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WHEN RECORDED, RETURN TO:

Gayle A. Kern, Esq.
Kern & Associates, Ltd.
5421 Kietzke Lane, Suite 200
Reno, NV 89511

JUDGMENT ON AN ARBITRATION AWARD

■ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

☐ I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law:____________________ (state specific law)

Gayle A. Kern (signature) — Attorney
Signature — Title

Gayle A. Kern, Esq.

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030, Section 4.

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Attorneys for Snowdown Homeowners Association, Inc.

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

SNOWDOWN HOMEOWNERS ASSOCIATION, a Nevada corporation,

Movant,

vs.

ERIC WINSTON,

Respondent.

CASE NO.: 11-CV-0362

DEPT NO.: I

NRED CONTROL NO.: 11-45

JUDGMENT ON AN ARBITRATION AWARD

Upon reading the Motion for Confirmation and Judgment on Arbitration Award, and no Opposition having been filed, and the Court being fully informed in the premises;

NOW THEREFORE:

IT IS ORDERED AND ADJUDGED that the Arbitration Decision and Award attached hereto as Exhibit "1," and the Final Arbitration Decision and Award attached hereto as Exhibit "2" are hereby confirmed, incorporated and adopted in their entirety.

IT IS THEREFORE ORDERED that Judgment is entered in favor of Snowdown Homeowners Association, and against Eric Winston in the amount of Seven Thousand Five

KERN & ASSOCIATES, LTD.
5421 KIETZKE LANE, SUITE 200
RENO, NEVADA 89511
TELEPHONE: (775) 324-5930

Hundred Dollars ($7,500.00), plus $399.12 for costs as stated in the Memorandum of Costs for a total of $7,899.12, plus interest at the judgment rate from the date of this Judgment until paid in full.

DATED this 31 day of Jan, 2012.

DISTRICT COURT JUDGE

Submitted by:

KERN & ASSOCIATES, LTD.

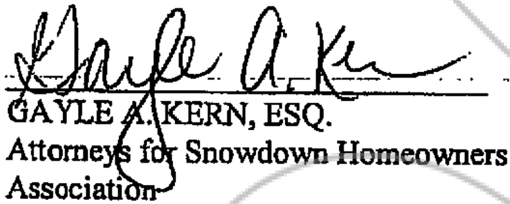

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EXHIBIT "1"

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EXHIBIT "1"

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STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

Eric Winston,
Claimant,

vs.

Snowdown Homeowners
Association, Corporation.,

Respondent.

Case No. NRED #11-45

ARBITRATION DECISION AND AWARD

This arbitration involves allegations by Snowdown condominium unit owner Eric Winston ("Mr. Winston" or "Claimant") that Snowdown Homeowners Association Corporation("Snowdown", "Snowdown HOA", "Association", or "Respondent") has (1) historically allowed such extensive encroachment into common areas (or "common elements") by other unit owners that there has been a waiver or abandonment of any and all rules prohibiting such encroachment by unit owners (thus permitting a similar expansion desired by the Claimant without the consent of the Association or other owners) and (2) that as a result of the foregoing waiver or abandonment of its rules, the existing Association assessment rules should be ordered changed from the original 1/26th sharing of Association assessments to a method based on the amount of square footage unit owners actually occupy to the exclusion of other unit owners. Based upon the nature of the allegations, jurisdiction exists over both the claims and the parties to this proceeding. *See* NRS 38.310(1).

This matter was heard on June 17, 2011 at the law offices of

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Kern & Associates. Ltd., 5421 Kietzke Lane, Suite 200, Reno, Nevada 89511. Witnesses testifying at the arbitration included Mr. Winston, represented by Jeffery K. Rahbeck, Esq. and Association board member and Treasurer John Rabura, the Association being represented by Gayle A. Kern, Esq. As a part of the arbitration process the parties also submitted a substantial number of exhibits, including the governing documents of the Association, a number of photographs of various properties within the development, various other exhibits and a number of legal cases for the Arbitrator's review.

BACKGROUND

By way of brief background, Mr. Winston testified that he bought his condominium unit (#10) in August, 2003, that he has never lived in the unit, but offers it to friends and relatives and that he occasionally utilizes it as a rental. He also testified to having been a past Association board member for two or three years. Nonetheless, on cross examination, he testified that he was not familiar with the provisions of NRS Chapter 116.

Mr. Rabura testified that he bought his unit in July, 2008 and that he has been a Board member since 2009. It should be noted that Mr. Rabura's lack of knowledge regarding the history of the Association and the issues raised by Mr. Winston severely limited his value as a witness. This, coupled with Mr. Winston's inability (in some cases) to clearly identify the nature of the alleged common area encroachments, lead directly to additional Arbitrator time being required to glean information from the many exhibits.

SNOWDOWN DEVELOPMENT

The Snowdown condominium complex was constructed in the early

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1970's and lies completely within Tahoe Village Unit No. 1. The original 1974 Snowdown declaration (although apparently missing several attachments) and subsequent declaration amendments in 1975 and 2007 (which do have attached the "Amended Map of Snowdown", dated October 29, 1974), all indicate that the Snowdown development's "footprint" is primarily limited to the actual coverage of Snowdown buildings "A" and "B" (Units 1-26). Exhibit "B" to the 2007 Second Amended Snowdown Declaration (page 2), appears to designate almost all areas outside the Snowdown buildings' footprint as being "COMMON AREA OF TAHOE VILLAGE UNIT NO. 1".[1] This issue has relevance to the current dispute as among the allegations made by Mr. Winston is a claim that the Snowdown Association has on more than one occasion allowed owners to expand their units outside the Snowdown building envelope and into Association common area. While the evidence seems to severely limit this issue, there nonetheless is a potential issue to be examined. More about this claim later.

The Second Amended Declaration of Snowdown, recorded March 1, 2007 (the "Declaration"), by its terms was intended to and did ". . . *replace and supercede all previously recorded Declarations in their entirety.*" For this reason, its contents, in large part, dictate the result in this case.

Not part of the testimony in this case because of the copy legibility problems noted earlier, but of significant importance to its outcome, is the definition and designation of Snowdown units and common area contained in the recorded governing documents submitted

[1] At the arbitration, the parties had great difficulty producing a legible copy of Exhibit "B" to the 2007 Declaration. Taking a copy provided at the arbitration by Mr. Winston's counsel, the Arbitrator was later able to enlarge the print and with the aid of a magnifying glass read the contents of the document.

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1 by the parties. Exhibit "B", attached and incorporated into the
2 Declaration has the following language:

3 *The boundary lines of each unit are interior unfinished surfaces exclusive of paint, paper, wax, tile, enamel, or other finishes of its perimeter walls, bearing walls, floors, ceilings, windows, and window frames, doors and door frames, and trim, and includes both the portions of the subdivided building so described and the air space so encompassed.*

8 *The remainder of the project is Common Area which means all land and all portions of Snowdown not located within any unit and also includes but not by way of limitation all stairwells, corridors, shafts, janitor rooms, storage rooms, central heating, refrigeration and other equipment, roofs, floors, foundations, pipes, ducts, flues, chutes, conduits, wires and other utilities to the outlets, bearing walls, columns, and girders, to the unfinished surfaces thereof, regardless of location.*

14 *Each parcel designated with a "B" and a number is a Balcony Area, the use of which is reserved to the owner of the corresponding numbered unit.*

16 *The owner of each unit shall have an undivided interest in the Common Area.*

17 *All building walls of units are at right angles.*

18 *All interior dimensions shown and elevations noted on Sheets 2, 3, 4 and 5 are measured to the unfinished surfaces of walls, floors and ceilings.*

20

21 **SNOWDOWN UNITS**

22 Very significantly, the enhanced copy of Exhibit "B" to the
23 Declaration revealed that a number of the lower level "units" in the
24 Snowdown Association are, in fact, larger than was known during the
25 arbitration hearing. Exhibit "B", pages 3, 4 and 5, reveal that
26 Unit No. 1, Units, 2, 3 and 4, Unit 9, Unit 13, Units 14, 15, 16,
27 and 17, and Unit 18, each have, as a part of the individually owned
28 "unit" as defined in Exhibit "B" and in the Declaration, an

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1 additional area designated in the recorded documents as a "bunk
2 room" (sea level based elevations set forth in Exhibit "B" for each
3 space confirm the "bunk rooms" are spaces located *under* the primary
4 living space of each of the above-identified units). Based on the
5 definition of a "unit" and the other descriptions of the additional
6 spaces set forth in Exhibit "B", it appears the boundaries of these
7 additional spaces are established by the same ". . . *unfinished*
8 *interior surfaces of the walls, floors and ceilings. . .*" definition
9 utilized for the primary living spaces. Each of the "bunk rooms"
10 under the lower level units, based upon the various "Unit
11 Elevations" set forth on Exhibit "B", appear to be located directly
12 below each corresponding unit and are approximately eight (8) feet
13 in height. More precise information is difficult to glean from the
14 documents available. A more accurate definition of the true size of
15 these additional spaces would obviously have to take into
16 consideration the definition of common area and the boundaries of a
17 unit contained in various provisions of the Declaration and Exhibit
18 "B". For example, while the Declaration defines a "unit" as the
19 elements of a condominium which are not owned in common with owners
20 of other units and that the ". . . *boundaries of the twenty-six (26)*
21 *Units are shown and depicted in the Condominium Map. . .*", it also
22 defines "Common Area and Common Elements" with some particularity.
23 *See* Declaration, Article I (Definitions 4 and 14 and Exhibit "B".
24 What appears to be clear, is that these "bunk room" areas, as
25 defined by the governing documents, are in fact a part of each
26 respective owner's "unit" and are neither common area nor limited
27
28

common area[2]. The "bunk rooms" are therefore owned by the individual unit owners whose condominiums lie above those designated spaces.

Of the lower level units, only Unit 10(Mr. Winston's unit) and Unit 19 appear *not* to have the additional "bunk room" spaces. The drawings also indicate that the development includes a common area "laundry room" occupying a part of the space under each of these two units, and that circumstance may well explain the lack of designated ownership of these spaces in Exhibit "B". It appears the spaces under Unit 10 and Unit 19 are indeed "common area" as defined in the governing documents.

While the Association retains the right to control unit owner improvements (*See* Declaration Article I, Definition 13, Article V, Section 2 (including but not limited to sub-paragraph (aa), and NRS 116.3102), it does not have the power to allow encroachments into individual units by other unit owners. On the other hand, each such owner is responsible to maintain such areas. Declaration, Article VII, Section 2. In addition, as noted in an earlier footnote, the Association governing documents also identify every unit as having a balcony. This too has an impact on the resolution of this case and will be discussed below.

WINSTON ENCROACHMENT CLAIMS

Encroachment Into Lower Areas

As noted earlier, Mr. Winston's claims arise from his multi-year (since 2004) failure to obtain permission from the Association

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[2] Limited Common Area (or Exclusive Common Area) is defined by the Declaration (Article I, definition 8) and Exhibit "B" as including decks and balconies. No other common areas or limited common areas are identified in the governing documents of the Association.

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(and his fellow owners) to exclusively occupy or to purchase the space beneath his unit that is not otherwise already taken up by the presence of one of the development's common area laundry rooms. As discussed above, the space he wishes to purchase and occupy to the exclusion of other unit owners is indeed common area. Under Nevada law and the current rules of the Association, Snowdown may indeed sell common area, however, its rules require an affirmative vote of at least 50% of the unit owners (excluding Board members) before the Board may transfer common area.[3] Most recently, in December, 2007, the Association, responding to Mr. Winston's repeated requests to gain control of the space below his unit, and in keeping with its rules regarding the sale or, alternatively approval of a unit owner's exclusive occupation and use of common area, approved the sale of the unoccupied space under Unit 10 to Mr. Winston. At the same meeting, the Board also approved the sale of a similarly situated space to the owners of Unit 17 (the Matsons). There was testimony at the arbitration and the documents reflect that, as early as March, 2008, the Matsons informed the Association that they believed that they already owned the additional space in question and there was therefore no need for them to purchase the space, nor to seek approval of the membership for such a sale or occupation. Beyond that, the Matsons indicated they were going to move forward with their plans to improve and occupy the space under Unit 17. Nonetheless, in keeping with its new rules, in March, 2008, the

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[3] NRS 116.3112 requires the affirmative vote of a "... *majority of votes allocated to units not owned by a declarant, or a larger percentage if the declaration specifies...*" and the statutory rule, which conflicts with the Association rule which requires only 50% (a tie) to approve a transfer, would, by law, control how such a vote is taken. *See* NRS 116.1206. It should be noted that there are also additional specific statutory requirements for the allocation of limited common elements.. *See* NRS 116.2108.

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1 Association mailed out ballots soliciting approval (or not) of Mr.
2 Winston and the Matsons' offer to purchase the unoccupied space
3 beneath their existing units. Each of the ballot measures failed to
4 be approved by the membership with the vote recorded, at a special
5 meeting of the membership held in April, 2008, as to Mr. Winston: "2
6 Yes; 6 No" and the Matsons: "4 Yes; 4 No". As a result, the sales
7 did not occur. There was testimony at the arbitration by Mr.
8 Winston, not disputed by the Association, that the Matsons
9 nonetheless improved and today occupy the space beneath Unit 17.
10 Mr. Winston did not move forward to occupy the space beneath his
11 unit, but did file this action the Nevada Real Estate Division.
12 There is insufficient evidence for any final conclusions, however,
13 Unit 17 is one of the units which the governing documents indicate
14 includes a "bunk room" beneath the remainder of the unit. From the
15 evidence, it appears the Matsons were and are correct in their claim
16 to already own the space they have already improved and occupied.
17 Their situation is unfortunately of little help in resolving the
18 claims of Mr. Winston, because, as pointed out above, his unit
19 description does not include the same additional "bunk room" space.
20 In reviewing the testimony and exhibits submitted by the
21 parties, Mr. Winston claimed at the hearing that there have been
22 numerous unauthorized encroachments into the lower level unoccupied
23 common area spaces, or into the common area outside the Association
24 buildings by several units owners. Specifically, he testified that
25 such invasions of the common area have occurred relative to units 1,
26
27
28

3, 4, 13, 15, 16, 17, 19[4], 20, and 26. In addition, he testified that he believes it is "possible" that similar incursions exist relative to units 2, 9, 14, and 18.

Based on the available evidence, it is quite impossible to tell which incursions into the spaces below the units identified by Mr. Winston might well represent completely proper use of individual unit space and which might be something different. Of the complained of units, units 1, 2, 3, 4, 9, 13, 14, 15, 16, 17, and 18 all have "bunk room" rights. Declaration Exhibit "B".

Encroachment By Balconies and Decks

Mr. Winston testified that he believes units 1, 3, 13, 19, 20 and 26 each exhibit balcony construction or improvement issues involving unauthorized extensions into the Snowdown common area. The Association argued at the arbitration that, if there is any incursion into common area by these units, the common area in question is controlled by a third party, Tahoe Village Unit No. 1 ("Tahoe Villas") and no violation exists regarding Snowdown common area.

Careful examination of Exhibit "B" reveals a Snowdown lot footprint of 50 feet by 140 feet. Each unit in the development has by grant in the Declaration(including Exhibit "B") either a deck or a balcony. A careful examination of Exhibit "B" reveals that (contrary to the argument made by the Association at the arbitration) the balcony and deck rights of units 2, 6, 9, 11, 14, 18, 21 and 25 extend *only* into the 50 foot by 140 foot Snowdown

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[4] Unit 19 is owned by Mr. Raburn who testified that he did replace his deck but it remained the same size as had existed before the remodel project.

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1 common area or building footprint and do *not* extend into the Tahoe
2 Villas common area. Because Mr. Winston's allegations, however,
3 involve only units 1, 3, 13, 19, 20 and 26, all of which extend *only*
4 into Tahoe Villas Unit No. 1 common area, it appears the Association
5 is nonetheless correct in its argument that whatever the situations
6 with the balconies and decks of the six (6) units complained of, it
7 is Tahoe Villas that would be the primary controlling Association.

8 As an addition note, if there had been new and unauthorized
9 construction of balconies or other improvement attached to the
10 Snowdown buildings, at the point(s) where such improvements extended
11 into Snowdown common area, including any point where their
12 supporting structure(s) penetrated the exterior walls of the
13 Snowdown building, there would be a common area incursion issue.
14 From the documents and evidence, however, there is insufficient
15 evidence that such has occurred or that, if such incursions do
16 exist, that they were not approved at some point in time by the
17 Association.

18 This is not to say that the Association does not have the duty
19 and responsibility to monitor, guide and perhaps even establish
20 written rules and an architectural committee to protect the
21 Association's interests as improvements occur. This would be
22 particularly critical in terms of protecting the integrity of the
23 development's foundation and other structural components if owners
24 undertake (or have undertaken) improvements in to the space under
25 their existing living quarters. There was testimony by Mr. Winston
26 regarding various owners "excavating" as they made improvements to
27 the lower level spaces in question. Without very careful oversight
28 by the Association, such activities could clearly threaten the

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1 foundation and other structural systems of the development. These
2 are matters that should always be investigated and closely monitored
3 by the Association. There is some evidence in the record that the
4 Association has historically exercised such supervision.
5 Although Mr. Winston pointed out a number of situations where
6 apparently there have been improvements to lower level areas similar
7 to the space which underlies his unit, given the apparently
8 different rights of every unit owner complained of, there is
9 insufficient evidence to support a conclusion that there have been
10 numerous unauthorized intrusions by owners into Association common
11 area. Likewise, although there may well have been balconies and
12 decks improved or replaced, it appears that, as to each of the units
13 complained of by Mr. Winston, each extends *only* into Tahoe Villas
14 common area, or still occupy their original footprint within the
15 Snowdown common area. There is, of course, the possibility that one
16 or more violations of the sort complained of by Mr. Winston do
17 exist. A relatively brief arbitration hearing could easily fail to
18 reveal every such circumstance. For the reasons which follow,
19 however, the existence of one or even several violations would not
20 entitle the Claimant to the relief he seeks in this proceeding.
21 <u>ABANDONMENT AND WAIVER</u>
22 The nexus of Mr. Winston's claims is that over the years there
23 have been so many unauthorized encroachments into the Snowdown
24 common area, either by occupation of the lower level spaces or
25 balcony or deck expansions, that any rule or prohibition against his
26 purchasing and/or exclusively occupying the common area which lies
27 underneath his unit should be deemed waived or abandoned. Nevada
28 has specific case law applicable to this situation.

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Initially it should be noted that the Second Amended Declaration for Snowdown contains express non-waiver language. The Declaration states in relevant part:

> *"No waiver or any breach of any of the covenants of the Declaration shall constitute a waiver of any succeeding or preceding breach of the same, or any other covenant or condition herein contained."*

Declaration, Article VIII, Section (8). Such provisions are very common in association governing documents and are intended to prevent a mistaken or lack of assertion of a valuable association right from resulting in a permanent loss or waiver of the right.

In 1979, the Supreme Court of Nevada spoke to the related issues of changed conditions and the abandonment of restrictive covenants. In Gladstone v. Gregory, a homeowner attempted to add a second story to his home in defiance of a restrictive covenant allowing only single story homes. In arguing for his project, the homeowner argued that the restrictions were old, that home values would be helped by allowing such construction, that the surrounding area allowed two story homes and that other homeowners had also violated the restrictions in several different respects over the years. The trial court denied injunctive relief to a complaining neighbor.

The Nevada Supreme Court reversed the trial court, stating that with regard to the issue of changed conditions:

> *"[c]hanged conditions sufficient to justify nonenforcement of an otherwise valid restrictive covenant must be so fundamental as to thwart the original purpose of the restriction."* (citations omitted).

Gladstone, 95 Nev. 474, 596 P.2d 491, 494 (1979).

The Court also addressed the issue of abandonment stating:

> *"As with changed conditions outside the restricted area,*

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> *in order for community violations to constitute an abandonment of a restrictive covenant they must be so general and substantial as to frustrate the original purpose.* (Citations omitted.)

Id.

In Tompkins v. Buttrum Constr. Of Nevada, the Nevada Supreme Court added to the standard which must be met to find "abandonment" of a restrictive covenant, establishing the rule in Nevada that such must be established by ". . . *clear and unequivocal acts of a decisive nature.*" (Citation omitted). 99 Nev. 142, 659 P.2d 865, 867 (1983).

There has been no such showing of clear and unequivocal acts of a decisive nature in this case indicating either an abandonment of Association rules or control over its common area. At most, the Association, has acquiesced to the occupation and improvement of certain spaces under existing living area, many of which it appears are actually owned by the occupying unit owners. In addition, the Association may have also allowed certain balcony and deck reconstruction improvements without proper oversight and control. This is actually not clear based on the evidence presented.

Based on the evidence, Mr. Winston has not and cannot establish an "abandonment" or "waiver" of the Association's rules against authorized encroachment into its common area or of its rules regarding the occupation or sale of common area. This is made even more clear by NRS 116.3112, which, even if the Association had no individual rule regarding such matters, would, in any case, require majority membership approval for any conveyance or encumbrance of its common area.

For all of the foregoing reasons, Mr. Winston's request that

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1 any and all Association rules that have prevented him from either
2 purchasing, or simply occupying, the common area beneath his unit be
3 declared void and/or unenforceable must be and hereby is denied.
4 Likewise, any implicit request by Mr. Winston for an order
5 compelling or allowing his purchase, or occupation, of the common
6 area in question must be and hereby is denied.

7 **ALTERATION OF ASSESSMENT ALLOCATION RULES**

8 Snowdown's governing documents require that each of the twenty-
9 six (26) unit owner share equally general Association assessments.
10 Declaration, Article VI, Section 7, 12, Declaration, Exhibit "A".

11 Mr. Winston requests an order requiring the Association amend
12 this rule and establish a new allocation method based on the square
13 footage of each of the indiviual units. His request arises from his
14 claim and belief that there have been numerous and material
15 unauthorized expansions of numerous units in Snowdown, thus making
16 the equal allocation rule unfair and subject to change as a matter
17 of equity.

18 The evidence does not support Mr. Winston's underlying premise
19 of numerous unauthorized alterations of many units in the
20 development. Moreover, both the Declaration, and NRS 116.3115, very
21 clearly control assessment procedures. Any change to the
22 Association's assessment rules could only be done by amendment of
23 the Declaration, and then only in a manner not violative of NRS
24 116.3115 and other applicable provisions of Nevada law.

25 As a result of the foregong, Mr. Wibnston's request for a
26 forced change in the assessment rules of the Association is wholly
27 unjustified and must be, and hereby is, denied in its entirety.

28 / / / /

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1 OUTSTANDING ASSOCIATION ASSESSMENTS

2 As a part of his efforts to convince the Association to either
3 sell him, or allow him to occupy, the common area beneath his unit,
4 since 2007, Mr. Winston has failed to pay his assessments, both
5 special and general in an amount now in excess of $14,000.00.
6 Except as discussed in the section above, Mr. Winston testified at
7 the arbitration that he does not challenge the validity of the
8 assessments and that he has not actually refused to ever pay them,
9 but that he has declined to pay them in a timely manner in an effort
10 to force the Association to acquiesce to his desire to purchase the
11 additonal common area under his unit.

12 Although some argument was raised in Claimant's brief regarding
13 the continuing validity of the Association's lien for the amounts
14 due and owing, from the evidence and documents on record, it appears
15 the general assessments are ongoing and the "*full amount*" of a 2007
16 special assessment for roof and siding maintenance work was due on
17 October 1, 2007. A "Notice of *Delinquent Assessment Lien*" was first
18 recorded on February 12, 2008, well within the three (3) year
19 statute of limitations pointed out by counsel for Mr. Winston. *See*
20 NRS 116.3116(5).

21 Neither party formally requested any dermination regarding the
22 validity or amount of the Association's lien against Mr. Winston's
23 unit and there is a lack of sufficient information in the record to
24 make any final determination. From the information available,
25 however, it does appear the lien is valid and enforceable.
26 Certainly, Mr. Winston's actions in refusing to pay admittedly valid
27 assessments in an effort to force a real estate agreement with his
28 association were and are completely inappropriate and indefensible.

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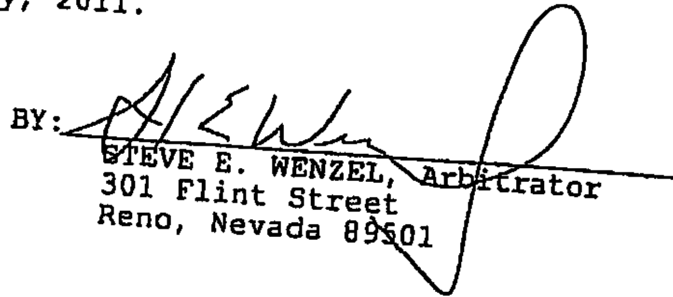
A small association such as Snowdown cannot and should not be required to perform its' maintenance and other ongoing duties without the necessary resources to do so.

ARBITRATION EXPENSES, ATTORNEYS FEES AND COSTS

Motions for an award of arbitration expenses, attorney's fees and costs shall be submitted (post-marked) by August 4, 2011. Opposition(s)to such motion(s) shall be submitted (post-marked) within seven (7) days (weekends and other non-judicial days excluded) following the post-marked date of the motion(s). No reply to any opposition shall be permitted. Each motion and/or opposition is limited to seven (7) pages excluding affidavits, exhibits and any other supporting materials. Following the expiration of the time for submission of motion(s) and opposition(s) the issues shall stand submitted for decision.

If no fee and expense motions are filed within the time frame stated in this order, at the expiration of the time allowed for such motion(s), this Arbitration Decision and Award shall be deemed final without further notice or order and the time for any petition for judicial review shall began to run on August 5, 2011. If one or more fee and expense motions are timely filed, a final order shall be issued and that order shall establish the time(s) for appeal or review of the entirety of this decision.

DATED this 18th day of July, 2011.



BY: STEVE E. WENZEL, Arbitrator
301 Flint Street
Reno, Nevada 89501

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1 **CERTIFICATE OF MAILING**

2 I, STEVE E. WENZEL, Esq., on this date deposited for mailing a
3 true copy of the within document entitled **ARBITRATION DECISION AND**
4 **AWARD** addressed to:

5 Mr. Eric Winston
6 c/o Jeffery K. Rahbeck. Esq.
P.O. Box 435
7 Zepher Cove, Nevada 89448

8 Snowdown Homeowners Association, Inc.
c/o Ms Gayle A. Kern, Esq.
9 Kern & Associates, Ltd.
5421 Kietzke Lane, Suite 200
10 Reno, Nevada 89511

11 DATED: July 18, 2011

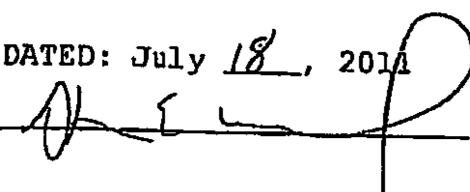
12 

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EXHIBIT “2”

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EXHIBIT “2”

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

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Eric Winston,
Claimant,

vs.

Snowdown Homeowners Association, Corporation.,

Respondent.

Case No. NRED #11-45

FINAL ARBITRATION DECISION AND AWARD

An Arbitration Decision and Award has previously been entered in this case. Jurisdiction was retained by the Arbitrator to allow for briefing on the issues of arbitration expenses, attorney's fees and costs. That briefing is now complete.

ARBITRATION EXPENSES, ATTORNEYS FEES AND COSTS

Respondent Snowdown Homeowners Association Corporation ("Snowdown", "Snowdown HOA", "Association", or "Respondent") has filed a request for an award of arbitration expenses incurred in the amount of $1,993,43, attorney's fees in the amount of $11,781.50, and costs in the amount of $670.17.

Claimant Eric Winston opposes *any* monetary award to the Association and specifically objects to any award of fees and costs incurred prior to March 3, 2011 (the date Respondent was served with Mr. Winston's claim)($1,473.50), costs prior to that date ($291.60(*sic* $296.60), and all charges incurred *after* the arbitration hearing on June 17, 2011($3.864.00). Mr. Winston's

1 arguments regarding pre-arbitration fees and costs do have merit.
2 It is also clear, however, that at least some of the expenses sought
3 and arising *after* the hearing are directly related to and a result
4 of this arbitration proceeding.
5 Claimant's counsel correctly points out that the Arbitrator has
6 wide discretion regarding an award of arbitration expenses, fees and
7 costs. In this case, because the issues were relatively complex,
8 the parties litigated the matter vigorously, and the real property
9 rights implicated were and are quite significant for the entire
10 development, overall costs were fairly high. In fact, in an effort
11 to hold down costs for both parties (and Association members), the
12 Arbitrator discounted his bill by $2,500.00 ($1,250.00 per party).
13 Another complicating factor in the arbitration is the fact that
14 both parties were apparently operating under a critical
15 misapprehension of fact. Only a magnified examination by the
16 Arbitrator of partially illegible Association records revealed the
17 truth regarding ownership of the disputed spaces which lie beneath
18 some of the condominium units. During the arbitration, both parties
19 were equally ignorant of the original designation of some of these
20 spaces as part of the "unit" in the development originating records.
21 After consideration of all of the circumstances of the
22 arbitration the following awards of arbitration expenses, attorney
23 fees and costs.
24 At this point, each party has paid the discounted sum of
25 $1,993.43 (one half) of the arbitration expenses. Each party has
26 also received the benefit of a discount of $1,250.00 by the
27 Arbitrator. No further award of arbitration expenses is warranted
28 to either party.

1 With regard to the matter of attorney's fees, it must be noted
2 that neither party completely prevailed on the basis of arguments
3 raised at the arbitration. The case was resolved on a factor not
4 raised by either party. On the other hand, Mr. Winston elected to
5 pursue this matter into arbitration on the basis of arguments that
6 would not have prevailed even in the absence of the newly discovered
7 definition of a "unit". Mr. Winston's allegations regarding
8 improper incursions into the lower level "common areas" by other
9 owners were not supported by the record. In fact, even with the
10 newly discovered definition (obviously unknown to the Claimant until
11 a Decision was entered), it turned out that the space below
12 Claimant's unit was not, by definition, a part of his unit.
13 Moreover, his arguments regarding improper incursions into the
14 Association common area by other owners' balconies and decks were
15 not supported by the evidence. Further, the evidence produced at
16 the arbitration by Mr. Winston did not rise to the level of
17 demonstrating an abandonment or waiver of Association rules and
18 regulations. Finally, Claimants arguments for a forced change to
19 the manner in which assessments are allocated by the Association
20 were not supportable either in fact or under the law.
21 Looked at dispassionately, Mr. Winston raised a number of
22 issues, but failed to prevail on even one. At most, the filing of
23 the arbitration eventually brought to light the new "unit"
24 definition noted above. While important, the method used by the
25 Claimant, which, in addition to the arbitration proceeding, included
26 refusing to pay admittedly valid assessments since 2007, was a very
27 "blunt" instrument, eventually resulting in significant costs to his
28 fellow Association members.

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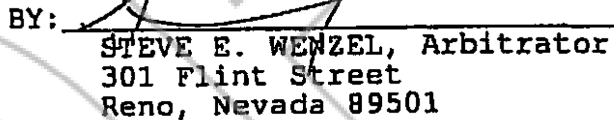
Based on the circumstances of the case, and acknowledging the partial validity of opposing arguments made by counsel for Mr. Winston, the Association is awarded the sum of $7,500.00 in attorneys fees to paid by Mr. Winston.

The Association is also awarded costs in the amount of $378.57.

Following entry of this order, the entire arbitration decision and award shall be deemed final and the time for any petition for judicial review or the commencement of a civil claim or claims involving a claim previously submitted for nonbinding arbitration shall thereafter began to run as provided by NRS 38.330(5) and as otherwise provided by law.

DATED this 19th day of September, 2011.



BY: ______________________

STEVE E. WENZEL, Arbitrator
301 Flint Street
Reno, Nevada 89501

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Mr. Eric Winston
c/o Jeffery K. Rahbeck. Esq.
P.O. Box 435
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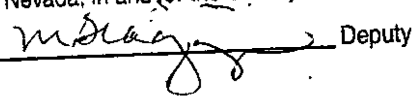
Snowdown Homeowners Association, Inc.
c/o Ms Gayle A. Kern, Esq.
Kern & Associates, Ltd.
5421 Kietzke Lane, Suite 200
Reno, Nevada 89511

Gordon Milden, Program Officer
Office of the Ombudsman
State of Nevada
Department of Business and Industry
Real Estate Division
2501 E. Sahara Avenue, Suite 202
Las Vegas, Nevada 89104

DATED: September 20, 2011

CERTIFIED COPY
The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.
DATE 2/7/12
TED THRAN Clerk of the 9th Judicial District Court of the State of Nevada, in and for the County of Douglas,
By _____ Deputy



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