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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

STEVEN E. KROLL,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a/k/a I V G I D , a governmental subdivision of the State of Nevada; JOHN A. BOHN, GENE BROCKMAN, BEA EPSTEIN, CHUCK WEINBERGER, and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25 inclusive, each in their individual and official capacities,

Defendants.

3:08-cv-00166-ECR-(RAM)

First Amended Complaint for Damages & Equitable Relief: First Amendment Petition

1. **Federal Civil Rights Violations 42 U.S.C. §§ 1983 and 1988;**
2. **Declaratory Judgment - NRS 30.010 et seq**
3. **Damages and an Accounting - Breach of Fiduciary Duty**
4. **Writ of Prohibition re Self-Interested Trustees**
5. **Nevada Open Meeting Law Violations**
6. **IVGID as Public Utility - Appeal from Final Ruling**

Exhibits A through E

Demand for Jury Trial

Certificate of Service

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Comes now plaintiff STEVEN E. KROLL pursuant to Rule 15 FRCP and hereby amends as of right his Complaint for Damages & Equitable Relief filed in the First Judicial District Court of the State of Nevada on March 4, 2008, and as and for his **First Amended Complaint** alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

Parties and Jurisidiction

1. Plaintiff STEVEN E. KROLL is a citizen of the United States and of the State of Nevada residing in the County of Washoe within the Incline Village General Improvement District in the

village of Crystal Bay.

2. Defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT (hereinafter sometimes "IVGID" or "THE DISTRICT") is a municipal and public corporation organized and operating as a political subdivision of the State of Nevada pursuant to Chapter 318 of the Nevada Revised Statutes.

3. Defendants JOHN A. BOHN, GENE BROCKMAN, BEA EPSTEIN, CHUCK WEINBERGER, and ROBERT C. WOLF are duly-elected or appointed Trustees of defendant IVGID and residents of Incline Village, Washoe County, Nevada and are sued herein in their individual as well as representative capacities.

4. The true names or status of DOES 1 through 25 inclusive are not known to plaintiff, who therefore sues said defendants, whether individual, corporate, partnership, municipal or other by such fictitious names; and upon ascertaining the true name and status of a DOE defendant, plaintiff will amend this Complaint, or seek leave to do so, by substituting same for such fictitious name.

5. Each of the named defendants and DOE defendants 1-20 inclusive is an agent, employee, independent contractor, attorney, accountant, bondsman, or an actor in some other capacity acting for or on behalf of defendant IVGID and each other who has materially and knowingly or negligently contributed to or participated in the actions and omissions complained of herein, and who is liable for the damages sustained by plaintiff as hereinafter more fully alleged.

6. In doing the acts herein complained of, all defendants and DOE defendants 1 through 20 did each unlawfully agree and conspire with one another to deprive, and pursuant to and in performance of said unlawful agreement and conspiracy each did deprive plaintiff STEVEN KROLL of rights, privileges and immunities guaranteed by the First, Fifth, and Fourteenth Amendments to the United States Constitution, and by the Constitution and laws of the State of

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Nevada.

7. At all times material hereto, each defendant named herein except DOE defendants 20-25 inclusive was acting as the employee, agent, representative and officer of every other defendant, and within the course and scope of such employment and agency, and under color of state law.

Substantive Allegations of Fact

8. Defendant IVGID's enabling legislation and NRS 318.143 empowers it to acquire, construct, reconstruct, improve, extend and better lands, works, systems and facilities for public recreation.

9. Pursuant to Nevada law, all purchases by THE DISTRICT for public recreation are required to "serve a public use" and promote "the general welfare of the inhabitants" of the District and of the State of Nevada.

10. By Deed dated June 4, 1968 (hereinafter referred to as "the 1968 Deed", marked Exhibit A attached hereto and made part hereof), defendant IVGID purchased from the private developers thereof certain particularly beautiful real properties abutting Lake Tahoe, hereinafter sometimes referred to as "the BEACH PROPERTIES," for the recreational use of District members.

11. The purchase of the BEACH PROPERTIES in 1968 became possible as a result of a litigation settlement which arose out of the developers' plan for a property owner's recreation association to own and maintain the BEACH PROPERTIES, but which plan failed because of the developers' inability to obtain binding financing.

12. At the time of defendant IVGID's purchase of the BEACH PROPERTIES in 1968, THE DISTRICT's boundaries were coextensive with those of the unincorporated town of Incline Village; but over the years THE DISTRICT has grown outside those boundaries through annexation and merger.

13. The BEACH PROPERTIES, more particularly described as "BURNT CEDAR BEACH"

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and "INCLINE BEACH", were purchased by defendant IVGID with public moneys, and in the years since that purchase defendant DISTRICT has improved said properties and paid for said improvements with public moneys.

14. Upon the transfer of the BEACH PROPERTIES to defendant IVGID as abovesaid they became and continue to be exempt from state property taxes pursuant to NRS 361.060 solely because their owner, IVGID, is a public body.

15. BURNT CEDAR BEACH (APN 122-162-23) had, for property tax purposes, an assessed value in the 2007/2008 tax year of $18,434,668, and INCLINE BEACH (APN 127-280-01) had an assessed value during that same period of $18,181,802, for a total of $36,616,470 which is today exempt from property taxes for the BEACH PROPERTIES as aforesaid.

16. BURNT CEDAR BEACH which comprises the following improvements: a heated swimming pool, a wading pool, sun decks, bath houses, a waterfront director's office, landscaping, irrigated lawns, picnic areas, barbecue pits and refreshment stands; and INCLINE BEACH which comprises the following improvements: a boat ramp, picnic areas, parking areas, restrooms, playground and refreshment stands, constitute "Parks" as that term is defined in NRS 377A.0155 or is otherwise used in this Complaint.

17. The 1968 Deed to the BEACH PROPERTIES contained a number of covenants and conditions one of which (hereinafter sometimes referred to as "the RESTRICTIVE COVENANT") purported to limit access to and use of the BEACH PROPERTIES to

> **"property owners and their tenants (specifically including occupants of motels and hotels) within the Incline Village General Improvement District as now constituted, and, as the Board of Trustees of said District may determine, the guests of such property owners."**

18. The RESTRICTIVE COVENANT in the 1968 Deed was an attempt to accomplish through public means what the developers of Incline Village had failed to bring off with private

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money, namely the creation of a private beach on the crystalline shores of Lake Tahoe for the exclusive use of the developers' Incline Village home buyers, thereby significantly raising property values and saleability among many other economic and political benefits.

19. NRS 318.015 declares it the public policy of the State of Nevada that the powers granted defendant IVGID by Chapter 318 of the Nevada Revised Statutes "are not intended to provide a method for financing the costs of developing private property," and the RESTRICTIVE COVENANT in the 1968 Deed was and is void on its face and unenforceable for that reason alone.

20. The RESTRICTIVE COVENANT in the 1968 Deed was and is further void on its face for:

(a) Its impermissible attempt to contractually tie the hands of future elected governmental officials in the discharge of their public duties in violation of NRS 281.240;

(b) Attempting to create a private enclave to be run by the government within the body politic thereby unlawfully introducing therein community divisiveness, institutionalized segregation and built-in irreconcilable conflicts of interest among other evils prohibited by the U.S. Constitution and laws of Nevada;

(c) Exceeding the scope of defendant DISTRICT's statutory authority which is limited by Chapter 318 of the Nevada Revised Statutes to serving "a public use" and promoting the general welfare of *all* inhabitants of the General Improvement District;

(d) Regulating the use or right of use of a project or improvement of a General Improvement District in a manner "in conflict with the Constitution and laws of the State" in violation of NRS 318.205;

and for the other Constitutional and legal infirmities set forth in more detail throughout this Complaint.

21. Shortly after defendant IVGID's purchase of the BEACH PROPERTIES in 1968 and in alleged reliance upon the RESTRICTIVE COVENANT therein, defendant DISTRICT commenced a

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practice of excluding the General Public from BURNT CEDAR BEACH and INCLINE BEACH, which said practice continues to this day.

22. The alleged reliance upon the RESTRICTIVE COVENANT by defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF was and is bogus and a sham, in that said defendants have deliberately rendered themselves ignorant of the law by willfully refusing to avail themselves of the provisions of NRS Chapter 43 entitled "Judicial Confirmation" which grants municipal governments quick access to the courts for an authoritative judicial determination on such matters, as at least three IVGID General Counsels and Bond Counsel since 1972 had advised specifically was their option.

23. Plaintiff is informed and believes and thereon alleges that defendants IVGID and the other defendants named above, in violation of their duty to said plaintiff and to his damage, have made a conscious and affirmative decision to remain ignorant of the legal validity of the RESTRICTIVE COVENANT because they fear that a court will invalidate the said COVENANT and thereby deprive them of the personal and financial benefits accruing to said defendants and the other 1968 Deed holders alleged in more detail hereafter, and because "The Trustees will not take this to court and it would be political suicide for them to remove the beach restriction without being forced to do so," as then IVGID General Manager John Danielson observed on July 11, 2000.

24. On or about November 12, 1987 THE DISTRICT enshrined the RESTRICTIVE COVENANT into law by adopting Ordinance 7 entitled "Recreation Pass Policy", Section 62 of which provides:

> **Deed Restrictions. Parcels annexed to the District after May 30, 1968, are not eligible for District beach access as per deed restrictions listed on the beach property.**

25. At the same time as it was legalizing the RESTRICTIVE COVENANT in Section 62 of Ordinance 7 as abovesaid, defendant DISTRICT began a decades-long practice of trying to have it

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both ways in matters pertaining to the BEACH PROPERTIES by also adopting Section 68 of that Ordinance which effectively waived and repudiated the 1968 Deed restriction in the following words:

> **Nothing in this ordinance shall prevent the District from issuing recreation privileges to employees, former Board members, or anyone else, in the past, present or future, as approved by the Board of Trustees.**

26. THE DISTRICT has relied upon Section 68 of Ordinance No. 7 to issue Recreation Passes to the BEACH PROPERTIES to former Board of Trustee members and others it has deemed worthy of same whether or not the recipient thereof was a resident of Incline Village or even the State of Nevada, in violation of the RESTRICTIVE COVENANT.

27. Notwithstanding the invalidity and unenforceability of the RESTRICTIVE COVENANT, defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have continued under color of law to exclude from its BEACH PROPERTIES all members of the General Public including, in particular, plaintiff STEVEN KROLL, using Ordinance 7 as a basis therefor.

28. The practical effect of THE DISTRICT's exclusionary law and practices was and is to turn its publicly-owned BEACH PROPERTIES into valuable PRIVATE BEACHES of the town of Incline Village, Nevada, and defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have overtly so treated them in fact.

29. Among other things, the named defendants and/or their predecessor Trustees have:

(a) Posted signs reading "Private Beach" at BURNT CEDAR and INCLINE BEACHES (see Exhibit B attached hereto and made part hereof);

(b) Passed laws and resolutions, including Ordinance 7 hereinbefore alleged and Resolution No. 1701 (Exhibit C attached hereto) specifically declaring that "All of the beaches within the Incline Village General Improvement District are private, have restricted access, and are available for the exclusive use of the Incline Village property owners";

(c) Publicly declared through IVGID's General Manager Bill Horn in the

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North Lake Tahoe Bonanza dated August 18, 2006: " We fought for private beaches and now we have to defend them;"

(d) Sent by Certified Mail dated May 18, 2007 a warning to one IVGID member from Crystal Bay (not the plaintiff) that he should not "attempt to gain access to the private beaches of Incline Village on May 31, 2007 as you have stated you are going to do";

(e) Confirmed in an April 27, 2000 letter to a Crystal Bay resident (not the plaintiff) from defendant IVGID's then-General Counsel Noel Manoukian, Esq. that "each time that the IVGID Board has been confronted with this issue" over the years they have "invariably voted to maintain the beaches as 'private'";

(f) Proclaimed in a "4th of July Announcement!" on June 30, 2000 (Exhibit D attached hereto): "RESTRICTED ACCESS TO BEACHES", advising that the BEACH PROPERTIES "*will not* [sic] be open to the public" (lumping plaintiff STEVEN KROLL, an IVGID member, into "the public"), and warning that "Whether a person arrives during the day or evening hours for the fireworks display, a recreation pass or a tenant authorization form will be required for entry to any of the three beaches";

and defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have on many other occasions demonstrated their long-standing practical treatment of the BEACH PROPERTIES as PRIVATE BEACHES despite their public provenance.

30. In 1995 plaintiff's status vis-a-vis defendant IVGID changed when the Washoe County Commission duly merged defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT with the Crystal Bay General Improvement District (CBGID) of which plaintiff STEVEN KROLL was then a member.

31. From the moment of the 1995 Merger plaintiff STEVEN KROLL ceased to be a member of the General Public in relation to IVGID and became instead a legal taxpaying resident thereof; and the Trustees of THE DISTRICT entered their own new relationship with plaintiff, and "**what they do in that relation**" declared Mr. Justice Cardozo in *Nixon vs Condon*, 286 U.S. 73, 88 in 1932,

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> **"they must do in submission to the mandates of equality and liberty that bind officials everywhere. They are not acting in matters of merely private concern like the directors or agents of business corporations. They are acting in matters of high public interest, matters intimately connected with the capacity of government to exercise its functions unbrokenly and smoothly."**

32. At the moment of the 1995 Merger and as one result thereof, plaintiff STEVEN KROLL and his property in Crystal Bay became subject "to all of the taxes and charges imposed by the district, and liable for its proportionate share of existing general obligation bonded indebtedness of the district," pursuant to NRS 318.258.

33. The existing bonded indebtedness for which plaintiff STEVEN KROLL became liable as aforesaid includes bonds devoted to the improvement of publicly-owned property from which plaintiff is excluded by IVGID's Ordinance No. 7, namely INCLINE BEACH and BURNT CEDAR BEACH, thereby grievously violating plaintiff's Civil Rights and Property Rights and causing him injury and damage in a sum in excess of $10,000.

34. One of the charges of defendant DISTRICT for which plaintiff STEVEN KROLL became statutorily liable following the Merger was and is an annual Recreation Fee levied by defendant IVGID against all District members for the maintenance and upkeep of the District's various recreation venues such as the Golf Courses, Ski Area, Tennis courts, etc.

35. In excess of the authority granted by NRS 318.269 to charge new members of THE DISTRICT only for "tolls and charges which are *uniformly* made, assessed or levied for the entire district", and in violation of Article 10 Section 1 of the Nevada Constitution requiring uniform and equal rates of taxation for property owners, and in willful defiance of the United States and Nevada Constitutions' guarantee of Freedom of Speech and Association and the Equal Protection of the Laws among others, defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF created two classes of citizens within IVGID's membership to whom Recreation Passes

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would be issued, namely those IVGID members with access to the BEACH PROPERTIES, and those IVGID members denied such access, with a different Recreation Fee to be applied to each such class.

36. In 1996, the first year after the Merger, IVGID members with Beach Access paid $275 a year in mandatory Recreation Fees while IVGID members without Beach Access paid $200. In the 2007-08 Tax Year, those with Beach Access pay $710, while those without Beach Access and plaintiff in particular pay $560 yearly.

37. Pursuant to the manner of charging its members for the Recreation Fee as above described, defendant DISTRICT issued a Recreation Pass card to plaintiff which was physically different from that issued to the majority of the District's members, in that it contained the words "NO BEACH" in bold red letters on the face of said Card (Exhibit E attached) .

38. Plaintiff's offer to pay the additional fee for use of the BEACH PROPERTIES was rejected and instead defendant IVGID specifically excluded him from said PROPERTIES thereby unlawfully discriminating against plaintiff and depriving him of the Equal Protection of the Law among many other constitutional insults, and causing him to suffer embarrassment, anger, frustration and outrage at being treated as a second-class citizen and a legal outcast in his own community all to his damage in a sum in excess of $10,000.

39. Plaintiff demanded of defendant IVGID that if he was to be denied the use of all of THE DISTRICT's facilities on an equal basis with every other member he should be able to opt out of the use (and payment for) all of the other facilities, but defendant DISTRICT rejected that demand and in violation of the Nevada statutes set forth above imposed the mandatory non-beach annual recreation fee on him, to his damage.

40. The policy of defendant IVGID to limit access to its BEACH PROPERTIES solely to property owners in Incline Village; the aggressive efforts of defendant DISTRICT and defendants

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BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF to spend public money to promote, defend, and protect the BEACH PROPERTIES as private and restricted; the tax-exempt status conferred upon those properties by virtue of defendant IVGID's ownership and the vast financial benefit said tax exemption confers upon the 1968 Deed holders individually as is alleged in more detail hereafter have all served to create and confer a valuable economic and pecuniary benefit on those members of the District who happen to be Incline Village property owners under the 1968 Deed, while denying that valuable economic and pecuniary benefit to, and in fact punishing members of the District who are not 1968 Deed holders thereby damaging plaintiff in his person and property in amounts in excess of $10,000.

41. Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF, and each of said defendants in their individual capacities are 1968 Deed holders and direct beneficiaries of the exclusive access to the BEACH PROPERTIES and the economic and pecuniary benefits arising therefrom as herein alleged.

42. NRS 318.0956 governing General Improvement District Boards of Trustees provides that "no member of the board may be interested, directly or indirectly, in any property purchased for the use of the district," but in violation of that statute defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF continue to maintain their direct interest in and benefit from the BEACH PROPERTIES owned by THE DISTRICT.

43. Defendants' direct interest in property purchased for use of the THE DISTRICT raises a clear conflict between said defendants' interest in their individual capacity to preserve the exclusivity and economic value of the 1968 Deed holders' use of the BEACH PROPERTIES, as against their loyalty in their representative capacity to THE DISTRICT as a whole, and the requirement of treating all of its residents equally under the law as Justice Cardozo observed is the duty of all public officials as alleged in paragraph 31 above.

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44. The conflict of interest above set forth prohibits defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF from legislating in any matters concerning the BEACH PROPERTIES so long as said defendants refuse to divest themselves of said interest, but each said defendant continues to legislate thereon in gross violation of their fiduciary duty to plaintiff KROLL and in defiance of NRS 318.0956 and other laws and despite plaintiff's many demands for their recusal, all to plaintiff's damage.

45. At the same time defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF were and are maintaining the District's BEACH PROPERTIES as private for the benefit of themselves and the other 1968 Deed holders in Incline Village, they were and are also continuing their policy of having it both ways by falsely, deceptively, and tortiously holding out these same properties as public when it is to said defendants' financial or political advantage to do so.

46. In particular, defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT and defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have utilized the public ownership of the BEACH PROPERTIES to secure extremely valuable financial and recreational advantages to themselves and those of their constituents with Beach Access, and denied those valuable rights to those in THE DISTRICT and plaintiff KROLL in particular who are excluded from Beach Access by:

(a) Using the tax exemption granted to public bodies by NRS 361.060 to relieve themselves and other 1968 Deed holders from having to pay millions of dollars in property taxes which would otherwise be payable on these exclusive PRIVATE BEACHES over the years, shifting that burden to plaintiff and other Washoe County citizens denied Beach Access by increasing their proportionate share of property taxes paid;

(b) Making use of these extraordinary Lakefront Parks for their own private and exclusive purposes without paying the rental value or other additional charge to THE DISTRICT, and without a credit given to non-Beach Access members such as

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plaintiff for the value of their substantial Loss of Use, more fully alleged hereafter;

(c) Borrowing money from the State or Federal Government at favorable rates and conditions pursuant to NRS 318.339 and other laws and using the funds to spend on IVGID assets from which plaintiff is excluded under color of law;

(d) Relying upon its status as a General Improvement District to have its annual Recreation Fee made a part of the Washoe County Tax bill and collected by the Washoe County Treasurer in the same way annual Property Taxes are collected, and subject to the same penalties if delinquency occurs;

(e) Extending the "full faith and credit" of the entire District when borrowing money at favorable rates through tax-free Municipal Bonds to finance both its public projects and those from which the public is excluded, such as the BEACH PROPERTIES;

and in many other ways holding defendant IVGID's BEACH PROPERTIES out to be public where that is perceived by defendants to be to their advantage, all the while treating said properties in every practical application as private.

47. On or about August 29, 2007 defendant IVGID voted to reject a unanimous proposal by an IVGID-appointed Focus Group of which plaintiff and defendants EPSTEIN and BROCKMAN were members, that would have allowed IVGID residents from Crystal Bay the use of the BEACH PROPERTIES under certain limited conditions.

48. THE DISTRICT's rejection of the Focus Group's proposal followed a public meeting attended by a raucous crowd of IVGID residents who were also 1968 Deed holders vociferous in their opposition to the proposal on the ground that the BEACH PROPERTIES were not supposed to be accessible to the General Public but rather were restricted in access and use exclusively for Incline Village property owners and their guests as abovesaid, and a majority of the Board of Trustees adopted that reasoning to reject the Focus Group's proposal to allow all residents of THE DISTRICT at least some semblance of equal access to the BEACH PROPERTIES.

49. Two months later, on or about October 31, 2007, defendant IVGID reversed course

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temporarily in order to have it both ways again by ruling that the BEACH PROPERTIES were, after all, "accessible to the public" for purposes of gaining an advantage in calculating water fees under IVGID's Ordinance No. 4, thereby saving THE DISTRICT approximately $6,000 in Excess Water Fees which would otherwise be payable if the true character of the BEACH PROPERTIES as PRIVATE BEACHES, as IVGID had itself labeled them, had been utilized.

50. Recognizing that its action in continuing to bill INCLINE BEACH and BURNT CEDAR BEACH as "accessible to the public" for purely financial reasons as aforesaid was transparently self-serving and contradictory to its policy of exclusivity for 1968 Deed holders, defendant DISTRICT in late 2007 and early 2008 proceeded to try to cover up its tracks by quietly taking down the "Private Beach" signs (Exhibit B); changing Ordinance 1701 (Exhibit C) to erase and eliminate the description of all Incline Beaches as "private"; and taking other surreptitious and devious actions designed to disguise their wrongful conduct and motives but which in fact demonstrate their consciousness of guilt and actual knowledge of their own wrongdoing herein.

51. Among other such deceptive actions and in particular offense against the First Amendment and the concept of ordered liberty at the very heart of our democracy, defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have attempted under color of law to change the English language itself in an Orwellian scheme of double-speak and misdirection to mask their own wrongdoing, including among other actions:

(a) Inventing a new definition for the word "public", to wit: "public with restricted access", which is a contradiction in terms and a deliberate and calculated act by these defendants to try to validate their official finding that the BEACH PROPERTIES are "accessible to the public" for purposes of lower water rates under Ordinance No. 4, as is more fully alleged in the Sixth Cause of Action in this Complaint;

(b) Taking down the "Private Beach" signs which had existed for years at the BEACH PROPERTIES without advance notice or hearing and substituting signage

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that defendants designed deliberately to obfuscate and hide the true status of said PROPERTIES;

(c) Answering the straightforward central question: "Are the beaches public or private property" in an official 2007 IVGID "FAQs About Beach Access" authored by defendant GENE BROCKMAN with the non-response: "The beaches are owned by a public body, IVGID, a quasi-municipal corporation formed by Washoe County under Nevada Revised Statute Chapter 318", and then pretending that such an answer explained "to the fullest extent possible the facts on his complex issue" as promised in defendant BROCKMAN's introduction to the FAQs ;

(d) Adopting a self-described "mantra" for THE DISTRICT which says "One District, One Team", when in truth and in fact IVGID is two separate and unequal districts with One Team;

and defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have in other ways taken and continue to take extraordinarily deceptive steps to protect the favored status of the 1968 Deed holders at the expense and damage of plaintiff and the other 400 or so minority members of THE DISTRICT whom said defendants are duty-bound also to serve.

52. Holding out the BEACH PROPERTIES as private when excluding plaintiff and other members of THE DISTRICT similarly situated therefrom and in the same breath holding out the BEACH PROPERTIES as public when a financial advantage is to be gained thereby in favor of the THE DISTRICT and the 1968 Deed holders constitutes a knowing, deliberate, and completely impermissible governmental shell game which fraudulently benefits a majority of IVGID's membership at the expense of the minority, and is so obviously wrong in the light of preexisting law that only a plainly incompetent officer or one who was knowingly violating the law would have done such a thing.

53. The shell game hereinabove alleged is not innocent or accidental but a deliberate and willful choice by all the named defendants to favor their own interests and to discriminate against the plaintiff's at every turn, and no reasonable trustee could have believed or could believe now

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that such a shell game or the other misconduct herein complained of was or is lawful under the clearly established principles of law governing that conduct, and defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF are liable to plaintiff for all damages and equitable relief, plus costs and attorneys fees as prayed for in this Complaint.

FIRST CAUSE OF ACTION: for MONEY DAMAGES and ATTORNEYS FEES
(Federal Civil Rights Violation — 42 U.S.C. Sections 1983 and 1988)

54. Plaintiff realleges Paragraphs 1 through 53 above.

55. This is an action for money damages and equitable relief brought under Title 42 U.S.C. Sections 1983 and 1988 to redress deprivations under color of state law of rights, privileges, and immunities secured to plaintiff STEVEN KROLL by the United States Constitution and by the First, Fifth, and Fourteenth Amendments thereto, and over which this Court has jurisdiction pursuant to NRS 41.0334.2 and *Ortega v Reyna*, 114 Nev. 55, 953 P.2d 18 (1998).

Claims Under the First Amendment to the United States Constitution

56. Plaintiff STEVEN KROLL is a former elected Trustee and Chairman of the Board of Trustees of the now-merged Crystal Bay General Improvement District and has been an unsuccessful candidate for other public elective office at Tahoe's North Shore including Justice of the Peace and Trustee of the Incline Village General Improvement District post-Merger.

57. INCLINE BEACH and BURNT CEDAR BEACH are in truth and in fact Public Parks which in America have immemorially been held in trust for the use of the public and time out of mind been used as Public Forums for purposes of assembly, communicating thoughts between citizens, running for government office, discussing public questions, gathering together on the Fourth of July for fireworks and the celebration of our nation's birth, and for all the other expressive and associational activities protected against governmental interference by the First Amendment to the United States Constitution.

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58. The First Amendment to the United States Constitution prohibits government and defendant IVGID in particular from making any law abridging the freedom of speech or the right of the people to peaceably assemble and petition the Government for a redress of grievances, among other things.

59. By denying plaintiff entry to the BEACH PROPERTIES, defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have excluded him from a Public Forum to which he has an absolute right of entry under the Assembly, Speech, and Press Clauses of the First Amendment, and under the Equal Protection Clause of the Fifth and Fourteenth Amendment more fully alleged hereafter.

60. Demonstrating their capriciousness, wantonness, oppression and other bad motives exercised under color of law, and in further support of plaintiff's claims for both Compensatory and Punitive Damages against the individually-named defendants as herein set forth, all named defendants except for defendant EPSTEIN added insult to injury by barring and preventing plaintiff STEVEN KROLL and others from Crystal Bay from joining a Community Picnic and Fireworks event partly paid for by THE DISTRICT on July 4, 2007 at the BEACH PROPERTIES (see also Exhibit D attached reflecting the same action on July 4, 2000), despite plaintiff's formal application to defendant IVGID to make an exception on that day at least, and pointing out to the Board of Trustees that there was precedence for opening the BEACH PROPERTIES to Crystal Bay members on Independence Day.

61. On or about September 17, 2006 plaintiff STEVEN KROLL invoked his Right to Petition under the First Amendment, presenting defendants BOHN, BROCKMAN, EPSTEIN, and WOLF with a 15-page document signed by himself and a few other citizens entitled: "A Petition to the Hon. Trustees of the Incline Village General Improvement District to Recuse Themselves from Voting on Proposed Ordinance 7, As Required by Law and Propriety", setting forth many of the

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allegations and complaints contained in the instant litigation.

62. In further violation of plaintiff STEVEN KROLL's First Amendment rights as well as NRS 41.635 et seq. entitled "Liability of Persons Who Engage in Right of Petition," defendants BOHN, BROCKMAN, EPSTEIN, WOLF, and later WEINBERGER failed and refused to respond in any public way to plaintiff's Petition for their recusal except by implication, rejecting said Petition by their continued consideration and voting on matters pertaining to the BEACH PROPERTIES; and instead, said defendants, with the active assistance and participation of DOE defendants 1 through 10 circled the wagons and pretended without any basis whatsoever and in the face of all evidence to the contrary that plaintiff's Petition was the opening salvo of a lawsuit.

63. Unbeknownst to plaintiff KROLL at the time, defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF used the pretext of the pretended lawsuit to conduct unannounced and secret meetings with their General Counsel and various others to discuss and make decisions with respect to the Petition and other matters touching on the BEACH PROPERTIES, perverting plaintiff's Petition into a means of escaping the legislative mandate imposed by NRS 241.010 *et seq* known as the Open Meeting Law, as is more fully alleged as the Fifth Cause of Action in this Complaint.

64. In particular, defendant IVGID's General Counsel T. Scott Brooke, Esq. wrote a confidential memorandum to Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, and WOLF on October 11, 2006 opining "that the recent communications to the District and public statements by parties involved constitute threatened litigation," and based on that manufactured conclusion confirmed with said defendants a previously set "private meeting and discussion on 8 November 2006" which Mr. Brooke described as "a 'non-meeting' under the provisions of NRS 241.015 to discuss litigation."

65. The conversion of plaintiff STEVEN KROLL's constitutionally protected public state-

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ments and communications with his elected representatives on the Beach Access issue into something that could be and was officially and secretly used against him by these same elected representatives does the severest kind of injury to plaintiff's rights as an American citizen and to the protection of Freedom of Speech guaranteed by the first of our Bill of Rights, and plaintiff KROLL has been damaged thereby in a sum in excess of $10,000.

66. In further violation of plaintiff's First Amendment rights and with great damage to plaintiff's good name and reputation, Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF; and DOE defendants 1 through 5 put plaintiff STEVEN KROLL on a local government Black List labeling him pejoratively as *adversarial* solely for publicly advocating his position on the BEACH PROPERTIES.

67. In particular, the aforesaid defendants through their agent and employee BILL HORN, the General Manager of defendant IVGID acting at all times within the course and scope of his employment, emailed plaintiff KROLL on or about November 27, 2006 informing him that "it was decided weeks ago by myself that all communication from you would be treated as adversarial", citing plaintiff's "position on beach access," and announcing that all of plaintiff's further communications to the Board of Trustees would hereafter be "forwarded to our District Counsel," and that General Manager Horn would "leave it up to our District counsel as to whether your correspondence will be read into the record on Wednesday [November 29] or December 13, 2006."

68. Defendant DISTRICT's General Manager further advised plaintiff KROLL in said email that he had "refrained from reading all correspondence personally from you" on the grounds that "it tends to raise one's emotions as the result of the choice of words and position on the facts," all of which actions and conduct by defendant IVGID attempt to and did impose a prior restraint upon plaintiff's Free Speech rights and are otherwise in violation of the First Amendment and Fourteenth Amendment to the United States Constitution, to plaintiff's damages in a sum in

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excess of $10,000.

Claims under the Fifth Amendment to the U.S. Constitution for Taking of Private Property without Due Process of Law

69. Plaintiff STEVEN E. KROLL is the owner in fee simple of certain real property within the Incline Village General Improvement District identified as Parcel 123-101-05, valued by the Washoe County Assessor at $1,636,316, and given an Assessed Value for the 2007/2008 Tax Year of $572,710, resulting in a Gross Ad Valorem Tax of $18,816.39 in the 2007/2008 Tax Year, of which $356.40 went directly to defendant DISTRICT and other portions went indirectly thereto.

70. The assessed value of plaintiff's said property is included in defendant DISTRICT's calculations of its total reported assessed valuation for purposes of satisfying NRS 318.277 which limits the aggregate principal amount of the District's general obligation debt to 50% of said total valuation.

71. In 1999 defendant District issued $3,500,000 in "General Obligation (Limited Tax) (Revenue Supported) Recreational Facilities Improvement Bonds Series Oct. 1, 1999" (hereinafter "the 1999 Bonds") allegedly pursuant to NRS 318.035, 318.275 and other applicable law.

72. Defendant DISTRICT's "Official Statement" described the purpose of the 1999 Bonds as "to be used to finance recreation projects for the District," stating the security for said bonds to be a "direct and general obligations of the District" and the "full faith and credit of the District is pledged for payment of Principal and Interest due thereon."

73. Defendant IVGID, in combination and conspiracy with DOE defendants 10 through 20, deliberately or negligently and otherwise tortiously manipulated and concealed the fact that among the "facilities for public recreation" that THE DISTRICT intended to fund out of the proposed debt was BURNT CEDAR BEACH from which plaintiff KROLL and the General Public are excluded under color of law.

74. Defendant IVGID deliberately and knowingly attempted to disguise and hide its dif-

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ferent and non-public treatment of the BEACH PROPERTIES from that of the other recreational facilities defendant DISTRICT operates which *are* open to the General Public in the following ways among others:

(a) In an IVGID "Capital Improvement Plan Amendment dated April 9, 1999" sandwiching into the Project Name and amounts to be funded by the 1999 Bond such as the "Golf Course", "Snowmaking", "Tennis" and related recreational offering as if it were in the same category as those publicly accessible venues the item: "Burnt Cedar $900,000", which is not accessible to the public or to plaintiff STEVEN KROLL as aforesaid;

(b) Documenting "operating revenues" to include the District's entire Recreation Fee receipts without clearly disclosing the two classes of fee applicable to the BEACH PROPERTIES;

(c) Failing by footnote, separate category, general description, or in any other easily understandable way to identify and explain in THE DISTRICT's Official Statement to the 1999 Bonds or THE DISTRICT's current Annual Financial Statement that IVGID has a policy of treating the BEACH PROPERTIES as restricted in use to less than the entire population of THE DISTRICT; that this policy has created an economic and pecuniary advantage to defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF and to the other 1968 Deed holders; and that this economic advantage is gained at the expense of other members of THE DISTRICT such as plaintiff KROLL;

(d) Closing the BEACH PROPERTIES to the public on July 4th of the very first year following its successful 1999 Bond drive raising money allegedly for public recreation, and pretending the reason for the closing was "due to safety concerns with parking and traffic control", as shown in Exhibit D attached;

and did in others ways deliberately conceal the true use to which these publicly raised funds would be used by defendant IVGID and how said defendants would account for same.

75. As a result, the 1999 Bonds have been and are being used by defendant IVGID to help fund DISTRICT-owned properties which are closed to plaintiff while at the same time said defen-

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dant makes use of plaintiff's real property in Crystal Bay without his permission or agreement to help secure repayment of those Bonds, all to plaintiff KROLL's damage in a sum in excess of $10,000.

76. The actions hereinabove complained of constitute among other violations of the United States Constitution the taking of plaintiff's property for public use without Due Process of Law or just compensation in violation of the Fifth and 14th Amendments, to plaintiff's damage in a sum in excess of $10,000.

77. The actual market value of the BEACH PROPERTIES as of the date of filing this Complaint exceeds $104,618,486, and the value of the Loss of its Use over the years to plaintiff STEVEN KROLL exceeds the sum of $10,000 and constitutes a deprivation of property and consequent damage to plaintiff in addition to others sustained for the violation of plaintiff's Fifth and Fourteenth Amendment rights as herein alleged.

Claims under the Fourteenth Amendment to the Constitution for Discrimination and Unequal Protection of the Laws

78. The Fourteenth Amendment to the United States Constitution provides in pertinent part as follows:

> **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

79. The actions hereinabove complained of have deprived plaintiff STEVEN KROLL of the Equal Protection of the Laws in the following particulars, among others:

(a) THE DISTRICT has divided its citizens into two classes of citizenship, one class with access to the BEACH PROPERTIES and the other class, of which plaintiff is a member, invidiously segregated from said access;

(b) THE DISTRICT's Recreation Pass Policy has created an apartheid system which labels and separates and ultimately stigmatizes plaintiff from other members

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of the IVGID community;

(c) THE DISTRICT has raised funds for its operation by imposing unequal taxes, recreation fees, utility bills, and other fees and mandatory payments which favor the defendants at the expense of plaintiff and the other minority members of THE DISTRICT;

(d) THE DISTRICT has utilized its status as a governmental subdivision of the State of Nevada to be exempt from state property taxes and the substantial economic benefits resulting therefrom in a manner which unequally favors defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF, and the other IVGID members given access to the BEACH PROPERTIES, and discriminates against and penalizes IVGID members such as the plaintiff herein who do not have such access; and

(e) Defendant IVGID has made it a pattern and practice to place the burden of legally testing the RESTRICTIVE COVENANT upon those members of its constituency, a tiny minority, who are the victims of the restrictions instead of undertaking that act themselves as is their duty as sworn guardians of the Constitution and the Equal Protection of the Laws.

DAMAGES

80. By reason of the aforesaid acts and omissions of defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF and each of them as their interest shall appear:

(a) Plaintiff STEVEN KROLL has been damaged in the loss of civil rights lying at the core of his American citizenship and pride: the Right of Free Speech and Assembly; the right to Liberty and the Pursuit of Happiness; the right to be treated equally before the law; the right to freedom from segregation and government-sponsored discrimination; the right to be free from arbitrary and capricious government oppression; the right to be compensated for property taken without permission by the government; the right to be free from unequally imposed taxes and fees, and the right through the electoral process to have his vote count and be meaningfully represented in the public body empowered to impose those taxes and fees, and the

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value of the loss of those precious Constitutional Rights to plaintiff KROLL exceeds the sum of $10,000 in consequential damages;

(b) Plaintiff STEVEN KROLL has been damaged as a member of the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT entitled to access over the past decade and more to INCLINE BEACH and BURNT CEDAR BEACH, and to the Loss of Use thereof when defendants denied him such access and use;

(c) Plaintiff was damaged in his personal and property rights by being rendered unable to participate in his proportionate share of defendant IVGID's tax exemption which has allowed THE DISTRICT to provide financial and recreational benefits to its members beyond measure in money, including most importantly access through its publicly owned lands to the waters of Lake Tahoe and the fairest place and picture the whole earth affords;

(d) Plaintiff has been damaged in the devaluation of his real property by the same amount as constitutes an increase in economic and pecuniary value accruing to those members of THE DISTRICT who have Beach Access as a result of the matters complained of herein;

(e) Plaintiff has suffered his real property to be counted in THE DISTRICT's calculations for municipal revenue raising limits established by law, and been further damaged by said defendant's encumbrance of said plaintiff's property to support the issuance of tax-free municipal Bonds whose funds were and are used for defendant IVGID's Projects which are closed by law to plaintiff's use and enjoyment; and

(f) Plaintiff has been made to feel unwelcome and rejected by THE DISTRICT, a stranger in a strange land despite his 26 years as a resident of Tahoe's North Shore, and as a result he has sustained great mental shock, anxiety, anguish, torment, frustration, depression, paranoia, and humiliation, as well as anger and rage against the machine and other unhealthy and unnecessary feelings, all to plaintiff's damage in an amount exceeding $10,000.

81. By reason of all the foregoing, plaintiff STEVEN KROLL sustained damages in a sum in excess of $10,000, and will continue to sustain such damages into the future unless the acts and omissions complained of herein are ended.

82. The aforementioned acts and omissions of defendants BOHN, BROCKMAN, EP-

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STEIN, WEINBERGER and WOLF and certain DOE defendants were done knowingly, willfully, recklessly, and wantonly with intent to harass and oppress the plaintiff and deprive him of his rights in utter disregard thereof and in favor of their own self interest as 1968 Deed holders; and by reason thereof plaintiff is entitled to an award of punitive and exemplary damages in the sum of $1000 each against defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF; and in excess of $10,000 for such damages against the designated DOE defendants.

Claim for Equitable Relief Available under 42 U.S.C. 1983

83. The award of monetary damages as hereinabove prayed for does not provide a plain, speedy and adequate remedy in the ordinary course of law to prevent the continued deprivation of plaintiff's privileges and immunities under the United States Constitution as hereinabove alleged, and to achieve that goal an Order of this Court is required to compel the performance of acts which the law especially enjoins as a duty resulting from the office of trust enjoyed by defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER and WOLF; and to compel said defendants and defendant IVGID to admit plaintiff STEVEN KROLL to the use and enjoyment of rights to which he is entitled and from which he is being unlawfully precluded by said defendants as authorized under NRS 34.150 et seq and other provisions of State and Federal law.

84. Plaintiff is entitled by 42 U.S. C. §1983 and the procedures provided in Title 3 of the Nevada Revised Statute to the following Orders of this Court:

(a) A Declaration finding Ordinance 7 unconstitutional on its face and prohibiting any further discrimination against or segregation of residents of THE DISTRICT who are not 1968 Deed holders;

(b) An Order requiring Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF to permit plaintiff immediate access to and use of the BEACH PROPERTIES to exercise his Free Speech and Association Rights, or to Show Cause why such an Order should not be granted;

(c) An Order that plaintiff be permitted to opt out of the use of THE DIS-

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TRICT's recreational offerings and the annual Recreation Fee connected therewith so long as Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF continue to prevent plaintiff's recreational use (as opposed to First Amendment use) of the BEACH PROPERTIES;

(d) An Order prohibiting Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF from further considering or voting upon any matters pertaining to the BEACH PROPERTIES, or an Order to Show Cause why they should not be so prohibited because of their personal and pecuniary interest therein;

(e) An Order invalidating every piece of past legislation or policy pertaining to the BEACH PROPERTIES upon which Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have voted, on the ground that such votes were by self-interested Trustees in violation of law, and therefore null and void; and

(f) For such other Order deemed by the Court to be required to insure plaintiff the Privileges and Immunities to which he is entitled under the U. S. Constitution, and which have heretofore been denied him by defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF.

85. In the event and to the extent this Court determines that the 1968 Deed holders having or claiming an interest in the BEACH PROPERTIES may be affected by the Court's Declaratory Judgment or other equitable remedy sought or issued herein and are thereby deemed necessary parties to those portions of this lawsuit, plaintiff seeks leave to add said individuals as a Defendant Class identified as "1968 Deed holders" pursuant to Rule 23 of the Nevada Rules of Civil Procedure on the following grounds:

(a) The class of 1968 Deed holders is comprised of some 8,200 parcels more or less within the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, too numerous to make joinder of each of them individually practicable;

(b) There are in this lawsuit questions of law or fact common to the class, namely the validity and enforceability of the 1968 RESTRICTIVE COVENANT upon which defendant DISTRICT relies to limit access and use of its BEACH PROPERTIES, and the defenses against plaintiff's Complaint on said issue are the same for the class

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as they are for defendants;

(c) Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF in their individual capacity are 1968 Deed holders and fully representative of the defendant class who have demonstrated by past actions that they will fairly and adequately protect the interests of said class;

(d) To the extent this Court judges defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF in their individual capacity to have a conflict of interest with their duties in their representative capacity rendering them unsuitable alone to fairly and adequately protect the interest of the defendant class of 1968 Deed holders should such be certified, plaintiff will seek leave to identify DOE defendants 20 through 25 inclusive, or some of them, to add as parties defendant as additional or alternative suitable representatives of the said defendant class .

86. Plaintiff nowhere in this Complaint seeks to invalidate the 1968 RESTRICTIVE COVENANT itself but rather seeks invalidation of defendant IVGID's Ordinance 7 and other acts and practices wrongfully based and disingenuously relying upon the RESTRICTIVE COVENANT by the named defendants, and plaintiff is of the belief and thereon alleges that this Complaint does not, in fact, adversely effect any property rights claimed by the 1968 Deed holders requiring their presence as parties; but if this Honorable Court determines otherwise upon its own Motion or one made by any defendant herein, plaintiff is entitled to a Certification of Defendant Class and prays that should this issue be raised, as soon as practicable thereafter this Court should determine by order whether said action is to be so maintained, and if so, that the matter proceed herein as required by Rule 23 NRCP.

Claim for Attorneys Fees under 42 U.S.C. 1988

87. Plaintiff has, over the past two years, expended hundreds of hours of his time and energy *pro bono publico* in this matter, and exercised every approach, means, method and idea that any reasonable citizen could imagine in order to bring about a voluntary solution that would avoid litigation on the issues raised in this Complaint.

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88. Among other things, plaintiff has filed a formal Petition and other applications to defendant Trustees for relief; has vigorously pursued administrative remedies in other branches of the Nevada state government; has sat on an IVGID-established Committee that actually arrived without dissent at a concrete proposal to solve the Beach Access problems, but the proposal was rejected by a majority of the Board of Trustees of THE DISTRICT in 2007 as hereinabove alleged; has written Letters to the Editor and testified before defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF on numerous occasions urging them to take actions ranging from changing the name of the District to include Crystal Bay's to make clear that THE DISTRICT is not confined to Incline Village alone, to pursuing the formal separation of Crystal Bay from THE DISTRICT and a divorce from the 1995 Merger; and even to his great distaste put himself up as a candidate for a vacant IVGID Trustee position all in order to try to bring about change in the wrongful practices and conduct set forth in this Complaint without the necessity of having to file a lawsuit.

89. Plaintiff's efforts to resolve the matters gently were all rejected by THE DISTRICT, and defendant JOHN A. BOHN in particular on numerous occasions vociferously invited the filing of a lawsuit, expressing the opinion that any lawsuit would be defeated by THE DISTRICT's deep pockets.

90. Defendant BOHN's position was not unique but rather part of a decades-long pattern and practice of defendant IVGID to sit back and enjoy the perks of power, putting the onus of any legal challenge on the tiny minority of its residents without Beach Access and then pouncing like a spider should anyone actually sue, such as happened in 2001 in a Second Judicial District Court case number CV01-03822 called *2001 Beach Access, Inc. vs. IVGID*, despite the soothing words of an April 27, 2000 letter to a Crystal Bay resident (not the plaintiff nor any party to the 2001 suit) from then IVGID General Counsel Noel Manoukian, who wrote concerning "this somewhat difficult question": "I feel comfortable in informing you that should you are any other persons who may

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feel aggrieved by the 'private/closed' nature of the IVGID beaches wish to challenge the District's policy, you may want to consider filing a complaint for declaratory relief under Chapter 30 of the Nevada Revised Statutes."

91. Defendant DISTRICT and individual defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF owed and owe a fiduciary duty to its minority constituency and to plaintiff STEVEN KROLL in particular not to force them to initiate litigation, but to answer the questions of the 1968 Deed and the validity of the RESTRICTIVE COVENANT themselves under the expedited procedures for municipalities set forth in NRS Chapter 43, and their violation of that duty has directly and proximately caused all damages sustained by plaintiff KROLL as alleged in this Complaint.

92. Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have further violated their fiduciary duty to plaintiff KROLL's extreme damage by failing to disclose to him that his many efforts to avoid litigation were doomed from the beginning because in another of its unwritten and undisclosed rules (as more particularly alleged in the Fifth Cause of Action herein), "The Trustees will not take this to court and it would be political suicide for them to remove the beach restriction without being forced to do so," in the words of then IVGID General Manager John Danielson on July 11, 2000.

93. "In such cases there is no safety for the citizen except in the protection of the judicial tribunals, for rights which have been invaded by the officers of the government professing to act in its name," as declared by the Connecticut Supreme Court in *Leydon v. Town of Greenwich*, 777 A.2d 552, (Conn. 2001) dealing with issues having many points in common with the case at bar, and thus the filing of this Complaint has become unavoidable.

94. As a result, the knowledge, skill, and training of legal professionals are and will continue to be required to prosecute the within action and to enable plaintiff to vindicate the depriva-

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tion and impairment of his aforementioned privileges and immunities under the U.S. Constitution, and by reason thereof plaintiff seeks and requests an order of the Court requiring defendants to pay a reasonable sum to plaintiff and any attorney for the plaintiff for the latter's fees, pursuant to Title 42 U.S.C.A. Section 1988.

95. Plaintiff STEVEN E. KROLL is an attorney at law licensed to practice before all the courts of the State of Nevada and a member of the Nevada Bar in good standing.

96. Plaintiff KROLL operates a solo legal practice among other means of earning a meager living, and is without the financial resources to hire counsel to prepare, file, and prosecute this case to a successful conclusion, the cost of which in his professional judgment could easily exceed $1,000,000.

97. It would be inequitable, unjust and a violation of substantive Due Process among other Constitutional rights to permit Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, WOLF and the DOE defendants to use their superior economic clout to take advantage of and benefit from the realities of the difficulties and expense of modern litigation to prevent the important constitutional rights sought to be vindicated herein from reaching a court of law because a lawyer could not be hired, and this plaintiff's only alternative to see that that does not happen is to perform the legal services required himself.

98. As a result, plaintiff STEVEN KROLL appears herein in two separate capacities: individually, as the injured party, and in his professional capacity as Attorney at Law, and he is entitled in the latter capacity to fair compensation in the discharge of his professional duties under 42 U.S.C. Section 1988 and other pertinent law.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

99. Plaintiff realleges Paragraphs 1 through 98 above.

100. This is an action under the Uniform Declaratory Judgments Act, NRS 30.010 et seq. to

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declare unconstitutional or otherwise invalidate certain municipal ordinances, regulations and practices of defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, and to determine questions arising in the administration of a public trust by defendants BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF in their fiduciary capacity.

101. Ordinance 7, in authorizing the legalized segregation of a portion of the population of the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT from the full and equal use and benefit of the BEACH PROPERTIES owned by said DISTRICT is void on its face as violative of the U.S. Constitution as aforesaid, and the equivalent provisions of the Constitution of the State of Nevada to wit: Article 1 Section 1 guaranteeing the inalienable right to enjoy and defend life and liberty, and to acquire and protect property; Section 2 clarifying the difference between public and private, and asserting that "Government is instituted for the protection, security and benefit of the people"; Section 8 providing that "no person shall be deprived of life, liberty, or property without due process of law", and "private property shall not be taken for public use without just compensation having been first made or secured"; and by Article 1 Section 9 guaranteeing Liberty of Speech, and Section 10 the Right to Assemble and to Petition.

102. Ordinance 7 is further invalid by reason of Article 10 Section 1 of the Nevada Constitution requiring uniform and equal rates of taxation by governmental entities as well as NRS Sections 281.240, 318.015, 318.205 and 318.220 and the other Nevada statutes cited in this Complaint.

103. Ordinance 7 is further invalid by reason of NRS 318.258 providing that plaintiff STEVEN KROLL's entry into the newly-merged IVGID in 1995 can not "be made subject to or contingent upon the payment or assumption of any penalty".

104. The BEACH PROPERTIES are an asset of defendant IVGID, but Trustees BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF, in violation of their fiduciary duty, are administering said asset in a way which denies certain beneficiaries of the trust such as plaintiff STEVEN

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KROLL the right to participate in the use and enjoyment thereof, and said plaintiff is entitled to a declaration of his rights or legal relations in respect to said trust property pursuant to NRS. 30.060.

105. Plaintiff is entitled pursuant to statute and case law to his costs and attorneys fees in bringing this Action for Declaratory Judgment.

THIRD CAUSE OF ACTION: for DAMAGES for BREACH OF FIDUCIARY DUTIES and for AN ACCOUNTING

106. Plaintiff incorporates the allegations contained in paragraphs 1-105 above.

107. This is an action for damages and equitable relief including an Accounting against Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF in their fiduciary capacity as TRUSTEES of the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT and in their administration of the BEACH PROPERTIES, a trust asset of THE DISTRICT.

108. Said defendants and defendant IVGID claim that they have a policy of ensuring that all costs and expenses regarding the BEACH PROPERTIES are properly segregated and allocated for payment only to those properties that receive the benefit, while plaintiff alleges that whatever their policy may say, such has not been the actual result.

109. Defendant IVGID has now, and at all times material hereto had no segregated Trust Accounts.

110. Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF have breached their fiduciary duties to plaintiff by, among other ways, commingling the income and expenditures alleged to come from the segregated BEACH PROPERTIES with the General Funds of THE DISTRICT, and failing and refusing despite plaintiff's demand therefor to establish a separate and segregated Trust Bank Account dedicated solely to accounting for such PROPERTIES.

111. Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF have further violated their fiduciary duties to plaintiff in other ways, including:

(a) Failing and refusing to recognize that however they justify the exclusion

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of plaintiff KROLL and others similarly situated from the BEACH PROPERTIES, they are assets of THE DISTRICT and not of the 1968 Deed holders and any income generated by those properties belongs to THE DISTRICT as a whole;

(b) Failing to generate income available to THE DISTRICT which would reduce the financial burden on plaintiff KROLL by not charging IVGID members granted access thereto a fee for such exclusive use, or otherwise to exploit the rental and other value of the BEACH PROPERTIES on behalf of THE DISTRICT;

(c) Using said defendants' connections with the Federal, State, County, and other governmental agencies and the other advantages and benefits alleged above to unequally benefit the 1968 Deed holders at the expense of plaintiff and others IVGID members similarly situated;

(d) Permitting the DISTRICT to abuse its status as a Public Utility by granting itself preferences and reduced rates at plaintiff's expense as more fully alleged in the Sixth Cause of Action in this Complaint;

and said defendants have committed other accounting errors which have fundamentally violated their fiduciary obligations to the plaintiff herein and cost him money out of pocket and other damages.

112. Said defendants, with the active and intentional or negligent assistance, participation, conspiracy, and agreement of, by and among DOE defendants 1 through 20 inclusive, have by their breach of duty aforesaid forced the plaintiff to help financially support the BEACH PROPERTIES through his property taxes, recreation fees, utility charges, and the value of his Loss of Use of said properties among other ways, to his damage in a sum in excess of $10,000.

113. As a result of defendant IVGID's refusal to establish a segregated Trust Account for the BEACH PROPERTIES and the other accounting errors and irregularities alleged herein, an independent audit and court-supervised accounting of defendant IVGID's books is required at said defendant's expense to try to unravel THE DISTRICT's commingled funds and ascertain the sums which must be refunded to said plaintiff as having been wrongfully expended for the BEACH

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PROPERTIES as aforesaid.

114. Plaintiff is further entitled to an Order of this Court requiring defendant IVGID to promptly establish a separate and segregated Trust Account for the BEACH PROPERTIES so long as said PROPERTIES should remain segregated in use to the 1968 Deed holders only.

115. Plaintiff is entitled by statute and case law to his costs and attorneys fees in bringing this action to enforce fiduciary obligations.

FOURTH CAUSE OF ACTION: for an ORDER PROHIBITING VOTES OF SELF-INTERESTED TRUSTEES, AND INVALIDATING PREVIOUS ACTION TAKEN BY THEM

116. Plaintiff realleges Paragraphs 1 through 115 above.

117. This is a petition pursuant to, *inter alia*, NRS 34.320 et seq., NRS 318.0956, and the Nevada Ethics in Government Law, NRS 281.411 et seq. The Petitioner is a member of the INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT and respectfully petitions this Court for a Writ of Prohibition directing defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF, all public officers, to desist and refrain from voting on or advocating the passage or failure of any matter involving THE DISTRICT's BEACH PROPERTIES in which they have a personal and pecuniary interest, or to show cause before this Honorable Court at such time and place to be set why said defendants should not be absolutely restrained from any further proceedings in such matters.

118. All votes cast on the BEACH PROPERTIES by defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF are and were in violation of Nevada laws prohibiting the votes of such interested Trustees and such actions are null and void as a result, and plaintiff is entitled to an Order of this Court so declaring.

119. Plaintiff has demanded many times that the individually named defendants recuse themselves from voting on matters concerning the BEACH PROPERTIES or divest themselves of the interest creating the conflict, but they have rejected those demands on every occasion and

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plaintiff is entitled to his costs and legal fees and expenses in bringing this action pursuant to Title 2 of the Nevada Revised Statutes.

FIFTH CAUSE OF ACTION: NEVADA OPEN MEETING LAW VIOLATIONS

120. Plaintff realleges Paragraphs 1 through 119 above.

121. This is an action under NRS 241.037 to require compliance with and prevent further violations of Chapter 241 of the Nevada Revised Statutes known (and hereinafter referred to) as the Open Meeting Law.

122. The Nevada Legislature adopted the Open Meeting Law to insure that all public bodies' actions "be taken openly and that their deliberations be conducted openly" as set forth in NRS 241.010, and generally provides that no decision or action upon any matter over which the public body has supervision, control, jurisdiction or advisory powers can be taken by that body unless and until certain prerequisites are satisfied, including setting a hearing date in writing with adequate advance notice to the public; agendizing a clear and complete statement of the topic to be considered; and an opportunity for people to comment before the public body's vote among other requirements.

123. Defendant INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT is a "public body" and Plaintiff STEVEN KROLL is a member thereof and a person covered by the rights conferred by the Open Meeting Law.

124. Plaintiff is informed and believes and on that basis alleges that on a date unknown but within the 120-day limitations period for actions brought pursuant to NRS 241.037.3 et al., defendant IVGID made a decision and took an action which plaintiff STEVEN KROLL had specifically asked them in writing to take, but in a deceptive and secret manner totally violative of the Open Meeting Law in doing so, namely: deciding that Ordinance 7 should be suspended on March 22, 2008 for an Easter "Eggstravaganza" at INCLINE BEACH, and that all children should

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be invited to that community event whether or not their parents hold Beach Passes.

125. Besides reaching the abovesaid decision in secret, defendant IVGID further violated the Open Meeting Law by failing to provide the "minimum public notice" required by NRS 241.020.3 advising the public of its decision to open up INCLINE BEACH for their "Eggstravaganza" as abovesaid, with the result that children and their parents without Beach Passes who did not read of it in the local newspaper a few days before the event would never have learned that it was open to them.

126. Violation of Nevada's Open Meeting Law in the manner set forth above is but one in a pattern and practice of defendants IVGID and BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF to secretly make up rules and procedures in certain matters as they go along, with the specific intent of avoiding the provisions of the Open Meeting Law in matters pertaining to the BEACH PROPERTIES or the RESTRICTIVE COVENANT.

127. More particularly, according to the Minutes of a March 11, 2008 IVGID Committee meeting defendant JOHN A. BOHN, a former Chairman of the Board of Trustees of IVGID, revealed that "the Board of Trustees grants a one-time-only exception [to the RESTRICTIVE COVENANT] and that if they were to put that in writing it would be a violation of the deed restriction which could potentially result in a lawsuit."

128. Plaintiff is entitled to an Order of this Court condemning and prohibiting the conduct alleged above and directing THE DISTRICT to make public all rules or policies on whatever topic or of whatever description adopted by it without "putting it in writing" for whatever reason which are, like the one disclosed by former Chairman Bohn alleged above, still in effect and operational.

129. Defendant DISTRICT and defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have for much of the time they have been in office as Trustees failed and re-

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fused properly to supervise and control certain of their professional staff or advisors, and they have been engaged in a wink-and-a-nod arrangement with each other and with those professionals to evade their responsibilities as Trustees and government officials, effectively using tactics such as those revealed by defendant BOHN as alleged above "to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers", as prohibited by NRS 241.040.

130. In addition to the abuses of the Open Meeting Law alleged above, defendant DISTRICT and defendants BOHN, BROCKMAN, EPSTEIN, WOLF and, after his appointment, WEINBERGER have improperly invoked narrowly circumscribed exceptions to that Law to conduct secret meetings, including one unannounced and officially unreported such meeting with their General Counsel T. Scott Brooke, Esq. on or about November 8, 2006 to discuss "the entire beach property issue", deceptively agreeing amongst themselves and certain DOE defendants that this would "be a 'non-meeting' under the provisions of NRS 241.015 to discuss litigation."

131. Reliance by these defendants upon NRS 241.015 was bogus and an obvious sham even to a non-lawyer as there was no litigation on "the entire beach property issue" pending or threatened at the time of the self-described "private meeting", and no reasonable Trustee who was conflict-free and could see with their own eyes what was going on could have adopted a conclusion of fact by their General Counsel that "recent communications to the District and public statements by parties involved constitute threatened litigation" thereby bootstrapping themselves out of the perceived constraints of the Open Meeting Law, and said defendants had the obligation to make those factual determinations independently for themselves and in the open, following all of the requirements of Nevada's Open Meeting Law.

132. Since any contentious issue of whatever description coming before THE DISTRICT's Board of Trustees will by definition have at least two sides to it and letters will inevitably be writ-

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ten or statements made in public supporting or opposing the matter, permitting defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF to continue to interpret "recent communications to the District and public statements by parties involved" as legally authorizing secret meetings behind closed doors as they have done in plaintiff's case would blow a hole in the Open Meeting Law big enough to drive a truck through and the Court must issue whatever orders are necessary to prevent that from happening again.

133. Because of the misconduct of defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF as above alleged, plaintiff is entitled to an Order of this Court to include:

(a) A specific direction to defendant BOHN and the other Trustees of defendant IVGID that all decisions or actions of the District must be reduced to writing after being properly adopted pursuant to law, with the specific admonition that there are no circumstances where the duty to "put it in writing" can be evaded for any reason whatsoever;

(b) An Order that any exception to the Nevada Open Meeting Law must be narrowly applied and does not excuse the Public Body invoking it from giving public notice of a meeting claimed to be exempt from the Open Meeting Law, and keeping minutes of that meeting for review, if necessary, by a Court of Law which may have to pass on the validity of the invocation of the exemption;

(c) An Order declaring the exception in the Open Meeting Law granted by NRS 241.015 to discuss litigation did not create a "non-meeting" on November 8, 2006 as described by an IVGID agent, and that the very term "non-meeting" is diametrically opposed to the entire architecture and spirit of the Open Meeting Law and is specifically disapproved as a term of art under the Open Meeting Law; and

(d) An Order that citizens writing letters to THE DISTRICT or expressing opinions in public on any matter within THE DISTRICT's jurisdiction may not, as a matter of law, be the basis for invoking NRS 241.015 to exempt the matter from the Open Meeting Law even if such letters or publicly expressed opinions contain threats of litigation, since the public has a right to know and evaluate any such threats, and any decision that such threats rise to the level of actual potential litigation must be

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made specifically and openly under all the provisions of the Open Meeting Law before the exemption of NRS 241.015 can be invoked.

134. Plaintiff is entitled to all reasonable costs and attorneys fees incurred in bringing this action, pursuant to NRS 241.037.2.

SIXTH CAUSE OF ACTION: Appeal from Final Ruling by IVGID in its capacity as a Public Utility

135. Plaintiff realleges Paragraphs 1 through 134 above.

136. This an appeal from a final ruling of THE DISTRICT in its capacity as a Public Utility denying plaintiff STEVEN KROLL a refund for overpayment of his water bill and other relief.

137. NRS 318.199 requires boards of trustees of General Improvement Districts such as defendant IVGID to "establish schedules showing all rates, tolls or charges for services performed or products furnished," and NRS 704.040 requires such charges to be "just and reasonable", making unlawful "every unjust and unreasonable charge for service of a public utility".

138. Defendant IVGID in its role as a Public Utility is obliged to serve alike all who are similarly circumstanced with reference to its system, and favor cannot legally be extended to one which is not offered to another.

139. Pursuant to its powers as a public utility, defendant DISTRICT duly adopted Water Ordinance No. 4 which among other things appropriately exempts from "excess water charges" all "outdoor parks and recreation accessible to the public."

140. Solely in order to secure a financial advantage for itself, Defendant DISTRICT in its role as a Public Utility has determined that INCLINE BEACH and BURNT CEDAR BEACH are "outdoor parks and recreation accessible to the public" despite said PROPERTIES' being closed to the General Public and to plaintiff KROLL, billing those PROPERTES as such in order to save and thereby saving itself more than $5918 in excess water charges in 2006 and 2007, and continuing to save monetarily with such unauthorized discounts into the future.

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141. On or about June 1, 2007 and pursuant to the provisions of Ordinance No. 4 as above-said, plaintiff demanded of defendants IVGID and BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF that they treat INCLINE BEACH and BURNT CEDAR BEACH consistently with their long-standing policy of making said PROPERTIES *not* accessible to the public, reversing the discount previously granted to those PROPERTIES and reimbursing plaintiff's proportionate share of said defendant's illegal and discriminatory water underpayment, but on or about October 31, 2007 defendant IVGID rendered a Final Ruling within the meaning of Section 1.09 of Ordinance 4 rejecting plaintiff's said demands.

142. Plaintiff has exhausted his administrative remedies and appeals to this Court to compel defendant IVGID's compliance with its obligations when acting as a Public Utility as abovesaid, and for an order refunding to plaintiff his proportionate share of THE DISTRICT's willful underpayment of its water charges as herein alleged, plus plaintiff's attorneys fees and costs.

WHEREFORE, plaintiff STEVEN E. KROLL prays for judgment against the defendants and each of them as their interests shall appear as follows:

1. For compensatory damages in excess of $10,000 by virtue of the First and Third Causes of Action;
2. For punitive and exemplary damages of $1000 each against defendants BOHN, BROCKMAN, EPSTEIN, WEINBERG, and WOLF, and for punitive damages against the willfully responsible DOE defendants in a sum in excess of $10,000 pursuant to the First, Third, Fourth and Fifth Causes of Action;
3. For an Order declaring Ordinance 7 unconstitutional on its face and as applied under the United States Constitution and the Constitution of the State of Nevada and invalid also under NRS Sections 281.240, 318.015, 318.205 and 318.220 and 318.258, and prohibiting any further discrimination against or segregation of residents of THE DISTRICT who are not 1968 Deed holders pursuant to the First and Second Causes of Action;
4. For an Order requiring Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WE-

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INBERGER, and WOLF to permit plaintiff immediate access to and use of the BEACH PROPERTIES to exercise his Free Speech and Association Rights or to Show Cause why such an Order should not be granted pursuant to the First and Second Causes of Action;

5. For an Order that plaintiff be permitted to opt out of the use of THE DISTRICT's recreational offerings and the annual Recreation Fee connected therewith so long as Defendants IVGID, BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF continue to prevent plaintiff's recreational use (as opposed to First Amendment use) of the BEACH PROPERTIES, and reimbursing plaintiff all Recreation Fees paid by him to date with statutory interest on said sum, pursuant to the First , Second and Third Causes of Action;
6. For an Order prohibiting Defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF from further considering or voting upon any matters pertaining to the BEACH PROPERTIES or to Show Cause why they should not be so prohibited because of their personal and pecuniary interest therein pursuant to the First, Second, Third and Fourth Causes of Action;
7. For an Order invalidating every piece of past legislation or policy pertaining to the BEACH PROPERTIES upon which defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF have voted, on the ground that such votes were by self-interested Trustees in violation of law and therefore null and void pursuant to the Fourth Cause of Action;
8. For an Order declaring plaintiff STEVEN KROLL's right to participate in and use all assets held in trust for all District residents by defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF pursuant to the Fourth Cause of Action;
9. For an independent audit and court-supervised accounting of defendant IVGID's books at said defendant's expense pursuant to the First and Third Causes of Action;
10. For an Order requiring defendant IVGID to promptly establish a separate and segregated Trust Account for the BEACH PROPERTIES to continue so long as said PROPERTIES remain segregated in use pursuant to the Third Cause of Action;

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11. For an Order specifically directing defendant BOHN and the other Trustees of defendant IVGID that all decisions or actions of the District must be reduced to writing after being properly adopted pursuant to law, with the admonition that there are no circumstances where the duty to "put it in writing" can be evaded for any reason whatsoever pursuant to the First and Fifth Causes of Action;
12. For an Order directing THE DISTRICT to make public any other rules or policies on whatever topic or of whatever description adopted by it without "putting it in writing" for whatever reason which are still in effect and operational, pursuant to the Fifth Cause of Action;
13. For an Order that any exception to the Nevada Open Meeting Law must be narrowly applied and does not excuse the Public Body invoking it from giving public notice of a meeting claimed to be exempt from the Open Meeting Law, and keeping minutes of that meeting for later review, pursuant to the First and Fifth Cause of Action;
14. For an Order declaring the exception in the Open Meeting Law granted by NRS 241.015 to discuss litigation did not create a "non-meeting" on November 8, 2006 as described by an IVGID agent, and that the very term "non-meeting" is diametrically opposed to the entire architecture and spirit of the Open Meeting Law and is specifically disapproved as a term of art under the Open Meeting Law;
15. For an Order that citizens writing letters to THE DISTRICT or expressing opinions in public on any matter within THE DISTRICT's jurisdiction may not, as a matter of law, serve as the basis for invoking NRS 241.015 to exempt the matter from the Open Meeting Law even if such letters or publicly expressed opinions contain threats of litigation since the public has a right to know and evaluate any such threats, and any decision by defendants BOHN, BROCKMAN, EPSTEIN, WEINBERGER, and WOLF or any successor Trustee that such threats rise to the level of actual potential litigation must be made specifically and openly under all the provisions of the Open Meeting Law before the exemption of NRS 241.015 can be invoked, pursuant to the First, Second and Fifth Causes of Action;
16. For an Order reversing THE DISTRICT's ruling against the plaintiff in its capacity as a Public Utility and requiring it to charge Excess Water Charges to the BEACH PROPERTIES until and unless those PROPERTIES become "accessible to

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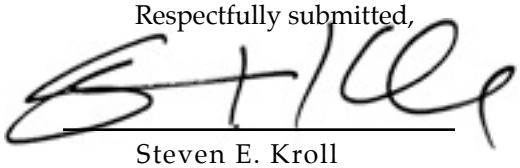
the public", to repay all unpaid Excess Water Charges to date with statutory interest, and to refund to plaintiff KROLL his proportionate share of that sum pursuant to the Sixth Cause of Action;

17. For prejudgment interest, all costs of suit, and attorneys' fees in an amount as proved.

18. For such further and other relief as the Court may deem appropriate.

DATED at Crystal Bay, Nevada this ___28th_____ day of March, 2008.

Respectfully submitted,



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Attorney for Plaintiff
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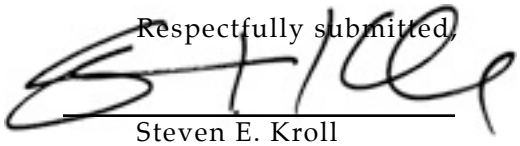
DEMAND FOR TRIAL BY JURY

Plaintiff STEVEN E. KROLL, by and through his attorney undersigned, hereby demands Trial by Jury on all matters so triable as of right herein; and as to any matter not so triable plaintiff moves the Court pursuant to Rule 39(c) FRCP to try any such issue with an advisory jury or order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

DATED at Crystal Bay, Nevada this __28th_____ day of March, 2008.

Respectfully submitted,



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DEED

THIS INDENTURE, made this 3rd day of June, 1968, between VILLAGE DEVELOPMENT CO., formerly known as CRYSTAL BAY DEVELOPMENT CO., a Nevada corporation, party of the first part, (hereinafter referred to as "Grantor"), and INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a quasi-municipal corporation organized and existing pursuant to the provisions of the General Improvement District Law, Chapter 318, Nevada Revised Statutes, party of the second part (hereinafter referred to as "Grantee"),

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of TEN DOLLARS ($10.00), lawful money of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns, all that certain lot, piece or parcel of land situate in the County of Washoe, State of Nevada, more particularly described in Exhibit "A" attached hereto.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

It is hereby covenanted and agreed that the real property above described, and any and all improvements now or hereafter located thereon, shall be held, maintained and used by grantee,

BOOK 284 PAGE 402

Exhibit A

its successors and assigns, only for the purposes of recreation by, and for the benefit of, property owners and their tenants (specifically including occupants of motels and hotels) within the Incline Village General Improvement District as now constituted, and, as the Board of Trustees of said District may determine, the guests of such property owners, and for such other purposes as are herein expressly authorized.

This covenant shall be in perpetuity, shall be binding upon the successors and assigns of grantee, shall run with and be a charge against the land herein described, shall be for the benefit of each parcel of real property located within the area presently designated and described as Incline Village General Improvement District and shall be enforceable by the owners of such parcels and their heirs, successors and assigns; provided, however, that said Board of Trustees shall have authority to levy assessments and charges as provided by law, and to control, regulate, maintain and improve said property as in its sole discretion it shall deem reasonable and necessary to effectuate the purposes herein mentioned; and provided, further, the said District shall have the right to use the real property above described for the maintenance and operation of the water pumping facilities now located thereon and such other utility facilities necessary to the operation of the District.

Grantor, for the benefit of itself and its successors and assigns in the ownership of real properties located within the presently constituted boundaries of Incline Village General Improvement District, and for the benefit of all other owners of property located within said boundaries, and their respective successors and assigns in such ownership, hereby specifically reserves an easement to enter upon the above described real property and to

use said real property for the recreational uses and purposes specified herein. Said District shall have the authority to impose reasonable rules, regulations and controls upon the use of said easement by the owners thereof.

The easement hereby created and reserved shall be appurtenant to all properties located within the Incline Village General Improvement District, as said District is now constituted. Such easement may not be sold, assigned or transferred in gross, either voluntarily or involuntarily, but shall pass with any conveyance of real properties within said District as now constituted.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

VOL 324 PAGE 194

ATTEST:

Secretary

VILLAGE DEVELOPMENT CO.

By
President

ACCEPTED AND APPROVED:

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

ATTEST:

Secretary

By
President

-3-

Exhibit B

Policy and Procedure Resolution No. 132
Resolution No. 1701

Director of Parks and Recreation and/or the District General Manager. The time of the year, capacity and availability of recreational facilities will be factors for consideration for discounting.

ALL BEACHES

All of the beaches within the Incline Village General Improvement District are private, have restricted access, and are available for the exclusive use of the Incline Village property owners. On a case by case basis, uses of the beaches by a qualified, non-profit, volunteer organization or activity based in Incline Village will be directed, for possible consideration, to the District General Manager.

POLICY AND PROCEDURE STEP 3
REPORTING TO THE BOARD OF TRUSTEES

The District Staff will provide at a minimum an annual report, to the Board of Trustees summarizing the use of the District venues under this Policy and Procedures/Resolution.

* * * * * * * *

I hereby certify that the foregoing is a full, true and correct copy of Policy and Procedure Resolution No. 132, Resolution No. 1701, as amended at a regular meeting of the Board of Trustees of the Incline Village General Improvement District on the 13th day of June, 2007, by the following vote:

AYES, and in favor thereof, Trustees:
NOES, Trustees:
ABSENT, Trustees:

Robert C. Wolff, Secretary

POLICY AND PROCEDURE RESOLUTION NO. 132, RESOLUTION NO. 1701
As amended April 12, 2000
As amended April 30, 2003
As amended May 15, 2003
As amended February 25, 2004
As amended October 11, 2006
As amended June 13, 2007

Exhibit C

Board Meeting Recap—*June 28, 2000*

Agenda Item	Board Action
Consent Calendar:	
Award of Contract for Manhole and Valve Box Adjustments related to Washoe County's Year 2000 Overlay Project	5-0
Insurance Renewal for 2000-01	5-0
Will-Serve Letter, 939 Wendy Lane, "O'Hara" Project	4-0
General Business:	*(Exhibit obtained)*
Duck Hunting Program	5-0

(These are the more significant of the items considered on the June 28 agenda.)

4th of July Announcement!
RESTRICTED ACCESS TO BEACHES

Due to safety concerns with parking and traffic control, the three beaches in Incline Village will have restricted access on Tuesday, July 4, 2000, and *will not* be open to the public. Access will be permitted to the following persons:

- Resident Recreation Pass Holders
- Guests of a Resident Recreation Pass Holder
- Tenants with an IVGID Tenant Authorization Form

Whether a person arrives during the day or evening hours for the fireworks display, a recreation pass or a tenant authorization form will be required for entry to any of the three beaches. There will also be a fee charged at the gates for guests of residents.

Questions can be answered by contacting the Incline Village Recreation Department at 832-1310.

...rocess

...professionals solely on ...herefore, selection is ...ria for the project. ...nal services range from ...nstruction costs. The ...professional team has ...h the overall value and ...roposed new or ...ed it is essential that the ...sionals be hired.

...CESS ...is formal, and statu... ...are required preceding ...a bid is disqualified for ...og between the bidders ...ormal basis where ...e kept and circulated. ...ernally and require ...f receipt. Upon ...limited discussion and ...can occur. ...ntractor, IVGID is ...rules of NRS 318, ...cific rules for bidding ...Consequently, public ...f with means of ...edures governing what ...iate during a public bid ...tract. The regulations ...the public interest and ...fic scope of work that ...bidding of a project. In ...anguage is added to the ...quiring specific ...perience. For instance, ...ilting of swimming ...ould require evidence ...projects within the past ...project team develops ...es, some additive, ...t augment the "base" ...e Burnt Cedar Pool ...ive alternatives for the ...he decision of the ...is almost always based ...provided in the bid.

...ntractors must meet the ...e contract documents, ...cations. Therefore, any ...sed and bonded could ...ompleting the project. ...ntractor will dictate

the project's success. At IVGID, most projects are delivered through the conventional method of design, bid and construction. The use of this method allows various elements, including materials, equipment, and sub-contracts to be procured as independent bids. In doing so, IVGID's project manager must provide ample on-site project management for full coordination of these subcontracts. IVGID has utilized a "design/build" method of procurement in which a preliminary or even conceptual performance based description of the project is provided. The general contractor's design/build ... detailed engineering ... of design/build projects include the bridge between the Middle School and the tennis complex, the fabric structure at golf, a steel water storage reservoir, and a beach gatehouse building.

In summary, the process of project management is long and arduous. Project management uses the skills of the design team coordinating closely with other professional organization such as TRPA and Washoe county regulatory officials and the community to provide the quality of projects that Incline Village enjoys.

SESSION III – LAST SESSION OF JR. GOLF BEGINS NEXT WEEK!

...July 10 through July 14

For more details, please call the Golf Administration Office: (775) 832-1143.

Exhibit D

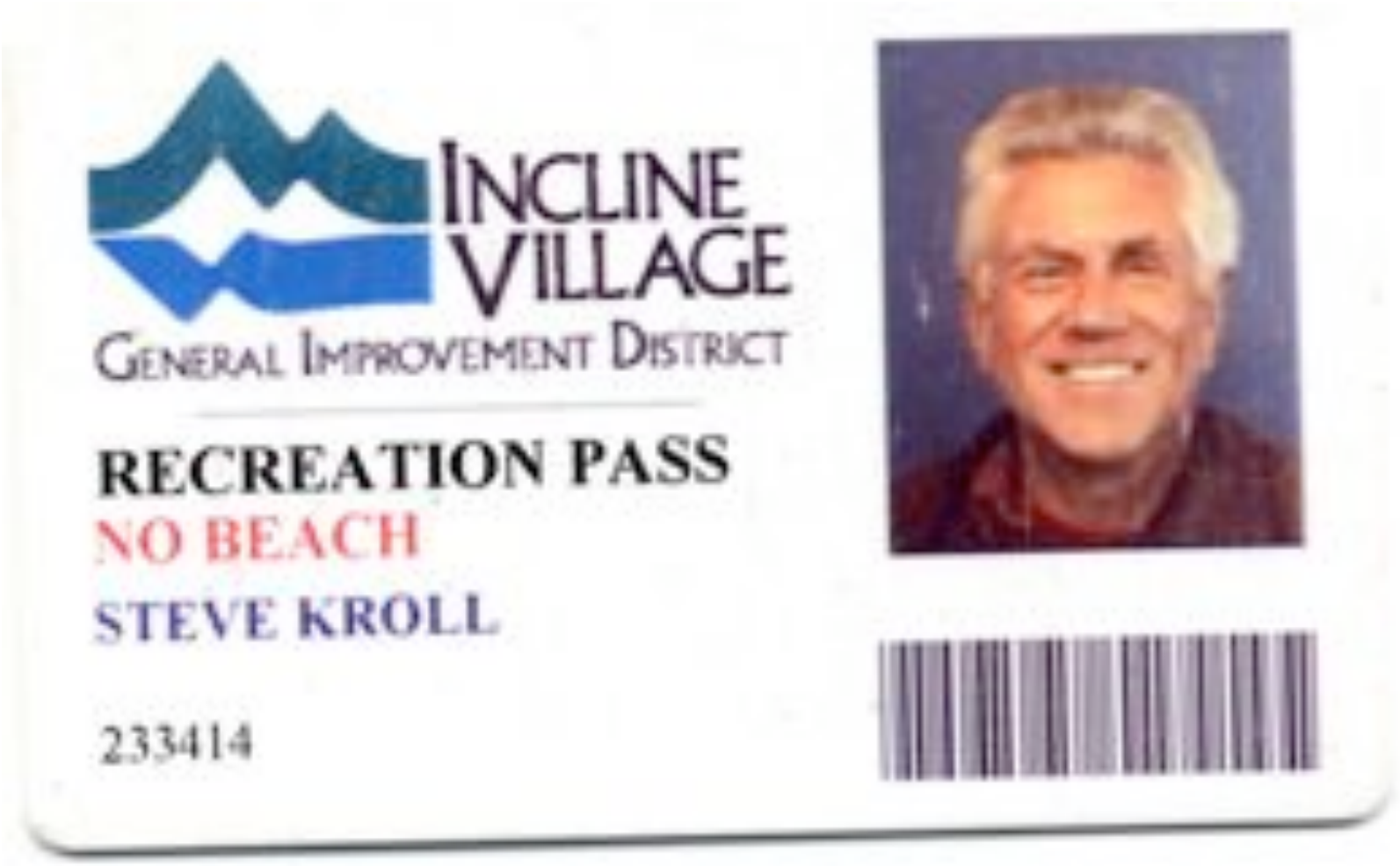

Exhibit E

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to Rule 5(b) FRCP, I certify that I am the attorney for Plaintiff in the above entitled action, and that on March 28, 2008 the State version of the following described First Amended Complaint was personally served upon defendant IVGID, and before it could be filed with the First Judicial District Court of the State of Nevada the matter was removed to this Court; and that on this date I caused a true and correct copy of the "**First Amended Complaint for Damages & Equitable Relief: First Amendment Petition**" herein to be served upon the parties or attorneys by electronically filing the same with this Court pursuant to and in compliance with its CM/ECF filing system, to which the following named attorney for all named defendants is a signatory:

Stephen C. Balkenbush, Esq.
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 South McCarran Blvd. Suite B
Reno, Nevada 89509

DATED: at Crystal Bay, Nevada this 16th day of April, 2008.

STEVEN E. KROLL