If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but **you must vote**. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

CONTACT ME

Name *

Email *

Subject

Message

Send

Dear Southern Highland Neighbor,

I would like to be your representative on Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of our only two independent Board Directors (three directors are selected and employed by the developer) will be selected.

My objectives if elected are:

First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for our Board to experience conflicts of interest, loss of board autonomy, and failed fiduciary oversight exists. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected and loyal only to homeowners.**

Second, we can **significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricy contract with the Developer's management company, Olympia Management (another $1.4M/yr) and;
- refrain from wasteful legal costs ($1.3M in 2016, far more than typically incurred by HOAs of similar size).

Third, a community needs to be seen as a **secure place to live**. While I currently believe SH is one of the safest place to live in Southern Nevada, we are going rapidly and crime is increasing. This needs to be large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best interests of homeowners** with government agencies. Recently, the Board failed to oppose a massive change, approved by the Clark County Commission, to our long overdue "Sports Park". Despite being promised by the County and Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession.
- Two practice baseball fields, one soccer field, two basketball courts, all lighted.
- A second entrance with associated parking, plus more.

These massive cuts saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County approved twelve million dollars ($12M) in public money to build a 4x baseball complex in Mountain's Edge.

This would not have happened had our Board, as did Mountain's Edge Board (where directors are all owner elected), defended owner interests. Our Board turned a blind eye, not even telling owners of the pending change while the Developer worked changes to its agreement. Was the Board's failure to act in opposition to the change and the interests of the Developer a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but you must vote. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **PLAINTIFFS' OPPOSITION TO DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Hearing Date: March 5, 2018 Hearing Time: 9:30 a.m.

Plaintiffs, by and through their attorneys of record, hereby submit their Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.600.

This Opposition is made and based upon the following Points and Authorities, any exhibits attached hereto, the pleadings and papers on file herein, the oral argument of counsel, and such other

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or further information as this Honorable Court may request.

Dated this 16th day of February 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis

J. RANDALL JONES, ESQ. (#1927)
NATHANAEL R. RULIS, ESQ. (#11259)
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Introduction

Plaintiffs filed this action after exercising extreme patience with Mr. Kosor and after several attempts to secure his agreement to cease and desist from his reckless behavior defaming Plaintiffs at nearly every opportunity. Unfortunately, despite Plaintiffs' multiple efforts, Kosor's conduct has persisted, and Kosor continues to spout demonstrably false statements about Plaintiffs without any regard for the truth or of Plaintiffs' rights. Kosor's tunnel vision may have originated with his earnest attempts to effect political change, but that does not excuse his pattern of reckless behavior towards Plaintiffs and complete refusal to acknowledge the wrongfulness of his actions. Each and every one of Kosor's statements identified in Plaintiffs' Complaint either constitute defamation per se and are of the type which would tend to lower the reputation of Plaintiffs in the community or excite derogatory opinions about Plaintiffs. Kosor's statements are not only defamatory, they are not subject to the protections of Nevada's anti-SLAPP statute as he claims, nor does his inclusion of qualifying language transform these statements into mere opinions. When he published each of these statements, Kosor either knew that each of these statements were false, or he published them with a reckless disregard to whether they were true. Plaintiffs can demonstrate the falsity of each of these statements, and can also

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demonstrate their probability of prevailing on each of their claims against Defendant. Accordingly, Defendant's motion should be denied in its entirety.

II.

Statement of Relevant Facts

Plaintiffs filed their Complaint on November 27, 2017 alleging causes of action for defamation and defamation per se. *See* Complaint, filed on Nov. 27, 2017 ("Compl."). Plaintiffs' Complaint outlines several specific examples of Kosor's defamatory statements about Plaintiffs.[1] While Kosor denies having said many of these things, the exhibits to his own motion reveal the truth.

1. Plaintiffs spoke with County Commissioners in a "dark room"

Plaintiff's Complaint alleges that "Kosor made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a "dark room" and coerced them to act or vote in a certain manner." Compl. at ¶ 6. At the December 17, 2015, Christopher Communities Association ("CCA") board meeting, Kosor stated that "They [the County Commissioners] were apologizing to the developer, Goett . . . was upset and angry, and he probably got the Commissioners aside in a dark room someplace, read them the riot act." Mot. Ex. G at 1:20:45–1:21:01. He was later overheard repeating similar statements – that Olympia pays for "back room" deals with politicians – to other Southern Highlands homeowners at an SHCA board meeting in late 2016.

2. Plaintiffs are "lining its pockets" to the detriment of homeowners

Plaintiff's Complaint alleges that "Kosor made comments that . . . Olympia is "lining its pockets" to the detriment of the Southern Highlands homeowners." Compl. at ¶ 6. At the December 17, 2015, CCA board meeting, Kosor stated that "[the Declarant is] basically lining his own pockets in my opinion at the expense of the owners in Southern Highlands." Mot. Ex. G at 1:19:12–14.

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[1] Plaintiffs' Motion is supported by the Declaration of Angela Rock, Esq., which is filed separately.

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3. Plaintiffs obtained a "lucrative agreement" with the County

Plaintiff's Complaint alleges that "On or around September 11, 2017, Mr. Kosor posted a statement on the Nextdoor.com website accusing Olympia of obtaining a "lucrative agreement" with Clark County by cost-shifting expenses for the maintenance of public parks to the Southern Highlands owners." Compl. ¶ 9. In fact, Kosor's statement does state that "To obtain a lucrative agreement with the County the developer committed to constructing the above Sports Park using private money." *See* Kosor's post, attached hereto as Exhibit 1. But beyond that, Kosor admits that this is something that only "a ***small handful*** of concerned residents" have been dealing with – decidedly not a matter of public interest.

4. Plaintiffs act like a "foreign government"

Plaintiff's Complaint alleges that "On or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things, acting like a foreign government that deprives people of essential rights." Compl. ¶ 10. Though Kosor denies making this statement, *see* Mot. at 20:5–6, his website proclaims that he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in **foreign countries where citizens did not have this right** and saw first-hand the negative implications. I do not like the idea **the community** I now look to spend my retirement **has denied me this central and important right**." Mot. Ex. H (emphasis added).

5. Other Statements on Kosor's Website

Plaintiff's Complaint alleges that "In other parts of his website, Mr. Kosor continues to reference sweetheart deals, statutory violations, breaches of fiduciary duties, and improper cost shifting of "millions of dollars". Compl. ¶ 10. Kosor's website specifically states that the "SHCA Board has repeatedly failed to inform owners of", among other things, "**a massive sweetheart deal** for our Developer." Mot. Ex. H (emphasis added). Once again, Kosor denies having made this statement, despite the fact that the exhibits to his own motion show otherwise. *See* Mot. at 20:6–7.

Kosor's website also boldly accuses Plaintiffs of numerous statutory violations, including accusations that the "County and Developer coordinated [an] agreement that would permanently and wrongfully obligate the HOA to maintain the "public" parks in our community." Mot. Ex. H (emphasis in original). Kosor's website also claimed that the Olympia entered into an agreement with the Board in contravention of Nevada law: "the Agreement was done without satisfying necessary owner acceptance provisions in the statutes. A technical "loophole" allows it to do so. However, per NRS 116.3112 par 4. ".. the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3" (a majority vote of the owners)." *Id.*

Further, Kosor repeatedly states that the Board and Olympia breach their fiduciary duties to Southern Highlands homeowners with statements such as "the general **failure** of our Association Board **to advance the interests of Southern Highlands homeowners**" and "the SCHA Board's **recurring failure to engage on behalf of homeowners**" *Id.* (emphasis added). While more specifically targeting Olympia as a developer, Kosor avers that "[w]ith the management company, Olympia Management, **also controlled by the Developer**, the potential for conflicts of interest, loss of board autonomy, and **failed fiduciary oversight are clear**." *Id.* (emphasis added). Finally, Kosor's website states that "Clark County's '**cost-shifting**' of park maintenance expenses to our HOA" and that he "believe[s] this has cost our community **millions of dollars**." *Id.* (underline in original) (bold added).

Despite claiming in his Motion that his statements on these breaches of fiduciary duties are only presented as "potential," he immediately follows this statement by suggesting that undisclosed facts demonstrate these breaches have **already transpired** and cost the community millions of dollars. That does not qualify as a protected opinion.

6. Pamphlet says Olympia breached its fiduciary duties

Plaintiff's Complaint alleges that "On or about November 17, 2017, homeowners throughout the Southern Highlands community received a written pamphlet from Kosor. Within Kosor's written

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pamphlet was the statement that Olympia/Developer breached its fiduciary duties to the Southern Highlands community." Compl. ¶ 11. Kosor's pamphlet and accompanying letter clearly state that "[w]ith Olympia Management **owned by the Developer**, the potential for conflicts of interest, loss of board autonomy, and **failed fiduciary oversight are clear**." Mot. Ex. D (emphasis added). The letter also accuses the board of "**repeatedly fail[ing] to act in the best interest of homeowners** with government agencies, **defaulting to the Interests of the Developer**." *Id.* (emphasis added).

7. Plaintiffs' actions have "cost homeowners millions"

Plaintiff's Complaint goes on to allege that Kosor's pamphlet claims that the "Developer's actions have "already cost the homeowners millions." Compl. ¶ 11. Kosor's pamphlet does indeed state that "[w]ith Olympia Management owned by the Developer . . . **this has cost our community millions of dollars**." Mot. Ex. D (emphasis added).

8. Kosor's pamphlet grossly overstates legal expenses

Additionally, Plaintiffs' Complaint alleges that Kosor's pamphlet, as well as his website, "grossly overstates the Southern Highlands Community Association's 2016 legal expenses." Compl ¶ 11. Kosor's pamphlet refers to "wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size)." Mot. Ex. D. This statement exposes that Mr. Kosor's continued accusations of Plaintiffs' lack of fitness for their business or profession are knowingly false. Even he admits this statement is false in his Motion. But this admission isn't even entirely revealing. The numbers that Mr. Kosor references in his Motion are **not** the actual legal expenses incurred by Southern Highlands in 2016.[2] As has been discussed ad nauseum with Mr. Kosor previously by

[2] In the summer of 2016, the SHCA board generated a proposed budget for 2017 based on financial statements received through July 31, 2016. The resulting budget was ratified by the board and was attached as Exhibit F to Mr. Kosor's Motion. At the time the 2017 budget was generated, the only litigation expenses that had been posted were through May 2016, for a total of $517,488.85. In order to calculate the anticipated litigation expenses for the year, the board annualized that number by dividing the posted number by the number of months ($517,488.85/5 = $103,497.77) and then multiplied that number by twelve in order to estimate what the expenses would be for the entire year

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Olympia employees, the Southern Highlands Community Association's 2016 actual legal expenses were less than $900,000 – or over half-a-million dollars less than Mr. Kosor's published statements.

III.

Legal Argument

A. Legal Standard

Nevada's anti-Strategic Lawsuits Against Public Participation ("anti-SLAPP") statute, NRS 41.660, protects a person from civil liability for privileged good faith communications. *See John v. Douglas County School District,* 125 Nev. 746, 749, 219 P.3d 1276, 1279 (2009). Nevada's anti-SLAPP statute permits a defendant to file a special motion to dismiss when a case is filed against him in order to "chill [his] exercise of his . . . First Amendment free speech rights." *Stubbs v. Strickland,* 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citing to *John v. Douglas County School District*); *see also* NRS 41.660(a)(1).

Once a special motion to dismiss pursuant to NRS 41.660(a)(1) is filed, the court must first determine whether the moving party has established, by a preponderance of the evidence, that the subject communications fall within the anti-SLAPP statute's protections, i.e., "that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.". NRS 41.660(3)(a). If the court determines that the communications are protected by the anti-SLAPP statute, the burden shifts to the plaintiff to demonstrate that he has a "probability of prevailing on the claim." NRS 41.660(3)(c).

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($103,497.77 x 12 = $1,241,973.24). In truth, the actual total spent on legal expenses in 2016 only amounted to $880,967.72, as reflected in the GL Ledger Summary compiling all of Southern Highlands Community Association's Legal Fees for 2016, which is attached hereto as Exhibit 2.

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B. Kosor's Defamatory Statements Do Not Fall Within the Protection of Nevada's Anti-SLAPP Statute Because They Are Not Good Faith Communications Made in Direct Connection with an Issue of Public Concern.

NRS 41.637 defines "good faith communications" as those made "in furtherance of the right to petition or the right to free speech **in direct connection with an issue of public concern**." *Id.* (emphasis added). This includes the following categories of communications:

> 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
> 2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
> 4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum,
> ➥ which is truthful or is made without knowledge of its falsehood.
>
> NRS 41.637.

Thus, Nevada's anti-SLAPP statute provides protection for four categories of "good faith communications." The first category involves communications aimed at procuring governmental or electoral action. NRS 41.637(1). The second and third categories concern communications directed to government representatives regarding matters of public concern. NRS 41.637(2)–(3). "[A]ll that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding." *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.4th 1106, 1116, 969 P.2d 564, 570, 81 Cal.Rptr.2d 471, 477 (1999) (discussing a similar provision in California's anti-SLAPP statute). Finally, the fourth category applies to statements made in a public forum "in direct connection with an issue of public interest." NRS 41.637(4). Even if the statements fit within these narrow categories, the statements are only protected if they are "truthful or . . . made without knowledge of . . . falsehood." NRS 41.637.

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"The term 'in furtherance of the right to petition or the right to free speech' does not operate independently within the anti-SLAPP statute. It too is part of the phrase 'good faith communication in furtherance of the right to petition or the right to free speech **in direct connection with an issue of public concern**,' which must be given its express definition as provided in NRS 41.637." *Delucci v. Songer*, 396 P.3d 826 (Nev. 2017) (emphasis added). As Plaintiffs will demonstrate below, none of Kosor's statements fall within the protections of Nevada's anti-SLAPP statute, as they were not made "in direct connection with an issue of public concern" and the statements were false or made with disregard to whether they were truthful.

1. Kosor's Statements Were Not Directly Connected to an Issue of Public Concern.

"[W]here the issue is of interest to only a private group, organization, or community, the protected activity must occur in the context of an ongoing controversy, dispute, or discussion, such that its protection would encourage participation in matters of public significance." *D.C. v. R.R.*, 182 Cal.App.4th 1190, 1226, 106 Cal.Rptr.3d 399, 426 (2010) (citations omitted); *see also Du Charme v. International Brotherhood of Electrical Workers*, supra, 110 Cal.App.4th 107, 119, 1 Cal.Rptr.3d 501, 510 (2003). Kosor's statements all concern with issues "of interest to only a limited but definable portion of the public": Southern Highlands homeowners. *Hailstone v. Martinez*, 169 Cal.App.4th 728, 737, 87 Cal.Rptr.3d 347, 353 (2008). Furthermore, Kosor's statements did not encourage participation in matters of public significance; they encouraged public scrutiny of Plaintiffs and solicited votes for Kosor in a board member election, hardly matters which were the subject of an ongoing controversy or dispute.

When determining whether an issue is of public concern, the court's "focus is not on some general abstraction that *may be of concern* to a governmental body, but instead on the specific issue implicated by the challenged statement and whether a governmental entity is reviewing that particular issue." *Talega Maintenance Corp. v. Standard Pacific Corp.*, 225 Cal.App.4th 722, 733, 170

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Cal.Rptr.3d 453, 462 (2014) (emphasis in original). In *Talega*, the issue was whether the homeowners association or the developer should be required to pay for neighborhood trails. The court in *Talega* found that "[g]iven the absence of any controversy, dispute, or discussion", the issue was "of interest to only a narrow sliver of society" and thus not an issue of public concern. *Id.*, 225 Cal.App.4th at 734, 170 Cal.Rptr.3d at 463. Kosor's statements involve a very similar issue: whether the homeowners association should be required to pay for community parks. Though Kosor claims that this issue concerned all Southern Highlands homeowners and "the estimate [sic] 40% of [Clark County] citizens that reside in homeowner associations", Mot. at 13:24–26, the truth is that, there is no public controversy, dispute or discussion of this issue beyond Kosor's own protests. Unlike the issues implicated in *Damon v. Ocean Hills Journalism Club*, 85 Cal.App.4th 468 (2000), which had the residents "split into two camps" and was described as a "highly emotional atmosphere surrounding [the] dispute", *id.* at 472, there has been no evidence that the homeowners in Southern Highlands or anywhere else in Clark County are similarly split or even discussing this issue. As such, Kosor's statements were clearly not "in direct connection with an issue of public concern" and are not subject to protection by Nevada's anti-SLAPP statute.

2. Kosor's Statements Were Not Aimed at Procuring Governmental or Electoral Action.

Each of the statements identified in Plaintiffs' Complaint were not made to government or elected officials; they were directed at either Southern Highlands homeowners or the public at large. Kosor claims that the website and pamphlet statements are protected communications because they are "[c]ommunication that [are] aimed at procuring any governmental or electoral action, result or outcome." Mot. at 19:19–20 (emphasis in original). While "communications with either the government or the public that are intended to influence an electoral result [could] *potentially* fall under" Nevada's anti-SLAPP statute, not every election is an issue of public concern. *See Adelson v. Harris*, 133 Nev. Adv. Op. 67, 402 P.3d 665, 670 (2017) (emphasis added). In *Adelson*, the Supreme

Court of Nevada considered whether, as here, communications to non-governmental entities which seek to influence an electoral action or result, were covered by Nevada's anti-SLAPP statute. *Id.* The *Adelson* Court only held that such communications *could potentially* fall under Nevada's statute, however the Court declined to find whether the communications at issue in that case, which sought to weaken financial support for a **U.S. presidential election** candidate, actually *did* fall within this exception.

The provision in Nevada's anti-SLAPP statute which protects good faith communications aimed at procuring an electoral action or result are clearly directed at *governmental* elections. Prior to the 2013 amendments to Nevada's anti-SLAPP statute, NRS 41.637(1) provided protections for "communication that is aimed at procuring any governmental or electoral action, result or outcome." *Delucci*, *supra*, 396 P.3d at 829–30. After the 2013 amendments, the Nevada Legislature expanded this to clarify that the statute was not intended to only protect communications made directly to a governmental agency. *Id.* at 830. Importantly, the 2013 amendments did not expand scope of the statute's protections, it merely clarified one aspect of the statute's protections. To allow the statute's protections to be available to *any* electoral action or result would go beyond the clear scope the Legislature intended. Kosor's website and pamphlet statements addressed the SHCA Board election, a non-governmental election which was "of interest to only a narrow sliver of society." *Talega, supra*, 225 Cal.App.4th at 734, 170 Cal.Rptr.3d at 463. This is not the type of electoral action the Legislature intended to be covered by Nevada's anti-SLAPP statute. Even if this Court is inclined to broaden the "electoral result" exception to this extent, which it should not, as explained *supra*, none of Kosor's statements were directly connected to an issue of public concern and are not subject to the protections of Nevada's anti-SLAPP statute.

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3. Kosor's Statements Were Not Made in Public Forums, Nor Were They Made in Direct Connection with an Issue of Public Interest.

In order for Kosor's statements to be protected under subsection 4 of Nevada's definition of "good faith communications", they must have been made in public forums *and* in direct connection with an issue of public interest. NRS 41.637(4). As stated *infra*, none of the statements listed in Plaintiffs' Complaint were made in public forums, and they were not made in direct connection with an issue of public interest.

a) Kosor's Statements Were Not Made in Public Forums.

"A public forum is a place open to the use of the general public 'for purposes of assembly, communicating thoughts between citizens, and discussing public questions.' *Weinberg v. Feisel*, 110 Cal.App.4th 1122, 1130, 2 Cal.Rptr.3d 385, 391 (2003). "Means of communication where access is selective . . . are not public forums." *Id.* Kosor's statements were made and published to third parties in four different forums. However, most if not all of these forums had selective access and thus do not qualify as public forums.

i. The CCA board meeting was not a public forum because the board does not perform actual government functions.

The first forum was the CCA board meeting. *See* Mot. Ex. G. Kosor boldly asserts that homeowners association board meetings are public forums, relying on *Damon v. Ocean Hills Journalism Club*, 85 Cal.App.4th 468 (2000). In *Damon*, the court analogized homeowners associations to "quasi-government entit[ies]" which "served a function *similar* to that of a governmental body." *Id.* at 475 (emphasis added). Further, the board meeting at issue in *Damon* was televised to the public, and was held in accordance with California state law which required that all such boards hold open meetings. *Id.* (citing to Cal. Civ. Code., §§ 1363.05, 1363, 1350–1376). Nevada law has no such parallel provision, nor was the CCA board meeting at issue here available to the public as "a widely disseminated television broadcast." *Id.* at 476 (citing to *Metabolife Internat., Inc. v. Wornick*, 72 F.Supp.2d 1160, 1165 (S.D. Cal. 1999)). *See also generally*, NRS Chapters 116

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(Common-Interest Ownership) and 214 (Meetings of State and Local Agencies). California has also found that a homeowners association board meeting is *not* a public forum, noting that "although courts have recognized the similarities between a homeowners association and a local government . . . a homeowners association is not performing or assisting in the performance of the *actual* government's duties." *Talega, supra*, 225 Cal.App.4th at 732, 170 Cal.Rptr.3d at 461 (emphasis in original). The CCA board does not perform or assist with the performance of any *actual* government duties, nor does the subject meeting mirror any of the characteristics of the board meeting in *Damon*. As such, the CCA board meeting at issue in this matter is clearly not a public forum for purposes of Nevada's anti-SLAPP statute.

ii. *The social media website Nextdoor.com is not a public forum because it has limited access and has strict editorial guidelines for content.*

The second forum was a limited-access website known as Nextdoor.com. *See* Ex. 1. Kosor claims that his statements "were posted on a social media website" which "clearly show[s] the statements were made in a public forum." Mot. 18:8–9. Nextdoor explains that it is a "**private** social network" for neighborhoods and requires members to be residents of their claimed neighborhoods. *See* Exhibit 3, which includes screenshots of various Nextdoor pages (emphasis added).

Kosor claims that the website at issue is a public forum simply because "websites are 'classical forum communications.'" Mot. at 18:21–22. In *ComputerXpress, Inc. v. Jackson*, 93 Cal.App.4th 993, 113 Cal.Rptr.2d 625 (2001) found that the websites "Raging Bull" and "Ogravity99" constituted public forums because both websites were accessible to any member of the public, and "[l]iterally anyone who has access to the Internet has access to [Raging Bull's] chat-rooms." 93 Cal.App.4th at 1006, 113 Cal.Rptr.2d at 637 (quoting *Global Telemedia International, Inc. v. Doe*, 132 F.Supp.2d 1261, 1264 (C.D.Cal. 2001) (also describing the Raging Bull website)). The court further noted that neither of the websites at issue had editorial control over the content posted on the website. *Id.*

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Here, while Nextdoor.com is accessible to any member of the public, the 'neighborhood' group in which Kosor posted his defamatory statements about Plaintiffs, is not. In fact, Nextdoor.com has a policy that only actual residents of a neighborhood may post in a neighborhood's message board. Ex. 3 Nextdoor's Community Guidelines. Furthermore, Nextdoor.com routinely exercises editorial control over its content: users are specifically advised to not "use Nextdoor as a soapbox" and the site is moderated, both by "Neighborhood Leads" and by Nextdoor staff. Ex. 3, Nextdoor's Community Guidelines. Therefore, due to the restricted nature of both membership and content on Nextdoor.com, it is clearly not a "public forum."

iii. *Kosor's websites not a public forum, but even if it was the content on his website were not directly connected to issues of public concern.*

The third forum was Kosor's personal website. *See* Mot., Ex. H. While Kosor's website may have been accessible by any member of the public with internet access, that does not automatically make it a public forum. A 'public forum' is traditionally defined as a place that is open to the public "**where information is freely exchanged**." *ComputerXpress,* 93 Cal.App.4th at 1006 (citations omitted) (emphasis added). This generally means websites and online message boards and forums "that are accessible free of charge to any member of the public where members of the public may read the views and information posted, **and post their own opinions**." *Piping Rock Partners, Inc. v. David Lerner Associates, Inc*., 946 F.Supp.2d 957, 975 (2013) (citing *Ampex Corp. v. Cargle,* 128 Cal.App.4th 1569, 1576, 27 Cal.Rptr.3d 863 (2005)) (emphasis added). However, "[m]eans of communication where access is selective ... are not public forums." *Weinberg v. Feisel,* 110 Cal.App.4th at 1130, 2 Cal.Rptr.3d 385 (2003) (citing *Arkansas Educ. TV v. Forbes,* 523 U.S. 666, 678–680, 118 S.Ct. 1633, 140 L.Ed.2d 875 (1998)).

While Kosor's website was, indeed, available on the internet, there was no free exchange of information permitted on his website. The only viewpoints that were posted or represented on Kosor's website were his own. There was nowhere for anyone other than Kosor to post their opinions or

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statements. Undoubtedly, Kosor had complete and unlimited editorial control over his own website and did not permit anything but his own version to be represented.

Furthermore, not all content on his website was geared towards his campaign for a place on the SHCA Board of Directors. While parts of Kosor's website may have labeled one part of his website 'public issues', "that does not mean that every post on the website is . . . about a 'public issue.'" *Young v. Handshoe*, 171 So.3d 381, 389 (La.App. 5 Cir. 2016). One of the goals of Kosor's website was clearly to impugn Plaintiffs' integrity and their fitness for their trade, business, or profession and to impede their ability to perform their business operations.

These are clearly not public issues; they matter only to a "small handful" the SHCA residents. As explained *infra*, for Kosor's statements to be protected good faith communications, they must not only be made in a public forum, but also be made in direct connection with an issue of public interest. The statements from Kosor's website listed in Plaintiffs' Complaint plainly do not meet either of these criteria.

iv. *Kosor's campaign pamphlet was not a public forum because it was not publicly disseminated nor did was it directly connected to issues of public concern.*

The fourth forum was a pamphlet which Kosor mailed to residents of Southern Highlands. *See* Mot., Ex. D. While this also was published as part of Kosor's campaign for a place on the SHCA Board of Directors, the limited nature of this publication exempts it from being considered a "public forum" for purposes of Nevada's anti-SLAPP statute. In *Damon*, *supra*, the court found that a newsletter published by a homeowners association constituted a public forum. 85 Cal.App.4th at 476. However, that publication was disseminated not only to the neighborhood residents, but also to "neighboring businesses." *Id.* In contrast, Kosor's pamphlet was only disseminated to residents of Southern Highlands, as they were the only citizens who were eligible to vote in the SHCA election. Thus, while other forms of written communication may constitute public forums, the limited nature of both the purpose and distribution of Kosor's pamphlet make it a private publication.

b) Kosor's Statements Were Not Made in Direct Connection with an Issue of Public Interest.

"[M]ere publication . . . on a Web site . . . should not turn otherwise private information . . . into a matter of public interest." *Du Charme*, 110 Cal.App.4th at 117, 1 Cal.Rptr.3d at 509 (citation omitted). For a matter to be "public", it must bear some attributes which made it a public, as opposed to a merely private, interest. *Weinberg v. Feisel*, 110 Cal.App.4th 1122, 1132, 2 Cal.Rptr.3d 385, 392 (2003). "A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." *Id.* 110 Cal.App.4th at 1133, 2 Cal.Rptr.3d at 393. *See also Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO*, 105 Cal.App4th 913, 130 Cal.Rptr.2d 81 (2003) (rejecting claim that a private matter can transform into one of public interest by publishing it to a large number of people). "First, 'public interest' does not equate with mere curiosity." *Weinberg*, 110 Cal.App.4th at 1132, 2 Cal.Rptr.3d at 392 (internal citation omitted). Second, the matter "should be something of concern to a substantial number of people"; "**a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest**." *Id.* (citations omitted) (emphasis added). Third, there must be a "degree of closeness between the challenged statements and the asserted public interest." *Id.* (citation omitted). Finally, "the focus of the speaker's conduct should be the public interest" not to "gather ammunition" to further his private controversy. *Id.* 110 Cal.App.4th at 1132–33, 2 Cal.Rptr.3d at 392.

Applying the *Weinberg* factors to Kosor's statements, it is clear that they were not made in direct connection with an issue of public concern. Although some of the content in Kosor's publications may have concerned 'issues' *relevant* to residents voting for the SHCA Board, it does not mean that all SHCA homeowners were more than merely curious about those issues. Further, the primary "issue" implicated by Kosor's statements was the issue of whether Southern Highlands homeowners should bear the costs for the parks. Kosor's concerns have not been echoed by a substantial number of people. If anything, the other homeowners who have expressed similar concerns

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represent a very small, specific audience. In Kosor's own words, this is an issue for a "small handful of concerned residents." *See* Ex. 1.

Moreover, many of Kosor's statements bear absolutely no close relationship to his claimed 'public issues'. For example, accusations that Plaintiffs spoke with County Commissioners in a 'dark room' to pressure them to vote a certain way, and statements comparing Plaintiffs to a foreign government which deprives its citizens of essential rights hardly bear any nexus to purported campaign issues. The focus of Kosor's statements largely appear to be geared towards causing harm to the reputation of Plaintiffs, not towards any actual public issue.

Each of the four forums Kosor utilized to publish his statements about Plaintiffs bear characteristics which clearly demonstrate they are not public forums. Furthermore, Kosor's statements are not directly related to issues of public concern. As such, each of his statements fall outside of the scope of protection offered by Nevada's anti-SLAPP statute.

C. Plaintiffs Have a Probability of Prevailing on Their Claims Because Kosor's Statements Were Made with Reckless Disregard of the Truth or of Plaintiffs' Rights and Because Kosor's Statements Constitute Defamation Per Se.

Even if this Court finds that any of Defendant Kosor's statements are subject to the protection of Nevada's anti-SLAPP statute, which they are not, this Court should still deny Defendant's motion in its entirety because Plaintiffs have a probability that they will prevail on each of their claims.

Plaintiffs' Complaint alleges claims for defamation and defamation *per se*. Defamation is "a publication of a false statement of fact." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (quoting *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993).) "An action for defamation requires the plaintiff to prove four elements: '(1) a false and defamatory statement ...; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.'" *Clark County School Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (quoting *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005).).

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"However, if the defamatory communication imputes a crime, imputes a "person's lack of fitness for trade, business, or profession," or tends to injure the plaintiff in his or her business, it is deemed defamation per se and damages are presumed." *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1192, 866 P.2d 274, 282 (1993); *see also Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (citations omitted).

Plaintiffs can establish that they have a probability of prevailing on each of their claims against Kosor because they can demonstrate that each of Kosor's statements are false and defamatory, each of the statements are unprivileged and were published to third parties, Kosor was negligent and/or reckless in making each of these statements, and each of these statements constitute defamation per se, therefore damages are presumed.

1. Each of Kosor's Statements Are Defamatory Because They Are False and Kosor was Negligent and/or Reckless in Making Each of These Statements.

A statement is defamatory if it "would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002) (quoting *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191, 866 P.2d 274, 281–82 (1993)). While generally statements of opinion are not defamatory, even "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false." *Id.*, 118 Nev. at 714, 57 P.3d at 88 (quoting *K-Mart Corp.*, 109 Nev. at 1192, 866 P.2d at 282 (internal citation omitted)). That is, expressions of opinion do not enjoy blanket constitutional protection. *See Franklin v. Dynamic Details, Inc.*, 116 Cal.App.4th 375, 384, 10 Cal.Rptr.3d 429 (2004). An opinion loses its constitutional protection and becomes actionable when it is "based on implied, undisclosed facts" and "the speaker has no factual basis for the opinion." *Ruiz v. Harbor View Community Association*, 134 Cal.App.4th 1456, 1471, 37 Cal.Rptr.3d 133 (2005). "If a statement of opinion implies a knowledge of facts which may lead to a defamatory conclusion, the implied facts

must themselves be true." *Ringler Associates Inc. v. Maryland Casualty Co.*, 80 Cal.App.4th 1165, 1181, 96 Cal.Rptr.2d 136 (2000).

In a defamation action involving a public figures and issues of public concern, the plaintiff must prove "actual malice" in order to prevail. *Pegasus*, 118 Nev. at 719, 57 P.3d at 89–91. A party can make himself a "limited-purpose public figure" regarding certain issues by "voluntarily inject[ing] himself or [thrusting himself] into a particular public controversy or public concern." *Id.*, 118 Nev. at 720, 57 P.3d at 91. Plaintiffs here are not public figures, and Plaintiffs have already established that Kosor's statements are not directly related to issues of public concern. Furthermore, Plaintiffs have not injected themselves into any public controversy or concern implicated by Kosor's statements. As such, Plaintiffs are not required to prove that Kosor acted with actual malice in making his statements against them.

While Plaintiffs are not required to prove that Kosor acted with actual malice in making his statements about Plaintiffs, Plaintiffs may be required to prove knowledge of falsity or reckless disregard for the truth in order to recover presumed or punitive damages. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349, 94 S.Ct. 2997, 3011 (1974). "Reckless disregard means that the publisher acted with a 'high degree of awareness of . . . [probable] falsity' of the statement or had serious doubts as to the publication's truth." *Pegasus*, at 118 Nev. at 719, 57 P.3d at 90–91. *See also St. Amant v. Thompson*, 390 U.S. 727, 732, 88 S.Ct. 1323, 1325 (1968) ("recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports").

Many of Kosor's statements demonstrate on their face that he either knew his statements were not true, or that he was at least doubtful as to the truth of his statements. For example, Kosor used the qualifying term "probably" in relation to his "dark room" statement, showing that he did not know if it was true or not. Kosor claims that his "statements and beliefs are in reliance of Nevada Revised Statutes and recorded documents," *see* Mot. at 5:20–21, yet some of his own exhibits, including the

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SHCA Board Budget for 2016–2017, demonstrate that he knew his statements were false or at least had 'obvious reasons to doubt the veracity' of his statements.

a) Kosor's "Dark Room" Statement Accuses Plaintiffs of Criminal Activity.

Kosor's statement accusing Plaintiffs of speaking with Clark County Commissioners in a "dark room" in order to influence their actions, *see* Comp. ¶ 6, clearly constitute defamation per se. This is a thinly-veiled accusation that Plaintiffs engaged in either bribery or extortion, both of which are felony criminal offenses in the State of Nevada. *See* NRS 204.320, 197.020. Further, engaging in both of these crimes can constitute racketeering. *See* NRS 207.360, 207.390. At the very least, this constitutes slander per se because it suggests that Plaintiffs have engaged in the commission of a crime. *See K-Mart*, 109 Nev. at 1192, 866 P.2d at 282.

Kosor made this statement with absolutely no knowledge of whether it was true or not: his qualifying language of "probably" admits as much. Adding a qualifier such as "probably" does not transform a defamatory statement into an opinion. Although, even if it was presented as an opinion, that statement loses any constitutional protection and is actionable because it implies undisclosed facts but Mr. Kosor has no factual basis for the opinion. *See Pegasus*, 118 Nev. at 714, 57 P.3d at 88.

"The ultimate question is whether a reasonable trier of fact could conclude that the published statements imply a provably false assertion." *Wilbanks v. Welk*, 121 Cal.App.4th 883, 902, 17 Cal.Rptr.3d 497, 509 (2004) (rejecting the contention that a rhetorical question was a mere opinion). *See also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 21 (1990) (the language and "general tenor of the article" did not negate the impression of a factual statement).

b) Kosor's "Lining Its Pockets" Statement Suggests That Plaintiffs Are Not Fit to Conduct Its Business.

Kosor's statement accusing Plaintiffs of "lining its pockets" to the detriment of SHCA homeowners, *see* Comp. ¶ 6, clearly constitutes defamation per se. This statement suggests that Plaintiffs are misappropriating homeowner funds and getting rich in the process, all the while harming

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SHCA homeowners. Despite Kosor's qualifying language of "in my opinion", this is clearly not a mere opinion because it "suggest[s] that [Kosor] knows certain facts to be true or [implies] that facts exist" to support his accusation. *Pegasus*, *supra*, 118 Nev. at 714, 57 P.3d at 88 (quoting *K-Mart Corp.*, *supra*, 109 Nev. at 1192, 866 P.2d at 282 (internal citation omitted)).

c) Kosor's "Lucrative Agreement" and "Sweetheart Deal" Statements Accuses Plaintiffs of Criminal Activity.

Kosor's statement accusing Plaintiffs of obtaining a "lucrative agreement" with the County and "cost-shifting expenses" to force SHCA homeowners to pay for the parks, *see* Comp. ¶ 6, clearly constitute defamation per se. Kosor implies improper criminal behavior when he stated that Plaintiffs had procured "a massive sweetheart deal" which Plaintiffs then hid from homeowners. *See* Comp. ¶ 10. Just as Kosor's "dark room" comment implies that Plaintiffs engaged in either bribery or extortion, so does the implication that Plaintiffs had a "lucrative agreement" or obtained "sweetheart deals" with the County. Beyond that, Kosor's statements again imputes Plaintiffs' "lack of fitness for trade, business, or profession," and tends to injure Plaintiffs in their business.

d) Kosor's Statement Comparing Plaintiffs to a "Foreign Government" Would Tend to Lower Plaintiffs in the Estimation of the Community and Excite Derogatory Opinions About Plaintiffs.

Kosor's statement comparing Plaintiffs to a "foreign government" which deprives people of essential rights, *see* Compl. ¶ 10, when read in context suggests that Plaintiffs have deprived him and fellow homeowners of the right to vote. *See* Mot. Ex. H. "It is, of course, well established that the right to vote is fundamental. . .." *County of Clark v. City of Las Vegas*, 550 P.2d 779, 792 (Nev. 1976). By accusing Plaintiffs of denying him and other homeowners of this "central and important right" Kosor is essentially accusing Plaintiffs of being dictators. *See* Mot. Ex. H. Such an accusation is the very embodiment of a statement which would "tend to lower [Plaintiffs] in the estimation of the community, [and] excite derogatory opinions about [Plaintiffs]". *K-Mart*, *supra*, 109 Nev. at 1191, 866 P.2d at 281. In truth, Kosor's very motion admits the falsity of such an accusation, as he speaks at

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length about the recent SHCA board member election, conceding that the election did in fact take place, despite alleged "irregularities." *See* Mot. at 5:26–6:7, 6:17–25, and 7:8–13. Therefore, it is clearly not true that Plaintiffs deprive homeowners of their right to vote and this statement is both patently offensive and demonstrably false.

e) Kosor's Statements Accusing Plaintiffs of Breaching Their Fiduciary Duties And "Cost-Shifting" of "Millions" Constitute Defamation Per Se.

Kosor suggests on both his website and in his campaign pamphlet that Plaintiffs breached their fiduciary duties to Southern Highlands homeowners, both by use of the term "fiduciary duty" and also by repeatedly stating that Plaintiffs "cost-shifting" which "already cost the homeowners millions". *See* Compl. ¶¶ 10–11. As with the accusation that Plaintiffs were "lining its pockets" at the homeowners' expense, this too suggests that Plaintiffs are improperly expending homeowner funds and are, as such not fit for their trade or business. *See supra*. *See also Silk v. Feldman*, 208 Cal.App.4th 547, 555–56, 145 Cal.Rptr.3d 484, 490 (2012) (holding that accusing Plaintiffs "of a serious breach of fiduciary duty . . . is libelous per se."). As these statements both directly accuse Plaintiffs of breaching their fiduciary duties to Southern Highlands owners and also accuses them of actions which would constitute such a breach, these statements constitute slander per se. Although Kosor claims that his use of qualifying language "I believe" makes his statement an opinion, his statements go a step further by suggesting the existence of facts to support his statement, as his statements as a whole suggest that he has seen financial records to support his claim that it has "already cost homeowners millions." *See Pegasus, supra,* 118 Nev. at 714, 57 P.3d at 88 (citations omitted).

f) Kosor's Statements Accusing Plaintiffs of Statutory Violations Constitute Defamation Per Se and Tend to Lower Plaintiffs in the Estimation of the Community and Excite Derogatory Opinions About Plaintiffs.

Kosor's website accuses Plaintiffs of numerous statutory violations. *See* Compl. ¶ 10; *see also* Mot. Ex. H. Kosor claims that this was based on his good faith review of Nevada law and that he only stated that "SHCA failed to inform homeowners of the date and time of the next executive board

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meeting." Mot. 20:7–10. Yet Kosor's allegations go further: his website specifically references sections of the Nevada Revised Statutes and claims that Plaintiffs entered into improper deals due to "loopholes" which directly contravene Nevada law. Many of these allegations further compound the accusations that Plaintiffs engaged in criminal activity to secure improper deals with government officials, and as such, constitute defamation per se. At the very least, such accusations would "tend to lower [Plaintiffs] in the estimation of the community, [and] excite derogatory opinions about [Plaintiffs]". *K-Mart*, *supra*, 109 Nev. at 1191, 866 P.2d at 281.

g) Kosor's Statement Grossly Overstating SCHA's 2016 Legal Expenses Also Suggests That Plaintiffs Are Not Fit to Conduct Their Business.

Kosor's pamphlet not only grossly overstates SCHA's legal expenses for 2016, it also accuses Plaintiffs of incurring "wasteful legal costs." *See* Mot. Ex. D. Even should Kosor urge that this was a mere expression of his opinion, his statements clearly suggest that he "knows certain facts to be true or [implies] that facts exist" to support his statement, including his reference to a precise sum and a comparison to other homeowners associations of similar size. *See Pegasus, supra*, 118 Nev. at 714, 57 P.3d at 88 (quoting *K-Mart Corp.*, *supra*, 109 Nev. at 1192, 866 P.2d at 282 (internal citation omitted).).

Kosor urges that, even though he did overstate the 2016 legal expenses, it was not a *gross* overstatement, as the fees were $1,241,973 and he stated that the fees were $1.4 million. Mot. 27:3–5. This is a variance of over $158,000; hardly an insignificant number to the average homeowner. But beyond that fact, time and again it was demonstrated to Mr. Kosor that SHCA's legal fees for 2016 were not actually $1,241,973, either. Even Mr. Kosor recognized this. In an email to Olympia employee Sara Gilliam on December 5, 2016, Kosor acknowledges that this number is simply an "annualized" amount. *See* Dec. 5, 2016 Email from Kosor requesting the documents for the YTD 2016 Annualized Litigation Expense category, page 12 of the email string attached hereto as Exhibit 4.

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The bottom line is that the $1.4 million figure Kosor has proclaimed is not only demonstrably false, but he admits that he knew it was false when he included it in his letter. Further, when Kosor fabricated this number, he did so to convince homeowners that Olympia is wasting homeowner funds on legal costs, yet failed to mention that (1) the actual legal fees spent in 2016 were significantly less than he represented and (2) the budgeted legal fees for 2017 are significantly less than that spent in 2016. Mot. Ex. F. This is yet another accusation that Plaintiffs are unfit to conduct their business and constitutes defamation per se.

2. Each of Kosor's Statements Are Unprivileged and Were Published Third Parties.

There are some types of communications which are privileged, and therefore protect the speaker from liability. For example, "statements made during the course of judicial proceedings are generally considered absolutely privileged." *Jacobs v. Adelson*, 130 Nev. Adv. Op. 44, 325 P.3d 1282, 1284 (2014). In contrast, "[a] qualified or conditional privilege exists where a defamatory statement is made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or a duty, if it is made to a person with a corresponding interest or duty." *Circus Circus Hotels v. Witherspoon*, 99 Nev. 56, 62, 657 P.2d 101, 105 (1983). Where, as here, a speaker claims a "common interest privilege", it "is a question of law for the court" to determine whether the privilege applies. *Lubin v. Kunin*, 17 P.3d 422 (Nev. 2001) (citing to *Circus Circus, supra*). If the privilege does apply, "the action for defamation will be presented 'to the jury only if there is sufficient evidence for the jury reasonably to infer that the publication was made with malice in fact." *Id.* Although he has not claimed it by way of his answer, Kosor seems to claim that his statements are privileged due to the common interest privilege because he was making good faith statements to other persons with corresponding interests. As this is an evidentiary claim to be decided at the time of trial, and Kosor has not "established facts to show that the privilege applies", this Court cannot determine at this early state whether this asserted privilege does or does not apply. *See Lubin, supra,* at 428.

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Publication is "the communication of the defamatory matter to some third person or persons." *Simpson v. Mars, Inc.*, 113 Nev. 188, 191, 929 P.2d 966, 967 (1997) (citations omitted). Each of Kosor's defamatory statements were published by communicating them to third parties. The "dark room" and "lining his pockets" statements were made at a CCA board meeting at which at least three other individuals were present. Mot. Ex. G (audio recording at least three separate voices). The Nextdoor post regarding Plaintiffs' "lucrative" agreement with Clark County was posted on a private website where it was seen fellow homeowners in the Southern Highlands neighborhood group. Ex. 1. Kosor's website was active for several months where an unknown number of individuals saw Kosor's statements comparing Plaintiffs to a foreign government, referencing sweetheart deals, statutory violations, breaches of fiduciary duties, and improper cost shifting. *See* Decl. of Angela Rock. Finally, Kosor's pamphlet containing statements accusing Plaintiffs of breaching their fiduciary duties to Southern Highlands homeowners, of costing homeowners millions, and grossly overstating SHCA's legal expenses was sent directly to thousands of Southern Highlands homeowners.

Accordingly, there are no available privileges Kosor may assert for his numerous defamatory statements, and Plaintiffs have established that Kosor caused each of these statements to be published by communicating these statements to third parties.

3. Each of Kosor's Statements Constitute Defamation Per Se, Therefore Damages are Presumed.

Generally, special damages must be proven before a plaintiff may recover for defamation unless defamation per se is proven, in which case damages are presumed. *See K-Mart*, *supra*, 109 Nev. at 1194, 866 P.2d at 284. "[S]tatements that are defamatory per se by their very nature are likely to cause mental and emotional distress, as well as injury to reputation, so there arguably is little reason to require proof of this kind of injury . . .." *Id.*, 109 Nev. at 1195, 866 P.2d at 284 (quoting *Carey v. Piphus*, 435 U.S. 247, 262, 98 S.Ct. 1042, 1051–52 (1978) (footnotes omitted). "Damages for slander per se include harm to the reputation of the person defamed, or, absent proof of such harm, 'for the

harm which normally results from such a defamation.'" *Id.* (quoting *Gertz v. Robert Welch,* Inc., 418 U.S. 323, 372, 94 S.Ct. 2997, 3023 (White, J., dissenting) (quoting Restatement of Torts § 621 (1938))).[3]

Each and every one of Kosor's statements constitute defamation per se because they all imply that Plaintiffs engaged in criminal activities, and tends to injure Plaintiffs' in their trade, business, and profession. As discussed *supra*, several of Kosor's statements, including the "dark room" and "sweetheart deal" statements suggest that Plaintiffs' engaged in criminal activities such as bribery or extortion. Furthermore, nearly every one of Kosor's statements impute "[Plaintiffs'] lack of fitness for [their] trade, business, or profession," or tends to injure the Plaintiff in his or her business. *K-Mart*, *supra*, 109 Nev. at 1192, 866 P.2d at 282. Kosor's attempt to downplay the severity of his statements by claiming that "the goal of every business owner is to enter into lucrative deals, find sweetheart deals and when possible lower and/or find alternate payors for expenses i.e. cost-shift" does not excuse the fact that each of these terms are derogatory by their very nature, and suggest that Plaintiffs are not fit to conduct business. *See* Mot. at 29:28–30:1.

As each and every one of Kosor's statements constitute defamation per se, damages are presumed and Plaintiffs should not be required to produce proof of damages at this early stage in the litigation. However, after further discovery on the subject, Plaintiffs will be able to demonstrate its actual damages, including damages stemming from "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Gertz, supra*, 418 U.S. at 350,

[3] With slander (or defamation) *per se*, the plaintiff is entitled to presumed, general damages. General damages are those that are awarded for loss of reputation, shame, mortification and hurt feelings. General damages are presumed upon proof of the defamation alone because that proof establishes that there was an injury that damaged plaintiff's reputation and because of the impossibility of affixing an exact monetary amount for present and future injury to the plaintiff's reputation, wounded feelings and humiliation, loss of business, and any consequential physical illness or pain. *See Bongiovi, v. Sullivan*, 122 Nev. 556, 577, 138 P.3d 433, 448 (2006) (citations omitted).

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94 S.Ct. at 3012. *See also Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628, 646–647 (1996) overruled on other grounds ("the court may allow specified discovery").

D. Defendant is Not Entitled to an Award of Attorneys' Fees and Costs.

If a court grants a special motion to dismiss brought pursuant to NRS 41.660(a)(1), the court "shall award reasonable costs and attorney's fees to the person against whom the action was brought." NRS 41.670 (1)(a). However, if the court denies the special motion to dismiss, upon a finding that the special motion to dismiss was "frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion" plus an optional award of up to $10,000. NRS 41.670 (2)–(3)(a).

Kosor requests that this Court award a total of $15,055.00 for his responding to Plaintiffs' Complaint, claiming that it "was filed for the sole purpose of chilling [his] speech." Mot. at 29:10–11, 17. As Plaintiffs have demonstrated, though Kosor denies making many of these statements and attempts to justify his behavior by emphasizing qualifying language to couch his statements as opinions, Kosor did in fact make each of these statements, all of which either constitute defamation per se and/or impute characteristics to Plaintiffs which would tend to lower their reputation in the community or incite derogatory opinions about Plaintiffs. Kosor complains of Plaintiffs' "repeated omissions and misstatements of fact," yet is guilty of this precise conduct in his motion. Mot. at 29:24–25. Kosor further insults Plaintiffs by claiming that "[t]he goal of every business owner is to enter into lucrative deals, find sweetheart deals and when possible lower and/or find alternate payors for expenses i.e. cost-shift," suggesting that his statements are merely characterizations of typical business owners. Mot. at 29:28–30:2. None of these statements are protected by Nevada's anti-SLAPP statute.

Plaintiffs have demonstrated that they are likely to prevail on each of their claims. As such, this Court should deny Kosor's motion in its entirety and this Court should instead award Plaintiffs their reasonable attorneys' fees in the amount of $13,797.50 for having to respond to Kosor's motion. *See*

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the Declaration of Nathanael Rulis, attached hereto as Exhibit 5, regarding Plaintiffs' fees incurred in relation to opposing this motion.

IV.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 in its entirety. Plaintiffs further request that this Court award Plaintiffs' a total of $13,797.50 as reimbursement for the reasonable costs and attorney's fees and costs incurred in responding to Defendant's Motion.

Dated this 16th day of February 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2018, I served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/Alison Augustine
An Employee of KEMP, JONES & COULTHARD, LLP

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Exhibit 1

Mike Kosor, Southern Highlands

SH community is not getting its long-promised Sports Park- WHY?

In 2005 SH residents were promised a 20-acer intense use Sports Park, to be available in 2008. It was to have a 4-plex baseball complex, lighted, concession, and shaded stands, 2 baseball practice fields, multiple lighted soccer fields, and more. Yet that has not and potentially will never happen- WHY? See RJ article https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ To obtain a lucrative agreement with the County the developer committed to constructing the above Sports Park using private money. Despite multiple failures by the developer to deliver on those commitments, the County would in the fall of 2015 inexplicably relieving the developer of its original commitment only to then approve spending $7M in public tax dollars for a similar complex in Mountain's Edge. - WHY? The County also coordinated with the developer to cost-shift, over $1M/year to maintain the limited public parks to our HOA, without owner approval.- WHY? The SH HOA Board, still (and inexplicably) controlled by the developer, has done nothing to protect the Sports Park first promised our community. – WHY? A small handful of concerned residents have been asking the County and Commissioners these questions and others for almost two years. Yet despite promises of transparency from the County we have received no good answers- often no answer at all. - WHY? If you can answer the questions above, let the community know. Otherwise, write/email/call our Commissioners and ask – WHY? Then join us at Wednesday's Clark County Commission meeting and lets all ask – WHY? If we do not stand up and demand accountability for what I believe are inexplicable actions, your County, the Commissioners, and your HOA Board have made it clear they will continue to ignore these questions while continuing to make SH home owners bear more than their fair share.

Clark County still waiting for sports park at Southern Highlands

Kickoff for the Southern Highlands United youth soccer fall season isn't until next Sunday, but coaches have spent two weeks competing — for space, not goals — in Inzalaco Park.

reviewjournal.com

5 Sep · Southern Highlands in General
Thank
Reply

.

Larry Mc, Southern Highlands·6 Sep
I, for one, think the original sports park plan should not only be adhered to, but major pressure should also be put on the Commissioners to reallocate to Southern Highlands a portion of the millions it has allocated to parks & improvements. You should know Southern Highlands is NOTICEABLY absent from the list of intended beneficiaries of those allocated millions and it is, in my opinion, an outrage! One vital question we, as a community, need to answer with finality is: Does Southern Highlands want public or private parks? I present this question because I have long suspected there are strong currents both for and against making our parks public. I think it would be best to have our community decide this question by a vote on a resolution to that effect presented at our next annual meeting. A public referendum will settle the question openly AND WITH FINALITY. What do you think, neighbors? Whether you are in favor of public or private parks, this is an opportunity for all of us to be heard and to decide AS A COMMUNITY the direction we want our governing board to take about our parks. Think about it, but more importantly, make it happen!
Thank

Teresa Larkin, Southern Highlands·6 Sep
Thanks Mike for all your efforts. This is a very important issue and I think the home owners should know what the advantages and dis-advantages of both options are including the costs to each homeowner. What I understand is we as homeowners aren't even getting a say in this matter, the City Commissioners and Developer are the ones deciding what we will get and what we as homeowners will have to pay for. Excellent article in the Review Journal, we should all read it
Thank
Mike Kosor, Southern Highlands·6 Sep
Teresa- Not only are we not getting a say, County Commissioners are turning a blind eye to the developer's violations of their development agreement- the one sighted as authority for the cost-shifting of park maintenance. The transfer failed to meet required criteria- essentially obtaining HOA acknowledgement/acceptance. I see no HOA advantage in paying the entire park maintenance costs- currently $1.3M/year almost 1/3 of total HOA assessments. These are public parks, open to all citizens, having been constructed using state tax credits provided to the developer under an agreement the HOA is not a party. The County does a good job with maintenance (contrary to rumors). It should pay maintenance costs and carry the liability of the parks using tax dollars, as it does for most all other parks. Today, marked the ninth consecutive month I and a few concerned owners appealed to Commissioners at the bi-weekly Zoning Meeting to act on the cost shifting and to restore the 6x ball fields, covered stands, and much more removed from our 10 years over-due Sports Park. But they continue to refuse, providing little transparency, while recently authorizing $7M in public money for 4x baseballs fields in Mountains Edge. WOW- talking about sticking it to SH. Know our HOA Board has never engaged nor even worked to inform owners in a joint engagement of Commissioners to protect us from the above. Didn't we elect board members to represent our interest? Oh- sorry, most are not elected but appointed by the developer. In that case should we believe the developer's control

of our HOA Board is at play? Or maybe, it is the massive and inexplicable sweet heart deal the Commissioners gave our developer related to the yet to be delivered Sports Park, that is at play?
Thank

Stephanie Hodges, Southern Highlands·7 Sep
Perhaps we should engage with a news channel to look into this? Seems like back door deals and special treatment is going on at our expense.
Thank
Rahul Harkawat, Southern Highlands·7 Sep
Thanks Mike for your yeoman service and doggedness. Without your efforts none of this detail would have bubbled up to the knowledge of the residents. I wish more of the residents review the details to understand how the association fees is being used and respond accordingly

Exhibit 2

GL Ledger Summary

Thursday, February 15, 2018 11:19

GL Account Key 7815 Legal Fees

Period 1/1/2016 To 12/31/2016 11:59:00 PM

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION

Posted	Transaction	Source	Department	Note	Debit	Credit	Balance
7815 Legal Fees							**0.00**
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2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	3,417.50		9,500.15
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	2,517.50		12,017.65
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,690.83		13,708.48
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,175.00		14,883.48
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	3,721.72		18,605.20
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	7,734.00		26,339.20
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	420.00		26,759.20
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,380.00		28,139.20
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	17,357.39		45,496.59
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Pete	4,320.00		49,816.59
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	25,134.54		74,951.13
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	3,185.00		78,136.13
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2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	356.20		80,678.89
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,717.39		82,396.28
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: The	1,774.00		84,170.28
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: The	2,038.50		86,208.78
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: The	114.28		86,323.06
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	157.50		86,480.56
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	80.00		86,560.56
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2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	180.00		93,325.91
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Lewis	15,000.00		108,325.91
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	79.00		108,404.91
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	2,044.69		110,449.60
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	655.55		111,105.15
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	922.50		112,027.65
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,046.25		113,073.90
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	6,011.60		119,085.50
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	160.00		119,245.50
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	3,390.24		122,635.74
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,543.50		124,179.24
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2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	1,040.00		127,119.24
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	750.00		127,869.24
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	3,626.95		131,496.19
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	258.50		131,754.69
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	480.00		132,234.69
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post:	9,463.50		141,698.19
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	733.45		142,431.64
2/1/2016	2/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	83.75		142,515.39
2/1/2016	2/9/2016	A/P	Operating	A/P Voucher Post:	1,536.79		144,052.18
2/9/2016	2/9/2016	A/P	Operating	A/P Voucher Post:	125.05		144,177.23
2/12/2016	2/12/2016	A/P	Operating	A/P Voucher Post:	40.00		144,217.23
2/12/2016	2/12/2016	A/P	Operating	A/P Voucher Post:	45.00		144,262.23
2/22/2016	2/22/2016	A/P	Operating	A/P Voucher Post:	588.65		144,850.88
2/25/2016	2/25/2016	A/P	Operating	A/P Voucher Post:	6,587.60		151,438.48
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	3,404.68		154,843.16
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	2,512.28		157,355.44
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	30.00		157,385.44

GL Account Key 7815 Legal Fees

Period 1/1/2016 To 12/31/2016 11:59:00 PM

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION

Posted	Transaction	Source	Department	Note	Debit	Credit	Balance
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4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	160.00		166,092.16
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4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	180.00		166,452.16
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post: Lipson	12,578.75		179,030.91
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	476.35		179,507.26
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	263.00		179,770.26
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	335.00		180,105.26
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	2,010.00		182,115.26
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	6,732.47		188,847.73
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	3,731.32		192,579.05
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	3,733.50		196,312.55
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	1,118.00		197,430.55
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	9,312.36		206,742.91
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	2,974.24		209,717.15
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	7,260.00		216,977.15
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	11,309.05		228,286.20
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	657.50		228,943.70
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	500.00		229,443.70
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	248.50		229,692.20
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	814.50		230,506.70
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	2,250.00		232,756.70
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	340.00		233,096.70
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	4,938.60		238,035.30
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	5,851.25		243,886.55
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	7,360.95		251,247.50
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	4,443.50		255,691.00
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	4,320.00		260,011.00
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	2,469.36		262,480.36
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	2,681.69		265,162.05
4/1/2016	4/1/2016	A/P	Operating	A/P Voucher Post:	391.00		265,553.05
4/8/2016	4/8/2016	A/P	Operating	A/P Voucher Post:	115.31		265,668.36
4/11/2016	4/11/2016	A/P	Operating	A/P Voucher Post: The	333.52		266,001.88
4/15/2016	4/15/2016	A/P	Operating	A/P Voucher Post: Lewis	10,000.00		276,001.88
4/1/2016	4/19/2016	A/P	Operating	A/P Voucher Post:	1,716.19		277,718.07
4/1/2016	4/19/2016	A/P	Operating	A/P Voucher Post:	5,847.50		283,565.57
4/1/2016	4/19/2016	A/P	Operating	A/P Voucher Post:	7.00		283,572.57
4/1/2016	4/25/2016	A/P	Operating	A/P Voucher Post:	584.76		284,157.33
5/1/2016	5/1/2016	A/P	Operating	A/P Voucher Post: Lewis	49,037.50		333,194.83
5/1/2016	5/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	40,000.00		373,194.83
5/6/2016	5/6/2016	A/P	Operating	A/P Voucher Post:	651.90		373,846.73
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post:	6,259.33		380,106.06
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post:	4,409.38		384,515.44
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post:	3,554.19		388,069.63
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post:	40.00		388,109.63
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	251.25		388,360.88
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	1,903.35		390,264.23
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	2,884.35		393,148.58
6/1/2016	6/1/2016	A/P	Operating	A/P Voucher Post: All	1,102.56		394,251.14
6/1/2016	6/8/2016	A/P	Operating	A/P Voucher Post:	4,402.80		398,653.94
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	7,458.25		406,112.19
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	5,814.03		411,926.22

GL Account Key 7815 Legal Fees

Period 1/1/2016 To 12/31/2016 11:59:00 PM

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION

Posted	Transaction	Source	Department	Note	Debit	Credit	Balance
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7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	6,178.31		424,193.02
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	787.50		424,980.52
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	4,412.22		429,392.74
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	159.50		429,552.24
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Lewis	5,000.00		434,552.24
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Lewis	3,198.00		437,750.24
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	4,842.30		442,592.54
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	2,740.50		445,333.04
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	11,716.00		457,049.04
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	483.94		457,532.98
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	5,532.47		463,065.45
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	327.50		463,392.95
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	794.50		464,187.45
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	10,010.74		474,198.19
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	830.95		475,029.14
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	4,210.15		479,239.29
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	6,281.32		485,520.61
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	720.96		486,241.57
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post:	471.25		486,712.82
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: CSR	800.42		487,513.24
7/1/2016	7/1/2016	A/P	Operating	A/P Voucher Post: Depo	199.67		487,712.91
7/5/2016	7/5/2016	A/P	Operating	A/P Voucher Post: The	13,528.07		501,240.98
7/8/2016	7/8/2016	A/P	Operating	A/P Voucher Post:	25.00		501,265.98
7/8/2016	7/8/2016	A/P	Operating	A/P Voucher Post:	5,911.00		507,176.98
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	776.00		507,952.98
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	1,514.50		509,467.48
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	1,890.00		511,357.48
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	110.00		511,467.48
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	2,075.00		513,542.48
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	16,088.85		529,631.33
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	56.25		529,687.58
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post: Lewis	10,000.00		539,687.58
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post: Lewis	5,037.97		544,725.55
8/1/2016	8/1/2016	A/P	Operating	A/P Voucher Post:	635.38		545,360.93
8/2/2016	8/2/2016	A/P	Operating	A/P Voucher Post:	140.00		545,500.93
8/2/2016	8/2/2016	A/P	Operating	A/P Voucher Post:	1,499.00		546,999.93
8/2/2016	8/2/2016	A/P	Operating	A/P Voucher Post:	2,248.00		549,247.93
8/8/2016	8/8/2016	A/P	Operating	A/P Voucher Post: The	6,475.62		555,723.55
8/10/2016	8/10/2016	A/P	Operating	A/P Voucher Post:	1,716.00		557,439.55
8/10/2016	8/10/2016	A/P	Operating	A/P Voucher Void:		11,716.00	545,723.55
8/23/2016	8/23/2016	G/L	Operating	Refund of Overpayment -		24.00	545,699.55
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post:	247.00		545,946.55
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post:	1,078.50		547,025.05
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	8,333.40		555,358.45
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	1,702.50		557,060.95
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	4,433.27		561,494.22
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	251.25		561,745.47
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	763.75		562,509.22
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	2,264.25		564,773.47
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	5,974.76		570,748.23
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	294.50		571,042.73
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	714.05		571,756.78

GL Account Key 7815 Legal Fees

Period 1/1/2016 To 12/31/2016 11:59:00 PM

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION

Posted	Transaction	Source	Department	Note	Debit	Credit	Balance
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	3,378.15		575,134.93
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	31.25		575,166.18
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Lewis	95,340.15		670,506.33
9/1/2016	9/1/2016	A/P	Operating	A/P Voucher Post: Lewis	5,000.00		675,506.33
9/6/2016	9/6/2016	A/P	Operating	A/P Voucher Post: The	6,413.19		681,919.52
9/14/2016	9/14/2016	A/P	Operating	A/P Voucher Post:	180.00		682,099.52
9/14/2016	9/14/2016	A/P	Operating	A/P Voucher Post:	1,361.86		683,461.38
9/22/2016	9/22/2016	A/P	Operating	A/P Voucher Post: Lewis	5,000.00		688,461.38
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post: Lipson	3,438.60		691,899.98
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	3,527.50		695,427.48
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	6,042.00		701,469.48
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	1,712.42		703,181.90
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	1,978.00		705,159.90
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	62.90		705,222.80
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	1,025.00		706,247.80
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post: Wolf,	511.25		706,759.05
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	2,140.50		708,899.55
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	305.18		709,204.73
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	178.43		709,383.16
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	1,571.25		710,954.41
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	47.00		711,001.41
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	7,115.00		718,116.41
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	70.50		718,186.91
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	507.50		718,694.41
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	2,316.49		721,010.90
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	6,693.00		727,703.90
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	7,752.75		735,456.65
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	2,512.12		737,968.77
10/1/2016	10/1/2016	A/P	Operating	A/P Voucher Post:	47.00		738,015.77
10/11/2016	10/11/2016	A/P	Operating	A/P Voucher Post: The	2,400.99		740,416.76
10/13/2016	10/13/2016	A/P	Operating	A/P Voucher Post:	7,749.43		748,166.19
10/14/2016	10/14/2016	A/P	Operating	A/P Voucher Post: Lewis	10,000.00		758,166.19
10/1/2016	10/31/2016	A/P	Operating	A/P Voucher Post:	3,182.69		761,348.88
10/1/2016	10/31/2016	A/P	Operating	A/P Voucher Post:	8,570.50		769,919.38
10/31/2016	10/31/2016	G/L	Operating	Deposit for Weitzman		223.00	769,696.38
11/10/2016	11/10/2016	A/P	Operating	A/P Voucher Post:	180.00		769,876.38
12/7/2016	12/7/2016	A/P	Operating	A/P Voucher Post:	14,624.44		784,500.82
12/14/2016	12/14/2016	A/P	Operating	A/P Voucher Post: Lewis	5,000.00		789,500.82
12/19/2016	12/19/2016	A/P	Operating	A/P Voucher Post: Law	250.00		789,750.82
12/31/2016	12/31/2016	G/L	Operating	Accrue Legal Fees	91,216.90		880,967.72
				Net Change: 880,967.72	892,930.72	11,963.00	880,967.72

Exhibit 3

Log in (/login/) Sign up (/choose_address/)

Discover your neighborhood

Over 168,000 neighborhoods across the country use Nextdoor

Street address Apt

Email address Find your neighborhood

Nextdoor is the private social network for your neighborhood.

Nextdoor is the best way to stay informed about what's going on in your neighborhood—whether it's finding a last-minute babysitter, planning a local event, or sharing safety tips. There are so many ways our neighbors can help us, we just need an easier way to connect with them.

Find your neighborhood (/choose_address/)

Useful

The easiest way to keep up with everything in your neighborhood.

Private

A secure environment where all neighbors are verified.

Trusted

A community built by you and your neighbors.

Get to know Nextdoor.

Don’t miss out on what’s happening in your community.

Find your neighborhood (/choose_address/)

Company

About (/about_us/)
Press (/press/)
Blog (https://blog.nextdoor.com)
Jobs (/jobs/)

Resources

Guidelines (/neighborhood_guidelines/#guidelines)
Privacy (/privacy/#privacy)
Safety (/about_safety/#safety)
Help (/help/)

Community

For cities (/city/)
Events (/events/calendar/)
Neighborhoods (/find-neighborhood/)
Public agencies (/agencies/)

Businesses

Add your business (/business/)
Advertise (https://ads.nextdoor.com)
Real estate ads (https://realestate.nextdoor.com)

(https://play.google.com/store/apps/details?id=com.nextdoor)

(https://itunes.apple.com/us/app/nextdoor/id640360962?ls=1&mt=8)

(https://www.facebook.com/nextdoor) (https://twitter.com/nextdoor)

Made by your neighbors in San Francisco.

Community Guidelines

Our mission is to provide a trusted platform where neighbors work together to build stronger, safer, happier communities, all over the world.

We want all neighbors to feel welcome, safe, and respected when using Nextdoor. For that reason, we've developed a set of Community Guidelines describing what behaviors are – and are not – allowed on Nextdoor. The crux of our Guidelines can be boiled down to one simple statement: **Everyone here is your neighbor. Please treat each other with respect.**

We rely on you, the neighbors who make up the Nextdoor community, to report content that violates these Guidelines. Violating the Community Guidelines has consequences, which may include removal of content, suspension of posting privileges, or even a permanent ban from Nextdoor. Because of the diversity of people in any neighborhood, please keep in mind that while something may be disagreeable to you, it may not violate our Community Guidelines.

Learn more about Nextdoor's moderation systems (https://help.nextdoor.com/customer/en/portal/articles/2909190-how-does-moderation-work-?b_id=98) for enforcing the Community Guidelines.

Be helpful, not hurtful

The heart and soul of Nextdoor are the helpful conversations that happen between neighbors. When conversations turn disagreeable, everyone on Nextdoor suffers. Our Guidelines prohibit posts and replies that discriminate against, attack, insult, shame, bully, or belittle others. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467402).

- Disagreements and conflict (https://help.nextdoor.com/customer/en/portal/articles/2467402#Disagreements)
- Public shaming (https://help.nextdoor.com/customer/en/portal/articles/2467402#shaming)
- Personal disputes and grievances (https://help.nextdoor.com/customer/en/portal/articles/2467402#Disputes)
- Discrimination and hate speech (https://help.nextdoor.com/customer/en/portal/articles/2467402#Discrimination)
- Crime and suspicious activity (https://help.nextdoor.com/customer/en/portal/articles/2467402#Crime)

Don't use Nextdoor as a soapbox

Nextdoor is a communication platform that allows neighbors to mobilize and get stuff done like never before. However, favorite causes that are pushed too hard, political campaigning, and personal views on controversial issues will inevitably rub one's neighbors the wrong way. We rely on our members to report those who are over-posting, campaigning, and posting or ranting about controversial, non-local issues. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467434).

- Ranting (https://help.nextdoor.com/customer/en/portal/articles/2467434#soapboxing)
- Over-posting (https://help.nextdoor.com/customer/en/portal/articles/2467434#overposting)
- Dominating or hijacking conversations (https://help.nextdoor.com/customer/en/portal/articles/2467434#hijacking)
- Controversial issues (https://help.nextdoor.com/customer/en/portal/articles/2467434#controversial)
- Politics and campaigning (https://help.nextdoor.com/customer/en/portal/articles/2467434#campaigning)

Promote local businesses and commerce the right way

On Nextdoor, we support local businesses and encourage neighbors to share helpful information about their favorite businesses and services. We also encourage neighbors to buy, sell, and give things away. Nextdoor is actively working on solutions for local businesses to participate in their Nextdoor neighborhood. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467454).

To find and claim your business page, click here (https://nextdoor.com/create-business).

- Promoting your business or offering services (https://help.nextdoor.com/customer/en/portal/articles/2467454#business)
- For Sale and Free (https://help.nextdoor.com/customer/en/portal/articles/2467454#classifieds)
- Fundraising (https://help.nextdoor.com/customer/en/portal/articles/2467454#fundraising)
- Conflicts of interest (https://help.nextdoor.com/customer/en/portal/articles/2467454#coi)

Use your true identity

Nextdoor is a network for you and the people who live in your local community. To that end, using your true identity and honestly representing yourself are key parts of being a Nextdoor member. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467471).

- Real names (https://help.nextdoor.com/customer/en/portal/articles/2467471#name)
- Your profile and photo (https://help.nextdoor.com/customer/en/portal/articles/2467471#profile)
- Joining as a couple (https://help.nextdoor.com/customer/en/portal/articles/2467471#couple)
- Business or service provider accounts (https://help.nextdoor.com/customer/en/portal/articles/2467471#business)
- Public agency accounts (https://help.nextdoor.com/customer/en/portal/articles/2467471#agency)

Keep it clean and legal

Keep all content and activity family-friendly and legal, and adhere to our rules about regulated goods and services. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467486).

- Illegal and regulated goods and services (https://help.nextdoor.com/customer/en/portal/articles/2467486#illegal)
- Violations of privacy (https://help.nextdoor.com/customer/en/portal/articles/2467486#privacy)
- Threats to the safety of others (https://help.nextdoor.com/customer/en/portal/articles/2467486#safety)
- Profanity (https://help.nextdoor.com/customer/en/portal/articles/2467486#profanity)
- Fraud and spam (https://help.nextdoor.com/customer/en/portal/articles/2467486#spam)

Additional policy resources

Member Agreement (https://nextdoor.com/member_agreement/)
Privacy Policy (https://nextdoor.com/privacy_policy/)
Content moderation and the role of Leads (https://help.nextdoor.com/customer/en/portal/articles/968839)

Helpful? Yes (https://help.nextdoor.com/customer/en/portal/articles/2467454/rate?rating=1) No (https://help.nextdoor.com/customer/en/portal/articles/2467454/rate?rating=0)

Last Updated: Dec 07, 2017 05:06PM PST

Not finding an answer?
Try searching again or contact us. (//help.nextdoor.com/customer/en/portal/emails/new)

Exhibit 4

From: Sara Gilliam <sgilliam@olympiacompanies.com>
Sent: Monday, July 31, 2017 2:48 PM
To: Michael Kosor
Cc: Rick D. Rexius; Sara Gilliam
Subject: RE: request for document complaint

Good afternoon Mr. Kosor,

The Southern Highlands Community Association (the "Association") Board of Directors (the "Board") reviewed your email dated July 7, 2017. The Board's response is below in red.

First- Find attached my formal complaint under NRS 116.30187 requesting action on the next SHCA Executive Board agenda.

As mentioned to you in the brief response of Sara Gilliam on July 20, 2017, the agenda was printed on July 5th and postmarked on July 6th prior to receipt of your e-mail. The matter will be placed on the next agenda. As to the issues addressed therein, the Association removed the document retention policy from the agenda. At the meeting in May, the matter was tabled and it was not, at that time, before the Board for final approval. The Board determined that the governing statutes under Chapter 116 provided adequate protection of the Association's records and there was no need for a specific policy. Document requests will be made available to the membership once a document is complete, under consideration for final approval, and has been placed on an agenda.

Second- I again request you provide for my review the document(s) granting authority to OMG to make payments to Lewis & Roca, approximately $60K/year for lobby efforts, since 2010?

I reviewed the Lewis & Roca engagement letter approved in May 2010 you made available in response to my initial request (see below). The document notes a single small retainer having been paid in 2010. My examination of subsequent open session Board minutes failed to reveal any agenda and/or discussion in open session by the BOD since the initial execution involving Lewis & Roca lobbyist activities (the government affairs action of the firm separate and clearly distinct from the its litigation efforts on behalf of the HOA). I also failed to find any action by the BOD approving any contract or additional payments of the approximately $60K/year payment made to Lewis & Roca for lobby efforts since 2010. Again I ask you, ***provide for my review the document(s) granting authority to OMG to make payments to Lewis & Roca approximately $60K/year for lobby efforts since 2010.*** *Note - the "direction/policy provided by the BOD" to the lobbyist I requested (see email) was not provided or otherwise addressed.*

For purpose of a response an assumption is made that OMG is meant to be OMS. If otherwise, please let us know and an attempt to adjust the response will be made.

As to the issue of Lewis and Roca payments, there is no document, as you suggest, that grants "authority to OMG [sic]" to make payments to Lewis and Roca because OMS does not make payments to Lewis and Roca. The monthly retainer check is produced as part of management's AP duties, and then it is provided to the designated Board members for review and signature. Payment to Lewis and Roca are made directly from the Association.

Above, you make note, once again, of the "direction given to the lobbyist by the Board of Directors." As explained to you in open session by the Board at the March 16, 2017 meeting, direction was given on suggested or pending legislation (based on legislative year) as it would affect matters such as collection of delinquent assessments. During each one of the sessions from 2010 to present, bills have been presented or suggested that

affect or would affect the Association's pending legal matters. The lobbyist, a Nevada Licensed attorney, was given direction based on the Association's legal strategy to protect its right to collect assessments.

On June 12, 2017, you visited the Association offices to review the Engagement Agreements with Lewis and Roca. If you would like to review those agreements again and/or review the financial reports associated with payments made to Lewis and Roca by the Association, those will be made available to you upon written request.

Third- I have reviewed the June 6, 2017 letter of legal disclosures (attached) recently provided to me by you. Information I have obtained indicates potentially as many as 4 US District Court and 8 US Bankruptcy Adversary Proceeding Cases pending against SHCA not disclosed in this letter.

for example:

2:16-cv-02653-APG-NJK Ocwen Loan Servicing, LLC v. Corpolo Avenue Trust et al filed 11/18/16*

To date, the Association has not been served in this matter, and therefore, is not an active party. Counsel, Alverson Taylor, is investigating why the docket indicates that the Association accepted service. Upon resolution of that matter and receipt of the complaint, the case will be added to the letter.

2:17-cv-00489-JCM-CWH Christiana Trust v. Southern Highlands Community Association et al filed 02/16/17

This matter is listed on your attached letter under Foreclosure Actions, First Column, second from the bottom.

2:17-cv-01479-APG-VCF HSBC Bank USA, National Association v. SFR Investments Pool 1, LLC et al filed 05/24/17

As of the date of the letter, the Association had not been served. The docket confirms this information. The Association was finally served on Thursday, July 13, 2017. The case will appear on the next update.

17-01017-abl ALESSI & KOENIG, LLC v. STORM et al Lead BK: 16-16593-abl ALESSI & KOENIG, LLC 03/06/17 Cross Defendant*

This matter originated as case number A-14-699883-C. The Association was dismissed with prejudice from this case in August of 2014 and was no longer a defendant at the time it moved to bankruptcy court. Therefore, neither case numbers are listed. The court used the old caption when the matter was removed, which may have caused you confusion. The Association should not be a party. Our counsel is working to have our name removed.

17-01032-abl CKVC INVESTMENTS LLC v. BOBE et al Lead BK: 16-16593-abl ALESSI & KOENIG, LLC 03/08/17 Cross Defendant*

This matter is listed under Quiet Title Actions Row 4 as A-15-718097-C. The number that you reference is the Alessi and Koenig assigned bankruptcy number, which was given by the BK court at the time the matter was moved. This is the same case as listed on the disclosure.

17-01042-abl HOMEWARD RESIDENTIAL, INC. v. ALESSI & KOENIG, LLC et al Lead BK: 16-16593-abl ALESSI & KOENIG, LLC 03/08/17 Defendant, Formerly Nevada 8th Dist Ct Case No. A-16-744810-C (Removed to BK Ct 03/08/17)*

This matter is listed under Foreclosure Actions; first column, row 9 as A-16-744810-C. It is stayed pending the A&K bk. This case is under consideration for remand back to the District Court by the bankruptcy court. If remanded, it will keep the same case number as listed on our letter. If the remand is denied, it will be updated with the bankruptcy court's case number.

Please confirm the Legal disclosure statement letter you previously provided me (and new buyers in SCHA) is accurate.

An oversight was recently brought to the Association's attention. This matter was assigned Case No. A-12-670423-C. The Association was served in December of 2016 and immediately filed a motion to dismiss. The

matter was stayed that same month. This case is under consideration for remand back to the District Court by the bankruptcy court. If remanded, it will keep the same case number as listed on our letter. If the remand is denied, it will be updated with the bankruptcy court's case number. It appears this matter was inadvertently missed and will be added on the next update. There has been no action on this matter beyond the filing of the motion to dismiss, as it was stayed.

Fourth- Reference my Dec 5 2016 email (attached). You responded to me quickly (thank you) on Dec 8th (attached below) but failed to respond to my request to review documents (see 6 items listed in the email). I would receive a letter dated Dec 9, 2016 from Rick Rexius that addressed items #3-6. Please respond to #1 & 2- who is SCHA General Counsel paid $88K in 2016 and please make available to me the payment formula, expense allocation, contract, etc. used in establishing the $88K.

These questions and matters have been previously addressed. Specifically, the letter of December 9, 2016, answered issues regarding the Association's budgeting practices. Please refrain from readdressing matters previously addressed.

The Association did not spend $88k in General Counsel services in 2016. The sum you refer to is an annualized amount based on payments to-date at the time the 2017 budget was prepared. The Association utilizes the retainer services of several law firms. The purpose is to provide legal counsel and advice for varying legal matters from time-to-time, other than litigation. There is not one firm as suggested by the question. Fees are billed on matters in a "general" heading by each firm when the work does not relate to a specific case. In 2016, numerous firms billed the Association for legal counsel.

It's unclear what you mean when you ask for a "payment formula or expense allocation." Please explain so that the Board can respond. The Association pays the amounts billed for services and the invoices are tracked based on the firm's designation of the work as either "general" or "case specific." The retainer agreements are available for review at the office during regular business hours.

As to your December 5, 2016 request for documents, several emails were exchanged between you and Sara Gilliam in December and January. On January 30, 2017, you were asked if you'd like to review the financials (and asked that you provide the months in which you'd like to review), which was believed would satisfy the request. To date, you have not responded to that request.

While the Board appreciates your activism regarding the association business, you are placing inordinate demands on our resources. Please respect the fact that personnel together with other resources are being taxed in an effort to provide you the documents and information you have been seeking. We ask that you be very specific in the future regarding your requests.

The Board of Directors sincerely hopes the information provided here satisfactorily responds to your inquiries. If not, please advise.

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

Olympia Management SERVICES

From: Sara Gilliam
Sent: Tuesday, July 18, 2017 4:41 PM
To: 'Michael Kosor' <mkosor@aol.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Subject: RE: request for document complaint

Good afternoon Mr. Kosor,

The agenda was printed on July 5th and postmarked on July 6th prior to receipt of your e-mail. I will place the requested matter on the next agenda. As for all of your other comments, I will present them to the Board of Directors for discussion at the meeting on Thursday.

Thank you,

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Friday, July 07, 2017 2:36 PM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Subject: Re: request for document complaint

Sara

First- Find attached my formal complaint under NRS 116.30187 requesting action on the next SHCA Executive Board agenda.

Second- I again request you provide for my review the document(s) granting authority to OMG to make payments to Lewis & Roca, approximately $60K/year for lobby efforts, since 2010?

I reviewed the Lewis & Roca engagement letter approved in May 2010 you made available in response to my initial request (see below). The document notes a single small retainer having been paid in 2010. My examination of subsequent open session Board minutes failed to reveal any agenda and/or discussion in open session by the BOD since the initial execution involving Lewis & Roca lobbyist activities (the government affairs action of the firm separate and clearly distinct from the its litigation efforts on behalf of the HOA). I also failed to find any action by the BOD approving any contract or additional payments of the approximately $60K/year payment made to Lewis & Roca for lobby efforts since 2010. Again I ask you, **provide for my review the document(s) granting authority to OMG to make payments**

to Lewis & Roca approximately $60K/year for lobby efforts since 2010. Note - the "direction/policy provided by the BOD" to the lobbyist I requested (see email) was not provided or otherwise addressed.

Third- I have reviewed the June 6, 2017 letter of legal disclosures (attached) recently provided to me by you. Information I have obtained indicates potentially as many as 4 US District Court and 8 US Bankruptcy Adversary Proceeding Cases pending against SHCA not disclosed in this letter.

for example:
2:16-cv-02653-APG-NJK* Ocwen Loan Servicing, LLC v. Corpolo Avenue Trust et al filed 11/18/16
2:17-cv-00489-JCM-CWH Christiana Trust v. Southern Highlands Community Association et al filed 02/16/17
2:17-cv-01479-APG-VCF HSBC Bank USA, National Association v. SFR Investments Pool 1, LLC et al filed 05/24/17

17-01017-abl* ALESSI & KOENIG, LLC v. STORM et al Lead BK: 16-16593-abl ALESSI & KOENIG, LLC 03/06/17 Cross Defendant
17-01032-abl* CKVC INVESTMENTS LLC v. BOBE et al Lead BK: 16-16593-abl ALESSI & KOENIG, LLC 03/08/17 Cross Defendant
17-01042-abl* HOMEWARD RESIDENTIAL, INC. v. ALESSI & KOENIG, LLC et al Lead BK: 16-16593-abl ALESSI & KOENIG, LLC 03/08/17 Defendant, Formerly Nevada 8th Dist Ct Case No. A-16-744810-C (Removed to BK Ct 03/08/17)

Please confirm the Legal disclosure statement letter you previously provided me (and new buyers in SCHA) is accurate.

Fourth- Reference my Dec 5 2016 email (attached). You responded to me quickly (thank you) on Dec 8th (attached below) but failed to respond to my request to review documents (see 6 items listed in the email). I would receive a letter dated Dec 9, 2016 from Rick Rexius that addressed items #3-6. Please respond to #1 & 2- who is SCHA General Counsel paid $88K in 2016 and please make available to me the payment formula, expense allocation, contract, etc. used in establishing the $88K.

Thank you

Mike Kosor

CCd: Rick Rexius, President SCHA BOD

-----Original Message-----
From: Michael Kosor <mkosor@aol.com>
To: sgilliam <sgilliam@olympiacompanies.com>
Cc: rrexius <rrexius@olympiacompanies.com>
Sent: Mon, Jun 12, 2017 11:49 am
Subject: Re: request for document review

Sara

Confused. A retention policy (draft) was on the agenda- twice. In your response to my March 13th email you stated "This document is in draft form and the Board will review at the meeting Thursday."
You later responded to my objections to your refusal to release the document stating "As previously discussed, the Board does not release documents in draft form." - a policy we know is defective.

Now no document exist? How is that?
Note- The status of the document "...for board review at this time" is irrelevant to my request for document(s) on the agenda.

I continue my request for the draft document place on the agenda.

Mike

-----Original Message-----
From: Sara Gilliam <sgilliam@olympiacompanies.com>
To: Michael Kosor <mkosor@aol.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Sent: Mon, Jun 12, 2017 11:27 am
Subject: RE: request for document review

There's not a draft retention policy for board review at this time. The contract is at the front for your review.

Thank you,

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Monday, June 12, 2017 11:24 AM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Subject: Re: request for document review

Sara

Ok- I will head over shortly.

Since the front desk will ask me and to be clear, I would like to see the draft retention policy placed on the agenda. I also wish to see the May 2010 lobbyist engagement contract you reference with any other actions by the BOD related to the lobbyist effort since.

Thank you

Mike

-----Original Message-----
From: Sara Gilliam <sgilliam@olympiacompanies.com>
To: Michael Kosor <mkosor@aol.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>

Sent: Mon, Jun 12, 2017 10:10 am
Subject: RE: request for document review

The Document Retention Policy was discussed at the meeting in March. At that meeting, the Board in attendance moved to table the item due to the fact that Robin Nedza, who initiated the request, was absent. Robin later asked to further discuss the document at the meeting on May 31st. As you are aware, due to time constraints at the meeting on the 31st, the item was tabled.

Lewis & Roca currently represents SHCA on the SFR Investments Pool 1, LLC v. US Bank matter.

The Lewis & Roca engagement letters are available for your review. Our offices are open Monday – Thursday from 7:30 am – 5:30 pm and Friday from 8 am – 5 pm.

Thank you,

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Tuesday, May 30, 2017 7:21 PM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Subject: Re: request for document review

Sara

The Retention Policy is old business. In your prior response to my request for documents (Mar 13th) you stated "this document is in draft form and the Board will review at the meeting Tuesday". Per my recall, the agenda item was introduced but would be deferred (i.e. old business on this agenda) because at least one BOD member had not seen the document and wanted time to review it. It is this document I requested- the one you now want we to understand will not be provided at tomorrow's meeting nor an alternate, despite being an agenda old business item?

On the lobbyist direction, I will assume your description of how the lobbyist was first contracted is accurate. I requested direction/policy provided by the BOD. That was not provided. In addition, your description of Garret's instructions from the BOD differs from that previously provided. (see your Mar email response)

If in fact the contract is the only document containing the direction to the firm on community interests, then I should be provided access to the contract. I am available tomorrow morning prior to the regular meeting to review. Please let me know when I can come in the office to read it.

It is not clear to me from your description what role Lewis and Roca played/is playing beyond lobby efforts. Are they engaged in litigation on behalf of SHCA? If so, what cases? One or two, if multiple, would be sufficient.

Mike

-----Original Message-----
From: Sara Gilliam <sgilliam@olympiacompanies.com>
To: Michael Kosor <mkosor@aol.com>

Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Sent: Tue, May 30, 2017 5:06 pm
Subject: RE: request for document review

Good afternoon Mr. Kosor,

In response to your email below, the SHCA Board will not a have a Document Retention Policy to review at the meeting tomorrow (May 31st). This agenda item will be for discussion purposes only.

The legal and government affairs retainer for Lewis and Roca was approved at an open meeting on May 27, 2010. The motion was made by the Owner representative Phil Jaynes and seconded by the other owner representative. Lewis and Roca was hired after two meetings worth of open discussion on the need to address legislative bills regarding pending and proposed litigation. As the litigation filed against the Association at that time is still active, the services have been consistently utilized. At each session since 2010, the firm of Lewis and Roca has met with the executive board to review pending litigation and has, thereafter, worked to address legislative issues relevant to that litigation.

The minutes for these meetings referenced above, as well as any other Open Session meetings, are available for your review in our offices during business hours.

Please let me know if you have any additional questions.

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Sunday, May 21, 2017 10:28 AM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Cc: Rick D. Rexius <rrexius@olympiacompanies.com>
Subject: Re: request for document review

Sarah

Ref. my question 3 below, repeated again here among others- please make the following available to me:

1) The "Document Retention Policy" on the May 31st SHCA Board meeting agenda.

As I have previously argued, an owner should, while Nevada statute directs must be given access upon request, to any and all documents scheduled as a Board agenda item. Alternatively, it is impossible for owners to provide constructive input. I would hope a desire for transparency be sufficient justification, Nonetheless, any policy or action like the one you note wherein the "...Board does not release draft documents in draft form" violates Nevada statutes.

I am sure you are aware NRS 116.31775 provides that my request for the draft Retention Policy, per my email below (and even if said document is a draft), once placed on an agenda (see statute language provided here) be made available to me (arguably immediately at your office) or via copy provided within 21 days. The provision allowing the association to refuse the release of draft documents does not apply once that document is placed on the agenda- as in March.

4. The provisions of subsection 1 do not apply to:

(a) The personnel records of the employees of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees;

(b) The records of the association relating to another unit's owner, including, without limitation, any architectural plan or specification submitted by a unit's owner to the association during an approval process required by the governing documents, except for those records described in subsection 5; and

(c) Any document, including, without limitation, minutes of an executive board meeting, a reserve study and a budget, if the document:

(1) Is in the process of being developed for final consideration by the executive board; and

(2) Has not been placed on an agenda for final approval by the executive board.

2) I also wish to once again notice the SHCA Board that Nevada statues significantly restrict the items the Board can consider and/or even discuss off the record in executive session.

NRS 116.31085

3. An executive board may meet in executive session only to:

(a) Consult with the attorney for the association on matters relating to proposed or pending litigation if the contents of the discussion would otherwise be governed by the privilege set forth in NRS 49.035 to 49.115, inclusive.

(b) Discuss the character, alleged misconduct, professional competence, or physical or mental health of a community manager or an employee of the association.

(c) Except as otherwise provided in subsection 4, discuss a violation of the governing documents, including, without limitation, the failure to pay an assessment.

(d) Discuss the alleged failure of a unit's owner to adhere to a schedule required pursuant to NRS 116.310305 if the alleged failure may subject the unit's owner to a construction penalty.

I have very good reason to believe the Board may not be fully aware of and/or compliant with this provision.

3) Finally, I ask the Association make available to me for examination at your office, the direction/policy provided the Association's contracted lobbyist for the current legislative session and the 2015 session. It was noted by a Board member in the last meeting in response to the above request made by me during the March Board meeting comment section, that direction and policy related to the association's contracted lobbyist was conducted in Executive session and was "privileged". First, such discussion(s) in executive session do not meet the above criteria for executive session discussion. Second, refusing to provide said Board direction to the lobbyist, on the grounds it is privileged, apparently based merely on the irrelevant fact the lobbyist is a licensed attorney, fails on a number of points.

4) Thank you for removing the long standing open agenda item Common Area Ownership.

Mike Kosor

CCd- Rick Rexius, SCHA Board Chairman

-----Original Message-----
From: Sara Gilliam <sgilliam@olympiacompanies.com>
To: Michael Kosor <mkosor@aol.com>
Sent: Wed, Mar 15, 2017 2:54 pm
Subject: RE: request for document review

Good afternoon Mike,
My responses are below in green.

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Monday, March 13, 2017 3:51 PM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Subject: Re: request for document review

Sara

Please see my response in blue.

Mike

-----Original Message-----
From: Sara Gilliam <sgilliam@olympiacompanies.com>
To: mkosor <mkosor@aol.com>
Sent: Mon, Mar 13, 2017 2:37 pm
Subject: RE: request for document review

Hi Mike,

My comments are below in red:

I write asking for the following documents related to the upcoming 3/16/17 SCHA agenda:
1- the Master Acknowledgement Agreement approved by the BOD last year.- This is the same document as previously reviewed, and it's my understanding that you obtained a copy of this document from the County. Your copy may well be the same as the one I have but to preclude our guessing I asked for a copy of that approved. I ask that you please direct your questions to the Board tomorrow morning. I believe Rick will address the status of this document at that time.
2- list of Advisory Committee members- The Board is in the process of selecting the Committee members. Yes, for many months now. Why is the item on the agenda? I believe the Board will finalize the member selections and consider the committee charter at the meeting tomorrow.
3- the document retention policy- At a meeting last fall, Robin Nedza requested the Board create a document retention policy. This document is in draft form and the Board will review at the meeting Thursday. What I expected and why I asked for the policy under consideration so I may comment intelligently. As I have noted previously, if you do not release the agenda item under consideration, how is an owner to provide comment? As previously discussed, the Board does not release documents in draft form. I ask that you please direct your questions to the Board tomorrow morning.
4- the subject(s) of the Common Area Ownership line item- There are no items for Board consideration at this time. Ok, as noted previously, the item need not appear on the agenda. "Place holders" are not appropriate

I will again ask for the project SHCA engaged in that required the issuance of a performance bond- the $3,000 entry in last years financials. As mentioned in my January 30th email, there are 2 performance bonds ($1,500 premium per bond). These are for the Maintenance Agreement at SH and the public drainage easements. You told me that before. I wish to know why an agreement requires a performance bond? Maintenance agreement with whom and for what? "Public drainage easements" sounds like a construction project. What construction- the storage yard? My understanding is that these are not for specific construction projects, but are required by Clark County.

I also request how much SCHA is paying Gordon Garret for lobby efforts. I'd also like to know what the BOD has directed he focus his efforts on (support or oppose) as the subject has never been addressed in BOD deliberations. SHCA pays Lewis Roca a flat rate of $5,000 a month. Garret has been instructed to monitor all matters related to NRS 116 with a particular focus on protecting associations from the pending litigation regarding the collection of assessments. SHCA pays $60K/yr? You did not list the objective of the lobby effort nor when it was addressed by the BOD. Again, Garret has been instructed to monitor all matters related to NRS 116 with a particular focus on protecting associations from the pending litigation regarding the collection of assessments. If you have further questions, I ask that you please direct them to the Board tomorrow morning.

Thank you,
Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager
11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Thursday, March 09, 2017 12:33 PM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Subject: Fwd: request for document review

Sara

I write asking for the following documents related to the upcoming 3/16/17 SCHA agenda:
1- the Master Acknowledgement Agreement approved by the BOD last year.
2- list of Advisory Committee members
3- the document retention policy
4- the subject(s) of the Common Area Ownership line item

I will again ask for the project SHCA engaged in that required the issuance of a performance bond- the $3,000 entry in last years financials.

I also request how much SCHA is paying Gordon Garret for lobby efforts. I'd also like to know what the BOD has directed he focus his efforts on (support or oppose) as the subject has never been addressed in BOD deliberations.

As always- thank you

Mike Kosor

-----Original Message-----
From: Sara Gilliam <sgilliam@olympiacompanies.com>
To: Michael Kosor <mkosor@aol.com>
Sent: Thu, Dec 8, 2016 2:14 pm
Subject: RE: request for document review

Hi Mike,
I had a very nice vacation, thank you. With the holiday and unfortunately, we now have several board members sick, there has been a delay in getting the response to your letter out. I'm hopeful to get this response letter to you early next week. As for the documents you are requesting, we will review the request and I'll put the items on a disc. I will let you know when the disc is available for you to pick up.

Regarding the acknowledgement agreement, the document is with Rick Rexius for review. As you know, Rick was not at the past few board meetings and has asked to review the document. Therefore, I don't have a signed document yet by the Board. As for the legal opinion on this matter, the document is an attorney/client privileged document, and not for distribution to members of the association.

Thank you,

Sara Gilliam, CMCA, AMS
Vice President of Operations | Supervising Community Manager

11411 Southern Highlands Parkway, Suite 100
Las Vegas, Nevada 89141
702.361.6640 Office
www.olympiamanagementservices.com

OMS offices will be closed on Monday, December 26th and will reopen on Tuesday, January 3rd. OMS will only be assisting Residents that need to make payments or purchase transponders during this time. Happy Holidays.

From: Michael Kosor [mailto:mkosor@aol.com]
Sent: Monday, December 05, 2016 10:15 PM
To: Sara Gilliam <sgilliam@olympiacompanies.com>
Subject: request for document review

Sara

I hope your time off was enjoyable.

Recall, I have asked previously for a copy of the executed Acknowledgment Agreement and/or the document number of the recorded document. Are you able to provide either now?

How about the associated legal opinion obtained by the BOD also discussed? Will the BOD authorize its release? I recognize release is not required by statute however, approval to so doing would aid in showing BOD transparency on this matter- and vice versa.

Recall I provided two letters (attached here for your convenience) to the BOD asking they respond and/or make them agenda items at the annual meeting. Unfortunately I was ignored.

Thus, I now request here the following documents be made available for my inspection at your office as soon as reasonable:

1- The identification of the legal counsel for which expenses, as shown in the financials under General Counsel Expense, have been accrued.
2- Ledger entries/supporting invoices outlining expenses with the allocation formula (as I assume the GC is employed/contracted by OMS, not SHCA) used in constructing the General Counsel Expense category number (shown YTD 2106 Annualized as $88,573)
3- Documents used to establish numbers used in the Litigation Expense category (shown YTD 2016 Annualized as $1,241,973).
4- Documents used to establish numbers used in the Performance Bond- Parks expense category (shown YTD 2106 Annualized as $3,000).
5- Documents used to establish numbers used in the Bad Debt Expense category (shown YTD 2016 Annualized as $679,008). Note GL as of 9/30/16 shows YTD as $1,041,504 so I a am looking to understand the budget annualized number.
6- The 2106 audited financials (wiht footnotes, disclosures, etc.) and auditor report

Once again, I wish the BOD/Treasurer had addressed the above the other questions I and other owners asked to be addresses at the annual meeting nor addressed during BOD executive meeting. Since that was not accomplished I am left with this approach.

As always, thank you in in advance for your assistance.

Mike Kosor
12070 Whitehills St
Las Vegeas, NV 89141

Exhibit 5

DECLARATION OF NATHANAEL RULIS

I, Nathanael Rulis, state and affirm as follows:

1. I am an associate in the law firm of Kemp, Jones & Coulthard, LLP ("KJC"), over 18 years of age, competent to testify to the matters set forth herein, and licensed to practice law in the State of Nevada.

2. KJC serves as counsel of record for Plaintiffs in the matter entitled *Olympia Companies, LLC v. Michael Kosor, Jr.* (Case No. A-17-765257-C).

3. I make this Declaration in support of Plaintiffs' Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660.

4. Along with others in my office, I reviewed all of KJC's attorney and paralegal time entries from January 29, 2018 to February 15, 2018, for purposes of identifying all billable time spent on tasks related to opposing Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. I did not include any of KJC's time related to tasks on other aspects of this case.

5. KJC spent a total of 50.7 attorney hours on efforts directly related to opposing Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. In particular, responding to this motion required work by the following KJC lawyers:

Timekeeper	Position	Avg. Rate	Hours	Total Fees
Randall Jones	Partner	$650	0.2	$135.00
Nathanael Rulis	Associate	$350	18.4	$6,440.00
Cara Brumfield	Associate	$225	32.1	$7,222.50
Totals	**n/a**	**n/a**	**50.7**	**$13,797.50**

6. KJC also expended approximately 6 additional hours, representing a total of approximately $1,725.00 in time on February 16, 2018, however that time has not yet been calculated or added to the above totals. KJC also anticipates incurring additional time for preparing

for and attending the hearing on Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. KJC can provide an updated accounting of attorney time at a later date.

7. KJC's attorney's fees of $13,797.50 reflect my firm's normal rates charged in other similar hourly actions. KJC has ensured that the time spent on this case was necessary and not duplicative of work done or being done by others. KJC has billed or, in the case of time incurred in February 2018, will bill this entire amount to Plaintiffs.

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

Dated this 16th day of February, 2018.

NATHANAEL RULIS, ESQ.

J. Randall Jones, Esq. (#1927)
jrj@kempjones.com
Nathanael R. Rulis, Esq. (#11259)
n.rulis@kempjones.com
Cara D. Brumfield, Esq., (#14175)
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KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Telephone: (702) 385-6000
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **DECLARATION OF ANGELA ROCK, ESQ. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Hearing Date: March 5, 2018 Hearing Time: 9:30 a.m.

Plaintiffs, by and through their attorneys of record, hereby the Declaration of Angela Rock, Esq. in Support of their Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.600. Ms. Rock's declaration is attached hereto as an exhibit.

Dated this 20th day of February 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis
J. RANDALL JONES, ESQ. (#1927)
NATHANAEL R. RULIS, ESQ. (#11259)
CARA D. BRUMFIELD, ESQ. (#14175)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorneys for Plaintiff

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2018, I served a true and correct copy of the foregoing **DECLARATION OF ANGELA ROCK, ESQ. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/Alison Augustine
An Employee of KEMP, JONES & COULTHARD, LLP

KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Tel. (702) 385-6000 • Fax: (702) 385-6001
kjc@kempjones.com

DECLARATION OF ANGELA ROCK

1. I, ANGELA ROCK, am an adult resident of Clark County, Nevada, over 18 years of age, and competent to testify to these matters. I am currently President of Olympia Management Services and counsel for Olympia Companies.

2. I make this Declaration in support of Plaintiffs' Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 in the matter entitled *Olympia Companies, LLC v. Michael Kosor, Jr.* (Case No. A-17-765257-C).

3. Michael Kosor, Jr. is a homeowner who resides in the Christopher Collection neighborhood within the Southern Highlands community ("Southern Highlands") in Clark County, Nevada. Mr. Kosor is also a member of the Christopher Collection ("CCA") HOA Board.

4. My employer, Olympia Companies ("Olympia") is the developer of the Southern Highlands community.

5. Beginning in approximately September 2015, Mr. Kosor began attending Southern Highlands Community Association ("SHCA) homeowners' association meetings. At each of these meetings, Mr. Kosor would stand to address the group of directors and homeowners, beginning with explaining his military background as a retired Air Force Colonel and "combat tested fighter pilot". Mr. Kosor would then recount all of his concerns with SHCA.

6. When other community members attempted to express viewpoints that differed from those of Mr. Kosor or otherwise criticized his behavior, Mr. Kosor would become argumentative and dismissive. Some of the homeowners who had regularly attended SHCA meetings for several years have stated that they were uncomfortable around Mr. Kosor.

7. On or about December 18, 2015, an employee of Olympia notified me of several comments Mr. Kosor made at the December 17, 2015 CCA board meeting, including statements accusing Olympia and/or Mr. Goett of meeting with County Commissioners in a "dark room" and of Olympia "lining its pockets" to the detriment of Southern Highlands homeowners. I subsequently obtained an audio recording of the meeting and listened to Mr. Kosor's comments myself. This was not the only time that Mr. Kosor made this sort of statement. At an SHCA meeting in late 2016, Mr. Kosor was overheard telling other homeowners that Olympia pays for "back room" deals with politicians.

8. In the summer of 2016, the SHCA board generated a proposed budget for 2017 based on financial statements received through July 31, 2016. The resulting budget was ratified by the board and was attached as Exhibit F to Mr. Kosor's Motion. At the time the 2017 budget was generated, the only litigation expenses that had been posted were through May 2016, for a total of $517,488.85. In order to calculate the anticipated litigation expenses for the year, the board annualized that number by dividing the posted number by the number of months ($517,488.85/5

= $103,497.77) and then multiplied that number by twelve in order to estimate what the expenses would be for the entire year ($103,497.77 x 12 = $1,241,973.24). In truth, the actual total spent on legal expenses in 2016 only amounted to $880,967.72, as reflected in the true and correct copy of the GL Ledger Summary, which is attached as **Exhibit 2** to Plaintiffs' Opposition.

9. On more than one occasion, Mr. Kosor has inquired about the 2016 legal expenses and it has been explained to him by Olympia employees and the SHCA Board that Southern Highlands did not incur $1.4 million in legal expenses during the 2016 calendar year, that the $1,241,973 included as part of the 2017 budget was an "annualized" number, that the actual legal expenses for 2016 were far less than the annualized number, and the reasons for those expenses. *See, e.g.*, July 31, 2017 Email from Sara Gilliam (who is the Vice President of Operations and Supervising Community Manager for Olympia Management Services) to Mr. Kosor explaining that the litigation expenses included as part of the 2017 budget were "annualized amount[s] based on payments to-date at the time the 2017 budget was prepared," a true and correct copy of which is attached as **Exhibit 4** to Plaintiffs' Opposition. It appears Mr. Kosor simply does not want to accept the truth about the 2016 legal expenses.

10. On or about October 14, 2016, Mr. Kosor submitted his application for a nomination to join the SHCA board of directors. Mr. Kosor did not win a seat on the board.

11. On or about September 6, 2017, Mr. Kosor again submitted a nomination form for a seat on the SHCA board of directors. Mr. Kosor's nomination form contained several statements which concerned Olympia.

12. Rather than take immediate legal action, the Board chose to postpone the election and seek the advice of the Nevada Real Estate Division ("NRED") on November 30, 2017.

13. On or about September 11, 2017, an employee of Olympia Companies downloaded and saved a copy of Mr. Kosor's post on the website Nextdoor.com, a true and correct copy of which is attached as **Exhibit 1** to Plaintiffs' Opposition. The employee provided me with a copy of Mr. Kosor's post after having read it. I also read Mr. Kosor's post and was immediately concerned about the defamatory statements contained therein, including the assertion that Olympia obtained a "lucrative agreement with the County".

14. On or about November 16, 2017, Mr. Kosor launched a website under his name which contained numerous negative statements about Olympia, the SHCA Board, and Olympia staff, including myself. The website was promoted on various social media platforms, including Facebook, Twitter, and Nextdoor. I first learned about Mr. Kosor's website on or about November 16, 2017, when an Olympia employee notified me of the website.

15. On or about December 19, 2017, a homeowner from Southern Highlands provided me with a copy of a postcard they received from Mr. Kosor which directed the homeowner to visit Mr. Kosor's website and "read what the SHCA Board does not want you to know".

16. On or about November 17, 2017, an employee from Olympia showed me a copy of the pamphlet and accompanying letter Mr. Kosor mailed to homeowners as part of his efforts to run for the SHCA board. As with Mr. Kosor's website, I was alarmed at the numerous negative statements about Olympia and the SHCA Board.

17. The SHCA board election was conducted on or about December 28, 2017. Mr. Kosor did not win a seat on the board.

18. To my knowledge, there have never been any improper "deals" or "agreements", including but not limited to any sort of "cost-shifting" arrangement, between Olympia and the County, Clark County Commissioners, or any other government official, nor has there ever been a situation where representatives of Olympia spoke with government officials in a "dark room" in order to influence their decision-making processes.

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

Dated this 20th day of February, 2018.

ANGELA ROCK, ESQ.

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DISCTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada Resident; DOES I-X, inclusive, Defendants.	CASE NO. A-17-765257-C DEPT. NO. XII DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 41.600 DATE: March 5, 2018 TIME: 9:30 a.m.

COMES NOW, Defendant, MICHAEL KOSOR, JR., by and through his attorneys of record, Raymond R. Gates, Esq., and Robert B. Smith, Esq., of the law firm of LAURIA TOKUNAGA GATES & LINN, and hereby file Defendant, Michael Kosor's Reply to Plaintiff's Opposition to Defendants Motion to Dismiss Pursuant to NRS 41.660.

This Reply is supported by all pleadings and papers on file in this matter, the Memorandum of Points and Authorities submitted herewith, and any additional evidence this Court receives at the hearing of the Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Legal Argument

A. KOSOR'S STATEMENTS FALL UNDER THE PROTECTIONS OF NEVADA'S ANTI-SLAPP STATUTE, AS THEY ARE GOOD FAITH COMMUNICATIONS MADE IN DIRECT CONNECTION WITH AN ISSUE OF PUBLIC CONCERN

Pursuant to NRS 41.660(3)(a), KOSOR, must make a showing by a preponderance of the evidence that the claim is based upon a Good Faith Communication, in furtherance of a right to petition or the right to free speech, in a direct connection with an issue of public concern. Good Faith Communications has been defined by NRS 41.637 which states:

> 41.637. "Good Faith Communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" defined
>
> "Good Faith Communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
>
> 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
> 2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
> 4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

As is argued below, all of the statements made by KOSOR, were in direct connection with an issue of a public interest, in a place open to the public or in a public forum and were truthful or without knowledge of its falsehood.

1. Kosor's statements are Truthful or Made without Knowledge of Them Being False

KOSOR, attached to his *Motion to Dismiss*, documentation supporting his positions that the SHCA should be using Homeowner's assessments to fund the community parks. See Exhibits A and E to

KOSOR's *Motion to Dismiss*, which outline the basis for his good faith belief that his statements are truthful or made without knowledge of its falsehood. The documents show the developer had an obligation to develop over 26 acres of parks, to the specifications approved by the county, which has not occurred. The parks, once completed by the developer, were to be turned over to the county to maintain, which has not occurred to the financial detriment of the Southern Highlands homeowners.

As to the issue of the Continued Control of the SCHA Board of Directors, by Olympia, KOSOR attached to his *Motion* the *Complaint,* filed with the Nevada Real Estate Division regarding the Declarant Control issue. The *Complaint* goes into great lengths detailing the basis for KOSOR's good faith belief his statements are truthful, documents recorded with the county, SHCA CC&R's and Nevada Revised Statutes. See Exhibit B to Defendants Motion.

All of the allegedly, defamatory statements made by KOSOR, relate to these two specific issues.

2. Kosor's Statements are Directly Related to an Issue of Public Concern

Plaintiff has completely ignored the Nevada case law adopting the California Analysis of whether or not an issue is one of public interest. The Nevada Supreme Court addressed this issue in Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

"While California's anti-SLAPP law, similar to Nevada's, provides no statutory definition of "an issue of public interest," California "courts have established guiding principles for what distinguishes a public interest from a private one." Piping Rock Partners, 946 F.Supp.2d at 968. Specifically:

1. (1) "public interest" does not equate with mere curiosity;
2. (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
3. (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
4. (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and

5. (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

   (citing Weinberg v. Feisel, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392–93 (2003)).

"We take this opportunity to adopt California's guiding principles, as enunciated in Piping Rock Partners, for determining whether an issue is of public interest under NRS 41.637(4). If a court determines the issue is of public interest, it must next determine whether the communication was made "in a place open to the public or in a public forum." Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

Pursuant the Nevada Supreme Courts holding in Shapiro, the issues relating the Southern Highland Homeowners continuing to fund the community parks and the failure of the SHCA Board of Directors to turn over the three appointed seats on the board are issues of public concern, to the homeowners of Southern Highlands, all Clark County tax payers and all HOA homeowners controlled by the developers across the State. They are affected by the way Nevada Real Estate Division fails to monitor units sold, which is directly connected to the turning over the election HOA Boards of directors to the homeowners. The decisions or indecisions on the part of the board can potentially impact up to 10,400, which is the maximum allowed units, (assuming no additional unilateral amendments by the developer. Residents, in Southern Highlands, total almost 23,000, which is a substantial group of people who have an interest in how their monthly HOA assessments are utilized by the board of directors. KOSOR's statements are directly related to the issues of public concern.

In Macias, the court found that campaign statements made during a union election constituted a "public" issue because the statements affected 10,000 union members and concerned a fundamental political matter-the qualification of a candidate to run for office. Macias v. Hartwell, 64 Cal. Rptr. 2d 222 (1997).

Plaintiff has completely taken the following statement by the Talega court out of context; "The Developer Board Members made their statements and others believed them without dispute. Given the absence of any controversy, dispute, or discussion, the issue of who was to pay for the

repairs, which was of interest to only a narrow sliver of society, was not a public issue." Talega Maint. Corp. v. Standard Pac. Corp., 170 Cal. Rptr. 3d 453, 463 (2014).

In Talega there was no controversy. The board of directors for the community stated the HOA was liable to pay for the repairs. This statement was accepted as truth, so there was no controversy. In the present matter, as is abundantly clear, there is a dispute amongst KOSOR, multiple homeowners and the SHCA Board of Directors. The homeowners, who spoke in the numerous SHCA board meetings and engaged on Nextdoor.com expressed concerns with the Park Access agreement, the cost of park maintenance over an extended period of time, the actions of the SHCA Board of Directors in failing to have the parks turned over to Clark County for maintenance, the failure of the board to take action to turn over the three, developer controlled board member seats to the homeowners. The developer regularly provided park updates as a standing agenda item. The SHCA Board would consider them to approve the Park Access agreement in November 2016 meeting, only to revoke that approval in a subsequent meeting, as a result of owner protests. Due to the controversy, **the SHCA established a sub-board comprised of owners to advise the board on the park issues and its negations with the county to reduce expenses.**

Contrary to the assertions made in the *Opposition,* there is an abundance of case law supporting that the statements made during HOA board elections, were a public issue.

> "By contrast, in cases involving statements made at public homeowners' association forums, where the court found there was a public issue, the requirement of an ongoing controversy was satisfied. In Damon, for example, "each of the alleged defamatory statements concerned (1) the decision whether to continue to be self-governed or to switch to a professional management company; and/or (2) [the general manager's] competency to manage the Association." (*Damon, supra,*85 Cal.App.4th at p. 479, 102 Cal.Rptr.2d 205.)

"Moreover, the statements were made in connection with the Board elections and recall campaigns." Talega Maint. Corp. v. Standard Pac. Corp., 170 Cal. Rptr. 3d 453, 463 (2014).

As in Damon, KOSOR, made statements at homeowner association forums and other forums, regarding the ongoing controversy/concerns, he has with the SHCA competency to manage the community. KOSOR, made many of the allegedly defamatory statements as part of his election

campaign, seeking a seat on the SHCA Board of Directors, which according the holding in Damon, making this a public issue.

Contrary to the assertions made in the *Opposition,* the Nevada Real Estate Division, the State of Nevada Attorney General's office and the Clark County District Attorney were reviewing the issues raised by KOSOR. Notably, the Clark County District Attorney often validated KOSOR's concerns and actively engaged with Olympia, to correct them (i.e. the Park Access/lack of easements). In the past three to four years KOSOR, has raised a number of issues with the Southern Highland Community Board of Directors, the Nevada Real Estate Division, the Nevada Attorney General's Office and the Clark County District Attorney. The issues raised by KOSOR include the funding of the Community parks by way of Southern Highland's homeowner HOA fees, failed/flawed oversight of and inexplicable amendments to the Southern Highlands Development Agreement by Clark County, and the continued control of the Southern Highland's Board of Directors by the developer. More than a year ago, KOSOR, filed a *Complaint* with the Nevada Real Estate Division claiming the increase in the number of units that could developed in Southern Highlands from 9,000 to 10,400, was completed in violation of NRS 116.2122 and 116. 2117. This increase in the total maximum number of units in the community will allows the continued control of the SHCA Board of Directors, by the developer.

"Similarly, here, our focus is not on some general abstraction that may be of concern to a governmental body, but instead on the specific issue implicated by the challenged statement and whether a governmental entity is reviewing that particular issue." Talega Maint. Corp. v. Standard Pac. Corp., 170 Cal. Rptr. 3d 453, 462 (2014).

On January 5, 2018, the State of Nevada Office of the Attorney General finally addressed KOSOR's Complaint. A copy of the Memorandum the State of Nevada Office of the Attorney General and the Clark County District Attorney, is attached for the courts review.

This clearly demonstrates the issues raised by KOSOR, the continued control of the SHCA Board of Directors by the developer and the Clark County review of numerous elements of the Southern Highlands Development Agreement, as one being under governmental review. As such, this requirement has been met.

/ / /

3. Kosor's Statements Were Aimed at Procuring Governmental or Electoral Action

Plaintiffs cites to **no** case law that supports their position that statements made during an HOA election are not protected speech. Plaintiffs on page 11 lines 15-18, of their Opposition argue that the legislative intent of the 2013 Amendment did not allow the protections of NRS41.637(1) to apply to any election. If this were true this position would be included in the legislative discussions/minutes on the Amendment, which if they existed would have been included in the opposition, which they are not. This is simply argument by counsel without any statutory support or support from the Nevada legislature itself.

As detailed in Defendant's Motion, planned development units compromise little democratic Subsociety, Lee v. Silveira, 211 Cal. Rptr. 3d 705, 714–15 (Ct. App. 2016). The court in Lee, stated;

> "As our Supreme Court has recognized, owners of planned development units '"comprise a little democratic subsociety...." In exchange for the benefits of common ownership, the residents elect a [] legislative/executive board and delegate powers to this board. This delegation concerns not only activities conducted in the common areas, but also extends to life within '"the confines of the home itself." A homeowners association board is in effect 'a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government." Id.

KOSOR's actions in distributing flyers and creating a website were directly related to his attempt to gain a seat on the SHCA board of directors who run the "little democratic subsociety." The association board he was attempting to get elected, "is in effect 'a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government." Id.

In the present matter, KOSOR was seeking election to this quasi-governmental body and as such his statements addressing issues of public concerns; the use of HOA funds to maintain parks and the continued control of the board of directors by the developer, are protected under NRS 41.660.

/ / /

4. Kosor's Statements Were Made in Public Forums and Made in Direct Connection With an Issue of Public Interest

The Statements at issue in the Complaint were all made in public forums; on the internet, public meetings, his election pamphlet and on a website supporting his election campaign and in direct connection with an issue of public concern; the use of homeowners' assessments and the right to elect HOA board members, which impacts a substantial number of people.

a. Kosor's Statements Were Made in Public Forums

i. CCA Board Meeting

The CCA board meeting is a public forum. This issue was raised in KOSOR's Motion and will be addressed again here. "For purposes of the third category in subdivision (e) of section 425.16, a " 'public forum' is traditionally defined as a place that is open to the public where information is freely exchanged. This Court in Damon concluded the board meetings of a homeowners 715 association constituted a **public forum** within the meaning of the **anti-SLAPP statute because they "serve[ ] a function similar to that of a governmental body**. Lee v. Silveira, 211 Cal. Rptr. 3d 705, 714–15 (Ct. App. 2016).

The holding in Lee is clear, "We concluded in Damon that the alleged defamatory statements made by the defendants about the plaintiff during a duly noticed board meeting met the statutory definition of a "public forum" as provided in subdivision (e)(3) of section 425.16. (Damon, supra, 85 Cal.App.4th at pp. 474–475, 102 Cal.Rptr.2d 205.)

Nowhere in the holding does the court state that its holding is based upon the Board meeting being televised or that California law requires that all board meetings be made open to the public. These are again unsupported assertions made by the Plaintiffs which is not supported by the case law or statute. The reason the courts in Talega and Lee held Board meetings are public forums is because the entities act like quasi-governments, plain and simple. Not because the meetings were televised.

Here Plaintiff once again makes broad unsupported assertions that are not support by case law, statute or fact, that the CCA does not perform governmental duties. Without any basis for this assertion the court should completely disregard this argument that the CCA board does not act like have government duties.

As such, statements made at the CCA meetings were made in a public forum under the protections of Nevada's Anti-SLAPP statutes and case law.

ii. The Nextdoor.com Post Is a Public Forum

Nextdoor.com is clearly a public forum, specifically a public forum for residents and homeowners in Southern Highlands community. The website is established as a way for members of a community to communicate. This is not limited in any way for the members of Southern Highlands, who are directly impacted by the actions of SHCA board of directors. The issues of public concern to the residents of Southern Highlands are the use of HOA assessments to maintain the parks, the inexplicable modification to the Southern Highlands Development Agreement, which significantly and negatively impacted the public park infrastructure, and the continued control of the SHCA Board of Directors by the developer.

"Electronic communication media may also constitute public forums. A federal court recently stated that a widely disseminated television broadcast was "undoubtedly a public forum" for purposes of section 425.16. (Metabolife Internat., Inc. v. Wornick (S.D.Cal. 1999) 72 F.Supp.2d 1160, 1165.) Apropos of this case, though not in the context of section 425.16, the court in Hatch v. Superior Court (2000) 80 Cal.App.4th 170 [94 Cal.Rptr.2d 453] noted that Internet communications have been described as "classical forum communications." (Id., at p. 201, fn. omitted.) ComputerXpress, Inc. v. Jackson, 113 Cal. Rptr. 2d 625 (2001).

"Thus, both the Raging Bull and Ogravity99 sites satisfy the criteria for a public forum set forth in Damon v. Ocean Hills Journalism Club, supra, 85 Cal.App.4th 468: "a place that is open to the public where information is freely exchanged." (Id., at p. 475.)

In the present matter Plaintiffs' Exhibit 1 clearly shows the Nextdoor.com website is open to the public, and the more than 18,000 residents of Southern Highlands, where information is freely exchanged. Exhibit 1 clearly shows KOSOR, posting statements on the website, as well as those of other area residents who posted their own comments in response, clearly showing the free exchange of information. This is clearly a public forum.

Arguments by Plaintiff that Nextdoor.com's ability to edit or control the content on the website make it a non-public forum was previously shot down by the courts in California. "However, DLA and Lerner contend that REIT Wrecks cannot be a public forum because Germain has the ability to restrict, edit, delete, or prohibit posts. This argument is unavailing. Courts have repeatedly held that websites like REIT Wrecks are public forums. Piping Rock Partners, Inc. v. David Lerner Associates, Inc., 946 F. Supp. 2d 957, 975 (N.D. Cal. 2013), aff'd, 609 Fed. Appx. 497 (9th Cir. 2015).

As such, statements post by KOSOR on Nextdoor.com were made in a public forum under the protections of Nevada's Anti-SLAPP statutes and case law.

iii. Kosor's Website is a Public Forum

Plaintiffs' in their Opposition, concede that KOSOR's website was open to the public and anyone with an internet connection could access the information he posted. Additionally, the information contained on the website was directly related to issues of public concern for the 8000 homeowners and the more than 18,000 residents in Southern Highlands. One of the issues of public concern relates to the continued control of the SHCA Board of Directors by the developer, which was

under review by the Nevada Real Estate Division and the State of Nevada Attorney General's office at the time the website went online.

"It is settled that "Web sites accessible to the public ... are public forums for purposes of the anti-SLAPP statute." Barrett v. Rosenthal (2006) 40 Cal.4th 33, 41, fn. 4, 51 Cal.Rptr.3d 55, 146 P.3d 510. (Emphasis Added). California case law is clear websites open to the public are public forums for the purposes of the Anti-SLAPP statute. Here there is no dispute KOSOR's website was accessible to anyone in the world with an internet connect and was public forum. Message boards can also be public forums, but contrary to arguments made by counsel, the free exchange of information is a factor to consider, but not required. This is made clear by the courts holding in Barret, websites accessible to the public are public forums for the purposes of the Anti-SLAPP statute.

As such, statements posted on KOSOR's website were made in a public forum under the protections of Nevada's Anti-SLAPP statutes and case law.

iv. Kosor's Campaign Pamphlet was a Public Forum and Directly Connected to an Issue of Public Concern.

v.

Plaintiff once again takes creative license with the courts holding in the Damon, case. The court does mention that the newsletter at issue was distributed to local business, but that had no bearing on the court's decision.

"The Village Voice newsletter was also a "public forum" within the meaning of section 425.16, subdivision (e)(3). Under its plain meaning, a public forum is not limited to a physical setting, but also includes other forms of public communication…. The stated purpose of the Village Voice newsletter was to "communicate information of interest and/or concern to the residents." Damon v. Ocean Hills Journalism Club, 102 Cal. Rptr. 2d 205 (2000). As is the case with the KOSOR's pamphlet, which was also a means used to communicate information of interest to fellow homeowners.

"First, numerous courts have broadly construed section 425.16, subdivision (e)(3)'s "public forum" requirement to include publications with a single viewpoint." Damon v. Ocean Hills Journalism Club, 85 Cal.App.4th 468, 476 (2000).

KOSOR's statements in his election pamphlet were of public concern. "As detailed below, each of the alleged defamatory statements concerned (1) the decision whether to continue to be self-governed or to switch to a professional management company; and/or (2) Damon's competency to manage the Association. These statements pertained to issues of public interest within the Ocean Hills community. Indeed, they concerned the very manner in which this group of more than 3,000 individuals would be governed-an inherently political question of vital importance to each individual and to the community as a whole." Damon v. Ocean Hills Journalism Club, 85 Cal.App.4th 468, 476 (2000).

The issues raised by KOSOR are similar to those raised in the Village Voice at issue in the Damon case. In Damon the issues of public concern were the management of the community and the competence of the Community manager. In Damon this concerned 3,000 homeowners. In the present matter there are nearly 8,000 homeowners in the Southern Highlands Community who are have an interest in how their assessments are utilized by the board it does not elect. Additionally, KOSOR raises the issue of the continued control of the SHCA Board of Directors by the developer an issue vital importance to the homeowners. As such, KOSOR's pamphlet was a public forum and the information contained in the pamphlet was of public concern.

b. Kosor's Statements Were Made in a Direct Connection With an Issue of Public Concern

All of KOSOR's statements were made in direct connection with issues of Public Concern, the operation and management of the community he resides along with 18,000 other residents.

"As detailed below, each of the alleged defamatory statements concerned (1) the decision whether to continue to be self-governed or to switch to a professional management company; and/or

(2) Damon's competency to manage the Association. These statements pertained to issues of public interest within the Ocean Hills community. Indeed, they concerned the very manner in which this group of more than 3,000 individuals would be governed-an inherently political question of vital importance to each individual and to the community as a whole." Damon v. Ocean Hills Journalism Club, 85 Cal.App.4th 468, 476 (2000).

Plaintiffs' in their Opposition, completely disregard the courts holding Damon, which stated that statements made relating to the management of a Homeowner Association were of public concern. Damon, was repeatedly cited by Plaintiffs' in their Opposition, but completely ignored when the case holding is clearly on point. Here KOSOR's statements at issue directly related to the management/control of the Southern Highlands Community by the SHCA Board of Directors. KOSOR has raised the parks issue with the SHCA Board of Directors on multiple occasions and the Board, controlled by Olympia Management has failed to take action. Additionally, KOSOR raised the issue of the continued control of the SHCA Board of Directors by the Developer, with the board, which has taken no action. This issue was then raised with the Nevada Real Estate Division and the Nevada Attorney General.

Even if the court were to apply the Weinberg, as argued by Plaintiffs the court must still find the Statements at issue relate to a public concern. Plaintiffs' position that there needs to be a public outcry of concerned citizens to be of public interest, without out citing any statute or case law. The concerns regarding the management of Southern Highlands and the use of HOA assessments to maintain parks are issues of concern to the homeowners. Just as the management of the HOA and the competency of Mr. Damon to manage were of public Concern in the Damon matter. Nowhere in Damon or Macias did either court hold that a certain number of homeowner had to express the concern. The real question is the issue one that will impact significant rights of the public.

The statements made by KOSOR are directly related to the proper title/ownership of the parks, the long running park maintenance obligation incurred by the association, the failure to turn the parks over to the County as Olympia requested in 2005, delays, in in some cases approaching ten years in park delivery, substantial reduction in infrastructure, otherwise promised and to be have been bore by Olympia, general management of the community and the associated cost of the management provided by Olympia, and more are issues raised, by KOSOR on multiple occasions.

The statements made regarding the "dark room" relate to the maintenance and operation of the parks at homeowners' expense. As discussed in the Motion, the developer was to construct parks in the area on over 26 acres of land. The parks were then to be turned over to the county. (Exhibit D to Defendants Motion.). The parks have never been completed nor have the completed parks been turned over to the county to maintain. Part of KOSOR's Election Campaign platform related to this issue.

The "foreign government" statement is directly related to the continued control of the SHCA Board of Directors by the developer. Residents in Southern Highlands do not get to elect directors to three of the five seats on the Board. The three seats are appointed by the developer, who appoints his employees to the remaining three seats. This issue is of concern to all of the residents of Southern Highlands because any vote where there is a dispute between the homeowners and the SHCA Board of Directors/developer will always be resolved in favor of the boards members appointed by the developer. This issue has been raised by KOSOR with the SHCA Board of Directors, Nevada Real Estate Division and the Nevada Attorney General.

All of KOSOR's statements were made in public forums and are directly related to issues of public concern. As such, they are all protected speech under NRS 41.660.

B. PLAINTIFFS HAVE NO PROBABILITY OF PREVAILING ON THE MERITS

"Statements of opinion cannot be defamatory because "there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges

and juries but on the competition of other ideas." This court has held that "statements of opinion as opposed to statements of fact are not actionable." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002).

In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." Id. at 715.

"Statements of opinion are protected speech under the First Amendment of the United States Constitution and are not actionable at law." Id at 714.

Plaintiff swill not be able to prove their case as the statements at issue are clearly ones of opinion. Plaintiffs spent two pages defining defamation and argue to the court that expressions of opinions which suggest the speaker knew certain facts to be true or implies the fact exists may make the expression of opinion defamatory. Id. at 715. Specifically, Plaintiffs addresses the allegedly defamatory statements and parses out "probably" and "dark room," and fails to provide the statements in context.

"The audit report was quickly glossed over, and the County Commission was worried about, they were apologizing to the developer, Goett, who was there, about the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and **probably** got the Commissioners aside in a dark room or someplace and read them the riot act." The Nevada Supreme court held in Pegasus, allegedly defamatory comments must be read in context.

> "In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." If the published statements could be construed as defamatory statements of fact, and therefore actionable, then the jury should resolve the matter. However, this court has also stated that comments must be considered in context. Id. At 715.

When read in context with the entire statement, "probably" and "Dark Room," are not defamatory. Nowhere is it suggested KOSOR was aware of some undisclosed fact. He simply stated

an opinion, that the GOETT, probably read the Commissioner the riot act. First, this is an opinion and secondly, reading someone the riot act in a "Dark Room" or anyplace is not defamatory. It is simply an idiom defined as to "reprimand; censure: or a sharp warning." When this statement read in context is not defamatory.

1. Kosor's "Dark Room" Statement Does Not Accuse Plaintiffs of Criminal Activity

As discussed above the "Dark Room" statement when read in context is not defamatory nor does it accuse Plaintiffs of criminal activity. The entire recorded statement is provided for the court below:

> "The audit report was quickly glossed over, and the County Commission was worried about, they were apologizing to the Developer, Goett, who was there, about the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and probably got the Commissioners aside in a "Dark Room" or someplace and read them the riot act."

A reasonable person reading the entire statement in context could find that the statement implies criminal activity such as bribery or extortion as alleged by Plaintiffs. The statement when read in context may imply a heated conversation took place, but not criminal activity.

2. Kosor's "Lining its Pockets" Statement was an Opinion and Per Se Not Defamatory

Once again, KOSOR, requests the Court read the statement fully or listen to the audio recording and listen to the statement in context. KOSOR stated "he is basically lining his own pockets, in my opinion at the expense of the owners in Southern Highlands." There is no implying by KOSOR that he is aware of facts or implies that are facts exists to support his statement. A reasonable person reading the statement or listening to the audio recording would not believe that is a statement of fact.

3. Kosor's "Lucrative Agreement" and "Sweetheart Deal" Statements Do Not Accuse Plaintiff of Criminal Activity

Plaintiffs' have again taken creative license implying the phrase "Lucrative Agreement" is defamatory. The reason companies go into business is to ideally make money by way of lucrative deals. As to the statement regarding improper cost shifting of "millions of dollars, "here is the full

statement, "stating it was his opinion/belief OLYMPIA entered into "lucrative agreement" with Clark County, turning over the costs associated with maintaining and operating the parks to SHCA and the Southern Highland homeowner. Nowhere in the statement is criminality stated or implied. KOSOR does not say shady deal, secret deal or illegal deal, which would be defamatory. Nowhere in the statement does KOSOR, state GOETT, or Olympia, are breaking the law. He simply stated, it was his opinion, that Plaintiffs' entered into a lucrative deal with the county. A reasonable person could not find this statement defamatory or in any way imply criminal activity.

4. Kosor's Statement Regarding a Foreign Government Are Not Defamatory

Nowhere in the Motion or any statement made by KOSOR does he call the Plaintiffs' dictators. KOSOR's statement at issue is as follows: "I lived in foreign countries where citizens did not have this right and saw firsthand (sic) the negative implications. I do not <u>like the idea</u> the community I now look to spend my retirement has denied me this central and important right."

The statement made by KOSOR is truthful, as the Southern Highlands Homeowners do not elect all five of the members who represent them. OLYMPIA Management, a company owned by Plaintiffs' appoints three of the members with the remaining two seats being filled by way of an election. The homeowners can vote for the two board seats, but the homeowners cannot elect the entire board of directors.

Defamation is a publication of a false statement of fact. Statements of opinion cannot be defamatory because "there is no such thing as a false idea. <u>Id.</u> At 471. This again, is a statement of opinion, made clear by the, "I don't like the idea," which is clearly his opinion. As the Court stated in <u>Pegasus,</u> there is no such thing as a false idea. <u>Id.</u> A reasonable person could not find this statement defamatory or accuse Plaintiff of being Dictators.

5. Kosor's Statements as to "Breaching Their Fiduciary Duties" and "Cost Shifting" which "already Cost the homeowners Millions" are not defamatory.

Plaintiffs', once again, fail to provide each of the statements in its entirety and in context. The First statement at issue is follows, "the **<u>potential</u>** for our Board to experience conflicts of interest, loss of board autonomy, and failed fiduciary oversight exists." Plaintiffs' allege in their Opposition,

KOSOR, accused them if breaching their fiduciary duties to the homeowners. KOSOR clearly stated that the potential for this does exist, in his opinion. KOSOR, at no time accused Plaintiffs' of breaching their fiduciary duties to the homeowners. KOSOR stated the SHCA Board of Directors, a non-party, may experience conflicts of interest, loss of board autonomy, and failed fiduciary oversight exists. No reasonable person reading the entire statement in context would believe it was a statement of fact.

As to the statements regarding "cost shifting" and "already cost homeowners millions," they are statements of opinion and not actionable. Plaintiffs' are simply inferring KOSOR is aware of or suggest he is aware of facts is improper. Plaintiffs take each statement and infer the worst possible context and meaning. Reading someone the riot act equates to bribery and racketeering. Stating opinions regarding the election process turns Plaintiffs into Dictators. Engaging in lucrative agreements with the county becomes criminal conduct. As the court and Plaintiffs are aware, the standard is; would a reasonable person understand the remark to be one of opinion or a statement of existing fact. Here KOSOR stated, "I believe," which is clearly a statement of opinion and any reasonable person would find the same to be true.

6. KOSOR Statements Regarding Statutory Violations Were Aimed at SHCA a Non-Party and are Irrelevant to this Action

KOSOR's statements regarding the SHCA's failure to notify homeowners of the next executive meeting is true, but irrelevant to the present action. SHCA is not a party to this action. The inclusion of this issue clearly shows that OLYMPIA and SHCA are one and the same and even they do not know where those lines cross.

The statements as to "loopholes" which contravene Nevada law these arguments are improper as these statements/allegations are not contained in the Complaint. As such the court should completely disregard any arguments made regarding SHCA and arguments made as to statements attributed to KOSOR not included in the Complaint.

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7. Kosor Did not Grossly Overstate the 2016 Legal Fees

Once again Plaintiffs take things out of context and then embellish. Secondly, this statement is aimed at the actions of SHCA Board of Directors, not OLYMPIA or GOETT. Once again Plaintiffs have blurred the lines as to what are the actions of SHCA and what are the actions of the Plaintiffs. The arguments by Plaintiffs on this issue support the position long argued by KOSOR, that the SHCA Board of Directors is controlled by the developer. SHCA is not a party to this litigation and any statements possibly directed at SHCA are irrelevant, as it is a non-party. As such, the court should disregard all arguments on this issue.

The issue KOSOR was raising in his election campaign material was the misuse of SHCA funds by the board of directors.

The Pamphlet statement is as follows:

"Second, we can significantly lower expenses, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years of the Board of the Christopher Communities HOA. We need to:

- Immediately work with and if needed fight the county to remove more than $1.2 Million in annual assessments (Almost half of the HOA's total landscape, maintenance and utilities expenses compromising 25% of your total assessment) paid by the SHCA for the "public parks" that should/could otherwise be paid by the County.
- Competitively bid our very pricey contract with the developer's management company Olympia Management ($1.4M/yr).(Exhibit D to Defendant's Motions).
- Refrain from wasteful legal costs 1.4M in 2016, more than typically incurred by HOAs of similar size.

Based upon the information provided to KOSOR, the amount spent on litigation costs, $1,241,973.00 in 2016, was nearly five times the amount budgeted for litigation expense, which was $250,000.00. (See Exhibit F in Defendant's Motion). This is a significant deviation from the budgeted amount, which was KOSOR's was attempting to demonstrate. As such, KOSOR's statements made by

KOSOR are substantially true and are not defamatory. Per Nevada case law the statements that are "true or substantially" true are not defamatory. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

8. KOSORS Statements Were Made to Third Parties

KOSOR admits the statements at issue in the Complaint were communicated to third parties. At this stage of the litigation whether or not privileges apply is irrelevant. The statements at issue are all statements of opinion and per se not defamatory. Each of the statements were made in a public forum and of public concern clearly falling under the protections of the Nevada Anti-SLAPP statute.

9. KOSOR's Statements Do Not Constitute Defamation Per Se

This issue is premature at this time. This position assumes the statements at issue are not opinions, but facts, for the sake of the argument. Secondly, it assumes if the statements are not truthful, which is something that will be thoroughly investigated during the course of discovery.

10. KOSOR is Entitled to an Award of Attorney Fees and Costs

KOSOR as argued in the Motion is entitled to attorney fees and costs as the Complaint was filed to simply chill his constitutionally protected right of free speech. Plaintiffs in their Opposition continued their pattern of misstating facts, omitting facts and making unreasonable inferences from the opinion statements of KOSOR. When each of the statements at issue is read in their entirety and in context no reasonable person could find them defamatory. As such, KOSOR's request for attorney fees and costs should be granted.

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II.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests the Court Grant Defendant's Motion, and dismiss the present action, with prejudice and award Defendant attorney's fees and costs.

Dated: February 26, 2018

LAURIA TOKUNAGA GATES & LINN, LLP

/s/Robert B. Smith

By:_____

Raymond R. Gates
Nevada Bar No. 5320
Robert B. Smith
Nevada Bar No. 9693

Reply to: 1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833
(916) 492-2000
Attorneys for Defendants
Michael Kosor, Jr.

Southern Nevada Office:
601 South Seventh Street
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lauria Tokunaga Gates & Linn, and that on this 26th day of February 2018, I served a true and correct copy of the foregoing:

DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO NRS 41.600

□ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepared in Sacramento, California; and/or

✔ By electronic service (e-service)

□ By facsimile, pursuant to EDCR 7.26 (as amended); and/or

□ By personal service

as follows:

J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

/s/Christiane H. Hibberd
Christiane H. Hibberd
An employee of Lauria Tokunaga Gates & Linn, LLP

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
2501 East Sahara Avenue, Suite 214 * Las Vegas, NV 89104-4137 * (702) 486-4480
E-mail: CICOmbudsman@red.nv.gov http://www.red.nv.gov

COMPLAINT:

The SH Board has failed to comply with post-DCP provisions under NRS 116.31034.

BRIEF STATEMENT OF FACTS:

Southern Highlands CC&Rs (article 2.19) establish the termination of DCP "60 days after Declarant has conveyed 75% of the Maximum Units". Nevada statutes (NRS 116.31032 establish the termination of the declarant control period 60 days after conveyance of 90% (75% prior to October 1, 2015) of the units created to unit's owners other than declarant. The 2015 SH Master budget (last year's) notes 8,240 conveyed units (not counting 456 commercial units and additional units conveyed in 2015). The applicable maximum units are 9,000. Under both the CC&Rs (75%) and Nevada statutes (75% and 90% after Oct 2015) the Maximum Units conveyed and/or otherwise created to owners other than the declarant exceeds (at 91% prior to 2015) the DCP termination trigger.

Multiple attempts to get clarification on the failure to convey have failed. I filed a formal complaint with assocaition that was eventually dismissed citing an unrelated audit by NRED and referencing occupancy data-neither related to declarant control. I also filed a complaint with this office last year (2106-1859) was was improperly closed then upon review, determined the Divison "will not be pursuing".

RESOLUTION:

SH Board initiated required post-DCP per statutes or provide homeowners a written explanation as to why the DCP thresholds not been reached.

SUPPORTING LAW AND/OR GOVERNING DOCUMENT:

Southern Highlands CC&Rs and NRS 116.31032 & NRS 116.31034

I have read the foregoing Affidavit consisting of 1 pages (including all additional attached pages), and it is true and correct to the best of my knowledge and belief.

(Signature of complainant) _____
Name Michael J Kosor
Street Address 12070 Whitehills St
City, State, Zip Las Vegas, NV 89141
Area Code

Subscribed and sworn to before me
This ___ day of _____, 20___.

_____NOTARY PUBLIC

EXHIBIT "C"

EXHIBIT "C"

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION
NOMINATION INFORMATION FORM – 2017

This form is provided for homeowners who wish to run for the Board of Directors. If you would like to be considered and have your name on a secret ballot, please fill out the form below or submit a single typed page with the following information and return it to: Southern Highlands Community Association, 11411 Southern Highlands Parkway, Ste 100, Las Vegas, NV 89141 **no later than 4 pm on Monday, November 6, 2017.**

Please place my name on the ballot for a two (2) year term for the Southern Highlands Community Association. The information supplied below is accurate, and I agree that it may be published in any Association election materials. I acknowledge that failure to provide accurate information whether through dishonesty or omission may prevent me from seeking election to the Southern Highlands Community Association Board of Directors and may prevent my candidacy from moving forward.

Signature

Name: Michael Kosor Phone: [redacted] E-Mail: MKosor@AOL.com

Address: 12070 Whitehills St Las Vegas NV 89141

Mailing Address: SAME

I have owned a home in Southern Highlands for the following length of time: 6 yrs

I wish to serve on the Board because: see attached letter

Qualifications I feel will benefit our community: See attached letter

Other information I wish to share: See attached letter

REQUIRED DISCLOSURES (*see statutory references below*)

Do you have any professional or personal relationships that may result or appear to result in a potential conflict of interest of which voting owners should be aware? ☐Yes ☑No. If yes, please explain:

Do you certify, to the best of your knowledge, that you are a member in good standing with the Southern Highlands Community Association? ☑Yes ☐No

Are you related to, married to, or residing with another member of the Board? ☐Yes ☑No

PER NRS 116.31034 (8a) Each person whose name is placed on the ballot must disclose any financial, business, professional or personal relationship or interest that would result in or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve.

PER NRS 116.31034(8b) Each candidate must disclose if he/she is a member in good standing. For this paragraph, a candidate shall NOT be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

PER NRS 116.31034 (9a) Each candidate must disclose if he/she is related to, is married to, or domestic partners with, and/or resides with another member or candidate for the Board.

The ballot, along with the official meeting notice advising exact date, time, and location of the meeting will be mailed to all homeowners at a later time.

EXHIBIT "D"

EXHIBIT "D"

Meet Mike

A uniquely qualified Candidate

- Retired 24 year USAF Colonel & combat tested fighter pilot
- Second career as a for-profit hospital CEO
- Made SH his retirement home six years ago- understands the good and bad
- Currently serving his third year on the Christopher Communities HOA Board
- Served as a director on many civic, non-profit, and for-profit boards
- Not looking for community exposure to advance a business interest
- Committed to listening to owners and providing the transparency now lacking

Count on Mike to keep our community the premier place to live in Southern Nevada

To learn more go to
www.mikekosor.com

Issues

- End developer control of our HOA
- Bring HOA fees down
- End HOA payments for "Public" parks
- Make security of homeowners and families a
- End SCHA's absence/blind eye when HOA's interests are threatened
- Address the failed commitments around our sports park

To learn more go to
www.mikekosor.com

Vote
Mike Kosor

JA 0070

Southern Highlands
HOA

The Homeowner's Candidate

www.mikekosor.com

Dear Southern Highlands Neighbor,

I would like to be your representative on Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of our only two independent Board Directors (three directors are selected and employed by the developer) will be selected.

First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected** and loyal only to homeowners.

Second, **we can significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricy contract with the Developer's management company, Olympia Management (another $1.4M/yr)
- refrain from wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size).

Third, a community needs to be seen as **a secure place to live**. While I currently believe SH is one of the safest place to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best interest of homeowners** with government agencies, defaulting to the interests of the Developer. Recently, the Board failed to oppose a massive change, approved by the Clark County Commission, to our long overdue "Sports Park". Despite being promised by the County and Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession.
- Two practice baseball fields, one soccer field, two basketball courts, all lighted.
- A second entrance with associated parking, plus more.

These massive cuts, saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County approved twelve million dollars ($12M) in public money to build a 4x baseball complex in Mountain's Edge.

This would not have happened had our Board, as did Mountain's Edge Board (where directors are all owner elected), defended owner interests. Our Board turned a blind eye, not even telling owners of the pending change while the Developer worked changes to its agreement. Was the Board's failure to act in opposition to the change and the interests of the Developer a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but you must vote. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

EXHIBIT "E"

EXHIBIT "E"

Southern Highlands
DEVELOPMENT CORPORATION

Glen Hoover

April 27, 2005

Rebecca Ragain
Clark County Comprehensive Planning
500 S. Grand Central Parkway
Las Vegas, NV 89155

Jeff Harris
Clark County Parks and Recreation Department
2601 East Sunset Road
Las Vegas, NV 89120

In accordance with paragraph 6.02(a) of the Development Agreement between The County of Clark and Southern Highlands Development Corporation, Et Al., Owner hereby gives the County written notice of Owner's intent to dedicate 26.69 Acres of park or paseo to the County subject to the conditions and criteria of the Development Agreement.

The parks to be dedicated to the County per this notice are:

	P1	5.05 Ac	RCT	Goett Family Park	3.78 AC
→	P5	5.05 Ac	RCT	Inzalaco Park	4.38 AC (5.7
	P6	7.39 Ac	RCT	Somerset Park	6.3 AC
	LP1	9.20 Ac	RCT	Paseo	8.5 AC
↘	P8	20.0 AC			~~23.66~~

11-16-05 → Amend 2 → County maintain
Owner agrees to maintain all parks/paseo

DA required now 18 AC

Sincerely,

Jerome D. Helton
Southern Highlands Development

Cc: Mark Bolduc
Garry Goett
Brett Goett

Stonewood Park not included
- transf. to HOA 2003
- RCT funds used

11411 Southern Highlands Parkway, Suite 300 Las Vegas, NV 89141 (702) 616-3800 Fax (702) 616-3833

EXHIBIT "F"

EXHIBIT "F"

SOUTHERN HIGHLANDS 2017 RATIFIED BUDGET

	2017	Monthly Assessment per Unit $67.00	Siena Ancora Assessment $3.95		
Residential Units	7,303				
Siena Ancora Units	120				
Builder Units	844				
Commercial Units	552				
Description		**2017 Ratified Budget**	**2016 Ratified Budget**	**2016 Annualized Accrued**	**2016 Variance**
OPERATING BUDGET					
Monthly Assessments - Owners		5,871,612	5,133,600	5,198,280	(64,680)
Monthly Assessments - Siena Ancora		5,688	5,688	5,688	-
Monthly Assessments - Builders		678,576	470,160	926,397	(456,237)
Commercial Monthly Assessments		443,808	397,613		397,613
ARC Review Fees		25,000	20,000	29,100	(9,100)
SHD Resale Transfer Fees		123,750	112,500	145,286	(32,786)
Capital Contributions- Initial Sale Only		16,080	9,000	17,606	(8,606)
Late Fees		32,500	25,000	37,239	(12,239)
Newsletter Advertising Income		1,500	3,500	-	3,500
Miscellaneous Income / NSF		3,000	1,500	5,109	(3,609)
Fines		175,000	175,000	210,560	(35,560)
Interest Income		1,000	1,000	1,100	(100)
Late Assessment Interest (Association)		2,500	2,500	11,055	(8,555)
Distressed Properties Recovery		-	800	-	800
Prepaid Collection Cost Recovery		50,000	36,686		36,686
Carryover		-	401,856		401,856
TOTAL REVENUES		**7,430,014**	**6,796,403**	**6,587,418**	**208,984**
Property Taxes		500	500	4	496
Insurance - Liability and Property		60,033	57,913	57,028	885
Performance Bond- Parks		3,000	4,500	3,000	1,500
Insurance - Directors and Officers		21,977	18,007	19,000	(993)
Insurance- Self Insurance Fund		30,000	30,000	30,000	-
Insurance - Workman's Comp		615	500	500	0
TOTAL INSURANCE & TAXES		**116,124**	**111,420**	**109,532**	**1,888**
Landscape Maintenance - Parks		676,692	676,692	675,643	1,049
Landscape Maintenance - CA		966,276	966,276	971,050	(4,774)
Landscape Maintenance - Siena Ancora- Weitzman		3,660	3,660	3,660	-
Irrigation Controls		3,000	3,000	4,105	(1,105)
Distressed Properties Clean-up/Maintenance		-	800	-	800
Landscape Repairs and Supplies- General		-	-	1,586	(1,586)
Landscape Repairs and Supplies - Parks		4,500	4,500	1,603	2,897
Landscape Repairs and Supplies - CA		10,000	10,000	8,331	1,669
TOTAL LANDSCAPE & PLANTS		**1,664,128**	**1,664,928**	**1,665,978**	**(1,050)**
Vehicle-Fuel		200	200	-	200
Bad Debt Expense		386,908	300,353	679,008	(378,655)
Social Events		125,000	156,230	114,042	42,188
Fees and Permits		250	50	250	(200)
General Counsel Expenses		100,000	100,000	88,573	11,427
Litigation Expenses		700,000	250,000	1,241,973	(991,973)
Prepaid Collection Costs		75,000	83,000	73,870	9,130
Audit and Tax Expense		5,275	5,200	5,200	-
Board of Directors Expenses		750	1,500	643	857
Copies and Supplies		85,000	85,000	80,818	4,182
Postage		80,000	80,000	62,721	17,279
Management Fees		1,432,639	1,427,059	1,426,014	1,045
Ombudsman		31,038	30,303	21,579	8,724

SOUTHERN HIGHLANDS 2017 RATIFIED BUDGET

	2017	Monthly Assessment per Unit $67.00	Siena Ancora Assessment $3.95		
Residential Units	7,303				
Siena Ancora Units	120				
Builder Units	844				
Commercial Units	552				
Description		**2017 Ratified Budget**	**2016 Ratified Budget**	**2016 Annualized Accrued**	**2016 Variance**
Record Storage		2,500	1,903	1,918	(15)
Newsletter Expense		-	900	55	845
Website		2,100	2,100	2,289	(189)
Miscellaneous Expense		3,502	856	3,378	(2,521)
TOTAL MGMT. & ADMINISTRATIVE		**3,030,162**	**2,524,654**	**3,802,331**	**(1,277,677)**
Capital Improvements		-	15,000	108,651	(93,651)
Reverted Property Expense		2,500	1,457	2,489	(1,032)
Budgeted Reserve Transfers		445,000	381,500	381,500	(0)
Budgeted Reserve Transfers-Sienna Ancora		2,028	2,028	2,028	-
TOTAL OTHER EXPENSES		**449,528**	**399,985**	**494,669**	**(94,684)**
Repair and Maintenance		250	1,250	17	1,233
Repair and Maintenance - Parks		3,500	1,250	3,279	(2,029)
Repair and Maintenance - CA		1,500	2,000	1,135	865
Lighting Contract - Parks		2,500	2,500	2,484	16
Lighting Maintenance & Repair - Parks		2,500	4,500	1,582	2,918
Lighting Maintenance & Repair- CA		1,000	1,000	-	1,000
Vendor Maintenance & Repair - Parks		12,500	14,512	11,233	3,279
Vendor Maintenance & Repair - CA		7,500	12,300	3,870	8,430
Janitorial Service - Parks		16,775	16,785	16,625	159
Maintenance Contract - Parks		8,700	8,700	8,700	-
Pest Control - Parks		960	960	960	-
Pest Control - CA (Bees)		2,200	1,680	2,880	(1,200)
TOTAL REPAIRS & MAINTENANCE		**59,885**	**67,437**	**52,748**	**13,438**
Security Services Contract		960,796	911,686	920,092	(8,406)
Security - Supplies and Equipment		8,250	7,500	8,488	(988)
Equipment Service Plans		5,750	4,500	5,680	(1,180)
Security Vehicle Expense		185,304	185,304	185,304	-
Security- Vehicle Fuel Expense		500	1,200	-	1,200
TOTAL SECURITY		**1,160,600**	**1,110,190**	**1,119,565**	**(9,374)**
Electricity - Parks		15,000	15,129	13,851	1,278
Electricity- CA		20,000	18,857	18,784	73
Water - Parks		487,623	465,149	487,623	(22,474)
Water - CA		421,364	411,931	421,364	(9,433)
Sewer - Parks		5,000	5,000	5,386	(386)
Telephone		600	2,160	550	1,610
TOTAL UTILITIES		**949,587**	**918,225**	**947,559**	**(29,334)**
TOTAL EXPENSES		**7,430,014**	**6,796,839**	**8,192,381**	**(1,396,792)**
EXCESS REVENUE (EXPENSES)		**-**	**(436)**	**(1,604,962)**	**1,605,776**

*Based on financial statements for the period ending 7/31/16

SOUTHERN HIGHLANDS 2017 RATIFIED BUDGET

		Monthly Assessment per Unit	Siena Ancora Assessment		
	2017	$67.00	$3.95		
Residential Units	7,303				
Siena Ancora Units	120	2017 Ratified Budget	2016 Ratified Budget	2016 Annualized Accrued	2016 Variance
Builder Units	844				
Commercial Units	552				
Description					

2017 SHCA RESERVE STATEMENT

Monies in Reserve Account as of July 31, 2016	2,287,037.19
Anticipated Additional Contributions by End of 2016	158,958.35
Anticipated Additional Expenditures by End of 2016	100,151.21
Anticipated Reserve Funds as of December 31, 2016	**2,345,844.33**
Fully Funded Balance as of December 31, 2016	3,732,903.00
2016 Reserve Balance Differential	(1,387,058.67)
Percentage Funded	63%
Anticipated Contributions during 2017	445,000.00
Anticipated Interest Income during 2017	2,800.00
Anticipated Expenditures during 2017	299,014.44
Anticipated Reserve Funds as of December 31, 2017	**2,494,629.89**
Fully Funded Reserve Balance as of December 31, 2017	3,455,530.00
2017 Reserve Balance Differential	(960,900.11)
Percentage Funded	72%

**The Board does not anticipate the need for a Special Assessment to fund the Reserve Account for 2017. The Board anticipates $445,000 in contributions will be made in the form of Reserve Transfers during the 2017 fiscal year. The recommended balance for full funding for the reserve as of December 31, 2017 is $3,455,530 therefore, the current reserve account is considered adequately funded.*

2017 Siena Ancora Cost Center- RESERVE STATEMENT

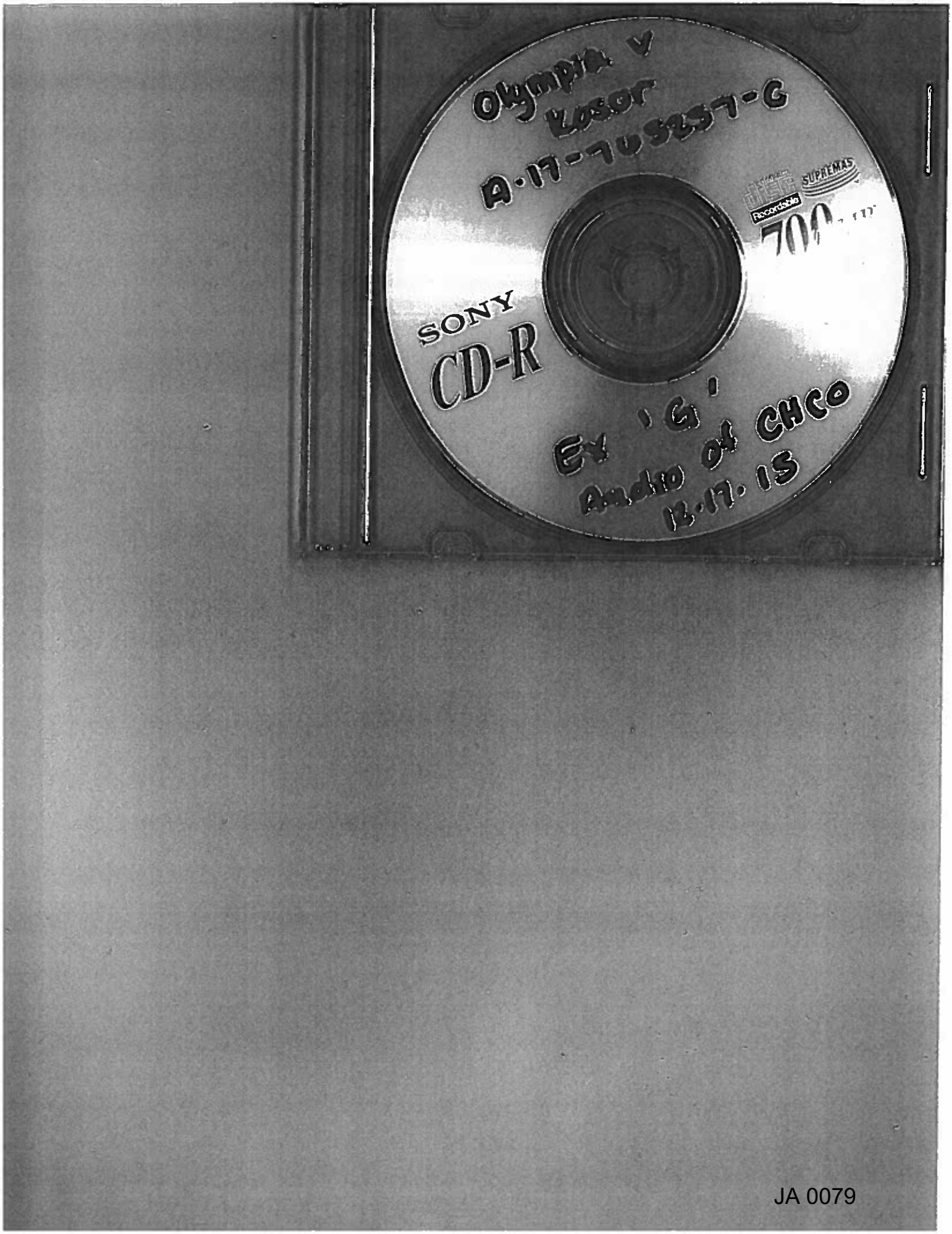
Monies in Reserve Account as of July 31, 2016*	22,911.73
Anticipated Additional Contributions by End of 2016	845.00
Anticipated Additional Expenditures by End of 2016	-
Anticipated Reserve Funds as of December 31, 2016	**23,756.73**
Fully Funded Reserve Balance as of December 31, 2016	34,730.00
2016 Reserve Balance Differential	(10,973.27)
Percentage Funded	68%
Anticipated Contributions during 2017	2,028.00
Anticipated Interest Income during 2017	357.00
Anticipated Expenditures during 2017	-
Anticipated Reserve Funds as of December 31, 2017	**26,141.73**
Fully Funded Reserve Balance as of December 31, 2017	39,784.00
2017 Reserve Balance Differential	(13,642.27)
Percentage Funded	66%

**The Board does not anticipate the need for a Special Assessment to fund the Siena Ancora Reserve Account for 2017. The Board anticipates $2,028 in contributions will be made in the form of reserve transfers during the 2017 fiscal year. The recommended balance for full funding for the reserve as of December 31, 2017 is $39,784 therefore, the current reserve account is considered adequately funded.*

Adopted by the Southern Highlands Board of Directors on October 13, 2017
Ratified on November 17, 2016

EXHIBIT "G"

EXHIBIT "G"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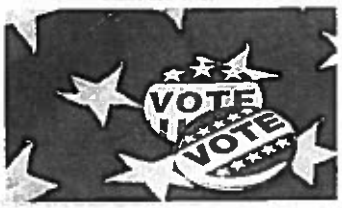

Mike **Kosor**

*A UNIQUELY QUALIFIED CANDIDATE **

for

Southern Highlands Community Association (SHCA) Board of Directors

These are the issues I will fight to improve

Unnecessarily high homeowners HOA fees

Local anti-crime efforts

Inadequate community parks, sports fields, and who pays the bill

Obtaining an HOA board selected by homeowners- not the Developer

A Letter to My Neighbors

* Made possible by the many homeowners who are supporting this effort!

Experience Does Make a Difference

- Retired Air Force Colonel and combat tested fighter pilot
- [illegible] CEO at [illegible]
- A proud home owner and resident of Southern Highlands for [illegible] years
- Proven Director and Treasurer on the Christopher Communities HOA Board since 2015 successfully reducing HOA dues while maintaining a premier community
- Waging an ongoing three-year campaign to end the Developers control of our Board
- Personally challenged the County Commission following their persistent failure to address matters impacting our community, in particular [illegible]

take appropriate actions on issues related to our community's parks

Learn More About me

My Pledge To You

My pledge to Southern Highland homeowners is to work hard to preserve our quality community. I will demand the SHCA Board be fully transparent, maintain strict control on costs, while truly listening to and always placing owner's interests first. Scheduling most meetings to a time easier for owners to attend would be a necessary first effort.

Be assured I have no alternative objectives in serving on the Board. I am not looking for community exposure to further a business and/or career ambitions. I am happily retired from any and all business pursuits.

If democracy is to work in Southern Highlands it requires your participation in our November Board election. I hope my experience and priorities for our community going forward is deserving of your confidence and vote. But regardless of your choice of candidates please cast a vote for one who is willing and capable to fight for homeowners.

Learn More About the Issues

Election vote count starts?

Olympia Management informed me via email on 11/21/17 that [illegible] caused a [illegible] delay in the mailing of [illegible] materials." The email also stated "...the Board is seeking guidance before proceeding. Once a determination is made, the Board will reach out to each candidate with an update and new timeline."

How or even if the community is to be informed was not addressed.

The mailing of election ballots was originally scheduled for NLT 11/15/17 with a vote count on November 30th. When I hear more, I will update this site and the count down clock.

CONTACT ME

Name *

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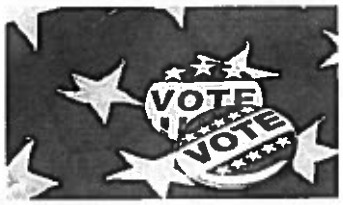

MEET Mike

Mike Kosor was born into a military family moving across much of America as a child. He inherited a strong sense of service from his father, a retired Air Force Chief Master Sergeant.

After attending college on an AFROTC scholarship, Mike would spend twenty-four years in the United States Air Force. There he was a combat tested fighter pilot in the first Gulf War, commanded an F-15 fighter squadron, attended the USAF War College, appointed to serve as a senior military advisor in the Middle East, and finished his military career in Washington DC directing the efforts of the Air Forces' largest foreign military sales regional.

Retiring as a Colonel, Mike would have a second successful career in hospital administration, where he would eventually serve as a CEO for a major for-profit hospital operator. Retiring a second time, in large part to assist with the care of this parents, Mike moved his family and parents to Las Vegas and eventually Southern Highlands in 2011.

Mike has an undergraduate degree in Accounting and a Master's Degree in Public Administration. He holds a commercial airline transport pilot certificate and held a Realtor license in two different states.

Mike will fight for owner interests, not those of the Developer or other typically influential parties. He has spent the past three years impacting local issues such as developer control of HOAs, Clark County's unfilled

community park commitments, and the general failure of our Association Board to advance the interest of Southern Highlands homeowners.

Mike now wants to use his time, experience, and energy to strengthen our HOA's financial position, engage on issues adversely impacting Southern Highlands, and upholding our community's reputation as a premier place to live, much as he has done as a board member of the Christopher Communities HOA since 2015.

Mike has proven success leading multiple large organizations. He can successfully lead our community.

CONTACT ME

Name *

Email *

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Developer Control of Our HOA

The Developer has done a great job building an excellent community. But the time to allow the community to be self-governed has long been upon us. Read my January 2017 letter to the SCHA Board concerning its continued refusal to address a law (NRS 116.31032) to effect a control change ending the Developer's ability to appoint three of the five directors and holding owner elections for all Board directors.

Security for Homeowners and Our Families

A community needs to provide a safe environment for all its residents. While I currently believe Southern Highlands is one of the safest places to live in Southern Nevada, the area is growing rapidly and our crime is increasing. This needs to be an important focus of our Association going forward.

Assessments and Expense Control

We all understand a quality product generally requires money to maintain. This applies to HOAs. My issue with SHCA is it spends too much of our money, often on items that have not improved quality. I believe we can ***significantly lower expenses, thus assessments****, while maintaining quality. Here is what I will push for on our behalf:*

- *Renegotiate our very expensive contract with Olympia Management, an affiliate of the Developer. We currently pay as much as double what I believe we should for quality management services*
- *Immediately work to address the more than $1.2M in annual public park maintenance we as owners pay. These unnecessary payments account for almost half of the HOA's total landscape, maintenance and utilities expenses and comprise 25% of your total assessment. These are after all "public parks" that should/could otherwise be paid by the County*
- *End the wasteful legal costs ($1.4M in 2016, many time more than typically incurred by HOAs of similar size). Spending owner money blindly chasing delinquent payers must end*
- *Stop the huge deficit spending which occurred in 2016*

The SHCA Board's recurring failure to engage on behalf of homeowners

Southern Highlands is effectively a small city of over twenty thousand plus voters. Yet our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State - for example:

- *a massive "sweetheart" deal for our Developer that significantly changed and reduced our long overdue "Sports Park"*
- *Clark County's "cost-shifting" of park maintenance expenses to our HOA*
- *County and Developer coordinated agreement that would permanently and wrongly obligate the HOA to maintain the "public" parks in our community (my letter to the SHCA*

BOD)

- *recurring changes to the Southern Highlands Development Agreement that had many significant negative impacts on our community and the homeowners*
- *our Management Company President actively lobbied State representatives to pass a law (AB 192-2015) allowing the Developer to extend its control of our community (watch her testimony - 2:07 into the video) but said nothing to owners*

Our community must engage on the political front as others are doing. If elected I will keep owners informed and insist our Association engages to advance and defend owner interests on both the County and State level.

Sports Park – the Great Failed Promise

The promise of a Sports Park has long attracted families to the Southern Highlands community. However, the County and Developer have repeatedly failed to deliver on their promises for the Sports Park, first set out in 2005.

Our children have long needed and waited for baseball and soccer fields. The current plan for our Sports Park is a far cry from that originally promised.

The Sports Park is now ten years late and if completed, as now scheduled for May 2018, it will be only a fraction of what was promised. In September 2015, the infrastructure of the Sports Park was drastically reduced. The change relieved the Developer of millions of dollars of private funding commitments. In return, the County and SH citizens ***would get absolute nothing.***

Unless we intervene as a community the Sports Park we were originally promised will never happen. Our current SHCA Board, controlled by the Developer, is not engaged. In contrast, the Mountains Edge community, with a Homeowner controlled Board, is and owners are benefiting. Mountain's Edge is getting $23M in public funded parks maintained with public tax dollars.

Read what the Review Journal had to say about the Sports Park.

CONTACT ME

Name *

Email *

Subject

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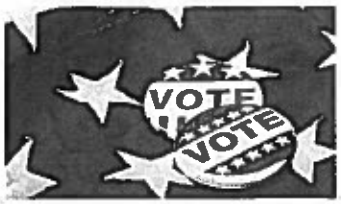

Q- Why are you doing this- running for a non-paying position on an HOA ?

A- Several year ago, as a new Southern Highlands owner, I attended a number of Association Board meetings. I was very disappointed for a number of reasons. To start, meeting times (typically 10 am) made attendance by most owners impossible. Strangely, the sessions appeared controlled by Angela Rock, the President of Olympia Management, who does not hold a position on the Board. I saw little real discussion on issues. Actions taken on significant issues appeared "pre-agreed", as if other private meetings/workshops were held. Transparency was clearly lacking.

I began looking into a number of issues. The Board repeatedly refused to release, among other items, draft annual budgets despite being on the agenda for approval. I also felt the Board had side-stepped my formal complaint related to Developer control change - control I feel should have been terminated many years ago (now under investigation by the Nevada Real Estate Division).

It was clear any improvement would have to start from the inside. Encouraged by my neighbors and other SH owners that love our community, I made the commitment to run for our HOA Board as your owner representative.

Q- Why are our assessments so much higher than Mountain's Edge?

A- The Master Plan fee at Mountain's Edge (ME) is $31/mo while Southern Highlands residents pay $67- more than double. Not having ME's financials (I am not a resident) and with the limited information SH provides, the exact answer is hard to determine. It is however a very good question for our BODs to answer. It is certainly one I will immediately look into if elected with full access to association financials.

Based on what I have been able to researched, a number of areas are at the root of our high fees. First, the management contract with Olympia is very expensive. Second, we pay a significant amount (20-25%) of our assessment to maintain what I believe should be publicly maintained parks (see more on this below). Most all public parks in ME are maintained by the County using public dollars- as they should be.

Two other major expenses need to be evaluated- (1) our landscape contract and ancillary expenses with Par 3 and (2) the huge expenditures for legal costs over the past several years. I believe significant cost savings are available in both areas while maintaining quality standards.

Another important area of concern is the funding level of our Reserves. If I recall correctly, our Reserves were last reported at 67% of fully funded. This under funding will eventually come due. I suspect our BOD is under funding Reserves to pay for the above noted excess. Under funding Reserves, the money used to replace expensive infrastructure like roads, is dangerous.

Q- Have you ever held a political office

A- No. I am an "operator" by trade (now retired). During my professional career I had success effecting change and moving large organizations forward. Frankly, I am rightly accused of too often "telling it as it is". Historically this has not been seen as a beneficial attribute for a politician. But I do listen and believe owners will also, provided the reciprocal is applied.

I feel someone needs to fight for homeowners in SH and I am willing, with the help of owners, to use my skills and experience to make a positive difference.

In full disclosure, I have served for the past three years as a director on the Christopher Community Association Board, but that, as with the SHCA Board, is not a "political" office.

Q- What do you mean by Declarant Control? Why should it be an issue?

A- Most homeowners are completely unaware of the concept of Declarant Control (i.e. Developer Control). This is not surprising. Nevada (as with most state) does not require pre-sale disclosure of the fact that a Declarant (Developer) may still control a homeowners association- control that can be indefinite. They just dump the large CC&R package on your closing table (or worse yet give you an electronic version) and it is up to you to find and understand the extensive terms you agreed to, to include the potential issues.

Developer control (called Declarant Control in the statutes) has a number of implications. The largest affecting SH today, is the Developer has the right to appoint, three of the five directors (the majority) of our association board. The three appointees (of which only two are owners in SH) are also employees of the Developer.

Until recently and per our CC&Rs, Declarant Control terminated when 75% of the maximum units authorized in the CC&Rs were no longer under Declarant Control. Nevada law changed in 2015 (arguably a piece of special interest legislation for our Developer and lobbied for by our senior executives of our Management Company) moved the control threshold to 90%. Inexplicably and I argue wrongly, the change is being interpreted as retroactive, affecting existing CC&Rs. See my letter to the Board for more details.

I filed a formal complaint with Nevada Real Estate Division (NRED) against our Board. I believe control change should have occurred years ago and our BOD is violating the law in not having effected the change in control. Our BOD disputes my claim but has not offered a clear explanation to me or owners. NRED is "still investigating"- something they started two years ago. Politics?

Much legislative reform and regulatory oversight is needed around CC&R construction, owner complaint processing, and the general lack of regulatory oversight of CC&R content, to include Declarant Control provisions. For more see Our Issues.

Q- What makes Developer control an issue?

A-The Developer, via his appointed majority control of our Board, effectively have the final say on all policy decisions, to include how much and where our assessment money is spent; not owners elected by owners. With the management company, Olympia Management, also controlled by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. I believe this has already cost our community millions of dollars.

I spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right.

The collective owners in SH have a much larger investment in the community than does the Developer. We deserve a fair share vote. The Developer had twenty plus years to execute its business plan in SH. It is time our governing body is elected by owners to represent only owners.

Q- Rumor has it you are trying to damage the Developer?

A- Nothing is further from the truth. I respect what the Developer has done in Southern Highlands. After all its vision, money, and hard work made Southern Highlands a great place to live. Its actions are constituent with those of a developer. Besides, I look to uphold the reputation of the community which is related to that of the Developer.

I invested in my home and retirement here for the above reasons and more. I simply expect the Developer to release control (end its ability to appoint 3 of 5 board members and more) transferring owners the control as it originally committed. Owner's collective investments in our community significantly exceeds that of the Developer's and control change is what it promised when we purchased.

Q- Rumor has it SHCA is using owner money to pays for a lobbyist. True?

A- Yes, it does and based on my inquiries, it has since 2010-costing owners over $400K. I am told Lewis & Roca, one of many law firms representing SHCA in foreclosure related litigation, is also engaged as our lobbyist.

I do not feel the money was and is well spent. I would work to end these payments. First, it is not clear to me how the payments are being authorized in the first place. I have never heard the BOD approve any contract for said services, the annual payment authorizations, nor can I find anything in Board meeting minutes- one of many transparency issues I have with our BOD. I have attend all BOD meetings for the past three years and have never heard from our lobbyist nor what instructions/issues he/she is tasked to lobby for/against. The subject of lobbyist and legislative issues important to SHCA has never, to my knowledge, ever been on the agenda.

I certainly do not understand why our BOD feels we need a lobbyist given it never communicates issues at the State or County level potentially affecting owners.

I found it disturbing to discover a member of the law firm engaged by the HOA, actually lobbied Nevada legislators in support of a bill (AB 192-2015) that eventually passed and changed the developer control threshold from 75% to 90%. This is certainly not something in the best interest of SH owners, yet we as owners never even learned of the bill or our lobbyist efforts to pass it.

Q- Some believe if our parks were to be maintained by the County, they will deteriorate. A concern? What would you propose if elected?

A- First, I strongly believe that whatever the community does with the parks it should be done only after a majority vote of owners (required per the law), not by our Developer controlled BOD. If owners are to accept obligations not identified in our CC&Rs we must do so only if the majority agrees. Our current situation, saddling owners with the park obligations, has never been put to a vote.

Concerned with park deteriorating under County control? Not really, for three reasons. First, I see no evidence the County is unable to maintain the parks properly. Most all parks are maintained by the County and the City of Henderson and are generally in very good condition. This idea appears to be a rumor spread by those with an agenda.

Second, the Association will always pay close attention to the conditions of parks in our community. We have a large political block as a community capable of insisting on quality maintenance. Park maintenance is after all a part of our property taxes. I doubt many owners are excited about paying twice for maintenance- once in our assessments, then again in taxes to maintain other parks in other County communities.

Third, I'd work to negotiate with the County (a concept I proposed a year ago and which was eventually adopted, albeit distorted by the parks sub-committee) on jointly controlling and contributing (far less than we do today) to the maintenance of our parks.

Q- Why do you say are we not getting the Sports Park promised?

A- Our community's Sports Park is scheduled to be completed in May 2018. It was first promised to open in 2008- ten years ago. It has been re-scheduled several times since 2008 with each subsequent promise failing to materialize. Naturally, I am disappointed our SCHA Board sat silently doing nothing over this period.

More importantly, the infrastructure contained in the current Sports Park is drastically less than first promised in 2005. We will not get a 4x baseball complex, lighted, covered stands, and concessions. Nor will we get the two practice baseball fields, a soccer fields, all the basketball courts, and two entrances- all previously promised. (see Our Issues page for more)

The County Commission has cheated our community, while our BOD turned a blind eye to all of the above.

Q- What is this "Agreement for Public Access" being discussed and what happened/did not happen to get us here?

A- The Southern Highland Developer Agreement (SHDA) requires public access easements from the Developer for all parks where Nevada's Recreational Construction Tax money (a one-time tax on each home paid when the building permit is pulled) is credited to the Developer by the County for park construction. County records indicate about $6.7M of tax dollars have been credited -- but no easements were provided.

Title to the parks in question was transferred from the Developer to the HOA in 2007/2008. Prior to doing so, both per the SHDA and our CC&Rs, the Developer is required to obtain an acknowledged from the HOA in writing affirming (1) it (SHCA) is obligated to perform any unfulfilled terms and conditions of the SHDA and (2) it (SHCA) accepts Owner's maintenance obligations for each park and paseo. This did not happen.

So today, with title held by the HOA, the Developer is unable to provide the public easement access and is requesting the HOA do so. I believe the agreement we are being asked to execute is a huge mistake and I have told our BOD this at the September 2017 meeting when it came up on the agenda. FYI- a similar agreement was floated by our Developer last year and the BOD rejected the agreement. This time, despite objections again this year by owners, our SHCA BOD conditionally approved the proposed agreement.

My objections to the Agreement are: .

1. Title to the parks was inappropriately transferred to the HOA. The Board never approved the initial transfer and more importantly, owners never voted to accept the obligations of maintaining the "public" parks in question. The transfer should be voided.
2. SHCA owners should not be required to pay twice for the maintains of public parks- we already pay property taxes for that purpose.
3. Our Board's approval to execute this Agreement was done without satisfying necessary owner acceptance provision in the statutes. A technical "loophole" allows it to do so. However, per NRS 116.3112 par 4. ".. the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3" (a majority vote of the owners).
4. The deeds (somehow) transferred to the HOA hold terms & conditions I find completely unacceptable. (Read the deed for Goett Park yourself here.)

If we ignore the initial transfer I believe should be voided, technically our Board could execute the Agreement (under the weird provision in the law) but it is "unenforceable". Understandably, our BOD cannot obligate owners beyond the authority it has under our CC&RS to do so, without an owner majority approval vote.

As for how did this happen? Clearly there are a lot of moving parts here and big money. The County would have me believe its failure to obtain easements was an "error" on its part. I do not buy it. Something certainly happened, but it was not just an "error". If truly an "error", then we must assume the County failed to conduct required and very basic due diligence before approving the latest September 2015 SHDA. Second, this alleged "error" happen despite an audit of the SHDA by the County identifying a lack of easements in 2011. It was something the County took compliance action, so it was not just another unread report (watch the County Commission video and read report- agenda #31). Are we now to believe this was forgotten? Finally, the County is required to conduct a review of all development agreements every two years. Here again, the County would have me believe it missed the lack of easements during each review since 2011? So, if you buy all of the excuses, then yes, the above constitutes a mere staff "error". If not (my camp) them we must assume more is at play. I also ask, where was our BOD while all this was going on?

CONTACT ME

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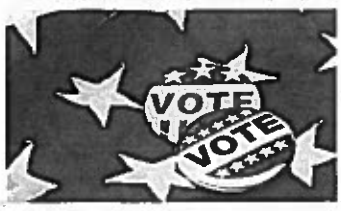

A Letter to My Neighbors

Dear Southern Highland Neighbor,

I would like to be your representative on the Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of only two independent/owner Board Directors will be selected (three directors are selected and employed by the developer).

I am a retired United States Air Force Colonel, combat tested fighter pilot, and former for-profit hospital CEO who made SH home six years ago. I have served as a director on many civic, non-profit, and for-profit boards, to include currently serving on the HOA Board of my sub-association. With a demonstrated ability to serve, proven integrity, large organization operational and financial experience, and years fighting the establishment for all SH owners, you can count on me to keep our community the premier place to live in Southern Nevada.

My objectives if elected are:
First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With our management company, Olympia Management, owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected and loyal only to the homeowners that elected them.**

Second, we can **significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricey contract with the Developer's management company, Olympia Management (another $1.4M/yr) and,
- refrain from wasteful legal costs ($1.4M in 2016, far more than that typically incurred by HOAs of similar size).

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

Third, a community needs to be seen as a **secure place to live**. While I currently believe SH is one of the safest places to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be a large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best inserts of homeowners** with government agencies. This must change. Recently, our Board failed to oppose a massive change, approved by the Clark County Commission, affecting our long overdue "Sports Park". Despite being promised by the County and our Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession
- Two practice baseball fields, one soccer field, two basketball courts, all lighted
- A second entrance with associated parking, plus more

What currently remains of the Sports Park is a far cry from that originally promised. These massive cuts saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County would at roughly the same time, approve twelve million dollars ($12M) in public money to build a four field baseball complex in Mountain's Edge.

This would not have happened had our Board, as did the Board of Mountain's Edge (where directors are all owner elected), been engaged in the defense of owner interests. Our Board turned a blind eye, not even telling owners of the pending changes proposed to the long awaited Sports Park. Was the Board's failure to act in opposition to the changes, a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but **you must vote.** Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

CONTACT ME

Name *

Email *

Subject

Message

Send

Dear Southern Highland Neighbor,

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My objectives if elected are:

First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for our Board to experience conflicts of interest, loss of board autonomy, and failed fiduciary oversight exists. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected and loyal only to homeowners.**

Second, we can **significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricy contract with the Developer's management company, Olympia Management (another $1.4M/yr) and;
- refrain from wasteful legal costs ($1.3M in 2016, far more than typically incurred by HOAs of similar size).

Third, a community needs to be seen as a **secure place to live**. While I currently believe SH is one of the safest place to live in Southern Nevada, we are going rapidly and crime is increasing. This needs to be large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best interests of homeowners** with government agencies. Recently, the Board failed to oppose a massive change, approved by the Clark County Commission, to our long overdue "Sports Park". Despite being promised by the County and Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession.
- Two practice baseball fields, one soccer field, two basketball courts, all lighted.
- A second entrance with associated parking, plus more.

These massive cuts saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County approved twelve million dollars ($12M) in public money to build a 4x baseball complex in Mountain's Edge.

This would not have happened had our Board, as did Mountain's Edge Board (where directors are all owner elected), defended owner interests. Our Board turned a blind eye, not even telling owners of the pending change while the Developer worked changes to its agreement. Was the Board's failure to act in opposition to the change and the interests of the Developer a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but you must vote. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

DECL
Raymond R. Gates, SBN 5320
Robert B. Smith, SBN 9396
LAURIA TOKUNAGA GATES & LINN, LLP
1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833
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Attorneys for Defendant MICHAEL KOSOR, JR.

DISCTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada Resident; DOES I-X, inclusive, Defendants.	CASE NO. A-17-765257-C DEPT. NO. XII DECLARATION OF ROBERT B. SMITH, ESQ., IN SUPPORT OF DEFENDANT, MICHAEL KOSOR, JR'S, MOTION TO DISMISS PURSUANT TO NRS 41.660 DATE: TIME:

I, Robert B. Smith, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of Nevada, my state bar number is 9396, and am an attorney with the law firm of Lauria Tokunaga Gates & Linn, LLP, attorneys of record herein for defendant MICHAEL KOSOR, JR.

2. I make this declaration of my own personal knowledge and am willing and able to testify if called as a witness as to the matters set forth herein.

3. Attached as Exhibit A to my Declaration is a true and correct copy of the letter from KOSOR to SHCA regarding the "Master Acknowledgment Regarding Public Access in Southern Highlands Parks.

4. Attached as Exhibit B to my Declaration is a true and correct copy of Correspondence/Complaint between KOSOR, Nevada Real Estate Division and the Nevada Attorney General regarding Declarant Control.

5. Attached as Exhibit C to my Declaration is a true and correct copy of the Southern Highlands Association Nomination Information Form – 2017.

6. Attached as Exhibit D to my Declaration is a true and correct copy of the pamphlet KOSOR distributed to the Southern Highlands homeowners as part of his election campaign, on November 17, 2017.

7. Attached as Exhibit E to my Declaration is a true and correct copy of the correspondence between Southern Highlands Development Corporation and Clark County Comprehensive Planning and Clark County Parks and Recreation Department.

8. Attached as Exhibit F to my Declaration is a true and correct copy of the Southern Highlands 2017 Ratified Budget.

9. Attached as Exhibit G to my Declaration is a true and correct copy of the audio recording of the December 2015 meeting at issue in the Complaint.

10. Attached as Exhibit H to my Declaration is a true and correct copy of the web pages from mikekosor.com.

ROBERT B. SMITH

EXHIBIT "A"

EXHIBIT "A"

Southern Highlands Community Association
Board of Directors
11411 Southern Highlands Pkwy., Suite 100
Las Vegas, NV 89141

September 18, 2017

Subject: Master Acknowledgment Regarding Public Access in Southern Highlands Parks (Parks Access document)

Dear SHCA Board:

As a home owner in the Southern Highland Community Association (SHCA), it has come to my attention a document titled Master Acknowledgment Regarding Public Access in Southern Highlands Parks (Parks Access document) constructed by the declarant and coordinated through the County, is on the September 21, 2017 agenda for approval by the Board of Directors. **SHCA has no present obligation to execute the Public Access document and should act to reject approval to execute the document for the following reasons:**

1. The deeded transfer of the park properties identified in the **Park Access document to SHCA is not enforceable and void.** Additionally, the title transfers fail to comport Southern Highlands Development Corporations' (Developer) required conditions for said transfers to SHCA as set forth in the Southern Highlands Development Agreement (SHDA) and SHCA CC&Rs. They were completed without Board resolution, making original title actions voidable.
   A. Recorded Quitclaim Deeds on the park properties, purport to convey an ownership interest and establish collectively performance obligation of the Association, set out in the singular and collective deeds. The deeds create a performance obligation by the Association, thus per NRS 116.087, create a security interest[1]. Statute provides the SCHA Board may "...acquire, hold, encumber, and convey...any right, title, or interest to real estate...but: (1) .... subjected to a security interest only pursuant to NRS 116.3112"[2]. NRS 116.3112 requires "at least a majority of the votes in the association...must agree...". As no SHCA owner vote was accomplished, the parks transfer, "...is not enforceable against the association..."[3] and the deed, purporting a conveyance of a security interest, not pursuant to NRS 116.3112 par 5 "is void"[4].

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[1] NRS 116.087- ""Security interest" defined. "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation."
[2] See (NRS 116.3102 (h))
[3] Per NRS 116.3112 par 4.- "The association, on behalf of the units' owners, may contract to convey an interest in a common-interest community pursuant to subsection 1, but the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments."
[4] **NRS 116.3112 par 5 - "Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements or of any other part of a cooperative is void." (emphasis added).**

B. Park acceptance, park property conveyances and deed transfers to SHCA were not accomplished in accordance with the conditions established in the SHDA and similar conditions set out in the SHCA CC&Rs[5].

C. No easements related to SHDA conditions are recorded against the properties nor have any actions been taken by SHCA that would otherwise obligate the Association under terms of the SHDA.

D. Title transfer acceptance of the identified park properties, performed by Rick Rexuis, SHCA Board President and an employee of the Developer, was done so without a resolution by the SCHA BOD nor were his actions later affirmed by same making his actions voidable.

2. Execution of the Park Access document would effectively establish a Board resolution acknowledging acceptance of conveyed park property to the Association which, as provided in #1D, has not been previously established. Any such action, as set out in 1A, would be unenforceable without an owner majority approval vote.

3. The Park Access document establishes a security interest and encumbrance of the park properties. If executed it would not be enforceable and void without an owner majority vote approving the action[6].

Paragraph C. purports Park Properties were provided "...to the Association for programming and management and thereafter conveyed.... pursuant to (the recorded deeds)". Paragraph 2. of the Parks Access document establishes park properties ".... will continue to be operated and programmed in accordance with the provisions of Paragraph 1. (conditions generally set forth in the SHDA and applicable Deeds)". This provision would obligate SHCA to maintain the parks at its sole expenses establishing a security interest (see footnote #2) and establish an encumbrance. As previously noted, NRS 116.3102 while providing SHCA the power to convey a security interest in and encumber common areas, NRS 116.3112 par 4. establishes any such action, as does the Park Access document "...is not enforceable against the association until approved pursuant to (a majority vote of owners)" and per NRS 116.3112 par 5. "is void".

4. Conditions set forth in the Master Acknowledgment Regarding Public Access in Southern Highlands Parks before the Board are seriously flawed. If executed the document would falsely affirm, establish a number of unacceptable conditions, and inappropriately obligate SHCA to park operating maintenance expenses.

A. Language in Paragraph 2. is flawed and misleading. It purports to be "memorializing the original intent of the Developer and the Association with respect to the conveyance and subsequent management and operation of each Park..."

1) The original conveyance, management, and operations intent of the Developer was to provide all park properties to the County, not SHCA. The Developer send formal notice dated April 27, 2005 to the County informing the County of its "intent to dedicate" the subject park properties to the County "in accordance with paragraph 6.02(a) of the (SHDA)". Furthermore, the County recognized the Developer's conveyance request and

[5] Established in section 6.02(b) of the original SHDA, unaltered by subsequent amendments. The section provides for transfer of an "HOA Park" by the Developer only pursuant to "...Homeowner's Association acknowledges in writing (a) that it is obligated to perform any unfulfilled terms and conditions of this Section 6, and (b) that it accepts Owner's maintenance obligation for such park or paseo." No such written acknowledgment was executed.

[6] An owner majority vote approving the original transfer action to SHCA by the BOD would also be required.

began budget efforts for the maintenance of the parks[7]. The County anticipated funding to operate the parks upon final conveyance acceptance, pending inspections and among other things, park compliance with County standards, the SHDA, and RCT conditions. Park conveyance to the County was never completed[8]

2) There is no evidence SHCA has ever properly resolve or otherwise establish an original intent as purported.

B. Paragraph A of the Park Access document states that the Developer "improved (the parks) pursuant to the requirements set forth in the Development Agreement ...(as amended, the "Development Agreement'), and further, the County approved the Park Properties as constructed and designed". The claim parks are compliant with the SHDA is being raised without documentation to prove the claim[9] while documentation of County approval "as constructed and designed" cannot be provided for confirmation[10].

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[7] Evident by a series of emails, obtained via FOIA, I can provide upon request.

[8] Following discussions and at least one "informal" meeting between the Developer and County, the County would stop its budget efforts in the fall of 2005. Shortly after the County would approve proposed changes to the SHDA related to park conveyance and standards while granting a significantly expansion to the Developer's total project scope, among other items. The Developer would transfer the parks to the HOA following Amendment 2 with now potentially revised compliance standards, therein providing the County an ability to avoid funding park maintenance.

[9] Section 6.01 of the original SHDA provided "Owner shall design, construct, maintain and dedicate to County (or on HOA parks provide a public access easement) public neighborhood parks and a paseo in compliance with the Master Parks and Public Facilities Plan attached as Exhibit "I"". Note, the SHDA required County approval of park designs and the Master Plan controlling before and after construction completion, defined neighborhood parks as greater than 5 acers. Neighborhood park would include Goett, Stonewater, Inzalaco, and Somerset Hill Parks. The SHDA would be amended (A2) in November 2005. All park properties associated with the Park Access document were completed prior to A2 with the aforementioned void title transfer actions to SHCA taken after A2, in and around 2008. First, A2 would delete section 6.01 of the original SHDA, inserting Section 6.01(b) Park Standards, wherein all parks of the Parks Access document (this is identified in amended language "Of Parks not yet constructed and to be dedicated...") would inexplicably, attempt to preclude parks already completed from previously established standards and County's previously approved final design. A2 would establish a revised Section 6.01 Park Standards and Location providing "owner shall design and construct public neighborhood parks and a paseo in compliance with the Master Parks and Public Plan attached as Exhibit "I-2" (not "I" as provided prior to A2).

Confirmation of construction compliance as referenced in paragraph A, necessitates an examination of the approved park designs, approved cost overruns, and post construction inspections for the park properties, all required under the original SHDA and the Park Master Plan in Exhibit "I" and "1-2". However, the County responded to my FOIA, submittal to inspection said documents, inexplicably informing me the above requested and required documents have not been located (per ADA Miller letter dated June 2 19,2017, subject Southern Highlands Development Agreement).

[10] Similarly, to footnote #9, FOIA requests for County document wherein showing parks were approved as "constructed and designed" but as noted in FN #10 cannot be found. Documentation reflecting Clark County Commission actions, recognizing the park properties were "completed", are available. However, "approval" and/or affirmation parks completed were in compliance with all SHDA conditions requires examination of documents not available.

Additionally, it should be noted, the SHDA as amended with A2, provided for the Developer (no longer the County) to "...create and establish uniform design guidelines for all (Parks)" then merely "deliver to County" the design guidelines even "when amended", with no reference to County approval. A2 was effective after all park properties were completed. A2 purports to delete any County design approval requirement. See footnote #10 for additional context around the above A2 approval.

C. I dispute claims in the Master Acknowledgment Regarding Public Access in Southern Highlands Parks purporting to establishment the "original intent" of both parties related to park public access. Paragraph 2. and Paragraph E. provides "...original intent of the Developer and the Association... included and has always included, a non-exclusive public access easement ...". Paragraph E., further states a "...desire to re-acknowledge the original intent of the Developer and the Association regarding public access".

1) The Developer has never properly recorded a public access easement on the park properties, despite SHDA requirements, this despite the County's release, of RCT credits issued under the SHDA and IAW NRS, subject to said easement recording.[11]
2) Despite having been made aware of a 2011 audit by the County identifying a lack of any properly recorded public access easements required under the SHDA, none were recorded
3) Despite the Developer's material representing in 2015, in executing A3 to the SHDA, the "Owner has recorded approved Public Access Easement(s) ...". None were ever properly recorded.[12]
4) No action of any kind, affirming the Association's "original intent" has ever been properly executed by SHCA. The Association thus cannot "re-acknowledge".

D. It is unclear what the language in the Park Access document providing "valuable consideration, the receipt and sufficiency of what are mutually acknowledge..." means. Documentation of said consideration is not provided.

E. I consider a number of provisions and guarantees, contained in every park property Quitclaim Deed[13] unacceptable. They include but are not limited to:

1) "...the quality of planting and equipment would be maintained at an acceptable level, in Declarant's sole discretion...",
2) "...maintain the grounds, landscaping, annual flowers, hardscape, play apparatus, and other organic and inorganic material and features within the park at the same or superior level...an acceptable level, in the Declarant's sole discretion",

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This section of the Park Access document may be referencing A3 to the SHDA was inexplicably approved in 2015. A3 to the SHDA would once again delete section 6.01, this time replaced with an affirmation (lacking any supporting documentation) that all park properties identified in the document were completed "... in compliance with Master Park and Public Facilities Plan ... (which was updated in the Third Amendment to this Development Agreement)." No approval or other documentation supporting the affirmation parks were compliant with the Master Plan at completion or alternatively demonstrating compliance post-construction, with the Master Plan current at completion and/or in 2015, has not been made available. See 1C.3) for at least one confirmed false affirmation contained in A3.

[11] See NRS 278.4983 Residential Construction tax. RCT must be imposed pursuant to this section. The section requires compliance with the County ordnance enacted adopting a recreation park master plan.

[12] This was confirmed by ADA Warhola in a letter dated October 13, 2016. An easement was approved by the Clark County Commission for Stonewater. It was located by this author having been recorded in error against the wrong parcel number. It should be additionally noted, Stonewater (parcel # 191-06-615-001) was designated in the Association CC&Rs as a common area with formal title transfer occurring in 2003 as a common area. SHCA approval was not required.

[13] Some minor wording changes at present among the park Quitclaim deeds recorded while the restrictions and conditions are effectively the same.

3) "...the name will not be changed..."
4) Upon violations of the above guarantees and other terms the "Declarant shall have the right and authority but not the obligation, at the sole cost and expense of the Association to obtain a permanent injunction...",
5) "...Declarant shall have the right and authority but not the obligation, at the sole cost and expense of the Association, to replace, repair, or maintain the feature or material.".
6) "...may not convey said land to any other entity, included but not limited to the Clark County Park and Recreation Department without the express written consent of Declarant."
7) "If any of the foregoing guarantees are violated, ownership of the parcel shall immediately revert back to the Declarant."

The above noted deed conditions continue beyond declarant control and the term of the SHDA. They more rightly describe a lease than a conveyance of real property and its associated rights bundle. **They obligate the Association to onerous conditions**. If properly accepted, they would permanently restrict and subordinate the authority of SHCA- terms and condition the Board, as a fiduciary of the owners and in exercising good Business Judgement, find are not in the best interest of the association.

Agreements and actions described above along with years of continuing omissions by the SHCA Board has resulted in SCHA inappropriately funding maintenance of park properties, costing owners in the community an estimated ten million dollars ($10M); an obligation otherwise resting with the Developer.

Last year a document similar to the Park Access document constructed by the Developer and coordinated with the County. It too intended to obtain SHCA execution of an agreement related to the park properties. It was by myself and others, eventually rejected by the Board. The disposition and maintenance of the park properties is and should remain a contract condition between the Developer and County.

In summary, the SHCA Board has no present obligation to execute the Public Access document. SCHA's acceptance of the park properties identified in the Park Access document are void. The document, if executed, lacking a majority owner vote in approval, would not be enforceable and void. In addition, numerous conditions set out in the Public Access document are seriously flawed, suspect and (as yet) unsubstantiated. The Public Access document contains conditions the Board, as a fiduciary of the owners, should find unacceptable.

A deferral of action can be accomplished without additional expense. Acting to approve, without addressing issues identified here, will result in significant and permanent additional and unnecessary cost to the community.

EXHIBIT "B"

EXHIBIT "B"

Nevada Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

VIA ELECTRONIC MAIL & CERTIFIED U.S. Mail

January 13, 2018

Re: Southern Highlands Community Association (SHCA) complaint #2

Dear Mr. Laxalt:

I ask you to review and revise the flawed and clearly deficient opinion recently authored by Mr. McKean in his Memorandum dated January 5, 2018 (attached).

As I set out in my January 12, 2018 letter to Mr. McKean (attached) the amendment to the initial January 2000 Southern Highlands declaration (CC&Rs) sited (attached), was not adopted by the Southern Highland's Community Association as is required to support Mr. McKean's opinion. The unilateral amendment by the developer contained an invalid provision. NRS 116.2122 clearly provides "a declarant may not in any event increase the number of units...". The opinion is flawed in finding the amendment appropriate to "replace" section 2.32 of the CC&Rs.

Mr. McKean's opinion also failed to address my additional claim that regardless of the Maximum units used (9,000 or 10,400) declarant control nonetheless occurred prior to October 2015.

My position on both of the above points was provided in my complaint (case #2017-913 attached) and again in my January 12, 2018 letter to Mr. McKean, as previously noted.

I respectfully ask your office to 1) review the Memorandum in question revising the determination on the validity of the "replace(d)" section 2.32 of the declaration with a new provision providing a new maximum number of units and 2) complete the opinion on the point clearly established in my complaint that units created to owners other than the declarant (NRS 116.31031) triggered declarant control change prior to October 2015.

Sincerely,

Michael J Kosor
12070 Whitehills St
Las Vegas, NV 89141
843-639-1701
mkosor@aol.com

attached: (1) NRED letter dated January 8, 2018 & attached Memo- Office of the Attorney General
(2) Letter to Mr. McKean dated January 12, 2018
(3) Third Amendment to SH CC&Rs
(4) NRED complaint filed 2/2/17 (case #2017-913)

cc: Office of the Administrator- Nevada real Estate Division
Office of the Ombudsman- Nevada Real Estate Davison

BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS PROGRAM
CICOmbudsman@red.nv.gov
http://www.red.nv.gov

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

January 8, 2018

Michael Kosor
12070 Whitehills Street
Las Vegas, Nevada 89141

Re: Case # 2017-913; Respondent: Southern Highlands Community Association (the "Association")

Dear Mr. Kosor:

The Nevada Real Estate Division (Division), Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels completed its investigation and requested the Attorney General's Office to review the legal questions and your allegations against Southern Highlands Community Association.

The Division received the Attorney General's response in a Memorandum dated January 5, 2018. The opinion indicates that the crux of the issue is the validity of the 2005 amendment. Challenges to the validity of the amendment have to be done in accordance with NRS 116.2117 (2). Currently there are no grounds to consider the amended Covenants, Conditions, & Restrictions ("CC&Rs") for Southern Highlands invalid in the absence of a legal challenge to the amendment having been brought in accordance with NRS 116.2117 (2). The Memorandum has been enclosed for your review.

Please be advised, based on the Attorney General's opinion, no further action will be taken by the Division and this case is closed. The decision to close this matter is made without prejudice.

Sincerely,

Sharath Chandra
Administrator

cc: Office of the Attorney General
Office of the Director – Department of Business & Industry
Office of the Ombudsman -Nevada Real Estate Division

Enclosure: Memo - Office of the Attorney General

ADAM PAUL LAXALT
Attorney General

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

MEMORANDUM

To: Sharath Chandra
Administrator, Real Estate Division

From: William J. McKean; 775.684.1207; wmckean@ag.nv.gov

Date: January 5, 2018

Subject: Southern Highlands – Homeowner Claim

This memorandum responds to legal questions regarding a homeowner claim that is premised on a challenge to the validity of an amendment to the master declaration of covenants, conditions, and restrictions ("CC&Rs") for Southern Highlands. As discussed below, there currently are no grounds to consider the amended CC&Rs invalid in the absence of a legal challenge to the amendment having been brought in accordance with NRS 116.2117(2).

The circumstances, as I understand them, involve the initial declaration for Southern Highlands recorded in January 2000.[1] Section 2.32 of the CC&Rs states that the maximum number of units approved for development as of that date was 9,000. Subsequently, in October 2005, an amendment to the CC&Rs was recorded (the "2005 Amendment").[2] By its terms, it "replaced" section 2.32 with a new provision providing a maximum number of units approved for development of 10,400.

A homeowner in Southern Highlands has asserted that the 2005 Amendment is legally ineffective or void—citing a provision of NRS Chapter 116, Nevada's codification of the Uniform Common-Interest Ownership Act ("UCIOA"). Specifically, the homeowner cites NRS 116.2122, which provides, in part, that the "declarant may not . . . increase the number of units in the planned community beyond the number stated in the original declaration." The contention is that if the 2005 Amendment is invalid, then the original Section 2.32 of the CC&Rs would remain in effect, leaving 9,000 as the maximum number of units for development. Based on this premise—that the amendment is void—the homeowner asserts that the 75-percent trigger for terminating declarant control was reached in October 2014, when the annual budget showed that

[1] Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for the Association as recorded on January 6, 2000, in Book 20000106 as instrument number 01679.

[2] Third amendment to the CC&R's, recorded on October 6, 2005, in Book number 20051006 as instrument number 5982.

7,041 units had been sold (7,041/9000 = 78%).[3] On the other hand, if the 10,400 unit maximum in the 2005 Amendment is not invalid, then the 75-percent threshold was not reached (7,041/10,400 = 67%). Thus, the threshold issue is whether the 2005 Amendment in invalid.

The Nevada UCIOA specifies the procedure required to challenge the validity of an amendment:

> No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

NRS 116.2117(2). By its plain language, a claimant seeking to challenge the "validity" of an amendment must "bring" an "action" within the one-year period. Since the statute does not define "validity," or "bring an action," it is appropriate to refer to dictionary definitions. *V & S Ry., LLC v. White Pine Cnty.*, 125 Nev. 233, 239-40 (2009). The term "valid" is defined as "[l]egally sufficient; binding." *Black's Law Dictionary* 1784 (10th ed. 2009). The phrase "bring an action" is defined as "to sue; institute legal proceedings." *Id.*; *see also Regency Towers Ass'n, Inc. v. Eighth Jud. Dist. Ct.*, 281 P.3d 1212 (Nev. 2009) (unpublished) (denying petition for extraordinary relief on grounds NRS 116.2117 afforded a property owner an "adequate remedy at law" to have "sued to challenge the validity of the amendment . . ."); *cf. SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 418 (Nev. 2014) (interpreting the phrase "institution of an action to enforce the lien" in the "context of foreclosures," to include "nonjudicial as well as judicial foreclosures"). Under Nevada's statutory time bar, then, a challenge to the legal sufficiency or binding nature of an amendment is conditioned on the timely commencement of a lawsuit. *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988) ("'Statutes of repose' bar causes of action after a certain period of time, regardless of whether damage or an injury has been discovered.").

Here, it does not appear that any lawsuit challenging the validity of the 2005 Amendment was brought within the one-year period after the amendment was recorded (based on an alleged violation of NRS 116.2122 or otherwise). In the absence of a valid legal challenge pursuant to NRS 116.2117(2), the replacement section 2.32 (stating a maximum of 10,400 units approved for development) in the 2005 Amendment should be considered legally sufficient and binding. Accordingly, there is no legal basis to conclude that the 75-percent trigger was reached in October 2014, when the annual budget showed that 7,041 units had been sold (7,041/10,400=67%).

In conclusion, at this time there is no basis to consider or treat the 2005 Amendment as void or unenforceable in the absence of a valid legal challenge pursuant to NRS 116.2117(2).

[3] As of October 2015, NRS 116.31032 was amended to increase the trigger percentage to 90 percent in the case of communities consisting of 1,000 units or more.

William J McKean
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

provided via Email

Subject: Southern Highlands Homeowner Claim Memorandum

January 12, 2018

Dear Mr. McKean:

I write here asking you to review two final items as an extension/clarification of phone conversation yesterday, January 11, 2018 and the information contained in my NRED investigation material I assume is in your possession. I hope you will take a minute and consideration the following and revise your Memorandum.

My complaint (case #2017-913) had two elements. One, the maximum units in establishing declarant control is 9,000 (not 10,400 apparently being asserted). Second and without regard to my first premise, declarant control change should have occurred prior to October 2015, i.e. even if 10,400 units is the proper maximum units as the developer/association apparently asserts.

First, while the law appears absurd as being asserted, I would nonetheless accept your opinion Memorandum on the topic of Amendment three to the SH CC&Rs- with one important proviso: the CC&R amendment was properly adopted by the association? A proper adoption process is the only thing that make sense of the provision.

NRS 116.2117 Amendment of declaration.

1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection 5 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsections 4, 7 and 8, the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

To my knowledge the 2005 amendment to the CC&Rs (attached) was a unilateral effort by the developer. Your Memorandum references its recording but does not confirm or otherwise note it was properly adoption by the association. My review of the recorded document (attached for your convince) provides none of the typical reference indicating adoption by the association such as contract amendment language and/or the President of association's signature, etc. Nothing in the language of the amendment indicates adoption nor does it fit within any of the many provisos set out in this section.

Were you provided confirmation or did you otherwise determined the amendment was adopted via a properly executed owner vote and recorded, etc.? If so would you or the Division share this with me in an effort to save time and spare additional challenges?

To be clear, I do not assert, as your memo states, the amendment is void in its entirety. I do not contest the declarant's ability to amend the CC&Rs. I merely assert the Maximum Units cannot be altered (per NRS 116.2122) even if an invalid and subsequently unchallenged amendment is recorded, can be controlling as you assert, only if the amendment was first properly adopted by the association.

Second, even if we assume the maximum number of units for SH is 10,400, control change should nonetheless have occurred prior to October 2015 (when the applicable statute was inexplicably and I argue unconstitutionally changed). Your memorandum fails to address my complaint on this point. Per the per-October change to the statue (NRS 116.31031(b)) 75% of the 10,400 maximum unit effects control change when 7,800 units are "created to owners other than the declarant". NRS 116.093 defines "unit" as "a physical portion of the common-interest community designed for separate ownership or occupancy..."- i.e. lots, with or without homes on them.

Your memo notes, the 11/20/14 ratified 2015 budget for SHCA (as previously made available to you and again attached) but it incorrectly addresses "sold" units as 7,041. For clarification, units "sold" is not the criteria established in the statute. More importantly, your "sold" number apparently only counted the association labeled "residential units" (units with COOs issued for the facility construed and have unit owners paying full assessments to the association). I count 8,240 units as "sold" or more appropriately "created to owners other than the declarant" units (residential 7,041, Siena 120, builder 1,079 as shown n the budget document). A simple count of COOs in insufficient. Builder units (annexed and paying 50% assessment per the CC&Rs) along with those of Siena must be included in the count, as they too have been "created to owners other than the declarant".

Declarant control should have been executed prior to the October 2015 if either claim is found to have merit.

Given the above information, I respectfully ask you reconsider your Memorandum.

Sincerely,

Mike Kosor

Receipt/Conformed Copy

Requestor:
FIRST AMERICAN TITLE COMPANY OF NEVADA
10/06/2005 15:51:44 T20050184097
Book/Instr: 20051006-0005982
Restrictio Page Count: 3
Fees: $16.00 NIC Fee: $25.00

APN: See Exhibit "1" attached hereto and by this reference made a part hereof for APNs.

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
4760 South Pecos Road, Suite 203
Las Vegas, Nevada 89121
(702) 966-6388
Order No. ACCOM-TL

(Space Above Line for Recorder's Use Only)

Frances Deane
Clark County Recorder

THIRD AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

SOUTHERN HIGHLANDS

(a Nevada Master Community)
Clark County, Nevada

THIS THIRD AMENDMENT TO DECLARATION ("**Third Amendment**"), made as of this 27 day of September, 2005, by SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION, a Nevada corporation ("**Declarant**").

WITNESSETH:

WHEREAS:

A. On or about January 6, 2000, Declarant caused to be Recorded a Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for SOUTHERN HIGHLANDS (the "**Community**"), in Book 20000106, as Instrument No. 01678; as amended by First and Second Amendments thereto, respectively Recorded in Book 20000106, as Instrument No. 01679, and in Book 20001009, as Instrument No. 01232; as supplemented by First, Second, Third, and Fourth Supplements to Exhibit "B" thereto, respectively Recorded in Book 20011016 as Instrument No. 01734, and in Book 20040916, as Instrument No. 03828, and in Book 20041213, as Instrument No. 04427, and in Book 20050421, as Instrument No. 0001340 (all of the foregoing, collectively, the "**Declaration**"); and

B. Pursuant to Section 23.1 of the Declaration, Declarant has the power from time to time to unilaterally amend the Declaration, to correct any scrivener's errors, to clarify any ambiguous provision, and to modify or supplement the Exhibits thereto; and

C. Pursuant to Section 23.1 of the Declaration, Declarant has heretofore from time to time modified and supplemented Exhibit "B" to the Declaration; and

D. Declarant desires to further amend the Master Declaration, to set forth the current number of Maximum Units as provided for in Section 2.32 of the Declaration, and thus further to clarify any ambiguity regarding the current number of Maximum Units included in the property described in Exhibits "A", "A-1", "A-2", and "B" (as heretofore amended and supplemented from time to time by Supplemental Exhibits "B-1" through "B-4", inclusive).

NOW, THEREFORE, Declarant hereby further amends the Declaration as follows:

1. Section 2.32 ("Maximum Units") is hereby replaced in its entirety with the following:

> 2.32 **"Maximum Units"**: The maximum number of Units approved for development within Southern Highlands under the Master Plan, as may be amended from time to time; provided, that nothing in this Declaration shall be construed to require Declarant to develop the maximum number of lots approved. The Maximum Units as of the date of this Third Amendment is 10,400 Units, contained in the land described in Exhibits "A", "A-1", "A-2", and "B" (as amended and supplemented from time to time by Supplemental Exhibits "B-1" through "B-4", inclusive).

2. Except as amended herein, the Declaration shall remain in full force and effect. All capitalized terms not defined herein shall reasonably have their respective meanings as set forth in the Declaration.

IN WITNESS WHEREOF, Declarant has executed this Third Amendment to Declaration as of the day and year first written above.

DECLARANT:

SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION,
a Nevada corporation

By: _____
R. Brett Goett, Vice President

STATE OF NEVADA)
)
COUNTY OF CLARK)

This Third Amendment was acknowledged before me as of the 27 day of September 2005, by R. Brett Goett, as Vice President of SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION, a Nevada corporation.

OFFICIAL SEAL
JANET G. DAVIS
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires July 12, 2007

_____
NOTARY PUBLIC
(seal)

(wnr\SH.100.amendment.3.01)

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
2501 East Sahara Avenue, Suite 214 * Las Vegas, NV 89104-4137 * (702) 486-4480
E-mail: CICOmbudsman@red.nv.gov http://www.red.nv.gov

COMPLAINT:

The SH Board has failed to comply with post-DCP provisions under NRS 116.31034.

BRIEF STATEMENT OF FACTS:

Southern Highlands CC&Rs (article 2.19) establish the termination of DCP "60 days after Declarant has conveyed 75% of the Maximum Units". Nevada statutes (NRS 116.31032 establish the termination of the declarant control period 60 days after conveyance of 90% (75% prior to October 1, 2015) of the units created to unit's owners other than declarant. The 2015 SH Master budget (last year's) notes 8,240 conveyed units (not counting 456 commercial units and additional units conveyed in 2015). The applicable maximum units are 9,000. Under both the CC&Rs (75%) and Nevada statutes (75% and 90% after Oct 2015) the Maximum Units conveyed and/or otherwise created to owners other than the declarant exceeds (at 91% prior to 2015) the DCP termination trigger.

Multiple attempts to get clarification on the failure to convey have failed. I filled a formal complaint with assocaition that was eventually dismissed citing an unrelated audit by NRED and referencing occupancy data-neither related to declarant control. I also filed a complaint with this office last year (2106-1859) was was improperly closed then upon review, determined the Divison "will not be pursuing".

RESOLUTION:

SH Board initiated required post-DCP per statutes or provide homeowners a written explanation as to why the DCP thresholds not been reached.

SUPPORTING LAW AND/OR GOVERNING DOCUMENT:

Southern Highlands CC&Rs and NRS 116.31032 & NRS 116.31034

I have read the foregoing Affidavit consisting of 1 pages (including all additional attached pages), and it is true and correct to the best of my knowledge and belief.

(Signature of complainant) _____
Name Michael J Kosor
Street Address 12070 Whitehills St
City, State, Zip Las Vegas, NV 89141
Area Code

Subscribed and sworn to before me
This ___ day of _____, 20____.

_____NOTARY PUBLIC

EXHIBIT "C"

EXHIBIT "C"

SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION
NOMINATION INFORMATION FORM – 2017

This form is provided for homeowners who wish to run for the Board of Directors. If you would like to be considered and have your name on a secret ballot, please fill out the form below or submit a single typed page with the following information and return it to: Southern Highlands Community Association, 11411 Southern Highlands Parkway, Ste 100, Las Vegas, NV 89141 **no later than 4 pm on Monday, November 6, 2017.**

Please place my name on the ballot for a two (2) year term for the Southern Highlands Community Association. The information supplied below is accurate, and I agree that it may be published in any Association election materials. I acknowledge that failure to provide accurate information whether through dishonesty or omission may prevent me from seeking election to the Southern Highlands Community Association Board of Directors and may prevent my candidacy from moving forward.

Signature

Name: Michael Kosar Phone: [redacted] E-Mail: MKosar@AOL.com

Address: 12070 Whitehills St Las Vegas NV 89141

Mailing Address: SAME

I have owned a home in Southern Highlands for the following length of time: 6 yrs

I wish to serve on the Board because: See attached letter

Qualifications I feel will benefit our community: See attached letter

Other information I wish to share: See attached letter

REQUIRED DISCLOSURES (*see statutory references below*)

Do you have any professional or personal relationships that may result or appear to result in a potential conflict of interest of which voting owners should be aware? ☐Yes ☑No. If yes, please explain:

Do you certify, to the best of your knowledge, that you are a member in good standing with the Southern Highlands Community Association? ☑Yes ☐No

Are you related to, married to, or residing with another member of the Board? ☐Yes ☑No

PER NRS 116.31034 (8a) Each person whose name is placed on the ballot must disclose any financial, business, professional or personal relationship or interest that would result in or would appear to a reasonable person to result in a potential conflict of interest for the candidate if the candidate were to be elected to serve.

PER NRS 116.31034(8b) Each candidate must disclose if he/she is a member in good standing. For this paragraph, a candidate shall NOT be deemed to be in "good standing" if the candidate has any unpaid and past due assessments or construction penalties that are required to be paid to the association.

PER NRS 116.31034 (9a) Each candidate must disclose if he/she is related to, is married to, or domestic partners with, and/or resides with another member or candidate for the Board.

The ballot, along with the official meeting notice advising exact date, time, and location of the meeting will be mailed to all homeowners at a later time.

EXHIBIT "D"

EXHIBIT "D"

Meet Mike

A uniquely qualified Candidate

- Retired 24 year USAF Colonel & combat tested fighter pilot
- Second career as a for-profit hospital CEO
- Made SH his retirement home six years ago- understands the good and bad
- Currently serving his third year on the Christopher Communities HOA Board
- Served as a director on many civic, non-profit, and for-profit boards
- Not looking for community exposure to advance a business interest
- Committed to listening to owners and providing the transparency now lacking

Count on Mike to keep our community the premier place to live in Southern Nevada

To learn more go to
www.mikekosor.com

Issues

- End developer control of our HOA
- Bring HOA fees down
- End HOA payments for "Public" parks
- Make security of homeowners and families a
- End SCHA's absence/blind eye when HOA's interests are threatened
- Address the failed commitments around our sports park

To learn more go to
www.mikekosor.com

Vote
Mike Kosor

Southern Highlands
HOA

The Homeowner's Candidate

www.mikekosor.com

JA 0115

Dear Southern Highlands Neighbor,

I would like to be your representative on Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of our only two independent Board Directors (three directors are selected and employed by the developer) will be selected.

First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected** and loyal only to homeowners.

Second, **we can significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricy contract with the Developer's management company, Olympia Management (another $1.4M/yr)
- refrain from wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size).

Third, a community needs to be seen as **a secure place to live**. While I currently believe SH is one of the safest place to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best interest of homeowners** with government agencies, defaulting to the interests of the Developer. Recently, the Board failed to oppose a massive change, approved by the Clark County Commission, to our long overdue "Sports Park". Despite being promised by the County and Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession.
- Two practice baseball fields, one soccer field, two basketball courts, all lighted.
- A second entrance with associated parking, plus more.

These massive cuts, saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County approved twelve million dollars ($12M) in public money to build a 4x baseball complex in Mountain's Edge.

This would not have happened had our Board, as did Mountain's Edge Board (where directors are all owner elected), defended owner interests. Our Board turned a blind eye, not even telling owners of the pending change while the Developer worked changes to its agreement. Was the Board's failure to act in opposition to the change and the interests of the Developer a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but you must vote. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

EXHIBIT "E"

EXHIBIT "E"

Southern Highlands
DEVELOPMENT CORPORATION

Blair Hoover

April 27, 2005

Rebecca Ragain
Clark County Comprehensive Planning
500 S. Grand Central Parkway
Las Vegas, NV 89155

Jeff Harris
Clark County Parks and Recreation Department
2601 East Sunset Road
Las Vegas, NV 89120

In accordance with paragraph 6.02(a) of the Development Agreement between The County of Clark and Southern Highlands Development Corporation, Et Al., Owner hereby gives the County written notice of Owner's intent to dedicate 26.69 Acres of park or paseo to the County subject to the conditions and criteria of the Development Agreement.

The parks to be dedicated to the County per this notice are:

P1	5.05 Ac	RCT	Goett Family Park	3.78 AC
→ P5	5.05 Ac	RCT	Inzalaco Park	4.38 AC (5.7
P6	7.39 Ac	RCT	Somerset Park	6.3 AC
LP1	9.20 Ac	RCT	Paseo	8.5 AC
↘ P8	20.0 AC			~~23.66~~

11-16-05 → Amend 2 → County Maintain
Owner agrees to maintain all paseo paseo

DA required now 18 AC

Sincerely,

Jerome D. Helton
Southern Highlands Development

Cc: Mark Bolduc
Garry Goett
Brett Goett

Stanwood Park not included
• trans. to HOA 2003
• RCT funds used

11411 Southern Highlands Parkway, Suite 300 Las Vegas, NV 89141 (702) 616-3800 Fax (702) 616-3833

EXHIBIT "F"

EXHIBIT "F"

SOUTHERN HIGHLANDS 2017 RATIFIED BUDGET

	2017	Monthly Assessment per Unit $67.00	Siena Ancora Assessment $3.95		
Residential Units	7,303				
Siena Ancora Units	120				
Builder Units	844				
Commercial Units	552				
Description		**2017 Ratified Budget**	**2016 Ratified Budget**	**2016 Annualized Accrued**	**2016 Variance**
OPERATING BUDGET					
Monthly Assessments - Owners		5,871,612	5,133,600	5,198,280	(64,680)
Monthly Assessments - Siena Ancora		5,688	5,688	5,688	-
Monthly Assessments - Builders		678,576	470,160	926,397	(456,237)
Commercial Monthly Assessments		443,808	397,613		397,613
ARC Review Fees		25,000	20,000	29,100	(9,100)
SHD Resale Transfer Fees		123,750	112,500	145,286	(32,786)
Capital Contributions- Initial Sale Only		16,080	9,000	17,606	(8,606)
Late Fees		32,500	25,000	37,239	(12,239)
Newsletter Advertising Income		1,500	3,500	-	3,500
Miscellaneous Income / NSF		3,000	1,500	5,109	(3,609)
Fines		175,000	175,000	210,560	(35,560)
Interest Income		1,000	1,000	1,100	(100)
Late Assessment Interest (Association)		2,500	2,500	11,055	(8,555)
Distressed Properties Recovery		-	800	-	800
Prepaid Collection Cost Recovery		50,000	36,686		36,686
Carryover		-	401,856		401,856
TOTAL REVENUES		**7,430,014**	**6,796,403**	**6,587,418**	**208,984**
Property Taxes		500	500	4	496
Insurance - Liability and Property		60,033	57,913	57,028	885
Performance Bond- Parks		3,000	4,500	3,000	1,500
Insurance - Directors and Officers		21,977	18,007	19,000	(993)
Insurance- Self Insurance Fund		30,000	30,000	30,000	-
Insurance - Workman's Comp		615	500	500	0
TOTAL INSURANCE & TAXES		**116,124**	**111,420**	**109,532**	**1,888**
Landscape Maintenance - Parks		676,692	676,692	675,643	1,049
Landscape Maintenance - CA		966,276	966,276	971,050	(4,774)
Landscape Maintenance - Siena Ancora- Weitzman		3,660	3,660	3,660	-
Irrigation Controls		3,000	3,000	4,105	(1,105)
Distressed Properties Clean-up/Maintenance		-	800	-	800
Landscape Repairs and Supplies- General		-	-	1,586	(1,586)
Landscape Repairs and Supplies - Parks		4,500	4,500	1,603	2,897
Landscape Repairs and Supplies - CA		10,000	10,000	8,331	1,669
TOTAL LANDSCAPE & PLANTS		**1,664,128**	**1,664,928**	**1,665,978**	**(1,050)**
Vehicle-Fuel		200	200	-	200
Bad Debt Expense		386,908	300,353	679,008	(378,655)
Social Events		125,000	156,230	114,042	42,188
Fees and Permits		250	50	250	(200)
General Counsel Expenses		100,000	100,000	88,573	11,427
Litigation Expenses		700,000	250,000	1,241,973	(991,973)
Prepaid Collection Costs		75,000	83,000	73,870	9,130
Audit and Tax Expense		5,275	5,200	5,200	-
Board of Directors Expenses		750	1,500	643	857
Copies and Supplies		85,000	85,000	80,818	4,182
Postage		80,000	80,000	62,721	17,279
Management Fees		1,432,639	1,427,059	1,426,014	1,045
Ombudsman		31,038	30,303	21,579	8,724

SOUTHERN HIGHLANDS 2017 RATIFIED BUDGET

	2017	Monthly Assessment per Unit $67.00	Siena Ancora Assessment $3.95		
Residential Units	7,303				
Siena Ancora Units	120				
Builder Units	844				
Commercial Units	552				
Description		**2017 Ratified Budget**	**2016 Ratified Budget**	**2016 Annualized Accrued**	**2016 Variance**
Record Storage		2,500	1,903	1,918	(15)
Newsletter Expense		-	900	55	845
Website		2,100	2,100	2,289	(189)
Miscellaneous Expense		3,502	856	3,378	(2,521)
TOTAL MGMT. & ADMINISTRATIVE		**3,030,162**	**2,524,654**	**3,802,331**	**(1,277,677)**
Capital Improvements		-	15,000	108,651	(93,651)
Reverted Property Expense		2,500	1,457	2,489	(1,032)
Budgeted Reserve Transfers		445,000	381,500	381,500	(0)
Budgeted Reserve Transfers-Sienna Ancora		2,028	2,028	2,028	-
TOTAL OTHER EXPENSES		**449,528**	**399,985**	**494,669**	**(94,684)**
Repair and Maintenance		250	1,250	17	1,233
Repair and Maintenance - Parks		3,500	1,250	3,279	(2,029)
Repair and Maintenance - CA		1,500	2,000	1,135	865
Lighting Contract - Parks		2,500	2,500	2,484	16
Lighting Maintenance & Repair - Parks		2,500	4,500	1,582	2,918
Lighting Maintenance & Repair- CA		1,000	1,000	-	1,000
Vendor Maintenance & Repair - Parks		12,500	14,512	11,233	3,279
Vendor Maintenance & Repair - CA		7,500	12,300	3,870	8,430
Janitorial Service - Parks		16,775	16,785	16,625	159
Maintenance Contract - Parks		8,700	8,700	8,700	-
Pest Control - Parks		960	960	960	-
Pest Control - CA (Bees)		2,200	1,680	2,880	(1,200)
TOTAL REPAIRS & MAINTENANCE		**59,885**	**67,437**	**52,748**	**13,438**
Security Services Contract		960,796	911,686	920,092	(8,406)
Security - Supplies and Equipment		8,250	7,500	8,488	(988)
Equipment Service Plans		5,750	4,500	5,680	(1,180)
Security Vehicle Expense		185,304	185,304	185,304	-
Security- Vehicle Fuel Expense		500	1,200	-	1,200
TOTAL SECURITY		**1,160,600**	**1,110,190**	**1,119,565**	**(9,374)**
Electricity - Parks		15,000	15,129	13,851	1,278
Electricity- CA		20,000	18,857	18,784	73
Water - Parks		487,623	465,149	487,623	(22,474)
Water - CA		421,364	411,931	421,364	(9,433)
Sewer - Parks		5,000	5,000	5,386	(386)
Telephone		600	2,160	550	1,610
TOTAL UTILITIES		**949,587**	**918,225**	**947,559**	**(29,334)**
TOTAL EXPENSES		**7,430,014**	**6,796,839**	**8,192,381**	**(1,396,792)**
EXCESS REVENUE (EXPENSES)		**-**	**(436)**	**(1,604,962)**	**1,605,776**

*Based on financial statements for the period ending 7/31/16

SOUTHERN HIGHLANDS 2017 RATIFIED BUDGET

		Monthly Assessment per Unit	Siena Ancora Assessment		
	2017	$67.00	$3.95		
Residential Units	7,303				
Siena Ancora Units	120	2017	2016	2016	2016
Builder Units	844	Ratified	Ratified	Annualized	Variance
Commercial Units	552	Budget	Budget	Accrued	
Description					

2017 SHCA RESERVE STATEMENT

Monies in Reserve Account as of July 31, 2016	2,287,037.19
Anticipated Additional Contributions by End of 2016	158,958.35
Anticipated Additional Expenditures by End of 2016	100,151.21
Anticipated Reserve Funds as of December 31, 2016	**2,345,844.33**
Fully Funded Balance as of December 31, 2016	3,732,903.00
2016 Reserve Balance Differential	(1,387,058.67)
Percentage Funded	63%
Anticipated Contributions during 2017	445,000.00
Anticipated Interest Income during 2017	2,800.00
Anticipated Expenditures during 2017	299,014.44
Anticipated Reserve Funds as of December 31, 2017	**2,494,629.89**
Fully Funded Reserve Balance as of December 31, 2017	3,455,530.00
2017 Reserve Balance Differential	(960,900.11)
Percentage Funded	72%

**The Board does not anticipate the need for a Special Assessment to fund the Reserve Account for 2017. The Board anticipates $445,000 in contributions will be made in the form of Reserve Transfers during the 2017 fiscal year. The recommended balance for full funding for the reserve as of December 31, 2017 is $3,455,530 therefore, the current reserve account is considered adequately funded.*

2017 Siena Ancora Cost Center- RESERVE STATEMENT

Monies in Reserve Account as of July 31, 2016*	22,911.73
Anticipated Additional Contributions by End of 2016	845.00
Anticipated Additional Expenditures by End of 2016	-
Anticipated Reserve Funds as of December 31, 2016	**23,756.73**
Fully Funded Reserve Balance as of December 31, 2016	34,730.00
2016 Reserve Balance Differential	(10,973.27)
Percentage Funded	68%
Anticipated Contributions during 2017	2,028.00
Anticipated Interest Income during 2017	357.00
Anticipated Expenditures during 2017	-
Anticipated Reserve Funds as of December 31, 2017	**26,141.73**
Fully Funded Reserve Balance as of December 31, 2017	39,784.00
2017 Reserve Balance Differential	(13,642.27)
Percentage Funded	66%

**The Board does not anticipate the need for a Special Assessment to fund the Siena Ancora Reserve Account for 2017. The Board anticipates $2,028 in contributions will be made in the form of reserve transfers during the 2017 fiscal year. The recommended balance for full funding for the reserve as of December 31, 2017 is $39,784 therefore, the current reserve account is considered adequately funded.*

Adopted by the Southern Highlands Board of Directors on October 13, 2017
Ratified on November 17, 2016

EXHIBIT "G"

EXHIBIT "G"

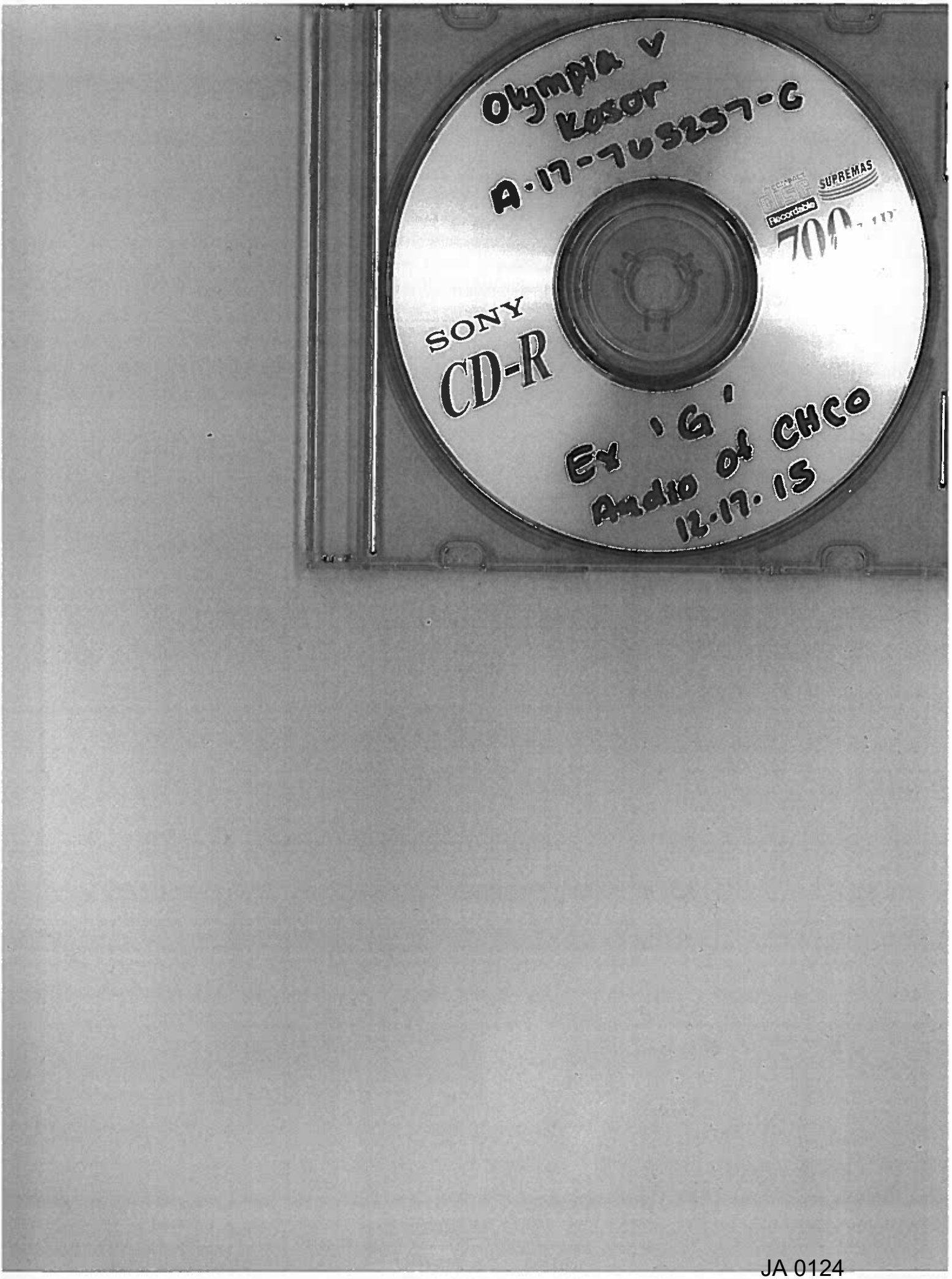
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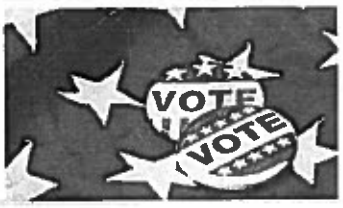
EXHIBIT "H"

EXHIBIT "H"



Mike Kosor

*A UNIQUELY QUALIFIED CANDIDATE **

for

Southern Highlands Community Association (SHCA) Board of Directors

These are the issues I will fight to improve

Unnecessarily high homeowners HOA fees

Local anti-crime efforts

Inadequate community parks, sports fields, and who pays the bill

Obtaining an HOA board selected by homeowners- not the Developer

A Letter to My Neighbors

* Made possible by the many homeowners who are supporting this effort!

Experience Does Make a Difference

- Retired Air Force Colonel and combat tested fighter pilot
- Successful leader and manager of complex organizations, serving as CEO at two hospitals
- A proud home owner and resident of Southern Highlands for 8 years
- Proven Director and Treasurer on the Christopher Communities HOA Board since 2015 successfully reducing HOA dues while maintaining a premier community
- Waging an ongoing three-year campaign to end the Developer's control of our Board
- Personally challenged the County Commission following their persistent failure to disclose matters impacting our community, in particular its failure to

take appropriate actions on issues related to our community's parks

Learn More About me

My Pledge To You

My pledge to Southern Highland homeowners is to work hard to preserve our quality community. I will demand the SHCA Board be fully transparent, maintain strict control on costs, while truly listening to and always placing owner's interests first. Scheduling most meetings to a time easier for owners to attend would be a necessary first effort.

Be assured I have no alternative objectives in serving on the Board. I am not looking for community exposure to further a business and/or career ambitions. I am happily retired from any and all business pursuits.

If democracy is to work in Southern Highlands it requires your participation in our November Board election. I hope my experience and priorities for our community going forward is deserving of your confidence and vote. But regardless of your choice of candidates please cast a vote for one who is willing and capable to fight for homeowners.

Learn More About the Issues

Election vote count starts?

Clyne a Management informed me via email on 11/21/17 that "... [illegible] ... might have [illegible] the mailing of the election materials." The email also stated "...the Board is seeking guidance before proceeding. Once a determination is made, the Board will reach out to each candidate with an update and new timeline."

How or even if the community is to be informed was not addressed.

The mailing of election ballots was originally scheduled for NLT 11/15/17 with a vote count on November 30th. When I hear more, I will update this site and the count down clock.

CONTACT ME

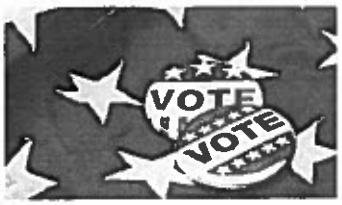
Name *

Email *

Subject

Message

Send



MEET Mike

Mike Kosor was born into a military family moving across much of America as a child. He inherited a strong sense of service from his father, a retired Air Force Chief Master Sergeant.

After attending college on an AFROTC scholarship, Mike would spend twenty-four years in the United States Air Force. There he was a combat tested fighter pilot in the first Gulf War, commanded an F-15 fighter squadron, attended the USAF War College, appointed to serve as a senior military advisor in the Middle East, and finished his military career in Washington DC directing the efforts of the Air Forces' largest foreign military sales regional.

Retiring as a Colonel, Mike would have a second successful career in hospital administration, where he would eventually serve as a CEO for a major for-profit hospital operator. Retiring a second time, in large part to assist with the care of this parents, Mike moved his family and parents to Las Vegas and eventually Southern Highlands in 2011.

Mike has an undergraduate degree in Accounting and a Master's Degree in Public Administration. He holds a commercial airline transport pilot certificate and held a Realtor license in two different states.

Mike will fight for owner interests, not those of the Developer or other typically influential parties. He has spent the past three years impacting local issues such as developer control of HOAs, Clark County's unfilled

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community park commitments, and the general failure of our Association Board to advance the interest of Southern Highlands homeowners.

Mike now wants to use his time, experience, and energy to strengthen our HOA's financial position, engage on issues adversely impacting Southern Highlands, and upholding our community's reputation as a premier place to live, much as he has done as a board member of the Christopher Communities HOA since 2015.

Mike has proven success leading multiple large organizations. He can successfully lead our community.

CONTACT ME

Name *

Email *

Subject

Message

Send

Developer Control of Our HOA

The Developer has done a great job building an excellent community. But the time to allow the community to be self-governed has long been upon us. Read my January 2017 letter to the SCHA Board concerning its continued refusal to address a law (NRS 116.31032) to effect a control change ending the Developer's ability to appoint three of the five directors and holding owner elections for all Board directors.

Security for Homeowners and Our Families

A community needs to provide a safe environment for all its residents. While I currently believe Southern Highlands is one of the safest places to live in Southern Nevada, the area is growing rapidly and our crime is increasing. This needs to be an important focus of our Association going forward.

Assessments and Expense Control

We all understand a quality product generally requires money to maintain. This applies to HOAs. My issue with SHCA is it spends too much of our money, often on items that have not improved quality. I believe we can ***significantly lower expenses, thus assessments****, while maintaining quality. Here is what I will push for on our behalf:*

- *Renegotiate our very expensive contract with Olympia Management, an affiliate of the Developer. We currently pay as much as double what I believe we should for quality management services*
- *Immediately work to address the more than $1.2M in annual public park maintenance we as owners pay. These unnecessary payments account for almost half of the HOA's total landscape, maintenance and utilities expenses and comprise 25% of your total assessment.These are after all "public parks" that should/could otherwise be paid by the County*
- *End the wasteful legal costs ($1.4M in 2016, many time more than typically incurred by HOAs of similar size). Spending owner money blindly chasing delinquent payers must end*
- *Stop the huge deficit spending which occurred in 2016*

The SHCA Board's recurring failure to engage on behalf of homeowners

Southern Highlands is effectively a small city of over twenty thousand plus voters. Yet our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State - for example:

- *a massive "sweetheart" deal for our Developer that significantly changed and reduced our long overdue "Sports Park"*
- *Clark County's "cost-shifting" of park maintenance expenses to our HOA*
- *County and Developer coordinated agreement that would permanently and wrongly obligate the HOA to maintain the "public" parks in our community (my letter to the SCHA*

BOD)

- *recurring changes to the Southern Highlands Development Agreement that had many significant negative impacts on our community and the homeowners*
- *our Management Company President actively lobbied State representatives to pass a law (AB 192-2015) allowing the Developer to extend its control of our community (watch her testimony - 2:07 into the video) but said nothing to owners*

Our community must engage on the political front as others are doing. If elected I will keep owners informed and insist our Association engages to advance and defend owner interests on both the County and State level.

Sports Park – the Great Failed Promise

The promise of a Sports Park has long attracted families to the Southern Highlands community. However, the County and Developer have repeatedly failed to deliver on their promises for the Sports Park, first set out in 2005.

Our children have long needed and waited for baseball and soccer fields. The current plan for our Sports Park is a far cry from that originally promised.

*The Sports Park is now ten years late and if completed, as now scheduled for May 2018, it will be only a fraction of what was promised. In September 2015, the infrastructure of the Sports Park was drastically reduced. The change relieved the Developer of millions of dollars of private funding commitments. In return, the County and SH citizens **would get absolute nothing.***

Unless we intervene as a community the Sports Park we were originally promised will never happen. Our current SHCA Board, controlled by the Developer, is not engaged. In contrast, the Mountains Edge community, with a Homeowner controlled Board, is and owners are benefiting. Mountain's Edge is getting $23M in public funded parks maintained with public tax dollars.

Read what the Review Journal had to say about the Sports Park.

CONTACT ME

Name *

Email *

Subject

Message

Send

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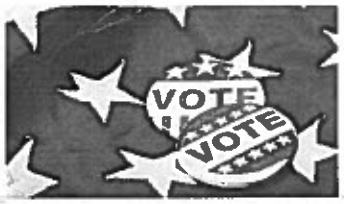

Q- Why are you doing this- running for a non-paying position on an HOA ?

A- Several year ago, as a new Southern Highlands owner, I attended a number of Association Board meetings. I was very disappointed for a number of reasons. To start, meeting times (typically 10 am) made attendance by most owners impossible. Strangely, the sessions appeared controlled by Angela Rock, the President of Olympia Management, who does not hold a position on the Board. I saw little real discussion on issues. Actions taken on significant issues appeared "pre-agreed", as if other private meetings/workshops were held. Transparency was clearly lacking.

I began looking into a number of issues. The Board repeatedly refused to release, among other items, draft annual budgets despite being on the agenda for approval. I also felt the Board had side-stepped my formal complaint related to Developer control change - control I feel should have been terminated many years ago (now under investigation by the Nevada Real Estate Division).

It was clear any improvement would have to start from the inside. Encouraged by my neighbors and other SH owners that love our community, I made the commitment to run for our HOA Board as your owner representative.

Q- Why are our assessments so much higher than Mountain's Edge?

A- The Master Plan fee at Mountain's Edge (ME) is $31/mo while Southern Highlands residents pay $67- more than double. Not having ME's financials (I am not a resident) and with the limited information SH provides, the exact answer is hard to determine. It is however a very good question for our BODs to answer. It is certainly one I will immediately look into if elected with full access to association financials.

Based on what I have been able to researched, a number of areas are at the root of our high fees. First, the management contract with Olympia is very expensive. Second, we pay a significant amount (20-25%) of our assessment to maintain what I believe should be publicly maintained parks (see more on this below). Most all public parks in ME are maintained by the County using public dollars- as they should be.

Two other major expenses need to be evaluated- (1) our landscape contract and ancillary expenses with Par 3 and (2) the huge expenditures for legal costs over the past several years. I believe significant cost savings are available in both areas while maintaining quality standards.

Another important area of concern is the funding level of our Reserves. If I recall correctly, our Reserves were last reported at 67% of fully funded. This under funding will eventually come due. I suspect our BOD is under funding Reserves to pay for the above noted excess. Under funding Reserves, the money used to replace expensive infrastructure like roads, is dangerous.

Q- Have you ever held a political office

A- No. I am an "operator" by trade (now retired). During my professional career I had success effecting change and moving large organizations forward. Frankly, I am rightly accused of too often "telling it as it is". Historically this has not been seen as a beneficial attribute for a politician. But I do listen and believe owners will also, provided the reciprocal is applied.

I feel someone needs to fight for homeowners in SH and I am willing, with the help of owners, to use my skills and experience to make a positive difference.

In full disclosure, I have served for the past three years as a director on the Christopher Community Association Board, but that, as with the SHCA Board, is not a "political" office.

Q- What do you mean by Declarant Control? Why should it be an issue?

A- Most homeowners are completely unaware of the concept of Declarant Control (i.e. Developer Control). This is not surprising. Nevada (as with most state) does not require pre-sale disclosure of the fact that a Declarant (Developer) may still control a homeowners association- control that can be indefinite. They just dump the large CC&R package on your closing table (or worse yet give you an electronic version) and it is up to you to find and understand the extensive terms you agreed to, to include the potential issues.

Developer control (called Declarant Control in the statutes) has a number of implications. The largest affecting SH today, is the Developer has the right to appoint, three of the five directors (the majority) of our association board. The three appointees (of which only two are owners in SH) are also employees of the Developer.

Until recently and per our CC&Rs, Declarant Control terminated when 75% of the maximum units authorized in the CC&Rs were no longer under Declarant Control. Nevada law changed in 2015 (arguably a piece of special interest legislation for our Developer and lobbied for by our senior executives of our Management Company) moved the control threshold to 90%. Inexplicably and I argue wrongly, the change is being interpreted as retroactive, affecting existing CC&Rs. See my letter to the Board for more details.

I filed a formal complaint with Nevada Real Estate Division (NRED) against our Board. I believe control change should have occurred years ago and our BOD is violating the law in not having effected the change in control. Our BOD disputes my claim but has not offered a clear explanation to me or owners. NRED is "still investigating"- something they started two years ago. Politics?

Much legislative reform and regulatory oversight is needed around CC&R construction, owner complaint processing, and the general lack of regulatory oversight of CC&R content, to include Declarant Control provisions. For more see Our issues.

Q- What makes Developer control an issue?

A-The Developer, via his appointed majority control of our Board, effectively have the final say on all policy decisions, to include how much and where our assessment money is spent; not owners elected by owners. With the management company, Olympia Management, also controlled by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. I believe this has already cost our community millions of dollars.

I spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right.

The collective owners in SH have a much larger investment in the community than does the Developer. We deserve a fair share vote. The Developer had twenty plus years to execute its business plan in SH. It is time our governing body is elected by owners to represent only owners.

Q- Rumor has it you are trying to damage the Developer?

A- Nothing is further from the truth. I respect what the Developer has done in Southern Highlands. After all its vision, money, and hard work made Southern Highlands a great place to live. Its actions are constituent with those of a developer. Besides, I look to uphold the reputation of the community which is related to that of the Developer.

I invested in my home and retirement here for the above reasons and more. I simply expect the Developer to release control (and its ability to appoint 3 of 5 board members and more) transferring owners the control as it originally committed. Owner's collective investments in our community significantly exceeds that of the Developer's and control change is what it promised when we purchased.

Q- Rumor has it SHCA is using owner money to pays for a lobbyist. True?

A- Yes, it does and based on my inquiries, it has since 2010-costing owners over $400K. I am told Lewis & Roca, one of many law firms representing SHCA in foreclosure related litigation, is also engaged as our lobbyist.

I do not feel the money was and is well spent. I would work to end these payments. First, it is not clear to me how the payments are being authorized in the first place. I have never heard the BOD approve any contract for said services, the annual payment authorizations, nor can I find anything in Board meeting minutes- one of many transparency issues I have with our BOD. I have attend all BOD meetings for the past three years and have never heard from our lobbyist nor what instructions/issues he/she is tasked to lobby for/against. The subject of lobbyist and legislative issues important to SHCA has never, to my knowledge, ever been on the agenda.

I certainly do not understand why our BOD feels we need a lobbyist given it never communicates issues at the State or County level potentially affecting owners.

I found it disturbing to discover a member of the law firm engaged by the HOA, actually lobbied Nevada legislators in support of a bill (AB 192-2015) that eventually passed and changed the developer control threshold from 75% to 90%. This is certainly not something in the best interest of SH owners, yet we as owners never even learned of the bill or our lobbyist efforts to pass it.

Q- Some believe if our parks were to be maintained by the County, they will deteriorate. A concern? What would you propose if elected?

A- First, I strongly believe that whatever the community does with the parks it should be done only after a majority vote of owners (required per the law), not by our Developer controlled BOD. If owners are to accept obligations not identified in our CC&Rs we must do so only if the majority agrees. Our current situation, saddling owners with the park obligations, has never been put to a vote.

Concerned with park deteriorating under County control? Not really, for three reasons. First, I see no evidence the County is unable to maintain the parks properly. Most all parks are maintained by the County and the City of Henderson and are generally in very good condition. This idea appears to be a rumor spread by those with an agenda.

Second, the Association will always pay close attention to the conditions of parks in our community. We have a large political block as a community capable of insisting on quality maintenance. Park maintenance is after all a part of our property taxes. I doubt many owners are excited about paying twice for maintenance- once in our assessments, then again in taxes to maintain other parks in other County communities.

Third, I'd work to negotiate with the County (a concept I proposed a year ago and which was eventually adopted, albeit distorted by the parks sub-committee) on jointly controlling and contributing (far less than we do today) to the maintenance of our parks.

Q- Why do you say are we not getting the Sports Park promised?

A- Our community's Sports Park is scheduled to be completed in May 2018. It was first promised to open in 2008- ten years ago. It has been re-scheduled several times since 2008 with each subsequent promise failing to materialize. Naturally, I am disappointed our SCHA Board sat silently doing nothing over this period.

More importantly, the infrastructure contained in the current Sports Park is drastically less than first promised in 2005. We will not get a 4x baseball complex, lighted, covered stands, and concessions. Nor will we get the two practice baseball fields, a soccer fields, all the basketball courts, and two entrances- all previously promised. (see Our Issues page for more)

The County Commission has cheated our community, while our BOD turned a blind eye to all of the above.

Q- What is this "Agreement for Public Access" being discussed and what happened/did not happen to get us here?

A- The Southern Highland Developer Agreement (SHDA) requires public access easements from the Developer for all parks where Nevada's Recreational Construction Tax money (a one-time tax on each home paid when the building permit is pulled) is credited to the Developer by the County for park construction. County records indicate about $6.7M of tax dollars have been credited -- but no easements were provided.

Title to the parks in question was transferred from the Developer to the HOA in 2007/2008. Prior to doing so, both per the SHDA and our CC&Rs, the Developer is required to obtain an acknowledged from the HOA in writing affirming (1) it (SHCA) is obligated to perform any unfulfilled terms and conditions of the SHDA and (2) it (SHCA) accepts Owner's maintenance obligations for each park and paseo. This did not happen.

So today, with title held by the HOA, the Developer is unable to provide the public easement access and is requesting the HOA do so. I believe the agreement we are being asked to execute is a huge mistake and I have told our BOD this at the September 2017 meeting when it came up on the agenda. FYI- a similar agreement was floated by our Developer last year and the BOD rejected the agreement. This time, despite objections again this year by owners, our SHCA BOD conditionally approved the proposed agreement.

My objections to the Agreement are:

1. Title to the parks was inappropriately transferred to the HOA. The Board never approved the initial transfer and more importantly, owners never voted to accept the obligations of maintaining the "public" parks in question. The transfer should be voided.
2. SHCA owners should not be required to pay twice for the maintains of public parks- we already pay property taxes for that purpose.
3. Our Board's approval to execute this Agreement was done without satisfying necessary owner acceptance provision in the statutes. A technical "loophole" allows it to do so. However, per NRS 116.3112 par 4. ".. the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3" (a majority vote of the owners).
4. The deeds (somehow) transferred to the HOA hold terms & conditions I find completely unacceptable. (Read the deed for Goett Park yourself here.)

If we ignore the initial transfer I believe should be voided, technically our Board could execute the Agreement (under the weird provision in the law) but it is "unenforceable". Understandably, our BOD cannot obligate owners beyond the authority it has under our CC&RS to do so, without an owner majority approval vote.

As for how did this happen? Clearly there are a lot of moving parts here and big money. The County would have me believe its failure to obtain easements was an "error" on its part. I do not buy it. Something certainly happened, but it was not just an "error". If truly an "error", then we must assume the County failed to conduct required and very basic due diligence before approving the latest September 2015 SHDA. Second, this alleged "error" happen despite an audit of the SHDA by the County identifying a lack of easements in 2011. It was something the County took compliance action, so it was not just another unread report (watch the County Commission video and read report- agenda #31). Are we now to believe this was forgotten? Finally, the County is required to conduct a review of all development agreements every two years. Here again, the County would have me believe it missed the lack of easements during each review since 2011? So, if you buy all of the excuses, then yes, the above constitutes a mere staff "error". If not (my camp) them we must assume more is at play. I also ask, where was our BOD while all this was going on?

CONTACT ME

Name *

Email *

Subject

Message

Send

A Letter to My Neighbors

Dear Southern Highland Neighbor,

I would like to be your representative on the Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of only two independent/owner Board Directors will be selected (three directors are selected and employed by the developer).

I am a retired United States Air Force Colonel, combat tested fighter pilot, and former for-profit hospital CEO who made SH home six years ago. I have served as a director on many civic, non-profit, and for-profit boards, to include currently serving on the HOA Board of my sub-association. With a demonstrated ability to serve, proven integrity, large organization operational and financial experience, and years fighting the establishment for all SH owners, you can count on me to keep our community the premier place to live in Southern Nevada.

My objectives if elected are:
First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With our management company, Olympia Management, owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected and loyal only to the homeowners that elected them.**

Second, we can **significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricey contract with the Developer's management company, Olympia Management (another $1.4M/yr) and;
- refrain from wasteful legal costs ($1.4M in 2016, far more than that typically incurred by HOAs of similar size).

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

Third, a community needs to be seen as a **secure place to live**. While I currently believe SH is one of the safest places to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be a large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best inserts of homeowners** with government agencies. This must change. Recently, our Board failed to oppose a massive change, approved by the Clark County Commission, affecting our long overdue "Sports Park". Despite being promised by the County and our Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession
- Two practice baseball fields, one soccer field, two basketball courts, all lighted
- A second entrance with associated parking, plus more

What currently remains of the Sports Park is a far cry from that originally promised. These massive cuts saved the Developer millions of dollars. In return, our **community received absolutely nothing.** Adding to this inexplicable action, the County would at roughly the same time, approve twelve million dollars ($12M) in public money to build a four field baseball complex in Mountain's Edge.

This would not have happened had our Board, as did the Board of Mountain's Edge (where directors are all owner elected), been engaged in the defense of owner interests. Our Board turned a blind eye, not even telling owners of the pending changes proposed to the long awaited Sports Park. Was the Board's failure to act in opposition to the changes, a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

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IN THE SUPREME COURT OF

THE STATE OF NEVADA

*****

MICHAEL KOSOR JR., A NEVADA RESIDENT, Appellant, vs. OLYMPIA COMPANIES, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND GARRY V. GOETT, A NEVADA RESIDENT, Respondents.	**Supreme Court No. 75669** District Court Case No. A-17-765259-C

JOINT APPENDIX

VOLUME I

On Appeal from Judgment of the Eighth Judicial District Court, Clark County, Nevada

The Honorable Michelle Leavitt

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ALPHABETICAL

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Declaration of Robert B. Smith, Esq. in Support of Defendant Michael Kosor, Jr.'s, Motion to Dismiss Pursuant to NRS 41.660	01/29/2018	I	94-138
Defendant Michael Kosor, Jr.'s Answer to Complaint	01/05/2018	I	9-17
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Defendant's Reply in Support of Motion for Reconsideration of Court's March 20, 2018 Order	05/29/2018	II	454-475
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CHRONOLOGICAL

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DESCRIPTION	DATE	VOL	PAGES
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: Department 12 **COMPLAINT** *Arbitration Exemption Claimed:* *Action Seeking Damages in Excess of $50,000.00*

COME NOW Plaintiffs Olympia Companies, LLC ("Olympia") and Garry V. Goett, ("Mr. Goett") (collectively "Plaintiffs"), by and through counsel, J. Randall Jones, Esq., Nathanael R. Rulis, Esq., and Cara D. Brumfield, Esq. of KEMP, JONES & COULTHARD, LLP, and for their claims for relief against the Defendant herein, assert and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Olympia is a Nevada limited liability company licensed to do business in the State of Nevada.

2. Mr. Goett is, and at all times relevant hereto has been, a resident of Clark County, State of Nevada.

3. Defendant Michael Kosor, Jr. ("Kosor") is, and at all times relevant hereto has been, a resident of Clark County, State of Nevada.

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Las Vegas, Nevada 89169
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kjc@kempjones.com

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendant herein designated as DOES I through V, and ROES VI through X, are Defendant individuals, corporations, partnerships and other business entities unknown to Plaintiffs at this time, who therefore sue said Defendant by such fictitious names. Plaintiffs are informed and believe and thereon allege that each Defendant is responsible in some manner for the events and happenings and proximately caused the injuries and damages herein alleged. Plaintiffs will seek leave to amend this Complaint to allege their true names and capacities when ascertained, and will further ask leave to join said Defendants in these proceedings.

5. The Eighth Judicial District Court is the proper venue for this matter in that this action involves a dispute in which all events took place in Clark County, Nevada.

FACTUAL ALLEGATIONS

5. Since 1996, Mr. Goett, Olympia Companies, and related/subsidiary entities have been in the business of developing and thereafter managing the Southern Highlands community in Clark County, Nevada.

6. Going as far back as December of 2015, Kosor has made various, specious defamatory statements against Olympia and Mr. Goett. At that time, Kosor made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a "dark room" and coerced them to act or vote in a certain manner; and that Olympia is "lining its pockets" to the detriment of the Southern Highlands homeowners.

7. In response to those comments made by Kosor, Olympia sent him a cease and desist letter, requesting that he immediately stop from any further defamatory conduct toward Olympia, its subsidiaries, Mr. Goett and his employees.

8. Kosor's conduct directed toward Olympia and Mr. Goett has not ceased. He has continued to speak at the meetings of the Southern Highlands Community Association and has stated that Olympia

and its employees have violated the law and breached their fiduciary duty to the owners of the community.

9. On or around September 11, 2017, Mr. Kosor posted a statement on a social media accusing Olympia of obtaining a "lucrative agreement" with Clark County by cost-shifting expenses for the maintenance of public parks to the Southern Highlands owners.

10. On or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things, acting like a foreign government that deprives people of essential rights. In other parts of his website, Mr. Kosor continues to reference sweetheart deals, statutory violations, breaches of fiduciary duty, and improper cost shifting of "millions of dollars", even though such statements are untrue and defamatory.

11. On or about November 17, 2017, homeowners throughout the Southern Highlands community received a written pamphlet from Kosor. Within Kosor's written pamphlet was the statement that Olympia/Developer breached its fiduciary duties to the Southern Highlands community and Developer's actions have "already cost the homeowners millions." In addition, he grossly overstates the Southern Highlands Community Association's 2016 legal expenses.

12. All of the above statements by Kosor were made as statements of fact, without qualification, and not as expressions of his opinion.

13. That Kosor made his false and defamatory statements with malice, and the intent to convince other homeowners throughout the Southern Highlands community of the bad character of the Plaintiffs.

14. Kosor's false and defamatory statements were made with reckless disregard of the accuracy and truth of the statements made in an attempt to harm the reputation of Mr. Goett and Olympia throughout the southern Nevada community.

15. In addition to the publications set forth above, Plaintiffs reasonably believe that Kosor may have engaged in additional and other publications of defamatory and libelous information about them, of

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which they are not yet aware but which may as well be injurious and harmful, or constitute *defamation per se,* and which will be the subject of discovery in this action.

FIRST CLAIM FOR RELIEF
(Defamation)

16. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained within the paragraphs above.

17. Kosor knowingly made false and defamatory statements about Plaintiffs.

18. The publications by Kosor were not privileged. Alternatively, if any privilege attached to any of the communications by the Kosor, Kosor exceeded the privilege by his wrongful actions.

19. Kosor's statements were published, at a minimum, to other homeowners throughout the Southern Highlands community.

20. The aforementioned accusations and statements made by Kosor would normally tend to lower the reputation of Plaintiffs in the community, and in the profession and business or industry in which Plaintiffs worked, and would excite derogatory opinions about Plaintiffs.

21. Kosor was at least negligent in making the statements.

22. As a direct and proximate cause of Kosor's conduct, as described above, Plaintiffs have been damaged in an amount in excess of Fifteen Thousand Dollars ($15,000).

23. Kosor's false and defamatory statements were made in reckless disregard of the rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual or implied malice giving rise of a claim for punitive and exemplary damages in excess of Fifteen Thousand Dollars ($15,000).

SECOND CLAIM FOR RELIEF
(Defamation Per Se)

24. Plaintiffs re-alleges and incorporates herein by reference each and every allegation contained within the paragraphs above.

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25. Kosor's statements constitute defamation or slander per se in that they impute to the Plaintiffs the commission of a crime (racketeering), and tend to injure Plaintiffs in its trade, business and profession.

26. As a direct and proximate cause of Kosor's conduct, as described above, Plaintiffs suffered general damages in an amount in excess of Fifteen Thousand Dollars ($15,000).

27. Kosor's false and defamatory statements were made in reckless disregard of the rights of Plaintiffs, and in reckless disregard of the truth of the matter, and constitute actual or implied malice giving rise of a claim for punitive and exemplary damages in excess of Fifteen Thousand Dollars ($15,000).

DEMAND FOR JURY TRIAL

Plaintiffs hereby requests a jury trial for all issues so triable.

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. General and special damages in an amount in excess of $15,000.00;
2. Punitive and exemplary damages in excess of $15,000.00;
3. Attorney's fees and costs; and
4. For such other relief that the Court deems just and proper.

DATED this 27 day of November, 2017

KEMP, JONES & COULTHARD, LLP

J. Randall Jones, Esq. (#1927)
Nathanael R. Rulis, Esq. (#11259)
Cara D. Brumfield, Esq. (#14175)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169
Attorneys for Plaintiffs

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Electronically Issued
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11/30/2017 8:44 AM
Steven D. Grierson
CLERK OF THE COURT

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Nathanael R. Rulis, Esq. (#11259)
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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident, Plaintiff vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **SUMMONS**

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

TO THE DEFENDANT: MICHAEL KOSOR, JR.

A civil Complaint has been filed by the Plaintiffs against you for the relief set forth in the Complaint.

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

Case Number: A-17-765257-C

Case Number: A-17-765257-C

(a) File with the Clerk of this Court, whose address is shown below, a formal written response to the complaint in accordance with the rules of the Court.

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

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

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

Issue at the direction of:

KEMP, JONES & COULTHARD, LLP

J. Randall Jones, Esq. (#1927)
jrj@kempjones.com
Nathanael R. Rulis, Esq. (#11259)
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3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169
Attorneys for Plaintiffs

CLERK OF COURT

By: _____ 11/29/2017
Deputy Clerk Date
County Courthouse, Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101
Sthacey Alvarez

NOTE: When service is by publication, add a brief statement of the object of the action. See Rules of Civil Procedure, Rule 4(b).

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AOS

DISTRICT COURT
CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	CASE NO.: A–17-765257-C DEPT. NO.: XII **AFFIDAVIT OF SERVICE**

I Genice O. Rojas, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received 1 copy(ies) of the Summons, Complaint and Cover Letter on the 29 day of November, 2017 and served the same on the 29 day of November, 2017 at 7:15 p.m. by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the defendant Michael Kosor, Jr., a Nevada resident at 12070 Whitehills St., Las Vegas, NV 89141.

2. Serve the defendant _____ by personally delivering and leaving a copy with ____, as person of suitable age and discretion residing at the defendant's usual place of abode located at _____.

(Use paragraph 3 for serve upon agent, completing A or B)

3. Serving the defendant _____ by personally delivering and leaving a copy at _____.

a. With _____ as _____, an agent lawfully designated by statue to accept service of process;

b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

SUBSCRIBED AND SWORN to before me this

29th day of November, 2017

NOTARY PUBLIC

JACQUELINE KOHLER
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 03-28-21
Certificate No: 17-2397-1

Genice O. Rojas – License #2039C
LV Process and Investigations, LLC
7121 Eyebright St
Las Vegas, NV 89131

ANSC
Raymond R. Gates, SBN 5320
Robert B. Smith, SBN 9396
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Attorneys for Defendant MICHAEL KOSOR, JR.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	CASE NO. A-17-765257-C DEPT. NO. XII **DEFENDANT MICHAEL KOSOR, JR.'S ANSWER TO COMPLAINT**

COMES NOW Defendant, MICHAEL KOSOR, JR., by and through his attorneys of record, Robert B. Smith, Esq., and Raymond R. Gates, Esq., of the law firm of Lauria Tokunaga Gates & Linn, and for his answer to the complaint of Plaintiff on file herein, admit, denies and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Answering paragraph 1 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

2. Answering paragraph 2 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

3. Answering paragraph 3 of Plaintiff's Complaint on file herein, this answering Defendant admits each and every allegation contained therein.

4. Answering paragraph 4, of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

5. Answering paragraph 5 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

FACTUAL ALLEGATIONS

5. Answering paragraph 5 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

6. Answering paragraph 6 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

7. Answering paragraph 7 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the

truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

8. Answering paragraph 8 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

9. Answering paragraph 9 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

10. Answering paragraph 10 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

11. Answering paragraph 11 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

12. Answering paragraph 12 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

13. Answering paragraph 13 of Plaintiff's Complaint on file herein, this answering Defendant denies, each and every allegation contained therein.

14. Answering paragraph 14 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

15. Answering paragraph 15 of Plaintiff's Complaint on file herein, this answering Defendants denies each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

(Defamation)

16. Answering paragraph 16 of Plaintiff's Complaint on file herein, this answering Defendant repeats and re-alleges each and every admission, denial or defense set forth in his answers to paragraphs 1 through 15, above and incorporates the same as though fully set forth herein.

17. Answering paragraph 17 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

18. Answering paragraph 18 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

19. Answering paragraph 19 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

20. Answering paragraph 20 of Plaintiff's Complaint on file herein, this answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations therein and, upon said ground, denies each and every allegation contained therein.

21. Answering paragraph 21 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

22. Answering paragraph 22 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

23. Answering paragraph 23 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

SECOND CLAIM FOR RELIEF

(Defamation Per Se)

24. Answering paragraph 24 of Plaintiff's Complaint on file herein, this answering

Defendant repeats and re-alleges each and every admission, denial or defense set forth in his answers to paragraphs 1 through 23, above and incorporates the same as though fully set forth herein.

25. Answering paragraph 25 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

26. Answering paragraph 26 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

27. Answering paragraph 27 of Plaintiff's Complaint on file herein, this answering Defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

I.

APPORTIONMENT OF FAULT

In the event Plaintiffs recover a judgment against this answering Defendant, a request is made that any such liability be apportioned under equitable principals with that of any other tortfeasors whose fault is determined to be related to the injuries and damages suffered by Plaintiff(s).

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state certain claims against this answering Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are guilty of fraud, laches, unclean hands and other inequitable conduct as should denies Plaintiffs any equitable relief whatsoever.

THIRD AFFIRMATIVE DEFENSE

In assessing damages and liability, both of which are denied, the trier of fact must compare and weigh the acts and omissions to the act of all actors, at which time it will be found that Defendant bears a greater degree of culpability for any claimed damages, same being denied.

FOURTH AFFIRMATIVE DEFENSE

The damages complained of, same being inadequately stated and denied, were the sole, direct and proximate result of the actions and omissions to act of Defendant and/or its agents and/or persons or entities over whom/which these parties had no control and thus no liability.

FIFTH AFFIRMATIVE DEFENSE

The statute of frauds bars some or all of the allegations in the Plaintiffs' Complaint.

SIXTH AFFIRMATIVE DEFENSE

Lack, failure and insufficiency of consideration bar some or all claims of Plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Failures of conditions precedent bar some or all claims of Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

Prior material breaches of contact by Plaintiff bar some or all claims of Plaintiffs.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs have failure to act in a commercially reasonable fashion, including by way of example and not necessarily limitation, in failing to mitigate damages, if any, same being denied.

TENTH AFFIRMATIVE DEFENSE

Any statements uttered by Defendant Michael Kosor, Jr. about Plaintiffs' Complaint were substantially true, privileged and/or constitute fair comment.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant Michael Kosor, Jr. is entitled to offset and recoupment against any sums owed Plaintiffs based on damages suffered by Defendant.

TWELFTH AFFIRMATIVE DEFENSE

No act or omission to act by Defendant Michael Kosor Jr. caused or contributed to any damage of Plaintiffs, same being denied.

THIRTEENTH AFFIRMATIVE DEFENSE

The potential damages recoverable in this action are limited by law pursuant to the provisions of N.R.S. 41.035 and that no recovery is permitted beyond those statutory limits.

FOURTEENTH AFFIRMATIVE DEFENSE

The allegations are filed in bad faith and designed to censor, intimidate and silence this answering Defendant and violate his freedom of speech, and are subject to Anti-SLAPP protections.

FIFTEENTH AFFIRMATIVE DEFENSE

This answering Defendant alleges that the Complaint fails to state facts sufficient to constitute

a claim for punitive or exemplary damages.

SIXTEENTH AFFIRMATIVE DEFENSE

This answering Defendant alleges that Plaintiff's Complaint, to the extent that it seeks exemplary or punitive damages, violates this answering Defendant's right to procedural due process under the Fourteenth Amendment of the United States Constitution, and the Constitution of the State of Nevada, and therefore fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

SEVENTEENTH AFFIRMATIVE DEFENSE

This answering Defendant alleges that Plaintiff's Complaint, to the extent that it seeks punitive or exemplary damages, violates this answering Defendant's rights to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Section 12, of the Constitution of the State of Nevada, and violates this answering Defendant's rights to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of Nevada, and therefore fails to state a cause of action supporting the punitive or exemplary damages claimed.

EIGHTEENTH AFFIRMATIVE DEFENSE

Procedures for the imposition of punitive damages are essentially criminal in nature, entitling Defendant to the rights given to defendants in criminal proceedings under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Article I, '8 of the Nevada Constitution. All procedures of Nevada and federal law in this action which deny such rights to Defendant, including the right against self-incrimination, and to proof requirements higher than a preponderance of the evidence, violates Defendant's rights under such constitutional provisions.

NINETEENTH AFFIRMATIVE DEFENSE

Pursuant to N.R.C.P. 11, as amended, all possible affirmative defenses have not been alleged herein insofar as sufficient facts are not available after reasonable inquiry upon the filing of this Answer; however, Defendant reserves the right to allege further affirmative defenses if subsequent investigation warrants.

WHEREFORE, Defendant prays that Plaintiffs take nothing by reason of the Complaint on file

herein, for costs of suit incurred herein and attorney's fees, as well as for such other relief as the Court deems just, proper and equitable.

Dated: January 5, 2018

LAURIA TOKUNAGA GATES & LINN, LLP

/s/ *Robert B. Smith*
By:_____
Raymond R. Gates
Nevada Bar No. 5320
Robert B. Smith
Nevada Bar No. 9693

Reply to: 1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833
(916) 492-2000
Attorneys for Defendants
Michael Kosor, Jr.

Southern Nevada Office:
601 South Seventh Street
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lauria Tokunaga Gates & Linn, and that on this 5th day of January, 2018, I served a true and correct copy of the foregoing:

DEFENDANT MICHAEL KOSOR, JR.'S ANSWER TO COMPLAINT

□ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepared in Sacramento, California; and/or

X By electronic service (e-service)

□ By facsimile, pursuant to EDCR 7.26 (as amended); and/or

□ By personal service

as follows:

J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

/s/ Keri A. Heaton
Keri A. Heaton
An employee of Lauria Tokunaga
Gates & Linn, LLP

DMJT

Raymond R. Gates, SBN 5320
Robert B. Smith, SBN 9396
LAURIA TOKUNAGA GATES & LINN, LLP
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Fax: (916) 492-2500

Southern Nevada Office:
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Las Vegas, NV 89101
Tel: (702) 387-8633
Fax: (702) 387-8635

Attorneys for Defendant MICHAEL KOSOR, JR.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	CASE NO. A-17-765257-C DEPT. NO. XII **DEMAND FOR JURY TRIAL**

TO: PLAINTIFF AND PLAINTIFF'S ATTORNEY OF RECORD:

Pursuant to Nevada Rules of Civil Procedure, Rule 38, Defendant demands a trial by jury of all

issues.

Dated: January 5, 2018

LAURIA TOKUNAGA GATES & LINN, LLP

/s/ *Robert B. Smith*
By:_____
Raymond R. Gates
Nevada Bar No. 5320
Robert B. Smith
Nevada Bar No. 9693

Reply to: 1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833
(916) 492-2000
Attorneys for Defendants
Michael Kosor, Jr.

Southern Nevada Office:
601 South Seventh Street
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lauria Tokunaga Gates & Linn, and that on this 5th day of January, 2018, I served a true and correct copy of the foregoing:

DEMAND FOR JURY TRIAL

□ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepared in Sacramento, California; and/or

X By electronic service (e-service)

□ By facsimile, pursuant to EDCR 7.26 (as amended); and/or

□ By personal service

as follows:

J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, NV 89169

/s/ Keri A. Heaton
Keri A. Heaton
An employee of Lauria Tokunaga
Gates & Linn, LLP

MTD
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Attorneys for Defendant MICHAEL KOSOR, JR.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	CASE NO. A-17-765257-C DEPT. NO. XII **DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Date of Hearing: ____ Time of Hearing: ____

COMES NOW, Defendant, MICHAEL KOSOR, JR., by and through his attorneys of record, Raymond R. Gates, Esq., and Robert B. Smith, Esq., of the law firm of LAURIA TOKUNAGA GATES & LINN, and hereby file Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660.

///

This Motion is supported by all pleadings and papers on file in this matter, The Memorandum of Points and Authorities submitted herewith, and any additional evidence this Court receives at the hearing of the Motion.

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendant MICHAEL KOSOR, JR. will bring the foregoing MOTION TO DISMISS PURSUANT TO NRS 41.660 and on for hearing before the above-entitled court at 9:30 __. am. on the 5 day of March 2018.

DATED: _____ Day of _____, 2018.

By: _____

Raymond R. Gates
Nevada Bar No. 5320
Robert B. Smith
Nevada Bar No. 9693

Reply to: 1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833
(916) 492-2000
Attorneys for Defendants
Michael Kosor, Jr.

Southern Nevada Office:
601 South Seventh Street
Las Vegas, NV 89101

MEMORANDUM OF POINTS AND AUTHORITIES

I.

PROCEDURAL HISTORY

Plaintiffs, Olympia Company, LLC (Hereinafter OLYMPIA) and Gary V. Goett (Hereinafter GOETT) filed their Complaint on November 29, 2018. Defendant, Michael Kosor, (Hereinafter, KOSOR) filed his Answer to the Complaint, on January 5, 2018. The Early Case Conference is scheduled to take place on February 1, 2018.

II.

STATEMENT OF FACTS

This matter involves the positions taken by KOSOR, regarding the actions (or failure to act) of Southern Highlands Community Association Board (hereinafter SHCA), The Nevada Real Estate Division, and Clark County. KOSOR believes all three governing/governmental bodies failed in their responsibilities to the homeowners in Southern Highlands, the citizens of Clark County, and Nevada home owners subject to governing associations. KOSOR's positions are broadly categorized as dealing with home owner association Declarant Control change, (providing for the free election of all association board members by home owners) and the amendment, administration, and use of public monies for public parks pertaining to the Southern Highlands Development Agreement (hereafter SHDA), a 1998 Agreement between Clark County and Southern Highlands Development Corporation for which OLYMPIA is an affiliate. KOSOR does not have a dispute with OLYMPIA or GOETT.

OLYMPIA is the development company owned by GOETT who, along with its parent company and numerous affiliates, developed the Southern Highlands Community. KOSOR is a homeowner in SHCA. He purchased his home in 2011. Since 2014 KOSOR has served as a board member on the

Christopher Communities Homeowners Association (CCHOA), a sub-association in the Southern Highlands community.

As early as 2015 KOSOR exercised his rights as a Nevadan, community homeowner, and a sub-association board member addressing his concerns that the continued declarant control of SHCA by OLYMPIA violates both the SHCA Declaration and Nevada law. KOSOR further exercised his rights as a Nevadan, and community homeowner in addressing his concerns regarding the failed administration and amendment actions of Clark County dealing with the SHDA, which resulted in a significant reduction in the park infrastructure promised to the community and the inappropriate "cost shifting" of "public park" maintenance onto home owners in the SHCA. KOSOR repeatedly, in good faith, with no economic incentive or expectation of gain, communicated his belief the best interests of Southern Highlands homeowners, all Clark County citizens, and Nevadans as a whole were not being served. KOSOR did so through correspondence with, public forums conducted by, and formal proceeding of, the controlling governing bodies previously noted.

A number of SHCA home owners have publicly and actively joined KOSOR's efforts, appearing with KOSOR before the various governing bodies noted, in meetings with government officials, correspondence, and even encouraging KOSOR to seek additional public office beyond his director role in his sub-association.

KOSOR along with other home owners have taken their concerns to the Attorney General's office, Nevada Real Estate Division, Clark County District Attorney and Clark County Commission. KOSOR along with a number of other concerned community homeowners has on numerous occasions addressed the Enterprise Town Board, Clark County Zoning Commission, and met in private with Clark County Commissioners, Administrator of the Nevada Real Estate Division, and Nevada Ombudsman.

KOSOR worked with elected officials, Assemblyman Justin Watkins and Senator Becky Harris in 2017, proposing legislation and amendments in opposition to AB 192 (2105) that Amended NRS 116.31032, changing the declarant control change threshold from "75 percent of the units that may be created to units' owners other than a declarant" to 90% and twice testified before the Commission for Common-Interest Communities and Condominium Hotels (CIC Commission).

KOSOR raised his concerns in a good faith belief the actions of SHCA, NRED, Clark County were in violation of the SHCA's CC&R's, Nevada Revised Statutes and the SHDA. KOSOR's actions clearly demonstrate his exclusive intent to obtain greater public transparency and obtain where appropriate, corrective action by the governing and governmental bodies involved.

KOSOR believes the present lawsuit was filed to deter him and others in the community from exercising his and their first amendment rights of speech to continue to advocate for his community, those that live in Clark County, and Nevada home owners in general. The positions taken and advocated for by KOSOR over the past three years are all well supported by statues and documentation recorded with Clark County. Attached as Exhibit (A) please find KOSOR's most recent correspondence with SHCA and copied to the Clark County District Attorney and later the Nevada Attorney General, dated September 17, 2017 regarding the "Master Acknowledgment Regarding Public Access in Southern Highlands Parks." As the court can see KOSOR'S statements and beliefs are in reliance of Nevada Revised Statutes and recorded documents. Also attached as Exhibit (B) please find KOSOR's correspondence with NRED and its subsequent handling of his formal complaint(s) related to his belief the SHCA board and NRED through its non-action and delays has failed to effect declarant control change.

In November of 2017, KOSOR notified the (SHCA) that he would be running for the sole board position being contested (the Board is comprised of five directors, three of which are appointed and

employed by OLYMPIA and two elected positions serving alternating bi-annual terms). (Exhibit C). Shortly after his candidacy was announced the present lawsuit was filed in what KOSOR believes was an attempt to discourage him from moving forward with his campaign, thus keeping him off the SHCA Board of Directors where he would have greater access to information, ability to improve owner transparency, and raise the level of interested among governmental agencies and regulatory bodies related to his and other owner's ongoing concerns.

Additionally, KOSOR believes the lawsuit was intended to intimidate and silence him and the growing number of owners with similar concerns, establish a premise for the (SHCA) censoring of KOSOR's communications with the community, influence a pending NRED determination related KOSOR's long standing declarant control concerns and formal complaint, and inflict significant legal costs dwarfing any potential cost saving KOSOR or any home owner would see from an adjudication of his concerns. KOSOR believes an adjudication of the concerns could cost OLYMPIA and GOETT potentially millions of dollars to fulfill SHDA commitments and subsequently reimburse SHCA.

During the course of the SHCA election there were several irregularities with the election process. The first was the delay of the ballot mailing and election date for reasons not communicated by SHCA and unknown to KOSOR. The SHCA board refused to distribute KOSOR's candidate statement along with the other candidate statements for the seat. On December 7, 2018, KOSOR was initially notified of SHCA's intent not to mail his candidate statement, four days prior to the mailing of the revised mailing of ballots. KOSOR immediately notified the board's counsel (December 7, 2017) demanded revised ballots and his candidate statement be included with the other candidate statements, but it was not.

During the course of the campaign KOSOR distributed a "pamphlet" with his candidacy platform. (Exhibit D). In response to a pamphlet distributed by KOSOR, SHCA emailed the

homeowners of Southern Highlands a response to KOSOR's candidate statement. KOSOR requested that he be allowed to provide a rebuttal response to the SHCA's written statement as allowed by NRS 16.31035(1). KOSOR submitted his statement to the SHCA for distribution to the homeowners in the community. SHCA, refused to produce KOSOR's statement in clear violation of the statutory mandates of NRS 16.31035(1), which states the board "**must**" distribute a candidate's response to the board's official statement.

The election took place on December 26, 2017, with the expected low voter turnout due to the election taking place the week of Christmas. KOSOR was not elected to the SHCA board and is challenging the election due to the above and other election irregularities.

The dispute between KOSOR and SHCA relates to a variety of issues, but the two primary areas of dispute are listed below:

1. The continued failure of SCHA to act to effect control change by the SHCA Board by OLYMPIA. OLYMPIA appoints three of the five SHCA board members with the other two board members being elected by the homeowners of Southern Highlands. The three appointed board Members are employees of OLYMPIA. KOSOR, believes, based upon his review of the SHCA's CC&RS and Nevada Revised Statutes OLYMPIA should have been required to turned over the three appointed SHCA Board seats it controls to the homeowners in 2014 and certainly since that time as the developer continues to effect ownership of units to those other than the declarant. (Exhibit B).
2. SHCA's acceptance and continued operation and maintenance of the parks in the community provided by OLYMPIA under the SHDA. KOSOR, based upon review of SHCA documents, public records and those provided by Clark County in his communications and multiple Freedom of Information Requests has developed reasonable

good faith belief the parks are being inappropriately held by SHCA with the cost paid by homeowners. KOSOR believes, failing a majority owner vote by SHCA, Clark County or OLYPMIA are responsible for the costs associated with the parks maintenance and operation. (Exhibit E). Instead the parks were titled to the SHCA with an annual cost in excess of $650,000.00. (The 2016 budget shows an expense of $675,643.00 annually for maintaining the public parks in the community.) (Exhibit F).

KOSOR raised his concerns regarding the above issues at various SHCA board meetings based upon a good faith belief the actions of SHCA were in violation of the SHCA's CC&R's, Nevada Revised Statutes and agreements between OLYMPIA and Clark County.

All of the statements made by KOSOR were good faith communications in direct connection with issues of public concern for all the homeowners in Southern Highlands, the use of SHCA funds to maintain "public parks" located in the Southern Highland's community and the failure to turn over the three OLYMPIA controlled SHCA Board Seats to the homeowners. All of the statements as it will be shown to the court were stated as opinions and/or good faith beliefs of KOSOR's and not defamatory statements of fact as improperly alleged in the Complaint.

In December of 2015, KOSOR attended a (CCHOA) board meeting and in connection with a related agenda item expressed his concerns regarding the actions of OLYMPIA and GOETT, as it related to Southern Highlands' parks begin operated and maintained at the Southern Highland homeowner's expense. The meeting was open to all owners (with only one owner representative in attendance) and as required, the statements at issue were recorded. A copy of the recording is attached as Exhibit G. As the court will see, the statements are not statements of fact, but opinions of KOSOR.

In September of 2017, KOSOR posted a statement on a website stating it was his opinion/belief OLYMPIA entered into "lucrative agreement" with the Clark County, turning over the costs associated

with maintaining and operating the parks to SHCA and the Southern Highland homeowners. The term "lucrative deal" on its face is not defamatory. Additionally, the statement was made regarding a public interest in and public forum which is clearly protected speech.

On November 16, 2017, KOSOR as part of his election campaign, created a website which included his campaign platform and concerns he had with OLYMPIA's continued control of the SHCA Board and SHCA's continued responsibility to operate and maintain Southern Highlands' parks at its expense. (Exhibit H).

As part of KOSOR's election campaign he produced a written pamphlet detailing his election platform, which he distributed to the homeowners in Southern Highlands. (Exhibit D). The pamphlet was distributed to the community on November 17, 2017. Nowhere in the pamphlet did KOSOR state OLYMPIA and/or GOETT breached its fiduciary duty to the Southern Highlands Community. KOSOR stated in the pamphlet as follows; "First and foremost, I will work to end the Developer's control of the HOA Board. Currently, three of our 5 –person SHCA Board of Directors are appointed and employed by the Developer. With Olympia owned by the Developer, the **potential** for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear." (See Exhibit D). As the court can see nowhere in the pamphlet does KOSOR state OLYMPIA and GOETT breached its fiduciary duty to the Southern Highland's homeowners. He clearly stated there is the "potential" for this to occur.

The second statement referenced in the Complaint "already cost the homeowners millions" is also inaccurate. KOSOR stated, "I **believe** this has cost our community millions of dollars." This is clearly a statement of opinion and not defamatory. (Exhibit D). In the pamphlet KOSOR stated the attorney fees for 2016 were $1.4 Million. (Exhibit F). KOSOR did not grossly overstate the 2016 legal expenses. See Exhibit F which shows the legal expenses for SHCA in 2016 were $1,241,973, which is nearly 5 times the ratified budget amount of $250,000.00.

III.

LEGAL ARGUMENT

KOSOR is bringing the present motion pursuant to NRS 41.660, Nevada's Anti-Strategic Lawsuit Against Public Participation statute. "A SLAPP suit is a meritless lawsuit that a party initiates primarily to chill a defendant's exercise of his or her First Amendment free speech rights." John v. Douglas County School District, 125 Nev. 746, 752, 219 P.3d 1276, 1280 (2009).

It is the belief of KOSOR the present lawsuit was filed in an attempt to deter him from running for an elected position on the SHCA board and to deter him and other community owners from exercising their/his, First Amendment free speech rights in advocating for issues of public concern which could have significant financial implications for GOETT and OLYMPIA. The lawsuit was filed by OLYMPIA and GOETT within weeks of KOSOR notifying the SHCA Board of Directors of his candidacy. Additionally, at the time the lawsuit was filed, known to Olympia and of concern to Southern Highland owners, 1) KOSOR'S long-awaited Complaint regarding the Declarant Control Issue, filed with the Nevada Real Estate Division was under active consideration with determination anticipated and 2) The SCHA Board was to act as its next meeting, on a n agreement between Clark County and SHCA dealing with SHDA "public parks".

NRS 41.660 states:

> NRS 41.660. Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition or free speech in direct connection with an issue of public concern; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits:
>
> 1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern:

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(a) The person against whom the action is brought may file a special motion to dismiss; and

(b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;
(b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;
(c) If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:

(1) Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or

(2) Affect the burden of proof that is applied in the underlying action or subsequent proceeding;

(d) Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);

(e) Except as otherwise provided in subsection 4, stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(f) Rule on the motion within 20 judicial days after the motion is served upon the plaintiff.

4. Upon a showing by a party that information necessary to meet or oppose the burden pursuant to paragraph (b) of subsection 3 is in the possession of another party or a third party and is not reasonably available without discovery, the court shall allow limited discovery for the purpose of ascertaining such information.

5. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

6. The court shall modify any deadlines pursuant to this section or any other deadlines relating to a complaint filed pursuant to this section if such modification would serve the interests of justice....

A. Kosor Has Timely Brought the Present Motion Pursuant to NRS 41. 660(2)

A motion brought pursuant to NRS 41.660(2) must be filed within 60 days of the service of the Complaint. OLYMPIA and GOETT served the Complaint on November 30, 2017, as such the motion was timely filed on January 29, 2018.

B. The Anti-SLAPP Statute Applies As Kosor's Statements Were Based Upon Good Faith Communications in Furtherance of His Right to Petition or Free Speech in Direct Connection to an Issue of Public Concern

Pursuant to NRS 41.660(3)(a) KOSOR must make must a showing by a preponderance of the evidence that the claim is based upon a good faith communication in furtherance of a right to petition or the right to free speech in a direct connection with an issue of public concern. Good Faith Communications has been defined by NRS 41.637 which states:

41.637. "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" defined

"Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

1. **Statements Made at December 2015 CCHOA Board Meeting Were Made in Good Faith Regarding An Issue of Public Concern, the Maintenance Costs of The Community's Parks**

a. Public Interest/Public Concern

"While California's anti-SLAPP law, similar to Nevada's, provides no statutory definition of "an issue of public interest," California "courts have established guiding principles for what distinguishes a public interest from a private one." Piping Rock Partners, 946 F.Supp.2d at 968. Specifically:

> 2. (1) "public interest" does not equate with mere curiosity;
> 3. (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
> 4. (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> 5. (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> 6. (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.
>
> (citing Weinberg v. Feisel, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392–93 (2003)).

"We take this opportunity to adopt California's guiding principles, as enunciated in Piping Rock Partners, for determining whether an issue is of public interest under NRS 41.637(4). If a court determines the issue is of public interest, it must next determine whether the communication was made "in a place open to the public or in a public forum." Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

The statements made by KOSOR at the December 2015, CCHOA meeting, were in direct connection to an issue that concerned the nearly eight thousand homeowners in Southern Highlands, all of Clark County, and the estimate 40% of citizens that reside in homeowner associations, the use of

private funds to operate public parks. (See NRS 41.637(4)) In 2016 it cost the Southern Highlands Homeowners $675,643.00 to maintain the "public parks." (Exhibit B).

The Complaint alleges KOSOR stated: "At that time, Kosor made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a "dark room" and coerced them to act or vote in a certain manner; and that Olympia is "lining its pockets" to the detriment of the Southern Highlands Community." Both of the alleged statements in the Complaint are incomplete and leave out key words, "in my opinion" and "probably."

The actual statements by KOSOR are as follows, "he is basically lining his own pockets, in my opinion at the expense of the owners in Southern Highlands." (Exhibit A, Audio recording at 1:19:14).

The second statement at issue is as follows: "The audit report was quickly glossed over and the County Commission was worried about, they were apologizing to the Developer Goett who was there, about the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and **probably** got the Commissioners aside in a dark room or someplace and read them the riot act." (Exhibit G, Audio Recording at1:20:40).

The statements at issue were made by KOSOR in his capacity as a concerned homeowner and member of one of CCHOA, the Sub-boards in the Southern Highlands community. The statements made were regarding the use of Southern Highland's homeowner funds to pay for the operation and maintenance of the public parks and the failure of the parks to be turned over to Clark County pursuant to the Southern Highland Development Agreement. This issue is of concern for the nearly eight thousand homeowners who reside in the community and Clark County citizens entitled to use "public parks". This is of particular concern to the homeowners who spent, $676,692.00 in 2016, for just the maintenance of the parks.

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a. Public Forum

KOSOR's communications in December of 2015 were made at the CCHOA board meeting in a setting which was open to the public and/or in a public forum. In California it has been determined board meetings of homeowners associations constituted a public forum.

"For purposes of the third category in subdivision (e) of section 425.16, a " 'public forum' is traditionally defined as a place that is open to the public where information is freely exchanged. This court in Damon concluded the board meetings of a homeowners 715 association constituted a **public forum** within the meaning of the **anti-SLAPP statute because they "serve [ ] a function similar to that of a governmental body.** Lee v. Silveira, 211 Cal. Rptr. 3d 705, 714–15 (Ct. App. 2016) (Emphasis Added).

"We concluded in Damon that the alleged defamatory statements made by the defendants about the plaintiff during a duly noticed board meeting met the statutory definition of a "public forum" as provided in subdivision (e)(3) of section 425.16." (Damon, supra, 85 Cal.App.4th at pp. 474–475, 102 Cal.Rptr.2d 205.) Lee v. Silveira, 211 Cal. Rptr. 3d 705, 715 (Ct. App. 2016). In Lee went on to state:

> As our Supreme Court has recognized, owners of planned development units '"comprise a little democratic subsociety...." In exchange for the benefits of common ownership, the residents elect a[ ] legislative/executive board and delegate powers to this board. This delegation concerns not only activities conducted in the common areas, but also extends to life within '"the confines of the home itself." A homeowner's association board is in effect 'a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government. Id.

Nevada's Anti-SLAPP statute mirrors that of California with Nevada adopting California's burden of proof required of Plaintiff in opposing a Motion to Dismiss Pursuant to NRS 41.660. NRS 41.665 states, the plaintiff must the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuits Against Public Participation law as of June 8, 2015."

In Delucci v. Songer, 396 P.3d 826, 833 (2017), the Nevada Supreme court relied upon a California decision City of Montebello v. Vasquez, Cal. 5th 409, (2016) in clarifying the statutory language and intent of NRS 41.637.

As the court can see Nevada has relied heavily on the California's Anti-SLAPP statutes and case law in interpreting its own Anti-SLAPP statute. KOSOR requests this court do the same in this case and hold that homeowner association meetings are a public forum.

Pursuant to the statutory language of NRS 41.637(4) and the decision in Lee, KOSOR's statements at the December CCHOA Board meeting were made at a "public forum" and were of "public interest."

c. Without Knowledge of Falsehood

The documentation referenced in Exhibit A, E and F, clearly show the basis for his belief the maintenance of the parks should not be paid for by the Southern Highlands Homeowners.

d. Statements of Opinion are Not Defamatory

The two statements at issue in the Complaint are that "OLYMPIA and Goett spoke to Commissioners in a "dark room" and that Olympia is "lining its pockets" are clearly statements of opinion. See the two statements listed below:

"he is basically lining his own pockets, **in my opinion** at the expense of the owners in Southern Highlands." (Exhibit G, Audio recording at 1:19:14).

The second statement at issue is as follows: "The audit report was quickly glossed over and the County Commission was worried about, they were apologizing to the Developer Goett who was there, about the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and **probably** got the Commissioners aside in a dark room or someplace and read them the riot act." (Exhibit G, Audio Recording at1:20:40 Exhibit).

"Statements of opinion cannot be defamatory because "there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." This court has held that "statements of opinion as opposed to statements of fact are not actionable." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002)

In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." Id. at 715.

"Statements of opinion are protected speech under the First Amendment of the United States Constitution and are not actionable at law." Id at 714.

As discussed above both statements at issue are statements of opinion which are not actionable under Nevada law. KOSOR clearly stated "probably" as to the dark room statement which is clearly an opinion. As to the second statement, KOSOR clearly states, "in my opinion" as to the statement of lining its pockets. No reasonable person listening to the two statements of KOSOR would believe they are statements of fact. As both statements are opinions the allegations in paragraph 6 of the Complaint must fail.

2. September 11, 2017 Social Media Post

a. Public Concern

The statement posted on September 11, 2017, by KOSOR, was regarding the Southern Highland homeowners' obligation to maintain the public parks in the community. As addressed above in 2016 the Southern Highland's homeowners spent $676,692.00 to maintain the parks. The SHCA 2017 budget included an allocation for the same amount $676,692.00, for the maintenance of the public parks, which

KOSOR believes title is inappropriately held by SCHA, and should be the responsibility of Clark County (Exhibit F).

This ongoing obligation has cost the homeowners millions of dollars in the past and will cost the homeowners millions of dollars in the future, which is clearly a concern for the eight-thousand home owners who fund the "public parks" if not other Clark County citizens.

b. Public Forum

The statements of opinion were posted on a social media website clearly showing the statements were made in a public forum. The statements were posted on a social media website.

"Cases construing the term "public forum" as used in section 425.16 (California Anti-SLAPP Statute) have noted that the term "is traditionally defined as a place that is open to the public where information is freely exchanged." (Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, 475 [102 Cal.Rptr.2d 205].) "Under its plain meaning, a public forum is not limited to a physical setting, but also includes other forms of public communication." (Id., at p. 476.) (Emphasis Added).

Electronic communication media may also constitute public forums. A federal court recently stated that a widely disseminated television broadcast was "undoubtedly a public forum" for purposes of section 425.16. (Metabolife Internat., Inc. v. Wornick (S.D.Cal. 1999) 72 F.Supp.2d 1160, 1165.) Apropos of this case, though not in the context of section 425.16, the court in Hatch v. Superior Court (2000) 80 Cal.App.4th 170 [94 Cal.Rptr.2d 453] noted that Internet communications have been described as "classical forum communications." (Id., at p. 201, fn. omitted.) ComputerXpress, Inc. v. Jackson, 113 Cal. Rptr. 2d 625 (2001).

"Thus, both the Raging Bull and Ogravity99 sites satisfy the criteria for a public forum set forth in Damon v. Ocean Hills Journalism Club, supra, 85 Cal.App.4th 468: "a place that is open to the public where information is freely exchanged." (Id., at p. 475.)

"In fact, the Web sites in this case present even a stronger case for qualification as public forums than did the newsletter involved in Damon. While newspapers exercise editorial control over access to their pages, that feature is not shared by the Web sites involved here. We therefore conclude defendants made a prima facie showing that the Web sites involved in this case were public forums for purposes of section 425.16." ComputerXpress, Inc. v. Jackson, 113 Cal. Rptr. 2d 625 (2001).

Based upon well-established state and federal case law internet websites, message boards and chatrooms are public forums, as such the statements of opinion posted by KOSOR on September 11, 2017, were made in a public forum.

c. Without Knowledge of Falsehood

KOSOR's statements are supported by his research and review of Nevada Revised statutes and the terms of the SDHA. See Exhibits A & E, which clearly details the basis of his belief the public parks should not be maintained by SHCA.

3. November 16, 2017 Website Launch

As part of KOSOR's campaign seeking election to the SHCA board he had a website created which outlined his platform, concerns and recommendations for improving the community. This action clearly falls under the auspices of NRS 41.637(1) 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome. KOSOR's website (communication) was aimed at procuring an election result, obtaining a seat on the SHCA board of directors. As such, this is protected speech and not actionable. (Exhibit H).

The Complaint alleges as follows:

"On or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things acting like a foreign government that deprives people of essential rights. In other parts of the website, Mr. Kosor continues to reference sweetheart

deal, statutory violations, breaches of fiduciary duty, improper cost shifting of "millions of dollars," even though such statements are untrue and defamatory." (Complaint pg. 3, lines7-11).

The plain language of the Complaint is inadequate in that it makes broad generalizations and assumptions of the intent of KOSOR's statements on his website. Nowhere on its website does it state that OLYMPIA is acting like a foreign government that deprives people of essential rights. Nowhere does KOSOR reference sweetheart deals. The reference to the statutory violations, relates to KOSOR's good faith belief the statements are true, relying upon Nevada law , wherein he stated SHCA failed to inform homeowners of the date and time of the next executive board meeting. KOSOR is under the good faith belief SHCA violated Nevada law by failing to provide the annual budget as required by statute.

Nowhere in KOSOR's website does he state OLYMPIA breached its fiduciary duty to the homeowners. KOSOR stated with the SHCA board controlled by three OLYMPIA employees there is "the **potential** for our Board to experience conflicts of interest, loss of board autonomy, and failed fiduciary oversight exists." The key word in the statement is potential. KOSOR is clearly stating these things could happen and the statement is clearly not a statement of fact. As to the statement regarding improper cost shifting of "millions of dollars." KOSOR statement on the website clearly is an opinion. He stated, **"I believe"** the actions of OLMPIA cost the Homeowners millions. This is not a statement of fact. (Exhibit H).

Additionally, as to the cost shifting statement KOSOR is under the good faith belief this is true. SHCA by way of its homeowners have paid millions of dollars to maintain the community's parks, an expense that should have been shifted to Clark County or some other entity years ago. (Exhibits A& E).

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a. Public Concern/Public Interest

"While California's anti-SLAPP law, similar to Nevada's, provides no statutory definition of "an issue of public interest," California "courts have established guiding principles for what distinguishes a public interest from a private one." Piping Rock Partners, 946 F.Supp.2d at 968. Specifically:

> (1) "public interest" does not equate with mere curiosity;
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.
> Id. (citing Weinberg v. Feisel, 110 Cal.App.4th 1122, 2 Cal.Rptr.3d 385, 392–93 (2003)).

"We take this opportunity to adopt California's guiding principles, as enunciated in Piping Rock Partners, for determining whether an issue is of public interest under NRS 41.637(4). If a court determines the issue is of public interest, it must next determine whether the communication was made "in a place open to the public or in a public forum." Shapiro v. Welt, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017).

As discussed at length above the issues included in KOSOR's website are of interest to the nearly eight thousand homeowners in Southern Highlands. The annual expenses related to the maintenance of the "public parks" and the continued control of the SHCA by three appointed directors who are employees of OLYMPIA.

b. Public Forum

As discussed previously internet websites are considered public forums by well-established state and federal case law. "Thus, both the Raging Bull and Ogravity99 sites satisfy the criteria for a

public forum set forth in Damon v. Ocean Hills Journalism Club, supra, 85 Cal.App.4th 468: "a place that is open to the public where information is freely exchanged." (Id., at p. 475.)(Emphasis Added).

KOSOR as part of this election campaign created the website Mikekosor.com, which provided the public/Southern Highlands homeowners his election platform and goals he hoped to accomplish if elected to the SHCA board. The website include a link to letter written to the homeowners in Southern Highlands detailing his platform and goals he hoped to accomplish once elected. This is the same written statement that SHCA refused to include with the other candidate statements that were mailed along with the election ballots sent to the homeowners. KOSOR's website is clearly a place that is open to the public where information is freely exchanged, as such his website is a public forum.

c. Without Knowledge of Falsehood

KOSOR adamantly denies that his website stated OLYMPIA and/or GOETT breached its fiduciary duty to the Southern Highlands community. This is argued at length above. The issue is whether or not OLYMPIA should still be appointing 3 of its employees as members of the SHCA board of directors. KOSOR based upon his review of Nevada Revised Statutes and recorded documentation has a good faith belief the amendment increasing the number of residences in the community to ten thousand four hundred from nine thousand was improper. (Exhibit B). As to the parks issue see Exhibits A & E, as to KOSOR's belief the statements are not false.

d. Statements of Opinion are Not Defamatory

The two statements at issue in the Complaint are that OLYMPIA breached its fiduciary duties to the Southern Highland Community and that the developer's actions, "have already cost the homeowners millions," are clearly not factual statements.

The first statement attributed to KOSOR relating to the alleged breach of fiduciary duty is clearly not a statement of fact. KOSOR's website includes the following statement which is clearly an

opinion, "First and foremost, I will work to end the Developer's control of the HOA Board. Currently, three of our 5 –person SHCA Board of Directors are appointed and employed by the Developer. With Olympia owned by the Developer, the **potential** for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear." (Exhibit H). It is KOSOR's opinion there is a potential for a breach of fiduciary duties. This is not a statement of fact.

As to the second statement, "Developer's actions have "already cost the homeowners million," fails to include KOSOR's full statement which states, "I believe." As can be clearly read on Exhibit H, KOSOR stated, "As I note below, I believe this has cost our community millions of dollars." This is clearly an opinion and not stated as fact.

"Statements of opinion cannot be defamatory because "there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." This court has held that "statements of opinion as opposed to statements of fact are not actionable." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002)

In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." Id. at 715.

"Statements of opinion are protected speech under the First Amendment of the United States Constitution and are not actionable at law." Id at 714.

As discussed above both statements at issue are statements of opinion which are not actionable under Nevada law. KOSOR requests that the court strike the allegations in paragraph 10 of the Complaint as the statements attributed to KOSOR are both opinions and not fact.

///

d. November 17, 2017 Written Pamphlet

On November 17, 2017, KOSOR distributed a pamphlet which included information as to his qualifications as a candidate and the issues he plans on addressing once elected to the board. The second page of the pamphlet is a letter to his "Southern Highlands Neighbor." In the letter KOSOR once again raises the issue of OLYMPIA's control of the SHCA board by way it appointing three of its employees as members and the parks issue. (Exhibit D).

The Complaint states on page 3, paragraph 11, "Within KOSOR'S written pamphlet was the statement that Olympia/Developer breached its fiduciary duty, and improper cost shifting of "millions of dollar," even though the statements are untrue."

The allegations in the Complaint are simply inaccurate and untrue. Nowhere in the pamphlet does KOSOR state OLYMPIA breached its fiduciary duties. The pamphlet clearly states there is the "potential" for conflicts of interest.....and failed fiduciary oversight. The key word is potential. This is not a statement of fact by KOSOR. Nowhere in the pamphlet is the phrase cost shifting used by KOSOR. As to the statement cost shifting of "millions of dollar," this clearly is a statement of opinion. The Pamphlet states, "I believe this has cost our community millions of dollars." This is clearly a statement of opinion and not fact.

a. The Communication (Pamphlet) was Aimed to Procure an Elected Position and Falls under NRS 41.637(1)

Additionally, the pamphlet clearly falls under NRS 41.637(1), 1. "Communication that is aimed at procuring any governmental or electoral action, result or outcome. The pamphlet was provided to the Southern Highlands homeowners to inform them of KOSOR's candidacy and his election platform. This was done in an attempt to procure a seat on the SHCA board. This is clearly protected speech.

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b. Public Concern

The issues discussed in the pamphlet are the same as those addressed above. Specifically KOSOR in the pamphlet addressed the issue of the SHCA and its homeowners paying for the maintenance of the public parks at an expense of $675,643.00 annually. The continued control of the SHCA board of directors by the developer and variety of other issues in the pamphlet which are not addressed in the Complaint, which includes SHCA legal expenses, ($1,241,973.00) which were 5 times the budgeted amount ($250,000.00) in 2016. The costs related to using OLYMPIA Management Company, which was $1,426,014.00 in 2016. All of the issues raised in the pamphlet are of concern to the homeowners in the Southern Highlands, as they related to the use of funds raised through homeowner assessments.

c. Without Knowledge of Falsehood

The issues regarding the costs associated with parks is based upon his review of the annual Budget, documents recorded with Clark County and Nevada Revised Statutes. See also Exhibits A, E & F.

d. Statements of Opinion Are Not Actionable

The first statement attributed to KOSOR in the pamphlet relates to the alleged breach of fiduciary duty is clearly not a statement of fact. KOSOR's pamphlets states, "First and foremost, I will work to end the Developer's control of the HOA Board. Currently, three of our 5 –person SHCA Board of Directors are appointed and employed by the Developer. With Olympia owned by the Developer, the **potential** for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear." (Exhibit D) It is KOSOR's opinion there is a potential for a breach of fiduciary duties. This is clearly not a statement of fact.

As to the second statement, "Developer's actions have "already cost the homeowners millions." As can be clearly read in Exhibit ...KOSOR stated, "As I note below, I believe this has cost our community millions of dollars." (Exhibit D). This is clearly an opinion and not stated as fact.

"Statements of opinion cannot be defamatory because "there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." This court has held that "statements of opinion as opposed to statements of fact are not actionable." Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) "

"Statements of opinion are protected speech under the First Amendment of the United States Constitution and are not actionable at law. See Nevada Ind. Broadcasting, 99 Nev. at 410, 664 P.2d at 341–42.

In determining whether a statement is actionable for the purposes of a defamation suit, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." Pegasus, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

As discussed above both statements at issue are statements of opinion, which are not actionable under Nevada law. Id. at 714.

No reasonable person could believe that either statement at issue was a statement of fact. The first statement regarding the fiduciary duty is prefaced with the word, "potential" which is clearly not a statement of fact. The second statement regarding OLYMPIA's actions costing homeowners millions is prefaced by the qualifier "I believe."

KOSOR requests that the court strike the allegations in paragraph 11 of the Complaint as the statements attributed to KOSOR are both opinions and not fact. The third statement at issue in

paragraph 11 of the Complaint is the statement, "In addition, he grossly overstates the Southern Highlands Community Association's 2016 legal fees." See Exhibit F Southern Highland's 2017 Ratified Budget. The budget shows SHCA's legal fees in 2016 were $1,241,973.00. KOSOR stated in the pamphlet the SCHA's 2016 legal fee were $1.4 million. This is clearly not "grossly" overstated.

C. KOSOR Has Established by a Preponderance of the Evidence That His Claims are Based Upon Good Faith Communications in Furtherance of His Right to Petition and Free Speech in Connection with an Issue of Public Concern.

As discussed at length above, the issues raised by KOSOR at the December 2015 CCHOA Board meeting, the September 11, 2017, statement on social media, the website he launched on November 16, 2017, and the pamphlet he distributed on November 17, 2017, were all of concern to the Southern Highland Homeowners. The statements related to the continued control of the SHCA board of directors by OLYMPIA and the use of SHCA funds to maintain the public parks. The good faith communications were based upon KOSOR's review of the SHCA's CC&R's, Nevada Revised Statutes and documentation from Clark County. Therefore, KOSOR has met his burden that the anti-SLAPP motion is appropriate.

The Complaint was filed simply in an attempt to deter KOSOR from exercising his rights as a concerned Southern Highlands Homeowner and for no other reason.

D. Plaintiff Cannot Demonstrate a Probability of Prevailing on the Merits

Pursuant to NRS 41.660(3)(B), which states:

> (b) If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has demonstrated with prima facie evidence a probability of prevailing on the claim;

As argued above the speech at issue is clearly protected. The statements all relate to public concerns of the homeowners of Southern Highlands, the continued expenses of maintaining public parks and the

continued control of the SHCA board of directors by the OLYMPIA. The statements were all made as part of an election campaign or in a public forum, areas where speech is protected.

In order for OLYMPIA and GOETT to defeat the present Motion they must demonstrate with prima facie evidence of the probability of prevailing at trial. This simply cannot be done by Plaintiffs. The allegedly defamatory statements made by KOSOR were statements of opinion and per se are not defamatory.

In order to prevail at trial on the defamation claim OLYMPIA and GOETT must prove the following:

(1) a false and defamatory statement; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages."

Clark County Sch. Dist. v. Virtual Educ. Software, Inc., 125 Nev. 374, 385, 213 P.3d 496, 503 (2009).

In order for OLYMPIA and GOETT to prevail on the Defamation Per Se claims, each must prove the above elements and damages are presumed. Id. at 385.

As argued above, the statements at issue in the Complaint on their face are not defamatory. Each statement is clearly a statement of opinion, by KOSOR, which cannot be defamatory. Additionally, KOSOR has a good faith basis to believe the statements he made are true. Per Nevada case law the statements that are "true or substantially" true are not defamatory. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 715, 57 P.3d 82, 88 (2002).

As such, OLYMPIA and GOETT cannot meet the burden imposed on them by NRS 41.660 and NRS 41.665 and the Complaint must be dismissed with prejudice.

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IV.

ATTORNEYS FEES

A. Kosor is Entitled to Recover Attorney Fees and Costs Pursuant To NRS 41.670 as the Prevailing Party

NRS 41.670 provides that the court shall award reasonable costs and attorney fees to the party who brought a Motion pursuant to NRS 41.660, if that party prevails. KOSOR requests this honorable court award him reasonable attorney fees and costs as the prevailing party. KOSOR's fees and costs in filing this motion are reasonable and the hourly rate charged by KOSOR's counsel is comparable to other counsel in this area and is further described in the declaration of KOSOR's counsel Robert B. Smith, Esq. KOSOR requests attorney fees and costs in the amount of $5,055.00.

In addition to attorney fees KOSOR requests the court award him $10,000.00 in damages as provided by NRS 41.670(b), which states, "(b) The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to $10,000 to the person against whom the action was brought."

The Complaint was filed for the sole purpose of chilling KOSOR's speech. As presented to the court above in detail the Complaint, misstates facts, omits pertinent parts of the statements of KOSOR at issue, specifically, the qualifiers used by KOSOR, "in my opinion," "potential" and "probably." KOSOR at no time stated OLYMPIA acted like a foreign government depriving homeowners their rights, but it is alleged in the Complaint. The Complaint alleges KOSOR stated OLYMPIA and GOETT were involved in racketeering without any factual basis or support.

A single omission or misstatement may be understandable, but not the repeated omissions and misstatements of fact. This cannot be overlooked by the court.

The Complaint alleges the phrases "lucrative deal," "sweetheart deals," and "cost shifting" are defamatory, which is nonsensical. The goal of every business owner is to enter into lucrative deals, find

sweetheart deals and when possible lower and/or find alternate payors for expenses i.e. cost-shift. These terms on their face are not defamatory.

As such, KOSOR requests the court award him $10,000.00 as allowed by NRS 41.670(b).

V.

CONCLUSION

For the reasons set forth above, Defendant's respectfully request the Court Grant Defendant's motion, and dismiss the present action, with prejudice and award Defendant attorney's fees and costs.

Dated: January 29, 2018.

LAURIA TOKUNAGA GATES & LINN, LLP

By: _____

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Nevada Bar No. 5320
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EXHIBIT "A"

EXHIBIT "A"

Southern Highlands Community Association
Board of Directors
11411 Southern Highlands Pkwy., Suite 100
Las Vegas, NV 89141

September 18, 2017

Subject: Master Acknowledgment Regarding Public Access in Southern Highlands Parks (Parks Access document)

Dear SHCA Board:

As a home owner in the Southern Highland Community Association (SHCA), it has come to my attention a document titled Master Acknowledgment Regarding Public Access in Southern Highlands Parks (Parks Access document) constructed by the declarant and coordinated through the County, is on the September 21, 2017 agenda for approval by the Board of Directors. **SHCA has no present obligation to execute the Public Access document and should act to reject approval to execute the document for the following reasons:**

1. The deeded transfer of the park properties identified in the **Park Access document to SHCA is not enforceable and void.** Additionally, the title transfers fail to comport Southern Highlands Development Corporations' (Developer) required conditions for said transfers to SHCA as set forth in the Southern Highlands Development Agreement (SHDA) and SHCA CC&Rs. They were completed without Board resolution, making original title actions voidable.

   A. Recorded Quitclaim Deeds on the park properties, purport to convey an ownership interest and establish collectively performance obligation of the Association, set out in the singular and collective deeds. The deeds create a performance obligation by the Association, thus per NRS 116.087, create a security interest[1]. Statute provides the SCHA Board may "..acquire, hold, encumber, and convey...any right, title, or interest to real estate...but: (1) .... subjected to a security interest only pursuant to NRS 116.3112"[2]. NRS 116.3112 requires "at least a majority of the votes in the association...must agree...". As no SHCA owner vote was accomplished, the parks transfer, "...is not enforceable against the association..."[3] and the deed, purporting a conveyance of a security interest, not pursuant to NRS 116.3112 par 5 "is void"[4].

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[1] NRS 116.087- ""Security interest" defined. "Security interest" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation."
[2] See (NRS 116.3102 (h))
[3] Per NRS 116.3112 par 4.- "The association, on behalf of the units' owners, may contract to convey an interest in a common-interest community pursuant to subsection 1, but the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments."
[4] **NRS 116.3112 par 5 - "Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale or other voluntary transfer of common elements or of any other part of a cooperative is void." (emphasis added).**

B. Park acceptance, park property conveyances and deed transfers to SHCA were not accomplished in accordance with the conditions established in the SHDA and similar conditions set out in the SHCA CC&Rs[5].

C. No easements related to SHDA conditions are recorded against the properties nor have any actions been taken by SHCA that would otherwise obligate the Association under terms of the SHDA.

D. Title transfer acceptance of the identified park properties, performed by Rick Rexuis, SHCA Board President and an employee of the Developer, was done so without a resolution by the SCHA BOD nor were his actions later affirmed by same making his actions voidable.

2. Execution of the Park Access document would effectively establish a Board resolution acknowledging acceptance of conveyed park property to the Association which, as provided in #1D, has not been previously established. Any such action, as set out in 1A, would be unenforceable without an owner majority approval vote.

3. The Park Access document establishes a security interest and encumbrance of the park properties. If executed it would not be enforceable and void without an owner majority vote approving the action[6].

Paragraph C. purports Park Properties were provided "...to the Association for programming and management and thereafter conveyed.... pursuant to (the recorded deeds)". Paragraph 2. of the Parks Access document establishes park properties ".... will continue to be operated and programmed in accordance with the provisions of Paragraph 1. (conditions generally set forth in the SHDA and applicable Deeds)". This provision would obligate SHCA to maintain the parks at its sole expenses establishing a security interest (see footnote #2) and establish an encumbrance. As previously noted, NRS 116.3102 while providing SHCA the power to convey a security interest in and encumber common areas, NRS 116.3112 par 4. establishes any such action, as does the Park Access document "...is not enforceable against the association until approved pursuant to (a majority vote of owners)" and per NRS 116.3112 par 5. "is void".

4. Conditions set forth in the Master Acknowledgment Regarding Public Access in Southern Highlands Parks before the Board are seriously flawed. If executed the document would falsely affirm, establish a number of unacceptable conditions, and inappropriately obligate SHCA to park operating maintenance expenses.

A. Language in Paragraph 2. is flawed and misleading. It purports to be "memorializing the original intent of the Developer and the Association with respect to the conveyance and subsequent management and operation of each Park..."

1) The original conveyance, management, and operations intent of the Developer was to provide all park properties to the County, not SHCA. The Developer send formal notice dated April 27, 2005 to the County informing the County of its "intent to dedicate" the subject park properties to the County "in accordance with paragraph 6.02(a) of the (SHDA)". Furthermore, the County recognized the Developer's conveyance request and

[5] Established in section 6.02(b) of the original SHDA, unaltered by subsequent amendments. The section provides for transfer of an "HOA Park" by the Developer only pursuant to "...Homeowner's Association acknowledges in writing (a) that it is obligated to perform any unfulfilled terms and conditions of this Section 6, and (b) that it accepts Owner's maintenance obligation for such park or paseo." No such written acknowledgment was executed.

[6] An owner majority vote approving the original transfer action to SHCA by the BOD would also be required.

began budget efforts for the maintenance of the parks[7]. The County anticipated funding to operate the parks upon final conveyance acceptance, pending inspections and among other things, park compliance with County standards, the SHDA, and RCT conditions. Park conveyance to the County was never completed[8]

2) There is no evidence SHCA has ever properly resolve or otherwise establish an original intent as purported.

B. Paragraph A of the Park Access document states that the Developer "improved (the parks) pursuant to the requirements set forth in the Development Agreement ...(as amended, the "Development Agreement'), and further, the County approved the Park Properties as constructed and designed". The claim parks are compliant with the SHDA is being raised without documentation to prove the claim[9] while documentation of County approval "as constructed and designed" cannot be provided for confirmation[10].

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[7] Evident by a series of emails, obtained via FOIA, I can provide upon request.

[8] Following discussions and at least one "informal" meeting between the Developer and County, the County would stop its budget efforts in the fall of 2005. Shortly after the County would approve proposed changes to the SHDA related to park conveyance and standards while granting a significantly expansion to the Developer's total project scope, among other items. The Developer would transfer the parks to the HOA following Amendment 2 with now potentially revised compliance standards, therein providing the County an ability to avoid funding park maintenance.

[9] Section 6.01 of the original SHDA provided "Owner shall design, construct, maintain and dedicate to County (or on HOA parks provide a public access easement) public neighborhood parks and a paseo in compliance with the Master Parks and Public Facilities Plan attached as Exhibit "I"". Note, the SHDA required County approval of park designs and the Master Plan controlling before and after construction completion, defined neighborhood parks as greater than 5 acers. Neighborhood park would include Goett, Stonewater, Inzalaco, and Somerset Hill Parks. The SHDA would be amended (A2) in November 2005. All park properties associated with the Park Access document were completed prior to A2 with the aforementioned void title transfer actions to SHCA taken after A2, in and around 2008. First, A2 would delete section 6.01 of the original SHDA, inserting Section 6.01(b) Park Standards, wherein all parks of the Parks Access document (this is identified in amended language "Of Parks not yet constructed and to be dedicated...") would inexplicably, attempt to preclude parks already completed from previously established standards and County's previously approved final design. A2 would establish a revised Section 6.01 Park Standards and Location providing "owner shall design and construct public neighborhood parks and a paseo in compliance with the Master Parks and Public Plan attached as Exhibit "I-2" (not "I" as provided prior to A2).

Confirmation of construction compliance as referenced in paragraph A, necessitates an examination of the approved park designs, approved cost overruns, and post construction inspections for the park properties, all required under the original SHDA and the Park Master Plan in Exhibit "I" and "1-2". However, the County responded to my FOIA, submittal to inspection said documents, inexplicably informing me the above requested and required documents have not been located (per ADA Miller letter dated June 2 19,2017, subject Southern Highlands Development Agreement).

[10] Similarly, to footnote #9, FOIA requests for County document wherein showing parks were approved as "constructed and designed" but as noted in FN #10 cannot be found. Documentation reflecting Clark County Commission actions, recognizing the park properties were "completed", are available. However, "approval" and/or affirmation parks completed were in compliance with all SHDA conditions requires examination of documents not available.

Additionally, it should be noted, the SHDA as amended with A2, provided for the Developer (no longer the County) to "...create and establish uniform design guidelines for all (Parks)" then merely "deliver to County" the design guidelines even "when amended", with no reference to County approval. A2 was effective after all park properties were completed. A2 purports to delete any County design approval requirement. See footnote #10 for additional context around the above A2 approval.

C. I dispute claims in the Master Acknowledgment Regarding Public Access in Southern Highlands Parks purporting to establishment the "original intent" of both parties related to park public access. Paragraph 2. and Paragraph E. provides "...original intent of the Developer and the Association... included and has always included, a non-exclusive public access easement ...". Paragraph E., further states a "...desire to re-acknowledge the original intent of the Developer and the Association regarding public access".

1) The Developer has never properly recorded a public access easement on the park properties, despite SHDA requirements, this despite the County's release, of RCT credits issued under the SHDA and IAW NRS, subject to said easement recording.[11]
2) Despite having been made aware of a 2011 audit by the County identifying a lack of any properly recorded public access easements required under the SHDA, none were recorded
3) Despite the Developer's material representing in 2015, in executing A3 to the SHDA, the "Owner has recorded approved Public Access Easement(s) ...". None were ever properly recorded.[12]
4) No action of any kind, affirming the Association's "original intent" has ever been properly executed by SHCA. The Association thus cannot "re-acknowledge".

D. It is unclear what the language in the Park Access document providing "valuable consideration, the receipt and sufficiency of what are mutually acknowledge..." means. Documentation of said consideration is not provided.

E. I consider a number of provisions and guarantees, contained in every park property Quitclaim Deed[13] unacceptable. They include but are not limited to:

1) "...the quality of planting and equipment would be maintained at an acceptable level, in Declarant's sole discretion ...",
2) "...maintain the grounds, landscaping, annual flowers, hardscape, play apparatus, and other organic and inorganic material and features within the park at the same or superior level...an acceptable level, in the Declarant's sole discretion",

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This section of the Park Access document may be referencing A3 to the SHDA was inexplicably approved in 2015. A3 to the SHDA would once again delete section 6.01, this time replaced with an affirmation (lacking any supporting documentation) that all park properties identified in the document were completed "... in compliance with Master Park and Public Facilities Plan ... (which was updated in the Third Amendment to this Development Agreement)." No approval or other documentation supporting the affirmation parks were compliant with the Master Plan at completion or alternatively demonstrating compliance post-construction, with the Master Plan current at completion and/or in 2015, has not been made available. See 1C.3) for at least one confirmed false affirmation contained in A3.

[11] See NRS 278.4983 Residential Construction tax. RCT must be imposed pursuant to this section. The section requires compliance with the County ordnance enacted adopting a recreation park master plan.

[12] This was confirmed by ADA Warhola in a letter dated October 13, 2016. An easement was approved by the Clark County Commission for Stonewater. It was located by this author having been recorded in error against the wrong parcel number. It should be additionally noted, Stonewater (parcel # 191-06-615-001) was designated in the Association CC&Rs as a common area with formal title transfer occurring in 2003 as a common area. SHCA approval was not required.

[13] Some minor wording changes at present among the park Quitclaim deeds recorded while the restrictions and conditions are effectively the same.

3) "...the name will not be changed..."
4) Upon violations of the above guarantees and other terms the "Declarant shall have the right and authority but not the obligation, at the sole cost and expense of the Association to obtain a permanent injunction...",
5) "...Declarant shall have the right and authority but not the obligation, at the sole cost and expense of the Association, to replace, repair, or maintain the feature or material.".
6) "...may not convey said land to any other entity, included but not limited to the Clark County Park and Recreation Department without the express written consent of Declarant."
7) "If any of the foregoing guarantees are violated, ownership of the parcel shall immediately revert back to the Declarant."

The above noted deed conditions continue beyond declarant control and the term of the SHDA. They more rightly describe a lease than a conveyance of real property and its associated rights bundle. **They obligate the Association to onerous conditions**. If properly accepted, they would permanently restrict and subordinate the authority of SHCA- terms and condition the Board, as a fiduciary of the owners and in exercising good Business Judgement, find are not in the best interest of the association.

Agreements and actions described above along with years of continuing omissions by the SHCA Board has resulted in SCHA inappropriately funding maintenance of park properties, costing owners in the community an estimated ten million dollars ($10M); an obligation otherwise resting with the Developer.

Last year a document similar to the Park Access document constructed by the Developer and coordinated with the County. It too intended to obtain SHCA execution of an agreement related to the park properties. It was by myself and others, eventually rejected by the Board. The disposition and maintenance of the park properties is and should remain a contract condition between the Developer and County.

In summary, the SHCA Board has no present obligation to execute the Public Access document. SCHA's acceptance of the park properties identified in the Park Access document are void. The document, if executed, lacking a majority owner vote in approval, would not be enforceable and void. In addition, numerous conditions set out in the Public Access document are seriously flawed, suspect and (as yet) unsubstantiated. The Public Access document contains conditions the Board, as a fiduciary of the owners, should find unacceptable.

A deferral of action can be accomplished without additional expense. Acting to approve, without addressing issues identified here, will result in significant and permanent additional and unnecessary cost to the community.

EXHIBIT "B"

EXHIBIT "B"

Nevada Attorney General
555 East Washington Avenue, Suite 3900
Las Vegas, NV 89101

VIA ELECTRONIC MAIL & CERTIFIED U.S. Mail

January 13, 2018

Re: Southern Highlands Community Association (SHCA) complaint #2

Dear Mr. Laxalt:

I ask you to review and revise the flawed and clearly deficient opinion recently authored by Mr. McKean in his Memorandum dated January 5, 2018 (attached).

As I set out in my January 12, 2018 letter to Mr. McKean (attached) the amendment to the initial January 2000 Southern Highlands declaration (CC&Rs) sited (attached), was not adopted by the Southern Highland's Community Association as is required to support Mr. McKean's opinion. The unilateral amendment by the developer contained an invalid provision. NRS 116.2122 clearly provides "a declarant may not in any event increase the number of units...". The opinion is flawed in finding the amendment appropriate to "replace" section 2.32 of the CC&Rs.

Mr. McKean's opinion also failed to address my additional claim that regardless of the Maximum units used (9,000 or 10,400) declarant control nonetheless occurred prior to October 2015.

My position on both of the above points was provided in my complaint (case #2017-913 attached) and again in my January 12, 2018 letter to Mr. McKean, as previously noted.

I respectfully ask your office to 1) review the Memorandum in question revising the determination on the validity of the "replace(d)" section 2.32 of the declaration with a new provision providing a new maximum number of units and 2) complete the opinion on the point clearly established in my complaint that units created to owners other than the declarant (NRS 116.31031) triggered declarant control change prior to October 2015.

Sincerely,

Michael J Kosor
12070 Whitehills St
Las Vegas, NV 89141
843-639-1701
mkosor@aol.com

attached: (1) NRED letter dated January 8, 2018 & attached Memo- Office of the Attorney General
(2) Letter to Mr. McKean dated January 12, 2018
(3) Third Amendment to SH CC&Rs
(4) NRED complaint filed 2/2/17 (case #2017-913)

cc: Office of the Administrator- Nevada real Estate Division
Office of the Ombudsman- Nevada Real Estate Davison

BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS PROGRAM
CICOmbudsman@red.nv.gov
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C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

January 8, 2018

Michael Kosor
12070 Whitehills Street
Las Vegas, Nevada 89141

Re: Case # 2017-913; Respondent: Southern Highlands Community Association (the "Association")

Dear Mr. Kosor:

The Nevada Real Estate Division (Division), Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels completed its investigation and requested the Attorney General's Office to review the legal questions and your allegations against Southern Highlands Community Association.

The Division received the Attorney General's response in a Memorandum dated January 5, 2018. The opinion indicates that the crux of the issue is the validity of the 2005 amendment. Challenges to the validity of the amendment have to be done in accordance with NRS 116.2117 (2). Currently there are no grounds to consider the amended Covenants, Conditions, & Restrictions ("CC&Rs") for Southern Highlands invalid in the absence of a legal challenge to the amendment having been brought in accordance with NRS 116.2117 (2). The Memorandum has been enclosed for your review.

Please be advised, based on the Attorney General's opinion, no further action will be taken by the Division and this case is closed. The decision to close this matter is made without prejudice.

Sincerely,

Sharath Chandra
Administrator

cc: Office of the Attorney General
Office of the Director – Department of Business & Industry
Office of the Ombudsman -Nevada Real Estate Division

Enclosure: Memo - Office of the Attorney General

ADAM PAUL LAXALT
Attorney General

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

MEMORANDUM

To: Sharath Chandra
Administrator, Real Estate Division

From: William J. McKean; 775.684.1207; wmckean@ag.nv.gov

Date: January 5, 2018

Subject: Southern Highlands – Homeowner Claim

This memorandum responds to legal questions regarding a homeowner claim that is premised on a challenge to the validity of an amendment to the master declaration of covenants, conditions, and restrictions ("CC&Rs") for Southern Highlands. As discussed below, there currently are no grounds to consider the amended CC&Rs invalid in the absence of a legal challenge to the amendment having been brought in accordance with NRS 116.2117(2).

The circumstances, as I understand them, involve the initial declaration for Southern Highlands recorded in January 2000.[1] Section 2.32 of the CC&Rs states that the maximum number of units approved for development as of that date was 9,000. Subsequently, in October 2005, an amendment to the CC&Rs was recorded (the "2005 Amendment").[2] By its terms, it "replaced" section 2.32 with a new provision providing a maximum number of units approved for development of 10,400.

A homeowner in Southern Highlands has asserted that the 2005 Amendment is legally ineffective or void—citing a provision of NRS Chapter 116, Nevada's codification of the Uniform Common-Interest Ownership Act ("UCIOA"). Specifically, the homeowner cites NRS 116.2122, which provides, in part, that the "declarant may not . . . increase the number of units in the planned community beyond the number stated in the original declaration." The contention is that if the 2005 Amendment is invalid, then the original Section 2.32 of the CC&Rs would remain in effect, leaving 9,000 as the maximum number of units for development. Based on this premise—that the amendment is void—the homeowner asserts that the 75-percent trigger for terminating declarant control was reached in October 2014, when the annual budget showed that

[1] Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for the Association as recorded on January 6, 2000, in Book 20000106 as instrument number 01679.

[2] Third amendment to the CC&R's, recorded on October 6, 2005, in Book number 20051006 as instrument number 5982.

7,041 units had been sold (7,041/9000 = 78%).[3] On the other hand, if the 10,400 unit maximum in the 2005 Amendment is not invalid, then the 75-percent threshold was not reached (7,041/10,400 = 67%). Thus, the threshold issue is whether the 2005 Amendment in invalid.

The Nevada UCIOA specifies the procedure required to challenge the validity of an amendment:

> No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

NRS 116.2117(2). By its plain language, a claimant seeking to challenge the "validity" of an amendment must "bring" an "action" within the one-year period. Since the statute does not define "validity," or "bring an action," it is appropriate to refer to dictionary definitions. *V & S Ry., LLC v. White Pine Cnty.*, 125 Nev. 233, 239-40 (2009). The term "valid" is defined as "[l]egally sufficient; binding." *Black's Law Dictionary* 1784 (10th ed. 2009). The phrase "bring an action" is defined as "to sue; institute legal proceedings." *Id.*; *see also Regency Towers Ass'n, Inc. v. Eighth Jud. Dist. Ct.*, 281 P.3d 1212 (Nev. 2009) (unpublished) (denying petition for extraordinary relief on grounds NRS 116.2117 afforded a property owner an "adequate remedy at law" to have "sued to challenge the validity of the amendment . . ."); *cf. SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 418 (Nev. 2014) (interpreting the phrase "institution of an action to enforce the lien" in the "context of foreclosures," to include "nonjudicial as well as judicial foreclosures"). Under Nevada's statutory time bar, then, a challenge to the legal sufficiency or binding nature of an amendment is conditioned on the timely commencement of a lawsuit. *Allstate Ins. Co. v. Furgerson*, 104 Nev. 772, 775 n.2, 766 P.2d 904, 906 n.2 (1988) ("'Statutes of repose' bar causes of action after a certain period of time, regardless of whether damage or an injury has been discovered.").

Here, it does not appear that any lawsuit challenging the validity of the 2005 Amendment was brought within the one-year period after the amendment was recorded (based on an alleged violation of NRS 116.2122 or otherwise). In the absence of a valid legal challenge pursuant to NRS 116.2117(2), the replacement section 2.32 (stating a maximum of 10,400 units approved for development) in the 2005 Amendment should be considered legally sufficient and binding. Accordingly, there is no legal basis to conclude that the 75-percent trigger was reached in October 2014, when the annual budget showed that 7,041 units had been sold (7,041/10,400=67%).

In conclusion, at this time there is no basis to consider or treat the 2005 Amendment as void or unenforceable in the absence of a valid legal challenge pursuant to NRS 116.2117(2).

[3] As of October 2015, NRS 116.31032 was amended to increase the trigger percentage to 90 percent in the case of communities consisting of 1,000 units or more.

William J McKean
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

provided via Email

Subject: Southern Highlands Homeowner Claim Memorandum

January 12, 2018

Dear Mr. McKean:

I write here asking you to review two final items as an extension/clarification of phone conversation yesterday, January 11, 2018 and the information contained in my NRED investigation material I assume is in your possession. I hope you will take a minute and consideration the following and revise your Memorandum.

My complaint (case #2017-913) had two elements. One, the maximum units in establishing declarant control is 9,000 (not 10,400 apparently being asserted). Second and without regard to my first premise, declarant control change should have occurred prior to October 2015, i.e. even if 10,400 units is the proper maximum units as the developer/association apparently asserts.

First, while the law appears absurd as being asserted, I would nonetheless accept your opinion Memorandum on the topic of Amendment three to the SH CC&Rs- with one important proviso: the CC&R amendment was properly adopted by the association? A proper adoption process is the only thing that make sense of the provision.

NRS 116.2117 Amendment of declaration.

1. Except as otherwise provided in NRS 116.21175, and except in cases of amendments that may be executed by a declarant under subsection 5 of NRS 116.2109 or NRS 116.211, or by the association under NRS 116.1107, 116.2106, subsection 3 of NRS 116.2108, subsection 1 of NRS 116.2112 or NRS 116.2113, or by certain units' owners under subsection 2 of NRS 116.2108, subsection 1 of NRS 116.2112, subsection 2 of NRS 116.2113 or subsection 2 of NRS 116.2118, and except as otherwise limited by subsections 4, 7 and 8, the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

2. No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

To my knowledge the 2005 amendment to the CC&Rs (attached) was a unilateral effort by the developer. Your Memorandum references its recording but does not confirm or otherwise note it was properly adoption by the association. My review of the recorded document (attached for your convince) provides none of the typical reference indicating adoption by the association such as contract amendment language and/or the President of association's signature, etc. Nothing in the language of the amendment indicates adoption nor does it fit within any of the many provisos set out in this section.

Were you provided confirmation or did you otherwise determined the amendment was adopted via a properly executed owner vote and recorded, etc.? If so would you or the Division share this with me in an effort to save time and spare additional challenges?

To be clear, I do not assert, as your memo states, the amendment is void in its entirety. I do not contest the declarant's ability to amend the CC&Rs. I merely assert the Maximum Units cannot be altered (per NRS 116.2122) even if an invalid and subsequently unchallenged amendment is recorded, can be controlling as you assert, only if the amendment was first properly adopted by the association.

Second, even if we assume the maximum number of units for SH is 10,400, control change should nonetheless have occurred prior to October 2015 (when the applicable statute was inexplicably and I argue unconstitutionally changed). Your memorandum fails to address my complaint on this point. Per the per-October change to the statue (NRS 116.31031(b)) 75% of the 10,400 maximum unit effects control change when 7,800 units are "created to owners other than the declarant". NRS 116.093 defines "unit" as "a physical portion of the common-interest community designed for separate ownership or occupancy..."- i.e. lots, with or without homes on them.

Your memo notes, the 11/20/14 ratified 2015 budget for SHCA (as previously made available to you and again attached) but it incorrectly addresses "sold" units as 7,041. For clarification, units "sold" is not the criteria established in the statute. More importantly, your "sold" number apparently only counted the association labeled "residential units" (units with COOs issued for the facility construed and have unit owners paying full assessments to the association). I count 8,240 units as "sold" or more appropriately "created to owners other than the declarant" units (residential 7,041, Siena 120, builder 1,079 as shown n the budget document). A simple count of COOs in insufficient. Builder units (annexed and paying 50% assessment per the CC&Rs) along with those of Siena must be included in the count, as they too have been "created to owners other than the declarant".

Declarant control should have been executed prior to the October 2015 if either claim is found to have merit.

Given the above information, I respectfully ask you reconsider your Memorandum.

Sincerely,

Mike Kosor

Receipt/Conformed Copy

Requestor:
FIRST AMERICAN TITLE COMPANY OF NEVADA
10/06/2005 15:51:44 T20050184097
Book/Instr: 20051006-0005982
Restrictio Page Count: 3
Fees: $16.00 N/C Fee: $25.00

APN: See Exhibit "1" attached hereto and by this reference made a part hereof for APNs.

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
4760 South Pecos Road, Suite 203
Las Vegas, Nevada 89121
(702) 966-6388
Order No. ACCOM-TL

(Space Above Line for Recorder's Use Only)

Frances Deane
Clark County Recorder

THIRD AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR

SOUTHERN HIGHLANDS

(a Nevada Master Community)
Clark County, Nevada

THIS THIRD AMENDMENT TO DECLARATION ("Third Amendment"), made as of this 27 day of September, 2005, by SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION, a Nevada corporation ("Declarant").

WITNESSETH:

WHEREAS:

A. On or about January 6, 2000, Declarant caused to be Recorded a Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for SOUTHERN HIGHLANDS (the "Community"), in Book 20000106, as Instrument No. 01678; as amended by First and Second Amendments thereto, respectively Recorded in Book 20000106, as Instrument No. 01679, and in Book 20001009, as Instrument No. 01232; as supplemented by First, Second, Third, and Fourth Supplements to Exhibit "B" thereto, respectively Recorded in Book 20011016 as Instrument No. 01734, and in Book 20040916, as Instrument No. 03828, and in Book 20041213, as Instrument No. 04427, and in Book 20050421, as Instrument No. 0001340 (all of the foregoing, collectively, the "Declaration"); and

B. Pursuant to Section 23.1 of the Declaration, Declarant has the power from time to time to unilaterally amend the Declaration, to correct any scrivener's errors, to clarify any ambiguous provision, and to modify or supplement the Exhibits thereto; and

C. Pursuant to Section 23.1 of the Declaration, Declarant has heretofore from time to time modified and supplemented Exhibit "B" to the Declaration; and

D. Declarant desires to further amend the Master Declaration, to set forth the current number of Maximum Units as provided for in Section 2.32 of the Declaration, and thus further to clarify any ambiguity regarding the current number of Maximum Units included in the property described in Exhibits "A", "A-1", "A-2", and "B" (as heretofore amended and supplemented from time to time by Supplemental Exhibits "B-1" through "B-4", inclusive).

NOW, THEREFORE, Declarant hereby further amends the Declaration as follows:

1. Section 2.32 ("Maximum Units") is hereby replaced in its entirety with the following:

> 2.32 **"Maximum Units"**: The maximum number of Units approved for development within Southern Highlands under the Master Plan, as may be amended from time to time; provided, that nothing in this Declaration shall be construed to require Declarant to develop the maximum number of lots approved. The Maximum Units as of the date of this Third Amendment is 10,400 Units, contained in the land described in Exhibits "A", "A-1", "A-2", and "B" (as amended and supplemented from time to time by Supplemental Exhibits "B-1" through "B-4", inclusive).

2. Except as amended herein, the Declaration shall remain in full force and effect. All capitalized terms not defined herein shall reasonably have their respective meanings as set forth in the Declaration.

IN WITNESS WHEREOF, Declarant has executed this Third Amendment to Declaration as of the day and year first written above.

DECLARANT:

SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION,
a Nevada corporation

By: _____
R. Brett Goett, Vice President

STATE OF NEVADA)
)
COUNTY OF CLARK)

This Third Amendment was acknowledged before me as of the 27 day of September, 2005, by R. Brett Goett, as Vice President of SOUTHERN HIGHLANDS DEVELOPMENT CORPORATION, a Nevada corporation.

OFFICIAL SEAL
JANET G. DAVIS
NOTARY PUBLIC-ARIZONA
MARICOPA COUNTY
My Comm. Expires July 12, 2007

_____
NOTARY PUBLIC
(seal)

(wnr\SH.100.amendment.3.01)