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BEFORE THE COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

STATE OF NEVADA

SHARATH CHANDRA, Administrator, Real Estate Division, Department of Business & Industry, State of Nevada, Petitioner, vs. HILLSIDE HOMEOWNERS ASSOCIATION, SOURAV HAZRA, ROY WHITMORE, KYLE HAGEMAIER, GEORGE SMITH, and RAMIRO RAMIREZ, Respondents.	CASE NO.: 2018-766 **RESPONDENTS' ANSWER AND OPPOSITION TO COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING**

COMES NOW, Respondents, HILLSIDE HOMEOWNERS ASSOCIATION ("Association"), SOURAV HAZRA, ROY WHITMORE, KYLE HAGEMAIER, GEORGE SMITH, and RAMIRO RAMIREZ ("Respondents"), by and through their counsel, THE CLARKSON LAW GROUP, P.C., and files their ANSWER AND OPPOSITION TO COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING (hereinafter "Answer and Opposition") to the REAL ESTATE

DIVISION, DEPARTMENT OF BUSINESS & INDUSTRY, STATE OF NEVADA'S (hereinafter the "Division" or "NRED") COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING ("Complaint") as follows.

For the purposes of the Respondents' Answer and Opposition, the knowledge of the Association shall be considered to be the knowledge of the remaining Respondents, based upon information and belief, so as to limit the briefing necessary for response to the Complaint thereby consolidating the briefing necessary for review by the Commission for Common-Interest Communities and Condominium Hotels (the "Commission").

JURISDICTION AND NOTICE

1. Respondents admit the allegations contained in Paragraph 1.

2. Respondents admit the allegations contained in Paragraph 2.

FACTUAL ALLEGATIONS

3. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3, and further aver the allegations contained in Paragraph 3 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 3 does require a response, Respondents deny said allegations.

4. Respondents aver the allegations are incomplete and therefore Respondents are prevented from answering the allegations without drawing inferences and as such Respondents deny said allegations.

5. Respondents aver the allegations contained in Paragraph 5 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 5 does require a response, Respondents deny said allegations.

6. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6, and therefore deny such allegations.

7. Respondents object to the term "owners", as the definition of such term differs dependent upon the scope of its use. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7, and therefore deny such allegations.

8. Respondents object to the term "owners", as the definition of such term differs dependent upon the scope of its use. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8, and therefore deny such allegations.

9. Respondents admit the allegations contained in Paragraph 9.

10. Respondents object to the term "owner", as the definition of such term differs dependent upon the scope of its use. Respondents admit the allegations contained in Paragraph 10 as to the "complainant".

11. Respondents admit the allegations contained in Paragraph 11.

12. Respondents object to the term "owner", as the definition of such term differs dependent upon the scope of its use. The letter speaks for itself, to the extent Paragraph 12 requires a response, Respondents aver the allegations contained in Paragraph 12 state legal conclusions for which no response is required

13. The letter speaks for itself, to the extent Paragraph 13 requires a response, Respondents admit the allegations contained in Paragraph 13.

14. Respondents object to the term "owners", as the definition of such term differs dependent upon the scope of its use. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14, and therefore deny such allegations.

15. Respondents object to the term "owner", as the definition of such term differs dependent upon the scope of its use. Respondents admit the allegations contained in Paragraph 15 as to the "complainant".

16. Respondents object to the term "owner", as the definition of such term differs dependent upon the scope of its use. Respondents admit the allegations contained in Paragraph 16.

17. The July 2, 2018 letter speaks for itself, to the extent Paragraph 17 requires a response, Respondents admit the allegations contained in Paragraph 17.

18. Respondents admit the allegations contained in Paragraph 18.

19. The document speaks for itself, to the extent Paragraph 19 requires a response, Respondents admit the allegations contained in Paragraph 19.

20. Respondents aver the allegations contained in Paragraph 20 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 20 does require a response, Respondents deny said allegations.

21. Respondents aver the allegations contained in Paragraph 21 state legal conclusions for which no response is required; provided however, that to the extent Paragraph 21 does require a response, Respondents deny said allegations.

22. The document speaks for itself, to the extent Paragraph 22 requires a response, Respondents admit the allegations contained in Paragraph 22.

VIOLATIONS OF LAW

23. Respondents deny the allegations in Paragraph 23.

24. Respondents deny the allegations in Paragraph 24.

25. Respondents deny the allegations in Paragraph 25.

26. Respondents deny the allegations in Paragraph 26.

27. Respondents deny the allegations in Paragraph 27.

28. Respondents deny the allegations in Paragraph 28.

29. Respondents deny the allegations in Paragraph 29.

PRAYER FOR RELIEF

WHEREFORE, the Respondents pray for relief as follows:

1. That the Commission finds that no violations of law were committed by the Respondents;

2. That the Commission finds that the individual Board Member Respondents acted on an informed basis, in good faith and in the honest belief that their actions were in the best interest of the Association in accordance with their duties under NRS 116.3103(1);

3. That the Commission finds that the individual Board Member Respondents' actions are protected by the business-judgment rule in accordance with NRS 116.3103(1);

4. That the Commission recommends that the Division rescind Advisory Opinion No. 14-01-116; and

5. For such other and further recommendations as the Commission may deem just and proper.

Dated this 29th day of October, 2018.

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RESPONDENTS' OPPOSITION TO COMPLAINT FOR DISCIPLINARY ACTION AND NOTICE OF HEARING

Mr. Levi Dickson ("Mr. Dickson") is not a unit owner within the Association and therefore Nevada Revised Statutes ("NRS") 116.31034 prohibits Mr. Dickson from serving as a candidate for the Association's Executive Board elections. Due to the fact that Mr. Levi Dickson is not a unit owner within the Association, Mr. Dickson is not entitled to attend Executive Board meetings, nor is he entitled to communicate with the Association's community managers.

Notwithstanding the legal authorities establishing that Mr. Dickson is not a unit owner within the Association, Mr. Dickson, via correspondence addressed to the Association, constructively admitted that he is not the owner of the unit he alleges to own **as he requested that the Association cease attempting to contact Ms. Lisa Kemp's, the record owner of the unit, mortgage company**. *See* **Exhibit 1**. To make clear, if Ms. Kemp has a "mortgage company", i.e. an owner of a deed of trust secures a security interest in the property due to their lending of money to Ms. Kemp to utilize for the purchase of the property and Ms. Kemp's **sole** ownership of the property, Mr. Dickson cannot be the owner of the property at issue.

I. Background

On or about December 6, 2017, the Association mailed a Mr. Dean Castillo ("Mr. Castillo") correspondence in response to his inquiry regarding his eligibility for the Association's next election cycle. *See* **Exhibit 2**. On or about December 8, 2017, the Association received correspondence from NRED concerning NRED's review and disagreement with the Association's positions identified in the letter attached hereto as **Exhibit 2**. *See* **Exhibit 3**.

Interestingly, in **Exhibit 3**, in attempting to support its "legal interpretation" of who may qualify as a "record owner" under NRS 116.001 *et seq.*, NRED makes the argument that the Association's position is simply based upon a "policy" rather than Nevada law in stating that,

"[o]wnership rights should not be taken away simply based on a policy of the board." As stated herein, the Association's primary position is in no way based upon a policy, but rather is based upon an interpretation of Nevada law, although such position may be further supported by consideration of practical issues related to such position. It is apparent, however, that the very advisory opinion relied upon by NRED, was issued, not strictly based upon an interpretation of law, but rather, "is based on multiple inquiries over a long period of time", i.e. a ***policy*** adopted by NRED. As discussed herein, the policy adopted by NRED is unsupported by statutory interpretation principals, unsupported by supplemental provisions of law, and fails to account for provisions of law beyond the realm of the fact that a conveyance of property need not be recorded to be effective between the parties subject to the conveyance.

Importantly, and in the scope of the "policy" proposed by NRED in **Exhibit 3**, NRED provided that, "[u]nless the association has a specific concern with any particular deed provided to it to show ownership, the association should afford the owner with all owner rights found in NRS 116 and the governing documents." **Exhibit 3**. Here, it is obvious why the Association has specific concerns in regard to the deed presented by Mr. Dickson as Mr. Dickson is not the "record owner of the unit" at issue as required by NRS 116.31034 in relation to candidacy and therefore the Association is prohibited by NRS 116.31034 from allowing Mr. Dickson to run for the Board. In addition to such concern, the following factors serve as indicia of potential impropriety related to Mr. Dickson's alleged deed:

1. Timing – The purported conveyance to Mr. Dickson occurred right before a position on the Board became vacant, indicating that the sole intent behind the purported conveyance was to obtain a seat on the Board, as opposed to a legitimate conveyance.

2. Nominal Consideration – The purported conveyance appears to split the interest in the subject unit between two unmarried individuals for merely $1.00, indicating that the purported conveyance may be a sham transaction.

3. Nominal Cost of Recording – The Clark County Recorder would charge a nominal fee in order to record the purported Document, indicating that Mr. Dickson has an ulterior motive behind not recording the Document, such as utilizing the Document to obtain a Board position without intent to ever truly effectuate or recognize a conveyance.

4. Mortgage Acceleration – The subject unit is encumbered by a deed of trust[1], naming Lisa Kemp as borrower. Therein, Section 9(b) of the Uniform Covenants provides that the "Lender shall…require immediate payment in full of all sums secured by this Security Instrument" if part of the subject unit is transferred and the grantee does not occupy the subject unit as his principal residence or his credit has not been approved (*see* **Exhibit 4**). The refusal to record the Document indicates that Mr. Dickson is attempting to circumvent this acceleration clause by concealing the purported conveyance from the lender. At a minimum, there is an indication that Mr. Dickson is attempting to either defraud/mislead the lender and/or Association and/or that the purported conveyance is otherwise not legitimate.[2]

Mr. Dickson could efficiently resolve the Association's concerns by simply recording the quitclaim deed for the nominal sum required by the Clark County Assessor. NRED must ask itself, if Mr. Dickson's true purpose was to simply be recognized as a Unit Owner and be allowed to run for the Board, why would he not simply record the deed as recommended by the Association almost **two (2) years ago**, or provide verified correspondence from Ms. Kemp's mortgage company/loan servicer acknowledging Mr. Dickson's ownership? Instead, Mr. Dickson has chosen to take no such actions and to simply attempt to rely upon NRED's two (2) page ***advisory*** opinion as to what qualifies a person as a "record owner".

Notably, **Exhibit 3** is the only formal correspondence the Association received from NRED regarding either Mr. Castillo and Mr. Dickson subsequent to the Association's mailing of **Exhibit 2**

[1] A copy of the deed of trust on the subject unit, recorded on December 6, 2013 in the records of the Clark County Recorder as instrument number 201312060001482, is attached as **Exhibit 4**.

[2] It should be noted, that the Association mailed correspondence to the deed of trust holders/servicers for the properties at issue in relation to Mr. Dickson and Mr. Castillo to inform them of the representations made by Mr. Dickson and Mr. Castillo and to request confirmation as to whether such representations are valid in an effort to obtain an appropriate confirmation of the parties that maintain interests in the properties. Interestingly, to our knowledge, Mr. Castillo has ceased pursuing the Association regarding his alleged rights a unit owner subsequent to the mailing of that letter, and as noted above, Mr. Dickson has acknowledged that the deed of trust holder in relation to Ms. Kemp and the property continues to maintain a secured interest in the property – i.e. Ms. Kemp continues to remain the sole owner of the property. *See* **Exhibit 1**.

to Mr. Castillo. Such fact is important because, on January 2, 2018, the Association mailed correspondence to NRED that addressed NRED's disagreement with the Association's position regarding unit owners, that provided NRED with additional legal analysis supporting the Association's position, and lastly, that requested that NRED and the Association be allowed to engage in discourse to obtain a mutual understanding of the issue regarding unit owners. *See* **Exhibit 5**. Rather than formally respond to such legal analysis, NRED simply informed the Association that NRED's position remained the same and that NRED only desired to obtain confirmation as to whether the Association will cede to NRED's, in the Association's opinion, unsupported interpretation of law.

At the request of NRED, on February 28, 2018, the Association mailed NRED correspondence that informed NRED of the Association's non-acceptance of NRED's unsupported position that non-record unit owners may be elected to an association's board. *See* **Exhibit 6**. In that letter, the Association again requested that NRED provide the Association with correspondence that sets forth the legal basis of NRED's interpretations of the provisions of law at issue. Further, the Association informed NRED that if the Association were to receive correspondence from NRED that negated or otherwise invalidated the position of the Association that the Association would be willing to reverse its position. Unfortunately, NRED never provided the Association with such correspondence and apparently found that this matter may only be resolved through formal investigation. Nevertheless, although Mr. Dickson's recent constructive admission that he is not the record owner of the unit should prevent this investigation from proceeding any further, the Association will be grateful that NRED will now be required to attempt to provide a legally substantive rebuttal to the Association's position before the Commission for Common-Interest Communities and Condominium Hotels ("Commission").

The majority of the legal analysis supporting the Association's position has been previously provided to NRED via the attached Exhibits. Nevertheless, for ease of reference for the Commission, such analysis will be substantively repeated herein and supplemented with further analysis.

II. Basic Statutory Interpretation Principals Stand in Opposition to the Position Previously Taken by NRED

Based upon a review of **Exhibit 3**, it appears that it is NRED's position that if an individual produces a quit claim deed naming them as the, or a, interest holder in a unit, then "the Division would expect that you would be allowed to run for a position on the board of directors." NRS 116.31034(14), however, provides the following:

> An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. **In all events where the person** serving or offering to serve as an officer of the association or a member of the executive board **is not the record owner, the person shall file proof in the records of the association that:**
>
> (a) The person is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and
>
> (b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

NRS 116.31034(14) (emphasis added).

An interpretation of law is not "a policy of the board", but rather is an attempt to comply with the specific requirements of Nevada law that have been adopted by the Nevada legislature. The Association does not disagree that Nevada law does not require a conveyance of real property to be recorded in the real property records. The Association, however, does find that the specific candidacy requirements provided in NRS 116.31034(14) are not synonymous with what is simply required for a conveyance of real property. Further, "[o]wnership is determined by a conveyance in Nevada law", however, ***candidacy*** for a community association is determined by the specific requirements provided for within NRS 116.31034(14). **Exhibit 3**. As addressed in Section III below, associations do have

specific concerns related to individuals who produce unrecorded deeds as a means of attempting to establish their right to serve as a candidate on an association board.

"Record owner" is not a defined term within NRS 116.001 *et seq.* Accordingly, the term "record owner" must be interpreted in a manner consistent with the purposes of NRS 116.001 *et seq.*, and more specifically, in the manner that it is utilized within NRS 116.31034(14). "Records of the association" are referenced several times within NRS 116.001 *et seq.* *See* NRS 116.31034(14), 116.31038(1), 116.31175(4)(b), 116.3118(2), and 116.41095(7)(d). The term "record owner" is included in only two provisions within NRS 116.001 *et seq.*, **NRS 116.31034(14)** and NRS 116.31162(1)(a).

In **Exhibit 3**, NRED expresses the following position:

> Mr. Clarkson your analysis of NRS 116.31034(10) saying the word "record" means the recorded deed is not supported. "Record" refers to documents of the association numerous times in NRS 116. It is referring only to the record for which the association has to indicate who the owner is – that is a deed whether recorded in the real property records or not.

Exhibit 3. Again, NRED fails to cite anything whatsoever supporting its determination that "record owner" simply means "the record for which the association has to indicate who the owner is." Black's Law Dictionary, however, provides a different definition of the exact phrase "record owner" as utilized by the Nevada legislature in NRS 116.31034(14). Black's Law Dictionary, since 1863, defines "record owner" as "**[a] property owner in whose name the title appears in the public records.**" OWNER, Black's Law Dictionary (10th ed. 2014). Accordingly, the unsupported interpretative policy NRED is attempting to impose upon common-interest communities stands in opposition to an accepted legal definition that has stood since the year 1863. Further, the

following Nevada statutes also define and/or reference terms similar to "record owner" and serve to support a finding that the plain meaning of "record owner" is the owner that appears in public records (*see Diamond v. Swick*, 117 Nev. 671, 675, 28 P.3d 1087, 1089 (2001) ("In construing a statute, this court must give effect to the literal meaning of its words.") (citation omitted)): **1)** NRS 645H.130 defines "real property owner" as "the owner of record of real property, including, without limitation, a homeowner or an owner of real property in foreclosure."; **2)** NRS 117.020 references "record owner" without further explanation as to what "record" may represent leading to the reasonable determination and understanding that "record" means public record; and **3)** NRS Chapters 107 (Deeds of Trust) and Chapter 111 (Property Rights and Transaction) make numerous references to "of record" whereby it is indisputable that "of record" relates to the records of the county recorder.

NRS 116.31162(1)(a) concerns notices of delinquent assessments and requires that such notices be mailed "to the ***unit's owner*** or his or her successor in interest, at his or her address, if known" and include "a description of the unit against which the lien is imposed and ***the name of the record owner of the unit***." NRS 116.31162(1)(a) (emphasis added). When faced with an issue of statutory interpretation, the court "should give effect to the statute's plain meaning." *MGM Mirage v. Nevada Ins. Guar. Ass'n,* 125 Nev. 223, 228, 209 P.3d 766, 769 (2009); *see also Mullner v. State*, 406 P.3d 473, 476 (Nev. 2017) (citation omitted) ("A statute's plain meaning controls its interpretation[.]"; *Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 610, 836 P.2d 633, 636 (1992) ("When a statute is susceptible to but one natural or honest construction, that alone is the construction that can be given.") (citation omitted); *Diamond v. Swick*, 117 Nev. 671, 675, 28 P.3d 1087, 1089 (2001) ("In construing a statute, this court must give effect to the literal meaning of its words.") (citation omitted). Accordingly, with such common law principals in place, the

legislature's decision to utilize both the words "unit's owner" and "record owner" may arguably be interpreted in two (2) different manners.

One interpretation may be that it is implicated that the Nevada legislature found that a "unit's owner" may differ from the "record owner of the unit" because it would not have utilized two (2) different terms of identification, i.e. "unit's owner" and "record owner of the unit", when drafting such language if the terms were synonymous. Such interpretation is drawn because a "unit's owner" may arguably be an entity or person who owns a unit via an unrecorded deed that has been provided to an association and although an entity or person may be deemed a unit's owner for the sake of the Association's administrative purposes (only should the Association choose to make such an ill-advised determination), that entity or person is not a "record owner" because the deed has not been recorded with the county recorder and therefore there is no "record" of their ownership. Such an interpretation is consistent with Advisory Opinion, No. 14-01-116 (the "Advisory Opinion"), which notably, addresses the identification of Unit Owners specifically, but does not address the candidacy restrictions provided in NRS 116.31034(14).

Alternatively, it may be interpreted that NRS 116.31162(1)(a)'s requirement that notices must be sent "to the unit's owner or his or her successor in interest, at his or her address, if known", and the statute's reference to the "unit's owner" is logically and imperatively the same person as the "record owner of the unit". Further, such interpretation is the most logical and reasonable because to find otherwise would create a scenario wherein associations may be put in a position where they may arguably find that a unit may have one "unit owner" and another separate and distinct "record owner". It is highly doubtful the legislature could have ever intended such interpretation to be found. Accordingly, a plain reading of NRS Chapter 116 in relation to the identification of unit owners results in a finding that "unit owners" are "record owners".

As provided above, a "person" may only reasonably be found to be a "record owner" if a record has been recorded with the appropriate county recorder's office evidencing their ownership interest in a unit. Notably, the non-record owner exceptions to NRS 116.31034(14) may only apply to properties wherein the record owner is: **1)** a corporate owner; **2)** a trust; **3)** a partnership; **4)** a limited-liability company; or **5)** an estate. Accordingly, when the record owner of a unit is a natural person, a non-record "owner" may not qualify to run for the board based upon that unit because regardless of what proof they may attempt to file with the association, including a quit claim deed, NRS 116.31034(14) does not provide for such exception.

The legal doctrine of *unius est exclusion alterius*[3] may prohibit the Division's apparent interpretation of NRS 116.31034. The exceptions set forth in NRS 116.31034 are specific and limited as set forth above, and the Nevada legislature intended that only those specifically delineated exceptions be applied in the cases of non-record owners. ***If the Nevada legislature intended to include an exception for non-record "owners" when the record owner was a natural person, it would have specifically set forth language allowing for such an exception.***

III. Practical Circumstances Stand in Opposition to the "Policy" Position Previously Taken by NRED

In the scope of NRS 116.31034(14), the terms "record owner" and "records of the association" are utilized and organized in such a manner where it is implicit that "record owner" is not reflective of the owner identified "in the records of the association", but rather is an entity or person who is identified based upon some other form or record. The only commonly understood and reasonable procedure in which to identify a "record owner" would be to do so through the records of a county recorder despite NRED's position that "[i]t is also not reasonable to say that what is reflected in the Assessor's records which includes a disclaimer for liability accuracy controls the determination of ownership and no association actually does a title search to determine who the current owner of a unit

[3] "The maxim 'expressio unius est exclusion altrius', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State". *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

is." In order to present the practical circumstances surrounding NRED's apparent position, several rhetorical questions are presented in addition to the analysis provided below.

What does NRED believe that community associations, and more specifically, Nevada licensed community managers, do to verify unit ownership within associations – demand that every unit owner provide a copy of their deed? Certainly, NRED does not believe that is the case because as NRED is aware, many unit owners do not respond to any association communications but for paying their regular assessments. In such cases, NRED would have associations abstain from recognizing a unit owner's ownership/membership rights until that owner provided a copy of their deed to the Association and be faced with unit owners' obvious rebuttal of the Association's position - "look at the county records, I am the owner of this property." If a unit owner in that position challenged the Association's abstention from recognizing their ownership rights due to their failure to provide the Association with a copy of their deed despite the county assessor's and recorder's identification of that individual as the record unit owner, would NRED support the position taken by the Association?

Standard industry practices, i.e. the use of county recorder and assessor records for evidence of ownership, and the inherent flaws in NRED's position that county assessor records are less appropriately relied upon in comparison to documents that may be simply submitted to an association as valid, without any verification whatsoever by any governmental authority serve to invalidate the "policy" position taken by NRED. Does NRED wish for every licensed community association manager to engage in the legal practice of examining the validity of an alleged real property conveyance to confirm that all appropriate recitals and conveyances are provided therein or does NRED wish for community associations to have to retain the services of legal counsel to review all such documents and provide an opinion as to whether the alleged real property conveyance is legitimate?

Lastly, as to NRED's curious position/statement that "no association actually does a title search to determine who the current owner of a unit is", and notwithstanding the lack of explanation regarding whether NRED believes such an effort would be appropriate/advisable in the case of a person presenting an unrecorded deed claiming to be the owner of a unit within an association, if the

Association in this case were to do a title search the ***RECORD OWNER*** that would result from such search would be Ms. Lisa Kemp and not Mr. Levi Dickson.

IV. Allowing a Non-Record Owner Who Does Not Meet an Exception Under NRS 116.31034(14) to Serve as an Association Board Member Exposes the Association to Additional Liability

Pursuant to NRS 116.3103, a director is a fiduciary of an association and may be held responsible by an association and/or its members for breaches of their fiduciary duty. In the event such a breach was proven to be the result of the director's gross negligence or willful/wanton malfeasance then the director would be liable for damages and they would not have a right to indemnification and defense from the Association. *See* NRS 116.31037. In such a situation, such conduct would be excluded by most if not all insurance policies, which would leave an association and its members with nowhere to turn to recover their losses other than the director's own assets. As a practical matter, the director's unit would most often be their most significant and ascertainable asset to which an association may attach a judgment and hope to recover therefrom.

In the event a culpable director was a non-record owner who does not meet an exception under NRS 116.31034(14), then an association may be precluded from attaching a judgment against the subject unit and/or be subject to liability related to slander of title and related claims that may be brought by the record owner and/or lien holders. For instance, an unrecorded quit claim deed could be lost and/or destroyed, or never have been valid in the first place, and the record owner's property interest may be subject to a lien, e.g. a mortgage lien. In such a scenario if the Association attempted to attach a judgment to the unit it would subject itself to claims from both the record owner and the mortgage holder among other lien holders.

In addition to the above concerns, liability and damage recovery concerns would arise if a non-record owner damaged Association property and as a result the Association imposed an assessment against the property associated with the non-record owner and ultimately recorded a lien on the property. The obvious liability concern would be a claim by the record owner that they did not transfer their interest in the property to the non-record owner and that the Association has no right to impose the assessment and record the lien against their property.

The above explanation illustrates at least two (2) reasons why NRS 116.31034(14) was drafted in a manner that did not allow for a non-record owner to qualify for the board when the record owner is a natural person.

V. Supplemental Principals of Law Are Applicable to NRS Chapter 116 and Such Principals Serve to Invalidate the Position Taken by NRED

Notwithstanding the Association's statutory interpretation arguments provided above in relation to NRS Chapter 116 specifically, to which it is the Association's position is determinative of this issue, supplemental principals of law applicable to NRS Chapter 116 also serve to invalidate the position taken by NRED. *See* NRS 116.1108 ("The principles of law and equity, including the law of corporations and any other form of organization authorized by law of this State, the law of unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.")

In accordance with NRS 116.1108, NRED need look no further than NRS 111.315 when considering whether an Association is obligated, without question, to accept an unrecorded deed as valid as NRS 111.315 provides the following:

> **Every conveyance of real property**, and every instrument of writing setting forth an agreement to convey any real property, or whereby any real property may be affected, proved, acknowledged and certified in the manner prescribed in this chapter, **to operate as notice to third persons, shall be recorded in the office of the recorder of the county in which the real property is situated** or to the extent permitted by NRS 105.010 to 105.080, inclusive, in the Office of the Secretary of State, **but shall be valid and binding between the parties thereto without such record**.

NRS 111.315 (emphasis added). By operation, NRS 111.315 provides that unless a conveyance is recorded, that conveyance shall not be valid and binding against third parties and shall only be valid and binding between the parties to the conveyance. *See Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) ("The maxim 'expressio unius est exclusion altrius', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State".). Importantly, to NRED's point that conveyances of real property need not be recorded, NRS 111.315 incorporates such fact by providing that although the unrecorded conveyance is not valid and binding as to third parties, the deed and conveyance are still valid between the parties, e.g. in this case, between Ms. Kemp and Mr. Dickson. In this case, the alleged conveyance of a property interest from Ms. Kemp to Mr. Dickson has not been recorded and therefore **it cannot be found to bind the Association to the alleged effects of the conveyance.** *See* NRS 111.315.

VI. Taking Actions to Protect the Association from Fraud Does Not Constitute Retaliatory Conduct Under NRS 116.31183

The Respondents' actions discussed herein were taken in an effort to protect the interests of the Association and to shield the Association from fraudulent conduct. The Respondents' actions were in no way taken "because [an alleged] unit's owner has: (a) Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; (b) Recommended the selection or replacement of an attorney, community manager or vendor; or (c) Requested in good faith to review the books, records or other papers of the association.

It is important to note that upon receipt of notice of legitimate issues/errors brought to light by Ms. Kemp and Mr. Dickson, the Respondents acknowledged such issues/errors and rectified such issues/errors to the best of their abilities. *See* **Exhibits 7** and **8**. The Respondents' actions were not petty retaliatory actions and were not taken lightly, as evidenced by their utilization of legal counsel. The Respondents' actions were taken in an effort to further investigate and evidence what it believes to be fraudulent conduct. The Respondents' hope was that it could have brought such evidence to light thereby preventing the Association from having to defend its legal interpretation against the Division's in what is effectively the Division's present request for declaratory relief from the Commission regarding what constitutes a "record owner" under NRS 116.001 *et seq.*

VII. The Respondents Acted in Good Faith and in the Best Interests of the Association in Taking Actions to Protect the Association from Fraud When They Provided Ms. Kemp's Deed of Trust Holder, a Secured Interest Holder, with a Copy of the Purported Conveyance

The Respondents did not disclose the copy of the purported conveyance to the public at large. The Respondents, in an effort to confirm the legitimacy of the purported conveyance, disclosed a copy of the purported conveyance to a secured interest holder in the Property whose interests may impact the Association's interests in the Property as established under NRS 116.3116 *et seq.* The Respondents, in good faith, disclosed the purported conveyance in an effort to protect the Association from fraud which served as actions taken in the best interests of the Association – as opposed to serving the best interests of a purported non-record owner of the Property and simply ignoring the indications of illegitimacy and accepting the liabilities associated with recognizing the purported conveyance as legitimate. If the Respondents were to ignore such indications of illegitimacy and accept the liabilities associated with recognizing the purported conveyance as legitimate without attempting to conduct appropriate due diligence, the Respondents would not have been acting in good faith and in the best interests of the Association, but would rather be ignoring or refusing to fulfill their fiduciary duties

that mandate the Respondents put the Association's interests before any other interests of any other person or entity.

Dated this 29th day of October, 2018.

THE CLARKSON LAW GROUP, P.C.

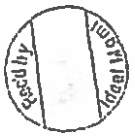
By: _____

ADAM H. CLARKSON, ESQ.
Nevada State Bar Number 10003
MATTHEW J. McALONIS, ESQ.
Nevada State Bar Number 11203
JOHN W. AYLOR, ESQ.
Nevada State Bar Number 13448
THE CLARKSON LAW GROUP, P.C.
2300 West Sahara Avenue, Suite 950
Las Vegas, Nevada 89102
Attorney for Respondents

EXHIBIT 1

RESP 1

VIA Certified Return Receipt Mail



Hillside Homeowners Association Board of Directors

C/O Ideal Community Management Company

5785 Centennial Center Blvd. Suite 210

Las Vegas, NV 89149

April 25, 2018

Hillside Homeowners Association Board of Directors,

This letter is to inform you, the current Hillside Board of Directors, my intent to file a complaint with the State of Nevada over the fact that I was told that I have abused my communication privileges and will not be allowed to attend HOA meetings or correspond with anyone from Ideal Community Management. I also think it is utterly unacceptable for the Hillside HOA attorney to have denied Lisa Kemp (the recorded owner) from communicating in email. I believe this was an attempt by the Hillside Homeowners Association Board of Directors to deny Lisa Kemp and myself the enjoyment we are due as a homeowners.

The letter from the Hillside attorney stated that "Mr. Levi Dickson, who is not a homeowner within the Association at this time, may no longer attend Association meetings unless otherwise required by law". I don't believe the Hillside counsel was ever provided with the previous ruling from the State in which Mr. Pernyak stated he understood that I was a homeowner and would allow me to run for a position on the board. In the letter from the attorney it stated that I harassed community management employees with constant questions and demands. I have numerous email chains in which when I asked a question of Mr. Pernyak I was lied to and not giving correct answers. I don't consider questioning a lie told to me by an employee of a service that Lisa Kemp and I pay for as harassment and find it unacceptable to be categorized in that manner. Does anyone in the Hillside Board of Directors consider it harassment when I asked about cumulative voting in the 2015 election that was run so flawed that the entire majority of the board had to be unseated and rerun in a curative election? Was it harassment when I asked Mr. Pernyak why he stated that he was the Presiding Officer at the HOA meetings and was told it was in the contract, then had to go back and forth attempting to explain to a licensed property manager that it is against the law for a management company employee to claim they are a Presiding Officer?

I have a letter from The State of Nevada in which Mr. Pernyak told the investigator he had made an honest mistake and I would be allowed to run for a Board of Directors position. I don't believe Mr. Pernyak ever shared that letter with the Board of Directors or the Hillside attorney. I was told that Mr. Pernyak never asked for a vote from the Hillside Board of Directors but simple told the members that Raynie White and himself had gotten and paid for the letter banning me themselves. Was this issue ever discussed in a meeting? If so when did it happen and why were Lisa Kemp and myself not told of it? Isn't

it a conflict of interest for an attorney that is paid to represent a homeowner deny that same owner their rights? If Ideal Community Management paid to use the Hillside's attorney to send a letter to a Hillside resident isn't that a conflict of interest and against State law? Who actually paid for the letter from The Clarkson Law Group on January 21st, 2016? Isn't it required by State Law and our CC&R's for homeowners to be notified whenever the Board of Directors meets with counsel? When and where were any notices of meetings with Hillside's Board of Directors and counsel ever sent out?

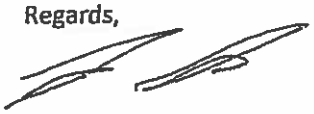
I believe the letter was sent to Lisa Kemp and myself as retribution for pointing out all of the flaws and mistakes being made by Patrick Pernyak and Ideal Community Management. Lisa Kemp and I have never conducted ourselves in an unbecoming manner at a meeting and challenge anyone to provide proof of the contrary. I do not believe that the Board of Directors was ever informed of Mr. Pernyak's previous admittance to the State that he had made a mistake and would allow me to run for a position on the board. I believe that the letter was requested and written under false pretenses and needs to be voided and an apology issued to Lisa Kemp and myself for the error and undue stress caused by it.

I firmly believe I was unjustly banned from HOA meetings simply because it was easier for Ideal Community Management to run the Hillside Community the way they wanted to instead of how the law requires. If I would have been allowed to attend the curative election ran in 2016 I would have pointed out according to our Governing Documents the election needs to be ran in September with a Nominating Committee. If I would have been allowed to attend the 2017 election meeting I would of pointed out that again the election should have had a Nominating Committee and that per our Governing Documents there are no one year Board of Director terms so why is the Board of Directors telling a newly elected member of the board they are only serving a one year term instead of the two year term stated in our Governing Documents? Those are a few of the reasons that I believe I was unjustly banned from HOA meetings and again request the letter be voided and an apology issued to Lisa Kemp and myself.

I also request that the Hillside Board of Directors and any and all employees and ownership of Ideal Community Management cease and desist from telling any other of my neighbors or anyone else that the State of Nevada has said I am not a homeowner as Mr. Pernyak did in an email to Mr. Castillo unless of course you have proof of the contrary. I also ask that the Hillside Board of Directors make no further attempt to contact Lisa Kemp's mortgage company as our attorney had stated, in his letter dated July 18,2016, we see this as harassment. I would also like to know when and where the Hillside Board of Directors discussed and voted on sending a letter to Lisa Kemp's mortgage company and why she was never informed of this?

I have attached the ruling form the State of Nevada in which it states that I am indeed a homeowner. Please provide that to all board members along with this letter.

Regards,



Levi Dickson

3939 Zodiacal Light St.

EXHIBIT 2

RESP 4

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA
Brian P. Nestor, Esq. Admitted in NV, CA

December 6, 2017

Via Certified, First Class U.S., and Electronic Mail
Mr. Dean Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129
Email: deanfcastillo@yahoo.com

Re: Hillside Homeowners Association – Response to Inquiry Regarding Eligibility for Next Election Cycle

Dear Mr. Castillo:

Please be advised that The Clarkson Law Group, P.C. serves as legal counsel to the Hillside Homeowners Association ("Association"). We are in receipt of your November 15, 2017 e-mail addressed to Association Management wherein you provide the following:

> Attached in this email is a letter from the State Of Nevada Real State Division dated October 2, 2017 The letter appears clear and concise. It appears that the State Of Nevada believes that my Deed does not need to be recorded to be effective. It is also stated that I am a unit owner/homeowner per the State Of Nevada, therefore eligible to run for a seat on the Board Of Directors in our Hillside Community if I chose to do so and to volunteer to be on any committee. In other words to enjoy all activities and benefits that come with being a unit/homeowner.
>
> I am sending this letter to you so a copy of this letter can be provided to each Board member so they can be informed of my favorable decision from the State Of Nevada Real State Division. My question to ICM Ideal Community Management and our Board Of Directors is simple - Am I going to be allowed to run for a seat on our Hillside Community Board Of Directors in the next election cycle? If for whatever reason the Board Of Directors and Ideal community Management are going to deny me the right to run for the HOA Board or to volunteer for any committee kindly please provide me with a written explanation including any and all references as to the reason why, within two weeks of receipt of this email.

See November 15, 2017 e-mail (emphasis removed). We were also provided with the correspondence attached to your November 15, 2017 e-mail. *See* **Attachment 1**. This correspondence shall serve as the

Association's response to your inquiry of, "[a]m I going to be allowed to run for a seat on our Hillside Community Board Of Directors in the next election cycle?"

I. The Association Cannot and Will Not Provide You with an Authoritative Declaration Regarding Future Candidacy Issues

As the Association's next election will not occur for several months and the Association's candidacy qualification process has not begun, the question you have posed to the Association is a hypothetical. Unfortunately, the Association cannot and will not provide authoritative declarations regarding future candidacy issues as the Association cannot predict the future and the circumstances that may surround such candidacy issues. Furthermore, the Association is not obligated to answer hypothetical questions posed to the Board. Accordingly, the Association simply cannot and will not answer your question of "[a]m I going to be allowed to run for a seat on our Hillside Community Board Of Directors in the next election cycle?"

II. Your Assertions of What Is Provided in the Letter from the Nevada Real Estate Division Are Self-Serving Exaggerations

Further, your assertions of what is declared in the letter attached hereto as Attachment 1 are self-serving exaggerations of what is actually stated in **Attachment 1**. The letter does not state that you are "a unit owner/homeowner per the State of Nevada, therefore eligible to run for a seat on the Board of Directors[.]" The letter states that "it would appear that the Division would recognize your ownership in said property. By the same reasoning, the Division would expect that you would be allowed to run for a position on the board of directors." Lastly, the letter provides that, "[n]othing in this correspondence implies or promises a certain outcome, should you choose to submit a complaint with the Division. The facts in a specific case could cause a different outcome."

III. General Summary of the Association's Position Regarding Non-Record Owners

As a courtesy, provided herein is a summary of the Association's current position regarding non-record owners. In order to qualify as a candidate for the Board, an individual must be a record unit owner or qualify for an ownership exception. The Association, and industry standards, require a recorded deed in order to prove requisite unit ownership. This requirement is imposed in order to protect the Association from harm or fraud. If unrecorded deeds were acceptable proof of unit ownership, then any person may feign unit ownership by producing fraudulent, unrecorded papers.

NRS 116.31034(10) provides that "[i]n all events where the person…**is not the record owner**, the person shall file proof" of an ownership exception for director eligibility. If an individual is not a record owner, the only way for that individual to be eligible to run for membership on the Board is to provide proof that they are: (1) an officer, employee, agent or director of a corporate owner of a unit; (2) a trustee or designated beneficiary of a trust that owns a unit; (3) a partner of a partnership that owns a unit; (4) a member or manager of a limited-liability company that owns a unit; or (5) a fiduciary of an estate that owns a unit. *See Id.* In cases wherein the record owner of a property is a natural person, none of the above identified exceptions may apply.

IV. Conclusion

The Association cannot and will not provide authoritative declarations regarding future candidacy issues as the Association cannot predict the future and the circumstances that may surround such candidacy issues. Your assertions of what was declared in **Attachment 1** are exaggerated and self-serving. Non-record owners may only qualify for candidacy in accordance with the exceptions provided under NRS 116.31034(10).

Please contact our office should you have any questions or concerns.

Very Truly Yours,

THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

Attachment - 1

ATTACHMENT 1

RESP 8

BRIAN SANDOVAL
Governor

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Commissioner

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

October 2, 2017

Dean Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129

Re:

Dear Mr. Castillo:

The State of Nevada Real Estate Division (the "Division"), Enforcement Section for Owners in Common-Interest Communities and Condominium Hotels, is in receipt of your September 27, 2017 letter, wherein you have requested further confirmation of the Division's position on the matter pertaining to the validity of your ownership of the property located at 10565 Shiny Skies Drive, Las Vegas, Nevada, and whether a Quit Claim Deed, transferring ownership to this property, need be recorded.

On December 12, 2013, the Division issued an Advisory Opinion, No. 13-01116, titled "What is a "unit's owner?". Within this Advisory Opinion, it is stated,

> *"A deed or other writing does not need to be recorded to be effective.*
>
> *"While a deed need not be recorded to be effective, the law does require that any transfer of an interest in real property be in writing, signed by the grantor, and notarized. An association should require any person claiming to be an owner to provide evidence thereof if they are not the owner of record."* (Emphasis added).

Based upon the Division's opinion as stated above, and in light of the fact you possess a Quit Claim Deed naming you as an additional owner of the aforementioned property, it would appear that the Division would recognize your ownership in said property. By the same reasoning, the Division would expect that you would be allowed to run for a position on the board of directors. In the event you choose to run for a position, and are met with opposition due to the fact your Quit Claim Deed is not recorded, you have the right to file a complaint with the Division, as the association would be in direct conflict with the Division's Advisory Opinion which states the Division's attitude on this issue.

3300 West Sahara Avenue, Suite 350, Las Vegas, Nevada 89102
Telephone (702) 486-4480 Facsimile (702) 486-4520 Statewide Toll Free (877) 829-9907

Nothing in this correspondence implies or promises a certain outcome, should you choose to submit a complaint with the Division. The facts in a specific case could cause a different outcome.

Should you have additional questions or concerns, please feel free to contact me at (702) 486-4480, or by email at darik.ferguson@red.nv.gov.

Sincerely,

Darik Ferguson
Chief, Compliance/Audit Enforcement

Cc: Sharath Chandra
Charvez Foger

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on December 6, 2017, I caused to be served a true and correct copy of the *Hillside Homeowners Association Response to Inquiry Regarding Eligibility for Next Election Cycle* to the following:

Via Certified, First Class U.S. and Electronic Mail
Mr. Dean Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129
Email: deanfcastillo@yahoo.com

An employee of THE CLARKSON LAW GROUP, P.C.

EXHIBIT 3

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
CICOmbudsman@red.nv.gov
www.red.nv.gov

December 8, 2017

Mr. Adam Clarkson
The Clarkson Law Group
2300 W. Sahara Ave. #950
Las Vegas, NV 89102

Dear Mr. Clarkson:

The Nevada Real Estate Division (the "Division"), Office of the Ombudsman for Owners in Common Interest Communities and Condominium Hotels received your response regarding Hillside Homeowners Association and the eligibility for Mr. Dean Castillo, to run for a board position next election cycle.

The Division issues advisory opinions to provide guidance to homeowners, board members and managers. The Division will enforce the provisions of NRS 116 in accordance with its advisory opinions and it expects board members to comply with them. The issue of ownership is significant, because owners are afforded important rights under NRS 116. The Division issued an advisory opinion on what a unit owner is based on multiple inquiries over a long period of time. Ownership rights should not be taken away simply based on a policy of the board. Nevada law does not require a conveyance of real property to be recorded in the real property records. Therefore, whether the Association disagrees with Nevada law or not is irrelevant. An unrecorded deed is a conveyance of real property and the grantee is the owner. If an owner chooses not to record his or her deed that is their choice. Unless the association has a specific concern with any particular deed provided to it to show ownership, the association should afford the owner with all owner rights found in NRS 116 and the governing documents.

Mr. Clarkson your analysis of NRS 116.31034(10) saying the word "record" means the recorded deed is not supported. "Record" refers to documents of the association numerous times in NRS 116. It is referring only to the record for which the association has to indicate who the owner is – that is a deed whether recorded in the real property records or not. There is nothing to suggest that NRS 116.31034(10) intends to limit the definition of unit's owner in NRS 116.095 which basically means a person who owns a unit and makes no reference to a recorded deed. Ownership is determined by a conveyance in Nevada law. It is also not reasonable to say that what is reflected in the Assessor's records which includes a disclaimer for liability of accuracy controls the determination of ownership and no association actually does a title search to determine who the current owner of a unit is.

I do agree that you can't answer a hypothetical question as to whether he can run as there is no current nomination process pending. Thanks for your cooperation in this matter and I look forward to your response.

Sincerely,

Charvez Foger
Ombudsman

cc: Dean Castillo
Hillside Homeowners Association

EXHIBIT 4

Inst #: 201312060001482
Fees: $31.00
N/C Fee: $0.00
12/06/2013 10:05:20 AM
Receipt #: 1864896
Requestor:
TICOR TITLE LAS VEGAS
Recorded By: SAO Pgs: 15
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor's Parcel Number:
137-12-114-043
Return To:
HomeAmerican Mortgage Corporation
4350 S. Monaco Street, Suite 200
Denver, CO 80237

Prepared By:
HomeAmerican Mortgage Corporation
4350 S. Monaco Street, Suite 200,
Denver, CO 80237

Recording Requested By:
Ticor Title of Nevada

Mortgage Broker Name: HomeAmerican Mortgage Corporation
License Number:

13156525RAS [Space Above This Line For Recording Data]

State of Nevada

DEED OF TRUST

FHA Case No.
332-5831966-703

MIN 100062500090468424

THIS DEED OF TRUST ("Security Instrument") is made on December 2, 2013
The Grantor is Lisa Kemp, A Single Woman

("Borrower"). The trustee is Ticor Title of Nevada

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. HomeAmerican Mortgage Corporation , ("Lender") is organized and existing under the laws of Colorado , and whose address is 4350 S. Monaco Street, Suite 200, Denver, CO 80237 . Borrower owes Lender the principal sum of one hundred ninety-two thousand eight hundred ninety-seven and 00/100 Dollars (U.S. $ 192,897.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on January 1, 2044 . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in Clark County, Nevada:
See attached "EXHIBIT A"

which has the address of 3939 Zodiacal Light Street [Street]
Las Vegas [City], Nevada 89129 [Zip Code]
("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 12 C.F.R. Part 1024, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

First, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with

any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly tothe entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

(i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment,or

(ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other

flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Assignment of Rents. Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by applicable law to Borrower and to the persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie

evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

19. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.

21. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ 500.00 .

22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)].

☐ Condominium Rider	☐ Growing Equity Rider	☐ Other [specify]
☒ Planned Unit Development Rider	☐ Graduated Payment Rider	

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Witnesses:

_____ Lisa Kemp (Seal) -Borrower

_____ _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

STATE OF NEVADA

COUNTY OF Clark

This instrument was acknowledged before me on December 3, 2013 by

Lisa Kemp

NOTARY PUBLIC
County of Clark-State of Nevada
Y. TRONCOSO
No. 12-9500-1
My Appointment Expires Oct. 22, 2016

Y. Troncoso

Mail Tax Statements To:
HomeAmerican Mortgage Corporation
4350 S. Monaco Street, Suite 200
Denver, CO 80237

Loan origination organization HomeAmerican Mortgage Corporation
NMLS ID 130676
Loan originator Kristin Crace
NMLS ID 193075

EXHIBIT "A"

All that certain real property situated in the County of Clark, State of Nevada, described as follows:

Parcel One:
Lot 43, Block A, Alexander 215, as shown by map thereof on file in Book 131 of Plats, Page 23 in the Office of the County Recorder of Clark County, Nevada.

Parcel Two:
A non-exclusive easement for ingress, egress, use and enjoyment and public utility purposes on, over and across the private streets and common area on the map referenced hereinabove, which easement is appurtenant to Parcel One

Assessor's Parcel Number: 137-12-114-043

PLANNED UNIT DEVELOPMENT RIDER

FHA Case No.
332-5831966-703

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 2nd day of December, 2013, and is incorporated into and shall be deeme d to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to HomeAmerican Mortgage Corporation

("Lender") of the same date and covering the Property described in the Security Instrument and located at: 3939 Zodiacal Light Street, Las Vegas, NV 89129

[Property Address]
The Property Address is a part of a planned unit development ("PUD") known as

Alexander 215
[Name of Planned Unit Development]

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the

yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of this Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitl ed thereto.

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments cre ating and governing the PUD.

C. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.

Lisa Kemp (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

EXHIBIT 5

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA
Brian P. Nestor, Esq. Admitted in NV, CA

January 2, 2018

Via First Class U.S. and Electronic Mail
State of Nevada Department of Business and Industry Real Estate Division
Common-Interest Communities and Condominium Hotels Program
Attn: Charvez Foger, Ombudsman
3300 West Sahara Avenue, Ste. 350, Las Vegas, NV 89102
Email: cfoger@red.nv.gov

Re: Case No. 2016-3886 and December 8, 2017 Letter – Request for Discussion and Advisement

Dear Mr. Foger:

As you are aware, The Clarkson Law Group, P.C. serves as general counsel to Hillside Homeowners Association ("Association"). We are in receipt of the Nevada Real Estate Division ("Division") correspondence dated October 2, 2017 addressed to Mr. Dean Castillo. *See* **Attachment 1.** We are also in receipt of your correspondence dated December 8, 2017. *See* **Attachment 2.** The purpose of this correspondence is to attempt to open a dialogue with the Division and request further advisement regarding its interpretation of Nevada Revised Statutes ("NRS") 116.31034(13) and Advisory Opinion, No. 14-01-116 (the "Advisory Opinion") so that the Association may appropriately conduct its candidate qualification procedures and elections.

I. Analysis of NRS 116.31034 and Attached Correspondence

Based upon a review of Attachment 1 and Attachment 2, it appears that it may be the Division's position that if an individual produces a quit claim deed naming them as the, or a, interest holder in a unit, then "the Division would expect that you would be allowed to run for a position on the board of directors." NRS 116.31034(13), however, provides the following:

> An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. **In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:**
>
> (a) The person is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

> (b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

NRS 116.31034(13) (emphasis added).

An interpretation of law is not "a policy of the board", but rather is an attempt to comply with the specific requirements of Nevada law that have been adopted by the Nevada legislature. We do not disagree that Nevada law does not require a conveyance of real property to be recorded in the real property records. We do, however, find that the specific candidacy requirements provided in NRS 116.31034(13) are not synonymous with what is simply required for a conveyance of real property. Further, "[o]wnership is determined by a conveyance in Nevada law", however, candidacy for a community association is determined by the specific requirements provided for within NRS 116.31034(13). As addressed in Section II below, associations do have specific concerns related to individuals who produce unrecorded deeds as a means of attempting to establish their right to serve as a candidate on an association board.

"Record owner" is not a defined term within NRS 116.001 *et seq.* Accordingly, the term "record owner" must be interpreted in a manner consistent with the purposes of NRS 116.001 *et seq.* and more specifically in the manner that it is utilized within NRS 116.31034(13). "Records of the association" are referenced several times within NRS 116.001 *et seq.* *See* NRS 116.31034(13), 116.31038(1), 116.31175(4)(b), 116.3118(2), and 116.41095(7)(d). The term "record owner" is included in only two provisions within NRS 116.001 *et seq.*, NRS 116.31034(13) and NRS 116.31162(1)(a).

NRS 116.31162(1)(a) concerns notices of delinquent assessments and requires that such notices be mailed "to the ***unit's owner*** or his or her successor in interest" and include "a description of the unit against which the lien is imposed and ***the name of the record owner of the unit.***" NRS 116.31162(1)(a) (emphasis added). Accordingly, it is implicit that the legislature accounted for the fact that a "unit's owner" may differ from the "record owner of the unit" because it would not have utilized two (2) different terms of identification when drafting such language if the terms were synonymous. Such is the case because a "unit's owner" may arguably be an entity or person who owns a unit via an unrecorded deed that has been provided to the Association and although an entity or person may be a unit's owner for the sake of the Association's purposes, that entity or person is not a "record owner" because the deed has not been recorded with the county recorder and therefore there is no "record" of their ownership. Such an interpretation is consistent with the Advisory Opinion, which notably, addresses the identification of Unit Owners specifically, but does not address the candidacy restrictions provided in NRS 116.31034(13).

In the scope of NRS 116.31034(13), the terms "record owner" and "records of the association" are utilized and organized in such a manner where it is implicit that "record owner" is not reflective of the owner identified "in the records of the association", but rather is an entity or person who is identified based upon some other form or record. The only commonly understood and reasonable procedure in which to identify a "record owner" through public record would be to do so through the records of a county recorder.

As provided above, a "person" may only reasonably be found to be a "record owner" if a record has been recorded with the appropriate county recorder's office evidencing their ownership interest in a unit. Notably, the non-record owner exceptions to NRS 116.31034(13) may only apply to properties

wherein the record owner is: 1) a corporate owner; 2) a trust; 3) a partnership; 4) a limited-liability company; or 5) an estate. Accordingly, when the record owner of a unit is a natural person, a non-record "owner" may not qualify to run for the board based upon that unit because regardless of what proof they may attempt to file with the association, including a quit claim deed, NRS 116.31034(13) does not provide for such exception.

The legal doctrine of *unius est exclusion alterius*[1] may prohibit the Division's apparent interpretation of NRS 116.31034. The exceptions set forth in NRS 116.31034 are specific and limited as set forth above, and the Nevada legislature intended that only those specifically delineated exceptions be applied in the cases of non-record owners. If the Nevada legislature intended to include an exception for non-record "owners" when the record owner was a natural person, it would have specifically set forth language allowing for such an exception.

II. Allowing a Non-Record Owner Who Does Not Meet an Exception Under NRS 116.31034(13) to Serve as an Association Board Member Exposes the Association to Additional Liability

Pursuant to NRS 116.3103, a director is a fiduciary of an association and may be held responsible by an association and/or its members for breaches of their fiduciary duty. In the event such a breach was proven to be the result of the director's gross negligence or willful/wanton malfeasance then the director would be liable for damages and they would not have a right to indemnification and defense from the Association. *See* NRS 116.31037. In such a situation, such conduct would be excluded by most if not all insurance policies, which would leave an association and its members with nowhere to turn to recover their losses other than the director's own assets. As a practical matter, the director's unit would most often be their most significant and ascertainable asset to which an association may attach a judgment and hope to recover therefrom.

In the event a culpable director was a non-record owner who does not meet an exception under NRS 116.31034(13), then an association may be precluded from attaching a judgment against the subject unit and/or be subject to liability related to slander of title and related claims that may be brought by the record owner and/or lien holders. For instance, an unrecorded quit claim deed could be lost and/or destroyed, or never have been valid in the first place, and the record owner's property interest may be subject to a lien, e.g. a mortgage lien. In such a scenario if the Association attempted to attach a judgment to the unit it would subject itself to claims from both the record owner and the mortgage holder among other lien holders.

The above explanation illustrates why NRS 116.31034(13) was drafted in a manner that did not allow for a non-record owner to qualify for the board when the record owner is a natural person.

///

[1] "The maxim 'expressio unius est exclusion altrius', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State". *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

III. Conclusion

The Association appreciates the Division's time and devotion to this issue and looks forward to working together to obtain a mutual understanding of this issue. Please contact our office should you have any questions or concerns.

Very Truly Yours,

THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

Attachments - 2

ATTACHMENT 1

RESP 35

BRIAN SANDOVAL
Governor

STATE OF NEVADA

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

C.J. MANTO
Director

SHARATH CHANDRA
Administrator

CHARLES COCA
Chief Deputy

October 2, 2017

Dear Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129

Re:

Dear Mr. Castillo:

The State of Nevada Real Estate Division (the "Division") Enforcement Section for Owners in Common-Interest Communities and Condominium Hotels is in receipt of your September 27, 2017 letter, wherein you have requested further confirmation of the Division's position on the matter pertaining to the validity of your ownership of the property located at 10565 Shiny Skies Drive, Las Vegas, Nevada, and whether a Quit Claim Deed, transferring ownership to this property, need be recorded.

On December 12, 2013, the Division issued an Advisory Opinion, No. 13-01-176, titled "What is a 'unit owner'?" Within this Advisory Opinion, it states:

> *"A deed or other writing does not need to be recorded to be valid."*
>
> *"While a deed need not be recorded, alternatively, the law does require that any transfer of an interest in real property be in writing, signed by the grantor, and notarized. An association should require any person claiming to be an owner to provide evidence in writing if they are not the owner of record."* (Emphasis added.)

Based upon the Division's opinions as stated above, and in light of the fact you possess a Quit Claim Deed naming you as an additional owner of the aforementioned property, it would appear that the Division would recognize your ownership in said property. By the same reasoning, the Division would expect that you would be allowed to run for a position on the board of directors. In the event you choose to run for a position, and are met with opposition due to the fact your Quit Claim Deed is not recorded, you have the right to file a complaint with the Division, as the association would be in direct conflict with the Division's Advisory Opinion which states the Division's attitude on this issue.

2800 West Sahara Avenue Suite 350 Las Vegas, Nevada 89102
Telephone (702) 486-4480 Facsimile (702) 486-4520 Statewide Toll Free (877) 829-9907

Nothing in this correspondence implies or promises a certain outcome, should you choose to submit a complaint with the Division. The facts in a specific case could cause a different outcome.

Should you have additional questions or concerns, please feel free to contact me at (702) 486-4480, or by email at darik.ferguson@red.nv.gov.

Sincerely,

Darik Ferguson
Chief, Compliance/Audit Enforcement

Cc: Sharath Chandra
Charvez Foger

ATTACHMENT 2

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
CICOmbudsman@red.nv.gov
www.red.nv.gov

December 8, 2017

Mr. Adam Clarkson
The Clarkson Law Group
2300 W. Sahara Ave. #950
Las Vegas, NV 89102

Dear Mr. Clarkson:

The Nevada Real Estate Division (the "Division"), Office of the Ombudsman for Owners in Common Interest Communities and Condominium Hotels received your response regarding Hillside Homeowners Association and the eligibility for Mr. Dean Castillo, to run for a board position next election cycle.

The Division issues advisory opinions to provide guidance to homeowners, board members and managers. The Division will enforce the provisions of NRS 116 in accordance with its advisory opinions and it expects board members to comply with them. The issue of ownership is significant, because owners are afforded important rights under NRS 116. The Division issued an advisory opinion on what a unit owner is based on multiple inquiries over a long period of time. Ownership rights should not be taken away simply based on a policy of the board. Nevada law does not require a conveyance of real property to be recorded in the real property records. Therefore, whether the Association disagrees with Nevada law or not is irrelevant. An unrecorded deed is a conveyance of real property and the grantee is the owner. If an owner chooses not to record his or her deed that is their choice. Unless the association has a specific concern with any particular deed provided to it to show ownership, the association should afford the owner with all owner rights found in NRS 116 and the governing documents.

Mr. Clarkson your analysis of NRS 116.31034(10) saying the word "record" means the recorded deed is not supported. "Record" refers to documents of the association numerous times in NRS 116. It is referring only to the record for which the association has to indicate who the owner is – that is a deed whether recorded in the real property records or not. There is nothing to suggest that NRS 116.31034(10) intends to limit the definition of unit's owner in NRS 116.095 which basically means a person who owns a unit and makes no reference to a recorded deed. Ownership is determined by a conveyance in Nevada law. It is also not reasonable to say that what is reflected in the Assessor's records which includes a disclaimer for liability of accuracy controls the determination of ownership and no association actually does a title search to determine who the current owner of a unit is.

I do agree that you can't answer a hypothetical question as to whether he can run as there is no current nomination process pending. Thanks for your cooperation in this matter and I look forward to your response.

Sincerely,

Charvez Foger
Ombudsman

cc: Dean Castillo
Hillside Homeowners Association

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on January 2, 2018, I caused to be served a true and correct copy of the attached correspondence regarding *Case No. 2016-3886 and December 8, 2017 Letter – Request for Discussion and Advisement (Hillside Homeowners Association)* to the following:

Via First Class U.S. and Electronic Mail
State of Nevada Department of Business and Industry Real Estate Division
Common-Interest Communities and Condominium Hotels Program
Attn: Charvez Foger, Ombudsman
3300 West Sahara Avenue, Ste. 350
Las Vegas, NV 89102
Email: cfoger@red.nv.gov

An employee of THE CLARKSON LAW GROUP, P.C.

EXHIBIT 6

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA

February 28, 2018

Via First Class U.S. and Electronic Mail
State of Nevada Department of Business and Industry Real Estate Division
Common-Interest Communities and Condominium Hotels Program
Attn: Charvez Foger, Ombudsman
3300 West Sahara Avenue, Ste. 350, Las Vegas, NV 89102
Email: cfoger@red.nv.gov

Re: Case No. 2016-3886 – Non-Acceptance of Legal Interpretation and Position of the Nevada Real Estate Division in Regards to Non-Record Unit Owners

Dear Mr. Foger:

As you are aware, The Clarkson Law Group, P.C. serves as general counsel to Hillside Homeowners Association ("Association"). This correspondence serves to notice the Nevada Real Estate Division ("Division") that the Association does not accept the legal interpretation and position of the Division in regards to the Division's position that non-record unit owners may be elected to an association's board. *See* previous correspondence related to this matter attached hereto as **Attachments 1 – 3.**

As an initial matter, the Association respectfully requests that the Division provide the Association with correspondence that sets forth the legal basis of the Division's interpretations of the provisions of law at issue. As Advisory Opinion No. 14-01-116 entitled "What is a 'unit's owner'?" is undeniably lacking in legal analysis supporting the positions taken therein, the Association was hopeful that the Division would provide a response to the Association's "Request for Discussion and Advisement" dated January 2, 2018 and attached hereto as **Attachment 3.**

If the Association were to receive correspondence from the Division that negated or otherwise invalidated the position of the Association detailed in **Attachment 3**, the Association would be more than willing to reverse its position. Furthermore, such communication would prevent the Association and the Division from being required to devote their limited resources to the proceedings related to a hearing before the Commission for Common-Interest Communities and Condominium Hotels ("Commission").

As a matter of record, the Association reiterates that its position in regards to this issue is not "a policy of the board", but rather is an interpretation of law to which it does not believe the Division has negated and therefore the Association cannot reverse its position in good faith. Furthermore, the Association's position is not based upon any particular person or factual issue, it is simply based upon what it believes to be the only appropriate interpretation of the provisions of law at issue.

If the Division is willing to allow the Association to further support its position prior to engaging formal state investigative proceedings, the Association will provide the Division with analysis of the public policy further supporting the Association's interpretation of the provisions of law at issue. Such analysis would include discussion of the fact that if the Division continues to maintain its position regarding non-record unit owners, association boards and community management companies will be left with no easily determinable method to confirm whether an individual truly is an owner of a unit and therefore eligible for the board. The repercussions of the inability to make such determinations and the potential that bad actors may fraudulently be elected to associations' boards should be of great concern to the State of Nevada.

Lastly, as the Association's next election will not occur for several months and the Association's candidacy qualification process has not begun, it appears that this issue is not ripe and therefore any potential immediate investigative and/or enforcement action by the division would be premature. As such, it would likely serve the best interest of all involved parties to engage in appropriate discourse in an effort resolve this issue without the need for the expenditure of the Division's investigative and enforcement resources.[1]

The Association looks forward to the Division's response to this correspondence and is prepared to proceed with whatever procedural course of action the Division elects to pursue to attempt to ultimately bring this issue to resolution.

Very Truly Yours,

THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

Attachments - 3

[1] In an effort to protect the interests of the Association, the Association will soon be contacting the mortgage servicing companies identified on the deed of trust recorded upon the property in an effort to confirm whether such companies are aware of any unrecorded conveyance concerning the property at issue as such conveyance may impact both the Association's secured interest in the property and communications that may be required to be conveyed to the mortgage servicing companies.

ATTACHMENT 1

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA
Brian P. Nestor, Esq. Admitted in NV, CA

December 6, 2017

Via Certified, First Class U.S., and Electronic Mail
Mr. Dean Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129
Email: deanfcastillo@yahoo.com

Re: Hillside Homeowners Association – Response to Inquiry Regarding Eligibility for Next Election Cycle

Dear Mr. Castillo:

Please be advised that The Clarkson Law Group, P.C. serves as legal counsel to the Hillside Homeowners Association ("Association"). We are in receipt of your November 15, 2017 e-mail addressed to Association Management wherein you provide the following:

> Attached in this email is a letter from the State Of Nevada Real State Division dated October 2, 2017 The letter appears clear and concise. It appears that the State Of Nevada believes that my Deed does not need to be recorded to be effective. It is also stated that I am a unit owner/homeowner per the State Of Nevada, therefore eligible to run for a seat on the Board Of Directors in our Hillside Community if I chose to do so and to volunteer to be on any committee. In other words to enjoy all activities and benefits that come with being a unit/homeowner.
>
> I am sending this letter to you so a copy of this letter can be provided to each Board member so they can be informed of my favorable decision from the State Of Nevada Real State Division. My question to ICM Ideal Community Management and our Board Of Directors is simple - Am I going to be allowed to run for a seat on our Hillside Community Board Of Directors in the next election cycle? If for whatever reason the Board Of Directors and Ideal community Management are going to deny me the right to run for the HOA Board or to volunteer for any committee kindly please provide me with a written explanation including any and all references as to the reason why, within two weeks of receipt of this email.

See November 15, 2017 e-mail (emphasis removed). We were also provided with the correspondence attached to your November 15, 2017 e-mail. *See* Attachment 1. This correspondence shall serve as the

Association's response to your inquiry of, "[a]m I going to be allowed to run for a seat on our Hillside Community Board Of Directors in the next election cycle?"

I. The Association Cannot and Will Not Provide You with an Authoritative Declaration Regarding Future Candidacy Issues

As the Association's next election will not occur for several months and the Association's candidacy qualification process has not begun, the question you have posed to the Association is a hypothetical. Unfortunately, the Association cannot and will not provide authoritative declarations regarding future candidacy issues as the Association cannot predict the future and the circumstances that may surround such candidacy issues. Furthermore, the Association is not obligated to answer hypothetical questions posed to the Board. Accordingly, the Association simply cannot and will not answer your question of "[a]m I going to be allowed to run for a seat on our Hillside Community Board Of Directors in the next election cycle?"

II. Your Assertions of What Is Provided in the Letter from the Nevada Real Estate Division Are Self-Serving Exaggerations

Further, your assertions of what is declared in the letter attached hereto as Attachment 1 are self-serving exaggerations of what is actually stated in Attachment 1. The letter does not state that you are "a unit owner/homeowner per the State of Nevada, therefore eligible to run for a seat on the Board of Directors[.]" The letter states that "it would appear that the Division would recognize your ownership in said property. By the same reasoning, the Division would expect that you would be allowed to run for a position on the board of directors." Lastly, the letter provides that, "[n]othing in this correspondence implies or promises a certain outcome, should you choose to submit a complaint with the Division. The facts in a specific case could cause a different outcome."

III. General Summary of the Association's Position Regarding Non-Record Owners

As a courtesy, provided herein is a summary of the Association's current position regarding non-record owners. In order to qualify as a candidate for the Board, an individual must be a record unit owner or qualify for an ownership exception. The Association, and industry standards, require a recorded deed in order to prove requisite unit ownership. This requirement is imposed in order to protect the Association from harm or fraud. If unrecorded deeds were acceptable proof of unit ownership, then any person may feign unit ownership by producing fraudulent, unrecorded papers.

NRS 116.31034(10) provides that "[i]n all events where the person...is not the record owner, the person shall file proof" of an ownership exception for director eligibility. If an individual is not a record owner, the only way for that individual to be eligible to run for membership on the Board is to provide proof that they are: (1) an officer, employee, agent or director of a corporate owner of a unit; (2) a trustee or designated beneficiary of a trust that owns a unit; (3) a partner of a partnership that owns a unit; (4) a member or manager of a limited-liability company that owns a unit; or (5) a fiduciary of an estate that owns a unit. *See Id.* In cases wherein the record owner of a property is a natural person, none of the above identified exceptions may apply.

IV. Conclusion

The Association cannot and will not provide authoritative declarations regarding future candidacy issues as the Association cannot predict the future and the circumstances that may surround such candidacy issues. Your assertions of what was declared in **Attachment 1** are exaggerated and self-serving. Non-record owners may only qualify for candidacy in accordance with the exceptions provided under NRS 116.31034(10).

Please contact our office should you have any questions or concerns.

Very Truly Yours,

THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

Attachment - 1

ATTACHMENT 1

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS PROGRAM

http://www.red.nv.gov

October 2, 2017

Dean Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129

Re:

Dear Mr. Castillo:

The State of Nevada Real Estate Division (the "Division"), Enforcement Section for Owners in Common-Interest Communities and Condominium Hotels, is in receipt of your September 27, 2017 letter, wherein you have requested further confirmation of the Division's position on the matter pertaining to the validity of your ownership of the property located at 10565 Shiny Skies Drive, Las Vegas, Nevada, and whether a Quit Claim Deed, transferring ownership to this property, need be recorded.

On December 12, 2013, the Division issued an Advisory Opinion, No. 14-01-116, titled "What is a unit's owner?". Within this Advisory Opinion, it is stated,

> *"a deed or other writing does not need to be recorded to be effective."*
>
> *"While a deed need not be recorded to be effective, the law does require that any transfer of an interest in real property be in writing, signed by the grantor, and notarized. This separation should require any person claiming to be an owner to provide evidence in writing if they are not the owner of record."* (Emphasis added.)

Based upon the Division's opinion as stated above, and in light of the fact you possess a Quit Claim Deed naming you as an additional owner of the aforementioned property, it would appear that the Division would recognize your ownership in said property. By the same reasoning, the Division would expect that you would be allowed to run for a position on the board of directors. In the event you choose to run for a position, and are met with opposition due to the fact your Quit Claim Deed is not recorded, you have the right to file a complaint with the Division, as the association would be in direct conflict with the Division's Advisory Opinion which states the Division's attitude on this issue.

3300 West Sahara Avenue, Suite 350 · Las Vegas, Nevada 89102
Telephone (702) 486-4480 · Facsimile (702) 486-4520 · Statewide Toll Free (877) 829-9907

Nothing in this correspondence implies or promises a certain outcome, should you choose to submit a complaint with the Division. The facts in a specific case could cause a different outcome.

Should you have additional questions or concerns, please feel free to contact me at (702) 486-4480, or by email at darik.ferguson@red.nv.gov.

Sincerely,

Darik Ferguson
Chief, Compliance/Audit Enforcement

Cc: Sharath Chandra
Charvez Foger

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on December 6, 2017, I caused to be served a true and correct copy of the *Hillside Homeowners Association Response to Inquiry Regarding Eligibility for Next Election Cycle* to the following:

Via Certified, First Class U.S. and Electronic Mail
Mr. Dean Castillo
10565 Shiny Skies Drive
Las Vegas, NV 89129
Email: deanfcastillo@yahoo.com

An employee of THE CLARKSON LAW GROUP, P.C.

ATTACHMENT2

RESP 52

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
CICOmbudsman@red.nv.gov
www.red.nv.gov

December 8, 2017

Mr. Adam Clarkson
The Clarkson Law Group
2300 W. Sahara Ave. #950
Las Vegas, NV 89102

Dear Mr. Clarkson:

The Nevada Real Estate Division (the "Division"), Office of the Ombudsman for Owners in Common Interest Communities and Condominium Hotels received your response regarding Hillside Homeowners Association and the eligibility for Mr. Dean Castillo, to run for a board position next election cycle.

The Division issues advisory opinions to provide guidance to homeowners, board members and managers. The Division will enforce the provisions of NRS 116 in accordance with its advisory opinions and it expects board members to comply with them. The issue of ownership is significant, because owners are afforded important rights under NRS 116. The Division issued an advisory opinion on what a unit owner is based on multiple inquiries over a long period of time. Ownership rights should not be taken away simply based on a policy of the board. Nevada law does not require a conveyance of real property to be recorded in the real property records. Therefore, whether the Association disagrees with Nevada law or not is irrelevant. An unrecorded deed is a conveyance of real property and the grantee is the owner. If an owner chooses not to record his or her deed that is their choice. Unless the association has a specific concern with any particular deed provided to it to show ownership, the association should afford the owner with all owner rights found in NRS 116 and the governing documents.

Mr. Clarkson your analysis of NRS 116.31034(10) saying the word "record" means the recorded deed is not supported. "Record" refers to documents of the association numerous times in NRS 116. It is referring only to the record for which the association has to indicate who the owner is – that is a deed whether recorded in the real property records or not. There is nothing to suggest that NRS 116.31034(10) intends to limit the definition of unit's owner in NRS 116.095 which basically means a person who owns a unit and makes no reference to a recorded deed. Ownership is determined by a conveyance in Nevada law. It is also not reasonable to say that what is reflected in the Assessor's records which includes a disclaimer for liability of accuracy controls the determination of ownership and no association actually does a title search to determine who the current owner of a unit is.

I do agree that you can't answer a hypothetical question as to whether he can run as there is no current nomination process pending. Thanks for your cooperation in this matter and I look forward to your response.

Sincerely,

Charvez Foger
Ombudsman

cc: Dean Castillo
Hillside Homeowners Association

ATTACHMENT3

RESP 54

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA
Brian P. Nestor, Esq. Admitted in NV, CA

January 2, 2018

Via First Class U.S. and Electronic Mail
State of Nevada Department of Business and Industry Real Estate Division
Common-Interest Communities and Condominium Hotels Program
Attn: Charvez Foger, Ombudsman
3300 West Sahara Avenue, Ste. 350, Las Vegas, NV 89102
Email: cfoger@red.nv.gov

Re: Case No. 2016-3886 and December 8, 2017 Letter – Request for Discussion and Advisement

Dear Mr. Foger:

As you are aware, The Clarkson Law Group, P.C. serves as general counsel to Hillside Homeowners Association ("Association"). We are in receipt of the Nevada Real Estate Division ("Division") correspondence dated October 2, 2017 addressed to Mr. Dean Castillo. *See* Attachment 1. We are also in receipt of your correspondence dated December 8, 2017. *See* Attachment 2. The purpose of this correspondence is to attempt to open a dialogue with the Division and request further advisement regarding its interpretation of Nevada Revised Statutes ("NRS") 116.31034(13) and Advisory Opinion, No. 14-01-116 (the "Advisory Opinion") so that the Association may appropriately conduct its candidate qualification procedures and elections.

I. Analysis of NRS 116.31034 and Attached Correspondence

Based upon a review of Attachment 1 and Attachment 2, it appears that it may be the Division's position that if an individual produces a quit claim deed naming them as the, or a, interest holder in a unit, then "the Division would expect that you would be allowed to run for a position on the board of directors." NRS 116.31034(13), however, provides the following:

> An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board. **In all events where the person serving or offering to serve as an officer of the association or a member of the executive board is not the record owner, the person shall file proof in the records of the association that:**
>
> (a) The person is associated with the corporate owner, trust, partnership, limited-liability company or estate as required by this subsection; and

> (b) Identifies the unit or units owned by the corporate owner, trust, partnership, limited-liability company or estate.

NRS 116.31034(13) (emphasis added).

An interpretation of law is not "a policy of the board", but rather is an attempt to comply with the specific requirements of Nevada law that have been adopted by the Nevada legislature. We do not disagree that Nevada law does not require a conveyance of real property to be recorded in the real property records. We do, however, find that the specific candidacy requirements provided in NRS 116.31034(13) are not synonymous with what is simply required for a conveyance of real property. Further, "[o]wnership is determined by a conveyance in Nevada law", however, candidacy for a community association is determined by the specific requirements provided for within NRS 116.31034(13). As addressed in Section II below, associations do have specific concerns related to individuals who produce unrecorded deeds as a means of attempting to establish their right to serve as a candidate on an association board.

"Record owner" is not a defined term within NRS 116.001 *et seq.* Accordingly, the term "record owner" must be interpreted in a manner consistent with the purposes of NRS 116.001 *et seq.* and more specifically in the manner that it is utilized within NRS 116.31034(13). "Records of the association" are referenced several times within NRS 116.001 *et seq.* *See* NRS 116.31034(13), 116.31038(1), 116.31175(4)(b), 116.3118(2), and 116.41095(7)(d). The term "record owner" is included in only two provisions within NRS 116.001 *et seq.*, NRS 116.31034(13) and NRS 116.31162(1)(a).

NRS 116.31162(1)(a) concerns notices of delinquent assessments and requires that such notices be mailed "to the ***unit's owner*** or his or her successor in interest" and include "a description of the unit against which the lien is imposed and ***the name of the record owner of the unit.***" NRS 116.31162(1)(a) (emphasis added). Accordingly, it is implicit that the legislature accounted for the fact that a "unit's owner" may differ from the "record owner of the unit" because it would not have utilized two (2) different terms of identification when drafting such language if the terms were synonymous. Such is the case because a "unit's owner" may arguably be an entity or person who owns a unit via an unrecorded deed that has been provided to the Association and although an entity or person may be a unit's owner for the sake of the Association's purposes, that entity or person is not a "record owner" because the deed has not been recorded with the county recorder and therefore there is no "record" of their ownership. Such an interpretation is consistent with the Advisory Opinion, which notably, addresses the identification of Unit Owners specifically, but does not address the candidacy restrictions provided in NRS 116.31034(13).

In the scope of NRS 116.31034(13), the terms "record owner" and "records of the association" are utilized and organized in such a manner where it is implicit that "record owner" is not reflective of the owner identified "in the records of the association", but rather is an entity or person who is identified based upon some other form or record. The only commonly understood and reasonable procedure in which to identify a "record owner" through public record would be to do so through the records of a county recorder.

As provided above, a "person" may only reasonably be found to be a "record owner" if a record has been recorded with the appropriate county recorder's office evidencing their ownership interest in a unit. Notably, the non-record owner exceptions to NRS 116.31034(13) may only apply to properties

wherein the record owner is: 1) a corporate owner; 2) a trust; 3) a partnership; 4) a limited-liability company; or 5) an estate. Accordingly, when the record owner of a unit is a natural person, a non-record "owner" may not qualify to run for the board based upon that unit because regardless of what proof they may attempt to file with the association, including a quit claim deed, NRS 116.31034(13) does not provide for such exception.

The legal doctrine of *unius est exclusion alterius*[1] may prohibit the Division's apparent interpretation of NRS 116.31034. The exceptions set forth in NRS 116.31034 are specific and limited as set forth above, and the Nevada legislature intended that only those specifically delineated exceptions be applied in the cases of non-record owners. If the Nevada legislature intended to include an exception for non-record "owners" when the record owner was a natural person, it would have specifically set forth language allowing for such an exception.

II. Allowing a Non-Record Owner Who Does Not Meet an Exception Under NRS 116.31034(13) to Serve as an Association Board Member Exposes the Association to Additional Liability

Pursuant to NRS 116.3103, a director is a fiduciary of an association and may be held responsible by an association and/or its members for breaches of their fiduciary duty. In the event such a breach was proven to be the result of the director's gross negligence or willful/wanton malfeasance then the director would be liable for damages and they would not have a right to indemnification and defense from the Association. *See* NRS 116.31037. In such a situation, such conduct would be excluded by most if not all insurance policies, which would leave an association and its members with nowhere to turn to recover their losses other than the director's own assets. As a practical matter, the director's unit would most often be their most significant and ascertainable asset to which an association may attach a judgment and hope to recover therefrom.

In the event a culpable director was a non-record owner who does not meet an exception under NRS 116.31034(13), then an association may be precluded from attaching a judgment against the subject unit and/or be subject to liability related to slander of title and related claims that may be brought by the record owner and/or lien holders. For instance, an unrecorded quit claim deed could be lost and/or destroyed, or never have been valid in the first place, and the record owner's property interest may be subject to a lien, e.g. a mortgage lien. In such a scenario if the Association attempted to attach a judgment to the unit it would subject itself to claims from both the record owner and the mortgage holder among other lien holders.

The above explanation illustrates why NRS 116.31034(13) was drafted in a manner that did not allow for a non-record owner to qualify for the board when the record owner is a natural person.

///

[1] "The maxim 'expressio unius est exclusion altrius', the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State". *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967).

III. Conclusion

The Association appreciates the Division's time and devotion to this issue and looks forward to working together to obtain a mutual understanding of this issue. Please contact our office should you have any questions or concerns.

Very Truly Yours,

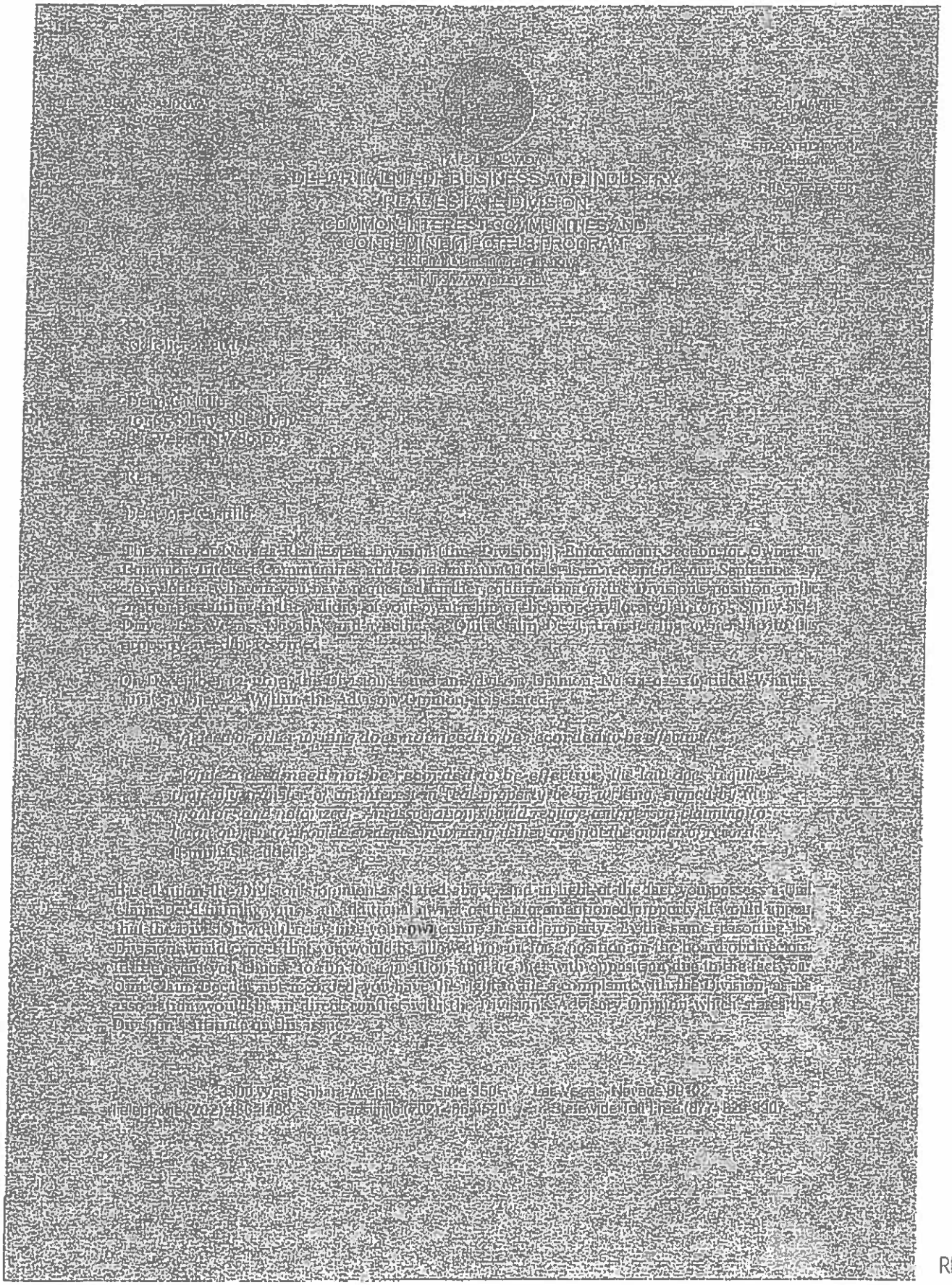
THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

Attachments - 2

ATTACHMENT 1

RESP 59



RESP 60

Nothing in this correspondence implies or promises a certain outcome, should you choose to submit a complaint with the Division. The facts in a specific case could cause a different outcome.

Should you have additional questions or concerns, please feel free to contact me at (702) 486-4480, or by email at darik.ferguson@red.nv.gov.

Sincerely,

Darik Ferguson
Chief, Compliance/Audit Enforcement

Cc: Sharath Chandra
Charvez Foger

ATTACHMENT 2

RESP 62

BRIAN SANDOVAL
Governor

STATE OF NEVADA

C.J. MANTHE
Director

SHARATH CHANDRA
Administrator

CHARVEZ FOGER
Ombudsman

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
CICOmbudsman@red.nv.gov
www.red.nv.gov

December 8, 2017

Mr. Adam Clarkson
The Clarkson Law Group
2300 W. Sahara Ave. #950
Las Vegas, NV 89102

Dear Mr. Clarkson:

The Nevada Real Estate Division (the "Division"), Office of the Ombudsman for Owners in Common Interest Communities and Condominium Hotels received your response regarding Hillside Homeowners Association and the eligibility for Mr. Dean Castillo, to run for a board position next election cycle.

The Division issues advisory opinions to provide guidance to homeowners, board members and managers. The Division will enforce the provisions of NRS 116 in accordance with its advisory opinions and it expects board members to comply with them. The issue of ownership is significant, because owners are afforded important rights under NRS 116. The Division issued an advisory opinion on what a unit owner is based on multiple inquiries over a long period of time. Ownership rights should not be taken away simply based on a policy of the board. Nevada law does not require a conveyance of real property to be recorded in the real property records. Therefore, whether the Association disagrees with Nevada law or not is irrelevant. An unrecorded deed is a conveyance of real property and the grantee is the owner. If an owner chooses not to record his or her deed that is their choice. Unless the association has a specific concern with any particular deed provided to it to show ownership, the association should afford the owner with all owner rights found in NRS 116 and the governing documents.

Mr. Clarkson your analysis of NRS 116.31034(10) saying the word "record" means the recorded deed is not supported. "Record" refers to documents of the association numerous times in NRS 116. It is referring only to the record for which the association has to indicate who the owner is – that is a deed whether recorded in the real property records or not. There is nothing to suggest that NRS 116.31034(10) intends to limit the definition of unit's owner in NRS 116.095 which basically means a person who owns a unit and makes no reference to a recorded deed. Ownership is determined by a conveyance in Nevada law. It is also not reasonable to say that what is reflected in the Assessor's records which includes a disclaimer for liability of accuracy controls the determination of ownership and no association actually does a title search to determine who the current owner of a unit is.

I do agree that you can't answer a hypothetical question as to whether he can run as there is no current nomination process pending. Thanks for your cooperation in this matter and I look forward to your response.

Sincerely,

Charvez Foger
Ombudsman

cc: Dean Castillo
Hillside Homeowners Association

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on January 2, 2018, I caused to be served a true and correct copy of the attached correspondence regarding *Case No. 2016-3886 and December 8, 2017 Letter – Request for Discussion and Advisement (Hillside Homeowners Association)* to the following:

Via First Class U.S. and Electronic Mail
State of Nevada Department of Business and Industry Real Estate Division
Common-Interest Communities and Condominium Hotels Program
Attn: Charvez Foger, Ombudsman
3300 West Sahara Avenue, Ste. 350
Las Vegas, NV 89102
Email: cfoger@red.nv.gov

An employee of THE CLARKSON LAW GROUP, P.C.

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on February 28, 2018 I caused to be served a true and correct copy of the correspondence regarding *Case No. 2016-3886 – Non-Acceptance of Legal Interpretation and Position of the Nevada Real Estate Division in Regards to Non-Record Unit Owner (Hillside Homeowners Association)* to the following:

Via First Class U.S. and Electronic Mail
State of Nevada Department of Business and Industry Real Estate Division
Common-Interest Communities and Condominium Hotels Program
Attn: Charvez Foger, Ombudsman
3300 West Sahara Ave., Ste. 350
Las Vegas, NV 89102
Email: cfoger@red.nv.gov

An employee of THE CLARKSON LAW GROUP, P.C.

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on July 2, 2018 I caused to be served a true and correct copy of the correspondence regarding *Case No. 2018-766; Hillside Homeowners Association* to the following:

Via Certified US. Mail and Hand Delivery
State of Nevada Department of Business and Industry
Real Estate Division: Common-Interest Communities and Condominium Hotels Program
Ombudsman Office
Attn: Christina Pitch, Compliance/Audit Investigator II
3300 W. Sahara Ave., Ste. #350
Las Vegas, NV 89102

An employee of THE CLARKSON LAW GROUP, P.C.

Exhibit 7

RESP 67

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA
Brian P. Nestor, Esq. Admitted in NV, CA

August 23, 2016

Via Certified U.S. Mail
Deaner, Malan, Larsen & Ciulla
Attn: Anthony Ciulla, Esq.
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101

Re: Hillside Homeowners Association – Response to July 18, 2016 Letter

Dear Mr. Ciulla:

As you are aware, The Clarkson Law Group, P.C. serves as general counsel to Hillside Homeowners Association ("Association"). Please be advised that Mr. Gerald L. Tan, Esq. is no longer an attorney with The Clarkson Law Group, P.C. This correspondence shall serve as the Association's response to your July 18, 2016 letter to this office.

Respectfully, we disagree with your assessment of the Board's authority and its fiduciary duties related to the confirmation of an individual's status a unit owner and member of the Association. Nevertheless, if you believe that the quitclaim deed from Ms. Kemp to Mr. Dickson is legitimate, you may wish to advise them that they may simply record that deed with the Clark County Recorder's Office. Thereafter, the Association will recognize Mr. Dickson's status as a unit owner and member of the Association. Pursuing such a course of action would be advisable as the costs related to such recording would no doubt be less than those that would be associated with challenging the Board's determination that Mr. Dickson cannot be recognized as a unit owner or member of the Association at this time.

As to your client's concerns regarding the October 2015 election, Mr. Dickson is correct in that the Association did not allow cumulative voting. That prohibition occurred in error, and the Association will be holding a curative election this October of 2016 wherein the positions that were filled during the October 2015 election will again be up for election along with the positions that were regularly scheduled to be up for election. The Association will allow cumulative voting in the October 2016 election in accordance with Association Bylaw § 4.5.

Very Truly Yours,

THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

CERTIFICATE OF MAILING

I, Sylvia Bishai HEREBY CERTIFY that on the 23rd day of August, 2016, I mailed the original of the attached Response to July 18, 2016 Letter, regarding the Hillside Homeowners Association, by first class, certified U.S. mail to the following:

Recipient(s):

Deaner, Malan, Larsen & Ciulla
Attn: Anthony Ciulla, Esq.
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101

By: Sylvia Bishai
for THE CLARKSON LAW GROUP, P.C.

Exhibit 8

RESP 70

THE CLARKSON LAW GROUP, P.C.

Adam H. Clarkson, Esq. Admitted in NV, CA, FL, SC, UT
James B. Fairbanks, Esq. Admitted in NV, WA
Matthew J. McAlonis, Esq. Admitted in NV, CA
John W. Aylor, Esq. Admitted in NV, CA
Brian P. Nestor, Esq. Admitted in NV, CA

September 6, 2016

Via Certified U.S. Mail
Deaner, Malan, Larsen & Ciulla
Attn: Anthony Ciulla, Esq.
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101

Re: Hillside Homeowners Association – Response to Letter Dated August 30, 2016 from Lisa Kemp and Levi Dickson

Dear Mr. Ciulla:

As you are aware, The Clarkson Law Group, P.C. serves as general counsel to Hillside Homeowners Association ("Association"). This correspondence shall serve as the Association's response to a letter from your clients, Lisa Kemp and Levi Dickson, dated August 30, 2016. *See* attached letter. If you do not serve as counsel to Ms. Kemp and Mr. Dickson in regards to this matter, please immediately forward this letter to them and inform our office that you do not serve as counsel to Ms. Kemp and Mr. Dickson.

As you were informed in correspondence from this office dated August 23, 2016, the Association will be holding a curative election in October of 2016 wherein the positions that were filled during the October 2015 election will again be up for election along with the positions that were regularly scheduled to be up for election. Furthermore, as you were informed, the Association will allow cumulative voting in the October 2016 election in accordance with Association Bylaw § 4.5. Importantly, the August 23, 2016 letter from our office recognized that an error was made during the October 2015 election as cumulative voting was prohibited when it should have been allowed.

Neither the Association's governing documents nor Nevada law provide express procedures that may be followed when such an error occurs in the Association's election process. As your clients should understand, the Association cannot go back in time to rectify the error made with respect to the 2015 election. The curative election is being held to attempt to cure the error made during the 2015 election. Please advise your clients that the current Board of Directors is well aware of this matter and the Association's curative election that will be held in October of 2016. Lastly, as to your client's transparency concerns, the Association's Membership will be properly informed of the terms of the

curative election when the balloting information for the October 2016 election is mailed to all Unit Owners.

In accordance with Nevada Revised Statutes ("NRS") 116.31087(2), if your unit owner client submits a written request that the subject of their complaint regarding the October 2015 election be placed on the agenda of the next regularly scheduled meeting of the executive board, the Association will list the subject of the complaint on the agenda of the next regularly scheduled meeting of the executive board.

Very Truly Yours,

THE CLARKSON LAW GROUP, P.C.

John W. Aylor, Esq.

Attachment - 1

CERTIFICATE OF MAILING

I, Sylvia Bishai HEREBY CERTIFY that on the 6th day of September, 2016, I mailed the original of the attached Response to Letter Dated August 30, 2016 from Lisa Kemp and Levi Dickson, regarding Hillside Homeowners Association, by first class certified U.S. mail to the following:

Recipient(s):

Deaner, Malan, Larsen & Ciulla
Attn: Anthony Ciulla, Esq.
720 South Fourth Street, Suite 300
Las Vegas, Nevada 89101

By: Sylvia Bishai
for THE CLARKSON LAW GROUP, P.C.

ATTACHMENT 1

RESP 74

VIA Certified Return Receipt Mail and US Mail

Mr. Patrick Pernyak
Ideal Community Management Company
5785 Centennial Center Blvd. Suite 210
Las Vegas, NV 89149

August 30, 2016

Dear Patrick,

We provided you a copy of an advisory opinion, dated December 12, 2013, from the Nevada Real Estate Division on defining a "unit owner." Given your many years as a Community Manager and as a Supervising Community Manager you may have felt that the authors of the advisory opinion did not properly understand the statute. You then persuaded the HOA to hire outside counsel, The Clarkson Law Group, with the goal of securing an opinion opposite of that from the Division which could prevent Levi Dickson from seeking a seat as a Director. During your engagement with counsel did you discus election rules or simply how to prevent Levi from running for Director? You forwarded to us a copy of that legal opinion dated August 27, 2015 but it did not outline a discussion pertaining to election rules.

Approximately two weeks later we reviewed Section 2.2.2 (d) of the CC&R's which state "Cumulative voting for the election of Directors shall be permitted in the Bylaws and as permitted by NRS 82.331". We asked you if aggregate (cumulative) voting was allowed and inquired if we could we cast all three votes for the same candidate. You read the same Section 2.2.2 (d) and advised us that combined (cumulative) voting is not allowed and that we were only allowed to cast one vote per candidate.

The ballot and voting instructions were mailed on October 6, 2015. This timeframe provided you with ample opportunity to correct your mistake or the mistake of Ideal Community Management Company. Patrick, you had the duty to exercise ordinary and reasonable care when reviewing the governing documents and applicable regulations prior to advising unit owners about the voting instructions (election rules). In addition to Section 2.2.2 (d) of the CC&R's Article 4.05 of the Bylaws provided that "a member shall have the right to cumulate his or her votes at any election of Directors, and give one (1) candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which the member is entitled, or to distribute the member's votes on the same principle among as many candidates as he or she shall think fit." Instead of including this information in the voting instructions you substituted *your* election rules in the voting instructions prepared by Ideal Community Management. You or Ideal Community Management Company instructed Unit Owners that cumulative voting is not permitted and that if more than one vote was cast per single candidate the ballot shall be deemed invalid.

With *your* election rules being presented as Hillside HOA elections rules in the voting instructions you denied the Unit Owners the right to participate in an honest and fair election run in accordance with *our* governing documents. We were unable to cast all three (3) votes for the candidate of our choice, based upon *your* election rules. Other Unit Owners surely were equally impacted as 40 unit owners mailed in their ballots. Each unit owner should have been entitled to three (3) votes given that three (3) Director seats were up for election creating a total potential vote count of 120 votes. According to the annual meeting minutes only 97 votes were counted. This means 23 votes were not accounted for during the October 2015 election due to the voting process which you oversaw as our State licensed Supervising Community Manager and Presiding Officer. No one can say with any certainty what the true outcome of the October 2015 election would have been if the governing document would have been adhered to.

Article 4.04 of the Bylaws clearly states "nominations of the election to the Board shall be made by the nominating committee." The nominating committee shall consist of a chairman, who shall be a Member of the Board, and two (2) or more Members of the Association. We are unaware of any nominating committee being involved with the October 2015 election. Please provide names and meeting minutes for the nominating committee for the October 2015 election.

You declared the election results with Christopher Harkins, Joseph Stout and Sourav Hazra having been elected for a term of 2 years ending in October 2017. The HOA counsel, Clarkson Law Group, responded on August 23, 2016 to an inquiry from our attorney. We assume you were provided a copy of that letter. A portion of that response letter acknowledged that our HOA did not allow cumulative voting during the October 2015 election. That prohibition occurred in error and our HOA will hold a "curative election" in October 2016. The three Directors elected during *your* 2015 election will be unseated and required to run for a new election even though you previously stated that Mr. Harkins, Mr. Stout and Mr. Hazra were elected for 2 year terms. We are unable to locate a reference in the governing documents which would permit this action to occur. If you would had simply conducted this election in accordance with the Hillside HOA governing documents this unfortunate and disheartening situation could have and should have been avoided. It is our summation that no licensed professional demonstrating reasonable care and judgment and acting in good faith would allow our association to be in this predicament. Association counsel, Clarkson Law Group, appears to recognize the negligence of Ideal Management and indicates that *our* October 2016 election will comply with *our* governing documents and general election laws as opposed to *your* October 2015 election process.

Unit Owners as a whole have not yet been informed of the mistakes and negligence which occurred during *your* October 2015 election process. Further, they have not been informed that all five (5) Directors will need to be elected in a "curative election" in an attempt to correct the errors from *your* October 2015 election process. As a Member of the HOA we are deeply concerned and frustrated with the situation as a whole and *your* lack of transparent communication on this matter. If the Directors elected in *your* October 2015 election were in fact duly/legally elected for two-year terms, why are they now being unseated and required to run for a new election? This time in accordance with the Hillside governing documents and for new two-year terms? How does this happen given *your* experience as a licensed supervising community management professional in the State of Nevada? In addition is Ideal Community Management aware of the extent of *your* mistakes? What is their recommendation for resolution?

Please respond within 12 business days.

Regards,

Lisa Kemp & Levi Dickson

3939 Zodiacal Light St.

CERTIFICATE OF MAILING

I, June Heydarian, certify that I am an employee of the law firm of The Clarkson Law Group, P.C. and that on October 29, 2018 I caused to be served a true and correct copy of the *Respondents' Answer and Opposition to Complaint for Disciplinary Action and Notice of Hearing (Case No. 2018-766)* to the following:

Via Hand Delivery
COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
3300 W. Sahara Avenue, Ste 350
Las Vegas, Nevada 89102
Attn: Legal Administrative Officer

MICHELLE D. BRIGGS, ESQ.
Senior Deputy Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101

An employee of THE CLARKSON LAW GROUP, P.C.