itself.
22

23 17. Answering paragraph 17 of the complaint RUSSO admits that the November 6, 2020
24 email referenced in paragraph 17 speaks for itself. RUSSO admits that the email from
25 counsel for QBE stated:
26

27 Dear Mr. Sampson:
28

1 I represent the Sunrise Villa's insurance carrier, QBE. The insurer has no
2 record of policies issued to Justin Sesman or Richard Duslak? What is the
3 reason for your demand letter to the insurer? Do you have a copy of a
4 tender from Justin Sesman and/or Richard Duslak? Do you now represent
5 Justin Sesman and/or Richard Duslak?

6 The insurer reserves all rights and waives none.

7 Thank you.

8 RUSSO admits the email did not ask RUSSO to "explain the basis for demanding
9 payment of the judgment". RUSSO further denies the remaining allegations in
10 paragraph 17.

11 18. Answering paragraph 18 of the complaint, RUSSO admits that there were no less than
12 eight (8) emails sent between counsel for RUSSO and counsel for QBE on November
13 17, 2020, and that the said emails speak for themselves. RUSSO further admits that
14 when counsel for QBE sent one of the November 17, 2020 emails, wherein counsel for
15 QBE asked, "Why are they insured?", RUSSO's counsel (who did not understand QBE's
16 counsel's question as seeking an exhaustive explanation of any and all basis for any
17 assertion that DUSLAK and/or SESMAN were insureds) responded as follows:

18 The policy defines "Covered Employee" as any natural person while in the
19 service of Sunrise and whom Sunrise compensates and whom Sunrise has
20 the right to control.

21 Both Duslak and Sesman are natural people who in August 2016 where in
22 the service of Sunrise (Board meeting minutes from Sunrise state that
23 Duslak and Sesman were hired in November 2015 and were not terminated
24 until September 2016), where compensated by Sunrise, and whom Sunrise
25 had the right to control (Board meeting minutes from Sunrise state that the
26 Secretary of the Sunrise "Morales" will oversee the work performed by
27 Duslak and Sesman).

28 Why would they not qualify as covered employees under the contract?

Thank you

1 RUSSO also admits that it appears QBE and SUNRISE did not provide RUSSO with a
2 full copy of the QBE policy before asking RUSSO's counsel "Why are they insured?"
3 RUSSO denies any and all remaining allegations in paragraph 18.
4

5 19. Answering paragraph 19 of the complaint RUSSO denies the allegations contained
6 therein.

7 20. Answering paragraph 20 of the complaint RUSSO denies the allegations contained
8 therein.
9

10 21. Answering paragraph 21 of the complaint RUSSO admits that his December 9, 2020
11 letter speaks for itself. RUSSO denies that he "altered" his argument. RUSSO admits
12 that the settlement agreement specifically excluded DUSLAK and SESMAN and made it
13 more than clear that DUSLAK and SESMAN were not a part of any settlement
14 agreement, that RUSSO had every right to continue his action and seek a Judgment
15 against DUSLAK and SESMAN, and that any language in the settlement agreement that
16 could be read to impact the rights of DUSLAK and/or SESMAN rights to coverage
17 under any applicable insurance (including insurance procured through SUNRISE) was
18 deemed null and void. RUSSO denies that "the Stipulation was unenforceable" if any
19 language contained therein could impact the rights of DUSLAK and/or SESMAN to
20 coverage as the agreement states that in the event such language exists that the said
21 language is deemed null and void, not that the stipulation or settlement agreement would
22 be unenforceable. RUSSO also admits that the settlement agreement specifically states
23 that if language therein is deemed invalid the said language is deemed severed and
24 deleted from the agreement and the agreement as a whole shall not be affected. RUSSO
25 also denies that December 9, 2020 was the first time he contended DUSLAK and
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1 SESMAN were employees of SUNRISE. RUSSO denies the any remaining allegations
2 contained in paragraph 21.

3 22. Answering paragraph 22 of the complaint, RUSSO does not have sufficient knowledge
4 or information upon which to base a belief as to the truth of the allegations contained in
5 this paragraph, particularly any claims about what QBE believes and, on that basis,
6 denies the allegations contained therein.
7

8 23. Answering paragraph 23 of the complaint RUSSO admits that he has alleged and
9 continues to allege that QBE owed DUSLAK and SESMAN a duty of defense and
10 indemnification, fiduciary duties, and a duty of good faith and fair dealing in connection
11 with the underlying action. RUSSO also admits that he understands and believes that
12 QBE breached those duties and that DUSLAK and SESMAN have actionable claims
13 against QBE. RUSSO denies any remaining allegations contained in paragraph 23 as
14 RUSSO does not possess any claims owned by DUSLAK and/or SESMAN as no
15 assignment has occurred.
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17

18 24. Answering paragraph 24 of the complaint RUSSO does not have sufficient knowledge as
19 to what QBE believes and therefore denies the allegations contained in paragraph 24.
20 RUSSO understands and believes that, as he is not a party or intended beneficiary to the
21 QBE insurance contract, he has no basis or grounds himself to recover directly against
22 QBE under the contract.
23

24 25. Paragraph 25 of the complaint incorporates the preceding paragraphs in the complaint
25 which does not require any admissions or denials by RUSSO. To the extent this
26 paragraph could be construed as calling for a response RUSSO denies all allegations
27 contained therein.
28

1 26. Answering paragraph 26 of the complaint, RUSSO admits he believes and alleges that
2 DUSLAK and SESMAN have claims against Plaintiff, that Plaintiff owed DUSLAK and
3 SESMAN a duty to defend and indemnify DUSLAK and SESMAN in connection with
4 the underlying action, that Plaintiff owed additional duties to DUSLAK and SESMAN,
5 and that DUSLAK and SESMAN are entitled to any and all damages arising as a
6 consequence of QBE's breaches of any of those duties, which damages would include,
7 but are not limited to, monies necessary to satisfy the judgment entered in favor of
8 RUSSO against DUSLAK and SESMAN. *See, Century Surety v. Andrew*, 134
9 Nev.Adv.Op. 100, 432 P.3d 180 (2018). RUSSO further admits that he is entitled to
10 recover funds from DUSLAK and SESMAN to satisfy the judgment in the underlying
11 matter, and that DUSLAK and SESMAN are entitled to recover said funds from
12 Plaintiff. RUSSO denies the remainder of the allegations in paragraph 26.
13
14

15 27. Answering paragraph 22 of the complaint, RUSSO denies the allegations contained
16 therein. RUSSO does admit it is his understanding and belief that, as he is not a party or
17 intended beneficiary to the QBE insurance contract, he has no basis or grounds himself
18 to recover directly against QBE, and that DUSLAK and SESMAN would have the right
19 to any and all damages arising as a consequence of QBE's breaches, including monies
20 necessary to satisfy the Judgment entered in favor of RUSSO against DUSLAK and
21 SESMAN. *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018).
22 RUSSO denies the remainder of the allegations in paragraph 27.
23
24

25 28. Answering paragraph 25 of the complaint, RUSSO does not have sufficient knowledge
26 or information upon which to base a belief as to the truth of the allegations contain in
27 this paragraph and, on that basis, denies the allegations contained therein. RUSSO
28

1 admits it is his understanding and belief that a controversy exists between QBE and
2 Defendants DUSLAK, and SESMAN. RUSSO understands that under Nevada law he is
3 not a party or an intended beneficiary of the subject insurance policy. RUSSO denies the
4 remainder of the allegations in paragraph 28.

5
6 29. Answering paragraph 29 of the complaint, RUSSO does not have sufficient knowledge
7 or information upon which to base a belief as to the truth of the allegations contained in
8 this paragraph and, on that basis, denies the allegations contained therein. RUSSO
9 admits it is his understanding and belief that a controversy exists between QBE and
10 Defendants DUSLAK and SESMAN. RUSSO understands that under Nevada law he is
11 not a party or an intended beneficiary of the subject insurance policy. RUSSO denies
12 the remainder of the allegations in paragraph 29.

13
14 30. Plaintiff's prayer for relief immediately following paragraph 30 of the complaint does
15 not contain any factual allegations that would require a response from RUSSO. To the
16 extent the prayer for relief could be construed as calling for a response, RUSSO denies
17 that Plaintiff is entitled to the relief requested therein.

18
19 **AFFIRMATIVE AND OTHER DEFENSES**

20 RUSSO asserts the following affirmative defenses to plaintiff's complaint.

21 **FIRST DEFENSE**

22 The complaint, and each and every cause of action thereof, fails to state a claim upon
23 which relief can be granted.

24
25 **SECOND DEFENSE**

26 Plaintiff failed to take reasonable steps to avoid the damages, if any, alleged in the
27 complaint, and each and every cause of action contained therein.

THIRD DEFENSE

Any damages sustained by plaintiff by reason of the events alleged in the complaint were proximately caused or contributed to by plaintiff's own breach of the subject insurance contract.

FOURTH DEFENSE

Plaintiff has engaged in acts, omissions and conduct that constitute a breach of Plaintiff's obligations under the subject policy.

FIFTH DEFENSE

Plaintiff has unclean hands in failing and refusing to defend DUSLAK and SESMAN and attempting to undermine the rights DUSLAK and SESMAN have to coverage.

SIXTH DEFENSE

QBE's handling of Plaintiff's claim was not correct, was not proper and was not reasonable under the terms of the subject policy.

SEVENTH DEFENSE

At all times and places relevant hereto, QBE failed to act in good faith, and acted without with justification or probable cause and with malice toward its insureds.

EIGHTH DEFENSE

QBE's actions at all times failed to comply with NRS 686A.310.

NINTH DEFENSE

QBE's conduct was malicious, oppressive and/or fraudulent pursuant to NRS 42.010.

TENTH DEFENSE

Plaintiff's cause of action is barred by the doctrine of waiver.

ELEVENTH DEFENSE

1 Plaintiff's action is barred by the doctrine of estoppel.

2 **TWELFTH DEFENSE**

3 Plaintiff's conduct waived the relief prayed for in the complaint.

4 **THIRTEENTH DEFENSE**

5 Plaintiff failed to properly and fully mitigate, minimize or avoid damages to itself and its
6 insureds.

7 **FOURTEENTH DEFENSE**

8 Plaintiff is not entitled to attorney's fees pursuant to any of the claims alleged in the
9 complaint.

10 **EIGHTEENTH DEFENSE**

11 That the Plaintiff subjected Defendants to duress in forcing Defendant to take certain
12 actions.

13 **NINETENTH DEFENSE**

14 That defense of the underlying matter was constructively tendered to QBE.

15 **TWENTIEH DEFENSE**

16 Pursuant to FRCP 11, as amended, all possible affirmative and other defenses may not
17 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry
18 upon the filing of this answer, and therefore, Acuity reserves the right to amend this answer to
19 allege additional affirmative defenses if subsequent investigation so warrants.

20 WHEREFORE, and for the reasons set forth in the counterclaim below, RUSSO prays for
21 judgment as follows:

- 22 1. For a declaration and determination that DUSLAK and SESMAN are insureds under the
23 policy between Plaintiff and SUNRISE, and that the defense of the claims against
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1 DUSLAK and SESMAN were duly tendered and/or constructively tendered to Plaintiff,
 2 that Plaintiff did owe DUSLAK and/or SESMAN a defense, indemnification, fiduciary
 3 duties, and good faith and fair dealing for claims arising out of the underlying action. For
 4 a declaration that DUSLAK and/or SESMAN are entitled to recover funds from Plaintiff
 5 QBE, including all funds necessary to satisfy the judgment against DUSLAK and/or
 6 SESMAN in the underlying action, including all interest;
 7

8 2. For attorney's fees;

9 3. For costs of suit;

10 4. For interest;

11 5. For all other relief the Court deems just and proper.
 12

13 **AMENDED COUNTERCLAIM**

14 COMES NOW Plaintiff, RUSSO individually, by and through his attorney, David
 15 Sampson, Esq., of THE LAW OFFICE OF DAVID SAMPSON, LLC., and for his claims for
 16 relief against the QBE, and each of them, incorporates the allegations set forth in the Answer
 17 above, and further alleges and complains as follows:
 18

19 **PARTIES**

20 1. At all times relevant to this action, Plaintiff was a resident of Clark County, Nevada.

21 2. At all times relevant to this action, Richard Duslak and Justin Sesman were residents of
 22 Clark County, Nevada.

23 3. At all times relevant to this action, Plaintiff/Counterdefendant, QBE INSURANCE
 24 CORPORATION, by its own admission, was at all times relevant to this action an insurance
 25 company based Pennsylvania and was operating and conducting business in Nevada.
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1 4. At all times relevant to this action, Counter defendant, COMMUNITY ASSOCIATION
2 UNDERWRITERS, by its own admission, was at all times relevant to this action an insurance
3 underwriting company based on Pennsylvania and doing business in Nevada.

4 5. That QBE issued insurance policies, some of which were underwritten by COMMUNITY
5 ASSOCIATION UNDERWRITERS. That each said Defendant is the parent and/or subsidiary
6 of, principle and/or agent of alter-ego of, doing business as, also known as, and/or otherwise
7 sharing an identity or continuity of interests with each and every other Defendant and, therefore,
8 are contractually, jointly and severally, legally, equitably, and/or otherwise liable for and/or
9 with each other herein, and are herein after individually and collectively referred to as "CAU"
10 and/or "the CAU Defendants".
11

12 6. That the true names and capacities, whether individual, corporate, partnership, associate
13 or otherwise, of Defendants, DOES I through X and ROE BUSINESS ENTITIES I through X,
14 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff
15 is informed and believes and thereon allege that each of the Defendants designated herein as
16 DOE and ROE are responsible in some manner for the events and happenings referred to and
17 caused damages proximately to Plaintiff as herein alleged, and that Plaintiff will seek leave of
18 this Court to amend this Complaint to insert the true names and capacities of DOES I through X
19 and ROE BUSINESS ENTITIES I through X, when the same have been ascertained, and to join
20 such Defendants in this action.
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23 GENERAL ALLEGATIONS

24 7. That on and before August 27, 2016 RICHARD DUSLAK ("DUALSAK") and JUSTIN
25 SESMAN ("SESMAN") were working for SUNRISE VILLAS IX HOMEOWNERS
26 ASSOCIATION ("SUNRISE") as maintenance personnel and also as landscapers. That in
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1 referring to the relationship between SUNRISE and DUSLAK and SESMAN, SUNRISE stated
2 it “employed” DUSLAK and SESMAN and called DUSLAK and SESMAN its “employees”.

3 8. That, according to SUNRISE, prior to August 27, 2016 SUNRISE employed DUSLAK
4 and SESMAN to perform lawn care and maintenance duties for SUNRISE.

5 9. That during the term of what SUNRISE called DUSLAK and SESMAN’s employment
6 with SUNRISE, SUNRISE exercised a high degree of control, if not complete control, over the
7 manner in which DUSLAK and SESMAN’s work was to be performed. That Exhibit “C” at
8 page SVHA0000557 are minutes from the February 17, 2016 SUNRISE Board of Directors
9 Meeting, wherein SUNRISE stated, “The Board reviewed the job descriptions as submitted by
10 *employees* Richard Duslak and Justin Sesman. Secretary Morales [Secretary of SUNRISE]
11 *volunteered to oversee the work performed on property by Mr. Duslak and Mr. Sesman* and
12 will report to the Board regarding progress on maintenance projects. A motion was made by
13 Treasurer Alexis seconded by Secretary Morales for the petty cash to not be maintained by the
14 *employees* at this time.” (Emphasis added). This shows SUNRISE considered DUSLAK and
15 SESMAN employees, that DUSLAK and SESMAN were in the service of SUNRISE, were
16 compensated by SUNRISE, and that SUNRISE (via Secretary Morales) had, and exercised, the
17 right to direct and control DUSLAK and SESMAN while DUSLAK and SESMAN performed
18 duties for SUNRISE.

19 10. That DUSLAK and SESMAN, while working as what SUNRISE called employees, did
20 not have any opportunity for profit or loss depending on their managerial skill, and that
21 DUSLAK and SESMAN were paid an hourly rate pursuant under their social security numbers
22 for a wage.
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1 11. That DUSLAK and SESMAN, while working as what SUNRISE called employees, did
2 not invest any of their own money in equipment or materials required for the tasks SUNRISE
3 directed DUSLAK and SESMAN to perform, and that all such equipment and/or materials were
4 purchased by and were the property of SUNRISE.

5 12. That DUSLAK and SESMAN, while working as what SUNRISE called employees, did
6 not have any ability to employ helpers.

7 13. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
8 were not performing tasks that require any special skill.

9 14. That DUSLAK and SESMAN, while working as what SUNRISE called employees, had
10 a degree of permanence of the working relationship with SUNRISE as SUNRISE did not permit
11 DUSLAK or SESMAN to work for anyone else other than SUNRISE.

12 15. That lawn care and maintenance is an integral part of SUNRISE's business as an HOA
13 in that an HOA's primary duty is the maintenance of common areas, and that SUNRISE is
14 required by its own CC&R's to maintain common areas and perform lawn care and
15 maintenance.

16 16. That on March 2, 2018 SUNRISE answered an interrogatory by admitting SUNRISE
17 "employed RICHARD DUSLAK and JUSTIN SESMAN for lawn maintenance repair and/or
18 cleaning prior to September 2016. *See*, Exhibit "A".

19 17. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
20 DUSLAK and SESMAN were paid pursuant to their social security numbers, and that neither
21 DUSLAK or SESMAN possessed Tax ID numbers.

22 18. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
23 were not required to have, and did not have, business licenses.
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1 19. That DUSLAK and SESMAN, while working as what SUNRISE called employees,
2 DUSLAK and SESMAN were required to work specific hours each working day as demanded
3 by SUNRISE.

4 20. On August 27, 2016 RUSSO was injured while on the property at SUNRISE. The injury
5 was a result of the negligence of DUSLAK and SESMAN.

6 21. On April 6, 2017 RUSSO filed a lawsuit against SUNRISE claiming that SUNRISE, its
7 maintenance personnel and/or landscapers, and other Defendants (including certain DOE and
8 ROE Defendant landscapers) had created a hazard on the property of 4617 Madreperla in the
9 SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, which hazard caused harm to
10 RUSSO. That initially SUNRISE stated that "J&G LAWN MAINTENANCE" handled the
11 maintenance and landscaping for SUNRISE at the time RUSSO was injured and, as a result,
12 "J&G LAWN MAINTENANCE" was named as a defendant in the action.

13 22. That the Plaintiffs, and each of them, including QBE, issued policy number
14 CAU234378-1, covering named insureds and covered employees as defined in the said policy
15 and/or under the law, which policy insured SUNRISE, covered employees as defined in the said
16 policy and by law, and others and covered SUNRISE's, covered employees, and others for the
17 losses RUSSO alleged he suffered in Case No. A-17-753606-C. *See* Exhibit "D". That
18 pursuant to the policy of insurance Defendants, and each of them, retained counsel to defend
19 SUNRISE in Case No. A-17-753606-C.

20 23. At the time of the August 27, 2016 incident DUSLAK and SESMAN were working as
21 what SUNRISE called employees of SUNRISE and were contractually, legally, equitably,
22 and/or otherwise insureds of the Plaintiffs, and each of them, including QBE.
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1 24. At all times pertinent hereto the said policy of insurance was/were in full force and
2 effect.

3 25. The incident of August 27, 2016, the aforesaid Case No. A-17-753606-C, and related
4 claims were noticed upon and submitted to DUSLAK, SESMAN, SUNRISE, and QBE.

5 26. That during the litigation process in Case No. A-17-753606-C SUNRISE informed
6 RUSSO that “J&G LAWN MAINTENANCE” had in fact not been handling maintenance or
7 landscaping for SUNRISE at the time RUSSO was injured, and that in fact DUSLAK and
8 SESMAN were the ones who were handling maintenance and landscaping for SUNRISE at the
9 time RUSSO was injured.
10

11 27. On November 29, 2017 RUSSO filed a motion in Case No. A-17-753606-C seeking to
12 amend the Complaint in that matter to add additional defendants that had theretofore not been
13 identified or had been misidentified by SUNRISE. The amended complaint identified
14 DUSLAK and SESMAN as Defendant landscapers and alleged that Defendants, and each of
15 them (which would include DUSLAK and SESMAN) were responsible for the maintenance and
16 landscaping for SUNRISE when RUSSO was injured. At the time the Amended Complaint was
17 filed QBE was actively defending SUNRISE in Case No. A-17-753606-C and was made aware
18 of the amended complaint.
19

20 28. That the motion to Amend and the Amended Complaint were provided to QBE as they
21 were provided to counsel for all parties in Case No. A-17-753606-C, which included counsel for
22 SUNRISE which was in a tripartite relationship with SUNRISE and QBE.
23

24 29. On December 22, 2017 RUSSO filed a supplement to the motion to amend the
25 complaint. *See* Exhibit “5” to QBE’s complaint. The supplement specified that SUNRISE had
26 indicated “J&G LAWN MAINTENANCE” was not handling landscaping and maintenance for
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1 SUNRISE at the time RUSSO was injured, and again sought leave to amend the complaint as
2 set forth in the proposed amended complaint which identified DUSLAK and SESMAN as the
3 actual individuals responsible for landscaping and maintenance at the SUNRISE property. *See*,
4 Exhibit “E”. The proposed amended complaint was provided to QBE as it was provided to
5 counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE which
6 was in a tripartite relationship with SUNRISE and QBE.
7

8 30. On February 7, 2018 the Court in Case No. A-17-753606-C entered an Order permitting
9 RUSSO to amend his Complaint and add DUSLAK and SESMAN as Defendants in Case No.
10 A-17-753606-C. *See* Exhibit “F”. The Order was provided to QBE as it was provided to the
11 parties in this action, including QBE via the tripartite relationship it had with its counsel in Case
12 No. A-17-753606-C.
13

14 31. That the Amended Complaint in Case No. A-17-753606-C alleged, *inter alia*, negligence
15 against DUSLAK and SESMAN. The amended complaint also identified DUSLAK and
16 SESMAN as Defendants and alleged that Defendants, and each of them (which would include
17 DUSLAK and SESMAN) were responsible for the maintenance and landscaping for SUNRISE
18 when RUSSO was injured. At the time the Amended Complaint was filed QBE was actively
19 defending SUNRISE in Case No. A-17-753606-C and was well aware of the Amended
20 Complaint.
21

22 32. On February 14, 2018 RUSSO served DUSLAK with the Amended Complaint. On
23 February 13, 2018 RUSSO served SESMAN with the Amended Complaint. Upon information
24 and belief DUSLAK and SESMAN advised SUNRISE of the fact that they had been served.
25 Additionally, as QBE had retained counsel who was actively defending SUNRISE in Case No.
26 A-17-753606-C when the Complaint was amended to add DUSLAK and SESMAN as
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1 Defendants, which counsel had a tripartite relationship with SUNRISE and QBE, QBE was well
 2 aware of, and was on notice of, the fact that DUSLAK and SESMAN had been sued in Case No.
 3 A-17-753606-C at least as of February 14, 2018.

4 33. That QBE received constructive tender of the action against DUSLAK and SESMAN,
 5 Case No. A-17-753606-C. *See, California Shoppers, Inc., v. Royal Globe Ins. Co.*, 175
 6 Cal.App.3d 1, 799 P.2d 1360 (1985); *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014
 7 U.S. Dist. LEXIS 170439 (S.D. Cal. Dec. 9, 2014); *Dearborn Ins. Co. v. International Surplus*
 8 *Lines Ins. Co.*, No. 1-97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999); *Gray v.*
 9 *Zurich Ins. Co.*, 65 Cal. 2d 263, 276; *Devin v. United Servs. Auto. Ass'n.*, 6 Cal. App. 4th 1149,
 10 1157 (1992) (“The duty to defend arises as long as the facts (either as expressed or implied in
 11 the third party’s complaint, or as learned from other sources) give rise to a potentially covered
 12 claim”) (citing *Fresno Economy Import Used Cars, Inc. v. United States Fidelity & Guar.*
 13 *Co.*, 76 Cal. App. 3d 272, 279 (1977)).

14 34. That when QBE became aware of the action against DUSLAK and SESMAN, Case No.
 15 A-17-753606-C, QBE was on inquiry notice to investigate the issue of coverage and failed to do
 16 so.
 17

18 35. That “an insurer . . . bears a duty to defend its insured whenever it ascertains facts which
 19 give rise to the potential of liability under the policy.” *See, Century Surety v. Andrew*, 134
 20 Nev.Adv.Op. 100, 432 P.3d 180 (2018) (citing *United Nat’l Ins. Co. v. Frontier Ins. Co.,*
 21 *Inc.*, 120 Nev. 678, 684 (2004)). That when QBE became aware of the Amended Complaint in
 22 Case No. A-17-753606-C, QBE ascertained (and/or reasonably should have ascertained) facts
 23 giving rise to the potential of liability under the policy covering DUSLAK and SESMAN. That
 24 when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, had QBE
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1 performed an investigation it would have ascertained (and/or reasonably should have
2 ascertained) facts giving rise to the potential of liability under the policy covering DUSLAK and
3 SESMAN.

4 36. That QBE did not defend or investigate its duty to defend DUSLAK and/or SESMAN.

5 37. That “the duty to defend arises when there is a potential for coverage based on the
6 allegations in a complaint.” *See, United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678,
7 684 (2004). That when QBE received the Amended Complaint in Case No. A-17-753606-C,
8 QBE was aware there was a potential for coverage based on the allegations against DUSLAK
9 and SESMAN in the said Amended Complaint.
10

11 38. That the Nevada Supreme Court has held that “where there is potential for coverage
12 based on ‘comparing the allegations of the complaint with the terms of the policy,’ an insurer
13 does have a duty to defend.” *See, Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d
14 180 (2018).
15

16 39. That in *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684 (2004) the
17 Nevada Supreme Court held that an insurer’s duty to defend is triggered when allegations of a
18 complaint, or “other evidence”, suggest that there is a potential for coverage. That on March 2,
19 2018 SUNRISE answered an interrogatory by stating SUNRISE “employed Richard Duslak and
20 Justin Sesman for lawn maintenance repair and/or cleaning prior to Setpember 2016.” *See*
21 Exhibit “A” at P. 7 L. 8-9. That when SUNRISE provided evidence that DUSLAK and
22 SESMAN were employed by SUNRISE, such evidence triggered QBE’s duty to defend
23 DUSLAK and SESMAN, and certainly triggered QBE’s duty to investigate whether it had a
24 duty to defend the individuals SUNRISE stated it employed.
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1 40. That under the insurance contract with SUNRISE, QBE was obligated to defend and
 2 indemnify any covered employee of SUNRISE as defined by the insurance policy with
 3 SUNRISE. *See* Exhibit “D”. The said policy defines a “Covered Employee” as:

4 (a) Any natural person:

5 (1) While in your service (and for 30 days after termination of service);
 6 and

7 (2) Whom you compensate directly by salary, wages or commissions; and

8 (3) Whom you have the right to direct and control while performing
 9 services for you.

10 *See* Exhibit “D” at P. SVHA 000018.

11 41. That on August 27, 2016 DUSLAK and SESMAN were natural people who were in the
 12 service of SUNRISE (and were working as what SUNRISE called employees), whom
 13 SUNRISE compensated directly by salary, wages, or commissions, and whom SUNRISE had
 14 the right to direct and control while DUSLAK and SESMAN performed duties for SUNRISE.
 15 *See* Exhibit “C”. That DUSLAK and SESMAN were parties to a contract of insurance with
 16 Defendants, and each of them, including QBE and/or were an intended beneficiaries to the
 17 same. The said contract carried liability coverage for losses such as those suffered by RUSSO.
 18

19 42. That Exhibit “C” at page SVHA0000557 are minutes from the February 17, 2016
 20 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “The Board reviewed the job
 21 descriptions as submitted by *employees* Richard Duslak and Justin Sesman. Secretary Morales
 22 [Secretary of SUNRISE] volunteered to oversee the work performed on property by Mr. Duslak
 23 and Mr. Sesman and will report to the Board regarding progress on maintenance projects. A
 24 motion was made by Treasurer Alexis seconded by Secretary Morales for the petty cash to not
 25 be maintained by the *employees* at this time.” (Emphasis added). This shows that DUSLAK
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1 and SESMAN were in the service of what SUNRISE called employees, and were compensated
2 by SUNRISE, and that SUNRISE (via Secretary Morales) had, and exercised, the right to direct
3 and control DUSLAK and SESMAN while DUSLAK and SESMAN performed duties for
4 SUNRISE.

5 43. That Exhibit "C" at page SVHA0000559 are minutes from the July 18, 2016 SUNRISE
6 Board of Directors Meeting, wherein SUNRISE stated under the heading Richard, "the board
7 unanimously agreed to terminate the petty cash for Richard they agreed to give him \$66.00 a
8 month for his cell phone bill." This shows SUNRISE compensated DUSLAK in addition to
9 providing DUSLAK with compensation in the form of wages, salary, and/or commission.

10 44. That Exhibit "C" at page SVHA0000561 are minutes from the September 8, 2016
11 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the heading "Richard
12 Duslak", "Board unanimously agreed to terminate the position of a onsite maintenance/poll man
13 the board is in agreement that there is no longer a need for this position therefore they are all in
14 agreement to terminate Mr. Duslak." This shows was employed by SUNRISE on August 27,
15 2016 and that SUNRISE did not terminate his position, or him as what SUNRISE called a
16 SUNRISE employee, until at least September 8, 2016, which was after August 27, 2016 when
17 RUSSO was injured.

18 45. That Exhibit "C" at page SVHA0000564 are minutes from the November 16, 2015
19 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, "It was the consensus of the
20 Board that Richard Dulkas (sic), Justin, and Carson has provided valuable service to the
21 community. The Board agreed to holiday gratuity for \$300 to Richard, \$300 for Carson, and
22 \$100 for Justin and directed the manager to process payment for holiday gratuity through
23 Covenant." This shows SUNRISE compensated DUSLAK and SESMAN in addition to
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1 providing DUSLAK and SESMAN with compensation in the form of wages, salary, and/or
2 commission.

3 46. That Exhibit “C” at page SVHA0000566 is a record of SUNRISE paying \$100.00 to
4 SESMAN for “Holiday gratuity”. This shows SUNRISE compensated SESMAN in addition to
5 providing SESMAN with compensation in the form of wages, salary, and/or commission.
6

7 47. That QBE, having been notified that RUSSO had filed an action against SUNRISE,
8 DUSLAK, and SESMAN in Case No. A-17-753606-C, that SUNRISE stated in court
9 documents and elsewhere that is it “employed” DUSLAK and SESMAN, that SUNRISE
10 referred to DUSLAK and SESMAN as “employees”, and given DUSLAK and SESMAN
11 qualified as covered employees of SUNRISE under Policy No. CAU234378-1, and qualified as
12 covered employees under the law, QBE had duty to defend DUSLAK and SESMAN and to at
13 least investigate whether DUSLAK and/or SESMAN were entitled to coverage under Policy No.
14 CAU234378-1, QBE refused to do so.
15

16 48. That QBE Defended SUNRISE in Case No. A-17-753606-C, yet, despite having a duty
17 to defend DUSLAK and SESMAN against RUSSO’s claims, and despite having knowledge that
18 RUSSO’s claims were proceeding against SUNRISE, DUSLAK, and SESMAN, QBE never
19 took any steps to defend or indemnify DUSLAK or SESMAN in Case No. A-17-753606-C.
20

21 49. That because QBE never took any steps to defend or indemnify DUSLAK or SESMAN
22 in Case No. A-17-753606-C, the Court entered defaults against DUSLAK and SESMAN in
23 Case No. A-17-753606-C.
24

25 50. That in entering a settlement release with RUSSO, QBE and SUNRISE agreed that any
26 settlement would specifically exclude DUSLAK and SESMAN, and anyone associated or
27 affiliated with them. *See*, Exhibit “B” at p. 1. The settlement release included SUNRISE
28

1 employees, except for DUSLAK and SESMAN or anyone associated or affiliated with them. *Id*
2 at P. 4. The settlement release also specifically stated that, “Nothing in this release shall release,
3 discharge, or in any way impact PLAINTIFF’S rights against RICHARD DUSLAK and/or
4 JUSTIN SESMAN in any manner”. *Id* at P. 4. The release further stated that any language in
5 the release that could be read to in any way impact the rights of DUSLAK and/or SESMAN
6 against any entity (including any insurer) “SHALL BE DEEMED NULL AND VOID.” *Id*.
7 The release further stated that if any language in the release was invalidated, such language is
8 deemed to be severed and deleted from the agreement as a whole, and neither the language nor
9 its severance and deletion shall in any way affect the validity of the remaining provisions of the
10 agreement. *Id*.
11

12
13 51. That QBE and SUNRISE attempted to undermine rights held by DUSLAK and
14 SESMAN by asking RUSSO to stipulate that DUSLAK and SESMAN were “independent
15 contractors”. *Id*. That the language in any stipulation in the release between SUNRISE, QBE,
16 and RUSSO does not impact the rights of DUSLAK and/or SESMAN to coverage as 1) neither
17 QBE, SUNRISE, nor RUSSO have any authority to stipulate or otherwise act in any manner to
18 impact the rights of DUSLAK and/or SESMAN to coverage from QBE and 2) as the release
19 specifically stated that any language in the release that could be read to in any way impact the
20 rights of DUSLAK and/or SESMAN against any entity (including any insurer) “SHALL BE
21 DEEMED NULL AND VOID”, any language from the release QBE is now attempting to utilize
22 to impact the rights of DUSLAK and/or SESMAN to coverage are, by virtue of the release
23 itself, null and void and is further deemed severed and deleted from the agreement.
24
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26 52. That any contractual labels in the said stipulation, whether they would have any impact
27 on the rights of DUSLAK and SESMAN to coverage, and whether any said contractual labels
28

1 are deemed null and void by the release or not, are of no consequence as the Ninth Circuit held
2 in *Real v. Driscoll Strawberry Assocs., Inc.*, 603 F.2d 748, 755 (9th Cir, 1979) that, “economic
3 realities, not contractual labels, determine employment status”. (citing *Rutherford Food Corp.*
4 *v. McComb*, *supra*, 331 U.S. at 729, 67 S.Ct. 1473; *Usery v. Pilgrim Equipment Co.*, 527 F.2d
5 1308, 1315 (1976).

6
7 53. That on September 18, 2019 counsel for RUSSO faxed a letter to QBE (Fax No: 267-
8 757-7434) and emailed the same letter to QBE at email address: hstavakis@cauinsure.com
9 which letter stated:

10 As you aware, some time ago our office initiated litigation against Justin Sesman,
11 Richard Duslak, as well as PW James Management & Consulting related to the above-
12 noted incident. We write at this time to advise Community Association Underwriters
13 Agency that the Court has entered default against Justin Sesman, Richard Duslak, and
14 PW James Management & Consulting in this matter. We have attached a copy of the
15 defaults for your convenience.

16 Please contact our office with any questions.

17 See, Exhibit “G”.

18 54. That at no time in 2019 did QBE contact the office of counsel for RUSSO, nor did QBE
19 at any time deny having received prior notice that Case No. A-17-753606-C included claims
20 against its insureds and DUSLAK and SESMAN whom SUNRISE called its employees.

21 55. At no time did QBE submit, notice, and/or otherwise direct said claim and/or action to
22 any further policy of insurance providing coverage for the same and, in particular, did not
23 submit, notice, and/or direct the same to the attention and consideration of any other policies of
24 general liability insurance.

25 56. The aforesaid legal action (Case No. A-17-753606-C) against SUNRISE and others was
26 initially defended by QBE under policy number CAU234378-1, through the association of and
27 payment of a defense firm, Springel & Fink.
28

1 57. That at no time did QBE defend DUSLAK or SESMAN in Case No. A-17-753606-C,
2 even after being given specific notice that the action was pending against DUSLAK and
3 SESMAN, and even after being notified that defaults had been taken against DUSLAK and
4 SESMAN.

5 58. The QBE failed to offer, suggest, and/or provide independent *Cumis* counsel to advise
6 DUSLAK and/or SESMAN as to the failure to defend them in Case No. A-17-753606-C, and/or
7 indemnify, or pertinent pleadings and Orders before and by the Court, and of any related
8 matters.
9

10 59. That because QBE did not defend DUSLAK or SESMAN despite being aware of the
11 lawsuit, and being aware that default had been taken against QBE's insureds, on December 17,
12 2019 the court in Case No. A-17-753606-C entered Judgment against DUSLAK and SESMAN
13 in the amount of \$25,000,000.00, which accrues interest at the statutory rate until paid in full, and
14 that Notice of Entry of the said Judgment was filed on December 17, 2019.
15

16 60. That the conduct of Defendants, and each of them, including QBE, in not defending
17 DUSLAK and SESMAN constituted a breach of the duty to defend under the insurance contract
18 that covered DUSLAK and SESMAN.
19

20 61. That under *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) an
21 insurer is liable for all consequential damages arising out of any breach of the duty to defend an
22 insured. Additionally, "an insurer's liability for the breach of the duty to defend is not capped at
23 the policy limits, even in the absence of bad faith." The Nevada Supreme Court subsequently
24 reiterated that the reasonableness of an insurer's refusal to defend "is irrelevant for determining
25 damages upon a breach of the duty to defend." *Nalder v. United Auto Ins. Co.*, No. 70504, 2019
26 WL 5260073.
27
28

FIRST CAUSE OF ACTION

RUSSO realleges and reasserts each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

62. At all times pertinent hereto, QBE had a contractual duty to defend and indemnify DUSLAK and/or SESMAN regarding certain claims for negligence and resulting injuries caused by them to include, but not limited to, those brought by RUSSO in District Court Case number A-17-753606-C. That, despite any contractual labels, the economic realities of the relationship between SUNRISE and DUSLAK and SESMAN qualified DUSLAK and SESMAN to coverage under the QBE policy.

63. The failure of QBE to reasonably and continuously defend and/or indemnify DUSLAK and/or SESMAN under said policy insurance coverage and/or other policies of insurance actually and/or potentially affording coverage to DUSLAK and/or SESMAN as alleged herein, including but not limited to QBE's failure to even investigate the question of coverage, constitutes a breach of contract on the part of QBE under the terms and conditions as the policies set forth.

64. That as a direct and proximate result of the aforesaid breaches of contract on the part of QBE, DUSLAK and SESMAN have been damaged in an amount in excess of Fifteen Thousand Dollars (\$15,000.00) and are entitled to monies sufficient to satisfy RUSSO's Judgment against them in the amount of \$25,000,000.00 plus all interest, which money is due and owing to RUSSO.

65. DUSLAK and/or SESMAN have satisfied the terms of the contract with QBE and have done everything they are required to do under the insurance policy.

1 66. That the conduct of QBE in refusing to defend DUSLAK and/or SESMAN for the action
2 brought by RUSSO constituted a breach of the duty to defend.

3 67. The conduct of QBE alleged in the foregoing paragraphs constitutes a breach of the
4 insurance contract.

5 68. As a result of the breach by Defendant of the contract, Judgment has been entered
6 against DUSLAK and/or SESMAN in the amount of \$25,000,000.00 with statutory
7 interest accruing thereon, and that RUSSO is entitled to recover funds from DUSLAK
8 and SESMAN in an amount sufficient to satisfy the Judgment of \$25,000,000.00 with
9 statutory interest accruing thereon, which money is due and owing to RUSSO.
10

11 69. That RUSSO as a named Defendant in the Declaratory Relief Action has been required
12 to obtain the services of an attorney to prosecute this claim and is therefore entitled to
13 their costs and reasonable attorney's fees incurred.
14

15 SECOND CAUSE OF ACTION

16 70. RUSSO realleges and reasserts each and every statement and allegation contained in the
17 preceding paragraphs as though set forth fully hereunder.

18 71. The any express and/or implied insurance agreement between QBE and DUSLAK
19 and/or SESMAN carries with it a fiduciary duty.
20

21 72. The contract of insurance as alleged herein carries with it a fiduciary duty.
22

23 73. QBE breached all duties and the fiduciary duty by the acts and omissions alleged herein.
24

25 74. That as a direct and proximate result of the aforesaid breach of duties, including
26 fiduciary duties, on the part of QBE, DUSLAK and SESMAN, have been damaged, and
27 that RUSSO is entitled to recover funds from DUSLAK and SESMAN in an amount
28

1 sufficient to satisfy the Judgment of \$25,000,000.00 with statutory interest accruing
2 thereon, which money is due and owing to RUSSO.

3 **THIRD CAUSE OF ACTION**

4 75. RUSSO realleges and reasserts each and every statement and allegation contained in the
5 preceding paragraphs as though set forth fully hereunder.

6
7 76. QBE is subject to various statutes of the State of Nevada regarding its business practices
8 including, but not limited to, the Nevada Unfair Claims Practices Act.

9 77. QBE violated numerous aspects of the above mentioned Nevada Unfair Claims Practices
10 Act, including, but not limited to, NRS 686A.310(1)(a-o).

11
12 78. That as a direct and proximate result of the aforesaid violations of Nevada statutes on the
13 part of QBE, DUSLAK and SESMAN, have been damaged, and that RUSSO is entitled
14 to recover funds from DUSLAK and SESMAN in an amount sufficient to satisfy the
15 Judgment of \$25,000,000.00 with statutory interest accruing thereon, which money is
16 due and owing to RUSSO.

17
18 **FOURTH CAUSE OF ACTION**

19 79. RUSSO realleges and reasserts each and every statement and allegation contained in the
20 preceding paragraphs as though set forth fully hereunder.

21 80. That at all times pertinent hereto QBE undertook to provide insurance coverage, defense,
22 and indemnity of SUNRISE, giving the reasonable and foreseeable expectation to
23 DUSMAN and/or SESLAK that that they were and would be covered, defended, and/or
24 indemnified with respect to the claims and actions against them, but then unilaterally and
25 unreasonably denied coverage, defense, and indemnification to DUSLAK and/or
26
27 SESMAN.
28

1 81. The aforesaid acts and omissions on the part of QBE creates in equity and/or law a
2 promise and agreement by QBE to cover, defend, and/or indemnify DUSLAK and/or
3 SESMAN regarding the aforesaid claims and actions against them, requiring that QBE
4 be estopped from denying and refusing such coverage, defense, and indemnification, and
5 that QBE be mandated and judicially compelled to cover, defend, and/or indemnify
6 DUSLAK and/or SESMAN including, but not limited to, paying any and all damages
7 assessed against DUSLAK and/or SESMAN, made and/or reduced to judgment in
8 favor of RUSSO and against DUSLAK and/or SESMAN, and/or otherwise imposed
9 against DUSLAK and/or SESMAN as related hereto, all in an amount entitling
10 DUSLAK and SESMAN to monetary damages in excess of Fifteen Thousand Dollars
11 (\$15,000.00) and equitable relief to include, but not limited to, Estoppel and/or
12 Mandamus as this honorable court sees just under the premises, and Declaratory Relief
13 in the form of an Order, Judgment, and/or directive otherwise that QBE is liable to
14 DUSLAK, and SESMAN, for the full amount of the aforesaid Judgment with all
15 applicable interest entered against DUSLAK and/or SESMAN, interest thereon which
16 DUSLAK and SESMAN owe to RUSSO, as well as incidental and consequential
17 damages, and general and special damages.
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21 **WHEREFORE**, Plaintiff RUSSO prays for judgment against the QBE as follows:
22

23 **ON ALL CAUSES OF ACTION**

- 24 1. That DUSLAK and SESMAN recover general damages in an amount in excess of
25 \$25,000,000.00, which money is due and owing to RUSSO;
26 2. That DUSLAK and SESMAN recover general damages in an amount in excess of
27 \$15,000.00, which money is due and owing to RUSSO;
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- 1 3. For DUSLAK and SESMAN to recover special damages in an amount to be
- 2 determined at trial, which money is due and owing to RUSSO;
- 3 4. For declaratory and equitable relief as pled and as the court sees fit in the premises;
- 4 5. Costs of this suit;
- 5 6. Attorney's fees; and
- 6 7. For such other and further relief as to the Court may seem just and proper in the
- 7 premises.
- 8

9 DATED THIS 30th day of December, 2020.

10 THE LAW OFFICE OF DAVID SAMPSON, LLC.

11 By: /s/ *David Sampson*

12 David Sampson, Esq.
13 Nevada Bar No. 6811
14 630 South 3rd Street
15 Las Vegas, NV 89101
16 Tel: (702) 605-1099
17 Email: David@davidsampsonlaw.com
18 *Attorney for RUSSO*
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EXHIBIT “9”



1 KIMBALL JONES, ESQ.
Nevada Bar No.: 12982
2 EVAN K. SIMONSEN, ESQ.
Nevada Bar No.: 13762
3 **BIGHORN LAW**
4 2225 E. Flamingo Rd.
Building 2, Suite 300
5 Las Vegas, Nevada 89119
6 Email: Kimball@BighornLaw.com
Evans@BighornLaw.com
7 *Attorneys for Defendants/Counterclaimants*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 QBE INSURANCE CORPORATION,
11 individually,

CASE NO.: 2:20-cv-02104-RFB-EJY

12 Plaintiff,

13 vs.

14 SIMONE RUSSO, RICHARD DUSLAK and
15 JUSTIN SESMAN,

16 Defendants.

**ANSWER, COUNTERCLAIM AND THIRD-
PARTY COMPLAINT**

17 RICHARD DUSLAK and JUSTIN SESMAN,
18

19 Counterclaimants,
20

21 vs.

22 QBE INSURANCE CORPORATION,
23

24 Counterdefendants.
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1 RICHARD DUSLAK and JUSTIN SESMAN,

2 Third-Party Plaintiffs,

3 vs.

4 COMMUNITY ASSOCIATION
5 UNDERWRITERS OF AMERICA, INC.;
6 SUNRISE VILLAS IX HOMEOWNERS'
7 ASSOCIATION; DOES I-X AND ROE
BUSINESS ENTITIES I-X,

8 Third-Party Defendants.

9
10 **ANSWER**

11 Defendants RICHARD DUSLAK and JUSTIN SESMAN (hereinafter "Richard" and
12 "Justin"), by and through their counsel of record KIMBALL JONES, ESQ. and EVAN K.
13 SIMONSEN, ESQ., with the Law Offices of **BIGHORN LAW**, hereby answers Plaintiff's First
14 Amended Complaint for Declaratory Relief as follows:

15 **PARTIES**

- 16
- 17 1. Answering paragraph 1 of the complaint, RICHARD and JUSTIN do not have sufficient
18 knowledge or information upon which to base a belief as to the truth of the allegations
19 contained in this paragraph and, on that basis, deny the allegations contained therein.
 - 20 2. Answering paragraph 2 of the complaint, RICHARD and JUSTIN do not have sufficient
21 knowledge or information upon which to base a belief as to the truth of the allegations
22 contained in this paragraph and, on that basis, deny the allegations contained therein
 - 23 3. Answering paragraph 3 of the complaint, RICHARD and JUSTIN admit the allegations
24 contained therein.
 - 25 4. Answering paragraph 4 of the complaint, RICHARD and JUSTIN deny the allegations
26 contained therein.

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6. Answering paragraph 6 of the complaint, RICHARD and JUSTIN admit the allegations contained therein.

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8. Answering paragraph 8 of the complaint, RICHARD and JUSTIN admit they are not named in the UNDERLYING MATTER (*attached as exhibit 1 to QBE's Amended Complaint*). RICHARD and JUSTIN deny that the initial complaint made by RUSSO did not include an alleged connection between J&G Lawn Maintenance and SUNRISE VILLAS HOA as the complaint attached by QBE specifically alleges that Defendants and each of them were authorized agents, servants, and employees of each other and were acting within the course and scope of their employment. Otherwise, RICHARD and JUSTIN do not have sufficient knowledge or information upon which to base a belief as to the truth of the other allegations contained in this paragraph and, on that basis, deny the allegations contained therein.

- 1 9. Answering paragraph 9 of the complaint, RICHARD and JUSTIN admit the allegations
2 contained therein, relying on the representation that Exhibit 2 and Exhibit 3 to QBE's
3 Complaint are authentic.
- 4 10. Answering paragraph 10 of the complaint, RICHARD and JUSTIN admit the allegations
5 contained therein, relying on the representation that Exhibit 2 and Exhibit 3 to QBE's
6 Complaint are authentic.
- 7 11. Answering paragraph 11 of the complaint, RICHARD and JUSTIN admit QBE issued an
8 insurance policy to SUNRISE, which should have provided for a defense and
9 indemnification of RICHARD and JUSTIN in the UNDERLYING MATTER. RICHARD
10 and JUSTIN do not have sufficient knowledge or information upon which to base a belief as
11 to the truth of the other allegations contained in this paragraph and, on that basis, deny the
12 allegations contained therein.
- 13 12. Answering paragraph 12 of the complaint, RICHARD and JUSTIN deny the allegations
14 therein.
- 15 13. Answering paragraph 13 of the complaint, RICHARD and JUSTIN deny the allegations
16 therein.
- 17 14. Answering paragraph 14 of the complaint, RICHARD and JUSTIN deny they were
18 independent contractors and admit they were employees of SUNRISE. RICHARD and
19 JUSTIN deny that any party in the UNDERLYING MATTER had any right or ability to alter
20 the reality of their employment status with SUNRISE and/or the rights and protections owed
21 to RICHARD and JUSTIN, regardless of whether or not parties in the UNDERLYING
22 MATTER erroneously opined and/or stipulated that RICHARD and JUSTIN were
23 independent contractors rather than employees. RICHARD and JUSTIN deny that any
24 purported stipulated language between parties in the UNDERLYING MATTER has any
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1 legal impact on the rights of RICHARD and/or JUSTIN. RICHARD and JUSTIN do not
2 have sufficient knowledge or information upon which to base a belief as to the truth of the
3 other allegations contained in this paragraph and, on that basis, deny the allegations
4 contained therein.
5

6 15. Answering paragraph 15 of the complaint, it appears this paragraph contains a typographical
7 error as to the amount of the judgment. With that in mind, RICHARD and JUSTIN admit the
8 allegations contained therein regarding a \$25,000,000.00 judgment.

9 16. Answering paragraph 16 of the complaint, RICHARD and JUSTIN do not have sufficient
10 knowledge or information upon which to base a belief as to the truth of the allegations
11 contained in this paragraph and, on that basis, deny the allegations contained therein.
12

13 17. Answering paragraph 17 of the complaint, RICHARD and JUSTIN do not have sufficient
14 knowledge or information upon which to base a belief as to the truth of the allegations
15 contained in this paragraph and, on that basis, deny the allegations contained therein.

16 18. Answering paragraph 18 of the complaint, RICHARD and JUSTIN do not have sufficient
17 knowledge or information upon which to base a belief as to the truth of the allegations
18 contained in this paragraph and, on that basis, deny the allegations contained therein.
19

20 19. Answering paragraph 19 of the complaint, RICHARD and JUSTIN do not have sufficient
21 knowledge or information upon which to base a belief as to the truth of the allegations
22 contain in this paragraph and, on that basis, deny the allegations contained therein.

23 20. Paragraph 20 of the complaint incorporates the preceding paragraphs in the complaint which
24 do not require any admissions or denials by RICHARD and JUSTIN. To the extent this
25 paragraph could be construed as calling for a response, RICHARD and JUSTIN admit they
26 were "Covered Employees" under the QBE policy and that they were covered employees as a
27 matter of law. RICHARD and JUSTIN do not have sufficient knowledge or information upon
28

1 which to base a belief as to the truth of the other allegations contained in this paragraph and,
2 on that basis, deny the allegations contained therein.

3 21. Answering paragraph 21 of the complaint, RICHARD and JUSTIN admit they have valid
4 claims against QBE and SUNRISE and that QBE owed RICHARD and JUSTIN a duty to
5 defend and indemnify in connection with QBE's insurance policy in the UNDERLYING
6 MATTER. Furthermore, RICHARD and JUSTIN are entitled to recover funds from QBE and
7 SUNRISE to satisfy the duly entered judgment against them. RICHARD and JUSTIN do not
8 have sufficient knowledge or information upon which to base a belief as to the truth of the
9 other allegations contained in this paragraph and, on that basis, deny the allegations
10 contained therein.
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12 22. Answering paragraph 22 of the complaint, RICHARD and JUSTIN deny the allegations and
13 opinions contained therein.
14

15 23. Answering paragraph 23 of the complaint, this allegation appears to be directed to RUSSO
16 only. To the degree a response is requested, RICHARD and JUSTIN do not have sufficient
17 knowledge or information upon which to base a belief as to the truth of the allegations
18 contained in this paragraph and, on that basis, deny the allegations contained therein.
19

20 24. Answering paragraph 24 of the complaint, this allegation appears to be directed to RUSSO
21 only. To the degree a response is requested, RICHARD and JUSTIN do not have sufficient
22 knowledge or information upon which to base a belief as to the truth of the allegations
23 contained in this paragraph and, on that basis, deny the allegations contained therein.
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25 25. Answering paragraph 25 of the complaint, RICHARD and JUSTIN reassert their prior
26 admissions and denials as outlined in the prior paragraphs.

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1 26. Answering paragraph 26 of the complaint, RICHARD and JUSTIN do not have sufficient
2 knowledge or information upon which to base a belief as to the truth of the allegations
3 contained in this paragraph and, on that basis, deny the allegations contained therein.

4 27. Answering paragraph 27 of the complaint, RICHARD and JUSTIN deny the allegations and
5 opinions contained therein.

6 28. Answering paragraph 28 of the complaint, RICHARD and JUSTIN admit the allegations and
7 opinions contained therein.

8 29. Answering paragraph 29 of the complaint, RICHARD and JUSTIN admit the allegations and
9 opinions contained therein.

10 30. Plaintiff's prayer for relief immediately following paragraph 29 of the complaint does not
11 contain any factual allegations that would require a response from RICHARD and JUSTIN.
12 To the extent the prayer for relief could be construed as calling for a response, RICHARD
13 and JUSTIN deny that Plaintiff is entitled to the relief requested therein.

14
15
16 **AFFIRMATIVE AND OTHER DEFENSES**

17 RICHARD and JUSTIN assert the following affirmative defenses to Plaintiff's complaint.

18 **FIRST DEFENSE**

19 The complaint, and each and every cause of action thereof, fails to state a claim upon which
20 relief can be granted.

21
22 **SECOND DEFENSE**

23 Any damages sustained by Plaintiff by reason of the events alleged in the complaint were
24 proximately caused or contributed to by Plaintiff's own breach of the subject insurance contract.

25 **THIRD DEFENSE**

26 Plaintiff failed to take reasonable steps to avoid the damages, if any, alleged in the complaint,
27 and each and every cause of action contained therein.

FOURTH DEFENSE

Plaintiff has engaged in acts, omissions and conduct that constitute a breach of Plaintiff's obligations under the subject policy.

FIFTH DEFENSE

Plaintiff's handling of RICHARD and JUSTIN'S claim was not correct, was not proper and was not reasonable under the terms of the subject policy.

SIXTH DEFENSE

Plaintiff failed to act in good faith and acted without with justification or probable cause and with malice toward its insureds.

SEVENTH DEFENSE

Plaintiff's actions failed to comply with N.R.S. 686A.310.

EIGHTH DEFENSE

Plaintiff's conduct was malicious, oppressive and/or fraudulent pursuant to N.R.S. 42.010.

NINTH DEFENSE

Plaintiff's cause of action is barred by the doctrine of are barred by reason of laches, waiver, estoppel, unclean hands and/or any other equitable defense.

TENTH DEFENSE

Plaintiff failed to properly and fully mitigate, minimize or avoid damages they allegedly sustained.

ELEVENTH DEFENSE

Plaintiff is not entitled to attorney's fees pursuant to any of the claims alleged in the complaint.

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1 **TWELFTH DEFENSE**

2 Pursuant to F.R.C.P. 11, as amended, all possible affirmative and other defenses may not
3 have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
4 the filing of this answer, and therefore, RICHARD and JUSTIN reserve the right to amend this
5 answer to allege additional affirmative defenses if subsequent investigation so warrants.
6

7 WHEREFORE, and for the reasons set forth in the counterclaim below, RICHARD and JUSTIN
8 pray for judgment as follows:

- 9 1. For a declaration and determination that RICHARD and JUSTIN are insureds under the
10 policy between Plaintiff and SUNRISE, and that the defense of the claims against RICHARD
11 and JUSTIN were duly tendered and/or constructively tendered to Plaintiff, that Plaintiff did
12 owe RICHARD and JUSTIN a defense, indemnification, fiduciary duties, and good faith and
13 fair dealing for claims arising out of the underlying action.
14
15 2. For attorney's fees;
16
17 3. For costs of suit;
18
19 4. For interest; and
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21 5. For all other relief the Court deems just and proper.

22 **COUNTERCLAIM/THIRD-PARTY COMPLAINT**

23 COMES NOW Counterclaimants/Third-Party Plaintiffs RICHARD DUSLAK and JUSTIN
24 SESMAN, by and through their attorney, KIMBALL JONES, ESQ. and EVAN K. SIMONSEN,
25 ESQ., with the Law Offices of **BIGHORN LAW**, and for their claims for relief against
26 Counterdefendant QBE INSURANCE CORPORATION, Third-Party Defendant COMMUNITY
27 ASSOCIATION UNDERWRITERS OF AMERICA, INC. and Third-Party Defendant SUNRISE
28 VILLAS IX HOMEOWNERS' ASSOCIATION, and each of them, allege and complain as follows:

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PARTIES

1. At all times relevant to this action, Counterclaimants/Third-Party Plaintiffs RICHARD and JUSTIN (hereinafter “RICHARD and JUSTIN”) were residents of Clark County, Nevada.
2. At all times relevant to this action, Co-Defendant SIMONE RUSSO (“Russo”) was a resident of Clark County, Nevada.
3. At all times relevant to this action, Plaintiff/Counterdefendant, QBE INSURANCE CORPORATION (hereinafter “QBE”) was at all times relevant to this action an insurance company based in Pennsylvania and was operating and conducting business in Nevada.
4. At all times relevant to this action, Third-Party Defendant COMMUNITY ASSOCIATION UNDERWRITERS OF AMERICA, INC. (hereinafter “CAU”) was at all times relevant to this action an insurance underwriting company based in Pennsylvania and doing business in Nevada.
5. That QBE issued insurance policies, some of which were underwritten by CAU. That QBE and CAU are the parent, and/or subsidiary of, alter-ego of, doing business as, also known as, and/or otherwise sharing an identity or continuity of interests with each and every other and, therefore, are contractually, jointly and severally, legally, equitably, and/or otherwise liable for and/or with each other herein.
6. At all times relevant to this action, Third-Party Defendant, SUNRISE VILLAS IX HOMEOWNERS’ ASSOCIATION (hereinafter “SUNRISE”) was at all times relevant to this action a business organization, form unknown, doing business in Nevada.
7. At all times relevant to this action, SUNRISE was a business organization, form unknown, which employed RICHARD and JUSTIN and held a policy for insurance sold by QBE and/or CAU, which covered SUNRISE’s employees, including RICHARD and JUSTIN.
8. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Third-Party Defendants, DOES I through X and ROE BUSINESS ENTITIES I

1 through X, are unknown to RICHARD and JUSTIN, who therefore sue said Third-Party
2 Defendants by such fictitious names. RICHARD and JUSTIN are informed and believe and
3 thereon allege that each of the Third-Party Defendants designated herein as DOE and ROE
4 are responsible in some manner for the events and happenings referred to and caused
5 damages proximately to RICHARD and JUSTIN as herein alleged, and that RICHARD and
6 JUSTIN will seek leave of this Court to amend this Third-Party Complaint to insert the true
7 names and capacities of DOES I through X and ROE BUSINESS ENTITIES I through X,
8 when the same have been ascertained, and to join such Third-Party Defendants in this action.
9

10 **GENERAL ALLEGATIONS**

- 11 9. On and before August 27, 2016 RICHARD and JUSTIN were working for SUNRISE as
12 maintenance personnel and landscapers.
13
14 10. On August 27, 2016 Co-Defendant RUSSO tripped over a cable and was injured while on the
15 property at SUNRISE. The injury allegedly resulted from negligent act or omission by
16 RICHARD and JUSTIN.
17
18 11. On April 6, 2017 RUSSO filed a lawsuit against SUNRISE claiming that SUNRISE, its
19 maintenance personnel and/or landscapers, and other individuals (including certain DOE and
20 ROE Third-Party Defendants) had created a hazard on the property of 4617 Madreperla in
21 the SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION, which hazard caused harm to
22 RUSSO (Court Case No. A-17-753606-C). See Exhibit "1". Upon information and belief,
23 initial information received by RUSSO from SUNRISE indicated that "J&G LAWN
24 MAINTENANCE" handled the maintenance and landscaping at the time RUSSO was
25 injured and, as a result, "J&G LAWN MAINTENANCE" was named as a defendant in the
26 action. *Id.*
27

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12. That QBE and/or CAU, and each of them, issued policy number CAU234378-1, covering named insured SUNRISE (including employees acting in the course and scope of their employment), and “Covered Employees” as defined in said policy, which policy insured SUNRISE’s “Covered Employees”, as defined in the said policy, and others and covered SUNRISE’s “Covered Employees”, and others, for the losses RUSSO alleged he suffered in Case No. A-17-753606-C. See Exhibit “2”. That pursuant to the policy of insurance, QBE and/or CAU, and each of them, retained counsel to defend SUNRISE in Case No. A-17-753606-C.
13. At all relevant times related to the August 27, 2016 incident, RICHARD and JUSTIN were agents, employees, and/or assigns of SUNRISE and were contractually, legally, equitably, and/or otherwise insureds by SUNRISE, and/or QBE, and/or CAU, and/or DOES I through X, and/or ROE BUSINESS ENTITIES I through X, and each of them.
14. Prior to the subject incident and for some time thereafter, SUNRISE paid RICHARD and JUSTIN for work.
15. Prior to the subject incident and for some time thereafter, SUNRISE paid RICHARD as an onsite maintenance / pool man.
16. Prior to the August 27, 2016 incident, there were times when Secretary John Morales of SUNRISE’s board oversaw work performed by RICHARD and JUSTIN.
17. Prior to the August 27, 2016 incident, there were times when Secretary John Morales of SUNRISE’s board would inspect the work performed by RICHARD and JUSTIN, provide corrective feedback and direction regarding how RICHARD and JUSTIN could better perform their work, and assign projects for RICHARD and JUSTIN to work on.
18. At all relevant times during their working relationship with SUNRISE, SUNRISE provided RICHARD and JUSTIN with an hourly work schedule.

19. At all relevant times during their working relationship with SUNRISE, the amount SUNRISE paid RICHARD and JUSTIN was entirely based on hours worked and the hourly wage.
20. At all relevant times during their working relationship with SUNRISE, SUNRISE actually paid RICHARD and JUSTIN all wages owed based on the hours RICHARD and JUSTIN worked.
21. At all relevant times during their working relationship with SUNRISE, the tasks assigned to RICHARD and JUSTIN were assigned by SUNRISE or by a member of SUNRISE's board.
22. At all relevant times during their working relationship with SUNRISE, SUNRISE had the discretion to choose the manner in which RICHARD and JUSTIN were to perform their work for SUNRISE, if SUNRISE chose to do so.
23. At all relevant times during their working relationship with SUNRISE, all equipment and materials for tasks to be performed by RICHARD and JUSTIN were provided by SUNRISE; RICHARD and JUSTIN were not required to provide their own equipment or materials.
24. At all relevant times during their working relationship with SUNRISE, all equipment for lawncare, property maintenance and pool maintenance was provided by SUNRISE. Further, SUNRISE paid RICHARD a monthly payment for RICHARD's cell phone bill.
25. At all relevant times during their working relationship with SUNRISE, SUNRISE did not require RICHARD or JUSTIN to have special skills beyond those of maintenance persons; rather, the tasks assigned were simple tasks that one would expect an onsite maintenance man or pool man to be able to perform.
26. The working relationship between SUNRISE and RICHARD ended on a date after the subject incident, when SUNRISE hired J&G for landscaping and determined that with the contracting of J&G, SUNRISE no longer needed an onsite maintenance/pool man.

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1 27. At all relevant times during their working relationship with SUNRISE, RICHARD and
2 JUSTIN were provided a relatively consistent work schedule during which time RICHARD
3 and JUSTIN were expected to be working for SUNRISE.

4 28. At all relevant times during their working relationship with SUNRISE, RICHARD and
5 JUSTIN were considered employees by SUNRISE for tax purposes and were provided a W-2
6 by SUNRISE.

7 29. At all relevant times during their working relationship with SUNRISE, RICHARD and
8 JUSTIN provided work for SUNRISE, which SUNRISE was required to provide according
9 to their agreement with the homeowners in the association.

10 30. At all relevant times during their working relationship with SUNRISE, RICHARD and
11 JUSTIN provided work for the association and the work provided included maintenance of
12 property, which SUNRISE was required to provide under the homeowner association's bi-
13 laws.

14 31. At all relevant times during their working relationship with SUNRISE, SUNRISE never
15 required that RICHARD or JUSTIN hold a business license.

16 32. At all relevant times during their working relationship with SUNRISE, the previously
17 identified policy of insurance from QBE and/or CAU was in effect.

18 33. At all relevant times during their working relationship with SUNRISE, SUNRISE referred to
19 RICHARD and JUSTIN as employees.

20 34. At all relevant times during their working relationship with SUNRISE, RICHARD and
21 JUSTIN were never referred to in writing by SUNRISE as independent contractors.

22 35. At all relevant times during their working relationship with SUNRISE, RICHARD and
23 JUSTIN were considered SUNRISE employees for purposes of the QBE insurance policy.

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- 1 36. The incident of August 27, 2016, the aforesaid Case No. A-17-753606-C (“the
2 UNDERLYING MATTER”), and related claims were noticed upon and submitted to
3 RICHARD, JUSTIN, SUNRISE, QBE, CAU, DOES I through X and ROE BUSINESS
4 ENTITIES I through X, and each of them.
5
- 6 37. Upon information and belief, during litigation of the UNDERLYING MATTER, QBE and/or
7 CAU, and each of them, retained defense counsel to defend RUSSO’s claims against
8 SUNRISE.
9
- 10 38. Upon information and belief, during litigation of the UNDERLYING MATTER, defense
11 counsel for SUNRISE consulted with and/or informed QBE and/or CAU, and SUNRISE
12 regarding its litigation strategy.
13
- 14 39. Upon information and belief, during litigation of the UNDERLYING MATTER, defense
15 counsel for SUNRISE provided information to QBE and/or CAU and SUNRISE regarding
16 the discovery and evidence produced in the case.
17
- 18 40. Upon information and belief, during litigation of the UNDERLYING MATTER, defense
19 counsel for SUNRISE submitted its billing requests and billing to QBE and/or CAU, for
20 payment and approval.
21
- 22 41. Upon information and belief, during litigation of the UNDERLYING MATTER, defense
23 counsel for SUNRISE provided QBE and/or CAU and SUNRISE copies of the disclosures,
24 discovery and evidence in the case.
25
- 26 42. Upon information and belief, during litigation of the UNDERLYING MATTER, SUNRISE
27 informed RUSSO that “J&G LAWN MAINTENANCE” was not handling maintenance or
28 landscaping for SUNRISE at the time RUSSO was injured, and that in fact RICHARD and
JUSTIN were employed by SUNRISE to handle maintenance and landscaping for SUNRISE
at the time RUSSO was injured.

- 1 43. Upon information and belief, during the litigation of the underlying matter, SUNRISE
2 provided a response to one of RUSSO's interrogatories wherein SUNRISE stated that
3 RICHARD and JUSTIN were employed by SUNRISE at the time of the subject incident.
- 4 44. Upon information and belief, on November 29, 2017, RUSSO filed a motion in Case No. A-
5 17-753606-C seeking to amend the Complaint in that matter to add additional defendants.
6 See Exhibit "3". The amended complaint identified RICHARD and JUSTIN as Defendants
7 and alleged that Defendants, and each of them (which would include RICHARD and
8 JUSTIN) were responsible for the maintenance and landscaping for SUNRISE when RUSSO
9 was injured. See Exhibit "4," at paragraphs 13, 19, and 20. At the time the Amended
10 Complaint was filed QBE and/or CAU, and each of them, were actively defending SUNRISE
11 in Case No. A-17-753606-C.
- 12 45. Upon information and belief, the Motion to Amend and Amended Complaint were provided
13 to counsel for all parties in Case No. A-17-753606-C, which included counsel for SUNRISE
14 as well as QBE and/or CAU, and each of them. *Id.*
- 15 46. Upon information and belief, on December 22, 2017 RUSSO filed a supplement to the
16 motion to amend the complaint. See Exhibit "5". The supplement specified that SUNRISE
17 had indicated "J&G LAWN MAINTENANCE" was not handling landscaping and
18 maintenance for SUNRISE at the time RUSSO was injured, and again sought leave to amend
19 the complaint, as set forth in the proposed amended complaint, which identified RICHARD
20 and JUSTIN as the actual individuals responsible for landscaping and maintenance at the
21 SUNRISE property. See Exhibit "5". This proposed amended complaint was provided to
22 counsel for QBE, CAU and SUNRISE, and each of them.
- 23 47. Upon information and belief, on February 7, 2018 the Court in Case No. A-17-753606-C
24 entered an Order permitting RUSSO to amend his Complaint and add RICHARD and
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1 JUSTIN as Defendants in Case No. A-17-753606-C. See Exhibit “6”. This order was
2 provided to QBE, CAU and SUNRISE, and each of them.

3 48. That the Amended Complaint in Case No. A-17-753606-C alleged, *inter alia*, negligence
4 against RICHARD and JUSTIN, including specific claims that RICHARD and JUSTIN
5 “...maintained and controlled those premises...” as “...duly authorized agents ... acting
6 within the course of their employment and scope of their authority...” for SUNRISE at the
7 time RUSSO was injured. See Exhibit “4,” at paragraphs 13, 19, and 20. QBE and/or CAU,
8 and each of them, were defending SUNRISE, and QBE, CAU and SUNRISE, and each of
9 them, were provided the Amended Complaint at this time either directly or through counsel
10 in the UNDERLYING MATTER.
11

12 49. On February 13, 2018, RUSSO served JUSTIN with the Amended Complaint. See Exhibit
13 “8”.
14

15 50. On February 14, 2018, RUSSO served RICHARD with the Amended Complaint. See
16 Exhibit “7”.
17

18 51. RICHARD and JUSTIN advised QBE, CAU and SUNRISE, and each of them, of the suit. In
19 response, SUNRISE informed RICHARD that SUNRISE had insurance coverage to protect
20 RICHARD and JUSTIN from the claims being brought against them in the UNDERLYING
21 MATTER, that SUNRISE already had attorneys in place defending RICHARD and JUSTIN
22 in the UNDERLYING MATTER and that RICHARD and JUSTIN had nothing to worry
23 about with respect to the claims made against them since QBE’s, CAU’s and SUNRISE’s,
24 and each of their, attorneys were already defending RICHARD and JUSTIN.
25

26 52. At the time the Amended Complaint was filed in the UNDERLYING MATTER, QBE, CAU
27 and SUNRISE, had documents in their possession and/or available to them, which
28

1 demonstrated conclusively that RICHARD and JUSTIN were employees of SUNRISE, at the
2 time of the subject incident.

3 53. QBE, CAU and SUNRISE, and each of them, were in fact aware that RICHARD and JUSTIN
4 were employees of SUNRISE, at the time of the incident giving rise to the UNDERLYING
5 MATTER.

6
7 54. QBE, CAU and SUNRISE, and each of them, had retained counsel, who was actively
8 defending SUNRISE in Case No. A-17-753606-C, when the Complaint was amended to add
9 RICHARD and JUSTIN as Defendants in the underlying action, which counsel had a
10 tripartite relationship with SUNRISE and Defendants, and each of them, including QBE
11 and/or CAU, who was well aware of, and were on notice of, the fact that RICHARD and
12 JUSTIN had been sued in Case No. A-17-753606-C, at least as of February 14, 2018.

13
14 55. Upon information and belief, QBE, CAU and SUNRISE, and each of them, received
15 constructive tender of the action against RICHARD and JUSTIN, Case No. A-17-753606-C.
16 See *California Shoppers, Inc., v. Royal Globe Ins. Co.*, 175 Cal.App.3d 1, 799 P.2d 1360
17 (1985); *Millennium Labs., Inc. v. Darwin Select Ins. Co.*, 2014 U.S. Dist. LEXIS 170439
18 (S.D. Cal. Dec. 9, 2014); *Dearborn Ins. Co. v. International Surplus Lines Ins. Co.*, No. 1-
19 97-0724, 1999 Ill. App. LEXIS 667 (Ill. Ct. App. Sept. 23, 1999); *Gray v. Zurich Ins. Co.*, 65
20 Cal. 2d 263, 276; *Devin v. United Servs. Auto. Ass'n.*, 6 Cal. App. 4th 1149, 1157 (1992)
21 (“The duty to defend arises as long as the facts (either as expressed or implied in the third
22 party’s complaint, or as learned from other sources) give rise to a potentially covered claim .
23 . . .”) (citing *Fresno Economy Import Used Cars, Inc. v. United States Fidelity & Guar. Co.*,
24 76 Cal. App. 3d 272, 279 (1977)).
25
26

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1 56. That when Counterdefendants, and each of them including QBE became aware of the action
2 against RICHARD and JUSTIN, Case No. A-17-753606-C, Counterdefendants, and each of
3 them including QBE were on notice to investigate the issue of coverage.

4 57. That QBE, CAU and SUNRISE, and each of them, failed to investigate the issue of coverage
5 for RICHARD and JUSTIN, even after becoming aware of the action against RICHARD and
6 JUSTIN.

7 58. That “an insurer . . . bears a duty to defend its insured whenever it ascertains facts which give
8 rise to the potential of liability under the policy.” See *Century Surety v. Andrew*, 134
9 Nev.Adv.Op. 100, 432 P.3d 180 (2018) (citing *United Nat’l Ins. Co. v. Frontier Ins. Co.,*
10 *Inc.*, 120 Nev. 678, 684 (2004)).

11 59. That when QBE became aware of the Amended Complaint in Case No. A-17-753606-C,
12 QBE ascertained (*and reasonably should have ascertained*) facts giving rise to the potential
13 of liability under the policy covering RICHARD and JUSTIN.

14 60. That when QBE became aware of the Amended Complaint in Case No. A-17-753606-C, had
15 QBE performed an investigation it would have ascertained (*and reasonably should have*
16 *ascertained*) facts giving rise to the potential of liability under the policy covering
17 RICHARD and JUSTIN.

18 61. That “the duty to defend arises when there is a potential for coverage based on the allegations
19 in a complaint.” See *United Nat’l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684
20 (2004). That when QBE learned of the Amended Complaint in Case No. A-17-753606-C,
21 QBE was aware there was a potential for coverage based on the allegations against
22 RICHARD and JUSTIN in the said Amended Complaint.

23 62. That the Nevada Supreme Court has held that “where there is potential for coverage based on
24 ‘comparing the allegations of the complaint with the terms of the policy,’ an insurer does
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1 have a duty to defend.” See *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180
 2 (2018).

3 63. That under the insurance contract with SUNRISE, QBE was obligated to defend and
 4 indemnify any “Covered Employee” of SUNRISE, as defined by the insurance policy with
 5 SUNRISE. See *Exhibit “2”*. The said policy defines a “Covered Employee” as:
 6

7 (a) Any natural person:

8 (1) While in your service (and for 30 days after termination of service); and

9 (2) Whom you compensate directly by salary, wages or commissions; and

10 (3) Whom you have the right to direct and control while performing services
 11 for you.
 12

13 See *Exhibit “2,”* at P. SVHA 000018.

14 64. That on August 27, 2016, RICHARD and JUSTIN were natural people who were in the
 15 service of SUNRISE, whom SUNRISE compensated directly by salary, wages, or
 16 commissions, and whom SUNRISE had the right to direct and control while RICHARD and
 17 JUSTIN performed duties for SUNRISE. See *Exhibit “9”*. That RICHARD and JUSTIN
 18 were parties to a contract of insurance with QBE, CAU and SUNRISE, and each of them,
 19 and/or were an intended beneficiaries to the same. The said contract carried liability coverage
 20 for losses such as those suffered by RUSSO.
 21

22 65. That *Exhibit “9,”* at page SVHA0000557, are minutes from the February 17, 2016 SUNRISE
 23 Board of Directors Meeting, wherein SUNRISE stated, “The Board reviewed the job
 24 descriptions as submitted by employees Richard Duslak and Justin Sesman. Secretary
 25 Morales [Secretary of SUNRISE] volunteered to oversee the work performed on property by
 26 Mr. Duslak and Mr. Sesman and will report to the Board regarding progress on maintenance
 27 projects. A motion was made by Treasurer Alexis seconded by Secretary Morales for the
 28

1 petty cash to not be maintained by the employees at this time.” This shows that RICHARD
2 and JUSTIN were in the service of SUNRISE, were compensated by SUNRISE, and that
3 SUNRISE (*via Secretary Morales*) had, and exercised, the right to direct and control
4 RICHARD and JUSTIN, while RICHARD and JUSTIN performed duties for SUNRISE.

5
6 66. That *Exhibit “9,”* at page SVHA0000559, are minutes from the July 18, 2016 SUNRISE
7 Board of Directors Meeting, wherein SUNRISE stated under the heading Richard, “the board
8 unanimously agreed to terminate the petty cash for Richard they agreed to give him \$66.00 a
9 month for his cell phone bill.” This shows SUNRISE compensated RICHARD, in addition to
10 providing RICHARD with compensation in the form of wages, salary, and/or commission.

11
12 67. That *Exhibit “9,”* at page SVHA0000561, are minutes from the September 8, 2016
13 SUNRISE Board of Directors Meeting, wherein SUNRISE stated under the heading Richard
14 Duslak, “Board unanimously agreed to terminate the position of a onsite maintenance/pool
15 man the board is in agreement that there is no longer a need for this position therefore they
16 are all in agreement to terminate Mr. Duslak.” This shows RICHARD was employed by
17 SUNRISE on August 27, 2016 and that SUNRISE did not terminate him until at least
18 September 8, 2016, which was after August 27, 2016 when RUSSO was injured.

19
20 68. That *Exhibit “9,”* at page SVHA0000564 are minutes from the November 16, 2015
21 SUNRISE Board of Directors Meeting, wherein SUNRISE stated, “It was the consensus of
22 the Board that Richard Dulkas (sic), Justin, and Carson has provided valuable service to the
23 community. The Board agreed to holiday gratuity for \$300 to Richard, \$300 for Carson, and
24 \$100 for Justin and directed the manager to process payment for holiday gratuity through
25 Covenant.” This shows SUNRISE compensated RICHARD and JUSTIN, in addition to
26 providing RICHARD and JUSTIN with compensation in the form of wages, salary, and/or
27 commission.
28

69. That *Exhibit “9,”* at page SVHA0000566 is a record of SUNRISE paying \$100.00 to JUSTIN for “Holiday gratuity”. This shows SUNRISE compensated JUSTIN, in addition to providing JUSTIN with compensation in the form of wages, salary, and/or commission.
70. That QBE and/or CAU having been notified that RUSSO had filed an action against SUNRISE, RICHARD and JUSTIN in Case No. A-17-753606-C, and given RICHARD and JUSTIN qualified as “Covered Employees” of SUNRISE under Policy No. CAU234378-1, QBE and/or CAU had duty to defend RICHARD and JUSTIN and to investigate whether RICHARD and/or JUSTIN were entitled to coverage under Policy No. CAU234378-1, yet QBE and/or CAU failed to do so.
71. That QBE and/or CAU Defended SUNRISE in Case No. A-17-753606-C, yet, despite having a duty to defend RICHARD and JUSTIN against RUSSO’s claim, and despite having knowledge that RUSSO’s claim was proceeding against SUNRISE, RICHARD and JUSTIN, QBE and/or CAU never took any steps to defend or indemnify RICHARD and JUSTIN in Case No. A-17-753606-C.
72. That because QBE and/or CAU never took any steps to defend or indemnify RICHARD and JUSTIN in Case No. A-17-753606-C, the Court entered defaults against RICHARD and JUSTIN in Case No. A-17-753606-C. See Exhibit “11”.
73. Upon information and belief, on September 18, 2019 counsel for RUSSO faxed a letter to QBE, CAU and SUNRISE, and each of them, (*Fax No: 267-757-7434*), and emailed the same letter to QBE, CAU and SUNRISE, and each of them, at email address: hstavakis@cauinsure.com, which letter stated:
- As you aware, some time ago our office initiated litigation against Justin Sesman, Richard Duslak, as well as PW James Management & Consulting related to the above-noted incident. We write at this time to advise

Community Association Underwriters Agency that the Court has entered default against Justin Sesman, Richard Duslak, and PW James Management & Consulting in this matter. We have attached a copy of the defaults for your convenience.

Please contact our office with any questions.

See Exhibit "10".

74. Upon information and belief, at no time did QBE, CAU and SUNRISE, and each of them, contact the office of counsel for RUSSO, nor did QBE, CAU and SUNRISE, and each of them, at any time deny having received prior notice that Case No. A-17-753606-C included claims against its insureds and "Covered Employees" RICHARD and JUSTIN.
75. Upon information and belief, at no time did QBE, CAU and SUNRISE, and each of them, or any of them, submit, notice, and/or otherwise direct said claim and/or action to any further policy of insurance providing coverage for the same and, in particular, did not submit, notice, and/or direct the same to the attention and consideration of any other policies of general liability insurance.
76. Upon information and belief, the aforesaid legal action (*Case No. A-17-753606-C*) against SUNRISE and others was initially defended by QBE and/or CAU under policy number CAU234378-1, through the association of and payment of a defense firm, Springel & Fink.
77. That at no time did QBE, CAU and SUNRISE, and each of them, defend RICHARD or JUSTIN in Case No. A-17-753606-C, even after being given specific notice that the action was pending against RICHARD and JUSTIN, and even after being notified that defaults had been taken against RICHARD and JUSTIN.
78. That when an insurance company receives notice from an attorney that a default has been taken against a party, the insurance company should inquire regarding the reason for which

1 an attorney would provide such notice. Yet, QBE, CAU and SUNRISE, and each of them,
2 took no action when advised of RUSSO's default against its insureds, RICHARD and
3 JUSTIN.

4 79. QBE, CAU and SUNRISE, and each of them, failed to offer, suggest, and/or provide
5 independent *Cumis* counsel to advise RICHARD and JUSTIN as to the failure to defend
6 them in Case No. A-17-753606-C, and/or indemnity, or pertinent pleadings and Orders
7 before and by the Court, and of any related matters.
8

9 80. That SUNRISE failed to specifically alert QBE and/or CAU that RICHARD and JUSTIN,
10 who were known to be employees, should be defended by QBE, CAU and SUNRISE, and
11 each of them, or did inform QBE and/or CAU that RICHARD and JUSTIN were known to
12 be employees and QBE and/or CAU nevertheless failed to defend RICHARD and JUSTIN.
13

14 81. That QBE failed to review the discovery in the UNDERLYING MATTER that was available
15 for review, which demonstrated that RICHARD and JUSTIN were, in fact, SUNRISE
16 employees covered under QBE's insurance policy.
17

18 82. That because QBE, CAU and SUNRISE, and each of them, did not defend RICHARD and
19 JUSTIN despite being aware of the lawsuit, and being aware that default had been taken
20 against QBE's insureds, on December 17, 2019, the court in Case No. A-17-753606-C
21 entered Judgment against RICHARD and JUSTIN in the amount of \$25,000,000.00, which
22 accrues interest at the statutory rate until paid in full. See Exhibit "11". That Notice of Entry of
23 the said Judgment was filed on December 17, 2019. See Exhibit "12".
24

25 83. Prior to judgment being entered against RICHARD and JUSTIN, no action or attempt
26 otherwise to seek or procure Declaratory Relief as to the issue of insurance coverage was
27 brought by the QBE, CAU and SUNRISE, and each of them, or the DOE and ROE Third-
28 Party Defendants, or any of them.

1 84. That the conduct of QBE, in not defending RICHARD and JUSTIN, constituted a breach of
2 the duty to defend under the insurance contract that covered RICHARD and JUSTIN as
3 “Covered Employees.”

4 85. That under *Century Surety v. Andrew*, 134 Nev.Adv.Op. 100, 432 P.3d 180 (2018) an insurer
5 is liable for all consequential damages arising out of any breach of the duty to defend an
6 insured. Additionally, “an insurer’s liability for the breach of the duty to defend is not
7 capped at the policy limits, even in the absence of bad faith.” The Nevada Supreme Court
8 subsequently reiterated that the reasonableness of an insurer’s refusal to defend “is irrelevant
9 for determining damages upon a breach of the duty to defend.” *Nalder v. United Auto Ins.*
10 *Co.*, No. 70504, 2019 WL 5260073.

11 86. Upon information and belief, on November 4, 2020 counsel for RUSSO faxed a letter to
12 QBE, CAU and SUNRISE, and each of them, (*Fax No: 267-757-7434*), and emailed the same
13 letter to QBE, CAU and SUNRISE, and each of them, including QBE and CAU (email
14 address: hstavakis@cauinsure.com) which stated:

15
16
17 As you aware, some time ago our office initiated litigation against Justin
18 Sesman, Richard Duslak, as well as PW James Management & Consulting
19 related to the above-noted incident. As we informed you over a year ago, the
20 Court entered default against Justin Sesman, Richard Duslak, and PW James
21 Management & Consulting in this matter. In December of 2020 the Court
22 entered Judgment against Justin Sesman, Richard Duslak in the amount of
23 \$25,000,000.00. We have attached a copy of the Judgment against your
24 insureds for your convenience. Please contact our office to make
25 arrangements to satisfy the Judgment against your insureds.
26
27

28 See Exhibit “13”.

FIRST CAUSE OF ACTION**(Breach of Contract – All Counterdefendants)**

87. RICHARD and JUSTIN reallege and reassert each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

88. At all times pertinent hereto, QBE and/or CAU had a contractual duty to defend and indemnify RICHARD and JUSTIN, regarding certain claims for negligence and resulting injuries caused by them to include, but not limited to, those brought by RUSSO in District Court Case number A-17-753606-C.

89. The failure of QBE and/or CAU to reasonably and continuously defend and/or indemnify RICHARD and/or JUSTIN under said policy insurance coverage and/or other policies of insurance actually and/or potentially affording coverage to RICHARD and/or JUSTIN as alleged herein constitutes a breach of contract on the part of QBE, CAU and SUNRISE, and each of them, under the terms and conditions as the policies set forth.

90. The failure of SUNRISE to ensure that its contracted employees were defended and/or indemnified by QBE and/or CAU, under said policy insurance coverage and/or other policies of insurance, actually and/or potentially affording coverage to RICHARD and/or JUSTIN as alleged herein, constitutes a breach of the employment contract on the part of SUNRISE.

91. QBE, CAU and SUNRISE, and each of them, willfully attempted to strip RICHARD and JUSTIN of their rights as employees and coverage as insureds in the UNDERLYING MATTER. This conspiratorial effort between QBE and/or CAU and that of SUNRISE, is evident from their combined efforts to convince RUSSO, though counsel, to stipulate that RICHARD and JUSTIN were independent contractors in their joint settlement agreement, even though QBE, CAU and SUNRISE, and each of them, all knew and had documentation available to them, that showed RICHARD and JUSTIN were W-2 employees acting in the

1 course and scope of their employment with SUNRISE, at all relevant times in this matter.
2 That with actual malice and with a conscious disregard for the welfare of RICHARD and
3 JUSTIN, QBE, CAU and SUNRISE, and each of them, fraudulently attempted to destroy
4 employment rights, so that SUNRISE would bear no responsibility for negligence and so that
5 QBE and/or CAU would bear no responsibility to defend and/or indemnify.
6

7 92. Moreover, QBE, CAU and SUNRISE, and each of them, in seeking to entirely avoid their
8 responsibilities and duties respecting RICHARD and JUSTIN, through their settlement
9 agreement, agreed that any settlement would specifically exclude RICHARD and JUSTIN,
10 and anyone associated or affiliated with them. The settlement release included SUNRISE
11 employees, except for RICHARD and JUSTIN, or anyone associated or affiliated with them.
12 The settlement release also specifically stated that, “Nothing in this release shall release,
13 discharge, or in any way impact [RUSSO’s] rights against RICHARD DUSLAK and/or
14 JUSTIN SESMAN in any manner,” thereby leaving RICHARD and JUSTIN without
15 protection in the underlying settlement.
16

17 93. Furthermore, the release stated that any language in the release that could be read to in any
18 way impact the rights of RICHARD and JUSTIN against any entity (including QBE and/or
19 CAU or any other insurer) “SHALL BE DEEMED NULL AND VOID.” Nevertheless, QBE
20 has now refused to abide by their agreement and has sought to further destroy the rights of
21 RICHARD and JUSTIN by bringing this action, long after judgment was entered against
22 RICHARD and JUSTIN. It is evident that QBE now seeks to specifically enforce part of the
23 language in an agreement—to which RICHARD and JUSTIN were not parties—even though
24 the language QBE seeks to enforce is specifically stricken since it “SHALL BE DEEMED
25 NULL AND VOID” to the degree it impacts the rights of RICHARD and JUSTIN.
26
27
28

///

1 94. As such, QBE, CAU and SUNRISE, and each of them, first rejected and refused to abide by
2 their duties and contractual obligations toward RICHARD and JUSTIN and instead acted
3 with malice and in bad faith with respect to RICHARD and JUSTIN, by knowingly
4 withholding the rights and protections they were legally and duty-bound to provide to
5 RICHARD and JUSTIN. SUNRISE breached its employment agreement and expected
6 protections as RICHARD's and JUSTIN's employer. QBE and/or CAU breached its
7 insurance contract and its duty to act in good faith as RICHARD's and JUSTIN's insurer.
8 Then, after these clear breaches of contract and bad faith actions and omissions, QBE now
9 seek to destroy RICHARD's and JUSTIN's ongoing rights to protect themselves now that
10 QBE, CAU and SUNRISE, and each of them, have saddled RICHARD and JUSTIN with a
11 judgment, which should have been defended against and ultimately paid by QBE, CAU and
12 SUNRISE, and each of them.

13
14
15 95. Because QBE, CAU and SUNRISE, and each of them, breached their contracts and acted in
16 bad faith toward RICHARD and JUSTIN in these identified instances, and upon information
17 and belief in many other instances, RICHARD and JUSTIN were defaulted with a massive
18 judgment in the UNDERLYING MATTER, and RICHARD and JUSTIN are now forced to
19 retain an attorney to defend themselves and to prosecute this matter.

20
21 96. Although in their relationship with QBE, CAU and SUNRISE, and each of them, RICHARD
22 and JUSTIN are clearly the aggrieved parties that have been sorely mistreated by QBE, CAU
23 and SUNRISE, and each of them, it is QBE that has added insult to injury by suing
24 RICHARD and JUSTIN to strip them further of their rights.

25
26 97. That after receiving notice of the damages caused by their malicious breaches of contract and
27 bad faith, QBE and/or CAU continued to reject its obligation to RICHARD and JUSTIN and
28

1 indemnify, but instead further damaged RICHARD and JUSTIN by filing suit against
2 RICHARD and JUSTIN.

3 98. That as a direct and proximate result of the aforesaid breaches of contract on the part of QBE,
4 CAU and SUNRISE, and each of them, RICHARD and JUSTIN have been damaged in an
5 amount in excess of Fifteen Thousand Dollars (\$15,000.00).
6

7 99. RICHARD and JUSTIN have satisfied the terms of the contract with QBE and/or CAU, and
8 have done everything they are required to do under the insurance policy.

9 100. RICHARD and JUSTIN have satisfied the terms of the employment agreement with
10 SUNRISE and have done everything they are required to do in their role as employees to
11 receive defense and indemnification under the subject insurance policy.
12

13 101. That the conduct of QBE and/or CAU, in refusing to defend RICHARD and JUSTIN for the
14 action brought by RUSSO, constituted a breach of the duty to defend.

15 102. The conduct of QBE and/or CAU, alleged in the foregoing paragraphs, constitutes a breach
16 of the insurance contract.

17 103. As a result of the breach by QBE, CAU and SUNRISE, and each of them, of the contract,
18 Judgment has been entered against RICHARD and JUSTIN in the amount of \$25,000,000.00
19 with statutory interest accruing thereon.
20

21 104. That RICHARD and JUSTIN have been required to obtain the services of an attorney to
22 prosecute this claim and is therefore entitled to their costs and reasonable attorney's fees
23 incurred.

24 105. QBE, CAU and SUNRISE, and each of them, breached their contract(s) with a conscious
25 disregard for the rights and harms these actions would have on RICHARD and JUSTIN,
26 which rises to the level of oppression, fraud, or malice, and which subjected RICHARD and
27 JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are therefore entitled to
28

1 punitive damages against QBE, CAU and SUNRISE, and each of them, in an amount in
2 excess of Fifteen Thousand Dollars (\$15,000.00).

3 SECOND CAUSE OF ACTION

4 (Breach of Fiduciary Duty – All Counterdefendants)

5
6 106. RICHARD and JUSTIN reallege and reassert each and every statement and allegation
7 contained in the preceding paragraphs as though set forth fully hereunder.

8 107. The expressed and/or implied agreement between QBE and/or CAU and RICHARD and
9 JUSTIN, carries with it a fiduciary duty.

10 108. The contract of insurance as alleged herein carries with it a fiduciary duty.

11 109. QBE and/or CAU have breached their fiduciary duty by the acts and omissions alleged
12 herein.

13
14 110. That as a direct and proximate result of the aforesaid breach of fiduciary duty on the part of
15 QBE and/or CAU, RICHARD and JUSTIN have been damaged, and are entitled to punitive
16 damages, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

17 111. QBE, CAU and SUNRISE, and each of them, violated their fiduciary duties with a conscious
18 disregard for the rights of RICHARD and JUSTIN, which rises to the level of oppression,
19 fraud, and/or malice, and which subjected RICHARD and JUSTIN to cruel and unjust
20 hardship. RICHARD and JUSTIN are therefore entitled to punitive damages against QBE,
21 CAU and SUNRISE, and each of them, in an amount in excess of Fifteen Thousand Dollars
22 (\$15,000.00).
23

24 THIRD CAUSE OF ACTION

25 (Negligence – All Counterdefendants)

26
27 112. RICHARD and JUSTIN reallege and reassert each and every statement and allegation
28 contained in the preceding paragraphs as though set forth fully hereunder.

1 113. SUNRISE had a duty to ensure, that their employees RICHARD and JUSTIN, were provided
2 the rights inherent in their employment, which included the right to a defense and
3 indemnification through SUNRISE's insurance.

4 114. SUNRISE was negligent in alerting QBE and/or CAU that RICHARD and JUSTIN were
5 employed and/or failed to follow up to ensure RICHARD and JUSTIN were properly
6 defended and/or indemnified by QBE and/or CAU, and/or SUNRISE did properly inform
7 QBE and/or CAU of RICHARD's and JUSTIN's employment with SUNRISE, but QBE
8 and/or CAU nevertheless refused to defend RICHARD and JUSTIN.

10 115. QBE and/or CAU had documentation in their possession and/or available to them
11 demonstrating that RICHARD and JUSTIN were employees of SUNRISE, but QBE and/or
12 CAU neglected its duty and failed to investigate, even after RUSSO's counsel specifically
13 informed QBE and/or CAU that it had defaulted RICHARD and JUSTIN in the
14 UNDERLYING MATTER. QBE's and/or CAU's negligent failure to investigate resulted in
15 damages to RICHARD and JUSTIN.

17 116. That as a direct, legal, and proximate result of the aforesaid negligence of QBE, CAU and
18 SUNRISE, and each of them, RICHARD and JUSTIN have been damaged, and are entitled
19 to damages, in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

21 117. QBE, CAU and SUNRISE, and each of them, grossly neglected their duties toward
22 RICHARD and JUSTIN, with a conscious disregard for the rights of RICHARD and
23 JUSTIN, which rises to the level of oppression, fraud, and/or implied malice, and which
24 subjected RICHARD and JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are
25 therefore entitled to punitive damages against QBE, CAU and SUNRISE, and each of them,
26 in an amount in excess of Fifteen Thousand Dollars (\$15,000.00).

28 ///

FORTH CAUSE OF ACTION**(Bad Faith – Counterdefendants QBE)**

118. RICHARD and JUSTIN reallege and reassert each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

119. That at all times pertinent hereto, QBE and/or CAU undertook to provide insurance coverage, defense, and indemnity of SUNRISE, giving the reasonable and foreseeable expectation to RICHARD and JUSTIN that they were and would be covered, defended, and/or indemnified with respect to the claims and actions against them, but then unilaterally and unreasonably denied coverage, defense, and indemnification to RICHARD and JUSTIN.

120. The aforesaid acts and omissions on the part of QBE and/or CAU create in equity and/or law a promise and agreement by QBE and/or CAU to cover, defend, and/or indemnify RICHARD and JUSTIN, regarding the aforesaid claims and actions against him, requiring that QBE and/or CAU be estopped from denying and refusing such coverage, defense, and indemnification, and that QBE and/or CAU be mandated and judicially compelled to cover, defend, and/or indemnify RICHARD and JUSTIN, including, but not limited to, paying any and all damages assessed against RICHARD and JUSTIN, made and/or reduced to judgment against RICHARD and JUSTIN, and/or otherwise imposed against RICHARD and JUSTIN as related hereto, all in an amount entitling RICHARD and JUSTIN to monetary damages in excess of Fifteen Thousand Dollars (\$15,000.00) and equitable relief to include, but not limited to, Estoppel and/or Mandamus as this Honorable Court sees just under the premises, and Declaratory Relief in the form of an Order, Judgment, and/or directive otherwise that QBE, CAU and SUNRISE, and each of them, are liable to RICHARD and JUSTIN, for the full amount of the aforesaid Judgment entered against RICHARD and JUSTIN, interest thereon, incidental and consequential damages, and general and special damages.

1 121. QBE and/or CAU denied the benefits owed with a conscious disregard for the rights of
2 RICHARD and JUSTIN, which rises to the level of oppression, fraud, or malice, and which
3 subjected RICHARD and JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are
4 therefore entitled to punitive damages against QBE and/or CAU in an amount in excess of
5 Fifteen Thousand Dollars (\$15,000.00).
6

7 **FIFTH CAUSE OF ACTION**

8 **(Unfair Claims Practices – QBE Counterdefendants)**

9 122. RICHARD and JUSTIN reallege and reassert each and every statement and allegation
10 contained in the preceding paragraphs as though set forth fully hereunder.

11 123. QBE's and/or CAU's actions were indecent and in violation of general fair claims practices.
12 Moreover, QBE's and/or CAU's actions were specifically in violation of the provisions of
13 the Unfair Claims Practices Act (N.R.S. 686A.310 et seq.), violation of which was done with
14 QBE's and/or CAU's actual, constructive and/or implied knowledge.
15

16 124. Pursuant to N.R.S. 686A.310(2), QBE and/or CAU are liable for any damages sustained by
17 RICHARD and/or JUSTIN, as a result of QBE's and/or CAU's violations of the unfair
18 claims practices, including, but not limited to, damages for benefits denied under the
19 insurance policy(ies), consequential damages, emotional distress, and attorneys' fees, in an
20 amount in excess of Fifteen Thousand Dollars (\$15,000.00).
21

22 125. QBE and/or CAU denied the benefits owed with a conscious disregard for the rights of
23 RICHARD and JUSTIN, which rises to the level of oppression, fraud, or malice, and which
24 subjected RICHARD and JUSTIN to cruel and unjust hardship. RICHARD and JUSTIN are
25 therefore entitled to punitive damages against QBE and/or CAU in an amount in excess of
26 Fifteen Thousand Dollars (\$15,000.00).
27

28 ///

SIXTH CAUSE OF ACTION**(Civil Conspiracy and Fraud – All Defendants)**

126. RICHARD and JUSTIN reallege and reassert each and every statement and allegation contained in the preceding paragraphs as though set forth fully hereunder.

127. At the time of settlement and the stipulation and order in the UNDERLYING MATTER, which was between RUSSO and QBE, CAU and SUNRISE in this matter, SUNRISE had specific knowledge that RICHARD and JUSTIN, at all relevant times, were SUNRISE employees. SUNRISE was aware that RICHARD and JUSTIN were provided W-2s for taxes rather than 1099s, that RICHARD and JUSTIN qualified as employees under the terms of the insurance contract with QBE and/or CAU, as well as under employment law standards, and that in all of SUNRISE's written documentation, RICHARD and JUSTIN were referred to as employees (*not independent contractors*). On the other hand, SUNRISE had absolutely no information or evidence suggesting that RICHARD or JUSTIN were independent contractors or that they should not be covered under SUNRISE's insurance policy with QBE and/or CAU.

128. At the time of settlement and the stipulation and order in the UNDERLYING MATTER, which was between RUSSO and QBE, CAU and SUNRISE, in this matter, QBE and/or CAU received documentation through SUNRISE and their joint attorneys at Springel & Fink, which combined to demonstrate that RICHARD and JUSTIN were SUNRISE employees at all relevant times. Moreover, at no point did QBE and/or CAU have any reasonable basis to believe RICHARD or JUSTIN were independent contractors or anything less than covered employees under QBE's and/or CAU's policy.

129. Nevertheless, with knowledge that RICHARD and JUSTIN were, in fact, SUNRISE employees at all relevant times, QBE, CAU and SUNRISE, and each of them, acted to

1 deceive RUSSO, and the Court in the UNDERLYING MATTER, into believing that
2 RICHARD and JUSTIN were merely independent contractors and not employees at all.
3 These efforts were for the calculated purpose of creating reliance by RUSSO and the Court,
4 which sought to result in terrible harm to RICHARD and JUSTIN, including a loss of
5 employment rights and insurance coverage, including defense and indemnity for negligence
6 that RICHARD and JUSTIN may have engaged in while under SUNRISE's employment.
7

8 130. That the desired result was in fact achieved by QBE, CAU and SUNRISE, and each of them,
9 as SUNRISE successfully withheld its obligations as RICHARD's and JUSTIN's employer,
10 and QBE and/or CAU successfully withheld a defense and indemnity, resulting in a
11 \$25,000,000.00 judgment against RICHARD and JUSTIN, that QBE, CAU and SUNRISE,
12 and each of them, are still claiming is owed by RICHARD and JUSTIN only.
13

14 131. QBE, CAU and SUNRISE, and each of them, willfully attempted to strip RICHARD and
15 JUSTIN of their rights as employees and coverage as insureds in the UNDERLYING
16 MATTER. This conspiratorial effort between QBE and/or CAU and that of SUNRISE, is
17 evident from their combined efforts to convince RUSSO, through counsel, to stipulate that
18 RICHARD and JUSTIN were independent contractors in their joint settlement agreement,
19 even though QBE, CAU and SUNRISE, and each of them, all knew, and had documentation
20 available to them, that showed RICHARD and JUSTIN were W-2 employees acting in the
21 course and scope of their employment with SUNRISE, at all relevant times in this matter.
22 That with actual malice and with a conscious disregard for the welfare of RICHARD and
23 JUSTIN, QBE, CAU and SUNRISE, and each of them, fraudulently attempted to destroy
24 employment rights so that SUNRISE would bear no responsibility for negligence and so that
25 QBE and/or CAU would bear no responsibility to defend and/or indemnify.
26
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1 132. Moreover, QBE, CAU and SUNRISE, and each of them, seeking to entirely avoid their
2 responsibilities and duties respecting RICHARD and JUSTIN through their settlement
3 agreement, agreed that any settlement would specifically exclude RICHARD and JUSTIN,
4 and anyone associated or affiliated with them. The settlement release included SUNRISE
5 employees, except for RICHARD and JUSTIN, or anyone associated or affiliated with them.
6 The settlement release also specifically stated that, “Nothing in this release shall release,
7 discharge, or in any way impact [RUSSO’s] rights against RICHARD DUSLAK and/or
8 JUSTIN SESMAN in any manner,” thereby leaving RICHARD and JUSTIN without
9 protection in the underlying settlement.
10

11 133. Furthermore, the release stated that any language in the release that could be read to, in any
12 way, impact the rights of RICHARD and JUSTIN against any entity (including QBE and/or
13 CAU, or any other insurer) “SHALL BE DEEMED NULL AND VOID.” Nevertheless, QBE
14 has now refused to abide by its agreement and has sought to further destroy the rights of
15 RICHARD and JUSTIN, by bringing this action long after judgment was entered against
16 RICHARD and JUSTIN. It is evident that QBE now seeks to specifically enforce part of the
17 language in an agreement—to which RICHARD and JUSTIN were not parties—even though
18 the language QBE seeks to enforce is specifically stricken since it “SHALL BE DEEMED
19 NULL AND VOID” to the degree it impacts the rights of RICHARD and JUSTIN.
20

21 134. As such, QBE, CAU and SUNRISE, and each of them, first rejected and refused to abide by
22 their duties and contractual obligations toward RICHARD and JUSTIN, and instead acted
23 with malice and in bad faith, with respect to RICHARD and JUSTIN, by knowingly
24 withholding the rights and protections they were legally and duty-bound to provide to
25 RICHARD and JUSTIN. SUNRISE breached its employment agreement and expected
26 protections as RICHARD’s and JUSTIN’s employer. QBE and/or CAU breached its
27
28

1 insurance contract and its duty to act in good faith as RICHARD's and JUSTIN's insurer.
2 Then, after these clear breaches of contract and bad faith actions and omissions, QBE now
3 seek to destroy RICHARD's and JUSTIN's ongoing rights to protect themselves now that
4 QBE, CAU and SUNRISE, and each of them, have saddled RICHARD and JUSTIN with a
5 judgment, which should have been defended against and ultimately paid by QBE, CAU and
6 SUNRISE, and each of them.
7

8 135. Because QBE, CAU and SUNRISE, and each of them, breached their contracts and acted in
9 bad faith toward RICHARD and JUSTIN, in these identified instances, and upon information
10 and belief in many other instances, RICHARD and JUSTIN were defaulted with a massive
11 judgment in the UNDERLYING MATTER, and RICHARD and JUSTIN are now forced to
12 retain an attorney to defend themselves and to prosecute this matter.
13

14 136. Although in their relationship with QBE, CAU and SUNRISE, and each of them, RICHARD
15 and JUSTIN are clearly the aggrieved parties that have been sorely mistreated by QBE, CAU
16 and SUNRISE, and each of them, it is now QBE that has added insult to injury, by suing
17 RICHARD and JUSTIN, to strip them further of their rights.
18

19 137. Furthermore, QBE, CAU and SUNRISE, and each of them, were aware of the tortuous nature
20 of their fraud, and conspired with each other to achieve their tortuous purposes.

21 138. RICHARD and JUSTIN have been seriously harmed by QBE, CAU and SUNRISE, and each
22 of them, fraud and conspiracy, resulting in monetary damages in excess of Fifteen Thousand
23 Dollars (\$15,000.00).

24 139. Moreover, QBE's, CAU's and SUNRISE's, and each of their, actions were malicious and
25 worthy of punitive or exemplary damages.
26

27 **WHEREFORE**, RICHARD and JUSTIN pray for judgment against QBE, CAU and
28 SUNRISE, and each of them, as follows:

ON ALL CAUSES OF ACTION

1. General damages in an amount in excess of \$25,000,000.00;
2. For general damages in an amount in excess of \$15,000.00;
3. For consequential damages in an amount in excess of \$15,000.00;
4. For special damages in an amount to be determined at trial;
5. For punitive damages in an amount to be determined at time of trial;
6. For declaratory and equitable relief as pled and as the court sees fit in the premises;
7. Costs of this suit;
8. Attorney's fees; and
9. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 4th day of January, 2021.

BIGHORN LAW

By: /s/ Kimball Jones
KIMBALL JONES, ESQ.
Nevada Bar No.: 12982
EVAN K. SIMONSEN, ESQ.
Nevada Bar No.: 13762
2225 E. Flamingo Rd.
Building 2, Suite 300
Las Vegas, Nevada 89119
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5, I hereby certify that I am an employee of **BIGHORN LAW**, and on the 4th day of January, 2021, I served the foregoing ***ANSWER, COUNTERCLAIM AND THIRD-PARTY COMPLAINT*** as follows:

☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system, and/or

☐ U.S. Mail – By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

Ramiro Morales, Esq.
MORALES, FIERRO & REEVES
600 South Tonopah Drive, Suite 300
Las Vegas, Nevada 89106
Attorneys for Plaintiff,
QBE INSURANCE CORPORATION

/s/ Erickson Finch
An employee/agent of **BIGHORN LAW**

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EXHIBIT “10”



1 DAVID F. SAMPSON, ESQ.
2 Nevada Bar No. 6811
3 THE LAW OFFICE OF DAVID SAMPSON, LLC.
4 630 South 3rd Street
5 Las Vegas, NV 89101
6 Tel: (702) 605-1099
7 Fax: (888) 209-4199
8 david@davidsampsonlaw.com
9 Attorneys for Defendant SIMONE RUSSO

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 QBE INSURANCE CORPORATION

Case No. 2:20-cv-02104-RFB-EJY

10 Plaintiff,

11 vs.

**VOLUNTARY DISMISSAL OF
RUSSO'S ORIGINAL
COUNTERCLAIM AND AMENDED
COUNTERCLAIM**

12
13 SIMONE RUSSO, RICHARD DUSLAK and
14 JUSTIN SESMAN

15 Defendants.

16 Defendant SIMONE RUSSO ("RUSSO") by and through his counsel of record DAVID
17 SAMPSON, ESQ., of THE LAW OFFICE OF DAVID SAMPSON, LLC., hereby voluntarily
18 dismisses his Counterclaim and Amended Counterclaim in this matter pursuant to FRCP 41(a)(1)
19 as no answer or motion for summary judgment has been filed in response to the same.
20

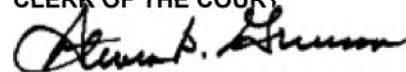
21 DATED THIS 11th day of January, 2021.

22 THE LAW OFFICE OF DAVID SAMPSON, LLC.

23
24
25 By: /s/ David Sampson

26 David Sampson, Esq.
27 Nevada Bar No. 6811
28 630 South 3rd Street
Las Vegas, NV 89101
Attorney for SIMONE RUSSO

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Steven D. Grierson
CLERK OF THE COURT


ACOS

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.)

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 CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the LAW OFFICE OF DAVID SAMPSON, LLC., and that on this 19th day of January, 2021, I served a copy of the OPPOSITION TO NON-PARTY QBE INSURANCE CORPORATION'S SECOND

MOTION TO INTERVENE AND MOTION TO “ENFORCE” SETTLEMENT on all the remaining parties in this matter via the court’s electronic online filing system and as follows:

RAMIRO MORALES, ESQ.
600 S. Tonopah Dr. Suite 300
Las Vegas NV 89106
Attorneys for Non-Party QBE
Insurance Corporation

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

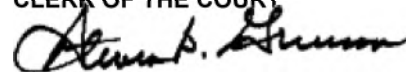
And

Via U.S. Mail:
JUSTIN SESMAN
4775 Topaz Street, Apt. 235
Las Vegas, NV 89121

Via U.S. Mail:
RICHARD DUSLAK
4012 Abrams Ave.
Las Vegas, NV 89110

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

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT


SUPP

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.)

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.)

**PLAINTIFF'S SUPPLEMENT TO OPPOSITION TO NON-PARTY QBE INSURANCE
CORPORATION'S SECOND MOTION TO INTERVENE AND MOTION TO
"ENFORCE" SETTLEMENT**

COMES NOW, Plaintiff, SIMONE RUSSO, by and through his attorney of record, and supplements his opposition to the motions filed by non-party QBE Insurance Corporation ("QBE"), to intervene in this matter and "enforce settlement", which were joined by SUNRISE.

This supplement, and the underlying opposition are made and based upon the pleadings and papers filed herein, the attached Points and Authorities, and upon oral argument at the time of hearing.

POINTS AND AUTHORITIES

In addition to the evidence and arguments set forth in the opposition, SIMONE also directs this Court to additional language in the settlement agreement and release that further specifically demonstrates that SIMONE did not waive any rights to pursue all claims against DUSLAK and/or SESMAN, even as employees. Each of the Defendants included in the agreement were identified as including the Defendants' respective employees, *with the clear exception of SUNRISE*. On page one of the agreement the parties are identified. See, Exhibit "4" to SIMONE's opposition. Defendant IES RESIDENTIAL, INC., is identified as:

IES RESIDENTIAL, INC. (hereinafter "IES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, *employees*, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

Id (emphasis added).

Defendant COX is identified as:

COX COMMUNICATIONS LAS VEGAS, INC. D/B/A COX COMMUNICATIONS (hereinafter "COX") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, *employees*, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers;

Id (emphasis added).

///

///

Defendant PW JAMES is identified as:

PW JAMES MANAGEMENT & CONSULTING, LLC (hereinafter "PW JAMES") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, *employees*, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees, transferees, successors assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners and insurers (potentially Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc.);

Id (emphasis added).

Defendant SUNRISE however is identified as:

SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION (hereinafter "SUNRISE") and its affiliated companies, and each of their respective past, present and future officers, directors, members, managers, agents, representatives, shareholders, partners, associates, insurers (Community Association Underwriters, Inc., QBE Insurance Corporation, Alliant Insurance Services, Inc., DSCM, Inc. and Armour Risk Management, Inc. - but only as it relates to SUNRISE), **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN OR ANYONE ASSOCIATED OR AFFILIATED WITH THEM, INCLUDING ANY ACTUAL OR POTENTIAL INSURER (per the stipulation attached in exhibit "A")**, attorneys, subsidiaries, predecessors, beneficiaries, grantors, grantees, vendees transferees, successors, assigns, heirs, divisions, contractors, joint ventures, special purpose entities, legal and equitable owners;

Id (emphasis in original).

The word “employees” is not used in the description of SURNISE as a Defendant, thus clearly indicating that SIMONE, who specifically retained all rights to any claims against DUSLAK and SESMAN, was not releasing any claims involving employees of SUNRISE. Additionally, on page 4 of the release, the description of the released parties includes all of Defendants’ “employees **EXCLUDING RICHARD DUSLAK AND/OR JUSTIN SESMAN . .** .”. *Id* at P. 4 (emphasis in original). When referencing the employees of any of the Defendants it was made more than clear that the term “employees” did not include DUSLAK or SESMAN.

The plain language of the agreement noted above flies in the face of QBE's claim that SIMONE is somehow not permitted to continue to pursue DUSLAK and SESMAN as employees of SUNRISE. As *the agreement does not include employees of SUNRISE as releasees*, and as *the agreement specifically excludes DUSLAK and/or SESMAN as released employees of any of the Defendants*, the agreement makes it clear that SIMONE retained all rights to pursue any claims against DUSLAK and/or SESMAN, and did not release any right to pursue the said individuals in any manner.

CONCLUSION

For the foregoing reasons SIMONE respectfully requests this Court deny QBE's motion to intervene and deny the motion to "enforce" the settlement as well. The Court should further hold that the 2019 settlement of this matter did not affect any rights SIMONE may have against DUSLAK and/or SESMAN as agreed on the record by all active parties on October 18, 2019, and further find that SIMONE retains all rights to pursue any claims against DUSLAK and/or SESMAN as specifically set forth on the record and in the subsequent settlement documents.

DATED this 19th day of January, 2021.

LAW OFFICE OF DAVID SAMPSON, LLC.

BY: /s/ David Sampson

DAVID SAMPSON, ESQ.

Nevada Bar No.6811

LAW OFFICE OF DAVID SAMPSON, LLC.

630 S. 3rd St.

Las Vegas NV 89101

Fax No: 888-209-4199

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, LLC., and that on this 19th day of January, 2021, I served a copy of the foregoing **SUPPLEMENT** on all the remaining parties in this matter via the court's electronic online filing system and as follows:

RAMIRO MORALES, ESQ.
600 S. Tonopah Dr. Suite 300
Las Vegas NV 89106
Attorneys for Non-Party QBE
Insurance Corporation

LEONARD FINK, ESQ.
9075 W. Diablo Dr. Suite 302
Las Vegas NV 89148
Counsel for SUNRISE

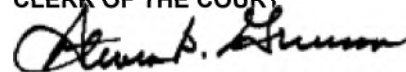
And

Via U.S. Mail:
JUSTIN SESMAN
4775 Topaz Street, Apt. 235
Las Vegas, NV 89121

Via U.S. Mail:
RICHARD DUSLAK
4012 Abrams Ave.
Las Vegas, NV 89110

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

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Steven D. Grierson
CLERK OF THE COURT



MSAD
LEONARD T. FINK
Nevada Bar No.: 6296
SPRINGEL & FINK LLP
9075 W. Diablo Drive, Suite 302
Las Vegas, NV 89148
E-Mail: lfink@springelfink.com

Attorneys for Defendant
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE RUSSO,	)	Case No.: A753606
	)	Dept: XVI
Plaintiff,)	
	)	MOTION TO SET ASIDE AND/OR
vs.	)	AMEND JUDGMENT
)	
COX COMMUNICATIONS LAS VEGAS,	)	ORAL ARGUMENT REQUESTED
INC. D/B/A COX COMMUNICATIONS; IES	)	HEARING REQUESTED
RESIDENTIAL, INC.; SUNRISE VILLAS IX)	
HOMEOWNERS ASSOCIATION; J&G)	
LAWN MAINTENANCE; KEVIN)	
BUSHBAKER; PW JAMES)	
MANAGEMENT & CONSULTING, LLC;)	
AND DOES I-V, AND ROE)	
CORPORATIONS I-V, inclusive,)	
)	
Defendants.)	

NOTICE

Defendant Sunrise Villas IX Homeowners Association ("Sunrise HOA") hereby moves this Court for an order either setting aside the default judgment entered in this matter on December 17, 2019 against Richard Duslak ("Duslak") and Justin Sesman ("Sesman") or, in the alternative, amending the judgment to explicitly reflect that liability as to each is based solely on their conduct as independent contractors.

The motion, made pursuant to NRCP 60, is based on the fact that Plaintiff agreed to release Duslak and Sesman from any and all liability arising from their conduct as HOA employees.¹ See

¹ Notwithstanding the fact that neither Duslak nor Sesman were alleged to be HOA employees, the HOA obtained a release of each out of an abundance of caution.

QBE's Motion to Intervene to Enforce previously filed.² As reflected in Plaintiff's Opposition to the Motion to Enforce, Plaintiff is now attempting to disavow himself from the release in contending that he never released his claims against Duslak and Sesman as alleged HOA employees. Meanwhile, Duslak and Sesman themselves have now sued the HOA claiming that the HOA is liable and responsible for the judgment based on the contention that each were HOA employees. See Exhibit 10 attached hereto.

Based on these developments, the judgment should be either set aside in its entirety as void by virtue of the release or, in the alternative, amended to reflect that the liability of Duslak and Sesman is limited and based solely to conduct as independent contractors (to the extent a *prima facie* showing of such can be made).

The motion is made based on this Notice, the points and authorities incorporated herein, the Court's file (including the Motion To Intervene to Enforce Settlement), any other matter this Court deems appropriate and any allowed oral argument.

DATED this 21st day of January, 2020.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
9075 W. Diablo Drive, Suite 302
Las Vegas, Nevada 89148
Attorneys for Defendants
*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

MOTION

I. INTRODUCTION

This matter arises from an alleged August 2016 slip and fall involving a coaxial cable wire

² Request is made that this Court take judicial notice of the Motion to Enforce as well as its entire file for this matter. Note that a hearing date for the Motion to Enforce has been set for February 11, 2021.

installed at a residence that Plaintiff contends caused him to trip so as to sustain bodily injuries. In this suit, Plaintiff alleged that Defendant, Sunrise HOA, was liable and responsible for his injuries based on alleged maintenance obligations the HOA ostensibly owed in connection with the area adjacent to the wire.

While Plaintiff did not initially name Duslak and Sesman as defendants in the case when he filed suit in 2017, he added each as defendants by way of an amended Complaint filed in 2018. Based on the conclusion that each were independent contractors, coupled with the absence of any allegations made by Plaintiff to the contrary, the HOA did not appear for either individual such that defaults were entered as to each.³

A settlement was reached in October 2019 which contemplated the carve out of Duslak and Sesman. In connection with documenting the settlement, the parties encountered difficulties regarding the scope and extent of the carve out of Duslak and Sesman, leading to a November 7, 2019 hearing before this Court in connection with a motion to enforce Plaintiff filed. See Exhibits 3, 4.

At the November 7, 2019 hearing, counsel for Plaintiff agreed to stipulate that Plaintiff would release any claims against Duslak and Sesman based on their conduct as employees. By virtue of this stipulation, counsel agreed to narrow Plaintiff's claims against Duslak and Sesman to their conduct (if any) as independent contractors. Of significance, the stipulation was made in open court before subsequently being reduced to writing. See Exhibits 4-7.

In reliance on the release, the HOA did not oppose the entering of a default judgment against Duslak and Sesman on December 17, 2019, a copy of which is attached hereto as Exhibit 8. The default judgment, however, itself includes no limiting provision reflecting that liability is based solely on their conduct as independent contractors. See Exhibit 8.⁴

In the absence of any limiting verbiage, Duslak and Sesman have now sued the HOA contending that each were HOA employees such that the HOA is liable and responsible for the

³ The Amended Complaint omits any allegations that Duslak and Sesman were HOA employees.

⁴ Compounding matters, the docket includes no record of the evidence submitted to substantiate the judgment while the hearing was not transcribed. See Exhibit 9. Given this, the HOA cannot determine the basis for the judgment entered against Duslak and Sesman.

judgment. See Exhibit 10. Meanwhile, counsel for Plaintiff, in connection with a separately filed Motion to Intervene to Enforce Settlement, has now attempted to disavow the stipulation he agreed to by contending that Plaintiff did not release his claims against Duslak and Sesman in their capacities as HOA employees. See Opposition to Motion to Enforce.

Based on these circumstances, it is respectfully submitted that the judgment entered by this Court violates the terms of the settlement agreement such that it is void. Alternatively, to the extent that Duslak and Sesman face liability arising from their conduct solely as independent contractors, the judgment should be amended and modified to reflect this limitation. Accordingly, for the reasons set forth herein, it is respectfully requested that the motion be granted.

II. BACKGROUND FACTS

Per above, this matter arises from an alleged 2016 slip and fall in which Plaintiff alleges the HOA was liable.

In October 2019, a settlement was reached in this case. See Transcripts dated October 16, 2019 and October 18, 2019, copies of which are attached hereto as Exhibits 1 and 2. Issues arose, however, in documenting the settlement, leading Plaintiff to file a Motion To Compel Settlement on November 1, 2019, a copy of which is attached hereto as Exhibit 3.

Plaintiff's Motion led to the scheduling of two separate hearings that were ultimately held on November 7, 2019 and November 8, 2019 during which the claims against Duslak and Sesman were extensively vetted and discussed. See Exhibits 4 and 6. Of significance, the November 7, 2019 transcript includes an extensive discussion between counsel and this Court regarding the fact that Duslak and Sesman were not part of the settlement. In framing the dispute, counsel for HOA advised the Court as follows:

The hold up, and Mr. Sampson I think said it but I'll say it again, I think the real hold up right now is whether or not the release that we negotiated was intended to cover Mr. Sesman and Duslak, D-U-S-L-A-K, I think. Actually, I've got it in front of me. Okay. Duslak, D-U-S-L-A-K, and Sesman, S-E-S-M-A-N, if they were considered employees of Sunrise.

There's never been one bit of evidence in this case that they were employees. It was always that they were independent contractors. But as I'm sure the Court has dealt with thousands of settlements, when you settle with an entity, you are settling with the employees too.

There's nothing in Mr. Sampson's amended complaint that even suggests or asserts that either one of these gentlemen is an employee. There is nothing in any one of his disclosures that asserts they're employees.

So the idea here is that not only is Sunrise getting itself out of the case, but it's also getting out its employees, which also includes board

members. Although, we didn't specifically say that on the record either, but also Cox, IES, they're also getting their employees out.

Exhibit 4, 16:12-17:25

Counsel for the HOA further stated as follows:

So I think that the only hang up is whether or not this settlement includes Mr. Duslak and Mr. Sesman if they are found to be employees of Sunrise. And I think that's it.

If they're not and they're independent contractors, then the settlement agreement absolutely does not cover them. Would allow Mr. Sampson to do what he needs to do. And even try to go after my client's insurance carriers to see if there is coverage for them as independent contractors. We all agree that -- that was one of the things that was important to him. We aren't seeking to release that.

But to the extent they're employees, this should cover it. And I think, I think that's really where we are, Judge.

Exhibit 4, 18:6-23, see also 27:6-24.

Counsel for Plaintiff initially responded that while he had no evidence existed that Duslak and Sesman were HOA employees, it was his view that the settlement did not necessarily contemplate the release of them in any capacity. See Exhibit 4, 20:16-24:8. In response to this comment, this Court stated as follows:

Because when you look at it from this perspective if there was truly evidence -- I mean, this makes perfect sense. If there was evidence that they were employees, there would not have been a default judgment entered against them. There would have been motions to set aside, answers, and the like. And that's pretty much the status of the case because I can't -- I can't foresee either Mr. Lemkul or Mr. Fink permitting an employee to be defaulted; right?

Exhibit 4, 37:4-12.

In addressing this Court's concerns, counsel for Plaintiff made the following proposal:

Could we perhaps enter a stipulation on the record here and now that for purposes of this litigation they're not employees?

Exhibit 4, 37:13-15.

The proposal led to the following exchange:

MR. FINK: Good, your Honor. Mr. Sampson made an interesting suggestion that I'd like to think about and that may work. That if we say for the purposes of this litigation they weren't employees. That may take care of all of this. I would just need to run that by my people. But that may take care of all of our concerns at that point, and then we can -- we can be done.

THE COURT: How's that, Mr. Sampson?

MR. SAMPSON: It was my suggestion, so I still totally agree with it.

Exhibit 4, 40:4-14.

In confirming that the proposal contemplated that Plaintiff would retain the right to proceed against Duslak and Sesman solely in their capacity as independent contractors, the Court made the following statement:

THE COURT: And I think he has no problem with that because that was his idea, you know, so regarding the fact that if they're independent contractors, there's no waiver of the right to seek coverage for this case. I mean, I get that based upon the insurance policy. And no big deal there.

Exhibit 4, 41:3-8.

The hearing concluded with the Court setting a status check for the following day (November 8, 2019) at 9:30 a.m. in order to afford the parties with time to document the stipulation. See Exhibit 4, 42:6-12.

On November 8, 2019 at 8:26 a.m. (before the Status Check), counsel for Plaintiff sent an email (a copy of which is attached hereto as Exhibit 5) advising that he had made a few minor changes to the release in light of the agreement reached between the parties. The email counsel for Plaintiff sent enclosed copy of a draft Stipulation he was agreeable to that provided as follows:

IT IS HEREBY STIPULATED THAT FOR THE PURPOSES OF THIS LITIGATION AND FOR ANY AND ALL ISSUES RELATED TO SIMONE RUSSO'S CLAIMS AND SETTLEMENT, THAT IN AUGUST 2016 BOTH DEFENDANT RICHARD DUSLAK AND DEFENDANT JUSTIN SESMAN WERE NATURAL PERSONS WHO WERE IN THE SERVICE OF SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION AS INDEPENDENT CONTRACTORS, WHOM SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION COMPENSATED WITH WAGES, AND WHOM SUNRISE VILLAS IX HOMEOWNERS

ASSOCIATION HAD THE RIGHT TO DIRECT AND CONTROL
WHILE DUSLAK AND SESMAN PERFORMED SERVICES FOR
SUNRISE VILLAS IX HOMEOWNERS ASSOCIATION.. .

Exhibit 5, p 4.

The parties subsequently appeared at the Status Check later that morning. Exhibit 6. At the hearing, counsel for Plaintiff made the following representation to the Court regarding recent developments:

So perhaps the Court could say, you know, if Mr. Fink and his client agree to what Mr. Sampson proposed this morning, and no one else has any objection on this Sunrise employee Duslak Sesman thing then we'll go ahead and sign what Mr. Sampson proposed this morning. And that's going to be done.

And if for some reason Mr. Fink's client doesn't agree, then we'll do the other proposal Mr. Sampson set up which is we all just all release each other pursuant to the terms that were placed on the record on the 16th, and 18th which are incorporated by this reference, and we'll just do it that way.

Exhibit 6, 5:22-6:8

In response, the Court made the following comment:

There appears to be a significant probability that based upon the action of the parties, and more specifically Mr. Fink, that we have an agreement in principle as to the language that will be in the agreement. Because whatever changes were made as it related to the two putative/independent contractor, whatever status they have, apparently there is some sort of agreement as the type of language that would be appropriate. And so all we have to do at this point is this: Either it's approved or it's not approved.

If it's approved, then we're done. There's no need for law and motion. There's no need for any decisions from me. I would anticipate the checks would be exchanged shortly.

Exhibit 6, 8:3-17.

The HOA and its insurer ultimately agreed to the revisions, leading to the full execution of the release agreement (including the stipulation) and the disbursement of the proceeds. See Motion, Ex. 7. Based on these circumstances, it is patent and clear that Plaintiff agreed to release Duslak and Sesman for any liability arising from their conduct as HOA employees such that the claims against each were limited to their conduct (if any) as independent contractors.

Plaintiff proceeded to obtain a default judgment against Duslak and Sesman on December 17,

2019. See Exhibit 8. While the judgment itself includes no limiting verbiage, it is now evident that the judgment is based on contentions that each were HOA employees as evidenced by the following:

- Plaintiff filed a counterclaim in connection with a coverage action the insurer for the HOA filed in which Plaintiff asserted that the insurer was liable and responsible for the judgment. See QBE's Motion To Enforce, Exhibits B and C.
- Duslak and Sesman have filed counterclaims in the coverage action in which each allege that they face exposure as former HOA employees. See Exhibit 10.
- Plaintiff has opposed QBE's Motion To Enforce (in which the HOA joined) on the basis that he did not release Duslak and Sesman in their capacity as HOA employees.

III. DISCUSSION

NRCP 60 provides as follows:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief From a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than 6

months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended under Rule 6(b).

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) upon motion filed within 6 months after written notice of entry of a default judgment is served, set aside the default judgment against a defendant who was not personally served with a summons and complaint and who has not appeared in the action, admitted service, signed a waiver of service, or otherwise waived service; or

(3) set aside a judgment for fraud upon the court.

A judgment is void if there is a defect in the court's authority to enter judgment. *Gossett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995). A motion brought on the basis that a judgment is void need only be brought within a reasonable time. *In re Harrison Living Trust*, 121 Nev. 217, 220, 112 P.3d 1058, 1060 (2005).

Meanwhile, a trial court retains the inherent power to correct mistakes. *Masi v. Jessop*, 129 Nev. 1136 (2013). The power to correct a judgment extends to instances of fraud. See *Murphy v. Murphy*, 65 Nev. 264 (1948)

In this case, the judgment is void as it violates the agreed-upon terms of the settlement reached in this case. Plaintiff released his claims against Duslak and Sesman based on their conduct as HOA employees. As Plaintiff erroneously contends he is not bound by the release, the judgment should be set aside as void pursuant to both NRCP 60(b)(4) and (d)(3).

Alternatively, to the extent that Plaintiff possesses meritorious claims against Duslak and Sesman as independent contractors (for which no record exists), the judgment should, at a minimum, be modified per NRCP 60(a), (b)(4) and/or (d)(3) to reflect that it is premised solely on the conduct of Duslak and Sesman as independent contractors and not employees.

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IV. **CONCLUSION**

For the reasons set forth herein, request is made that this motion be granted and that the judgment be set aside or, in the alternative, amended.

DATED this 21st day of January, 2020.

SPRINGEL & FINK LLP

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.
Nevada Bar No. 6296
9075 W. Diablo Drive, Suite 302
Las Vegas, Nevada 89148
Attorneys for Defendants
*SUNRISE VILLAS IX HOMEOWNERS
ASSOCIATION*

SUPPORTING DECLARATION

I, Leonard Fink, declare as follows:

1. I am an attorney with Springel & Fink, counsel for Sunrise HOA.
2. The factual information contained herein is true and correct based on my own personal knowledge.
3. Attached hereto are true and correct copies of the following:

Exhibit 1	Transcript of October 16, 2019 Hearing
Exhibit 2	Transcript of October 18, 2019 Hearing
Exhibit 3	Motion To Compel Settlement filed on November 1, 2019
Exhibit 4	Transcript of November 7, 2019 Hearing
Exhibit 5	November 8, 2019 Email Correspondence
Exhibit 6	Transcript of November 8, 2019 Hearing
Exhibit 7	Release Agreement
Exhibit 8	Default Judgment filed on December 17, 2019

Exhibit 9 Minutes of proceedings on December 17, 2019

Exhibit 10 Counterclaim filed by Duslak and Sesman.

I declare that the foregoing is true and correct based on my own personal knowledge.

Executed in Las Vegas, Nevada on the date specified below.

Dated: this 21st day of January, 2020.

/s/ Leonard T. Fink, Esq.

By:

LEONARD T. FINK, ESQ.

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, Alma Duarte, 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 9075 W. Diablo Drive, Suite 302, Las Vegas, Nevada, 89148.

On **January 21, 2021**, I served the document described as **MOTION TO SET ASIDE AND/OR AMEND JUDGMENT- ORAL ARGUMENT REQUESTED HEARING REQUESTED** 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/ Alma Duarte

 An employee of Springel & Fink LLP