



1 **AACC**  
2 **CLARKSON MCALONIS & O'CONNOR, P.C.**  
3 ADAM H. CLARKSON, ESQ. (10003)  
4 MATTHEW J. MCALONIS, ESQ. (11203)  
5 1210 S. Valley View Blvd., Suite #202  
6 Las Vegas, Nevada 89102  
7 Telephone: (702) 462-5700  
8 Facsimile: (702) 446-6234  
9 Email: AClarkson@cmolawpc.com  
10 MMcAlonis@cmolawpc.com  
11 *Attorneys for Defendant*  
12 *Southern Highlands Community Association*

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

11 MICHAEL KOSOR, JR., an individual;  
12  
13 **Plaintiffs,**  
14 v.  
15 SOUTHERN HIGHLANDS COMMUNITY  
16 ASSOCIATION, a Nevada Non-Profit  
17 Corporation; SOUTHERN HIGHLANDS  
18 DEVELOPMENT CORPORATION, a  
19 Nevada Corporation; CHRIS ARMSTRONG,  
20 an individual; RICK REXIUS, an individual;  
21 MARC LIEBERMAN, an individual.  
22  
23 **Defendants.**

Case No.: A-23-881474-W  
Dept. No.: 31

Consolidated with:  
Case No. A-24-886317-C

**DEFENDANT SOUTHERN HIGHLANDS  
COMMUNITY ASSOCIATION'S  
AMENDED ANSWER TO PLAINTIFF'S  
COMPLAINT AND COUNTER-CLAIM**

21 SOUTHERN HIGHLANDS COMMUNITY  
22 ASSOCIATION, a Nevada Non-Profit  
23 Corporation,  
24 **Counter-Claimant.**  
25 v.  
26 MICHAEL KOSOR, JR., an individual;  
27  
28 **Counter-Defendant**

1 COMES NOW, Defendant, Southern Highlands Community Association (the “Association”),  
2 by and through its counsel of record CLARKSON MCALONIS & O’CONNOR, P.C., hereby  
3 submits the following Answer to the Amended Complaint filed by Plaintiff Michael Kosor, Jr.  
4 (“Plaintiff”).  
5

6 **PARTIES AND JURISDICTION**

7 1. Answering paragraph number 1, the Association is without sufficient knowledge or  
8 information to form a belief as to the thrust of the allegations of said paragraph and, on that basis,  
9 denies each and every allegation set forth therein.

10 2. Answering paragraph 2, the Association is without sufficient knowledge or information to  
11 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
12 every allegation set forth therein.

13 3. Answering paragraph number 3, the Association admits to the allegations set forth therein.

14 4. Answering paragraph number 4, the Association admits to the allegations set forth therein.

15 5. Answering paragraph number 5, the Association denies the allegations set forth therein.

16 6. Answering paragraph number 6, the Association denies the allegations set forth therein.

17 7. Answering paragraph number 7, the Association denies the allegations set forth therein.

18 **GENERAL ALLEGATIONS**

19 8. Answering paragraph 8, Association states the recorded documents speak for themselves. To  
20 the extent a response is necessary the Association admits the allegations set forth therein.

21 9. Answering paragraph 9, the Association states the recorded documents speak for themselves.  
22 To the extent a response is necessary the Association admits the allegations set forth therein.

23 10. Answering paragraph 10, the Association admits the allegations set forth therein.

24 11. Answering paragraph 11, the Association denies the allegations set forth therein.

25 12. Answering paragraph 12, the Association denies the allegations set forth therein.

26 13. Answering paragraph 32, the Association admits election results of the Association’s  
27 corporate election indicated Plaintiff had sufficient votes for election but denies the balance of the  
28 allegations set forth therein.

1 14. Answering paragraph 14, the Association is without sufficient knowledge or information to  
2 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
3 every allegation set forth therein.

4 15. Answering paragraph 15, the Association denies the allegations set forth therein.

5 16. Answering paragraph 16, the Association is without sufficient knowledge or information to  
6 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
7 every allegation set forth therein.

8 17. Answering paragraph 17, the Association denies the allegations set forth therein.

9 18. Answering paragraph 18, the Association denies the allegations set forth therein.

10 19. Answering paragraph 19, the Association denies the allegations set forth therein.

11 20. Answering paragraph 20, the Association denies the allegations set forth therein.

12 21. Answering paragraph 21, the Association denies the allegations set forth therein.

13 22. Answering paragraph 22, the Association denies the allegations set forth therein.

14 23. Answering paragraph 23, the Association denies the allegations set forth therein.

15 24. Answering paragraph 24, the Association denies the allegations set forth therein.

16 25. Answering paragraph 25, the Association admits the allegations set forth therein.

17 26. Answering paragraph 26, the Association is without sufficient knowledge or information to  
18 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
19 every allegation set forth therein.

20 27. Answering paragraph 27, the Association states the Nomination Form speaks for itself.  
21 Association admits the allegations set forth therein.

22 28. Answering paragraph 28, the Association admits the allegations set forth therein.

23 29. Answering paragraph 29, the Association denies the allegations set forth therein.

24 30. Answering paragraph 30, the Association denies the allegations set forth therein.

25 31. Answering paragraph 31, the Association denies the allegations set forth therein.

26 32. Answering paragraph 32, the Association denies the allegations set forth therein.

27 33. Answering paragraph 33, the Association admits the allegations set forth therein  
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1 34. Answering paragraph 34, the Association is without sufficient knowledge or information to  
2 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
3 every allegation set forth therein.

4 35. Answering paragraph 35, the Association is without sufficient knowledge or information to  
5 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
6 every allegation set forth therein.

7 36. Answering paragraph 36, the Association is without sufficient knowledge or information to  
8 form a belief as to the thrust of the allegations of said paragraph and, on that basis, denies each and  
9 every allegation set forth therein.

10 37. Answering paragraph 37, the Association denies the allegations set forth therein.

11 38. Answering paragraph 38, the Association denies the allegations set forth therein.

12 39. Answering paragraph 39, the Association denies the allegations set forth therein.

13 40. Answering paragraph 40, the Association states the Letter speaks for itself. Association  
14 admits the allegations set forth therein.

15 41. Answering paragraph 41, the Association states the Letter speaks for itself. Association denies  
16 the allegations set forth therein.

17 42. Answering paragraph 42, the Association states the Letter speaks for itself. Association denies  
18 the allegations set forth therein.

19 43. Answering paragraph 43, the Association states the Letter speaks for itself. Association denies  
20 the allegations set forth therein.

21 44. Answering paragraph 44, the Association denies the allegations set forth therein.

22 45. Answering paragraph 45, the Association states the Letter speaks for itself. Association denies  
23 the allegations set forth therein.

24 46. Answering paragraph 46, the Association denies the allegations set forth therein.

25 47. Answering paragraph 47, the Association denies the allegations set forth therein.

26 48. Answering paragraph 48, the Association denies the allegations set forth therein.

27 49. Answering paragraph 49, the Association denies the allegations set forth therein.

28 50. Answering paragraph 50, the Association denies the allegations set forth therein.

1 51. Answering paragraph 51, the Association admits the allegations set forth therein.

2 52. Answering paragraph 52, the Association denies the allegations set forth therein.

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**FIRST CLAIM FOR RELIEF**

5 53. Answering paragraph 53, the Association repeats and realleges its answers to paragraphs 1  
6 through 52 above and incorporates the same by reference as though fully set forth herein.

7 54. Answering paragraph 54, the Association denies the allegations set forth therein.

8 55. Answering paragraph 55, the Association denies the allegations set forth therein.

9 56. Answering paragraph 56, the Association denies the allegations set forth therein.

10 57. Answering paragraph 57, the Association denies the allegations set forth therein.

11 58. Answering paragraph 58, the Association denies the allegations set forth therein.

12 59. Answering paragraph 59, the Association denies the allegations set forth therein.

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**AFFIRMATIVE DEFENSES**

15 1. Failure to State a Claim. Plaintiff and every purported cause of action therein, fails to state a  
16 claim for which relief can be granted against Association.

17 2. Statutes of Limitations. The Association alleges that the causes of action set forth in Plaintiff's  
18 Complaint are barred by all applicable Nevada Statutes of Limitations.

19 3. Estoppel. The Association is informed and believes, and thereon alleges, that Plaintiff  
20 engaged in conduct and/or activities with respect to the subject of Plaintiff's Complaint, and by reason  
21 of said conduct and/or activities, Plaintiff is estopped from asserting any claims for damages or  
22 seeking any other relief against Association.

23 4. Waiver. The Association is informed and believes, and thereon alleges, that Plaintiff and other  
24 parties have engaged in conduct and activities sufficient to constitute a waiver of any alleged breach  
25 of duty, negligence, act omission, or any other conduct, if any, as set forth in Plaintiff's Complaint.

26 5. Laches. Plaintiff waited an unreasonable period of time before asserting such claims under  
27 the doctrine of laches.

28

1 6. Unclean Hands. Plaintiff is barred by the equitable doctrine of unclean hands from obtaining  
2 the relief requested.

3 7. Failure to Appropriately Plead Fraud. To the extent Plaintiff intends to rely upon or claim that  
4 Association committed fraud, Plaintiff failed to appropriately plead such a cause of action and failed  
5 to meet the pleading standard necessary to bring such a claim.

6 8. Costs. The Association is informed and believes, and thereon alleges, that Plaintiff's  
7 Complaint was brought without reasonable cause and without a good faith belief that there was a  
8 justifiable controversy under the facts or the law, which warranted the filing of Plaintiff's Complaint  
9 against Association. Plaintiff should therefore be responsible for all of Association's necessary and  
10 reasonable defense costs.

11 9. Conduct was Justified. The conduct of the Association with regard to the matters alleged in  
12 Plaintiff's Complaint was justified, and by reason of the foregoing, Plaintiff is barred from any  
13 recovery against Association herein.

14 10. Lack of Standing. The Association is informed and believes, and thereon alleges, that Plaintiff  
15 has no standing to enforce the statutes and regulations identified in Plaintiff's Complaint.

16 11. Not Entitled to Relief. Plaintiff is not entitled to relief from or against the Association, as  
17 Plaintiff has not sustained any loss, injury, or damages that resulted from any act, omission, or breach  
18 by Association.

19 12. No Breach. The Association did not breach any statutory, common law, or contractual duties  
20 allegedly owed to Plaintiff.

21 13. Compliance with Statutes. Plaintiff's claims are barred because the Association complied  
22 with all applicable statutes and regulations.

23 14. Compliance with Covenants, Conditions and Restrictions ("CC&Rs"). At all times relevant,  
24 the Association has acted reasonably and in good faith with respect to the matters at issue and has  
25 complied with the provisions of the CC&Rs and Nevada law.

26 15. Equitable Relief Barred. Plaintiff is not entitled to equitable relief because he has an adequate  
27 remedy at law.

28 16. Res Judicata. Plaintiff's claims are barred by the doctrines of claim and/or issue preclusion.

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

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

11 WHEREFORE, Defendant prays:

12 1. That Plaintiff take nothing by way of her Complaint and that the Court deny Plaintiff  
13 all of the relief sought therein;

14 2. For costs and attorney fees incurred in the defense of this action; and

15 3. For any such other and further relief as the Court deems just and proper.

16 Dated this 30th day of July, 2024.

17  
18 **CLARKSON MCALONIS & O' CONNOR P.C.**

19 */s/ Adam H. Clarkson*

20 \_\_\_\_\_  
ADAM H. CLARKSON, ESQ.

Nevada Bar No. 10003

21 MATTHEW J. MCALONIS, ESQ.

22 Nevada Bar No. 11203

CLARKSON MCALONIS & O' CONNOR P.C.

23 *Attorneys for Defendant*

24 *Southern Highlands Community Association*

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**COUNTER-CLAIM**

Comes now, counter-claimant Southern Highlands Community Association (“Association”), by and through its attorneys of record, CLARKSON MCALONIS & O’CONNOR, P.C., and files these counter-claims against Counter-defendant Michael Kosor, Jr. (hereinafter “Counter-defendant” or “Kosor”), and states as follows:

**PARTIES**

1. The Association is a Nevada non-profit corporation, organized and existing as a homeowners association pursuant to NRS 116.001 et seq., to administer, manage and operate the Southern Highlands Community Association located in Clark County, Nevada.

2. Upon information and belief, Counter-defendant Kosor is a resident of Clark County, Nevada.

**JURISDICTION AND VENUE**

3. This Court has original jurisdiction, and the parties involved are located in Clark County, Nevada, or have submitted to the jurisdiction of this Court.

4. Venue is proper pursuant to NRS 13.010 because the events and omissions giving rise to this action occurred in Clark County, Nevada.

**GENERAL ALLEGATIONS**

5. Kosor owns a unit within the Association.

6. Kosor was elected to the Association’s Board of Directors (“Board”) in the December 2021 election.

7. Kosor served on the Association’s Board from December 2021 until his position was deemed vacant by operation of law in May of 2023.



1 8. Kosor submitted a candidate statement form to run for the Association's December 2023  
2 election.

3 9. Kosor's 2023 candidate statement form did not include a disclosure of all of Kosor's potential  
4 conflicts of interest if he were elected to serve on the Association's Board.

5 10. Kosor knew or should have known that he had numerous potential conflicts of interest  
6 requiring disclosure at the time he submitted his candidate statement.

7 11. Kosor falsely represented that Kosor did not have any potential conflicts of interest with  
8 serving on the Association's Board when Kosor checked the box indicating no conflicts of interest on  
9 Kosor's 2023 candidate statement form.

10 12. In December of 2023, Kosor was notified in writing of his failure to disclose and/or false  
11 representation regarding potential conflicts of interest in his candidate statement and failed or refused  
12 to correct such representations by disclosing such conflicts of interest.

13 13. At the time Kosor submitted his 2023 candidate statement Kosor had a civil action pending  
14 against the Association.

15 14. Kosor knew or should have known that he stood to gain profit or compensation of any kind if  
16 he were to serve as a director on the Association's Board.

17 15. Kosor falsely represented that Kosor did not stand to gain profit or compensation of any kind  
18 if he were to serve as a director on the Association's Board by checking the box on the candidate  
19 statement form indicating that Kosor did not potentially stand to gain profit or compensation of any  
20 kind if he were to serve as a director on the Association's Board.

21 16. In December of 2023, Kosor was notified in writing of his failure to disclose and/or false  
22 representation regarding the fact that he stood to gain profit or compensation of any kind if he were to  
23

1 serve as a director on the Association's Board and failed or refused to correct such false  
2 representations.

3 17. Kosor knew or should have known that the Association's insurers declined to provide  
4 directors' and officers' insurance coverage that would cover him, or claims made by him due to his  
5 various actions against the Association and claims he submitted for coverage while he was a director.  
6

7 18. Kosor failed to disclose and/or falsely represented that he was not insurable under the  
8 Association's directors' and officers' insurance coverage in his 2023 candidate statement.

9 19. In December of 2023, Kosor was notified in writing of his failure to disclose and/or false  
10 representation regarding the fact that he was not insurable under the Association's directors' and  
11 officers' insurance coverage and failed or refused to correct such representations.  
12

13 20. Kosor's 2023 candidate statement included a reference to a website maintained by or on behalf  
14 of Kosor, which Kosor claimed included additional information about his candidacy.

15 21. Kosor and Association completed mediation pursuant to NRS 38.310 in March of 2024, which  
16 included the issues involving these general allegations and set forth by Association as counter-claims  
17 herein.  
18

19 **FIRST CLAIM FOR RELIEF**  
20 **(Breach of NRS 116.31034(9))**

21 22. The Association repeats and realleges the allegations of the preceding paragraphs of the  
22 counter-claim complaint as though fully set forth herein and incorporates the same herein by reference.

23 23. NRS 116.31034(9) provides:

24 *Each person who is nominated as a candidate for membership on the*  
25 *executive board pursuant to subsection 4 must:*

26 *(a) Make a good faith effort to disclose any financial, business,*  
27 *professional or personal relationship or interest that would result or*  
28 *would appear to a reasonable person to result in a potential conflict of*

1 *interest for the candidate if the candidate were to be elected to serve as a*  
2 *member of the executive board; and*

3 (b) Disclose whether the candidate is a member in good standing. For  
4 the purposes of this paragraph, a candidate shall not be deemed to be in  
5 “good standing” if the candidate has any unpaid and past due assessments  
6 or construction penalties that are required to be paid to the association.

7 → The *candidate must make all disclosures required pursuant to this*  
8 *subsection in writing to the association with his or her candidacy*  
9 *information.* Except as otherwise provided in this subsection, the  
10 association shall distribute the disclosures, on behalf of the candidate, to  
11 each member of the association with the ballot or, in the event ballots are  
12 not prepared and mailed pursuant to subsection 5, in the next regular  
13 mailing of the association. The association is not obligated to distribute any  
14 disclosure pursuant to this subsection if the disclosure contains information  
15 that is believed to be defamatory, libelous or profane.

16 (emphasis added).

17 24. NRS 116.31034(13) provides:

18 If a person is not eligible to be a candidate for or member of the executive board or an  
19 officer of the association pursuant to any provision of this chapter, the association:

20 (a) Must not place his or her name on the ballot; and

21 (b) Must prohibit such a person from serving as a member of the executive board  
22 or an officer of the association.

23 25. An actual controversy has arisen between the Association and Counter-defendant that is ripe  
24 for adjudication concerning the interpretation of NRS 116.31034(9) and the required disclosure of  
25 potential conflicts by a potential candidate seeking election to the executive board of directors for the  
26 Association.

27 26. The Counter-defendant has numerous financial, business, professional or personal  
28 relationships or interests that would appear to a reasonable person to result in a potential conflict of  
interest for the candidate being nominated to serve on the executive board of the Association.

1 27. Despite being given multiple opportunities to disclose his potential conflicts of interest as  
2 required by NRS 116.31034(9), the Counter-defendant has refused to disclose any potential conflicts  
3 of interest and falsely represented he has none.

4 28. Counter-defendant's failure to disclose potential conflicts of interest and/or false  
5 representation of an absence of many potential conflicts of interest constitutes a violation of NRS  
6 116.31034(9) giving rise to a cause of action against Counter-defendant pursuant to NRS 116.4117.  
7

8 29. Counter-defendant's actions constituted a willful and material failure to comply with NRS 116  
9 and Association should be awarded punitive damages against Counter-defendant pursuant to NRS  
10 116.4117(4) to deter such conduct in the future.

11 30. Counter-defendant's failure to disclose potential conflicts of interest and/or false  
12 representation of an absence of many potential conflicts of interest constitutes a violation of NRS  
13 116.31034(9) and thereby causes Counter-defendant to be ineligible to serve as a candidate for or  
14 member of the Association's Board pursuant to NRS 116.31034(13) unless or until such time as  
15 Counter-defendant submits a candidate statement disclosing all potential conflicts of interest.  
16

17 31. Pursuant to NRS 30.010, this Court has the power and authority to declare rights under Nevada  
18 law.  
19

20 32. As a direct result of the Counter-defendant's actions, the Association has been forced to retain  
21 the services of an attorney to prosecute this action; therefore, pursuant to Nevada law and the  
22 Association's Governing Documents, the Association is entitled to recover its attorney's fees and costs  
23 incurred herein.  
24

25 **SECOND CLAIM FOR RELIEF**  
26 **(Breach of NRS 116.31034(10)(a)(2))**

27 33. The Association repeats and realleges the allegations of the preceding paragraphs of the  
28 counter-claim complaint as though fully set forth herein and incorporates the same herein by reference.

1 34. NRS 116.31034(10)(a)(2) provides:

2 Except as otherwise provided in subsections 11 and 12, unless a person is  
3 appointed by the declarant:

4 ***(a) A person may not be a candidate for or member of the executive  
5 board or an officer of the association if:***

6 (1) The person resides in a unit with, is married to, is domestic  
7 partners with, or is related by blood, adoption or marriage within the third  
8 degree of consanguinity or affinity to another person who is also a member  
9 of the executive board or is an officer of the association;

10 ***(2) The person stands to gain any personal profit or  
11 compensation of any kind from a matter before the executive board of the  
12 association; or***

13 (3) The person, the person's spouse or the person's parent or child,  
14 by blood, marriage or adoption, performs the duties of a community  
15 manager for that association.

16 (emphasis added).

17 35. NRS 116.31034(13) provides:

18 If a person is not eligible to be a candidate for or member of the executive board or an  
19 officer of the association pursuant to any provision of this chapter, the association:

20 (a) Must not place his or her name on the ballot; and

21 (b) Must prohibit such a person from serving as a member of the executive board  
22 or an officer of the association.

23 36. An actual controversy has arisen between the Association and Counter-defendant that is ripe  
24 for adjudication concerning the interpretation of NRS 116.31034(10)(a)(2) and whether Counter-  
25 defendant stands to gain any personal profit or compensation of any kind from a matter before the  
26 executive board of the Association.

27 37. The Counter-defendant stands to gain profit or compensation of any kind from matters  
28 currently before the executive board, including, but not limited to, procuring profit or compensation

1 in the form of attorney's fees or other favorable resolution of the outstanding litigation and appeal(s)  
2 currently pending against the Association through influencing and/or determining the outcome of such  
3 litigation as a member of the Association's Board of Directors.

4 38. Despite being given the opportunities to correct his disclosure of this issue in Counter-  
5 defendant's 2023 candidate statement and otherwise resolve Counter-defendants' potential to gain  
6 profit or compensation of any kind from matters currently before the executive board, the Counter-  
7 defendant has refused to correct Counter-defendant's candidate statement disclosure, falsely  
8 represented that he does not stand to gain profit or compensation of any kind, and either failed or  
9 refused to resolve such issues.  
10

11 39. Counter-defendant's attempt to serve on the Association's Board despite standing to gain profit  
12 or compensation of any kind constitutes a violation of NRS 116.31034(10)(a)(2) giving rise to a cause  
13 of action against Counter-defendant pursuant to NRS 116.4117.  
14

15 40. Counter-defendant's actions constituted a willful and material failure to comply with NRS 116  
16 and Association should be awarded punitive damages against Counter-defendant pursuant to NRS  
17 116.4117(4) to deter such conduct in the future.  
18

19 41. Counter-defendant's standing to gain profit or compensation of any kind from a matter before  
20 the Association's Board and nevertheless attempting to serve on the Association's Board constitutes  
21 a violation of NRS 116.31034(10)(a)(2) and thereby causes Counter-defendant to be ineligible to serve  
22 as a candidate for or member of the Association's Board pursuant to NRS 116.31034(13) unless or  
23 until such time as Counter-defendant's standing to gain profit or compensation of any kind from a  
24 matter before the Association's Board has been resolved and/or eliminated.  
25

26 42. Pursuant to NRS 30.010, this Court has the power and authority to declare rights under Nevada  
27 law.  
28

1 43. As a direct result of the Counter-defendant's actions, the Association has been forced to retain  
2 the services of an attorney to prosecute this action; therefore, pursuant to Nevada law and the  
3 Association's Governing Documents, the Association is entitled to recover its attorney's fees and costs  
4 incurred herein.

5  
6 **THIRD CLAIM FOR RELIEF**  
**(Breach of NRS 116.31034(13) by Being Uninsurable)**

7 44. The Association repeats and realleges the allegations of the preceding paragraphs of the  
8 counter-claim complaint as though fully set forth herein and incorporates the same herein by reference.

9  
10 45. NRS 116.31034(13) provides:

11 ***If a person is not eligible to be a candidate for or member of the executive board or***  
12 ***an officer of the association pursuant to any provision of this chapter, the association:***

13 (a) Must not place his or her name on the ballot; and

14 (b) Must prohibit such a person from serving as a member of the executive board  
15 or an officer of the association.

16 (emphasis added).

17  
18 46. NRS 116.3113(1)(d) provides:

19 1. Commencing not later than the time of the first conveyance of a unit to a person  
20 other than a declarant, ***the association shall maintain, to the extent reasonably***  
21 ***available and subject to reasonable deductibles***, all of the following:

22 . . .

23  
24 (d) ***Directors and officers insurance that is a nonprofit organization errors and***  
25 ***omissions policy in a minimum aggregate amount of not less than \$1,000,000***  
26 ***naming the association as the owner and the named insured. The coverage must***  
27 ***extend to the members of the executive board*** and the officers, employees, agents,  
28

1 directors and volunteers of the association and to the community manager of the  
2 association and any employees thereof while acting as agents as insured persons under  
3 the policy terms. Coverage must be subject to the terms listed in the declaration.

4 (emphasis added)

5 47. An actual controversy has arisen between the Association and Counter-defendant that is ripe  
6 for adjudication concerning the interpretation of NRS 116.3113(1)(d) as it relates to NRS  
7 116.31034(13) and whether Counter-defendant may serve on the Association's Board despite the  
8 Association's insurers declining to provide coverage for Counter-defendant under the Association's  
9 directors and officers insurance as required by NRS 116.3113(1)(d).

10 48. The Association is unable to provide insurance for Counter-defendant due to Counter-  
11 defendant's own actions in suing the Association and submitting claims to the Association's directors  
12 and officers insurance policy.

13 49. As a matter of equity, the Association and its membership should not be required to provide  
14 indemnification and defense pursuant to NRS 116.31037 to a director due to the director's having  
15 become uninsurable and NRS 116.31034(13) should be read to relieve the Association and its  
16 membership of any such obligation by disqualifying such a director from service on the Association's  
17 Board.

18 50. Counter-defendant's attempt to serve on the Association's Board despite the Association being  
19 reasonably unable to obtain the required directors and officers insurance for Counter-defendant to  
20 serve on the Board under NRS 116.3113(1)(d) constitutes a violation of NRS 116.31034(13) giving  
21 rise to a cause of action against Counter-defendant pursuant to NRS 116.4117.  
22  
23  
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1 51. Counter-defendant's actions constituted a willful and material failure to comply with NRS 116  
2 and Association should be awarded punitive damages against Counter-defendant pursuant to NRS  
3 116.4117(4) to deter such conduct in the future.

4 52. Counter-defendant's not being reasonably insurable as required by NRS 116.3113(1)(d) and  
5 nevertheless attempting to serve on the Association's Board constitutes a violation of NRS  
6 116.3113(1)(d) and thereby causes Counter-defendant to be ineligible to serve as a candidate for or  
7 member of the Association's Board pursuant to NRS 116.31034(13) unless or until such time as  
8 Counter-defendant becomes reasonably insurable under an directors and officers insurance policy.  
9

10 53. In the alternative, if Counter-defendant's not being reasonably insurable as required by NRS  
11 116.3113(1)(d) is determined not to cause Counter-defendant to be ineligible to serve as a candidate  
12 for or member of the Association's Board pursuant to NRS 116.31034(13), then the Association  
13 should be granted a declaration waiving NRS 116.31037's requirement to indemnify and defend  
14 Counter-defendant during his service as a director of the Association's Board unless or until such time  
15 as Counter-defendant becomes reasonably insurable under an directors and officers insurance policy.  
16

17 54. Pursuant to NRS 30.010, this Court has the power and authority to declare rights under Nevada  
18 law.  
19

20 55. As a direct result of the Counter-defendant's actions, the Association has been forced to retain  
21 the services of an attorney to prosecute this action; therefore, pursuant to Nevada law and the  
22 Association's Governing Documents, the Association is entitled to recover its attorney's fees and costs  
23 incurred herein.  
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**FOURTH CLAIM FOR RELIEF**  
**(Declaratory Relief)**

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3 56. The Association repeats and realleges the allegations of the preceding paragraphs of the  
4 counter-claim complaint as though fully set forth herein and incorporates the same herein by reference.

5 57. Pursuant to NRS 30.010, this Court has the power and authority to declare rights under Nevada  
6 law.

7 58. NRS 116.31034(13) states:

8 *If a person is not eligible to be a candidate for or member of the executive board* or an  
9 officer of the association pursuant to any provision of this chapter, *the association:*

10 (a) *Must* not place his or her name on the ballot; and

11 (b) *Must* prohibit such a person from serving as a member of the executive board  
12 or an officer of the association.

13 (emphasis added).

14 59. As demonstrated by the allegations set forth herein, an actual controversy exists between the  
15 parties concerning the legal application of NRS 116.31034(9), NRS 116.31034(10), NRS  
16 116.31034(13), and NRS 116.3113(1)(d) and whether or not the applicability of these provisions  
17 precludes Counter-defendant from being placed on the ballot for the election to the executive board  
18 of the Association.  
19

20 60. Association seeks a declaration that Counter-defendant is prohibited from running as a  
21 candidate for or serving upon the executive board of the Association unless or until such time as the  
22 issues raised herein that preclude such candidacy and service have been fully and finally resolved.  
23

24 61. As a direct result of the Counter-defendant's actions, the Association has been forced to retain  
25 the services of an attorney to prosecute this action; therefore, pursuant to Nevada law and the  
26 Association's Governing Documents, the Association is entitled to recover its attorney's fees and costs  
27 incurred herein.  
28

1 WHEREFORE, the Association requests that judgment be entered in its favor against Counter-  
2 defendant on the above Claims for Relief as follows:

3  
4 1. For an order declaring that the Association must not place Counter-defendant's name on the  
5 ballot for candidates for the Association's board of directors and must prohibit Counter-defendant  
6 from serving on the Association's board of directors until the following are satisfied:

- 7 a. Counter-defendant discloses all potential conflicts of interest in a candidate statement;  
8 b. Counter-defendant no longer stands to gain profit or compensation of any kind from a  
9 matter before the Association's Board;  
10 c. Counter-defendant is reasonably insurable under a policy of directors and officers  
11 insurance for the Association; and  
12 d. Counter-defendant has paid all fees, costs, and damages to the Association arising from  
13 the present matter.  
14

15  
16 2. For punitive damages against Counter-defendant for Counter-defendant's willful and material  
17 failure to comply with NRS 116;

18 3. For costs and attorneys' fees and associated with bringing this action; and

19 4. For such other and additional relief as the Court may deem just, equitable and proper.  
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21 Dated this 30th day of July, 2024.

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**CLARKSON MCALONIS & O' CONNOR P.C.**

*/s/ Adam H. Clarkson*

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ADAM H. CLARKSON, ESQ.

Nevada Bar No. 10003

MATTHEW J. MCALONIS, ESQ.

Nevada Bar No. 11203

CLARKSON MCALONIS & O' CONNOR P.C.

*Attorneys for Defendant and Counter-claimant*

*Southern Highlands Community Association*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 30th of July 2024, I served a true and correct copy of: **SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION’S AMENDED ANSWER TO PLAINTIFF’S COMPLAINT AND COUNTER-CLAIM** by serving the following parties via Odyssey File &

Serve:

ROBERT E. WERBICKY, ESQ.  
ARIEL C. JOHNSON, ESQ.  
PIERS TUELLER, ESQ.  
**HUTCHISON & STEFEN, PLLC**  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Telephone: (702) 385-2500  
Facsimile: (702) 385-2086  
Email: [ddoto@hutchlegal.com](mailto:ddoto@hutchlegal.com)  
[rwerbicky@hutchlegal.com](mailto:rwerbicky@hutchlegal.com)  
[ptueller@hutchlegal.com](mailto:ptueller@hutchlegal.com)  
*Attorneys for Plaintiff Michael Kosor, Jr.*

NATHANAEL RULIS, ESQ.  
**KEMP JONES**  
3800 Howard Hughes Pkwy., 17th Floor  
Las Vegas, NV 89169  
Telephone: (702) 385-6000  
E-mail: [n.rulis@kempjones.com](mailto:n.rulis@kempjones.com)  
*Attorney for Defendant Southern Highlands Development Corporation*

TAMARA BEATTY PETERSON, ESQ.  
**PETERSON BAKER, PLLC**  
701 S. 7th Street  
Las Vegas, NV 89101  
Telephone: (702) 786-1001  
Email: [tpeterson@petersonbaker.com](mailto:tpeterson@petersonbaker.com)  
*Attorney for Defendants Chris Armstrong  
Mark Lieberman and Rick Rexius*

/s/ Ashley Livingston  
Ashley Livingston  
An Employee of Clarkson McAlonis & O’Connor, P.C.