



Case No: A561172

Dept. No: XXII

NOTICE OF CONSTRUCTIONAL DEFECTS  
PURSUANT TO NRS 40.600 *et seq.*

**1. PURPOSE**

This Notice of Constructional Defects (“Notice”) is being given to satisfy the requirements of NRS 40.645. The constructional defects, deficiencies and resulting damage are pursuant to NRS 40.600 *et seq.*

**2. PARTIES**

Claimant is [REDACTED]

[REDACTED]. Respondents are , DOES I through XX, inclusive, and ROE CORPORATIONS I through XX, inclusive (“Respondents”). Respondents is/are the developer, builder, contractor, seller, distributor, manufacturer, statutory declarant of the Subject Property.

**3. COUNSEL**

Claimant is represented in this claim and potential forthcoming action for constructional defects and resulting damage pursuant to NRS 40.600 *et seq.* (“Claim”) by GERARD & ASSOCIATES located at 2840 South Jones Blvd, Bldg. D, Suite 4, Las Vegas, Nevada 89146 (“The Firm”). All correspondence must be directed through The Firm. Counsel for Respondent is unknown. If Respondents have an attorney, please provide him or her with this Notice promptly.

**4. FACTS**

This claim involves constructional defect and resulting damage at the Subject Property. Claimant purchased the Subject Property from Respondent Lennar Corporation. After living in

the Subject Property Claimant began to notice constructional defects, deficiencies and resulting damage. Claimant was forced to prosecute this claim pursuant to NRS 40.600 et seq.

## **5. DEFECTS**

At this time, without the benefit of a thorough investigation, without the benefit of destructive testing and without the benefit of original construction plans, reports and job file documents, Claimant contends that the Subject Property is suffering from the following defects, deficiencies and resulting damage:

1. Stair and Second Floor Landing Guardrails: Failure to comply with applicable design load code requirements;
2. Stucco: Excessive cracking in stucco surfaces resulting from improper workmanship and a failure to follow plans and specifications; and
3. HVAC System: System fails to adequately heat and cool the home with excessive utility bills resulting from improper workmanship and system design.

## **6. CHAPTER 40 DEMAND**

Pursuant to NRS 40.655, Claimant is entitled to the following damages:

- (a) Any reasonable attorney's fees;
- (b) the reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure any constructional defect that the contractor failed to cure and the reasonable expenses of temporary housing reasonably necessary during the repair;
- (c) The reduction in the market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;
- (d) The loss of the use of all or any part of the residence;
- (e) The reasonable value of any other property damaged by the constructional defect;
- (f) Any additional costs reasonably incurred by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:
  - (1) Ascertain the nature and extent of the constructional defects;
  - (2) Evaluate appropriate corrective measures to estimate the value of loss of use; and
  - (3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and
- (g) Any interest provided by statute.

Under *Albion v. Horizon Communities, Inc.* 122 Nev. Adv. Rep. 37, 132 P.3d 1022

(2006) and *D.R. Horton, Inc. v. Eighth Judicial District Court*, 168 P.3d 731, 739 (2007), and NRS 40.655, Claimant is ensured recovery of its attorney's fees, costs and prejudgment interest as damages when construction defects or deficiencies are established. Due to the nature of this claim the defects which exist, it is anticipated that Claimant will incur expert fees and costs. Those will be recovered in this claim/action along with their attorney's fees and costs, whether a repair offer or monetary offer is made. NRS 40.655

With respect to the defects and deficiencies, and resulting damage, Claimant requests that Respondents promptly make adequate and complete repairs pursuant to NRS 40.600 et seq. Respondents have ninety (90) days from the date of receipt of this Notice to: (1) inspect the common areas [see, NRS 40.6462 and NRS 40.647], and (2) provide a NRS 40.600 et seq. complaint offer to repair or monetary offer pursuant to NRS 40.6472, one which includes Claimant's entitlements pursuant to NRS 40.600 et seq., including but not limited too compensation for attorney's fees and costs. Pursuant to NRS 40.648(2), Respondents have 105 days from receipt of this Chapter Notice to perform all of the repairs to Claimants' satisfaction (if offered); and, within 30 days of substantial completion, provide an adequate Statement of Repairs pursuant to NRS 40.648(5). If repairs are made, Respondents may not request a release of liability and must provide new warranties for the repair work performed. See, NRS 40.648(4). Pursuant to NRS 40.670, Respondents have twenty (20) days to inspect and repair the water leaks by the refrigerator and the patio roof, testing for mold and remediate water damage and mold.

If Respondents fail to completely and adequately repair all of the defects and deficiencies, and resulting damage, specified herein within 105 days from the date this Chapter 40 Notice is received, or within twenty (20) days for the water leaks and mold issues, the costs to repair past, current and future defects and deficiencies, and damage resulting therefrom, and Chapter 40 entitlements, will be recovered from Respondents.

See, NRS 40.655. If Respondents fail to comply with NRS 40.600 et seq., Claimant will not be limited to damages specified in NRS 40.655, and Respondents will lose their statutory defenses (see NRS 40.640).

All repairs must be scheduled through The Firm and Claimant is not to be contacted directly. Repairs will be permitted upon reasonable advance notice and after all Chapter 40 requirements and conditions are satisfied. Experts retained by The Firm must be permitted to observe and document repairs.

**7. DEMAND FOR CHAPTER 40 MEDIATION-NRS 40.680**

Claimant demands mandatory Chapter 40 mediation pursuant to NRS 40.680. For this claim to be resolved during the pre-litigation process or at pre-litigation mediation, Respondents must be prepared to make an offer that includes re-purchase of the house at market value, or complete and adequate repairs and/or reasonable compensation for all of Claimant's damages and entitlements pursuant to NRS 40.655, including but not limited to compensation for attorney's fees and costs. Claimant proposes using Floyd Hale, Bruce Edwards, William Volk or Gary Nagel as mediator. If Respondents are not agreeable, please provide the name of an alternative mediator(s) within 20 days of receipt of this Chapter 40 Notice. Otherwise, Claimant will select a mediator and schedule mediation.

**8. DEMAND FOR PRE-MEDIATION DISCOVERY-NRS 40.681**

Pursuant to NRS 40.681, Claimant requests any and all relevant reports, photos, correspondence, plans, as-built plans, plans/specifications/details, specifications, warranties, contracts, subcontracts, work orders for repair, receipts, invoices, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the claim that are not privileged, including but not limited to: original civil, architectural, structural, electrical, plumbing and HVAC plans, grading reports/plans and geo-technical/soils reports, block wall backfill reports, civil improvement plans, hydrology studies, final grading reports,

specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, third-party inspections, technical reports, soil and other engineering reports, certifications, inspection records, correspondence with the Building Department and/or Department of Public Works, reports, photos and tests of consultants/experts (including soils/concrete tests), plans and materials concerning the inspections and repair work (if any) performed at the common areas prior to and during the NRS Chapter 40 claim, and all other documents, plans, reports, specifications or materials relating to the claim that are not privileged.

**9. DEMAND FOR INSURANCE POLICIES AND RESERVATION OF RIGHTS LETTERS-NRS 40.687**

Pursuant to NRS 40.687, Claimant demands copies of any and all insurance policies or agreements and reservation of rights letters from any and all insurance companies that may be liable, in whole or in part, for a judgment related to this Notice of Constructional Defects and the defects and deficiencies, and resulting damage stated herein.

**10. DUTY TO PUT SUBCONTRACTORS AND DESIGN PROFESSIONALS ON NOTICE SO THEY CAN INSPECT AND OFFER REPAIRS-NRS 40.646**

Pursuant to NRS 40.646, Respondents are required to put any and all responsible parties, e.g., subcontractors (including but not limited to design professionals, subcontractors, material suppliers, distributors, designers and manufacturers, on notice of this claim and should give them an opportunity to inspect the house and make a NRS 40.600 et seq. complaint response pursuant to NRS 40.6472.

**11. OBLIGATION TO PUT INSURANCE CARRIERS ON NOTICE-NRS 40.649**

Pursuant to NRS 40.649, Respondents are required to put all of its insurance carriers that are potentially at risk for this loss on notice of the claim or risk losing insurance coverage.

**CONCLUSION**

Claimant is hopeful this claim can be resolved short of litigation, and short of incurring

substantial attorney's fees and costs. Claimant looks forward to Respondents' anticipated cooperation and Response to this Chapter 40 Notice.

DATED this 9th day of March, 2011.

GERARD & ASSOCIATES

*/s/ Robert B. Gerard, Esq.*

BY: \_\_\_\_\_

Robert B. Gerard, Esq.  
Nevada State Bar #005323  
Ricardo R. Ehmann, Esq.  
Nevada State Bar ##010576  
2840 South Jones Boulevard  
Building D, Suite 4  
Las Vegas, Nevada 89146  
Telephone: (702) 251-0093  
Facsimile: (702) 251-0094

*Attorneys for Plaintiffs*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of March 2011, a copy of the foregoing PLAINTIFFS' THIRD NOTICE OF COMPLIANCE was made by serving all parties and their counsel pursuant to the E-file service list.

**Carissa Hampton**

\_\_\_\_\_  
An Employee of GERARD & ASSOCIATES

Gregory H. King, Esq.  
Payne & Fears, LLP  
7521 W. Lake Mead Blvd.  
Suite #525  
Las Vegas, Nevada 89128  
Fax No: (702) 382-3834  
Attorney For Lennar Homes, et al

Wayne Schumsker, Division President  
Ralph Stansfield, Vice President Customer Care  
Lennar Corporation  
6750 Via Austi Parkway  
Suite 400  
Las Vegas, Nevada 89119

Greystone Nevada LLC, a Delaware Limited Liability Company  
Corporation Trust Company of Nevada  
6100 Neil Road Ste. 500  
Reno, Nevada 89511

Greystone Homes of Nevada, Inc., a Delaware Corporation  
Corporation Trust Company of Nevada  
6100 Neil Road Ste. 500  
Reno, Nevada 89511